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**The Limits of Judicial Persuasion
and the Fragility of Judicial Legitimacy**

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Experimental research has yielded findings that are largely optimistic about the Court's powers to move public attitudes. But left largely unexplored is whether the Court's pronouncements simultaneously cause the Court to lose support among those who disagree with it. Here we explore these questions using a two-wave survey experiment with a nationally representative sample of Americans. We find that learning of the Court's rulings moves opinion toward the Court in an unmistakable fashion in only one out of six cases studied (the decriminalization of same-sex relations in *Lawrence v. Texas*). More significant, we find strong evidence that unpopular Court rulings result in a loss of legitimacy for the Court—but only among conservatives. Our findings suggest that in contemporary American politics, the persuasive powers of the Court are more limited and the institutional legitimacy of the Court more fragile than implied by previous work.

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When the Supreme Court decides, does the public follow—and change its views to endorse the position laid out by the ultimate arbiter of constitutionality?

Experimental research has yielded findings that are largely optimistic about the Court's powers to move public attitudes. Considered along with the theory of "positivity bias"—that exposure to judicial imagery and symbols bolsters the Court's legitimacy among Americans across the ideological spectrum—these findings have led many to conclude that the Court enjoys considerable persuasive powers and a significant degree of insulation from the slings and arrows of contemporary politics (Bartels and Mutz 2009; Clawson et al 2001; Cummings and Shapiro 2006; Gibson and Caldeira 2009; Gibson, Caldeira and Spence 2003a, 2003b; Hoekstra 1995, 2003; Hoekstra and Segal 1996; Mondak 1992, 1994; Unger 2008).

This research, however, stands in stark contrast to a long line of scholarship holding that the Supreme Court's legitimacy is in fact fragile. The Court lacks the autonomous power to enforce its rulings, forcing it to rely upon the support of actors in the other branches (Rosenberg 2008; Whittington 2009), and its involvement in policymaking is widely questioned by the public (Baum 2003). Experimental findings of persuasion are also at odds with studies using observational data, which have concluded that Supreme Court decisions tend to have little influence on public opinion (Marshall 1989). In addition, the resonance

of the charge among contemporary conservatives that the exercise of judicial review amounts to little more than “judicial activism” calls into question the claim that Americans’ responses to the Court are consistent regardless of ideology.

Against this background, in this study we employ a novel research design that for the first time permits the direct comparison of persuasion and delegitimation effects in an experimental setting. Like earlier studies, we examine whether attitudes on issues change among subjects informed of how the Court has ruled on those issues. Our innovation is a pretest-posttest control group design that helps us to better understand the factors affecting judicial legitimacy and legitimacy’s consequences for judicial persuasion. The design simultaneously allows us to see whether the Court loses legitimacy among those who disagree with its rulings in the pretest, and whether the Court is more persuasive among those who hold it in high regard in the pretest. Furthermore, we explore in depth the degree to which ideology moderates the impact of Court decisions on public opinion by assigning our subjects at random to learning from zero to three court decisions, with some subjects consistently exposed to liberal decisions and others to conservative decisions.

This methodological approach yields new findings that cast doubt on the Court’s power to persuade and bring to light previously unseen fractures in the Court’s legitimacy. We examine six rulings, and only one—the Court’s decision striking down state laws criminalizing same-sex relations in *Lawrence v. Texas* (2003)—moves our subjects’ attitudes in a significant fashion. But even this result should temper the optimism of those believing the Court has the ability to move

public opinion, for the observed effect is exactly the opposite of the backlash (a sharp drop in aggregate support for decriminalization) that actually occurred when *Lawrence* was handed down in 2003. This disjunction between an experimental finding and observational data suggests that even when the principles behind a Court ruling have the potential to change attitudes, outside the laboratory the capacity to persuade can be overcome by contemporaneous messages from elites and media coverage.

Furthermore, contrary to the positivity bias thesis, which holds that the symbolic aura of the Court moves people toward agreement with it and increased support for its institutional power, we find the opposite effect. Subjects who are informed of rulings that conflict with their preferences as measured in the pretest respond to learning of these disagreements by becoming less supportive of the Court's overall authority. More interestingly, this delegitimation effect has polarizing implications: the loss of the Court's legitimacy takes place among self-identified conservatives. It is they rather than liberals who withdraw support for endowing the Court with broad powers of judicial review.

These findings suggest that judicial legitimacy is more fragile and that the Supreme Court's persuasive powers are more limited than indicated by previous experimental work. When the Court issues an unpopular ruling, it may do so to its institutional peril. Even the Court's most convincing arguments can be chipped away by messages from other opposed political elites. Ironically, the judiciary is currently particularly vulnerable to attack from the right: despite the fact that a substantial majority of judges sitting on the federal bench at the time of our

experiment were nominated by Republican presidents, it is liberals who are more likely to maintain an institutional loyalty to the Supreme Court even when they disagree with its rulings.

Does the Judiciary Lead Public Opinion—or Ignore It at Its Peril?

This question has long been of interest to scholars, whose answers have largely divided along the lines of research method. On one side of the divide are experimentalists, who have discovered that the Court has strong persuasive abilities in settings where exposure to its rulings is under the researcher's full control. Experimental treatments in which subjects are informed of Court decisions (in some cases fictitious ones) have been found to affect attitudes regarding a range of policies, including affirmative action, the decriminalization of homosexual sex, euthanasia, flag burning, funding for controversial art, police searches, public displays of the Ten Commandments, public school funding, the teaching of creationism, and telecommunications regulation (Bartels and Mutz 2009; Clawson et al 2001; Cummings and Shapiro 2006; Hoekstra 1995; Mondak 1992, 1994; Unger 2008).

Findings like these are theoretically grounded in the idea that the Court enjoys persuasive powers due to a symbolic, quasi-mythical authority it holds in Americans' eyes. A large body of survey evidence shows that strong majorities of Americans express trust in the Court's ability to make the right decisions and disagree with the idea of reducing the Court's powers. These favorable sentiments are boosted by mere exposure to judicial symbols and imagery, even when the

judiciary is embroiled in controversy—a phenomenon that has been called “positivity bias” (Gibson and Caldeira 2009; Gibson, Caldeira and Spence 2003a). The judiciary is viewed by most Americans as an institution that should stand apart from politics and one that largely succeeds at doing so, even in the current polarized climate. Thus the Court is endowed with source credibility that should influence those who either use its rulings as a heuristic to make sense of complex issues, or as a substantive argument with which they engage in more mindful, systematic processing about those issues (Bartels and Mutz 2009). As a result, the Court’s legitimacy moves the public to accept counter-majoritarian decisions (Lerner 1967).

One limitation of the experimental approach is that the treatment is a one-time injection of information, whereas in reality a Supreme Court ruling is just the opening salvo of a debate among the nation’s elites that can quickly overwhelm any of the persuasive power of the ruling in a case. Thus on the other side of the divide are those who work with data drawn from surveys in the field, typically conducted before and after prominent Supreme Court decisions. These observational studies have generally failed to confirm the persuasion effects found by experimentalists. The most comprehensive study to date with observational data finds that the average change in aggregate opinion after a Supreme Court ruling is essentially zero (Marshall 1989; see also Adamany 1973). In many instances Court rulings appear to have resulted in backlash or polarization rather than persuasion (Brickman and Peterson 2006; Franklin and Kosaki 1989; Johnson and Martin 1998; Persily, Citrin, and Egan 2008). Only a few non-experimental studies exist in which opinion has been shown to move significantly toward the Court in the wake of its rulings—and

even these may be of limited generalizability to circumstances where the dominant flows of elite messages are in conflict with Court rulings. Many Americans who believed Al Gore won the 2000 presidential election nevertheless accepted the Supreme Court's ruling in *Bush v. Gore* as legitimate (Gibson, Caldeira and Spence 2003b)—but with few exceptions, so did the nation's Democratic and Republican elites, making it impossible to rule out that *Bush v. Gore* required elite messages for its legitimization. Supreme Court decisions can change the minds of residents living near a locality affected by the rulings (Hoekstra and Segal 1996; Hoekstra 2003), but this may be precisely because messages from national elites are usually absent in local disputes.

Indeed, given that American political culture is generally distrustful of government and particularly wary of non-democratic institutions, it is reasonable to expect that a counter-majoritarian ruling would trigger a negative shift in Americans' assessments of the Court's institutional legitimacy. Attitudes towards institutions and institutional processes can vary in important ways (Hibbing and Thiess-Morse 1995, 2002), and even persuasive political elites can see their standing reduced among those who disagree with their messages (Bailey, Sigelman and Wilcox 2003). Recognition of this threat, it is argued, pushes the Court to realign its rulings with the views of the coalition in charge of the White House and Congress (Dahl 1957) and to be responsive to public opinion (Casillas, Enns and Wohlfarth 2011; Clark 2011; Epstein and Martin 2011; Friedman 2009; Marshall 2008; McGuire and Stimson 2004).

In contrast to the work on judicial persuasion, there have been virtually no experimental explorations of the dynamics of judicial legitimacy. Nearly all of our knowledge comes from observational studies—again conducted with data obtained before and after relevant Supreme Court decisions. Findings from these studies are mixed. Some of this research shows that attitudes regarding controversies on which the Supreme Court has ruled—including abortion, racial segregation, pornography, and the 2000 presidential election—have little effect on Americans’ support for the Court (Caldeira and Gibson 1992; Gibson, Caldeira and Spence 2003a). However, other work has found that the Court can lose support among those who disagree with its rulings. Aggregate support declines after the Court strikes down federal laws or rules against the government in criminal cases (Caldeira 1986). Americans’ attitudes on flag burning and abortion affected their support for the Court after it issued rulings in 1989 on these issues (Grosskopf and Mondak 1998). Agreement or disagreement with Supreme Court rulings among residents in localities affected the rulings leads them to adjust their support for the Court accordingly (Hoekstra 2000; 2003). Only one published study investigates this question in an experimental context, and its finding—that college undergraduates adjust their views about the Court after learning how it ruled on controversies affecting students—is unfortunately of limited generalizability (Mondak 1992).

Judicial legitimacy and ideology. A final weakness of previous work on judicial legitimacy is that it has largely ignored the fact that Americans’ views of the Supreme Court can be shaped profoundly by their ideology (Caldeira 1990).

Throughout American history, political factions that have been stymied by the Court

have turned to other means to impugn the legitimacy of Court decisions that are not in their favor (Clark 2011). The current incarnation of this familiar narrative—set in place by a series of highly salient liberal Court rulings during the Earl Warren era—has conservatives charging that counter-majoritarian liberal Court rulings represent “judicial activism” (Keck 2004; Klarman 2005; Schacter 2009; Siegel 2010). Scholars generally locate the origins of this theme in Richard Nixon’s 1968 presidential campaign, which called for the appointment of “strict constructionists” who would stay out of policymaking on issues such as crime and school desegregation (Friedman 2009; Keck 2004; Siegel 2010). Through the end of the twentieth century, this elite ideological split was mirrored among the general population, where surveys found conservatives’ support for the Supreme Court to be much lower than that of liberals—a pattern that persisted despite the fact that the Court’s rulings became decidedly more conservative beginning in the 1970s (Hetherington and Smith 2007).¹

But as shown in Figure 1 (which displays data from the General Social Survey cumulative file), conservatives and liberals appear to have finally changed places. In surveys conducted from 2002 through 2010, conservatives’ confidence in the Supreme Court (relative to their confidence in other American institutions) was statistically significantly higher than that of liberals for the first time in at least three decades.² The fact that this sea change occurred so long after the Court itself moved

¹ Prominent measures of Supreme Court ideology concurring on this turning point include Bailey 2007, Martin and Quinn 2011, and Segal and Spaeth 2002.

² The other institutions included in the confidence questions on the GSS are banks, major companies, organized religion, education, the executive branch, organized labor, the press, medicine, television, the “scientific community, Congress, and the military. In an exploratory factor analysis, confidence in

in a conservative direction suggests that the extent to which Americans' support for the Court is affected by its rulings is moderated substantially by ideology—a phenomenon that previous empirical research on legitimacy has generally neglected to take into account.

Resolving Inconsistent Results with an Improved Research Design

This article adjudicates the discrepancies of previous work and investigates ideological heterogeneity with an improved research design that is the first to permit a direct comparison of the persuasion and delegitimation effects of Supreme Court rulings. Thus far, most of the experimental studies have suffered in that their designs do not include baseline measures of subjects' attitudes about issues or their assessments of the Court—i.e., they employ only a posttest and no pretest. Of course, for many purposes randomized experiments with a posttest-only control group design are as powerful as those that also include a pretest (Campbell and Stanley 1963). But in order to simultaneously detect evidence of persuasion and delegitimation among the same group of subjects and thus directly compare the size of their effects, a pretest-posttest control group design is needed. Furthermore, the external validity of previous experimental work has typically been weak for two reasons. First, many experiments are conducted with convenience samples of locally recruited subjects (often undergraduate students), leading to concerns about the generalizability of their findings to Americans as a whole. Second, many

all of these institutions loaded on one factor among both liberals and conservatives; no other factor was associated with an eigenvalue greater than one. We note that general confidence in American institutions over this period did not differ by ideology: it declined in a relatively steady fashion among both liberals and conservatives during this period. For a more elaborate discussion of these measures, see Smith 2009.

experiments reflect the liberal tenor of high-salience rulings by the Court over the past few decades with experimental treatments limited to liberal Supreme Court decisions. Since the Court has recently demonstrated no small appetite for using its powers of judicial review to advance a conservative agenda (Liptak 2010a), studies that do not include conservative rulings may fail to capture the true dynamics of persuasion and delegitimation in today's ideologically polarized environment.

Our study's design improves upon previous work in all of these respects. We employ data obtained from the Cooperative Congressional Election Studies (CCES), which was conducted via the Internet by the Polimetrix/YouGov polling firm during the 2006 and 2008 national election campaigns. The CCES employs a sample-matching method designed to yield samples whose representativeness is comparable to those obtained via a random-digit dial sampling process (Vavreck and Rivers 2008). Initial interviews were conducted in the final six weeks of the campaign. Respondents were empanelled and interviewed again after Election Day, typically two to four weeks after the initial interview.

In our pre-election survey, respondents were asked their opinions on three issues. In the 2006 study, the issues were three in which the Supreme Court has ruled in a liberal direction, striking down state laws outlawing abortion (*Roe v. Wade*, 1973), flag burning (*Texas v. Johnson*, 1989) and same-sex relations (*Lawrence v. Texas*, 2003). In 2008, we asked respondents for their opinions on three issues on which the Court has ruled in a conservative direction: striking down limits on self-financing by political candidates (*Buckley v. Valeo*, 1976), restricting the use of race by local school districts to assign students to schools (*Parents*

Involved in Community Schools v. Seattle School District, 2007), and striking down the District of Columbia’s ban on handgun ownership (*District of Columbia v. Heller*, 2008). In the pre-election survey, respondents were not told anything about how (or even that) the Supreme Court ruled on any of the issues. Wording for all questions used in this study and scores assigned to responses may be found in the Appendix.

Following the issue questions, respondents were then asked two questions designed to measure their evaluation of the Supreme Court. The first is a standard question employed in many opinion surveys that asks respondents’ their level of “confidence” in the Court. The second is a measure developed by Gibson, Caldeira and Spence (2003a) that asks respondents if they agree or disagree that “the right of the Supreme Court to decide certain types of controversial issues should be reduced.” We employed a simple additive scale of the two measures to reduce measurement error and boost statistical power.³

Experimental manipulation took place in the post-election survey. All respondents were again asked their opinions on the three issues, but on each issue respondents were randomly assigned to first read a one-sentence description of how the Supreme Court had ruled on the issue before being asked their opinion. We included a simple description of the Court’s reasoning on the matter of the kind one might read in the opening paragraph of a newspaper story or hear in a brief television news report describing the ruling. Each description invoked

³ This measure thus captures elements of both “diffuse” and “specific” support for the Court (Gibson, Caldeira and Spence (2003a, 2003b), as we are investigating what leads subjects to change their generalized support for the Court rather than the discrete components of that support.

constitutional principles embodying values widely shared by Americans, such as “the right to privacy,” “free speech,” or “equal protection.” The other half of respondents received no such description. Participants were randomly assigned to being informed of the Court’s decisions on zero, one, two, or all three of the issues. (As shown in the Appendix, balance tests confirmed that randomization was successful.) After answering the questions about the three issues, all respondents were then again asked the two questions regarding their evaluation of the Court.

Several additional features of our experimental design bolstered its internal and external validity in ways not addressed by previous research. Each of the six Supreme Court rulings were instances in which the Court exercised its powers of judicial review to strike down a law or policy enacted by a representative body. In this sense, each of the six decisions can be considered examples of “judicial activism”—or, less pejoratively, “interventions” that negated policies established by another branch of government (Baum 2003)—and thus any reactions to these rulings as such were held constant across all the rulings. By measuring subjects’ attitudes on the six issues and their assessments of the Court in a baseline survey conducted weeks before the experimental manipulation, we reduced the likelihood of an interaction between the pretest and the treatment and thus improved the external validity of our results. Concerns about testing effects were also reduced by the fact that the pretest and posttest questions were embedded in a larger survey incorporating a variety of topics about politics that were not related to our experiment, making it less likely that the purpose of the experiment would be overly transparent to our subjects. Finally, by including rulings that were all in the same

ideological direction in each wave, we were able to prime subjects into thinking of the court as either a liberal or conservative institution and thus assess the extent to which our subjects responded to Court rulings in an ideological fashion. Thus in some analyses we are able to consider each ruling a “dose” of comparable, ideologically consistent treatments. This aspect of the design also increased its external validity, as a series of high-salience Court decisions are typically issued within days of one another at the end of the Court’s term (in late June of each year) and they are often in a consistent ideological direction—and portrayed as such by the media (e.g. Liptak 2010b).

Results

Baseline measures of the percentages of subjects with issue opinions contrary to the Court’s rulings (displayed in Figure 2) indicate that, as expected, liberals and conservatives split substantially on five out of six of our issues. Conservatives were more likely to hold opinions aligned with the Court’s rulings on desegregation and gun rights, and liberals were more likely to agree with its rulings on abortion, flag burning and same-sex relations.⁴ The Court’s ruling on campaign finance was unpopular across the ideological spectrum. Aside from the largely predictable ideological differences, these data from the unprimed pretest respondents indicate that a majority of the public continues to oppose the content of three of the Court’s decisions queried (abortion, flag burning, and campaign finance) decades after they were handed down.

⁴ The marginals presented in this paper are calculated using sampling weights supplied with the CCES. Analyses of experimental effects were calculated using unweighted data.

Assessing the Evidence for Persuasion. The Court's power to persuade is assessed by the extent to which learning of its rulings, an informational prime, affected subjects' opinions on the six constitutional issues. In these analyses, the treatment effect is defined as the change in attitudes among those who were informed of the rulings (the treatment group) minus any change among those who were not informed (the control group). Those who changed their attitudes in the direction of the Court's ruling were assigned a change score of 1; those whose attitudes changed in the direction opposite the Court's ruling were scored -1; those whose attitudes did not change were scored zero. This scoring method yields estimates of the net change in the proportion of respondents in each treatment group agreeing with the Court's ruling that are comparable across the six issues. The treatment effect is the net change among treated respondents compared to the net change among the control respondents. It is thus an experimental estimate of the *ceteris paribus* effect of a Supreme Court ruling on public opinion: the net proportion of Americans whose attitudes would be predicted to change in the direction of a Court ruling without the intervening intrusion of reactions by political leaders, interest groups, or media.

Estimates of the treatment effect are found in the bivariate models in Table 1. These models are six issue-by-issue analyses in which the change score was regressed upon an indicator for assignment to the treatment group and thus the regression coefficient on the treatment indicator is an estimate of the treatment

effect.⁵ On five out of the six issues, the treatment of learning how the Court had ruled on the issue failed to affect attitudes to a statistically significant degree, and the size of any opinion change was small. In additional analyses (the multiple regression models in Table 1), we found no evidence of significant opinion change on these five issues even among respondents according the Court the strongest measured level of support. In each of these models, we again regressed the respondents' change scores on an indicator for whether they were in the treatment group, but also included support for the Court in the pretest wave and an interaction between support and being in the treatment group as additional predictors. If the Court's strongest supporters were actually more persuaded by exposure to the Court's decisions, these more elaborate models should better explain post-test opinions than the bivariate models. However, on each of the six issues, Wald tests found that these models did not yield significantly improved predictive power. Thus even among the Court's strongest supporters, its power to shift mass opinion toward accepting its rulings was essentially nil. Finally, in analyses not shown here, we checked for heterogeneity of treatment effects among self-identified liberals and conservatives by conducting separate estimates for each ideological group. These analyses yielded no evidence of significant differences in treatment effects by ideology.

⁵ Another specification that is widely used in research with pretest-posttest designs is to regress the posttest score on the pretest score and a treatment indicator. Estimating the models shown in Tables 1, 2 and 3 with this alternate specification produced results similar to those shown here, as would be expected given the fact that treatment and control groups were equivalent and there is no reason to expect the pretest had a true causal effect on the posttest (Allison 1990).

The one exception to the pattern of stable opinions is on the issue of decriminalizing same-sex relations, where the effect of being exposed to how the Court had ruled in *Lawrence v. Texas* was substantial. Here, the difference between change scores in the treated and control groups was nearly ten percentage points. But what is striking is that the direction of opinion change in our study was exactly opposite to the recorded change in American attitudes after *Lawrence* was handed down by the Court in June 2003. In a poll conducted by Gallup early that May, 60 percent of Americans had said that same-sex relations should be legal, extending a steady trend toward a more favorable outlook that began in the late 1980s. By late July 2003, however, support for decriminalization of homosexual sex had dropped 12 percentage points (Gallup 2010).

How to explain this discrepancy between our experimental findings and what actually took place in 2003? Our surmise has to do with the nature of elite responses to the Court's ruling. The immediate reaction among political leaders was generally unfavorable to gay rights. While *Lawrence* received just tepid support from Democratic elected officials, it was criticized harshly by Republicans, who condemned it as the harbinger of an inevitable judicial legalization of gay marriage. Media coverage of the ruling quickly focused on the divisive issue of marriage (Egan, Persily and Wallsten 2008), rather than the right-to-privacy principle upon which the ruling was actually based (Haider-Markel 2003). The result was an instance of a largely one-sided information flow that depressed support for the decriminalization of gay sex—and in fact led to a temporary across-the-board decline in support for gay rights altogether.

Assessing the Evidence for Positivity Bias and Delegitimation. We now examine the impact of exposure to information about what the Supreme Court has decided on beliefs about its legitimacy. In Table 2, we explore this question with issue-by-issue analyses in which the dependent variable is change in support for the Court from pretest to posttest. Those who increased their support for the Court were assigned a change score of 1; those who became less supportive of the Court were scored -1; and those whose attitudes did not change were scored zero. The scores thus yield estimates of the net increase or decrease in the proportion of respondents supporting the Court between pretest and posttest. Because these change scores were calculated in a similar fashion as the change scores analyzed in Table 1, we can compare the relative sizes of delegitimation and persuasion effects.

In Table 2, the change score is regressed on the treatment indicator (being told what the Court decided) as well as the respondent's position on the issue in the pre-treatment wave and the interaction of these two variables. Here, pretest issue positions were scored zero (if the subject was in complete agreement with the Court) to one (complete disagreement with the Court's ruling), and so the estimated treatment effect among those holding opinions completely at odds with the Court's ruling is found by summing the coefficients on the treatment indicator and interaction term and then subtracting the coefficient on the opinion variable. These estimated treatment effects for these respondents are shown in bold in Table 2. Although these effects are estimated imprecisely (none of them is estimated to be statistically significantly different from zero at the .05 level), they vary in important ways. The three liberal rulings led to a substantial decline in support for the Court

among those in disagreement with the rulings. Being told how the Court ruled in *Roe v. Wade*, *Texas v. Johnson*, and *Lawrence v. Texas* led to net losses of support for the Court among four, nine and 16 percent of those disagreeing with these rulings, respectively. No comparable withdrawal of institutional support occurred in the responses of those opposed to the three conservative rulings.

These analyses yield two preliminary conclusions. First, exposure to Supreme Court rulings does not increase the public's support for the Court as an institution. Second, in the wake of liberal rulings the Court appears to lose more support among those in disagreement than it does after it makes conservative rulings. But is the delegitimation effect linked only to liberal Court rulings, or is this finding being driven by self-identified conservatives (who, as shown in Figure 2, are more likely to disagree with these liberal rulings)? To further assess the evidence, we take advantage of the fact that subjects could be exposed to zero, one, two or three Court rulings with which they might agree or disagree. This allows us to see whether the preliminary conclusions reached from the analyses in Table 2 persist in specifications where exposures to court rulings are considered as comparable treatment "dosages." We can therefore pool respondents from the two waves, boosting statistical power and ensuring that any effects discovered in the individual waves are not time-specific.

These estimates are shown in Table 3. In the left-hand panel of this table, all self-identified conservative respondents from the two waves are pooled together, followed by wave-by-wave analyses limited to conservatives. The right-hand panel displays the same analyses for self-identified liberals. In these analyses, we are

again interested in how subjects' opinions on an issue (as measured in the pretest) and the treatment of being informed of the Court's ruling on that issue interact to change subjects' support for the Court between the pretest and the posttest. We therefore estimate the equation

$$\begin{aligned}
 & \text{change in support for Court} \\
 &= \alpha + \beta(\# \text{ of rulings to which } R \text{ was exposed}) \\
 &+ \gamma(\# \text{ of rulings with which } R \text{ disagrees with Court}) \\
 &+ \delta(\# \text{ of rulings to which } R \text{ was exposed and with which } R \text{ disagrees}) \\
 &+ \varepsilon.
 \end{aligned}$$

This specification allows us to test the theoretical expectation that a subject's support for the Court should decline to the extent that she is exposed to rulings with which she disagrees. For example, change in support for the Court expressed by a subject who disagreed with one ruling and was made aware of this is estimated to be $\hat{\alpha} + \hat{\beta} + \hat{\gamma} + \hat{\delta}$; the estimated change score for an otherwise similar subject not told about the ruling is $\hat{\alpha} + \hat{\gamma}$. Therefore the sum $\hat{\beta} + \hat{\delta}$ is the treatment effect of being exposed to a single Court ruling with which one disagrees.⁶

The results in the left-hand panel of Table 3 show that conservatives react in a very negative fashion to being exposed to Supreme Court rulings with which they disagree. The treatment effect is estimated as $(.023 - .170 = -.146)$. That is, among conservatives holding an opinion contrary to a Supreme Court ruling, 14.6 percent

⁶ An alternate, less intuitive way to define the treatment effect would be the difference in change scores between a subject who disagreed with one ruling and was exposed to it (estimated as above with the sum $\hat{\alpha} + \hat{\beta} + \hat{\gamma} + \hat{\delta}$) and a subject who disagreed with one ruling but was exposed to a different ruling with which she *agreed* (estimated as $\hat{\alpha} + \hat{\beta} + \hat{\gamma}$). Defining the treatment effect in this way (and thus estimating it as $\hat{\delta}$) yields stronger evidence for delegitimation among conservatives than reported here.

are estimated to reduce their support for the Court after being exposed to the ruling. The wave-by-wave analyses confirm that these effects are consistent across the 2006 and 2008 survey waves and thus are not being driven by reaction to liberal rulings. As shown in the bottom row of the table, the treatment effect among conservatives reacting to liberal rulings is $-.129$; the treatment effect for conservative rulings is $-.187$. By contrast, we see no such delegitimation effects among liberals: estimated treatment effects are not statistically significantly different from zero and are signed in the wrong direction.⁷

We note that these combined analyses allow us to rule out a rival explanation for the differences in reactions to conservative and liberal rulings: that Americans may care more about the issues addressed in the liberal rulings (abortion, flag burning, and same-sex relations) than those in the conservative rulings (campaign finance, desegregation and gun rights). While this rival hypothesis could conceivably explain differences in responses to liberal and conservative *rulings*, it cannot explain the substantial differences in reactions we observed between self-identified liberal and conservative *subjects*.⁸ In sum, when exposed to a Supreme

⁷ The difference in the size of treatment effects among conservatives and liberals ($-.146 - .040 = -.186$) is significant at $p = .03$.

⁸ Regardless, we find no evidence for the rival hypothesis. On two of the three conservative rulings, we were able to use other survey questions to identify subjects for whom we would expect the rulings to be particularly salient. We found no evidence of delegitimation effects even among these subjects. The Court's ruling on school desegregation should be of particular concern to black and Hispanic respondents; similarly its ruling striking down campaign finance laws should be found important by those naming "corruption in government" as the nation's most important problem (ten percent of our sample of American voters did so in 2008). However, we found no evidence of significant treatment effects in these groups among those disagreeing with the Court's rulings on these issues. The treatment effect among blacks and Hispanics holding opinions disagreeing with the Court's desegregation ruling was signed in the wrong direction and insignificant ($.225, p=.49$); the treatment effect among those viewing corruption in government as the nation's most important problem was insignificant ($-.141, p=.44$).

Court ruling with which they disagree, approximately one out of every seven conservatives reacts by reducing his or her support for the Court—even if the ruling is itself conservative. By contrast, liberals have no consistent reaction to exposure to rulings regardless of whether the rulings are in favor of liberal or conservative causes.

Were respondents already aware of the rulings? A final question of interest has to do with the external validity of our findings. An understandable concern might be that some subjects might already be aware of some of the rulings, and thus are not learning of them for the first time in the treatment condition. Our survey did not include a direct measure of prior knowledge of the six Supreme Court rulings (as obtaining such measures without contaminating other responses would have required that our empanelled respondents be surveyed on a third separate occasion). Nevertheless, there are several reasons to believe our results are generalizable to how Americans react to learning of a Court ruling for the first time. We note first that to the extent that our subjects were already aware of the rulings, all treatment effects—whether persuasion or delegitimation—should be diminished, as the baseline opinions of subjects would incorporate what they know about the Court and thus treated subjects' opinions should not change in response to information about which they are already aware. We also note that there is no discernable relationship between the sizes of the persuasion and delegitimation effects estimated in Tables 1 and 2 and the age of the rulings (and thus presumably the public's awareness of these rulings).

Finally, we would expect that subjects with high levels of general political knowledge would be most likely to have prior knowledge of the rulings as well. Therefore, to the extent that prior knowledge of rulings affected our results, we would expect the size of treatment effects to vary among those with different levels of general political knowledge. Batteries of factual questions about politics were included in the CCES surveys, allowing us to construct an index score of general political knowledge.⁹ To assess whether treatment effects varied by political knowledge, we re-ran all of the analyses in Tables 1, 2 and 3 with each predictor interacted with the political knowledge index score (as well as a constitutive term for political knowledge). In every case, Wald tests failed to reject the null that the coefficients on these additional terms were equal to zero. Furthermore, treatment effects were not consistently smaller among those with high levels of political knowledge, providing us with additional confidence that prior awareness of rulings did not depress these effects. We conclude that it is unlikely that prior awareness of the rulings in our study is a threat to the external validity of our results.

Conclusion

With a unique experimental design, this article calls into serious question whether all but a few Supreme Court rulings have the power in their own right to move mass opinion in the direction of judicial dicta. On the one hand, this should be

⁹ In the 2006 survey, the index consisted of four questions: which branch decides the constitutionality of laws, which branch nominates federal judges, the vote in Congress required to override a presidential veto, and which party is more conservative at the national level (Cronbach's $\alpha = .52$). In the 2008 survey, the index was composed of six questions: which party was in control of the Senate and House of Representatives, and the party affiliations of the respondent's governor, senators, and representative in the House (Cronbach's $\alpha = .83$). Index scores were converted into percentiles for comparison purposes across the 2006 and 2008 surveys.

unsurprising: rapid opinion change is rare and usually takes place as a response to massive, homogeneous transmissions of vivid information over a period of time (Page and Shapiro 1992). On the other hand, the relatively paltry effects of learning the Court's rulings found here pale in comparison to the size of other effects commonly found in survey research, such as those due to question order, question wording, or mode of survey. The notable exception here is the apparent power of the invocation of the "right to privacy" in the *Lawrence v. Texas* ruling, suggesting that the phrase combined with a reference to the Court is a powerful frame that can shift opinion even on a hot-button issue like gay rights. However, the sharp discrepancy between our experimental finding and aggregate trends in public opinion before and after *Lawrence* was handed down should give pause to those holding out hope that a persuasive argument from the Court can change mass opinion without the support of other elites. As such, our findings support the claims of scholars such as Dahl (1957) and Rosenberg (2008) that the Court must rely upon consensus from other actors in the political system in order to have a lasting effect on public opinion and public policy.

Our other main finding reveals an important difference in the ways liberals and conservatives view the institution of the Supreme Court in contemporary American politics. Conservatives react to Court decisions they dislike by questioning the legitimacy of judicial power, while liberals—even when they are unhappy with a specific decision—continue to value the authority of an institution that can act in a counter-majoritarian fashion. The size of the delegitimation effects among conservatives—some 15 percentage points on average—dwarfs the extent of

the persuasion effects identified in Table 1 (which ranged between one and ten points and were generally statistically and substantively insignificant). The implication is that in contemporary American politics, the faint persuasive effects of any unpopular Court ruling are less consequential than the substantial loss of legitimacy such a ruling may cause among conservatives.

In the context of American political history, this conservative suspicion of the judiciary is unusual. Until the Court reluctantly gave way to the New Deal, it was rightly perceived as a bulwark against mass democracy and populist sentiment. The historical reversal reached its apotheosis in the Warren Court, as the defender of individual rights and group equality. Decades later, liberals appear to continue to embrace the notion of a counter-majoritarian judiciary even when they disagree with its rulings. Given the Republican domination of the judicial nominations process at the federal level for nearly 30 years (Schiavoni 2009) and the conservative turn of the Rehnquist and Roberts Courts, some may regard this faith as misplaced. But while judicial rulings may have moved to the right, it is worth noting that many important legal institutions continue to send signals that they are firmly in the liberal camp. The American Bar Association—the legal profession’s largest and most influential interest group—routinely takes liberal official stances on issues like abortion, the death penalty and gay rights (American Bar Association 2010). The nation’s most prominent professional association of law school faculty has promoted law school clinics that champion liberal causes such as providing representation to defendants in criminal cases, illegal immigrants, and communities suffering environmental harms (Association of American Law Schools 2002).

Recently these clinics have been accused by conservative and business interests as being more likely to pursue cases of interest to liberals than conservatives (Urbina 2010). Even those who work in the legal profession are today much more liberal than the general public. Our analysis of data on occupation and ideology from the General Social Survey cumulative file indicate that a plurality (44 percent) of attorneys¹⁰ interviewed from 2000 through 2010 identified as liberal, compared to only 26 percent of American adults—a gap that has grown over time and which reflects the general movement of those in professional occupations toward identification as liberals and as Democrats (Manza and Brooks 1999).

Thus liberals who learn of Court rulings with which they disagree can take some comfort in the fact that liberals are in charge of many of the legal profession's most prominent institutions. By contrast, conservatives do not have these institutional assurances to fall back upon when they learn the Court has issued a ruling with which they disagree. Of course, perceptions can change. Were the Court to overturn *Roe v. Wade*, or strike down a long-sought liberal goal such as national healthcare legislation, liberals might find themselves reconsidering their loyalty to the judiciary as an institution. But for the time being, it appears that federal courts may be granted more leeway by liberals—even as they chart a conservative path.

¹⁰ Those in occupations classified as “lawyer,” “judge,” or “law teacher” (0.6 percent of the GSS sample of American adults).

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Figure 1. Relative Confidence in the Supreme Court among Conservatives and Liberals, 1974-2010
Source for data: General Social Survey Cumulative File.

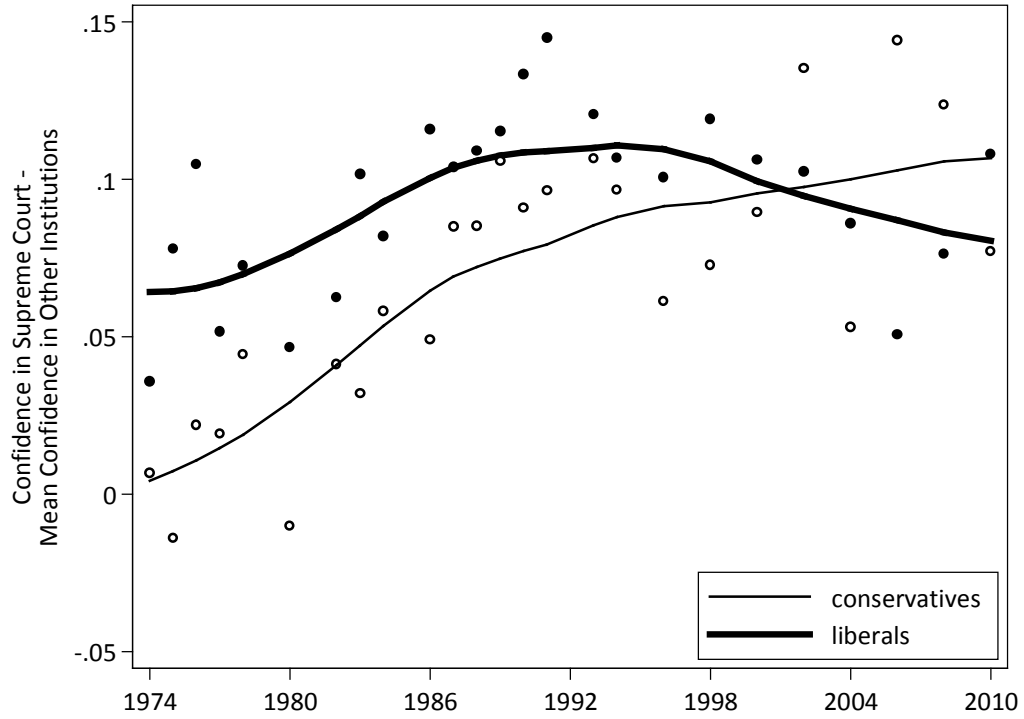
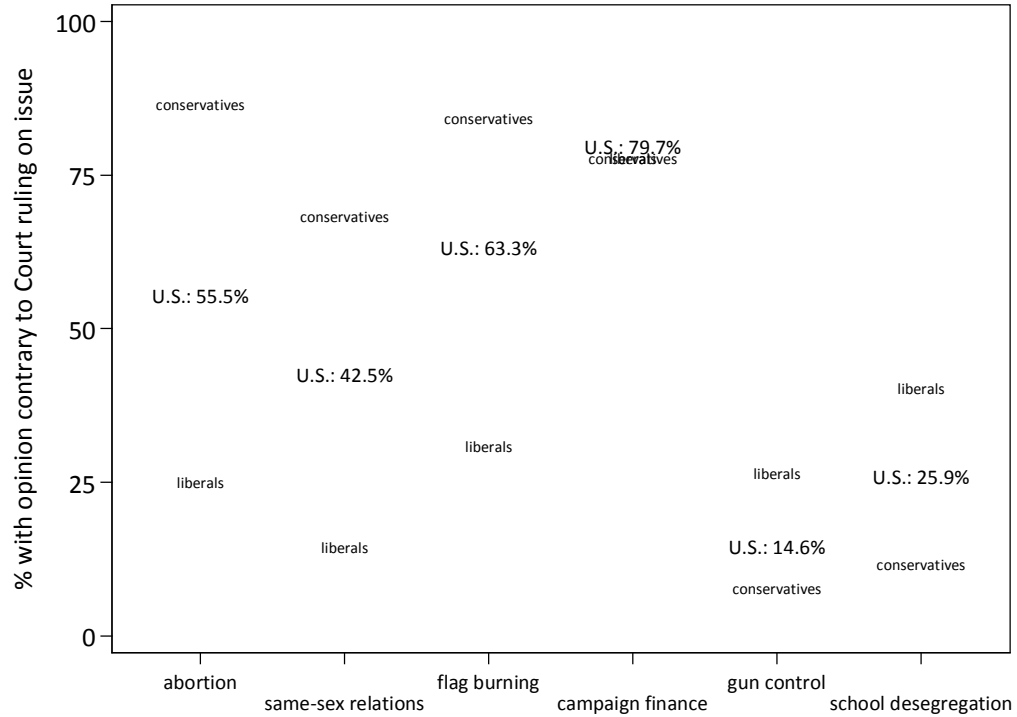


Figure 2. Congruence of American Opinion with Six Supreme Court Decisions
Source for data: 2006 and 2008 CCES



See Appendix for cites to Court decisions, wording of survey questions, and coding decisions.

**Table 1. Change in Opinion on Six Issues
as Function of Being Exposed to Supreme Court Rulings
and Support for Court (OLS Estimates)**

	<u>abortion</u>		<u>flag burning</u>		<u>same-sex relations</u>	
	I	II	I	II	I	II
treated (exposed to Court ruling on issue)	0.009 (0.031)	0.025 (0.060)	0.013 (0.025)	-0.039 (0.047)	0.098*** (0.027)	0.093 (0.052)
R's support for Court, pre-treatment (0-1 scale)		0.027 (0.070)		-0.079 (0.054)		0.059 (0.062)
treated x support for Court		-0.031 (0.098)		0.097 (0.076)		0.010 (0.084)
<i>N</i>	733	733	790	790	788	788
Wald test of H_0 : coefficients on additional variables in Model II = 0	$F = .07$ $p = .94$		$F = 1.24$ $p = .29$		$F = 1.26$ $p = .29$	

	<u>campaign finance</u>		<u>desegregation</u>		<u>gun rights</u>	
	I	II	I	II	I	II
treated (exposed to Court ruling on issue)	0.037 (0.038)	0.023 (0.071)	0.047 (0.027)	0.025 (0.051)	0.033 (0.025)	0.014 (0.047)
R's support for Court, pre-treatment (0-1 scale)		-0.091 (0.092)		-0.084 (0.066)		-0.064 (0.061)
treated x support for Court		0.025 (0.126)		0.044 (0.090)		0.038 (0.084)
<i>N</i>	862	862	860	860	862	862
Wald test of H_0 : coefficients on additional variables in Model II = 0	$F = .87$ $p = .42$		$F = 1.21$ $p = .30$		$F = .65$ $p = .52$	

Robust standard errors in parentheses, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (two-tailed tests)
All models include estimated intercepts (not shown).

**Table 2. Change in Support for the Supreme Court,
as Function of Disagreement with Court Rulings
and Being Exposed to Court Rulings
(OLS Estimates)**

	<u>abortion</u>	<u>flag burning</u>	<u>same-sex relations</u>
treated (exposed to Court ruling on issue)	0.081 (0.066)	0.061 (0.072)	0.085 (0.058)
opinion on issue, pre-treatment (0 = agree with Court; 1 = disagree with Court)	0.032 (0.101)	0.019 (0.071)	0.041 (0.085)
treated x opinion on issue	-0.125 (0.142)	-0.152 (0.100)	-0.242* (0.115)
<i>N</i>	726	778	777
treatment effect among those in complete disagreement with Court ruling	-.044	-.092	-.157

	<u>campaign finance</u>	<u>desegregation</u>	<u>gun rights</u>
treated (exposed to Court ruling on issue)	0.027 (0.099)	0.010 (0.054)	-0.053 (0.053)
opinion on issue, pre-treatment (0 = agree with Court; 1 = disagree with Court)	-0.006 (0.086)	0.110 (0.101)	-0.096 (0.089)
treated x opinion on issue	-0.066 (0.119)	0.037 (0.138)	0.125 (0.135)
<i>N</i>	834	835	833
treatment effect among those in complete disagreement with Court ruling	-.039	.047	.072

Robust standard errors in parentheses, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (two-tailed tests).
All models include estimated intercepts (not shown). See text for definition of treatment effect.

Table 3. Change in Support for the Supreme Court, as Function of Disagreement with Court Rulings and Being Exposed to Court Rulings, by Ideology (OLS Estimates)

	<u>CONSERVATIVES</u>			<u>LIBERALS</u>		
	all rulings	liberal rulings only (2006 wave)	conservative rulings only (2008 wave)	all rulings	liberal rulings only (2006 wave)	conservative rulings only (2008 wave)
# of rulings to which R was exposed (0 – 3)	.023 (.039)	.055 (.075)	.022 (.048)	-.004 (.044)	.102 (.058)	-.134* (.066)
# of rulings with which R disagrees (0 – 3)	.004 (.049)	.049 (.073)	.031 (.090)	.073 (.055)	-.044 (.105)	-.055 (.081)
# of rulings to which R was exposed and disagrees (0 – 3)	-.170* (.072)	-.184 (.104)	-.209 (.116)	.044 (.089)	.171 (.196)	.192 (.114)
<i>N</i>	610	285	325	373	160	213
treatment effect	-.146**	-.129*	-.187*	.040	.274	.058

Robust standard errors in parentheses, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (two-tailed tests). All models include estimated intercepts (not shown). See text for definition of treatment effect.

APPENDIX

Survey questions about Supreme Court rulings

ABORTION (*Roe v. Wade*)

Post-election treatment group only, precede question with:

As you may know, in 1973 the U.S. Supreme Court ruled in *Roe v. Wade* that the Constitution's right to privacy allows women to have an abortion for any reason in the first three months of a pregnancy. What do you think about this issue?

All pre- and post-election respondents then asked:

Which one of the opinions on this screen best reflects your view about abortion?

- <1> By law, abortion should never be permitted.
- <2> The law should permit abortion only in case of rape, incest, or when the woman's life is in danger.
- <3> The law should permit abortion for reasons other than rape, incest, or danger to the woman's life, but only after the need for the abortion has been clearly established.
- <4> By law, a woman should always be able to obtain an abortion as a matter of personal choice.
- <5> other (verbatim)

Coding: Responses <1> through <3> coded as in disagreement with the Supreme Court's ruling in *Roe v. Wade*; <4> coded as in agreement with Court's ruling.

FLAG BURNING (*Texas v. Johnson*)

Post-election treatment group only, precede question with:

As you may know, in 1989 the U.S. Supreme Court ruled in *Texas v. Johnson* that burning the American flag is a form of free speech protected by the First Amendment of the Constitution. What do you think about this issue?

All pre- and post-election respondents then asked:

Should burning or destroying the American flag as a form of political protest be legal or should it be against the law?

- <1> legal
- <2> against the law
- <3> not sure

SAME-SEX RELATIONS (*Lawrence v. Texas*)

Post-election treatment group only, precede question with:

As you may know, in 2003 the U.S. Supreme Court ruled in *Lawrence v. Texas* that the Constitution's right to privacy allows for consensual sex between two men or two women. What do you think about this issue?

All pre- and post-election respondents then asked:

Should homosexual relations between consenting adults be legal or should it be against the law?

<1> legal

<2> against the law

<3> not sure

CAMPAIGN FINANCE (*Buckley v. Valeo*)

Post-election treatment group only, precede question with:

As you may know, in 1976 the U.S. Supreme Court ruled that candidates' expenditures on their election campaigns is a form of free speech protected by the Constitution and therefore cannot be limited by law. What do you think about this issue?

All pre- and post-election respondents then asked:

Do you favor or oppose limiting the overall amount of money that candidates can spend on their campaigns—whether it is their own money, or money given by contributors?"

<1> favor

<2> oppose

<3> not sure

SCHOOL DESEGREGATION (*Parents Involved in Community Schools Inc. v. Seattle School District and Meredith v. Jefferson County Board of Education*)

Post-election treatment group only, precede question with:

As you may know, in 2007 the U.S. Supreme Court ruled that the Equal Protection Clause of the Constitution forbids public school systems from assigning students to schools on the basis of their race in order to achieve racial integration. What do you think about this issue?

All pre- and post-election respondents then asked:

Which of these best reflects your view about how students should be assigned to public schools?

<1> In some cases, students should be assigned to schools on the basis of race in order to ensure that schools are racially balanced.

<2> Race should not be used to determine where a particular child attends public school, even if it would improve schools' racial diversity.

<3> not sure

GUN RIGHTS. (*District of Columbia v. Heller*)

Post-election treatment group only, precede question with:

As you may know, in 2008 the U.S. Supreme Court ruled that owning a handgun for personal use is protected by the Constitution's right to bear arms. What do you think about this issue?

Which of the following best reflects your view about handguns?"

- <1> Handgun laws are currently too strict and should be relaxed.
- <2> Handgun ownership should be permitted, but all owners should be licensed and complete mandatory safety training.
- <3> Handgun ownership should be banned. But law-abiding citizens should be allowed to own other types of guns used for hunting and sports shooting.
- <4> not sure

Coding: Response <3> coded as in disagreement with the Supreme Court's ruling, which struck down a handgun ban in the District of Columbia.

Survey Questions Regarding Supreme Court

CONFIDENCE.

All pre- and post-election respondents:

Would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in the Supreme Court?

- <1> great deal of confidence
- <2> only some confidence
- <3> hardly any confidence
- <4> not sure

REDUCTION IN POWERS.

All pre- and post-election respondents:

Do you agree or disagree with the following statement: "The right of the Supreme Court to decide certain types of controversial issues should be reduced."

- <1> agree
- <2> disagree
- <3> not sure

Balance tests of treatment and control groups

	<u>Abortion</u>			<u>Flag burning</u>			<u>Same-sex relations</u>		
	Mean Treated	Mean Control	<i>p</i> -value	Mean Treated	Mean Control	<i>p</i> -value	Mean Treated	Mean Control	<i>p</i> -value
Disagreement with Court on issue (0 –1 scale)	.34	.30	.16	.56	.52	.85	.29	.33	.67
Support for Court (0 -1 scale)	.53	.52	.98	.53	.52	.97	.53	.53	1.00
Ideology (0 liberal – 1 conservative)	.55	.55	.97	.56	.55	.98	.55	.56	1.00
Political knowledge (0 – 1 scale)	.57	.57	1.00	.56	.58	.97	.57	.57	.74
Education (0 – 1 scale)	.49	.51	.75	.49	.52	.11	.50	.50	.99
Party ID: Republican	.31	.29	.62	.30	.30	.97	.30	.30	.78
	<u>Campaign finance</u>			<u>Desegregation</u>			<u>Gun rights</u>		
	Mean Treated	Mean Control	<i>p</i> -value	Mean Treated	Mean Control	<i>p</i> -value	Mean Treated	Mean Control	<i>p</i> -value
Disagreement with Court on issue (0 –1 scale)	.73	.70	.98	.16	.18	.99	.18	.15	.91
Support for Court (0 -1 scale)	.49	.46	.74	.49	.46	.74	.48	.47	1.00
Ideology (0 liberal – 1 conservative)	.54	.55	.65	.54	.54	.91	.54	.55	.97
Political knowledge (0 – 1 scale)	.58	.57	.99	.58	.58	.78	.58	.58	.96
Education (0 – 1 scale)	.48	.47	1.00	.49	.47	.74	.48	.48	.99
Party ID: Republican	.31	.31	.99	.32	.30	.55	.31	.31	.79

Displayed *p*-values are those associated with tests of the null hypothesis of no difference between treatment and control groups. For all variables except Republican party ID, the *p*-values are those associated with a Kolmogorov–Smirnov test for equality of distributions (exact test). The *p*-values reported for party ID (scored here as a dichotomous variable) are those associated with a *t*-test of equality of means.