

Does Elite Partisan Polarization Diminish the Supreme Court's Policy Authority?

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A previous version was presented at the 2016 Annual Meeting of the American Political Science Association, Philadelphia, PA. We note that this paper is part of our larger book project (under contract with Cambridge University Press). The analysis and results in this paper represent one portion of a larger study. As such, it is not necessarily written like a typical journal article.

When the U.S. Supreme Court rules, does America follow? How do elite political actors in American government influence acceptance of, and compliance with, Supreme Court decisions? Questions of *judicial supremacy*—the Supreme Court having the final word on constitutional meaning for everyone—are among the most important in the study of American politics. After all, the Supreme Court rules on some of the most divisive issues of the day—issues that are cornerstones of partisan and ideological conflict. In this paper, we consider two primary questions. First, to what extent does disagreement with the *policy content* of the Court’s decisions shape perceptions of judicial supremacy? Second, do the actions of *political elites* interact with policy content to influence how citizens respond to decisions in terms of acceptance and compliance? The distinguishing feature of our treatment of judicial supremacy is that we consider citizen judgments about, and behavior toward, the Court to be one instance of a more general theory of mass politics that has been very successful in other areas of study. Rather than treating the Court as different or unique, we argue that well-studied processes of partisan and ideological motivated reasoning shape the way citizens think about judicial supremacy in the wake of liked and disliked decisions. According to this view, citizens look to their favored political elites for cues regarding how to think about a given issue. When elites divide, so do citizens, and this is reflected in polarization of judgments about judicial supremacy that align with partisan divides over the issue itself. In contrast, when elite cues are absent or non-informative, citizens show lower disagreement over giving the Court the final word on an issue.

History contains illuminating examples of official and public compliance and noncompliance with the Court’s rulings, dating back to *Marbury v. Madison* (1803), in which Chief Justice Marshall arguably strategically retreated from his preferred outcome (granting commissions to the “midnight judges”) because he anticipated noncompliance from President

Jefferson. Then there is President Jackson's famous quip in response to the Court's 1832 *Worcester v. Georgia* ruling that gave Native Americans a semblance of sovereignty in their interactions with state and federal government: "John Marshall has made his decision; now let him enforce it." The Court's infamous *Dred Scott* decision, which ruled that slaves were not U.S. citizens and the federal government could not regulate slavery in the new territories, arguably led to the Civil War due to the ruling's activation of anti-slavery forces. Perhaps the most substantial form of noncompliance resulted from the Court's *Brown v. Board of Education* (1954) ruling that sought to racially integrate public schools. The ruling was met with massive noncompliance in Southern states. The Court's decisions banning school prayer have also engendered resistance at the local level over time (e.g., McGuire 2009). Kim Davis, a clerk in Rowan County, Kentucky, made national news when she refused to grant marriage licenses to gay couples in the wake the Supreme Court's landmark ruling—*Obergefell v. Hodges* (2015)—that granted the right for same-sex couples to marry. Each of these examples illustrates how noncompliance with the Court and its authority to render constitutional rulings results from policy disagreement with the decision itself.

What does compliance *in the face of policy disagreement* look like? President Nixon, when ordered by the Supreme Court (which included three justices he appointed¹) in *U.S. v. Nixon* (1974) to turn over recorded tapes that were crucial to the Watergate investigation, eventually relented to the Court's authority and turned over the tapes.² That was a decision that was clearly against President Nixon's own political interests, and it ultimately led to his resignation and would have more than likely led to his impeachment and removal from office

¹ Justice Rehnquist, President Nixon's fourth appointee, recused himself in *U.S. v. Nixon* due to his prior service in the Department of Justice during Nixon's first term.

² Nixon first attempted to turn over just written transcripts of the tapes, instead of the tapes themselves. But he eventually turned over the tapes as well.

had he not resigned.

In the *Bush v. Gore* (2000) ruling, the Supreme Court ended the presidential election dispute and recount in Florida, which effectively made Gov. George W. Bush the next president. On the evening of December 13, 2000, shortly after the Court had issued its ruling, Vice President Al Gore conceded the election to Bush with a textbook portrait of what deference to the Court's authority looks like in the face of disagreement:

Now the U.S. Supreme Court has spoken. Let there be no doubt, while I strongly disagree with the court's decision, I accept it. 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 as a people and the strength of our democracy, I offer my concession.

What Al Gore and President Nixon reluctantly acknowledged is perhaps the strongest form of compliance with the Court. They deferred to the authority of the Supreme Court's declaration despite strongly disagreeing with the policy direction of the Court's ruling.

The larger topic that is invoked here is subscription to *judicial supremacy*, or the notion that the Supreme Court has the *final word* on constitutional meaning for everyone in the country—Congress, the president, federal agencies, the states, and the American people. When the Supreme Court makes an interpretation of how the Constitution applies to a policy matter, that ruling should be treated as “fundamental law” that is binding on everyone since it is derived from the core governing document of our land, the U.S. Constitution. The legal policies contained in the Court's rulings in *Dred Scott*, *Worcester*, *Brown*, *Obergefell*, *Nixon*, and *Bush v. Gore* represent the “law of the land,” according to the view of judicial supremacy. Today, many Americans (to the extent that they think about it) may take judicial supremacy for granted, since there is nearly universal subscription to it. Most Americans—elected officials, elites, and

masses—treat the Court’s rulings with finality, akin to the logic provided by Vice President Gore in his concession speech. Throughout American history, however, subscription to judicial supremacy has ranged from quite low at the American founding to gradually, organically increasing levels over time. As we will discuss, judicial supremacy bears connections to conceptions of both “legitimacy,” particularly policy legitimacy, and “Court-curbing,” or attempts to diminish the Court’s authority.

Since judicial supremacy is more about how external actors subscribe to the Court’s authority to render declarative and final rulings, does the political and partisan polarization that exists in America today represent a threat to judicial supremacy? Does polarization exacerbate the impact of ideological and policy disagreement on subscription to judicial supremacy that is more vitriolic relative to a less polarized context? Does this enhanced policy disagreement override people’s respect for the Supreme Court’s authority? In this paper, we examine these questions with a survey experiment designed to address how elite political polarization in American politics shapes the process by which Americans defer to or do not defer to the Court’s authority to render constitutional rulings on policy matters.

The stakes of this debate are significant. Judicial supremacy, and the related aspect of policy legitimacy, is arguably the Court’s most treasured and important resource. It gives the Court its authority and capital with the public. It serves as an enforcement mechanism, which is crucial for an institution like the Court that does not possess a *formal* enforcement mechanism for its rulings and is instead reliant on the political branches and the public for enforcement and compliance. If those political branches are increasingly polarized, it potentially represents a serious threat to the Court’s authority as the nation’s final arbiter of constitutional meaning. The Court frequently uses its power of judicial review, of course, but judicial review is

foundationless absent widespread subscription to judicial supremacy. Subscription to judicial supremacy is tied to the Court's credibility and legitimacy.

Assuming the justices value and prefer to maintain uniform subscription to judicial supremacy, it behooves them to nurture this aspect of their legitimacy. If judicial supremacy is a function of ideological and policy disagreement with the Court's rulings, then *deference to the Court's authority is politicized and situational*, and in turn, judicial supremacy becomes at risk. We see signs of "politicized authority" at play quite frequently, including liberals and Democrats questioning the finality of rulings like *Citizens United*, and conservatives and Republicans questioning the finality of rulings like *Obergefell*. If there were no ideological foundations to judicial supremacy (and legitimacy), we would not observe such responses. We hear it often from both sides of the aisle in the face of monumental rulings. If polarization at elite levels in American politics enhances this politicized aspect of the Court, then it suggests that political elites can shape and exacerbate the politicized response from the public via the cues they transmit.

On the other hand, the Court's powers are never reduced and judicial supremacy never actually appears to be threatened. But the fact that judicial supremacy is a constant in the contemporary era, and the Court has not yet suffered a significant blow to its authority, should not be taken as evidence of the Court's invincibility. The Court is strategic in its decision-making and is constrained when it feels its legitimacy is under threat (e.g., Clark 2009, 2011; Rosenberg 1992; Epstein and Knight 1998; Epstein, Knight, and Martin 2001; see also Segal, Westerland, and Lindquist 2011). Indeed, despite the conservative turn from the 1960s to the 1970s, the Court has charted a quite moderate policy course in the contemporary era (see Bartels and Johnston

2013).³ In this sense, Court-curbing is often realized as a restriction of the Court's feasible decision space as it anticipates the response from the public and other political actors and adjusts its own behavior accordingly. As Clark (2009, 974) writes, "The historical record suggests the Court has at times been reluctant to forge ahead with its policy agenda for fear of acting outside of the broad contours of public support." In this way, politicized legitimacy reduces the Court's independence and freedom to pursue its preferences relative to a world in which legitimacy and ideology were independent from the public and politics.⁴

Judicial Supremacy, Policy Disagreement, and Elite Political Polarization

Scholars love to debate the importance of Chief Justice Marshall's opinion in *Marbury v. Madison* and its role in forging the Court's future role in American government. The textbook view is that Chief Justice Marshall *created* judicial review, or the Court's power to ascertain whether laws passed by democratic majorities violate the U.S. Constitution and if so, are therefore null and void. Revisionist accounts argue that judicial review was a power that was understood to be within the Court's functions in the Constitution and by the founders (Friedman 2005; Kramer 2001, 2004; Treanor 2005). While *Marbury* was the first case to strike down a federal law, the Court, in *Hylton v. U.S.* (1796), had previously invoked judicial review to *uphold* a federal law. There is extant evidence, then, that it was understood that the Court's would have the power of judicial review.

What this debate masks, of course, is the extent to which the Supreme Court's rulings vis-à-vis the invocation of judicial review are afforded *judicial supremacy*—ultimate authority as the final word on constitutional meaning for everyone, including Congress, the president, states,

³ Bartels and Johnston (2013) show that in general, the Court's contemporary outputs are moderate or center-right. But on highly salient cases, the Court has generated more *liberal* than conservative rulings in the past 20 years or so.

⁴ For example, this is one prominent explanation for Chief Justice Roberts' surprising approach to the Affordable Care Act in *NFIB v. Sebelius* (2013).

and the American people; its rulings bind all of these actors. Judicial supremacy was not embraced during early American history, but subscription to it increased throughout the 19th and 20th centuries (e.g., Friedman 1998, 2005; Kramer 2001, 2004; Whittington 2007). Some argue that Chief Justice Marshall sought to establish judicial supremacy in his *Marbury* opinion, but it was not widely embraced in those early years of the new constitutional order. Widespread subscription to judicial supremacy is arguably a 20th century phenomenon. Judicial supremacy arose organically, partly induced by the political branches themselves (Whittington 2005, 2007) and arguably because the public approves of this arrangement (Friedman 2009), due in part to the notion that the Court never strays too far from public sentiment. The Supreme Court sought to reiterate a strong form of judicial supremacy in *Cooper v. Aaron* (1958) in response to widespread defiance of the racial integration rulings.

Since the post-New Deal period, one could argue that judicial supremacy is locked in to our system. Once again, some argue that there is sort of an “unspoken accommodation” between the Court and the elected branches and the people--the Court has the final word on constitutional meaning so long as it does not stray too far from public sentiment (e.g., Friedman 2009; Kramer 2001). Under this arrangement, the Court has to walk a fine line and strategically spend capital if it wants to go out on a limb in terms of deviating from public preferences, particularly in controversial cases (e.g., Mondak 1992; Choper 1980; see also Mondak and Smithey 1997). In addition to these works, additional perspectives show that the Court’s outputs are influenced by the elected branches (e.g., Epstein, Knight, and Martin 2001; Segal, Westerland, and Lindquist 2011) and public preferences (e.g., Mishler and Sheehan 1993; McGuire and Stimson 2004), as well as the judicial selection process generally (Dahl 1957), all of which combat concerns about the “countermajoritarian difficulty” and provide at least some consolation to popular

constitutionalists (e.g., Kramer 2001, 2004).

Enter *elite political and partisan polarization* in America. How might increasing polarization in the country affect—and possibly diminish—this widespread subscription to judicial supremacy? By polarization, we focus on partisan polarization in America characterized by: (1) increasing ideological/policy distance between the typical Republican and typical Democrat, and (2) increasing intra-party ideological/policy homogeneity and extremity. Elite partisan polarization has been on the rise since the 1970s and particularly into the 1980s through the present day (e.g., McCarty, Poole, and Rosenthal 2006; Rohde 1991; Poole and Rosenthal 1984; Bond and Fleisher 2000; Schlesinger 1985).

Given the parties at the national level have become more extreme and far apart from each other, we may see this diminish the authority people attach to the Court's rulings. Debates continue about whether the public is as polarized as elites (e.g., Abramowitz and Saunders 2008) or just better “sorted” yet there still exists a robust political center (e.g., Fiorina, Abrams, and Pope 2006). Druckman, Peterson, and Slothuus (2013) show that the more polarized partisan elites are, the more polarized opinion formation becomes on public policy issues. We theorize a similar dynamic: We hypothesize that as polarization increases, and the more individuals are aware of the positions elites in their party are taking on the issues on which the Supreme Court is deciding, we will observe more polarized views on judicial supremacy. In other words, those who disagree with a ruling will become increasingly more likely to withhold authority/judicial supremacy to the Court's ruling as polarization increases. Those who agree with a ruling will be increasingly more likely to grant judicial supremacy as polarization increases.

Indeed (and related), a large part of our argument is that elite partisan polarization will enhance the effect of policy and ideological disagreement (with the Court's ruling) on

subscription to judicial supremacy, leading those in agreement to ascribe increased authority to the Court and those in disagreement to ascribe decreased authority. A significant debate exists about whether ideological and policy disagreement influences “institutional legitimacy” in the American public, defined as the Court’s rightful authority to render rulings for the polity (e.g., Tyler 2006; Caldeira and Gibson 1992; Gibson and Nelson 2014). Since judicial supremacy bears a strong connection to legitimacy—indeed, it is quite similar to policy legitimacy and Court-curbing—it is worth discussing this debate.

First, a strong conventional wisdom has built up over time suggesting that, at least in the short term, Supreme Court legitimacy is not a potent function of individual-level ideological and partisan orientations in relation to the Court’s outputs (e.g., Caldeira and Gibson 1992; Gibson, Caldeira, and Spence 2003b; Nicholson and Howard 2003; Gibson 2007; Gibson and Nelson 2014; Gibson and Nelson 2015). Instead, legitimacy is rooted in a subscription to democratic values—such as rule of law, liberty, and tolerance—and a positivity bias attached to the Court whereby exposure to and awareness of the Court leads people to perceive the Court as much less politicized and much more principled than the overtly political branches (Gibson and Caldeira 2009b; Gibson and Caldeira 2009a; Gibson and Caldeira 2011; Gibson and Nelson 2015; see also Hibbing and Theiss-Morse 1995). One could conclude that this body of work suggests a sort of “Supreme Court exceptionalism”—that is, the Court has been able to escape the politicized and polarized nature of American government and politics that has encapsulated so many other facets of the American political life.

A second body of work has rapidly emerged in recent years to challenge this conventional wisdom. This work argues that left-right orientations—partisanship and ideology—strongly dictate how individuals perceive the Court, including its legitimacy, both in a general

sense and in relation to specific Court rulings (e.g., Bartels and Johnston 2013; Johnston, Hillygus, and Bartels 2014; Nicholson and Hansford 2014; Christenson and Glick 2015; Clark and Kastellec 2015; Nelson and Smith 2015). In short, ideological and policy disagreement with the Court depresses institutional legitimacy. These perspectives uncover a portrait of the Court as a “political” institution in the public mind, complementing additional work showing that many Americans tend to perceive the Court in quite political terms (Scheb and Lyons 2000; Scheb and Lyons 2001; Bartels and Johnston 2012). According to this view, the Supreme Court has not been able to escape the consequences of politicization and polarization that we see in American politics today.

As it turns out, a flurry of evidence has emerged in recent years supporting the “revisionist” perspective of how left-right orientations have a substantively meaningful impact on legitimacy (and related orientations) in the context of a particular ruling or rulings. While Gibson and colleagues (e.g., Gibson, Caldeira, and Spence 2003a) have influenced scholars to focus on explaining “institutional legitimacy” as opposed to job approval or specific support orientations, much of this newer work draws on earlier work showing how approval of particular decisions can influence confidence (Grosskopf and Mondak 1998) and general support for the Court depending on whether the case originated in a person’s own community (Hoekstra and Segal 1996; Hoekstra 2000; Hoekstra 2003). It also builds on work testing the Court’s legitimating capacity, or opinion leadership—when the Court rules on an issue, does public opinion move in the same direction? Many observational studies have shown that aggregate opinion does not generally move in the direction of its rulings (Adamany 1973; Marshall 1987; 1989). Experimental studies tend to show strong evidence in favor of the legitimation hypothesis (Mondak 1990; 1994; Hoekstra 1995; Clawson, Kegler, and Waltenburg 2001; Bartels and Mutz

2009). However, evidence shows that opinion is also capable of polarizing, resulting in substantial degrees of individual-level change; individuals move in different directions depending on whether they agree or disagree with a ruling, e.g., abortion (see Franklin and Kosaki 1989). Zilis (2015) also finds that the Court's ability to move opinion is limited and can depend on policy agreement or disagreement. On the whole, movements by those who disagree with the ruling are offset by movements from those who agree, leading to the aggregate stability uncovered by Marshall and modeled by Mondak and Smithey (1997). The story is one of individual-level change and aggregate stability.

Scholars have uncovered a similar dynamic regarding how legitimacy is updated in response to blockbuster decisions. Christenson and Glick (2015) show aggregate stability in legitimacy orientations after the blockbuster ACA ruling in 2012. But they also show a great deal of movement among individuals via policy disagreement with the ruling. They show that changes in ideological disagreement exhibit a robust impact on changes in legitimacy orientations in light of the ACA ruling; those who liked the ruling and hence perceived themselves as ideologically closer to the Court in light of the ruling updated their legitimacy in a positive direction. Those who disliked the ruling and moved themselves away from the Court in left-right space emerged with more negative legitimacy orientations in light of the ACA ruling. Substantial individual-level change is occurring in legitimacy, but positive changes are offset by negative changes, thus producing the aggregate stability in legitimacy after the ruling compared to before. Nelson and Smith (2015) uncover a similar dynamic using nationally-representative data surrounding the ACA ruling. This same dynamic likely occurred in the infamous *Bush v. Gore* ruling, wherein Gibson et al. (2003b) found considerable aggregate stability in legitimacy.

Related experimental work has found that policy disagreement and partisan and

ideological signals have substantial effects on both “policy legitimacy” (Nicholson and Hansford 2014) and support for “Court-curbing” (Clark and Kastellec 2015). Thus, revisionist work in response to the conventional wisdom has a common theme: People develop perceptions about the Supreme Court based on ideological and policy motivations. However, other experimental work does suggest that non-policy, legalistic attributes of a Court ruling can boost support for the Court and its rulings (Baird and Gangl 2006; Farganis 2012), even when one is predisposed to disagree with the ruling (Zink, Spriggs, and Scott 2009; Gibson, Lodge, and Woodson 2014; see also Gibson, Caldeira, and Spence 2005).

THEORETICAL EXPECTATIONS

Research on Supreme Court legitimacy has traditionally argued that citizens see the Court as different from other actors and institutions of American government. In this view, the Court is held in high esteem and citizens afford the Court authority on the basis of their endorsement of core democratic values. Early childhood socialization to myths of legalism, as well as continued exposure to the legitimizing symbols of law and objectivity, reinforce these tendencies and create a reservoir of support that protects the Court from attacks when it makes decisions out-of-step with the public mood. In this and other work, we argue that this framework ignores important aspects of how citizens view the Court, and how they respond to its decisions. In our view, the Court is not set fully apart from other American politics institutions. While it is true that citizens tend to show higher levels of support and approval of the Court as a general matter, we argue that the same processes of judgment that apply in other areas of American politics apply here as well. Put another way, standard theories of mass politics are applicable to understanding judgments about the Court’s authority.

Much research in American politics suggests that citizens engage in partisan and ideological *motivated reasoning* about political matters (e.g., Lodge and Taber 2013; Taber and Lodge 2006; Kahan 2015). Rather than seeking the most accurate or most justified view of some political matter, citizens seek to first identify the partisan stakes of an issue—what groups are associated with what positions—and then conform their own view to those of the social and political groups with whom they identify (Cohen 2003). Subsequent reasoning about the issue is then driven by a desire to defend the group and maintain positive distinctiveness relative to competing groups. Indeed, even judgments of simple facts—such as the state of the economy, or the relative expertise of a source of information—are often bent to the goal of maintaining a positive view of the in-group and its position on the issue (e.g., Bartels 2002; Kahan 2015). Further, these tendencies are moderated by the behavior of elites. When elites are sharply divided on an issue—for example, along partisan lines—citizens perceive that the stakes are higher and are more likely to engage in motivated reasoning relative to contexts where elites are less divided (Druckman, Peterson, and Slothuus 2013). Elite *polarization* thus plays an important role driving citizen bias in judgments about the political world.

We apply this simple model to citizen judgments about judicial supremacy. When the Supreme Court makes a decision, citizens look to elite actors for cues regarding how partisan and ideological groups line up on the issue. Subsequent judgments regarding the Court’s authority—whether the decision should be respected as the final word, whether compliance with the decision is necessary—are then shaped by the desire to reinforce the in-group in a positive way. Thus, if the decision is positive for the in-group, citizens will strongly endorse the notion of judicial supremacy, but if the decision is a negative outcome for the in-group, citizens will withdraw their endorsement of supremacy and a way of countering that outcome and maintaining

a positive view of the in-group. In essence, citizens delegitimize the *decision* by delegitimizing the *Court*. The decision need not be respected because the Court's authority is limited.

Moreover, these tendencies will be exacerbated by elite polarization on the issue. When there is more at stake in terms of political group conflict, the propensity to attack the Court's authority in the wake of disliked decisions will be greater.

RESEARCH DESIGN AND DATA

To test our expectations about the role of polarization and policy disagreement in influencing judicial supremacy, we designed a survey experiment, which was conducted using a national sample. The study was executed by YouGov, who conducted interviews between May 17 and May 24 of 2016.⁵ Our sample size for this study is 1,076. Our design is a 2 [ideological direction of ruling] x 3 [polarization treatment] full-factorial experimental design; thus, respondents are randomly assigned to 1 of 6 experimental conditions.

Ideological Direction Treatment

Experimental subjects read a brief vignette about a Supreme Court ruling. Respondents were randomly assigned to read about either a liberal or conservative ruling. While many past studies assign subjects to just one issue, thus calling into question issues of generalizability to other issues, we actually randomly assign subjects to one of four issue areas within the liberal and conservative experimental conditions. Subjects randomly assigned to the liberal or conservative conditions were further randomly assigned to one of four Court rulings, each of which represents an actual Supreme Court policy that the Court has delivered in the past (we do

⁵ The entire survey experiment actually involved two modules: the polarization study (part of which we analyze in this paper) and a procedural study, which we will analyze in the future. YouGov interviewed 2619 respondents who were then matched down to a sample of 2500 to produce the final dataset. The polarization module included 1250 respondents, 174 of whom were in a control group (that received no treatment information) for the purposes of another aspect of this study that we will analyze for the future. Thus, the effective sample size for this study is 1076. YouGov matches respondents to a sampling frame on gender, age, race, education, ideology, and political interest. The frame is constructed by stratified sampling from the full 2010 American Community Survey (ACS) sample with selection within strata by weighted sampling with replacements (using the person weights on the public use file).

not attribute case names). In the introduction, we provide some issue context (part of which includes the polarization treatment discussed below) and then we randomly deliver one of the following four liberal rulings:

1. The Supreme Court has ruled that anti-abortion protesters do **not** have the right to engage in counseling or literature distribution with patients entering or leaving an abortion clinic.
2. The Supreme Court has ruled that the death penalty **cannot** be given to offenders who were under the age of 18 when their crimes were committed.
3. The Supreme Court has ruled that college and university administrators **can** use an individual's race as one of several factors in admissions decisions if it advances an institution's goal of generating a racially diverse student body.
4. The Supreme Court has ruled that the police may **not** draw blood from drunk driving suspects to test their blood alcohol level without a search warrant, even if there is probable cause.

For the conservative ruling group, we randomly deliver one of the following four rulings:

1. The Supreme Court has ruled that corporations **can** spend as much money as they want to help political candidates win elections.
2. The Supreme Court has ruled that lethal injection is **not** "cruel and unusual punishment" and has rejected death row inmates' challenges that certain lethal injection drugs cause severe pain and suffering.
3. The Supreme Court has ruled that the federal government **cannot** require states with a history of racial discrimination to secure federal government approval of changes to their election laws.
4. The Supreme Court has ruled that evidence gathered from an illegal police search **can** be used in court as long as the search violation was not intentional.

Note that across liberal and conservative rulings, we attempted to generate general issue correspondence: (1) freedom of expression; (2) Eighth Amendment and "cruel and unusual punishment;" (3) race; and (4) police conduct vis-à-vis the Fourth Amendment. We attempted to find rulings on the liberal and conservative sides of these general issue areas that roughly mirrored each other. Since these rulings are based in reality, our study escapes "artificiality" concerns or lack of realism that can sometimes accompany such studies. Moreover, we do not have to painstakingly create a fictional scenario, thereby potentially disputing reality, where the Court could issue a conservative or liberal ruling on the same underlying issue.

The biggest payoff of our study is the ability to generalize our results *across multiple issue areas*, thus escaping the criticism that any results we generate are specific to one issue area. In our analyses below, we include our liberal/conservative experimental factor, but we average over the issue areas such that our results about ideological direction of the ruling are generalizable across those four issue areas.

Polarization Treatment

Our polarization factor contains two treatments—(1) party cues, elite polarization and (2) party cues, but low elite polarization—and (3) a control group that receives no party cues. Before we deliver the direction of the Court’s ruling, we provide some context about the issue, including degrees of elite partisan polarization. In implementing this treatment, we adapt the basic structure used by Druckman et al. (2013) to the Supreme Court context. The control group for this factor receives no cues about where the national parties stand on the issue and only receives the Court’s ruling on an issue. However, the polarization treatment group receives the following information about party stands on the underlying issue:

There has been a lot of discussion over the years about [issue context]. Republicans nationwide tend to favor [issue] while Democrats tend to oppose it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

Like Druckman et al., we treat subjects with the two core components of elite partisan polarization: (1) the parties are far apart ideologically on the issue, and (2) members of each party are internally homogeneous.

The second treatment gives cues on where the parties stand but signals low degrees of elite partisan polarization:

There has been a lot of discussion over the years about [issue context]. Republicans nationwide tend to favor [issue] and Democrats tend to oppose it. However, the partisan

divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

While this treatment gives respondents information on where the parties stand generally, it also signals low polarization: (1) the parties are *not* far apart, and (2) there is internal heterogeneity among the parties. Part of our task in choosing issues was being able to credibly claim that the national parties are either polarized or non-polarized on the issue.

Dependent Variable

Our dependent variable of interest in this study is *subscription to judicial supremacy*, which is related to past operationalizations of policy legitimacy (Mondak 1990, 1994; Nicholson and Hansford 2014). We measure this outcome of interest with two survey questions about judicial finality and national compliance:

1. The Supreme Court's ruling should not be the final word on the matter and there ought to be an effort to overturn the ruling.
2. All Americans (including elected officials nationwide) should comply with the Supreme Court's ruling.

For both items, 6-point agree-disagree response scales were used.⁶ Note that the items were reverse coded (relative to each other) to reduce the possibility of respondent "straight-lining."

We average these two items together to create a judicial supremacy scale; we recoded it to range from 0 to 1, where higher values represent higher subscription to judicial supremacy.⁷

Independent Variables

In addition to our experimental variables, we require an individual-level measure of left-right orientations. Past work has used specific policy disagreement (respondents' position vis-à-vis the Court's ruling) as well as general ideological disagreement (respondents' ideology or

⁶ Response options include: Agree Strongly, Agree Moderately, Agree Somewhat, Disagree Strongly, Disagree Moderately, Disagree Somewhat.

⁷ We also separately analyzed these two items and some interesting differences appear, which we will examine more closely in future work.

partisanship vis-à-vis the Court's ruling or the Court's general ideological tenor). Since our paper focuses on the role of elite partisan polarization driven by ideological disagreement, we use a general left-right measure that combines an individual's ideology and party identification (PID), which, in the age of increased sorting, are highly correlated (in our data, $r = .65$). We use a combination of the two, which is done by taking the average of the two.⁸ This allows one to capture a more fine-grained left-right measure that differentiates “liberal Democrats” at one end from “conservative Republicans” at the other. To detect any nonlinear functional forms that may exist, we created a 3-category measure of this ideology/PID measure via separating it into “tertiles” and operationalizing it as a nominal variable (liberal/Dem., moderate/Ind., and conservative/Rep.). Since we did not detect any nonlinear functional forms, we use the continuous ideology/PID measure instead, as results are highly similar using both operationalizations. For our statistical model, we include standard controls: sex, race (Hispanic, Black, White), education, religiosity, and knowledge (based on a scale).

Model Specification

Since we expect the treatment effects to depend on left-right orientations and vice versa, we specify a model where we include our measure of ideology/PID, our experimental factor (with all 6 experimental conditions: liberal ruling, polarized; liberal ruling, not polarized, etc.) as a nominal independent variable (“dummied” out, excluding one category), and the interaction between the two. Alternatively, one can specify the exact same underlying model by including ideology/PID, the liberal/conservative experimental treatment dummy variable, the polarization treatment variable (nominal operationalization, dummied out), all two-way interactions between these variables, and a triple interaction. In addition, to properly average over the multiple (four)

⁸ Party identification is measured using the traditional 7-point scale. Ideology is measured using a 5-point scale, ranging from very liberal to very conservative. Both were recoded to range from 0 to 1 (higher values conservative/Republican) and then averaged together.

issues within each of the liberal and conservative experimental conditions, we estimate a random intercept model with a two-level hierarchical structure—individuals (level-1 units) nested within issue areas (level-2 units; the 8 issue area options). This specification allows us to account for the fact that levels of judicial supremacy may shift between the issues for unobserved/unmodeled reasons; the model therefore accounts for issue-level unobserved heterogeneity. We note that we also estimated a fixed effects model and observed very similar results. Our random intercept model is a statistically significantly better fit than a regular linear model that does not account for unobserved issue differences. We display our primary model results by way of three central graphs, which are derived directly from our model. We display our model results in tabular form in the Appendix.

RESULTS

Our results focus on the effects of ideological disagreement and elite partisan polarization on judicial supremacy, and particularly how they are conditional on each other. As discussed, we are interested in polarization's direct (and conditional) effects on subscription to judicial supremacy as well as how polarization moderates the impact of left-right orientations on judicial supremacy.

We first focus on the general effects of ideological disagreement on subscription to judicial supremacy and then how polarization moderates that effect. We turn to Figure 1, which presents the marginal effects of our ideology/PID measure on judicial supremacy conditional on the both the direction of the Court's ruling (liberal or conservative) and polarization. The first three conditions on the x-axis are liberal rulings and range from high polarization (on the left) to no polarization. The fourth through sixth conditions on the x-axis are conservative rulings and follow suit on polarization. Recall that ideology/PID is a continuous measure ranging from 0

(liberal Democrat) to 1 (conservative Republican).

[Figure 1 about here]

First, the results display a robust effect of ideological disagreement on judicial supremacy, averaging over the experimental conditions. For liberal rulings, there is a robust and statistically significant *negative* effect of ideology/PID on judicial supremacy, meaning that in the face of liberal rulings, liberals and Democrats who are in general agreement with that ruling are significantly more likely to grant judicial supremacy to the ruling than are conservatives and Republicans who are more prone to disagree.⁹ In line with perspectives on ideological disagreement as well as ideological and partisan motivated reasoning, we see the exact opposite effect of ideology/PID in the face of conservative rulings in Figure 1. Again, averaging across polarization conditions, the effect of ideology/PID is now *positive* when individuals are given conservative Court rulings. Conservatives and Republicans who agree with the ruling are now more likely to grant judicial supremacy to that ruling than are liberals and Democrats. Once again, this provides a very robust and potent finding in favor of ideological and partisan motivated reasoning and supports prior work on the impact of ideological disagreement on Court related facets of evaluation related to legitimacy (Bartels and Johnston 2013; Bartels, Johnston, and Mark 2015; Christenson and Glick 2015; Nicholson and Hansford 2014; Clark and Kastellec 2015).

To what extent does polarization enhance the impact of ideological disagreement? Figure 1 reveals an asymmetric impact depending the ideological direction of the ruling. For liberal rulings, we see an expected moderating role of polarization: As polarization increases (from no

⁹ We performed manipulation checks by way of asking, at the end of the survey, whether individuals agreed with the Court's ruling. This variable correlated quite highly with ideology/PID vis-à-vis the direction of the Court's ruling. This means that we can be quite certain that ideology/PID in conjunction with the direction of the Court's ruling represents a general form of ideological disagreement.

party cues, to nonpolarized party cues, to polarization), the impact of ideology/PID is enhanced, and at a statistically significant level when comparing the polarized condition to no party cues. This means that elite partisan polarization enhances the ideological and partisan divide in the mass public in the granting of judicial supremacy. The results show that elite partisan polarization undermines judicial supremacy by way of dividing individuals—along ideological and partisan lines—in their subscription to judicial supremacy. The Supreme Court’s authority in the political system to have the final word on constitutional meaning as related to policy issues is conditioned by the elite political environment. Citizens cannot escape the pull of polarization and it infects the Supreme Court in a political manner.

This effect is less pronounced for conservative rulings. As shown in Figure 1, the impact of ideology/PID is enhanced in the polarized condition relative to the other two conditions, but the differences in the effects are not statistically significant. Moreover, the effect in the party cues/nonpolarized condition is slightly *lower* (though not significantly so) than the no party cues condition. It appears that conservative rulings do not divide the public’s subscription to judicial supremacy as much as liberal rulings. Is that due more to liberal or conservative responses? We turn to Figures 2 and 3 for more insights. These figures show polarization treatment effects conditional on respondent left-right orientations and the direction of the Court’s ruling.

Figure 2 shows how liberals and conservatives differentially respond to liberal (2a) and conservative (2b) rulings across varying polarization environments. The y-axis represents predicted values of judicial supremacy as a function of varying polarization conditions (x-axis) and the ideology/PID of the respondent, which we set at low (liberal/Democrat) and high (conservative/Republican).¹⁰ Figure 2a sheds further light on the results from Figure 1. The

¹⁰ We set ideology/PID to .17 and .83, respectively, which represent typical values given the distribution of the variable. When we break ideology/PID into tertiles, .17 represents the median of the “liberal” group and .83

graph shows how polarization divides liberals and conservatives in their subscription to judicial supremacy. In light of a liberal ruling, increasing polarization increases liberal subscription and decreases conservative subscription to judicial supremacy. Our results show that the decrease due to ideological disagreement among conservatives is what drives this divide. Among conservatives in this graph, judicial supremacy statistically significantly decreases in the polarization condition relative to the “no cues” condition; no statistically significant decrease occurs from no party cues to party cues without polarization. Among liberal Democrats, while judicial supremacy does increase as a function of polarization, none of those increases are statistically significant. On the whole, then, the results show that polarization significantly diminishes judicial supremacy in the face of ideological disagreement and it does so more potently than it increases judicial supremacy in the face of agreement. Of course, ideological disagreement matters in a significant and potent way across the board. In line with Figure 1, its effect is significantly enhanced in a polarized relative to a no party cues environment.

[Figure 2 about here]

Figure 2b shows a similar dynamic. First, Figure 2b shows that the divide between liberal Democrats and conservative Republicans is not as stark in light of a conservative ruling. Ideological disagreement once again matters across the board and polarization never significantly enhances that effect. Among conservatives, who are in ideological agreement in Figure 2b, polarization has very minimal and statistically insignificant effects on judicial supremacy. It remains relatively high. We see an analogous dynamic among liberal Democrats in Figure 2b that we observed for conservative Republicans in Figure 2a. That is, for liberal Democrats, who are in ideological disagreement, polarization decreases subscription to judicial

represents the median of the “conservative” group. Thus, these values represent typical liberal Democrats and conservative Republicans.

supremacy and at a statistically significant level when comparing the polarized condition to the no party cues condition.

Across Figures 2a and 2b, then, the results show that polarization significantly undermines judicial supremacy in the face of ideological disagreement and much more so than it enhances judicial supremacy among those who agree. Also, while polarization has more limited, though important, effects, ideological disagreement exhibits an impact across the board. Liberal Democrats ascribe more judicial supremacy to liberal rulings than conservative Republicans, and conservative Republicans ascribe more judicial supremacy to conservative rulings than liberal Democrats. The Supreme Court's authority on policy issues among the American public is driven in large part by left-right orientations and under certain conditions, particularly in the face of ideological *disagreement*, polarization enhances that dynamic.

[Figure 3 about here]

Figure 3 presents the same data that is presented in Figure 2, but rearranges it to highlight how polarization enhances ideological disagreement for liberal Democrats (3a) and conservative Republicans (3b). In other words, how does the ideological direction of the Court's ruling matter for an ideologue's subscription to judicial supremacy, and does polarization enhance that gap? On the whole, Figure 3 shows that liberal Democrats appear to experience greater effects of ideological disagreement than conservative Republicans, particularly in the face of polarization. First, the judicial supremacy gap between liberal and conservative rulings is generally larger (averaging across polarization conditions) for liberal Democrats than it is for conservative Republicans. Second, polarization significantly enhances that gap (relative to no party cues) for liberal Democrats, whereas it does not significantly enhance the gap for conservative Republicans. Third, as discussed with respect to Figure 2, polarization diminishes subscription to

judicial supremacy in the face of ideological disagreement significantly more so than it enhances judicial supremacy in the face of ideological agreement.

DISCUSSION AND CONCLUSION

Our work presents important questions about a key feature in our political system: Do people ascribe ultimate authority to the Supreme Court when it comes to having the final word on constitutional meaning? Judicial supremacy looms large today because of increasing elite partisan polarization *and* because the Court rules on some of the most important issues in American politics that serve as centerpieces of the left-right divide in America today. The question of whether elite partisan polarization diminishes the public's subscription to judicial supremacy thus becomes a timely and important question. Has polarization undermined judicial authority?

The backdrop to this question centers on the role of ideological and policy disagreement with the Court's rulings, which has been previously shown to diminish the Court's legitimacy, including institutional and policy legitimacy. So the question becomes not only do people ascribe or withhold authority from the Court on the basis of whether they agree or disagree with Court rulings, but does elite partisan polarization *exacerbate* this effect? According to perspectives of ideological and motivated reasoning, there should be such an enhancement effect in general.

Our results show that polarization matters, and it matters in important ways, but its effects are conditional. On the whole, ideological disagreement is an important, unconditional driver of subscription to judicial supremacy, and polarization serves to enhance that dynamic. We see clear patterns of liberals and conservatives granting more or less judicial supremacy to the Court's rulings on the basis of ideological agreement with its rulings. Where polarization seems to matter most is in *diminishing* judicial supremacy in the face of ideological

disagreement. It matters least in enhancing judicial supremacy in the face of agreement. Those are important differences indeed, and from a normative standpoint, this represents a negative feature for the Court's authority in the American public. Elite partisan polarization serves as an undermining mechanism for that authority. As the Court continues to rule on highly salient issues, and as elite partisan polarization becomes more ingrained into the political system, further examinations of the drivers of judicial supremacy and Supreme Court authority will become more and more crucial for both empirical and normative reasons.

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Figure 1: Marginal Effects of Ideology/Partisanship on Judicial Supremacy Conditional on Experimental (Polarization) Conditions

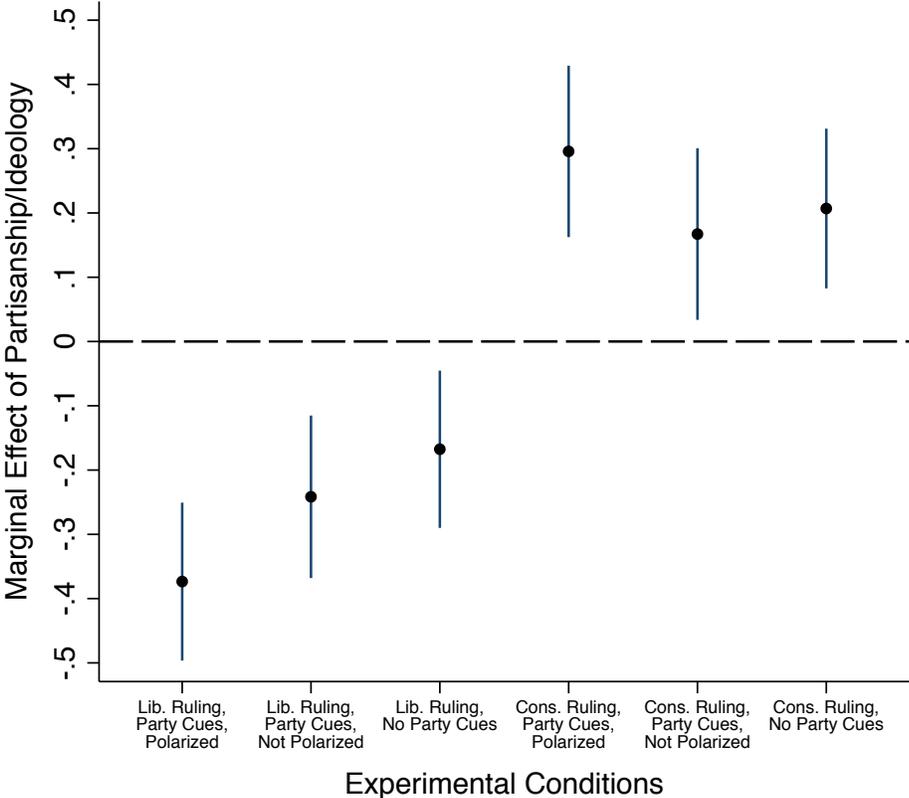


Figure 2: How Polarization Divides Subscription to Judicial Supremacy Between Liberals/Democrats and Conservatives/Republicans

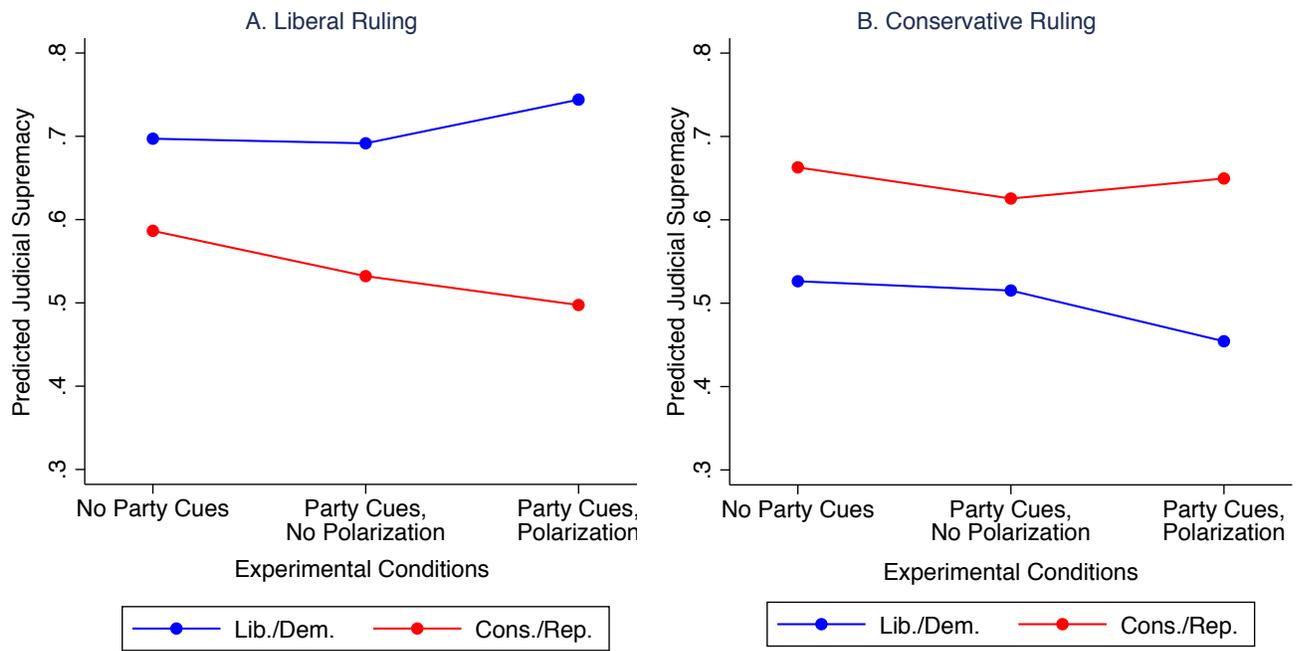
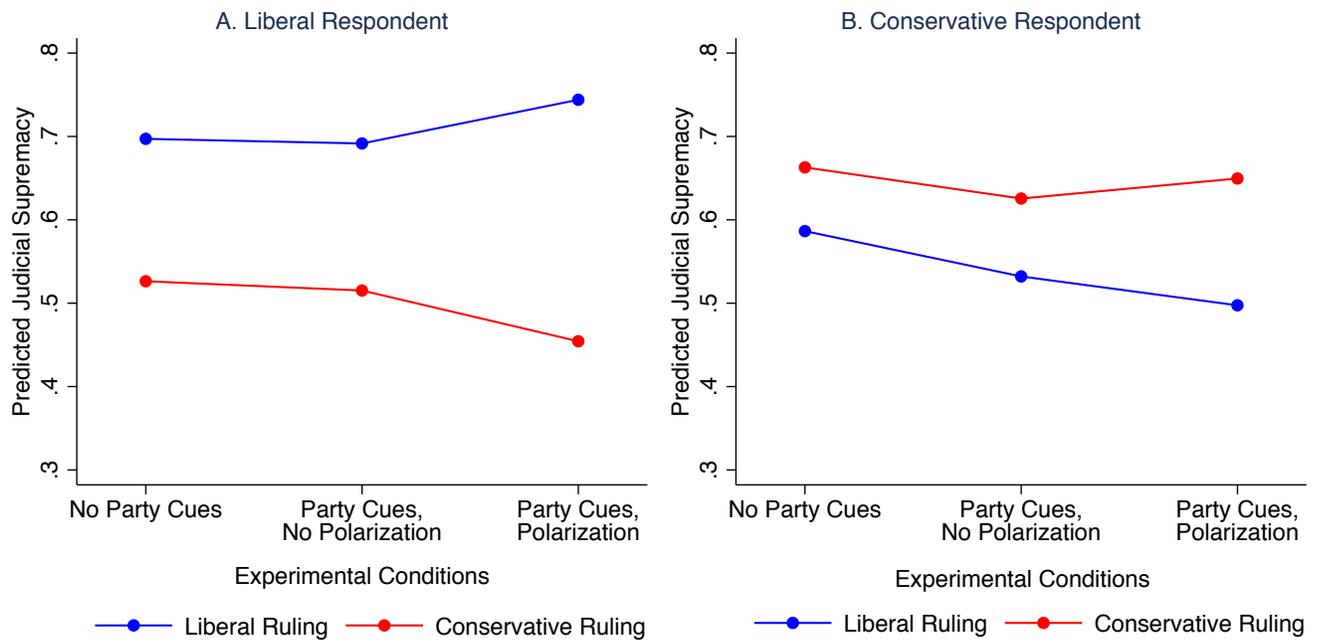


Figure 3: How Polarization Moderates the Impact of Ideological Disagreement on Judicial Supremacy



APPENDIX: Model Results from Random Intercept Model of Judicial Supremacy

Variables	Coeff.	(SE)	p
Ideology/PID	-0.37	(0.06)	0.00
Experimental Conditions			
Lib. Ruling, Polarization		[Baseline Category]	
Lib. Ruling, Party Cues, No Polarization	-0.07	(0.05)	0.13
Lib. Ruling, No Party Cues	-0.08	(0.05)	0.11
Cons. Ruling, Polarization	-0.40	(0.06)	0.00
Cons. Ruling, Party Cues, No Polarization	-0.32	(0.06)	0.00
Cons. Ruling, No Party Cues	-0.32	(0.06)	0.00
Interactions			
Ideo/PID x Lib. Ruling, Party Cues, No Polarization	0.13	(0.09)	0.14
Ideo/PID x Lib. Ruling, No Party Cues	0.21	(0.09)	0.02
Ideo/PID x Cons. Ruling, Polarization	0.67	(0.09)	0.00
Ideo/PID x Cons. Ruling, Party Cues, No Polarization	0.54	(0.09)	0.00
Ideo/PID x Cons. Ruling, No Party Cues	0.58	(0.09)	0.00
Female	0.05	(0.02)	0.00
Black	0.00	(0.03)	0.88
Hispanic	0.00	(0.03)	0.90
Education	0.05	(0.03)	0.10
Religion	-0.06	(0.02)	0.02
Political Knowledge	0.11	(0.03)	0.00
Intercept	0.73	(0.05)	0.00

Number of Respondents (level-1 units) = 1,042

Number of Issues (level-2 units) = 8

Likelihood Ratio Test, RI Model v. Pooled Linear Model: Chi-sq=21.28, p<.001

Level-1 Error Variance = 0.066

Level-2 Error Variance = 0.002

SUPPORTING INFORMATION: EXPERIMENTAL DESIGN AND DATA

Subjects are randomly assigned to 1 of 6 experimental conditions below. Within each condition, subjects are then randomly assigned to one of four issues and an associated Supreme Court ruling.

1. Liberal Ruling, Polarized Condition

[Subjects are randomly assigned to one of the following four issue vignettes.]

- A. There has been a lot of discussion over the years about the ability of anti-abortion protesters to express their views outside of abortion clinics and engage in discussions with patients of those clinics. Republicans nationwide tend to favor the ability of anti-abortion protesters to engage in these practices, while Democrats tend to oppose these practices. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that anti-abortion protesters do **not** have the right to engage in counseling or literature distribution with patients entering or leaving an abortion clinic.

- B. There has been a lot of discussion over the years about whether giving the death penalty to minors (under the age of 18) is “cruel and unusual punishment” in violation of the Constitution. Republicans nationwide tend to favor the death penalty for minors, while Democrats tend to oppose it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that the death penalty **cannot** be given to offenders who were under the age of 18 when their crimes were committed.

- C. There has been a lot of discussion over the years about using affirmative action in college admissions to increase racial diversity. Republicans nationwide tend to oppose the use of an applicant’s race as a consideration in admissions decisions, while Democrats tend to favor it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Democrats tend to be in favor and Republicans opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that college and university administrators **can** use an individual’s race as one of several factors in admissions decisions if it advances an institution’s goal of generating a racially diverse student body.

- D. There has been a lot of discussion over the years about appropriate types of action police officers may take when investigating an individual suspected of breaking the law. Republicans nationwide tend to support the police's ability to take assertive actions against criminal suspects to reduce crime, even if it means reducing suspects' rights, while Democrats tend to oppose such assertive actions and support extending suspects' rights. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor of assertive police actions and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that the police may **not** draw blood from drunk driving suspects to test their blood alcohol level without a search warrant, even if there is probable cause.

2. Liberal Ruling, Nonpolarized Condition

[Subjects are randomly assigned to one of the following four vignettes.]

- A. There has been a lot of discussion over the years about the ability of anti-abortion protesters to express their views outside of abortion clinics and engage in discussions with patients of those clinics. Republicans nationwide tend to favor the ability of anti-abortion protesters to engage in these practices, while Democrats tend to oppose these practices. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that anti-abortion protesters do **not** have the right to engage in counseling or literature distribution with patients entering or leaving an abortion clinic.

- B. There has been a lot of discussion over the years about whether giving the death penalty to minors (under the age of 18) is "cruel and unusual punishment" in violation of the Constitution. Republicans nationwide tend to favor the death penalty for minors, while Democrats tend to oppose it. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that the death penalty **cannot** be given to offenders who were under the age of 18 when their crimes were committed.

- C. There has been a lot of discussion over the years about using affirmative action in college admissions to increase racial diversity. Republicans nationwide tend to oppose the use of an applicant's race as a consideration in admissions decisions, while Democrats tend to favor it. However, the partisan divide is not stark as the

parties are not too far apart. Also, while Democrats tend to be in favor and Republicans opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that college and university administrators **can** use an individual's race as one of several factors in admissions decisions if it advances an institution's goal of generating a racially diverse student body.

- D. There has been a lot of discussion over the years about appropriate types of action police officers may take when investigating an individual suspected of breaking the law. Republicans nationwide tend to support the police's ability to take assertive actions against criminal suspects to reduce crime, even if it means reducing suspects' rights, while Democrats tend to oppose such assertive actions and support extending suspects' rights. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor of assertive police actions and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that the police may **not** draw blood from drunk driving suspects to test their blood alcohol level without a search warrant, even if there is probable cause.

3. Liberal Ruling, No Party Cues Condition

[Subjects are randomly assigned to one of the following four vignettes.]

- A. There has been a lot of discussion over the years about the ability of anti-abortion protesters to express their views outside of abortion clinics and engage in discussions with patients of those clinics.

The Supreme Court has ruled that anti-abortion protesters do **not** have the right to engage in counseling or literature distribution with patients entering or leaving an abortion clinic.

- B. There has been a lot of discussion over the years about whether giving the death penalty to minors (under the age of 18) is "cruel and unusual punishment" in violation of the Constitution.

The Supreme Court has ruled that the death penalty **cannot** be given to offenders who were under the age of 18 when their crimes were committed.

- C. There has been a lot of discussion over the years about using affirmative action in college admissions to increase racial diversity.

The Supreme Court has ruled that college and university administrators **can** use an individual's race as one of several factors in admissions decisions if it advances an institution's goal of generating a racially diverse student body.

- D. There has been a lot of discussion over the years about appropriate types of action police officers may take when investigating an individual suspected of breaking the law.

The Supreme Court has ruled that the police may **not** draw blood from drunk driving suspects to test their blood alcohol level without a search warrant, even if there is probable cause.

4. Conservative Ruling, Polarized Condition

[Subjects are randomly assigned to one of the following four vignettes.]

- A. There has been a lot of discussion over the years about whether corporations should be limited in their ability to spend money in elections. Republicans nationwide tend to favor corporations' ability to spend money in elections while Democrats tend to oppose it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that corporations **can** spend as much money as they want to help political candidates win elections.

- B. There has been a lot of discussion over the years about whether lethal injection as a means of carrying out a death sentence is "cruel and unusual punishment" in violation of the Constitution. Republicans nationwide tend to favor the use of lethal injection while Democrats tend to oppose it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that lethal injection is **not** "cruel and unusual punishment" and has rejected death row inmates' challenges that certain lethal injection drugs cause severe pain and suffering.

- C. There has been a lot of discussion over the years about whether U.S. states with a history of racial discrimination should still be monitored by the federal government to ensure that changes to their electoral laws are free from racial bias. Republicans nationwide tend to oppose such federal monitoring, while Democrats tend to favor it. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Democrats tend to be in favor and Republicans opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that the federal government **cannot** require states with a history of racial discrimination to secure federal government approval of changes to their election laws.

- D. There has been a lot of discussion over the years about whether incriminating evidence against a criminal suspect can be admitted in court if the police search that uncovered the evidence was illegal and a violation of a suspect's constitutional rights. Republicans nationwide tend to be in favor of admitting such evidence so long as the police did not intentionally violate the suspect's rights, while Democrats tend to oppose admitting evidence from any illegal search. Moreover, the partisan divide is stark as the parties are far apart. Also, not only do Republicans tend to be in favor and Democrats opposed, but most members of each party are on the same side as the rest of their party.

The Supreme Court has ruled that evidence gathered from an illegal police search **can** be used in court as long as the search violation was not intentional.

5. Conservative Ruling, Nonpolarized Condition

[Subjects are randomly assigned to one of the following four vignettes.]

- A. There has been a lot of discussion over the years about whether corporations should be limited in their ability to spend money in elections. Republicans nationwide tend to favor corporations' ability to spend money in elections and Democrats tend to oppose it. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that corporations **can** spend as much money as they want to help political candidates win elections.

- B. There has been a lot of discussion over the years about whether lethal injection as a means of carrying out a death sentence is "cruel and unusual punishment" in violation of the Constitution. Republicans nationwide tend to favor the use of lethal injection while Democrats tend to oppose it. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that lethal injection is **not** "cruel and unusual punishment" and has rejected death row inmates' challenges that certain lethal injection drugs cause severe pain and suffering.

- C. There has been a lot of discussion over the years about whether U.S. states with a history of racial discrimination should still be monitored by the federal government to ensure that changes to their electoral laws are free from racial bias. Republicans nationwide tend to oppose such federal monitoring, while Democrats tend to favor it. However, the partisan divide is not stark as the parties are not too far apart. Also, while Democrats tend to be in favor and Republicans opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that the federal government **cannot** require states with a history of racial discrimination to secure federal government approval of changes to their election laws.

- D. There has been a lot of discussion over the years about whether incriminating evidence against a criminal suspect can be admitted in court if the police search that uncovered the evidence was illegal and a violation of a suspect's constitutional rights. Republicans nationwide tend to be in favor of admitting such evidence so long as the police did not intentionally violate the suspect's rights, while Democrats tend to oppose admitting evidence from any illegal search. However, the partisan divide is not stark as the parties are not too far apart. Also, while Republicans tend to be in favor and Democrats opposed, members of each party can be found on both sides of the issue.

The Supreme Court has ruled that evidence gathered from an illegal police search **can** be used in court as long as the search violation was not intentional.

6. Conservative Ruling, No Party Cues Condition

[Subjects are randomly assigned to one of the following four vignettes.]

- A. There has been a lot of discussion over the years about whether corporations should be limited in their ability to spend money in elections.

The Supreme Court has ruled that corporations **can** spend as much money as they want to help political candidates win elections.

- B. There has been a lot of discussion over the years about whether lethal injection as a means of carrying out a death sentence is "cruel and unusual punishment" in violation of the Constitution.

The Supreme Court has ruled that lethal injection is **not** "cruel and unusual punishment" and has rejected death row inmates' challenges that certain lethal injection drugs cause severe pain and suffering.

- C. There has been a lot of discussion over the years about whether U.S. states with a history of racial discrimination should still be monitored by the federal government to ensure that changes to their electoral laws are free from racial bias.

The Supreme Court has ruled that the federal government **cannot** require states with a history of racial discrimination to secure federal government approval of changes to their election laws.

- D. There has been a lot of discussion over the years about whether incriminating evidence against a criminal suspect can be admitted in court if the police search that uncovered the evidence was illegal and a violation of a suspect's constitutional rights.

The Supreme Court has ruled that evidence gathered from an illegal police search **can** be used in court as long as the search violation was not intentional.

Dependent Variable: Judicial Supremacy

1. The Supreme Court’s ruling should not be the final word on the matter and there ought to be an effort to overturn the ruling. [agree strongly, agree somewhat, agree a little, disagree a little, disagree somewhat, disagree strongly.]
2. All Americans (including elected officials nationwide) should comply with the Supreme Court’s ruling. [agree strongly, agree moderately, agree a little, disagree a little, disagree moderately, disagree strongly]

[Additional Questions were asked as well that we will analyze for the future.]

Political Knowledge Items

For the next several questions we are interested in whether you happen to know about several contemporary political figures. Many people know the answers to these questions and many people do not know the answers. If you do not know the answer to a given question, you can simply respond “Don’t know.” We ask that you do not use any outside resources, such as the internet or another person, to answer these questions.

[Please randomize the order of questions 10-14. Randomize the options, too, with “Don’t Know” always going last.]

10. For how many years is a United States Senator elected, that is, how many years are there in one full term of office for a U.S. Senator? Please type the correct number into the box, or choose “Don’t know.”
 - a. [Open ended box]
 - b. Don’t know
11. On which of the following does the U.S. federal government currently spend the least?
 - a. Foreign aid
 - b. Medicare
 - c. National defense
 - d. Social Security
 - e. Interest payments on federal debt
 - f. Don’t know
12. Who is the current Chief Justice of the U.S. Supreme Court?
 - a. John Roberts
 - b. Stephen Breyer
 - c. Samuel Alito
 - d. Clarence Thomas
 - e. Anthony Kennedy
 - f. Don’t know

13. Who is the current Prime Minister of the United Kingdom?

- a. David Cameron
- b. Gordon Brown
- c. Tony Blair
- d. George Osborne
- e. Philip Hammond
- f. Don't know

14. Who is the current Speaker of the U.S. House of Representatives?

- a. Paul Ryan
- b. John Boehner
- c. Mitch McConnell
- d. Nancy Pelosi
- e. Kevin McCarthy
- f. Don't know

Additional Independent Variables

YouGov collects demographic and other individual-level information ahead of time. Data on **party identification** (traditional 7-point scale), **ideology** (5-point scale), **gender** (male or female), **race**, **education** (levels of education), and **religiosity** (church attendance) were given to us along with our study data.