

**Courting the Public:  
Judicial Behavior and Public Views of Court Decisions**

**John T. Scott**

[Jtscott@ucdavis.edu](mailto:Jtscott@ucdavis.edu)

**James F. Spriggs II**

[Jfspriggs@ucdavis.edu](mailto:Jfspriggs@ucdavis.edu)

**James R. Zink**

[Jrzink@ucdavis.edu](mailto:Jrzink@ucdavis.edu)

**Department of Political Science  
University of California, Davis  
Davis, CA 95616**

Paper prepared for the 2006 Annual Meetings of the Midwest Political Science Association. We thank Robert Huckfeldt and Cindy Kam for their suggestions.

The U.S. Supreme Court is generally said to be perceived as a legitimate institution in large measure because of its role as an apolitical, disinterested adjudicator of the law (Hibbing and Theiss-Morse, 1995; Scheb and Lyons 2001). The Court seeks to maintain this perception of independence and impartiality because, lacking any coercive enforcement powers, the public's confidence in the Court's neutrality is key to securing acceptance of Court outcomes. Two principal ways in which the Court signals the neutrality of its decisions, and thus enhances the likelihood of compliance with Court outcomes, are the use of precedent and the majority coalition size. First, when the Court bases its rulings on precedent, it projects to the public the view that the Court is making decisions objectively in accordance with the rule of law. By treating similar cases similarly, the Justices indicate that their decisions are legally-principled and neutral. As John Roberts explained in his recent confirmation hearings: "Precedent plays an important role in promoting stability and evenhandedness," characteristics that the public can readily identify in a Court opinion (9/13/2005). Second, Court opinions supported by larger majorities appear more credible and thus should result in greater levels of compliance (e.g., Johnson 1987; Wasby 1970; Baum 1981). Larger majority coalitions reflect greater judicial support for a policy and suggest that the Court decided a case in an unbiased way. Indeed, the putative relationship between majority size and legitimacy induced Justice Warren's attempts in *Brown v. Board of Education* (1954) to produce a unanimous opinion in the hopes of encouraging compliance with the decision (Schwartz 1996).

Despite the conventional wisdom, precious little empirical evidence exists to support the causal claim concerning the attributes of Court opinions and individual evaluations of judicial outcomes. Where the Court has been shown to have an effect on the public's behavioral predispositions towards its policies regards individual levels of "specific" support for the Court

and ideological agreement with Court outputs. Scholars have shown that the Court can, at times, act as a “source cue” to the public: Americans view the judiciary as a more “legitimate” institution than the other branches of government, and the Court can therefore more successfully bend public opinion towards the policies it supports (Hoekstra 2003; Gibson 1989; Gibson, Caldeira, and Spence 2005; Mondak 1991, 1992). Extant research also demonstrates that the public is more supportive of the Court when its decisions are less ideologically divergent from public opinion, which suggests that the Court can ensure compliance by producing outputs that satisfy popular opinion (Grosskopf and Mondak 1998; Caldeira 1986; Durr, Martin, and Wolbrecht 2000). There is no empirical support, however, for the claim that the *way* in which the Court reaches and justifies its rulings, including the majority size and its treatment of precedent, has any effect on individual perceptions of the Court’s decisions (see Mondak 1994; Gibson, Caldeira, and Spence 2005).

The gap between the conventional wisdom and absence of empirical support for it raises the question that motivates our paper: Does judicial behavior, especially the Court’s invocation of precedent and the size of an opinion’s majority coalition, affect public approval or acceptance of judicial policy outcomes? We use an experimental design to isolate the role of precedent and coalition size in respondents’ evaluations of the Court’s decisions. To be clear, we do not examine the causal relationship between individual perceptions of Court outcomes and the Court’s institutional legitimacy. While we suggest that individual attitudes about the Court’s legitimacy can be seen as an aggregation of subjective evaluations of Court decisions over time, we concern ourselves only with the first step in establishing the micro-foundations of the Court’s legitimacy: whether judicial behavior, in the form of opinion attributes that reflect procedural fairness, can influence individuals’ perception of a decision.

## **Legitimacy, Procedural Fairness, and Public Opinion: A Theoretical Perspective**

The inability of the judiciary to execute or enforce its decisions provides judges with a significant incentive to promote and maintain judicial legitimacy. As Alexander Hamilton noted in *Federalist* No. 78, the judiciary cannot wield the power of either the purse or the sword, and thus it is “the weakest of the three departments of power.” Judges instead must rely upon the public’s belief in the judiciary’s right to interpret and apply the law (Gibson and Caldeira 1998, 65), or in the words of then-judge Ginsburg, their “prestige to persuade” (Ginsburg 2004, 199). In his dissent in *Baker v. Carr*, Justice Frankfurter famously identified the ultimate source of the Court’s influence, writing, with reference to *Federalist* No. 78: “The Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction” (369 U.S. 186, 267; see also Powell 1990; Stevens 1983; Wald 1995; *Vasquez v. Hillery* 1986). The key to the Supreme Court’s power and ability to secure compliance with its decisions, then, resides in the public’s belief in the Court’s legitimacy, and it is rational for Justices to style their behavior in a way that reinforces this opinion of legitimacy (Friedman et al. 1981; Hansford and Spriggs 2006; Knight and Epstein 1996; Tyler and Mitchell 1994). The question nonetheless remains what, if anything, the Justices can do to affect public opinion.

The Justices clearly believe that their behavior and opinions can influence public reception of the Court’s rulings, which in turn theoretically should help the Court maintain the public perception of legitimacy that undergirds the Court’s power. In *Brown v. Board of Education II* (1955), for example, Justice Frankfurter repeatedly lobbied Chief Justice Warren to change the language of the Court’s majority opinion in a manner that Frankfurter thought would make it more favorably received among the public:

I still strongly believe that “with all deliberate speed” conveys more effectively the process of time for the effectuation of our decision... I think it is highly desirable to educate public opinion—the parties themselves and the general public—to an understanding that we are at the beginning of a process of enforcement and not concluding it. In short, I think it is far better to habituate the public’s mind to the realization of this, as ... the phrase “with all deliberate speed”... [is] calculated to do. (qtd. in Schwartz 1996, 103)

Frankfurter argued that Warren’s language would be construed by the public to require immediate and radical desegregation efforts, something that would elicit only public protest rather than compliance. Frankfurter’s comments reflect several important, related points about the relationship between judicial behavior and public opinion. First, his insistence that the opinion be moderated in part to accommodate public opinion underscores the idea that public opinion ultimately is the source of the Court’s power. Second, he assumes that the Court *can* influence public opinion and can even act as a “republican schoolmaster” that “educates” and “habituates” the public. Third, he acknowledges that attributes of the majority opinion are an important part of the Court’s power to alter public attitudes towards its policies. That is, he argues that the likelihood of compliance with *Brown II* would be significantly increased if the Court tailored its opinion to partially satisfy popular expectations.

Because the Court’s legitimacy is so closely tied to its role as a significant check on the potential tyranny of majoritarian sentiment, Justices most obviously would want to appear to behave in a way that satisfies popular expectations of judicial impartiality. Although lifetime tenure renders the Court in part an undemocratic institution, it serves an essential function in American liberal-democratic tradition by safeguarding the integrity of fundamental rights against “the effects of occasional ill humors in the society” (Fed. 78). Indeed, Hamilton notes that permanent tenure allows for “that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty” (Fed. 78). This prescriptive understanding of the

Court's role generally conforms to the actual subjective expectations of the American public (Hibbing and Theiss-Morse 1995; Scheb and Lyons 2001). The Court's function as an independent arbiter of the law thus places it in a peculiar position within the American governmental arrangement: it must remain above popular passions while it simultaneously must court public opinion.

Although real, this tension between the Court's institutional role and the source of its power is less problematic than it appears. The Court must tend to public opinion, of course, but only to the extent necessary to maintain the public's opinion of its legitimacy. This requires the Court to decide cases in a *visibly* independent and principled way; since its legitimacy is so closely identified with impartial adjudication, it must convince the public that legal outcomes result from the application of neutral decision-making criteria (Tyler and Mitchell 1994).

The norm of precedent is one way in which the Court seeks to project to the public that it is properly executing its institutional role. As the Court noted in *Bush v. Vera* (1996), "Our Legitimacy requires, above all, that we adhere to stare decisis, especially in such sensitive political contexts as the present, where partisan controversy abounds (517 U.S. 952, at 985). Precedents are the legal rulings from prior court cases that establish which case facts are relevant and that create legal consequences or tests that attach to particular sets of factual circumstances (Aldisert 1990; Schauer 1987). Rather than arriving at legal rules on a case-by-case basis, in other words, the Court uses precedent in part to demonstrate its use of fair and neutral decision-making procedures whereby similar cases are consistently treated according to similar legal principles. This image, in turn, should bolster the public's confidence in the fairness of judicial procedures and, concomitantly, its confidence in the Court and acceptance of Court outcomes. Scholars (Friedman et al. 1981; Hansford and Spriggs 2006; Knight and Epstein 1996) and

judges (Powell 1990; Stevens 1983; Wald 1995) thus commonly aver that one of the most important functions of *stare decisis* is to foster the acceptance of specific decisions, which in turn redounds to the Court's legitimacy. As Justice Roberts noted during his confirmations hearings: "[I]t is a jolt to the legal system when you overrule a precedent," and the public's reception of the Court's future decisions may therefore suffer accordingly.

The majority coalition size is another visible attribute of Court opinions that outwardly signals the Court's unbiased adjudication of cases before it. Existing research suggests that a norm of consensus had long survived on the Court because the Justices viewed it as an important way to impress upon the public its unity on an issue (Caldeira and Zorn 1998; Danelski 1980; Epstein, Segal, and Spaeth 2001; Murphy 1964). A unanimous or near-unanimous decision indicates to the relevant public that the ideological preferences of the Justices do not overwhelm impartial application of the law. This in turn should enhance the Court's authority to decide controversial issues in the eyes of the public and the other branches of government (Caldeira and Zorn 1998; Epstein, Segal, and Spaeth 2001). Although this norm no longer obtains on the Court (Epstein, Segal, and Spaeth 2001; Haynie 1992; Walker, Epstein, and Dixon 1988), scholars frequently argue that majority coalition size influences the likelihood of acceptance of and compliance with a Court ruling, especially on polarizing issues (Benesh and Reddick 2002; Gibson, Caldeira, and Spence 2005; Hutchinson 1979; Rhode 1972).

Contemporary judges also recognize the crucial importance of garnering as much support as possible for a judicial ruling. Justice Rehnquist, for example, admired Chief Justice John Marshall's disposal of opinions *seriatim*—that is, the tradition that each Justice would deliver a short opinion in each case—in favor of a single majority opinion, a change that was intended to present to the public a more unified Court. Rehnquist thought that Marshall's new policy was an

important step because it “greatly strengthened the authority of the Court’s opinions” (Rehnquist 1988, 480-81). Justices’ concern over coalition size and makeup also is evident in controversial cases, such as *Bush v. Gore*:

And, above all, in this highly politicized matter, the appearance of a split decision runs the risk of undermining the public's confidence in the Court itself. That confidence is a public treasure. It has been built slowly over many years..... It is a vitally necessary ingredient of any successful effort to protect basic liberty and, indeed, the rule of law itself. We run no risk of returning to the days when a President (responding to this Court's efforts to protect the Cherokee Indians) might have said, “John Marshall has made his decision; now let him enforce it!” But we do risk a self-inflicted wound—a wound that may harm not just the Court, but the Nation. (531 U.S. 98 (2000), at 157-58, Breyer, J., *dissenting*)

Breyer’s dissent makes two related points about the majority size. First, he identifies the public’s confidence in the Court as “vitally necessary” to the Court’s function as a protector of liberty and the rule of law, which reaffirms the apparent interrelationship between legitimacy, fair procedures, and public opinion. He indicates that the Court’s split decision will appear to the public as if ideological considerations determined the outcome of the case, and thus will undermine public acceptance of the Court’s decision and the public’s confidence in the Court’s ability to act as a neutral adjudicator. Second, his recollection of Andrew Jackson’s (apocryphal) comment about John Marshall recognizes that the Court cannot enforce its decisions. Breyer is suggesting that a split decision looks less legitimate not only in the eyes of the public, but also in the eyes of the lower courts and other departments of government. He argues that the relevant political actors charged with implementing Court decisions potentially will be more reluctant to enforce narrowly-decided legal questions.

The size of the majority coalition also is important because it signals to the public the possibility of the Court dealing with the issue differently in the future (Murphy 1964, 66). In justifying the overruling of *Booth* (1987) and *Gathers* (1989) in *Payne v. Tennessee*, Justice

Rehnquist suggests the Court is more likely to overrule a case decided “by the narrowest of margins” (501 U.S. 8008, at 829; see also Banks 1992; Brenner and Spaeth 1995). It is rational, then, for a majority opinion author to garner as much support as possible for an opinion because larger majority coalitions are less likely to be undermined by future Court decisions (Spriggs and Hansford 2001, 1104-5). Conversely, smaller coalitions and separate opinions cast doubt on an opinion and lead to an increased possibility of future legal change, which might make the relevant political actors reluctant to enforce a narrow decision.

### **The Apparent Disjunction between Expectations and Empirical Proof**

Good reasons thus exist for the Court to style its decisions in a way that influences public opinion, but the empirical link between judicial behavior and public opinion is tenuous. Researchers commonly agree that the Court is perceived as a relatively legitimate decision maker (Gibson 1989; Mondak 1994), but they disagree about whether the Court’s own behavior can affect attitudes towards it and its policies.

The apparent disjunction between theoretical expectations and empirical reality in part centers on the difficulty in conceptualizing and operationalizing “legitimacy.” Judicial legitimacy generally is the public’s sincere belief in the judiciary’s right to interpret and apply the law (Gibson and Caldeira 1998, 65). This recognition of the Court’s authority, or “diffuse support” for the judiciary, reflects a “reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effect of which they see as damaging to their wants” (Easton 1979, 273). As such, the public’s opinion of legitimacy is not entirely contingent upon its satisfaction with specific policy outputs, or its “specific support” for the Court (Easton 1979, 268). Institutional legitimacy, therefore, most plausibly is measured

as a stable commitment to the Court's fundamental institutional role (Caldeira and Gibson 1992; Gibson and Caldeira 1995; Gibson and Caldeira 1998; Tyler and Rasinski 1991). Some researchers have found that this institutional loyalty to the Court is invulnerable to change because it derives from early life socialization and the belief in basic democratic values (Caldeira and Gibson 1992; Gibson 1991; Gibson, Caldeira, and Spence 2003; Gibson and Caldeira 1992; Gibson, Caldeira, and Baird 1998). According to this view, an individual's assessment of the Court as an institution is exogenous to—and thus shapes individual perceptions of—Court outcomes and procedures. To the extent that the Court affects public opinion on its *policies*, then, in this view the Court's influence mostly is driven by individuals' long-standing support for its institutional role rather than judicial behavior or opinion attributes (Adamany 1973; Caldeira and Gibson 1992; Dahl 1957; Mondak 1990).

The question remains, however, whether individuals' compliance behavior is *entirely* driven by their overall level of diffuse support for the Court, or whether the Court can do anything to influence public opinion. Some scholars contend that an individual's attitude toward Court opinions can influence confidence in the Court as an institution (Grosskopf and Mondak 1998; Hoekstra 2003; Nicholson and Howard 2003). Building on this research and trying to move from public opinion about specific outcomes to more general views about the legitimacy of the judiciary, some scholars have suggested that the effect of judicial outcomes on public support for the Court is especially pronounced when the Court issues a series of controversial rulings (Caldeira 1986; Caldeira 1987; Durr, Martin, and Wolbrecht 2000). As scholars analyzing this research have noted, however, most of these studies use questionable measures of institutional legitimacy, undermining their conclusions regarding the influence of specific support factors on individuals' diffuse support for the Court (Gibson, Caldeira, and Spence 2003, 538). This

critique of these studies does not, however, necessarily nullify the connection between the content of judicial outcomes and compliance behavior. As noted above, while we do suggest that individual attitudes about the Court's legitimacy can be seen as an aggregation of subjective evaluations of Court decisions over time, we are concerned here only with the first step in establishing the micro-foundations of the Court's legitimacy by determining whether judicial behavior can influence individuals' reception of a decision.

Only a few studies support the claim that the *way* in which the Court decides a case potentially influences individual evaluations of the Court and its decisions (Tyler 1994a; Tyler 1994b; Tyler and Mitchell 1994; Tyler and Rasinski 1991; Scheb and Lyons 2001). In a reply to Gibson (1989), Tyler and Rasinski (1991) outline a more dynamic relationship between judicial behavior and public support for Court outcomes: perceptions of procedural justice on a given case scenario impact respondents' views on the Court's institutional legitimacy, which in turn affects respondents' post-decision behavioral dispositions (1991, 625). Contrary to the notion that the Court enjoys a basic wellspring of support that serves an essential legitimacy-conferring function, they suggest that opinions about specific procedures can affect individuals' support for the Court. Their results imply a constitutive relationship between institutional support and judicial behavior, whereby specific factors such as procedural fairness enhance or diminish support for the Court's institutional role, which in turn has an impact on acceptance and compliance with specific outcomes. Gibson (1991) points out in reply, however, that the indirect effects found by Tyler and Rasinski reflect the problematic assumption that individual perceptions of procedural fairness exist independent of individual attitudes toward the Court as an institution (see also Mondak 1993). Gibson (1991) argues that it is safer to assume that an individual's opinion of and support for the Court as an institution is causally prior to, and thus

influences, individual assessments of both the Court's procedures and outcomes. Mondak's (1990) research on source cues similarly finds that the Court typically is considered a comparatively credible source by individuals, and thus its outcomes possess more persuasive power relative to similar outputs by other governmental institutions.

In spite of the theoretical and empirical difficulties plaguing extant research, Supreme Court Justices seem to believe in their power to cultivate public opinion. This belief is evident, for example, in the majority opinion in *Planned Parenthood v. Casey* (1992, 865-866): "The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands. . . . Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation." This excerpt from Justice O'Connor's opinion reflects the complex manner in which diffuse support for the Court, fair decision making procedures, and the perceived legitimacy of judicial outcomes impact one another. Staton (2006) suggests that judges sitting on national constitutional courts in other nations similarly believe that they can "go public" to influence compliance with their decisions. The U.S. Supreme Court, of course, uses its majority opinions rather than the media to encourage compliance with its decisions.

Although much has been written about the Justices' ability to influence public acceptance of Court rulings, existing research has found no support for the potential role of a Court opinion's attributes on public acquiescence in policy outcomes. Gibson, Caldeira, and Spence (2005) and Mondak (1994) find no support for the role of majority size in effecting behavioral compliance. Similarly, Mondak (1994) finds that the Court's use of precedent has no effect agreement with or acceptance of Court outcomes. Tyler and Rasinski (1991) find that procedural

fairness matters, but they focus on *subjective perceptions* of procedural fairness rather than objective opinion attributes that are designed to influence public acceptance of the Court's decisions and, moreover, they do not adequately address Gibson's (1991) critique of their causal assumptions (see also Tyler 1994a, Tyler 1994b).

On the other hand, if the findings by Gibson (1989) and others are accurate, then the Court need not cite precedent at all as authority for its rulings or otherwise worry about coalition size; it already enjoys a basic reservoir of support that is sufficient to ensure public compliance with its decisions. Yet, the Court *does* rely on precedent, and the norm of *stare decisis* continues to play an important role in judicial decision-making. The Court notes as much in *Vasquez v. Hillery* (1986): "That doctrine [*stare decisis*] permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact" (474 U.S. 254, 265-66). Moreover, majority opinion authors commonly attempt to garner as much support as possible for their opinions. It seems, then, that the Court at least believes that these identifiable opinion attributes serve an essential legitimating function in the eyes of the public. Even granting the role of socialization in influencing individual assessments of judicial outcomes (Caldeira and Gibson 1992; Gibson 1989; Gibson, Caldeira, and Spence 2005), this socialization presumably involves the inculcation of the Court's role as an independent and impartial anchor in the sometimes stormy seas of majoritarian sentiment. It is reasonable to expect, then, that an individual's agreement with or acceptance of a Court ruling is in part a function of the extent to which the Court's opinion satisfies her expectations of impartial adjudication.

## Data and Methods

We use an experimental design to isolate the role of precedent and coalition size in affecting individuals' responses to Court decisions. Our experimental treatments consist of a series of newspaper articles reporting on a fictitious U.S. Supreme Court decision. We use a 2 x 2 x 2, between-subjects design: two conditions reflecting the *ideological direction* of the Court case's outcome (liberal or conservative), two conditions pertaining to the Court's *treatment of precedent* (following or overruling precedent), and two conditions regarding the *size of the majority coalition* in a case (unanimous or divided).

We also use this experimental design to examine three different cases (within-subject), chosen because they vary according to their issue salience: abortion (high salience), school prayer (moderate salience), and bankruptcy (low salience). The literature shows that the Court is generally less able to influence opinion when a policy is of high ideological salience or personal relevancy (Johnson and Martin 1998; Grosskopf and Mondak 1998; Hoekstra 2003; Mondak 1990, 1991, 1992). By exposing each respondent to all three cases, we can control for issue salience and examine whether the effect of precedent or coalition size is diminished for the high salience issue.

We randomly assigned respondents (undergraduates enrolled in four different Political Science courses at U.C. Davis) to one of the eight test conditions for each of the case types. These eight treatments derive from our 2 x 2 x 2 research design in the following way. Our study includes four treatment conditions—Court follows precedent with unanimous coalition, Court follows precedent with a divided coalition, Court overrules precedent with a unanimous coalition, and Court overrules precedent with a divided coalition. We then combine each of these treatment conditions with the ideological direction of the case outcome in the vignette

presented to the respondent. This results in eight different newspaper articles for each of the three cases in this study. For example, one newspaper article consists of a liberal decision outcome, the Court following precedent, and a unanimous decision.

For each case, respondents read the stimulus (a brief newspaper article describing a fictitious Supreme Court ruling) and then answered two questions that serve as our dependent variables: the degree to which individuals agree with the outcome of a Court decision and the extent to which they are willing to accept the decision as the final word on the issue. To measure whether they agreed with the outcome of the decision, we asked the following question: “Overall, do you agree or disagree with the Court’s decision in this case.” The survey response to this question consisted of five possible answers, ranging from strongly disagree to strongly agree. We code this dependent variable from 1 to 5, and larger positive scores indicate greater agreement with the Court decision.

To capture the degree to which citizens are willing to accept or comply with a court decision, we adopted the most commonly-used measure in the literature (see Gibson, Caldeira, and Spence 2005). This question asks the following: “Do you accept the Decision? That is, do you think that the decision out to be accepted and considered to be the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?” The answer to this question included four responses, from strongly believe the decision should be challenged to strongly believe it should be accepted. Larger positive scores (coded from 1 to 4) indicate a greater willingness to accept the decision.

Prior research indicates that individuals’ ideological positions on issues influence their perception of Court opinions, as does their diffuse support for the Court (i.e., their level of trust in the Court as an institution). We administered a questionnaire immediately prior to

respondents' receiving the experiment to develop control variables for each of these factors. To measure diffuse support, we created an index based on four questions commonly used in the literature for this purpose (see Gibson, Caldeira, and Spence 2005; Gibson, Caldeira, and Baird 1998). We list these questions (# 7, 8, 9, and 10), and all others used in this analysis, in the Appendix. More specifically, the index is the factor score obtained from a factor analysis of these four variables, where larger values indicate a greater level of diffuse support for the Court.

To control for ideology, we asked respondents (again, prior to their receiving the newspaper articles that serve as our experimental treatments) to identify their view on the issue addressed by each of the vignettes.<sup>1</sup> Respondents placed themselves on a four-point scale, where two of the responses indicate support for the liberal case outcome in the vignette and two of the responses indicate support for the conservative case outcome. For example, the legal question in our school prayer vignette is whether a silent prayer in public schools is constitutionally permissible. We determined each respondent's position on this legal question by asking them the following: "Would you support or oppose a law that allows public schools to schedule time when children can pray silently if they want to?" The possible answers to this question included strongly support, somewhat support, somewhat oppose or strongly oppose. Thus, two of the responses indicate the respondent prefers the conservative case outcome in the vignette, and the other two responses show they ideologically prefer the liberal case outcome. We asked similar questions for the bankruptcy and abortion vignettes, and all these questions appear in the Appendix.

We then combined these ex ante measures of each respondent's policy preference and linked them with the actual ideological direction of the decisional outcome in the newspaper

---

<sup>1</sup> To ameliorate the possibility that our pre-experimental survey could affect the answers to questions asked regarding the treatments (i.e., the newspaper articles), we included several questions regarding issues not included in the vignettes (e.g., flag burning).

article we presented to them for a given vignette. For example, respondents reading the article with the liberal prayer case outcome and who answered the pre-experimental question regarding prayer by choosing one of the opinions that supported the liberal outcome were coded as supporting the Court policy. If, by contrast, they received the liberal case outcome and answered the pre-experimental questionnaire by indicating support for the conservative prayer outcome then we coded them as opposing the Court policy. This procedure yields a dichotomous variable—individual supports (coded as 1) or opposes (coded as 0) the policy outcome in the Court decision, and we label this variable as *Ideological Predisposition*. See Table 1 for the construction of the resulting categories for analysis.

[Insert Table 1 about here]

Since each of the dependent variables is an ordered, categorical variable, we estimate the relationships of interest using an ordered probit model (in Stata 8). To control for any possible correlations of errors across students within a given course, we utilize the heteroskedastic consistent variance estimator (“robust” standard errors), clustered on each test group.

We isolate the influence of the precedent and coalition size treatments from the effect of ideological affinity with the case outcome by combining *Ideological Predisposition* (*I*) with our treatment variables. Each of our treatment variables is dichotomous, where 1 indicates that the presence of that treatment condition and otherwise we code it as 0. Specifically, we estimate the following equation for each our dependent variables and for each of the case vignettes:

$$y = \alpha + \beta_1 I * \textit{Follow Precedent-Divided} + \beta_2 I * \textit{Overrule Precedent-Unanimous} + \beta_3 I * \textit{Overrule Precedent-Divided} + \beta_4 P + \beta_5 (1-I) * \textit{Follow Precedent-Divided} + \beta_6 (1-I) * \textit{Overrule Precedent-Unanimous} + \beta_7 (1-I) * \textit{Overrule Precedent-Divided}.$$
<sup>2</sup>

By omitting *Follow Precedent-Unanimous* from the model, it becomes the referent category, meaning each of the included treatment variables represents its effect as compared to the effect of *Follow Precedent-Unanimous*. Using this formulation, the variables take on the following interpretations:  $\beta_1$ ,  $\beta_2$ , and  $\beta_3$  represent the treatment effect for individuals who manifested *ex ante support* for the Court policy in the vignette, while  $\beta_5$ ,  $\beta_6$ , and  $\beta_7$  represent the effects of each of the respective treatments for individuals who expressed *ex ante opposition* to the Court decision in the vignette. For instance, the coefficient on  $\beta_1$  indicates whether respondents (who expressed *support* for the policy in the vignette prior to receiving the experimental treatment) presented with the *Follow Precedent-Divided* vignette were less likely to agree with or accept the Court decision than those who received the *Follow Precedent-Unanimous* newspaper article. This particular variable therefore tests for the influence of coalition size. Finally, the coefficient for  $\beta_4$  indicates the influence of *ex ante support* for the Court policy (and specifically for the treatment regime of *Follow-Precedent-Unanimous*, since it is the baseline category); it therefore tests whether individuals, who in the pre-experimental questionnaire professed support for the policy outcome in the vignette, were more likely to agree with the Court decision than those indicated opposition.

---

<sup>2</sup> That is, we multiplied each of our treatment variables with either *Ideological Predisposition* or *(1-Ideological Predisposition)*. For example,  $\beta_1 I * \textit{Follow Precedent-Divided}$  equals 1 if the respondent received an article that followed precedent by a divided coalition *and* that individual also expressed *ex ante support* for the case outcome in the vignette. It takes on the value of 0 for all other conditions.  $\beta_5 (1-I) * \textit{Follow Precedent-Divided}$  equals 1 if the respondent read an article describing the court following precedent by a divided coalition *and* that respondent expressed *ex ante opposition* to the court decision in the vignette.

Estimating the model with the *Follow Precedent-Unanimous* baseline does not allow one to compare directly all of the treatment effects with one another (e.g., one can not discern whether the effect of *Follow Precedent-Divided* is statistically different from that of *Overrule Precedent-Divided*). One can either calculate likelihood ratio tests for the relevant coefficient comparisons or run the model two additional times, each with a different baseline treatment category (i.e., *Follow Precedent-Divided* and *Overrule Precedent-Unanimous*). We estimated the model for all three baselines, and Table 2 reports the results for the Follow Precedent-Unanimous baseline for the analysis of agreement with a decision (and Table 4 reporting the results using the same baseline for the analysis of acceptance of a decision), and Table 3 reports the results for the other two baselines in analyzing decision agreement (and Table 5 doing likewise for the analysis of decision acceptance).<sup>3</sup>

## Results

To recapitulate, our theoretical claim is that perceptions of procedural fairness—whether courts decide based upon legally neutral, impartial criteria—influence individuals’ attitudes toward decisions. We expect that individuals will have more favorable attitudes toward a decision if they perceive that a court decided it on a principled, neutral basis. The Court’s use of precedent and the size of the majority, we suggest, can indicate to individuals whether the decision was based on impartial decision-making criteria. When a decision follows precedent or has a unanimous coalition, we predict that respondents will be more willing to accept it even if the policy outcome conflicts with their ideological predispositions. We expect a liberal respondent, for example, to view a conservative outcome that *follows* precedent more favorably

---

<sup>3</sup> We randomized the order in which respondents received the vignettes, and we also empirically verified that our results are not sensitive to the order in which the questions were presented to the respondents.

than a conservative decision that *overrules* precedent. In short, after controlling for an individual's ideological position on the specific policy in question and their level of diffuse support (again, both of which are elicited through a survey administered prior to the experimental treatments), we expect the experimental manipulations regarding the use of precedent and coalition size to influence respondents' perceptions of a Court decision.

### **Agreement with Court Decisions**

We begin by discussing the influence of the use of precedent and majority coalition size on an individual's tendency to express agreement with the outcome of a Court decision. We note, first, that our control variables corroborate past research—individuals' ideological predispositions regarding an issue and their level of diffuse support for the Court influence their expressed level of agreement with a Court decision. The effects of these two variables are consistently strong across all three of the case vignettes, though, as one would expect, ideological predispositions play somewhat less of a role for the bankruptcy case, the least salient case type. For example, if an individual expressed an ideological predisposition consistent with the Court decision on prayer, then our data indicate they have a 74.2% chance of being strongly supportive of that decision.<sup>4</sup> If, by contrast, an individual was ideologically opposed to the position the Court took on prayer then this percentage decreases to 12.0%.<sup>5</sup> Likewise, diffuse support leads individuals to be more supportive of Court decisions. For instance, individuals

---

<sup>4</sup> We calculate all predicted probabilities based on the results from the ordered probit model relevant for a given comparison, holding constant for *Diffuse Support* at its mean value of 0.

<sup>5</sup> This percentage applies, technically speaking, to individuals who received the *Follow Precedent-Unanimous* manipulation. The ideological effects are reasonably consistent across the four treatment categories.

with greater levels of trust in the Court are 26.2% (from 65.0% to 82.0%) more likely to strongly agree with the Court decision on prayer.<sup>6</sup>

[Insert Tables 2 and 3 about here]

More importantly, the results for our experimental manipulations provide evidence for our hypotheses and suggest that the Court's treatment of precedent and the size of the majority can influence agreement with Court decisions. However, the data do not uniformly support all of our hypotheses. The most notable-- and most unanticipated-- difference is that while the unanimity effect appears reasonably strong for individuals who expressed a policy predisposition favoring the Court decision, it has little influence on those having a preexisting ideological opposition to the Court outcome. In addition, the overall influence of the Court's treatment of precedent appears to be more consistent for those who were ideologically predisposed to oppose the policy position adopted by the Court.<sup>7</sup>

One can get a sense for the overall character of the results by examining Table 4, which lists the vignettes for which each of the hypotheses received support in the data from analyses using all the possible baseline comparisons. For example, the data analysis supports our expectations for four out of the six treatments for the size of the Court majority (i.e., *Follow Precedent-Divided* versus *Follow Precedent-Unanimous* and *Overrule Precedent-Divided* versus *Overrule Precedent-Unanimous*, for each of the three case vignettes) for respondents who were ideologically predisposed to agree with the Court outcome. But, the data are only consistent

---

<sup>6</sup> We altered the value of *Diffuse Support* from one standard deviation below (-1.33) to one standard deviation above (1.33) its mean value of 0. Also, note that this comparison applies to individuals whose *Ideological Predisposition* was supportive of the Court decision they read about in the vignette.

<sup>7</sup> The Bankruptcy vignette's results for the *Overrule Precedent-Unanimous* versus *Follow Precedent-Divided* comparison reinforce this feature of the data. Since moving from overrule to follow should enhance an individual's agreement with a decision, but switching from a unanimous decision to a divided one should reduce their agreement, one can use this comparison to get at the relative magnitude of these two variables. Unanimity appears to trump the influence of precedent for those who entered the experiment with ideological priors in favor of the Court decision, while precedent appears to dominate for those who identified an ex ante position opposed to the Court decision in the vignette (using a .05 level, two-tailed test of statistical significance).

with our predictions for one out of the six coalition size manipulations for individuals predisposed to disagree with the decision. Likewise, when considering the precedent-based treatments, four out of the six demonstrate influence for individuals who received a vignette at odds with their ideological point of view, while only one out of the six influenced respondents predisposed to agree with the Court decision. Additionally, the data also indicate that the Court's use of precedent or the size of the majority has a more consistent and strong effect for the low salience issue of bankruptcy than the high salience issue of abortion.

[Insert Table 4 about here]

Also, the results for five out of the six comparisons in which both the treatment of precedent and the size of the majority were different (e.g., *Follow Precedent-Unanimous* versus *Overrule Precedent-Divided*) support our predictions. This particular empirical detail, that the results are most consistent when comparing categories in which *both* coalition size and the use of precedent vary across respondents, suggests that the size of the majority coalition and the use of precedent may reinforce one another to affect how individual's perceive decisions.

To illustrate the substantive nature of the effects, consider the prayer vignette in Table 1. The baseline treatment category in this table is *Follow-Precedent Unanimous*, and thus each of the independent variables (except for *Diffuse Support*) reports its effect as compared to that referent category. The negative coefficient for *Follow Precedent-Divided* indicates that individuals (who expressed ex ante ideological affinity for the Court decision in the vignette) were less likely to agree with the decision if they read a news account that indicated the Court followed precedent, with a divided coalition, rather than seeing a news account in which the Court followed precedent with a unanimous coalition. That is, the presence of a unanimous coalition led respondents to express higher levels of agreement with the decision. The

magnitude of this effect is substantial, changing the probability of strong disagreement by approximately 400%; while only 0.5% of respondents viewing the unanimous coalition article strongly disagreed with the decision, 2.7% did so if they received the divided coalition article. Likewise, 51.0% of those receiving the divided court vignette expressed strong agreement with it, while 74.2% did so if they viewed the unanimous vignette.

We now turn to those respondents who, in the pre-experiment survey, indicated opposition to the Court outcome they later received in the vignette. As mentioned above, precedent-based effects appear to have a more pronounced effect on these respondents than decision size does. Consider the effect of *Overrule Precedent-Unanimous* for the bankruptcy case (see Table 2): the coefficient of -0.25 indicates that such individuals are less likely to agree with the decision than those who received the *Follow Precedent-Unanimous* treatment. For example, they were over 63.3% less likely to strongly agree with the decision (4.9% as compared to 8.0%) and 48.7% more likely to strongly disagree with the decision (17.1% as contrasted with 11.5%).

Further illustrations of the magnitude of these effects can be seen in Figure 1. In this figure, we plot the effect of manipulating simultaneously both of our experimental treatments, size of majority and the interpretation of precedent; specifically, the comparison is *Follow-Precedent Unanimous* versus *Overrule Precedent-Divided* for the prayer case. The results show that these opinion attributes, taken in combination, exerted an influence on our subjects' attitude toward the decision.

[Insert Figure 1 about here]

Consider respondents who, prior to receiving the experiment, indicated they preferred the policy they read about in the experimental vignette. These individuals had a 57.3% chance of

strongly agreeing with the decision if they received an article indicating the Court overruled precedent with a divided coalition, and this percentage increased to 74.2%, if the article they read reported that the Court followed precedent with a unanimous coalition. For those whose policy priors put them at odds with the Court decision in the article they read, they have only a 6.8% chance of strongly agreeing with the decision if the newspaper account reported that the Court overruled precedent by a divided vote. This percentage increases to 12.0% (a 76.5% increase) if the article they viewed informed them that the Court followed precedent with a unanimous coalition.

### **Acceptance of Court Decisions**

While agreement with Court decisions is an important behavioral response, the willingness to accept or comply with a decision arguably represents an even more significant phenomenon. Indeed, the reason that scholars and judges place such heavy emphasis on the need for judges to follow *stare decisis* or otherwise signal the impartiality or neutrality of the judicial process is in part because of their assumption that the actions judges take on the bench have a direct effect on the willingness of individuals to comply with Court decisions. No research, however, has demonstrated that such a causal relationship actually exists.

Broadly speaking, the results for the acceptance question are not as supportive of our theoretical expectations as they are for the decisional agreement question. In fact, in only two out of the 12 comparisons of our experimental treatment categories for a precedent-based effect (e.g., *Follow Precedent-Unanimous* versus *Overrule Precedent-Unanimous*) do the data support our argument (one out of six for those who *ex ante* support the Court decision and one out of six for those who *ex ante* opposed it). Thus, it does not appear that the Court's following, rather

than overruling, of precedent has a consistent influence on how people perceive a decision (see Tables 5 and 6).

[Insert Tables 5, 6, and 7 about here]

However, six out of the twelve comparisons for the unanimity manipulation demonstrate a unanimity effect (three out of six for ex ante supporters of the Court decision and three out of six comparisons for ex ante opponents). More supportive of our predictions, for those who indicated an ideological predisposition in favor of the decision in the experiment, two out of the three comparisons involving both unanimity and precedent support our argument.<sup>8</sup> As expected, the effect of the use of precedent or coalition size has much more consistent effects for bankruptcy (the low salience issue) than for abortion. For example, the data support five out of ten of the bankruptcy comparisons for which we make predictions, while doing so for abortion in only one out of ten comparisons.

Figure 2 provides an illustration of the effects for the bankruptcy case and the comparisons of *Follow Precedent-Unanimous* and *Overrule Precedent-Divided*. We first consider respondents who ex ante supported the policy in the bankruptcy vignette they read. Such individuals are 5.8% likely to strongly challenge a decision if they were told the Court followed precedent by a unanimous vote, but this percentage increases to 9.4% if they read that the Court overruled precedent with a divided coalition. For those who entered the experiment opposing the Court decision they read about, the effects are similar. Such individuals who read that the Court followed precedent with a united voice were 17.1% likely to strongly accept the decision, but only 8.3% were willing to do so if the Court overruled precedent by a divided vote.

---

<sup>8</sup> In addition, the comparisons for *Overrule Precedent-Unanimous* with *Follow Precedent-Divided* corroborate the dominance of the unanimity effect for respondents who indicated ex ante support for the policy (for the bankruptcy vignette) and reinforce the more consistent effect for precedent among those who received a vignette to which they were ideologically opposed (for the prayer vignette). We used a two-tailed test of statistical significance ( $p \leq .05$ ) for these comparisons.

[Insert Figure 2 about here]

## **Discussion and Conclusion**

Judges, legal theorists, and political scientists often make claims (either explicitly or implicitly) that suggest that the way in which judges decide cases can influence whether people agree with, or are willing to accept, those decisions (Hansford and Spriggs 2006; Epstein and Knight 1998; Knight and Epstein 1996; Tyler and Mitchell 1994). Our central claim is that individuals will be more supportive of Court opinions if they perceive that judges decided them based upon neutral decisional criteria. To date, however, no empirical research has provided any convincing support for this causal relationship. This paper is an initial attempt to uncover empirical evidence for this connection.

In particular, we argued that two prominent features of Court opinions can suggest to people whether the Court decided a case based on unbiased, legal criteria and thus will influence individuals' attitudes toward them. First, the doctrine of stare decisis instructs judges to pay respect to prior cases. Judges, moreover, often connect their adherence to this legal norm as a necessary ingredient to the legitimacy of their decisions and even the perceived integrity of the institution itself. Scholars, as well, argue that the presence of this social expectation and the judiciary's relatively weak ability to implement its policy choices reinforces judges' incentives to act in accordance with the law. We therefore hypothesized that the Court's overruling, rather than following, of precedent would lead citizens to be less enamored with those decisions. In addition, we argued, in line with decades of scholarly commentary, that decisions decided by narrow margins, rather than unanimously, would be less persuasive in influencing public support for Court policies.

To probe these questions empirically, we developed an experimental research design that used newspaper articles' reporting of fictitious Court decisions to vary these two indicators of judicial impartiality. Our results, while not uniformly supportive of our hypotheses, do indicate that these decisional elements can, at times, affect to what extent people agree with Court decisions, as well as whether they indicate a willingness to comply with them. These results are new to the literature and provide some corroboration for the assumptions of scholars and judges alike about this process.



## References

*Baker v. Carr* .369 U.S. 186.

*Brown v. Board of Education* .347 U.S. 483.

*Brown v. Board of Education II* 349 U.S. 295.

*Bush v. Gore* .531 U.S. 98.

*Bush v. Vera*. 1996. 517 U.S. 952.

*Payne v. Tennessee* 501 U.S. 808.

*Planned Parenthood v. Casey* 505 U.S. 833.

*Vasquez v. Hillery* 474 U.S. 254.

Aldisert, Rugero J. 1990. "Precedent: What It Is and What It Isn't; When Do We Kiss It and When Do We Kill It?" *Pepperdine Law Review* 17 (April): 605-636.

Banks, Christopher P. 1992. "The Supreme Court and Precedent: An Analysis of Natural Courts and Reversal Trends." *Judicature* 75(February—March): 262-268.

Baum, Lawrence. 1981. "Comparing the Implementation of Legislative and Judicial Policies." In *Effective Policy Implementation*, ed. Daniel A. Mazmanian and Paul A. Sabatier. Lexington, MA: Lexington Books.

Benesh, Sara C., and Malia Reddick. 2002. "Overruled: An Event History Analysis of Lower Court Reaction to Supreme Court Alteration of Precedent." *Journal of Politics* 64(2): 534-550.

Brenner, Saul, and Harold J. Spaeth. 1988. "Ideological Position as a Variable in the Authoring of Dissenting Opinions on the Warren and Burger Courts." *American Politics Quarterly* 16(July): 317-328.

Burbank, Steven B., and Barry Friedman. 2002. *Judicial Independence at the Crossroads: An Interdisciplinary Approach*. Thousand Oaks, CA: Sage Publications.

Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court." *The American Political Science Review* 80 (4): 1209-1226.

Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36: 635-664.

- Caldeira, Gregory A., and Christopher J.W. Zorn. 1998. "Of Time and Consensual Norms in the Supreme Court." *American Journal of Political Science* 42: 874-902.
- Dahl, Robert. 1957. "Decision Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law* 6: 279-295.
- Danelski, David J. 1980. "The Influence of the Chief Justice in the Decisional Process of the Supreme Court." In *Constitutional Law and Judicial Policy Making*, eds. Joel B. Grossman and Richard S. Wells. New York: Wiley.
- Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. 2000. "Ideological Divergence and Public Support for the Supreme Court." *American Journal of Political Science* 44 (4): 768-776.
- Easton, David. 1979. *A Systems Analysis of Political Life (Phoenix Edition)*. Chicago, IL: University of Chicago Press.
- Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.
- Epstein, Lee, Jeffrey A. Segal, and Harold J. Spaeth. 2001. "The Norm of Consensus on the U.S. Supreme Court." *American Journal of Political Science* 45(2): 362-377.
- Friedman, Lawrence M., Robert A. Kagan, Bliss Cartwright, and Stanton Wheeler. 1981. "State Supreme Courts: A Century of Style and Citation." *Stanford Law Review* 33 (May): 773-818.
- Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance." *Law & Society Review* 23 (3): 469-496.
- Gibson, James L. 1991. "Institutional Legitimacy, Procedural Justice, and Compliance with Supreme Court Decisions: A Question of Causality." *Law & Society Review* 25(3):631-636.
- Gibson, James L. and Gregory A. Caldeira. 1992. "Blacks and the United States Supreme Court: Models of Diffuse Support." *The Journal of Politics* 54(4):1120-1145.
- Gibson, James L., and Gregory A. Caldeira. 1995. "The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice." *American Journal of Political Science* 39(2): 459-489.
- Gibson, James L. and Gregory A. Caldeira. 1998. "Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis." *British Journal of Political Science* 28(1): 63-91.
- Gibson, James L., Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92(2):343-358.

- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33: 535-556.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2005. "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment." *Political Research Quarterly* 58 (2): 187-201.
- Ginsburg, Ruth Bader. 2004. "Speaking in a Judicial Voice: Reflections on *Roe v. Wade*" In *Judges on Judging: Views from the Bench*. 2<sup>nd</sup> ed. Ed. David M. O'Brien. Washington, DC: Congressional Quarterly Press.
- Grosskopf, Anke, and Jeffery J. Mondak. 1998. "Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of *Webster* and *Texas v. Johnson* on Public Confidence in the Supreme Court." *Political Research Quarterly* 51 (September): 633-654.
- Hansford, Thomas G., and James F. Spriggs II. 2006. *The Politics of Precedent on the U.S. Supreme Court*. Princeton, NJ: Princeton University Press.
- Haynie, Stacia L. 1992. "Leadership and Consensus on the U.S. Supreme Court." *Journal of Politics* 54: 1158-1169.
- Hibbing, John R., and Elizabeth Theiss-Morse. 1995. *Congress as Public Enemy: Public Attitudes toward American Political Institutions*. Cambridge: Cambridge University Press.
- Hoekstra, Valerie J. 2003. *Public Reactions to Supreme Court Decisions*. New York: Cambridge University Press.
- Hutchinson, Dennis J. 1979. "Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958." *Georgetown Law Journal* 68(1): 1-87.
- Johnson, Charles A. 1987. "Law, Politics, and Judicial Decision Making: Lower Federal Court Uses of Supreme Court Decisions." *Law and Society Review* 21: 325-40.
- Johnson, Timothy R., and Andrew D. Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." *American Political Science Review* 92: 299-327.
- Knight, Jack, and Lee Epstein. 1996. "The Norm of *Stare Decisis*." *American Journal of Political Science* 40 (4): 1018-1035.
- Mondak, Jeffery J. 1990. "Perceived Legitimacy of Supreme Court Decisions: Three Functions of Source Credibility." *Political Behavior* 12(4): 363-384.
- Mondak, Jeffrey J. 1991. "Substantive and Procedural Aspects of Supreme Court Decisions as Determinants of Institutional Approval." *American Politics Research*, 19 (2): 174-188.

- Mondak, Jeffrey J. 1992. "Institutional Legitimacy, Policy Legitimacy, and the Supreme Court." *American Politics Research*, 20 (4), 457-477.
- Mondak, Jeffrey J. 1993. "Institutional Legitimacy and Procedural Justice: Reexamining the Question of Causality." *Law & Society Review* 27(3): 599-608.
- Mondak, Jeffrey J. 1994. "Policy Legitimacy and the Supreme Court: The Sources and Contexts of Legitimation." *Political Research Quarterly* 47 (September): 675-692.
- Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.
- Nicholson, Stephen P. and Robert M. Howard. 2003. "Framing Support for the Supreme Court in the Aftermath of Bush v. Gore." *The Journal of Politics* 65(3):676-695.
- Powell, Lewis F., Jr. 1990. "Stare Decisis and Judicial Restraint." *Washington and Lee Law Review* 47 (Spring): 281-290.
- Rehnquist, William H. 1996. "The Supreme Court: The First Hundred Years Were the Hardest." *University of Miami Law Review* 42: 475-490.
- Rohde, David W. 1972. "Policy Goals and Opinion Coalitions in the Supreme Court." *Midwest Journal of Political Science*. 16(2): 208-224.
- Schauer, Frederick. 1987. "Precedent." *Stanford Law Review* 39 (February): 571-605.
- Scheb, John M., and William Lyons. 2001. "Judicial Behavior and Public Opinion: Popular Expectations Regarding the Factors That Influence Supreme Court Decisions." *Political Behavior* 23(2):181-193.
- Schwartz, Bernard. 1996. *Decision: How the Supreme Court Decides Cases*. New York: Oxford University Press.
- Spriggs, James F., II, and Thomas G. Hansford. 2001. "Explaining the Overruling of U.S. Supreme Court Precedent." *Journal of Politics* 63(August): 1091-1111.
- Staton, Jeffrey K. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50(1): 98-112.
- Stevens, John Paul. 1983. "The Life Span of a Judge-Made Rule." *New York University Law Review* 58 (April): 1-21.
- Tyler, Tom R. 1994. "Governing and Diversity: The Effect of Fair Decision making Procedures on the Legitimacy of Government." *Law & Society Review* 28:809-832.
- Tyler, Tom R. 1994a. "Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice." *Journal of Personality and Social Psychology* 67(5):850-863.

- Tyler, Tom R., and Gregory Mitchell. 1994. *Duke Law Journal* 43 (Feb.): 703-802.
- Tyler, Tom R., and Kenneth Rasinski. 1991. "Procedural Justice, Institutional Legitimacy, and the Acceptance of Unpopular U.S. Supreme Court Decisions: A Reply to Gibson." *Law & Society Review* 25: 621-630.
- Wald, Patricia M. 1995. "The Rhetoric and the Results of Rhetoric: Judicial Writings." *University of Chicago Law Review* 62 (Fall): 1371-1419.
- Walker, Thomas G., Lee Epstein, and William J. Dixon. 1988. "On the Mysterious Demise of Consensual Norms in the United States Supreme Court." *Journal of Politics* 50: 361-389.
- Wasby, Stephen L. 1970. *The Impact of the United States Supreme Court*. Homewood, IL: The Dorsey Press.

## Appendix: Survey Questions and Experimental Treatments

### Survey Questions Administered Prior to the Experimental Treatments

Please circle the number corresponding to your answer on the following questions.

1. Would you support or oppose a law that requires unmarried women under the age of 18 to obtain the consent of at least one parent before getting an abortion?
  1. Strongly support
  2. Somewhat support
  3. Somewhat oppose
  4. Strongly oppose
  
2. Would you support or oppose a Constitutional amendment that bans the burning of the American flag as a form of protest?
  1. Strongly support
  2. Somewhat support
  3. Somewhat oppose
  4. Strongly oppose
  
3. Would you support or oppose a law that allows public schools to schedule time when children can pray silently if they want to?
  1. Strongly support
  2. Somewhat support
  3. Somewhat oppose
  4. Strongly oppose
  
4. Do you agree or disagree with the following statement: Government-sponsored affirmative action policies should be prohibited because they promote unconstitutional discrimination based on race.
  1. Strongly agree
  2. Somewhat agree
  3. Somewhat disagree
  4. Strongly disagree
  
5. In general, which of the following views comes closest to your opinion regarding debtors (i.e., people or businesses who owe money) or creditors (i.e., people or businesses that are owed money)?
  1. Strongly favor creditors
  2. Somewhat favor creditors
  3. Somewhat favor debtors
  4. Strongly favor debtors
  
6. Do you agree or disagree with the following statement: The government should allow doctors to assist terminally ill patients in committing suicide?

1. Strongly agree
2. Somewhat agree
3. Somewhat disagree
4. Strongly disagree

Do you agree or disagree with the following questions.

7. If the United States Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Court altogether.

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

8. The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

9. The decisions of the US Supreme Court favor some groups more than others.

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

10. The right of the Supreme Court to decide certain types of controversial issues should be reduced.

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

## **STIMULI**

After answering the pretest questions, we randomly assigned each respondent to three newspaper articles, one for each issue area (abortion, school prayer, and bankruptcy).

The following article is an example of how our stimuli appeared to the respondents.

### **Unanimous Court Follows Precedent, Bans Silent Prayer in Public Schools**

WASHINGTON (AP) — The U.S. Supreme Court unanimously ruled yesterday that public schools cannot designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is

widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In prohibiting the practice by a vote of 9-0, the Court stated that its ruling was based squarely on its previous decisions involving school prayer. In past cases,

the Court held that the practice of prayer in public schools or at school events is “dangerously close” to a government endorsement of religion. Commenting on this case, legal analysts noted that the Court closely followed its prior rulings.

The full text of each of the school prayer stimuli follow:

[Liberal Outcome, Follows Precedent, Unanimous Decision]

### **Unanimous Court Follows Precedent, Bans Silent Prayer in Public Schools**

WASHINGTON (AP) — The U.S. Supreme Court unanimously ruled yesterday that public schools cannot designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In prohibiting the practice by a vote of 9-0, the Court stated that its ruling was based squarely on its previous decisions involving school prayer. In past cases, the Court held that the practice of prayer in public schools or at school events is “dangerously close” to a government endorsement of religion. Commenting on this case, legal analysts noted that the Court closely followed its prior rulings.

[Liberal Outcome, Follows Precedent, Divided Decision]

### **Divided Court Follows Precedent, Bans Silent Prayer in Public Schools**

WASHINGTON (AP) — A sharply divided U.S. Supreme Court ruled yesterday that public schools cannot designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In prohibiting the practice by a close vote of 5-4, the majority stated that its ruling was based squarely on the Court’s previous decisions involving school prayer. In past cases, the Court held that the practice of prayer in public schools or at school events is “dangerously close” to a government endorsement of religion. Commenting on this case, legal analysts noted that the majority closely followed the Court’s prior rulings.

[Conservative Outcome, Follows Precedent, Unanimous Decision]

### **Unanimous Court Follows Precedent, Allows Silent Prayer in Public Schools**

WASHINGTON (AP) — The U.S. Supreme Court unanimously ruled yesterday that public schools are allowed to designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In permitting the practice by a vote of 9-0, the Court stated that its ruling was based squarely on its previous decisions involving school prayer. In past cases, the Court held that voluntary moments of silence at school classroom do not necessarily amount to a governmental endorsement of religion. Commenting on this case, legal analysts noted that the Court closely followed its prior rulings.

[Conservative Outcome, Follows Precedent, Divided Decision]

### **Divided Court Follows Precedent, Allows Silent Prayer in Public Schools**

WASHINGTON (AP) — A sharply divided U.S. Supreme Court ruled yesterday that public schools are allowed to designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In permitting the practice by a close vote of 5-4, the majority stated that its ruling was based squarely on the Court's previous decisions involving school prayer. In past cases, the Court held that voluntary moments of silence at school classroom do not necessarily amount to a governmental endorsement of religion. Commenting on this case, legal analysts noted that the majority closely followed the Court's prior rulings.

[Liberal Outcome, Overrules Precedent, Unanimous Decision]

### **Unanimous Court Breaks with Precedent, Bans Silent Prayer in Public Schools**

WASHINGTON (AP) — The U.S. Supreme Court unanimously ruled yesterday that public schools cannot designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In prohibiting the practice by a vote of 9-0, the Court acknowledged that its ruling departed from its previous decisions regarding school prayer. The Court noted, however, that its past decisions erred by allowing public religious expressions that came "dangerously close" to government endorsements of religion and that it was not obliged to follow wrongly-decided case law. Commenting on this case, legal analysts noted that the Court specifically overturned its prior rulings.

[Liberal Outcome, Overrules Precedent, Divided Decision]

### **Divided Court Breaks with Precedent, Bans Silent Prayer in Public Schools**

WASHINGTON (AP) — A sharply divided U.S. Supreme Court ruled yesterday that public schools cannot designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In prohibiting the practice by a close vote of 5-4, the majority acknowledged that its ruling departed from the Court's previous decisions regarding school prayer. The majority noted, however, that the Court's past decisions erred by allowing public religious expressions that came "dangerously close" to government endorsements of religion and that it was not obliged to follow wrongly-decided case law. Commenting on this case, legal analysts noted that the majority specifically overturned the Court's prior rulings.

[Conservative Outcome, Overrules Precedent, Unanimous Decision]

### **Unanimous Court Breaks with Precedent, Allows Silent Prayer in Public Schools**

WASHINGTON (AP) — The U.S. Supreme Court unanimously ruled yesterday that public schools are allowed to designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In upholding the practice by a vote of 9-0, the Court acknowledged that its ruling departed from its previous decisions regarding school prayer. The Court noted, however, that its past decisions erred in restricting an individual student's right to free religious practice and that it was not obliged to follow wrongly-decided case law. Commenting on this case, legal analysts noted that the Court specifically overturned its prior rulings.

[Conservative Outcome, Overrules Precedent, Divided Decision]

### **Divided Court Breaks with Precedent, Allows Silent Prayer in Public Schools**

WASHINGTON (AP) — A sharply divided U.S. Supreme Court ruled yesterday that public schools are allowed to designate class time for students to engage in voluntary silent prayer.

The case came from a small public school district in Texas where the practice of prayer at school is widespread. The school district sets aside class time at the start of each school day for students to pray silently if they want to.

In upholding the practice by a close vote of 5-4, the majority acknowledged that its ruling departed from the Court's previous decisions regarding school prayer. The majority noted, however, that the Court's past decisions erred in restricting an individual student's right to free religious practice and that it was not obliged to follow wrongly-decided case law. Commenting on this case, legal analysts noted that the majority specifically overturned the Court's prior rulings.

## **POST-STIMULUS QUESTIONS**

After each newspaper article, respondents answered the following questions.

Overall, do you agree or disagree with the Court's decision in this case?

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree

5. Strongly disagree

Do you accept the decision? That is, do you think that the decision ought to be accepted and considered to be the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?

1. Strongly believe that it should be accepted and considered to be final
2. Somewhat believe that it should be accepted and considered to be final
3. Somewhat believe that it should be challenged
4. Strongly believe that it should be challenged

**Table 1: Construction of Categories for Analysis**

<p><b>Ex Ante Support for Decision</b></p> <p>Conservatives &amp; Conservative Outcome &amp; Liberals &amp; Liberal Outcome</p>	<p>Follow Precedent Unanimous Decision</p>	<p>Overrule Precedent Unanimous Decision</p>
	<p>Follow Precedent Divided Decision</p>	<p>Overrule Precedent Divided Decision</p>
<p><b>Ex Ante Opposition to Decision</b></p> <p>Conservatives &amp; Liberal Outcome &amp; Liberals &amp; Conservative Outcome</p>	<p>Follow Precedent Unanimous Decision</p>	<p>Overrule Precedent Unanimous Decision</p>
	<p>Follow Precedent Divided Decision</p>	<p>Overrule Precedent Divided Decision</p>

**Table 2: Respondents' Willingness to Agree with a Court Decision**

	<b>Abortion</b>	<b>Prayer</b>	<b>Bankruptcy</b>
<b>Baseline:</b> Follow Precedent-Unanimous			
Ex Ante Policy Support			
Follow Precedent-Divided	.03 (.20)	-.62 (.19) *	-.39 (.04) *
Overrule Precedent-Unanimous	.05 (.05)	-.52 (.29) *	.07 (.03)
Overrule Precedent-Divided	-.24 (.11)*	-.47 (.27) *	-.38 (.17) *
Ex Ante Policy Opposition			
Follow Precedent-Divided	-.26 (.02) *	-.06 (.15)	.05 (.15)
Overrule Precedent-Unanimous	-.28 (.16) *	-.33 (.27)	-.25 (.08) *
Overrule Precedent-Divided	-.18 (.20)	-.32 (.15) *	-.28 (.10) *
Ideological Predisposition	.82 (.07) *	1.83 (.12) *	.57 (.16) *
Diffuse Support Factor	.08 (.04) *	.20 (.06) *	.24 (.07) *
N	546	550	522

\*p<.05; one-tailed test

Note: *Ex Ante Support* (and *Opposition*) indicates whether in the pre-experimental questionnaire a participant voiced support for (or opposition to) the policy at issue in a decision. For example, participants voicing opposition to stricter abortion laws would be categorized as showing Ex Ante Support if the experimental manipulation of the court decision regarding abortion struck down a law involving stricter abortion regulations and characterized as showing Ex Ante Opposition if the decision upheld a law involving stricter abortion regulations.

**Table 3: Respondents Willingness to Agree with a Court Decision**

	Abortion		Prayer		Bankruptcy	
	Baseline 2	Baseline 3	Baseline 2	Baseline 3	Baseline 2	Baseline 3
Ex Ante Policy Support						
Follow Precedent-Unanimous	.24 (.11) *	-.03 (.20)	.47 (.27) *	.62 (.19)*	.38 (.17) *	.39 (.04) *
Follow Precedent-Divided	.28 (.23)	-----	-.16 (.18)	-----	-.003 (.13)	-----
Overrule Precedent-Unanimous	.29 (.10) *	.02 (.19)	-.06 (.30)	.10 (.16)	.46 (.18)*	.46 (.04) *
Overrule Precedent-Divided	-----	-.28 (.23)	-----	.16 (.18)	-----	.003 (.13)
Ex Ante Policy Opposition						
Follow Precedent-Unanimous	.18 (.20)	.26 (.02) *	.32 (.15) *	.06 (.15)	.28 (.10) *	-.05 (.15)
Follow Precedent-Divided	-.08 (.19)	-----	.26 (.06) *	-----	.32 (.07) *	-----
Overrule Precedent-Unanimous	-.10 (.05)	-.02 (.14)	-.01 (.22)	-.27 (.18)	.03 (.09)	-.29 (.12) *
Overrule Precedent-Divided	-----	.08 (.19)	-----	-.26 (.06)*	-----	.32 (.07) *
Ideological Predisposition	.75 (.17) *	1.11 (.22) *	1.68 (.17) *	1.26 (.05) *	.47 (.10) *	-.14 (.18)
Diffuse Support Factor	.09 (.03) *	.08 (.04) *	.20 (.06) *	.20 (.06) *	.24 (.07) *	.24 (.07) *
N	546	546	550	550	522	522

\*p<.05; one-tailed test.

Baseline 2= Overrule Precedent-Divided ; Baseline 3= Follow Precedent-Divided

**Table 4: Treatment Effects on Individuals' Agreement with Court Decisions**

*Ex Ante Policy Support*

	<b>Follow Unanimous</b>	<b>Follow Divided</b>	<b>Overrule Unanimous</b>	<b>Overrule Divided</b>
<b>Follow Unanimous</b>		Prayer Bankruptcy	Prayer	Abortion Prayer Bankruptcy
<b>Follow Divided</b>	Abortion		Bankruptcy	
<b>Overrule Unanimous</b>	Abortion Bankruptcy	Bankruptcy		Abortion Bankruptcy
<b>Overrule Divided</b>	Prayer Bankruptcy	Prayer Bankruptcy		

*Ex Ante Policy Opposition*

Note: The cells to the right of the shaded boxes represent treatment effects for those individuals who, in the pre-experimental questionnaire, indicated they supported the outcome they received in the vignette. Those to the left provide results for individuals who ex ante opposed the Court outcome in the vignette they read.

**Table 5: Respondents Willingness to Accept a Court Decision**

	<b>Abortion</b>	<b>Prayer</b>	<b>Bankruptcy</b>
<b>Baseline: Follow Precedent-Unanimous</b>			
Ex Ante Policy Support			
Follow Precedent-Divided	.12 (.17)	-.24 (.12) *	-.30 (.09) *
Overrule Precedent-Unanimous	.14 (.09)	-.14 (.04)*	-.01 (.08)
Overrule Precedent-Divided	.12 (.09)	-.35 (.26)	-.30 (.13) *
Ex Ante Policy Opposition			
Follow Precedent-Divided	-.29 (.09) *	.24 (.30)	-.45 (.22) *
Overrule Precedent-Unanimous	-.40 (.36)	.05 (.28)	-.24 (.23)
Overrule Precedent-Divided	-.09 (.12)	-.11 (.27)	-.40 (.15) *
Ideological Predisposition	.46 (.06) *	1.42 (.19) *	.05 (.18)
Diffuse Support Factor	.27 (.06) *	.09 (.02) *	.28 (.06) *
N	543	548	512

\*p<.05; one-tailed test.

Note: *Ex Ante Support* (and *Opposition*) indicates whether in the pre-experimental questionnaire a participant voiced support for (or opposition to) the policy at issue in a decision. For example, participants voicing opposition to stricter abortion laws would be categorized as showing Ex Ante Support if the experimental manipulation of the court decision regarding abortion struck down a law involving stricter abortion regulations and characterized as showing Ex Ante Policy Opposition if the decision upheld a law involving stricter abortion regulations.

**Table 6: Respondents Willingness to Accept a Court Decision**

	Abortion		Prayer		Bankruptcy	
	Baseline 2	Baseline 3	Baseline 2	Baseline 3	Baseline 2	Baseline 3
Ex Ante Policy Support						
Follow Precedent-Unanimous	-.12 (.09)	-.12 (.17)	.35 (.26)	.24 (.11) *	.30 (.13) *	.30 (.09) *
Follow Precedent-Divided	-.002 (.09)	-----	.10 (.16)	-----	-.01 (.21)	-----
Overrule Precedent-Unanimous	.02 (.08)	.02 (.11)	.21 (.26)	.11 (.15)	.29 (.13) *	.29 (.12) *
Overrule Precedent-Divided	-----	.003 (.09)	-----	-.10 (.16)	-----	.01 (.21)
Ex Ante Policy Opposition						
Follow Precedent-Unanimous	.09 (.12)	.29 (.09) *	.11 (.27)	-.24 (.30)	.40 (.15) *	.45 (.22) *
Follow Precedent-Divided	-.20 (.14)	-----	.35 (.05) *	-----	-.05 (.10)	-----
Overrule Precedent-Unanimous	-.31 (.25)	-.11 (.34)	.16 (.07) *	-.19 (.04) *	.16 (.17)	.20 (.11) *
Overrule Precedent-Divided	-----	.20 (.14)	-----	-.35 (.05) *	-----	.05 (.10)
Ideological Predisposition	.67 (.06) *	.87 (.21) *	1.17 (.24) *	.93 (.05) *	.15 (.09) *	.19 (.06) *
Diffuse Support Factor	.27 (.06) *	.27 (.06) *	.09 (.02) *	.09 (.02) *	.28 (.06) *	.28 (.06) *
N	543	543	548	548	522	522

\*p<.05; one-tailed test.

Baseline 2= Overrule Precedent-Divided ; Baseline 3= Follow Precedent-Divided

**Table 7: Treatment Effects on Individuals' Acceptance of Court Decisions**

*Ex Ante Policy Support*

	<b>Follow Unanimous</b>	<b>Follow Divided</b>	<b>Overrule Unanimous</b>	<b>Overrule Divided</b>
<b>Follow Unanimous</b>		Prayer Bankruptcy	Prayer	Bankruptcy
<b>Follow Divided</b>	Abortion Bankruptcy		Bankruptcy	
<b>Overrule Unanimous</b>		Prayer		Bankruptcy
<b>Overrule Divided</b>	Bankruptcy	Prayer		

*Ex Ante Policy Opposition*

Note: The cells to the right of the shaded boxes represent treatment effects for those individuals who, in the pre-experimental questionnaire, indicated they supported the outcome they received in the vignette. Those to the left provide results for individuals who ex ante opposed the Court outcome in the vignette they read.

Figure 1

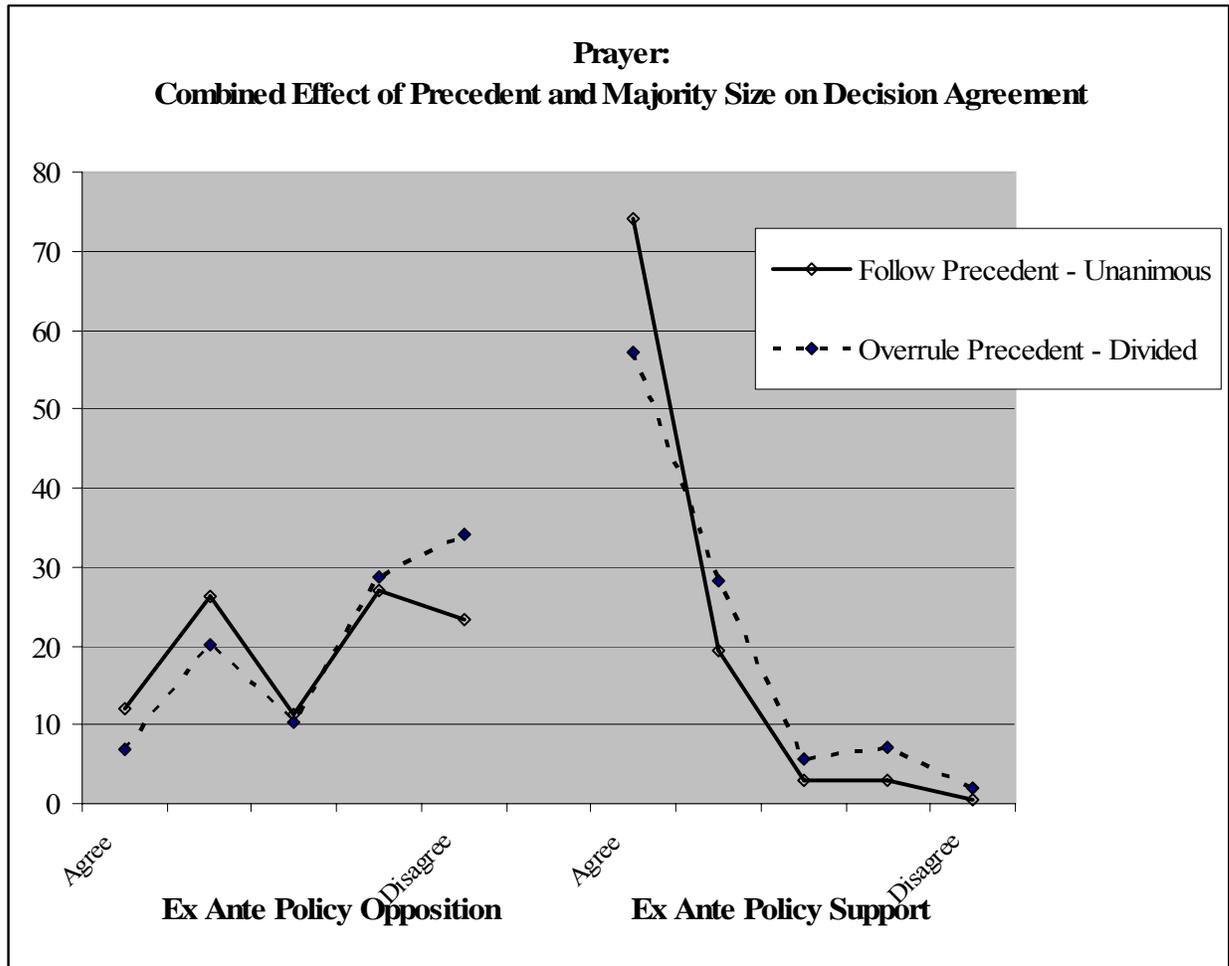


Figure 2

