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Brandon L. Bartels¹

Abstract

Most scholarship on Supreme Court decision making assumes that justices' ideological preferences exhibit a uniform impact on their choices across a variety of situations. I develop a theoretical framework positing the importance of case-level context in shaping the magnitude of ideological voting on the Court. I hypothesize how issue-related factors influence this magnitude. I test the hypotheses using a multilevel modeling framework on data from the 1953-2004 terms. The results provide support for several of the hypotheses; issue salience, issue attention, the authority for the decision (statutory interpretation versus constitutionality of federal or state laws), intercourt conflict, the presence of a lower court dissent, and mandatory versus discretionary jurisdiction all significantly influence ideological voting. Overall, the article adds significant qualifications to extant theories of judicial decision making by showing how ideological voting on the Court is shaped by the varying situations that confront the justices from case to case.

¹George Washington University, Washington, DC

Corresponding Author:

Brandon L. Bartels, Assistant Professor, Department of Political Science, George Washington University, 2115 G Street NW, 440 Monroe Hall, Washington, DC 20052

Email: bartels@gwu.edu

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One of the central concerns in political science is explaining how governmental actors make decisions. Scholarship on the U.S. Supreme Court gives primary attention to the ways that various considerations—ideological, legal, and strategic—influence the choices that the Court’s justices make. Political scientists studying Supreme Court decision making have been most influenced by the attitudinal model, which contends that justices decide cases almost exclusively on the basis of their ideological, or policy, preferences—defined as justices’ predispositions toward legal policy that range from liberal to conservative positions (Rohde & Spaeth, 1976; Schubert, 1974; Segal & Spaeth, 1993, 2002).¹ This contention typically provides a starting point for analyses of justices’ behavior, with scholars—even critics of the attitudinal model (e.g., Epstein & Knight, 1998)—underscoring at the outset the central role of justices’ ideological preferences. While scholars differ in their acceptance of the attitudinal model, with some arguing for the influence of legal (e.g., George & Epstein, 1992; Kahn, 1999; Richards & Kritzer, 2002) and strategic considerations (Epstein & Knight, 1998; Maltzman, Spriggs, & Wahlbeck, 2000; Spiller & Gely, 1992), most assume that ideology exhibits a uniform impact on decision making across a wide variety of contexts. This assumption has fostered the ability to make broad generalizations about justices’ behavior, but I argue that there exists meaningful and systematic variation in the impact of ideology on justices’ choices that can be explained theoretically and tested empirically, a task capable of expanding our knowledge about how and why justices decide cases in various ways.

The goal of this article is to explain variation in the relationship between justices’ ideological preferences and justices’ votes (hereinafter, “ideological voting”) across cases. The analysis represents a departure from the literature on Supreme Court decision making by highlighting the importance of issue-related, case-level context. That is, cases provide justices with different contexts and situations, which in turn interact with ideology and hence shape the magnitude of ideological voting. Certain issue-related characteristics may intensify ideological voting, whereas other characteristics may constrain it. A focus on how situational factors can both constrain *and* enhance ideological voting extends strategic perspectives which have, for the most part, focused on constraint only. Indeed, certain factors can motivate justices to act more strongly on the basis of their ideological preferences. Moreover,

situations in which ideology matters less imply that additional factors, particularly legal considerations, become more influential. I develop a theoretical framework of the mechanisms underlying how issue-related stimuli in a case activate ideology to a degree, which then determines the extent to which ideology influences justices' choices. I hypothesize the influence of a variety of case-level stimuli on the magnitude of ideological voting.

Analyzing justices' voting data from the 1953-2004 terms of the Supreme Court, I employ a multilevel (hierarchical) modeling framework to test the hypotheses. Results reveal support for several of the hypotheses. Overall, the theory and findings contribute to the literature by underscoring the idea that ideological voting on the Court is shaped by the varying situations that confront the justices from case to case.

Ideology and Supreme Court Decision Making

Contemporary presentations of the attitudinal model (Segal & Spaeth, 1993, 2002) suggest that four factors allow Supreme Court justices to decide cases almost exclusively on the basis of their ideological preferences: (a) they are electorally unaccountable; (b) they do not possess progressive ambition for higher office; (c) the Supreme Court is the court of last resort, and no other court can overrule its decisions; and (d) justices have discretionary jurisdiction over their docket, leaving them latitude to choose to hear "hard cases" where the room for ideology to operate is vast. Proponents of the attitudinal model have produced empirical evidence that both bolsters their central arguments and casts doubt on legal and strategic perspectives (Segal, 1997; Segal & Spaeth, 1993, 2002; Spaeth & Segal, 1999). This has made the attitudinal model an influential perspective in judicial behavior research and a stimulus for alternative perspectives attempting to provide empirical evidence of other influences on justices' behavior. Although theoretical and empirical debates exist regarding the impact of considerations other than ideological preferences (e.g., Bergara, Richman, & Spiller, 2003; Epstein & Knight, 1998; George & Epstein, 1992; Richards & Kritzer, 2002; Segal, 1997), I argue that a central question remains open for inquiry: Is there significant variation in the relationship between justices' ideological preferences and their choices that can be systematically explained?

In the interest of parsimony and generalizability, most judicial behavioralists have, perhaps implicitly, circumvented this question by estimating a global, uniform impact of ideology across a wide variety of situations, without an accompanying interest in conditions that may strengthen or weaken this impact. Although some scholars have suggested exploring these conditions

(Baum, 1997, 2006; Gibson, 1983, 1991), most scholarship shares a common assumption, namely, that the manner in which justices rely on ideological preferences in making choices does not systematically vary across cases. As a result, scholars have gained only a partial sense of *when* ideology exhibits a greater or lesser impact on justices' decisions. One important exception is research from the strategic perspective that investigates conditions under which justices will deviate from acting on their ideological preferences, but these studies have highlighted a limited set of conditions, namely, elements of the political environment (Eskridge, 1991a; Martin, 1998; Spiller & Gely, 1992; see, though, Segal, 1997) and collegial interaction (Epstein & Knight, 1998; Maltzman et al., 2000). And importantly, these studies have primarily focused on how certain factors *constrain* justices, as opposed to how some factors may constrain justices, whereas others may enhance justices' ideological discretion. Another exception includes research, primarily applied in the Court's economics and business decisions, questioning the one-dimensional view that justices' votes are dominated by substantive left-right ideological preferences (e.g., Ducat & Dudley, 1987; Flango & Ducat, 1977; Hagle & Spaeth, 1992). This work shows that additional dimensions, including federalism and judicial restraint, exhibit a genuine impact on justices' votes. On the other hand, Brazil and Grofman (2002) find that a single left-right dimension best captures the votes of the justices.

More recent studies have pushed a research agenda highlighting the limits of the attitudinal model as an explanatory model of judging and examining the conditional influence of ideology. Unah and Hancock (2006) find that issue salience significantly enhances the impact of ideology on case outcomes. Collins's (2008) study of judicial consistency—or “variability in decision making”—posits that certain factors (e.g., salience, ideological extremism, tenure) increase the predictability of justices' choices. In a comparison between the U.S. Supreme Court and the Canadian Supreme Courts, Wetstein, Ostberg, Songer, and Johnson (2009) find that ideological consistency during part of the Rehnquist Court was not necessarily as iron-clad or “tight” as many scholars assume; and in Canada, voting behavior exhibits a greater amount of ideological complexity than in the United States. Edelman, Klein, and Lindquist (2008) present an innovative analysis of “disordered” voting patterns, i.e., instances when voting outcomes among the justices deviate from what we would expect if justices were voting on the basis of ideological preferences. The authors find that various issue-related characteristics are associated with disordered voting patterns. Bartels (2009) finds that different legal standards produce significantly different degrees of ideological discretion and hence, ideological voting. Beyond these studies that are

relevant to the current study, additional work has explored the conditional effects of ideology on judicial behavior more generally (Bailey & Maltzman, 2008; Lindquist & Cross, 2005; Maltzman & Wahlbeck, 2004; McAtee & McGuire, 2007; Zorn, 2001).

Each of these studies, then, suggests that ideology matters, but its influence depends on the situational context confronting the justices from case to case. The attitudinal model claims that the absence of political and electoral constraints provides justices maximum latitude to act solely on their ideological preferences. But attitudinalists have touched on these very broad constraints, and strategic perspectives, as mentioned, have examined a limited set of circumstances that might constrain justices. Building on the research agenda established by the studies above, I argue that issue-related stimuli at the *case level* explain variation in ideological voting. My analysis is distinct from Collins (2008) and Edelman et al. (2008) in that I hypothesize how a variety of case-level characteristics *directly influence* the relationship between ideology and justices' votes. And this analysis extends the work of Unah and Hancock (2006) and Bartels (2009) by examining a wider range of case-level, issue-related factors that might influence the magnitude of ideological voting.

Theoretical Framework

The core argument of this article is that certain issue-related, case-level characteristics in a given decision context can either enhance or attenuate the impact of ideology on justices' choices. Research in political and social psychology places a strong emphasis on the conditions under which attitudes guide behavior to varying degrees (e.g., Braman & Nelson, 2007; Fazio & Towles-Schwen, 1999; Krosnick, 1988, 1990; Miller & Peterson, 2004; Petty & Krosnick, 1995). Such perspectives place a central focus on the psychological processes underlying the attitude-behavior relationship (Eagly & Chaiken, 1993; Fazio & Towles-Schwen, 1999). This research provides a strong theoretical rationale for (a) how and why systematic variation exists in the attitude-behavior relationship and (b) the types of factors that will shape the attitude-behavior relationship. Because situational characteristics across contexts can trigger different motivations and considerations, people's attitudes are expected to exhibit varying effects across contexts. Certain situations may activate attitudes to a greater extent, leading to higher degrees of attitude strength, accessibility, and importance (Fazio & Towles-Schwen, 1999; Krosnick, 1988, 1990; Miller & Peterson, 2004; Petty & Krosnick, 1995). The stronger the attitude, the more it will influence behavior.²

I apply this intuition to the ideology–vote relationship for Supreme Court justices. In specifying this relationship as a process of judgment that can be explained, the focus becomes not simply whether ideology guides behavior, but *when* ideology influences justices' votes to greater or lesser degrees. The cases that come before the justices contain legal and policy issues that vary along a number of dimensions. Certain factors associated with an issue in a case will trigger particularly strong ideological preferences among the justices, which will lead to enhanced magnitudes of ideological voting. Other factors will lead to the justices suppressing a reliance on ideology, leading to an outcome reflecting little ideological division among the justices and perhaps elevating the influence of legal considerations. Importantly, issue-related context matters in how justices map their ideological preferences onto their votes.

Before discussing the specific hypotheses, I clarify the following question: What does it mean for a case-level factor to shape the magnitude of ideological voting for justices? In judicial decision-making studies, the impact of ideology is posited and assessed in comparative terms. That is, variation in ideology *across justices* explains the propensity of casting a liberal or conservative vote. Thus if ideology is influential, then for a typical case, liberal justices will be significantly more likely than conservative justices to cast a liberal vote in a given case. Variation in ideological voting ranges from a theoretical scenario where ideology fails to differentiate the votes of the justices (i.e., liberals and conservatives exhibit the same voting propensities) to a scenario where ideological voting is maximized and ideology exhibits a full impact. For these reasons, then, I examine the impact of situational, case-level factors, and not justice-level factors, on ideological voting. Because I am examining ideological divisions in voting, and because these divisions occur between justices, it does not make sense, for purposes of this analysis, to examine the influence of justice-specific factors.³

Hypotheses

I posit that certain case-level characteristics will systematically shape the magnitude of ideological voting on the Supreme Court. To confine the scope of the article's inquiry, I examine only issue-related context, i.e., characteristics associated with the substantive issues that vary from case to case.⁴ I posit the influence of the following factors: issue salience, whether the case involves a single or multiple issues, issue attention, the authority for the decision, intercourt conflict, whether there is a lower court dissent, and mandatory versus discretionary jurisdiction. I argue that these issue-related stimuli

prime ideological preferences to varying degrees, leading to variation in ideological voting.

The first factor is issue salience, which implies that the case is of high importance to the justices. It is safe to assume that justices recognize the importance of a case as they become familiar with its substance (e.g., Epstein & Segal, 2000), and it is in these high-stakes cases that justices will attempt to maximize the possibility of implementing their ideological preferences into legal policy. Akin to Unah and Hancock (2006) and Collins (2008), I posit that salient cases will strongly activate ideological preferences among the justices, and thus, increases in salience will enhance ideological voting.⁵ This conceptualization of salience is contemporaneous (Epstein & Segal, 2000) because it represents what the justices themselves perceive to be particularly important cases at the time they are considering them.

Hypothesis 1 (Issue Salience Hypothesis): Salient cases will elicit a higher magnitude of ideological voting compared to nonsalient cases.

The second issue-related factor is whether a case involves a single issue or multiple issues. Cases with multiple issues will make the activation of traditional left-right cleavages more difficult, because justices might have preferences in two different directions on each of the separate issues present in the case. But cases involving just one legal issue will activate ideology to a greater degree because there is no threat that a second or third issue will exhibit a countervailing ideological force. In the area of First Amendment law, Epstein and Segal (2006) have found that for “pure” cases (i.e., cases where only a First Amendment issue is at play), justices exhibit typical left-right alignments; liberal justices support First Amendment rights, and conservatives support governmental restrictions over that right. However, when additional issues beyond the First Amendment enter into the decision context, traditional left-right alignments have the potential to be shattered. Thus, in “pure,” single-issue cases, we should expect clear left-right cleavages in voting behavior. But the presence of additional issues in a case can have the effect of reducing the degree of ideological voting because of the increasing potential of additional issues to exhibit a countervailing force against traditional left-right divisions.

Hypothesis 2 (Single-Issue Hypothesis): Single-issue cases will elicit a higher magnitude of ideological voting compared to multiple-issue cases.

The third factor is issue attention. Justices will engage in a higher degree of ideological voting on issues that have appeared on the Court's docket more frequently in the past. Issue attention facilitates an activation of ideological divisions. Many legal issues range from being established "blue chip" issues that have been decided on many times to issues that have not received as much attention by the Court over time. For issues that have received a great deal of attention in the past, justices can more easily relate to the core content of the issue. Therefore, they can more easily map their ideological preferences onto the content of the case because their preferences are highly accessible due to the greater familiarity with the issue content. However, for issues that have not received as much attention over the years by the Court, ideological preferences toward the issue may not become activated to the same degree, resulting in a lower magnitude of ideological voting.⁶

Hypothesis 3 (Issue Attention Hypothesis): The more attention the issue in a given case has received over time, the greater the magnitude of ideological voting.

The fourth issue-related factor concerns the *authority for the Court's decision*, that is, whether a case involves *constitutional* or *statutory interpretation*, or other types of interpretation. In practice, the Supreme Court is the final arbiter of what the Constitution means. Only a constitutional amendment overruling a decision by the Court prevents the justices from having the last word on constitutional issues. In statutory interpretation cases, where the Court does not construe the meaning of the Constitution but instead interprets the meaning of a federal statute or a federal agency ruling, Congress can and sometimes does overturn the Court's rulings (e.g., Eskridge, 1991b). Moreover, the Court sometimes invites Congress to revisit the Court's interpretation (Hausegger & Baum, 1999). For these reasons, many strategic perspectives contend that the justices are more constrained from acting on their sincere ideological preferences in statutory as opposed to constitutional interpretation cases (e.g., Epstein & Knight, 1998; Eskridge, 1991a; Spiller & Gely, 1992; see, though, Sala & Spriggs, 2004; Segal, 1997). On the other hand, Epstein, Knight, and Martin (2001) argue that the Court is more constrained in its *constitutional* cases because reprisals against the Court's decisions with which the other branches disagree could come in the form of attacks against the Court as an institution (e.g., changing the Court's jurisdiction). From the bulk of the strategic perspectives, one might expect that ideological voting will be significantly lower in statutory cases as opposed to constitutional cases. For instance, in their study of disordered voting,

Edelman et al. (2008) find that deviations from “regular” ideological voting are more frequent in statutory compared to constitutional cases.

In the study of constitutional versus statutory decision making, I argue that the categories need to be more fine-grained. In particular, among constitutional cases, a distinction should be made between cases involving the constitutionality of *federal laws* versus those involving *state laws*. I argue that the justices will show greater ideological restraint when adjudicating the constitutionality of federal compared to state laws. First, the Court has traditionally been quite deferential to the federal government when it is a direct party in a case or when the Solicitor General (SG)—the federal lawyer who represents the federal government before the Court—files an *amicus curiae* brief on behalf of the government. Over the past 60 years or so, the federal government has won roughly 70% of the time in front of the Court as a direct party. One of the primary reasons for such deference is the result of the SG’s advocacy. The SG’s success in front of the Court is well documented (e.g., Bailey, Kamoie, & Maltzman, 2005; Pacelle, 2003; Salokar, 1992; Scigliano, 1971; Segal, 1990; Segal & Reedy, 1988). As an actor who straddles her responsibilities to the president, the Court, and the law, the SG maintains high levels of credibility in front of the Court, regardless of partisanship. Additional research shows that the Court is generally more deferential to the federal government compared to states in constitutional adjudication (e.g., Howard & Segal, 2004). Moreover, Bailey and Maltzman (2008) show that several of the justices in the modern era show quite high levels of deference to Congress, suggesting that the justices are constrained by legal considerations when these issues arise. Lindquist and Solberg (2007) find that the Court was more likely to strike down state laws compared to federal laws during the Burger Court, but not during the Rehnquist Court.⁷

The second key argument relates to comparing the degree of threat that the justices might perceive in adjudicating the constitutionality of federal versus state cases. As mentioned, Epstein et al. (2001) argue that the Court is constrained in its federal constitutional decision because Congress has the power to engage in court-curbing and jurisdiction-stripping in response to the Court’s decisions. Other scholars (e.g., Rosenberg, 1992) argue that the threats of these court-curbing attempts can intimidate the Court, which may lead to greater ideological restraint. On the other hand, states cannot wield these threats against the Court. They simply do not possess the same powers (i.e., court-curbing) that Congress does, meaning that states do not instill a degree of threat that can come close to Congress. On the whole, then, there is a theoretical basis to the notion that the Court will be more deferential to the federal government compared to the states in constitutional cases. For my

theoretical inquiry, this implies that ideological voting should be more constrained in federal constitutional cases relative to state constitutional cases.

For statutory cases, many of the same arguments apply that were made with respect to federal constitutional issues. In statutory interpretation cases, ideological motivations are not as pronounced (Hausegger & Baum, 1999), Congress and the president can overrule these decisions with ordinary legislation, and the Solicitor General participates in many cases as either a direct party or *amicus curiae*. Moreover, in statutory cases, the SG is a valuable informational source when it comes to construing the meaning of federal statutes (Pacelle, 2003). Therefore, I expect statutory cases to elicit the lowest magnitude of ideological voting compared to both types of constitutional cases. Because the Court has more discretion in federal constitutional cases than in cases involving federal statutory interpretation, we should also expect ideological voting to be higher for the former.

Hypothesis 4 (Authority for Decision Hypothesis): Constitutional cases involving state laws will elicit a higher magnitude of ideological voting compared to constitutional cases involving federal laws. Statutory cases will elicit the lowest magnitude of ideological voting, relative to both types of constitutional interpretation.

The final three hypothesized factors are associated with the background of the case at the lower court from which it was appealed. Each factor provides the justices with important signals that influence the magnitude of ideological voting. Each of the three factors is also examined in Edelman et al.'s. (2008) analysis of deviations from expected ideological voting patterns, so it is valuable to make comparisons to that study. The first factor concerns whether the case involved a *conflict in legal interpretation between lower courts*, for example, intercircuit conflict or conflict between a state court of last resort and a federal court. One of the primary stimuli that influences whether the Court grants certiorari to a case is when such a conflict exists (Caldeira & Wright, 1988; Perry, 1991). Edelman et al. (2008) and Lindquist and Klein (2006) argue that when attempting to resolve intercircuit conflicts, justices' ideological goals are not as paramount and, instead, justices are "more concerned [with ensuring] uniformity in federal law" (Edelman et al., 2008, p. 836). Thus, when making decisions on these types of cases, justices should show less of a reliance on ideological preferences.

Hypothesis 5 (Intercourt Conflict Hypothesis): The magnitude of ideological voting will be lower in cases with an intercourt conflict compared with cases without such a conflict.

The next factor involves whether the lower court decision included a dissent. Dissents among federal judges in the Courts of Appeals (where most of the Supreme Court's cases come from) are rare. Hettinger, Lindquist, and Martinek (2004) argue that dissenting behavior results more from sincere, ideologically driven behavior as opposed to strategic, forward-looking behavior (e.g., an intention to signal an en banc reversal). Lower court dissents, then, signal to the justices where the ideological fault lines lie in a given case. They serve to activate justices' ideological preferences. In these cases, justices can recognize the arguments made for both the liberal and conservative positions in the case, thus providing them important information that helps them clearly map their ideological preferences onto their votes. Edelman et al. (2008) find that the presence of a lower court dissent leads to more ordered ideological voting.

Hypothesis 6 (Lower Court Dissent Hypothesis): The magnitude of ideological voting will be higher in cases where there was a lower court dissent compared to cases where there was not one.

The last factor has to do with whether the case is heard as a result of the Court's discretionary or mandatory jurisdiction. Today, the Court has almost completely discretionary jurisdiction; the Court decides whether to grant or deny certiorari to the cases that are appealed to it from a lower court. The Judges' Bill of 1925, passed by Congress, granted the Court discretionary jurisdiction to a large share of cases, and subsequent laws have further expanded such jurisdiction. However, part of the Court's jurisdiction is mandatory, meaning the Court is obliged to hear certain cases. This includes the Court's original jurisdiction (cases originating in the Supreme Court)⁸ and cases heard "on appeal."⁹ Before 1988, the Court was obliged to hear a nontrivial number of cases "on appeal," where, for instance, a lower court had ruled a law unconstitutional. Congress eliminated most of this mandatory jurisdiction in 1988, meaning that "on appeal" cases are now rare and mainly include Voting Rights Act cases from three-judge federal district courts (Epstein & Walker, 2010, p. 12).¹⁰ In general, ideological voting should be more pronounced in cases arising from discretionary compared to mandatory jurisdiction because in the former, the Court is taking the "hardest" cases with the most gray area to resolve legal ambiguities that are present in the lower courts. The more gray area, the more room there is for ideological preferences to operate. In mandatory cases, however, there is not as strong a focus on resolving crucial legal issues, and therefore, ideological preferences are not activated to the same degree (e.g., Edelman et al., 2008).

Hypothesis 7 Mandatory versus Discretionary Jurisdiction Hypothesis:

The magnitude of ideological voting will be lower in cases arising under mandatory compared to discretionary jurisdiction.

Data and Measurement

To test these hypotheses, I analyze justices' votes on all formally decided civil liberties and civil rights cases decided from 1953 to 2004.¹¹ These data are collected from the *United States Supreme Court Judicial Database* (Spaeth, 2006). The analysis allows for broad generalizations over a long time span. Over this time span, civil liberties and rights cases constitute about half of the Court's plenary agenda. I analyze this set of cases because ideological divisions are clearly and consistently defined over time. That is, liberal votes favor individuals claiming liberties or rights over government's restrictions of those liberties or rights, whereas conservative votes favor certain governmental restrictions over civil liberties and rights. The measure of ideological preferences that I use (discussed below), as well as others used in the literature, seem to be most appropriate for civil liberties and civil rights cases because they tend to best capture the left-right ideological cleavages inherent in most civil liberties and rights cases. In other issue areas, such as economics and federalism, ideological divisions are not so clear-cut and consistent over time and more likely to contain multiple dimensions in addition to the left-right ideological spectrum (Ducat & Dudley, 1987; Flango & Ducat, 1977; Hagle & Spaeth, 1992). Given that ideology maps onto the justices' votes in civil liberties and rights cases more strongly than in economics or federalism cases (e.g., Epstein & Mershon, 1996), the test I present here is a quite stringent test of the hypotheses, and any effects that are found are especially meaningful given the high average magnitude of ideological voting in civil liberties and rights cases.¹² A multilevel (hierarchical) modeling framework is well-qualified to test the hypotheses. I estimate a model employing a three-level hierarchical structure: *justices' choices* (Level 1 units) nested within *cases* (Level 2 units) nested within *years* (Level 3 units); I discuss the model in more detail in the next section. In many quantitative analyses of Supreme Court decision making, the choices of the justices from a given set of cases are the only recognized units of analysis. Although judicial scholars undoubtedly recognize that additional levels are present, studies very rarely incorporate hierarchical structures into empirical analyses (but see Martin, 1998; Martin & Quinn, 2002; Zorn, 2001). The specification of a random coefficient model (discussed below) allows one to

model explicitly how higher-level variables—the hypothesized case-level factors—explain variation in lower-level effects (the impact of ideology on justices' votes). The use of this methodology offers an advance in analyzing justices' voting behavior and explaining variation in the magnitude of ideological voting across cases.

The data consist of 28,469 choices (Level 1 units) nested within 3,252 cases (Level 2 units) nested within 52 years (Level 3 units). The dependent variable, justices' votes, is coded "1" for a liberal vote and "0" for a conservative vote. Measuring ideology is a complicated issue in judicial politics that requires careful attention in various types of judicial decision-making analyses (see Bartels, 2009, pp. 490-491). Because the analysis in this article covers a relatively long time span, I employ Martin and Quinn (2002) scores, which are estimates of justices' ideologies from a Bayesian item response measurement model. Thus, they can be viewed as yearly estimates of justices' policy or ideological positions in left-right policy space. As originally coded, negative Martin and Quinn scores reflect more liberal ideological preferences, whereas positive values reflect more conservative preferences. I switched the sign so that increasing values of the variable reflect more liberal ideological preferences.¹³

One of the major strengths of the Martin-Quinn measure is that it allows for valid comparisons of ideology across justices and across time, a quality that alternative measures—namely, Segal-Cover (1989) scores—do not possess. Martin-Quinn scores also allow justices' ideological preferences to change over time, whereas Segal-Cover scores are constant across time for a given justice. We know, for instance, that certain justices do indeed change their preferences over time (e.g., Epstein, Hoekstra, Segal, & Spaeth, 1998; Epstein, Martin, Quinn, & Segal, 2007). Related to the last point, Martin-Quinn scores produce a more valid ordering of justices from liberal to conservative than do Segal-Cover scores. Such a property is critical for the present analysis.¹⁴ I performed robustness checks using three alternative measures of ideological preferences: (a) Segal-Cover (1989) scores, (b) Martin and Quinn scores lagged by 1 year, and (c) the percentage of liberal votes cast by each justice in the prior term.¹⁵ Using these three measures, the core substantive results related to the hypotheses are very similar relative to the use of Martin-Quinn scores.¹⁶ I choose to use Martin-Quinn scores instead of each alternative because (a) they provide greater accuracy than Segal-Cover scores for purposes of estimating the magnitudes of ideological voting and the effects of case-level variables on these magnitudes and (b) they do not induce missing data like the second and third measures do; when using lagged measures, the measure for justices during their first terms is missing data.

To measure issue salience, I adopt Epstein and Segal's (2000) dichotomous indicator for whether or not the case appeared on the *New York Times* front page the day after it was decided.¹⁷ 22.5% of the cases in the data are salient cases. To measure whether the case was a single-issue one or otherwise, I counted the number of unique issues, using Spaeth's (2006) "issue" variable, contained in the case. The variable is dichotomous; "0" represents a case that involves more than one issue (e.g., freedom of speech and free exercise of religion), and "1" represents that a case involves just one issue (e.g., freedom of speech only). 90% of the cases in the data contain a single issue.¹⁸ Issue attention should tap how often the Court has previously heard and decided on the issue in the present case over time.¹⁹ Using Spaeth's (2006) "issue" variable, for each case in a given term, I calculated the percentage of times the Court had previously decided cases in the same issue area dating back to 1946. For example, for each case in the 1994 term, the variable taps the percentage of times the Court had heard cases in the same issue area from the 1946 to 1993 terms. Given the skewness of the variable and an expectation of diminishing marginal returns, I use the natural logarithm of this variable.²⁰

To measure the authority for the Court's decision, I rely on Spaeth's "authdec1" variable. I operationalize the variable as a four-category, nominal variable. The four categories are (a) *constitutional interpretation of a federal law* (authdec1 = 1), (b) *constitutional interpretation of a state law* (authdec1 = 2), (c) *statutory interpretation of a federal law or interpretation of an agency regulation or rule* (authdec1 = 4 or 5), or (d) *cases involving neither a constitutional nor statutory issue* (authdec1 = 3 or 7).²¹ The last category involves interpretation of judge-made (common law) rules or doctrines, issues of judicial power, and other "residual" types of cases (Spaeth, 2006). I dummy out the categories and include categories a, b, and d, which means that effects are relative to the statutory interpretation cases (the baseline). The frequency distribution for each category is (a) 14.6%, (b) 40.5%, (c) 32.6%, (d) 12.3%.

The last three variables also rely on the Spaeth (2006) database. To measure intercourt conflict, I rely on Spaeth's "cert" variable, which codes the reason why the Court granted certiorari in a case. I recoded this variable so that is dichotomous, where 1 = the existence of a conflict in interpretation between federal circuit courts, state supreme courts, or between federal and state supreme courts (cert = 1, 2, 3, 4, or 5), and 0 = no such conflict. About 18% of the cases in the data contain an intercourt conflict. To measure whether a lower court dissent existed, I rely on Spaeth's "diss" variable; 1 = the existence of a dissent at the lower court, and 0 = no dissent. About 26% of the cases in the data have a lower court dissent. Finally, to measure mandatory versus discretionary jurisdiction, I use Spaeth's "jur" variable. The variable

takes on a value of “1” for mandatory jurisdiction, which includes cases “on appeal” ($\text{jur} = 2$) and original jurisdiction cases ($\text{jur} = 9$), and “0” for discretionary cases, which were granted vis-à-vis the Court’s certiorari jurisdiction. 20% of the cases in the data are mandatory jurisdiction cases.

Analysis and Results

To test these hypotheses, I specify a three-level random coefficient model. The appendix contains more technical details about model specification and estimation. Here, I discuss the working parts of the model in a less technical manner. The Level 1 equation is justices’ votes as a function of justices’ ideology. Both the intercept and the coefficient for ideology (at Level 1) are specified as randomly varying across both cases (Level 2) and years (Level 3). The case-level variables enter the Level 2 equations. To test the hypotheses, cross-level interactions are included between each Level 2 (case-level) variable and ideology. These cross-level interactions test whether the posited case-level variables exhibit significant effects on the magnitude of ideological voting (represented by the random coefficient for ideology). Because all case-level variables are interacted with ideology, the constituent terms—the coefficients in the β_{0jt} equation—for these case-level factors represent conditional effects. More specifically, they represent the effects of the case-level factors on the probability of a liberal vote when ideology is equal to zero. And the constituent effect of ideology is conditional on all variables with which it is interacted being equal to zero. Though I do not have theoretical expectations for these constituent terms for the case-level variables, to enhance interpretation of them, I mean-center all variables, which means the constituent terms for the case-level variables represent their effects on the probability of a liberal vote for the average value of ideology (which is zero, given mean centering). The constituent term for ideology represents its impact conditional on all case-level variables held at their mean values. Note that mean centering has no impact on the inferences made regarding cross-level interactions, which test the hypotheses. The cross-level interaction effects are identical whether one mean centers or not.

The payoff in estimating the three-level random coefficient model is the ability to account for unobserved heterogeneity at both the case-level and year-level, which improves confidence in the estimates of the key parameters that test the hypotheses. The model accounts for unobserved, case-level heterogeneity that may explain justices’ voting outcomes. As many judicial scholars find it important to control for case facts (e.g., Ostberg & Wetstein, 2006, 2007; Richards & Kritzer, 2002; Segal, 1984, 1986; Segal & Spaeth, 2002),

which amount to *observed* heterogeneity that affects voting outcomes, the random intercept component of the model is an alternative way to control for case differences, albeit of an unobserved nature, when one does not have measured case facts variables. This is a valuable strategy for analyses of civil liberties issues pooled together (like in this article), where it is not feasible to include case facts variables as one would do for issue-specific data.²² And the benefit of applying this framework to civil liberties and rights data together, as opposed to examining issue-specific data (e.g., search and seizure or free expression), is that one can draw broader generalizations about how the hypothesized case-level factors influence the magnitude of ideological voting. The random intercept component also accounts for unobserved variation in voting outcomes across years, which may result from, for example, membership change. The random coefficient component of the model accounts for unobserved case-level and year-level heterogeneity that may explain variation in the impact of ideology.

One can estimate this model via maximum likelihood or Bayesian simulation via Markov chain Monte Carlo (MCMC; see Rodriguez & Goldman, 2001). For reasons of computational feasibility, particularly given the three-level aspect of the model, I employ the Bayesian MCMC approach—specifically, Gibbs sampling—as implemented in WinBUGS 1.4.1 (Spiegelhalter, Thomas, Best, & Lunn, 2004). In Bayesian inference, one estimates the joint posterior distribution—the joint distribution of the parameters conditional on the data. The posterior is constituted by the prior distribution of the parameter and the likelihood, or the “data.” I use noninformative (diffuse) priors, meaning that the likelihood (the data) dominates the prior, resulting in inferences that are similar to what would be made using ML. Inferences about the effects of independent variables are made by interpreting the mean and standard deviation of the posterior distribution for each parameter, which are analogous to the coefficient and standard error, respectively, in ML. Specific inferences regarding statistical significance are made using Bayesian credible intervals, which are analogous to confidence intervals in classical statistics. A credible interval communicates the probability that a parameter lies in the constructed interval, conditional on the data.²³ To make inferences regarding statistical significance, I report 90% credible intervals—the 5th and 95th percentiles—to assess whether at least 95% of the posterior is greater than (for a positive effect) or less than zero (for a negative effect). This is a one-sided Bayesian hypothesis testing approach (Gill 2002, pp. 203-207).

The results from the random coefficient model are displayed in Table 1. Model fit is assessed comparing the deviance information criterion (DIC; Spiegelhalter et al., 2004) from the full model to reduced models. The DIC was consistently lower for the full model compared to reduced models

Table 1. Effects of Case-Level Factors on Ideological Voting, 1953-2004; MCMC Estimates of Three-Level Random Coefficient Model

	Posterior summaries		
	Mean	SD	90% Bayesian credible interval
Voting outcomes equation			
Intercept	0.58	0.11	[0.40, 0.77] ^b
Issue salience	0.84	0.18	[0.54, 1.13] ^b
Single-issue case	-0.17	0.25	[-0.57, 0.24]
Issue attention	-0.07	0.23	[-0.45, 0.32]
Authority for decision (baseline = statutory interpretation)			
Constitutional, federal issue	-1.04	0.24	[-1.44, -0.65] ^b
Constitutional, state issue	0.56	0.18	[0.26, 0.87] ^b
Other ^a	-0.04	0.25	[-0.45, 0.37]
Intercourt conflict	-0.20	0.21	[-0.54, 0.14]
Lower court dissent	-0.13	0.17	[-0.41, 0.14]
Mandatory jurisdiction	0.37	0.19	[0.05, 0.69] ^b
Ideological voting equation (cross-level interactions)			
Ideology	7.72	0.21	[7.38, 8.07] ^b
Ideology × Issue salience (+)	2.33	0.36	[1.73, 2.93] ^b
Ideology × Single-issue case (+)	-0.42	0.47	[-1.19, 0.36]
Ideology × Issue attention (+)	1.66	0.44	[0.93, 2.39] ^b
Authority for Decision (Baseline = Statutory Interpretation)			
Ideology × Constitutional, federal issue (+)	0.75	0.43	[0.04, 1.47] ^b
Ideology × Constitutional, state issue (+)	2.18	0.34	[1.63, 2.75] ^b
Ideology × Other ^a	1.58	0.47	[0.80, 2.36] ^b
Ideology × Intercourt conflict (-)	-0.60	0.38	[-1.21, 0.02] ^c
Ideology × Lower court dissent (+)	0.67	0.32	[0.15, 1.20] ^b
Ideology × Mandatory jurisdiction (-)	-1.08	0.36	[-1.68, -0.49] ^b
Level 2 Variance-covariance components	$\text{var}(u_{0ic}) = 13.85 (.68)$; $\text{var}(u_{1ic}) = 26.63 (1.94)$; $\text{cov}(u_{0ic}, u_{1ic}) = -1.87 (.60)$		
Level 3 Variance-covariance components	$\text{var}(r_{00c}) = .33 (.13)$; $\text{var}(r_{10c}) = .48 (.28)$; $\text{cov}(r_{00c}, r_{10c}) = .26 (.13)$		
Deviance information criterion	17,320.0		
Level 1 units	28,469 votes		
Level 2 units	3,252 cases		
Level 3 units	52 years		

Note: Hypothesized directions of effects are included next to the variable names in the ideological voting equation.

a. "Other" represents supervision of lower federal courts and federal common law.

b. At least 95% of the posterior is greater than or less than zero.

c. At least 90% of the posterior is greater than or less than zero.

(e.g., a random intercept only model, a two-level random coefficient model, etc.), which supports the statistical superiority of the fully specified random coefficient model. Moreover, the variance-covariance components in Table 1 suggest that case-level and year-level unobserved heterogeneity exists in both the intercept and the coefficient for ideology.

The results from the top half of Table 1—entitled the “voting outcomes equation”—report the effects for the constituent terms for the case-level variables. With the inclusion of cross-level interactions in the model, recall that these are conditional effects of the independent variables on the probability of casting a liberal or conservative vote, when holding ideology at 0 (which is its mean because of mean centering). Because there are no directional expectations for these variables on the probability of a liberal vote, these effects are not substantively meaningful. The results from the bottom half of Table 1—entitled the “ideological voting equation”—are the cross-level interaction effects (ideology interacted with each case-level variable). They test how the hypothesized case-level factors influence the magnitude of ideological voting. The first effect in the ideological voting equation is the “typical” effect of ideology, because it is the effect conditional on all other variables held at their means. Not surprisingly, this effect is positive and statistically significant. For a typical case, left-right cleavages are prevalent in civil liberties decision making on the Court.

I discuss the results in Table 1 in conjunction with Figure 1, which presents a clear substantive view of the results, showing the size of the effects for each statistically significant case-level factor. In each graph, the y-axis is the predicted magnitude of ideological voting. The x-axis represents variation in the values of the case-level factors, while holding the remaining variables at their mean values. From the appendix, I simply plug values into the β_{ijt} equation to generate these predicted values. The Bayesian computational approach allows one to incorporate these quantities of interest into the joint posterior and then retrieve posterior summaries of the quantities. For instance, to generate the predicted magnitude of ideological voting for low salience cases, I set salience to its minimum value and the remaining variables to their mean values.²⁴ Issue attention, which is a continuous variable, was set to its 10th percentile for the low value, and its 90th percentile for the high value. In the graphs, I report the 90% Bayesian credible interval around each prediction. The graphs allow one to get a better sense of the size of the effects. In addition, the dotted line in each graph is the “average” magnitude of ideological voting; the value is 7.72, which is reported in Table 1. This represents the effect of ideology when all other variables are held at their mean values, which allows one to see how the predicted magnitudes compare to this baseline.

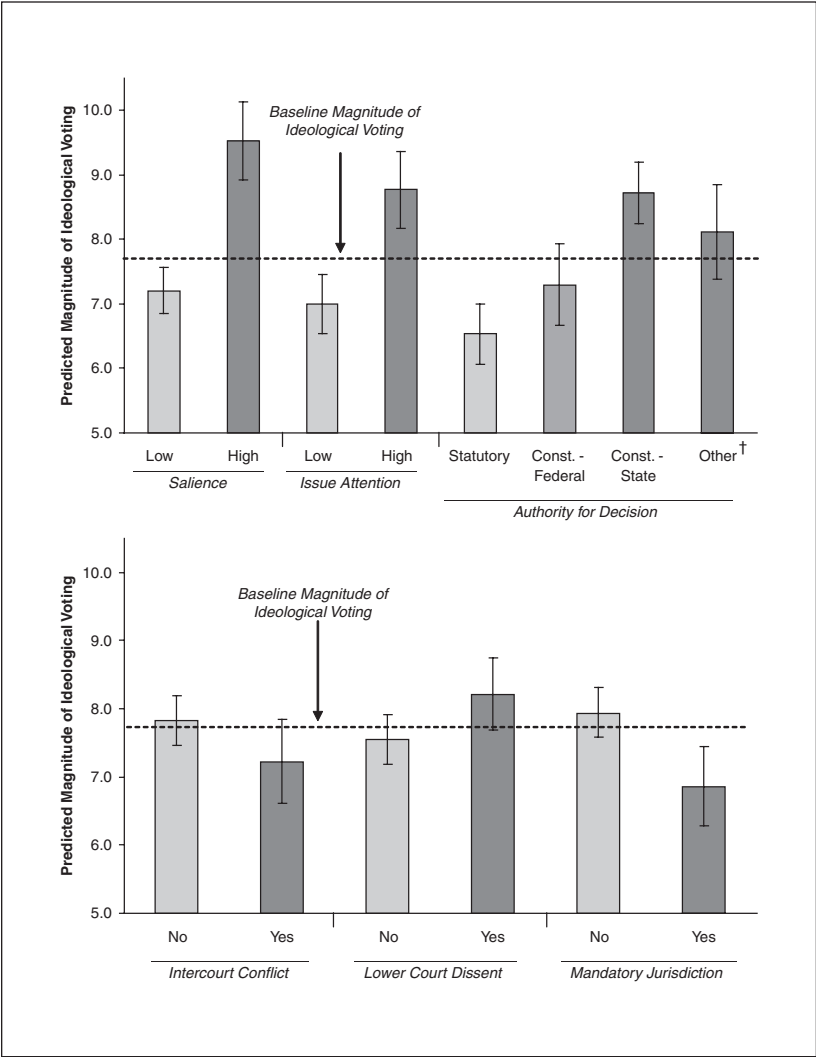


Figure 1. Predicted magnitude of ideological voting as a function of case-level factors

Note: Bars represent the predicted magnitude of ideological voting for varying values of each independent variable, while holding the remaining variables constant at their mean values. The brackets around each bar represent 90% credible intervals.

†. “Other” represents supervision of lower federal courts and federal common law.

The results from the cross-level interactions in Table 1 indicate that all but one of the hypothesized variables exhibit statistically significant effects on ideological voting. In support of the salience hypothesis, results indicate that issue salience significantly enhances the impact of ideology on justices' votes. For cases that are particularly important to the justices, ideology exhibits greater effects compared to less important types of cases. This finding, at the choice level, supports Unah and Hancock's (2006) case-level result and is congruent with Collins's (2008) evidence that salience increases judicial consistency. From Figure 1, note the large magnitude with which salience enhances ideological voting, both compared to low-salience cases and the baseline magnitude. This suggests that in high-salience cases, justices vote in a highly ideological manner, above and beyond baseline levels, in an effort to impose their ideological preferences onto legal policy. For low-salience cases, which elicit lower levels of ideological voting, perhaps other more legally oriented factors become more influential. These findings suggest that the media, interested Court watchers, politicians, and the general public may have an exaggerated perception of the Court as overly ideological. For the cases that are the most salient, and therefore receive the most attention from elite discourse, the Court is often divided along ideological lines. But recall that highly salient cases make up under 25% of the Court's agenda. Thus, for the bulk of cases that the Court decides that are not as high profile and that do not receive as much attention from elite discourse, ideological divisions are not as pronounced.

Whether a case is a single-issue or a multiple-issue one fails to exhibit a statistically significant effect on ideological voting, and moreover, its effect is in the direction contrary to expectations. Epstein and Segal's (2006) findings with respect to First Amendment do not appear to generalize to civil liberties cases writ large. This evidence comports with Edelman et al.'s (2008) study of disordered ideological voting, which found that the number of issues in a case does not significantly affect disordered voting patterns.

Table 1 and Figure 1 show that increases in issue attention significantly enhance ideological voting. Thus, for cases involving issues that have received a great deal of attention from the Court over time, justices are more likely to divide along ideological lines compared to issues that have not been heard by the Court as frequently. Figure 1 shows that issue attention does not exhibit as large of an effect on ideological voting as does salience, but it does demonstrate how cases involving issues that have received a great deal of attention over the years tend to induce higher levels of ideological voting than cases involving issues that have received less attention. Greater attention to issues

by the Court facilitates a greater understanding of that issue's content, which eases the task of mapping one's ideology onto voting decisions.

Next, the effects for the authority of the decision are in line with theoretical expectations. Recall that statutory interpretation is the baseline category, which means that the effects for the three dummy variables are relative to this category. First, Table 1 and Figure 1 show that, in line with expectations, cases involving the constitutionality of state statutes elicit the highest magnitude of ideological voting among the four categories. The residual category, involving issues like common law doctrines and judicial power, produces the second highest magnitude of ideological voting. Though I did not directly hypothesize the magnitude of ideological voting for this category, the results are sensible and suggest that the justices possess a large degree of discretion in these cases. Federal statutory cases elicit the lowest magnitude of ideological voting, and constitutional cases involving federal statutes elicit the second lowest magnitude.

Table 1 indicates which of these differences among categories are statistically significant. Cases involving the constitutionality of federal statutes elicit significantly larger magnitudes of ideological voting compared to statutory interpretation cases. Furthermore, ideological voting is significantly enhanced in constitutional interpretation of state statutes compared to statutory interpretation. Importantly, additional calculations show that ideological voting is significantly higher for constitutional cases involving state statutes compared to constitutional cases involving federal statutes.²⁵ This underscores the importance of separating constitutional issues into state versus federal issues and suggests that the Court treats each differently. The Court displays significantly different degrees of ideological restraint when adjudicating each type of constitutional case.

The results offer empirical support for this hypothesis and shed new light on how the justices respond to constitutional versus statutory decisions. The justices appear to show the most ideological restraint in statutory interpretation cases. This is sensible given the previous arguments that in these cases, ideological motivations are not as pronounced as in constitutional issues (Hausegger & Baum, 1999), the justices may feel constrained in these cases because Congress can overturn them with ordinary legislation, and the Solicitor General, who is an influential actor in front of the Court, often takes a position in favor of the federal government in these cases. Moreover, ideological voting is significantly different in constitutional cases depending on whether the Court is considering a federal versus state statute. The justices exercise the most ideological discretion in cases involving the constitutionality of state laws. Importantly, the justices show a modicum of ideological

restraint when it comes to adjudicating the constitutionality of federal laws. Recall that some strategic perspectives suggest that the Court is constrained in constitutional cases because responses from Congress could come in the form of making fundamental alterations to the Court's structure (Epstein et al., 2001). Moreover, the Solicitor General often takes a position, as either a direct party or *amicus curiae*, in favor of the federal government in constitutional cases. Thus, there is a logical underpinning to the notion that, in the realm of constitutional issues concerning federal laws, but not necessarily state laws, the justices show a degree of ideological restraint—a degree approaching that of cases involving statutory interpretation.

The final three factors exhibit statistically significant effects on the magnitude of ideological voting, though as Figure 1 demonstrates, these effects are not as substantively large as the factors previously discussed. First, in line with expectations, cases where there is an intercourt conflict in interpretation elicit lower magnitudes of ideological voting compared to cases without such a conflict. This effect barely misses statistical significance at the 95% posterior probability level, as seen by the fact that 0 is just included in the 90% credible interval. However, 94.43% of the posterior distribution for this parameter is less than 0, suggesting that the impact of intercourt conflict is certainly worth underscoring. On the whole, the evidence supports Lindquist and Klein (2006) and Edelman et al. (2008), who argue that when trying to bridge differences between circuits, the justices temper ideological motivations in an effort to carefully craft a legal policy that will carry force with the lower courts. Figure 1 shows that the lack of conflict elicits magnitudes of ideological voting akin to baseline levels, while the presence of a conflict attenuates the impact of ideology. Although the effect is not particularly large, compared to previous factors, it does suggest an interesting dynamic in how justices' ideological responses are different in conflict versus nonconflict cases.

Also, cases where there is a lower court dissent enhance ideological voting relative to cases where there was no such dissent. The results support expectations that such dissents send signals to the justices identifying the ideological fault lines in a case, which activates preferences and facilitates the task of mapping ideological preferences onto votes. Figure 1 demonstrates that the lack of a lower dissent produces ideological voting just under baseline levels. However, the presence of a dissent accentuates ideological voting above baseline levels.²⁶

Finally, the results indicate that cases arising via the Court's mandatory jurisdiction—"on appeal" and original jurisdiction—elicit significantly lower magnitudes of ideological voting compared to the Court's discretionary docket consisting of cases to which the Court grants certiorari. Figure 1

shows that in cases arising under the Court's certiorari jurisdiction, ideological voting is on par with baseline levels. But for mandatory jurisdiction, ideological voting decreases dramatically and rivals the low magnitude for statutory interpretation cases. This suggests that in mandatory cases, ideological motivations are not as paramount because these cases do not constitute the "core" agenda for the Court in the way that the cases arising via certiorari jurisdiction do.

Discussion and Conclusion

This article began by posing a question heretofore rarely asked by judicial specialists: Under what conditions will justices' ideological preferences exhibit a greater or lesser impact on their choices? Is there variation in ideological voting that can be explained theoretically and empirically? Such questions have substantive implications for central theoretical perspectives in judicial politics. The attitudinal model assumes that the impact of ideology on voting is constant across a wide range of situations. Strategic perspectives have examined conditions under which the justices may be constrained, but they have examined a limited set of broad situations, as opposed to situations that may vary from case to case. Moreover, such perspectives have focused on constraint only, as opposed to examining how certain factors might also enhance ideological voting. Related to legal perspectives, the implications of reduced ideological voting are that legal factors may be exhibiting a greater impact on decision making; when ideological voting is significantly enhanced, however, little room is left for the influence of legal factors. The theoretical and empirical analysis in this article builds on more recent work by Unah and Hancock (2006), Collins (2008), Wetstein et al. (2009), Edelman et al. (2008), and Bartels (2009) underscoring some key qualifications to the attitudinal model, as well as other theoretical frameworks. My theoretical framework posited several issue-related factors that influence the magnitude of ideological voting on the Court. The multilevel modeling framework allows for the mapping of the hypotheses onto a statistical model with a high degree of congruence.

Altogether, the theoretical framework and the empirical results present some significant contributions and qualifications to our understanding of Supreme Court decision making, particularly to the attitudinal model. While many studies implicitly assume that ideology exhibits uniform effects across a wide variety of situations, I have highlighted the importance of case-level context and how it shapes the magnitude of ideological voting across cases in systematic and interesting ways. From the analysis of more than 50 years of data, evidence supported every hypothesis except for the single-issue one.

Case-level stimuli activate ideological preferences to varying degrees, leading to variation in the magnitude of ideological voting. Salient cases elicit a significantly higher magnitude of ideological voting than nonsalient cases. In the hot-button, high profile cases, we generally see more rigid ideological splits among the justices. Less salient cases, which constitute a strong majority of cases, generate less ideological division, meaning that the public may receive an overexaggerated perception of the Court as overly political and ideological. Furthermore, in support of the issue attention hypothesis, the results suggest that familiarity with issues breeds greater ideological divisions; it allows justices to more easily map their ideologies onto voting decisions.

The results supporting the authority for the decision hypothesis underscore the importance of separating constitutional issues concerning federal laws versus state laws, and then comparing these categories to statutory interpretation cases. The results show that ideological restraint is maximized in statutory interpretation cases, while the magnitude of ideological voting is maximized in constitutional issues involving state laws. Moreover, the magnitude of ideological voting is significantly lower in constitutional cases involving federal laws compared to both constitutional issues involving state laws and statutory interpretation cases. The results suggest a greater degree of deference by the Court given to the federal government compared to state governments, partly due to the influential role played by the Solicitor General, who frequently takes a position—either as direct party or *amicus curiae*—in front of the Court in favor of the federal government. These results contribute to various strategic perspectives weighing in on these matters. Finally, the results also show a tempering of ideological preferences when trying to resolve an intercourt conflict, a heightening of ideological voting when there is a lower court dissent, which clarifies ideological fault lines in a case, and enhanced ideological voting in cases involving the Court's discretionary (*certiorari*) jurisdiction versus its mandatory jurisdiction.

Overall, this article has attempted to expand the field's knowledge of Supreme Court decision making by systematically examining the conditions that strengthen or weaken the impact of ideology on the choices justices make. As this study demonstrates, many avenues exist for providing refined models of Supreme Court decision making that offer significant qualifications to existing models. And future research can continue this trend with more detailed examinations of the general inquiry. While my study has produced broad generalizations over a long time span, future work can examine in more detail the potential of time-varying effects of the hypothesized case-level factors (or additional factors). For instance, does the magnitude of

ideological voting change over time with respect to constitutional (federal versus state laws) versus statutory interpretation cases? Lindquist and Solberg (2007) find more deference to the federal government during the Burger Court compared to the Rehnquist Court. Perhaps there are interesting and theoretically expected dynamics underlying the generalized results presented here. In addition, future work can examine additional issue areas, such as economics and federalism cases, and examine the role of additional case-level and year-level factors on the magnitude of ideological voting.

Hopefully scholars will continue to probe these types of extensions and beyond, all in an attempt to understand further the conditions under which ideology, as well as other considerations, influences justices' behavior to greater or lesser degrees. Such inquiries can further contribute to the theoretical perspectives central to the study of judicial decision making. More generally, and most important, such work is capable of expanding our knowledge and understanding of how justices go about making decisions on the important legal questions that face them from case to case.

Appendix

Methodological Appendix

Model specification. For binary dependent variables, a hierarchical generalized linear model setup is required. A Bernoulli sampling model is used, and I use a logit link. For the logit link, $\Pr(Y_{ijt} = 1) = p_{ijt}$, which is the probability of a liberal vote for choice i in case j in time t . Then η_{ijt} is the log-odds of p_{ijt} : $\eta_{ijt} = \log[p_{ijt}/(1 - p_{ijt})]$. The model below (for the analysis in Part I) is a three-level random coefficient model testing whether the hypothesized Level 2 variables systematically explain variation in impact of ideology.

$$[\text{Level 1 equation}] \eta_{ijt} = \beta_{0jt} + \beta_{1jt} \text{IDEO}_{ijt}$$

$$[\text{Level 2 equations}] \begin{aligned} \beta_{0jt} &= \gamma_{00t} + \gamma_{01} \text{sal}_{jt} + \gamma_{02} \text{single}_{jt} + \gamma_{03} \text{issueatt}_{jt} + \\ &\quad \gamma_{04} \text{fedconst}_{jt} + \gamma_{05} \text{stateconst}_{jt} + \gamma_{06} \text{authother}_{jt} + \gamma_{07} \text{conflict}_{jt} + \\ &\quad \gamma_{08} \text{lowdissent}_{jt} + \gamma_{09} \text{mandatory}_{jt} + u_{0jt} \\ \beta_{1jt} &= \gamma_{10t} + \gamma_{11} \text{sal}_{jt} + \gamma_{12} \text{single}_{jt} + \gamma_{13} \text{issueatt}_{jt} + \gamma_{14} \text{fedconst}_{jt} + \\ &\quad \gamma_{15} \text{stateconst}_{jt} + \gamma_{16} \text{authother}_{jt} + \gamma_{17} \text{conflict}_{jt} + \\ &\quad \gamma_{18} \text{lowdissent}_{jt} + \gamma_{19} \text{mandatory}_{jt} + u_{1jt} \end{aligned}$$

$$[\text{level 3 equation}] \begin{aligned} \gamma_{00t} &= \pi_{000} + r_{00t} \\ \gamma_{10t} &= \pi_{100} + r_{10t} \end{aligned}$$

i indexes Level 1 units (choices), j indexes Level 2 units (cases), and t indexes Level 3 units (years). $IDEO_{ijt}$ is a justice's ideology associated with choice i in case j in year t . In the Level 2 equations, the random coefficients, β_{0jt} and β_{1jt} , are each modeled as a function of a systematic component (the Level 2 variables) and a stochastic error component. β_{1jt} represents the impact of justices' ideology on votes. The γ coefficients in the β_{1jt} equation—the cross-level interaction effects—allow for explicit tests of the hypotheses (see also the reduced form representation below). u_{1jt} and r_{10t} account for unobserved heterogeneity that may explain variation in the impact of ideology at the case-level and year-level, respectively. β_{0jt} is the random intercept. u_{0jt} is the Level 2 stochastic term, or random effect, for the intercept. Importantly, u_{0jt} captures unobserved heterogeneity across cases, that is, unmeasured variability in case-level factors that may affect the outcome, η_{ijt} . r_{00t} represents unobserved heterogeneity in voting outcomes at the year level. The Level 2 and Level 3 error components are assumed to have bivariate normal distributions. Thus, at Level 2, $\text{var}(u_{0jt})$, $\text{var}(u_{1jt})$, and $\text{cov}(u_{0jt}, u_{1jt})$ can be estimated, and at Level 3, analogous variances and covariances can be estimated.

The model can also be written in its reduced form, which entails substituting the Level 3 equations into the Level 2 equations, and then substituting the Level 2 equations into the Level 1 equation. This representation, depicted below, explicitly highlights the cross-level interactions. Note the correspondence between the parameters in the β_{1jt} equation above and the multiplicative terms below in the reduced form equation.

$$\begin{aligned} \eta_{ijt} = & \pi_{000} + \gamma_{01} \text{sal}_{jt} + \gamma_{02} \text{single}_{jt} + \gamma_{03} \text{issueatt}_{jt} + \gamma_{04} \text{fedconst}_{jt} + \gamma_{05} \text{stateconst}_{jt} + \\ & \gamma_{06} \text{authother}_{jt} + \gamma_{07} \text{conflict}_{jt} + \gamma_{08} \text{lowdissent}_{jt} + \gamma_{09} \text{mandatory}_{jt} + u_{0jt} + r_{00t} + \\ & \pi_{100} IDEO_{ijt} + \gamma_{11} IDEO_{ijt} * \text{sal}_{jt} + \gamma_{12} IDEO_{ijt} * \text{single}_{jt} + \gamma_{13} IDEO_{ijt} * \text{issueatt}_{jt} + \\ & \gamma_{14} IDEO_{ijt} * \text{fedconst}_{jt} + \gamma_{15} IDEO_{ijt} * \text{stateconst}_{jt} + \gamma_{16} IDEO_{ijt} * \text{authother}_{jt} + \\ & \gamma_{17} IDEO_{ijt} * \text{conflict}_{jt} + \gamma_{18} IDEO_{ijt} * \text{lowdissent}_{jt} + \gamma_{19} IDEO_{ijt} * \text{mandatory}_{jt} + \\ & IDEO_{ijt} * u_{1jt} + IDEO_{ijt} * r_{10t} \end{aligned}$$

Estimation. I use MCMC via Gibbs Sampling to estimate the three-level model. I specify uniform distributions for the standard deviations of the random effects terms at each level (Gelman, 2005). I use diffuse priors for the γ and π parameters (mean = 0, precision = 0.001). Convergence was assessed by first specifying three parallel Markov chains. Next, I relied on the Gelman and Rubin (1992) test (see also Gelman, Carlin, Stern, & Rubin, 2003), which requires monitoring the potential scale reduction (R) that taps differences between the 3 chains, for all parameters. When R is close to 1, it indicates that the chains are overlapping and the Gibbs sampler is approaching the target distribution. Using the Gelman–Rubin diagnostic, model convergence was

achieved after 30,000 iterations (using the initial 15,000 iterations as a burn-in). Thus, all results are based on 15,000 samples.

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Notes

1. I treat “ideology,” “policy preferences,” and “attitudes toward legal policy” as synonymous.
2. While insights from the psychological literature on the attitude-behavior relationship are most relevant to my inquiry, other psychological frameworks have been employed in the judicial realm, including heuristics and bounded rationality (Segal, 1986), the schema concept in social cognition (Ostberg & Wetstein, 1998), and motivated reasoning (Braman & Nelson, 2007).
3. Because justice-level effects do not figure into my theoretical and empirical examination does not mean, of course, that these effects are irrelevant or impossible to examine. Indeed, Spaeth and Segal (1999), for instance, present a compelling analysis of how preferentialist and precedentialist voting differs across justices. One could also think of justice-level factors like “freshman status” as influencing the degree of ideological voting, which future research could examine.
4. Another form of case-level context would involve *external actors*, an inquiry I leave for future research. Examples would be interest group participation via amicus curiae briefs, influence by the other branches of government, and the influence of the Solicitor General via direct party or amicus curiae participation. For the latter, my hypothesis for the authority for the decision (federal versus state constitutional issues versus statutory interpretation) implicates the important role played by the Solicitor General.
5. A key distinction from Unah and Hancock (2006) is that my examination uses justices’ votes as the lowest level of analysis, whereas Unah and Hancock use cases as their units of analysis.

6. This conceptualization assumes that issue attention is an objective case-level factor that all of the justices perceive in the same manner. The validity of this assumption may be threatened by acclimation effects. However, because most justices in the modern era have had either prior experience as a judge or prior experience in a law-related job, the assumption that all justices—new and old—will hold similar perceptions of issue attention seems very reasonable.
7. Lindquist and Solberg's (2007) findings highlight the possibility that the effect of this factor—as well as the other factors I analyze—may change over time. My focus is on broader generalization throughout a long time period.
8. Original jurisdiction is rooted in Article III of the Constitution. Today, the Court's original jurisdiction, which is rarely exercised, concerns disputes between states.
9. Another appellate category is certification, where a lower court judge (or judges) asks the Supreme Court to clarify federal law. Certification is extremely rare, and no cases in the data I examine arise under this jurisdiction.
10. Less than 5% of the cases in the data were on appeal after 1988. Before 1988, about 25% were on appeal.
11. Using the Spaeth (2006) database, I employ the standard case selection criterion to retrieve formally-decided civil liberties cases: *analu* = 0 or 4; *dec_type* = 1, 6, or 7; and *value* < 7.
12. Within civil liberties, there are several sub-issue areas, including (using Spaeth's, 2006 "value" variable) criminal procedure, civil rights, First Amendment, due process, privacy, and attorneys. I explored differences in the magnitude of ideological voting among these categories by including value dummies in the main model discussed below. First, inclusion of these dummies in no way altered the substantive conclusions regarding the hypotheses. Second, the primary difference of substantive relevance that emerged was that criminal procedure cases elicited a higher magnitude of ideological voting than the remaining categories.
13. This transformation leads to a positive coefficient for the impact of ideology on vote choice (because 1 = a liberal vote). Martin and Quinn scores originally range from -4.31 to 6.33. I rescaled the variable so that it resembles the ranges for the other independent variables, which can help facilitate convergence. I first recoded the variable from 0 to 1, then multiplied it by 2, and then mean-centered it. The transformed variable ranges from -.82 to 1.18. Note that this transformed variable is still perfectly correlated with the original variable and does not alter substantive conclusions in any way.
14. Bartels (2009, pp. 490-491) shows how Martin-Quinn scores demonstrate greater face validity than Segal-Cover scores. For example, during the 1994-2004 terms of the Rehnquist Court, Segal-Cover scores rank Justice Stevens as the fourth most conservative justice, despite the fact that he is widely viewed as the most liberal justice on the Court. Justice O'Connor is ranked as more liberal than both

- Justices Stevens and Souter. This highlights how Segal-Cover cannot account for the “ideological drift” that has occurred for Justices Stevens and Souter, as well as Justice Blackmun during the 1970s, 80s, and 90s.
15. The latter two measures are intended to alleviate tautological criticisms by using measures based on past behavior.
 16. Results from these three models are available for download at http://home.gwu.edu/~bartels/apr_choices.htm.
 17. Even though the measure is temporally subsequent to justices’ choices, Epstein and Segal (2000) argue that the measure taps *contemporaneous* salience.
 18. As an alternative, I could have used the number of issues in a case. However, the distribution of this variable is highly skewed. Out of 3,252 cases, 303 have two issues, 18 have three issues, 2 have four issues, and 2 have five issues. Thus, 303 out of the 325 (93%) multiple issue cases have two issues. Results are substantively similar when I use number of issues as opposed to the binary single versus multiple issues coding. In addition, Maltzman et al. (2000) use a “complexity” variable that combines number of issues, number of laws, and number of opinions released in the case. My focus is on issues only, akin to Epstein and Segal (2006), as opposed to Maltzman et al.’s multifaceted complexity concept. However, using their measure does not change the substantive findings.
 19. For multiple-issue cases, I use the primary issue for purposes of measuring issue attention.
 20. Overall, the goal is to measure issue attention within the modern era of civil liberties law, and, aside from data limitations, 1946 provides a reasonable starting date for this modern era. Chief Justice Stone’s “preferred position doctrine” from “Footnote Four” in *United States v. Carolene Products* (1938) intended to elevate the importance of civil liberties issues compared to economics issues. Justices who adhered to the doctrine would eventually increase the frequency of civil liberties cases on the Court’s agenda (Pacelle, 1991).
 21. About 10% of the cases are coded as having multiple values of this variable (e.g., statutory interpretation and constitutional interpretation), which can be ascertained by using Spaeth’s (2006) “auth_dec” variable. Spaeth’s “authdec1” variable codes the authority for the decision on the primary issue in the case.
 22. I also note that I include both unanimous and nonunanimous decision in the analysis. 30.1% of the decisions in the data are unanimous. It is important to include these cases, as they provide crucial information for inferring the full range of ideological voting on the Court. As mentioned in the text, the random intercept and coefficient components allow for case-level and year-level differences that may result in more or less unanimity. Accounting for these case-level and year-level differences (in both voting outcomes and ideological voting) produces more confidence in the inferences regarding how case-level factors shape the magnitude of ideological voting.

23. While this interpretation is different from a frequentist interpretation, practical distinctions between Bayesian and frequentist inference are minor when employing diffuse priors.
24. The random effects terms are set to zero, their expected values.
25. This inference was made by simply changing the baseline category.
26. Because many lower court judges dissent when there is a conflict among the circuits, there may be a more nuanced dynamic occurring between lower court dissent and intercourt conflict. To distinguish these explanations, I estimated a model that included a three-way interaction: Ideology \times Intercourt conflict \times Lower court dissent. However, the interaction effect was close to zero and far from statistically significant.

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Bio

Brandon L. Bartels is assistant professor of political science at George Washington University. His research focuses on American politics, judicial politics, the Supreme Court, judicial decision making, public opinion, and political methodology.