

What Moves the Court? Interest Groups, Public Opinion, Court Composition, and the Solicitor General

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The impact of several major types of interest groups, the solicitor general, Court composition, and American public opinion on U.S. Supreme Court decision-making is tested with a poll-matched data base from the Warren, Burger, and Rehnquist Courts. Results indicate that the solicitor general's position, American public opinion, Court composition, and a few (but not most) interest groups all significantly and independently affect Supreme Court decision-making.

Introduction

Political scientists have long been concerned with explaining how judges, particularly U.S. Supreme Court justices, make their decisions. Explanations often have focused on the justice's ideologies, the facts presented in the dispute, the legal positions of the interest groups involved, the solicitor general's position, and American public opinion. Directly comparing these explanations, however, is difficult. Most attempts to unscramble the impact of the justices' ideologies, case facts, interest groups, the solicitor general, and public opinion focus on specific, narrowly-defined areas of law, such as sex discrimination (Segal and Reedy 1988) or death penalty cases (George and Epstein 1992). Efforts also are hampered by the difficulty of measuring key variables, particularly American public opinion.

This article examines a diverse set of Supreme Court decisions from the last half-century with a "poll-matched" sample of 149 full, written decisions for which specific nationwide public opinion polls are available. After describing each of the predictors, this article develops a probit model to test how different explanations affect the likelihood of an ideologically-liberal Supreme Court decision. The solicitor general's position is clearly the single strongest explanation of Supreme Court decision-making, but American public opinion, Court composition, and two types of interest groups (but not ten others) also have a significant impact.

Interest Groups

Interest groups doubtlessly play an important role in American judicial politics. Interest groups often actively support or oppose nominees to the

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federal bench, particularly U.S. Supreme Court nominees (Bronner 1989; Caldeira, Hojnacki, and Wright, 1996 and 2000; DeGregorio and Rossotti 1994; Lichtman 1990; Toner 2001). Many interest groups sponsor and finance lawsuits or file amicus briefs in the hopes of convincing U.S. Supreme Court justices to vote with the group's position and to adopt the group's legal arguments (Epstein and Kobylka 1992; Epstein and Knight 1999; Ivers and O'Connor 1987; O'Neill 1985; Spriggs and Walbeck 1997). In the most highly-visible cases dozens of interest groups may file amicus briefs (Behuniak-Long 1991; Epstein 1993; Krislov 1963; O'Neill 1985).

At one time, several political scientists focused on interest groups that were remarkably successful players in judicial policy-making. Early case studies of litigants such as the NAACP (Cortner 1988; Tushnet 1987; Vose 1959), Jehovah's Witnesses (Manwaring 1962), pro-criminal defendant groups (Medalie 1968), pro-women and children groups (Lawrence 1990; O'Connor 1980), under-represented urban and suburban voters (Cortner 1970), or consumer and labor groups (Vose 1957) pointed to the considerable litigation success of otherwise politically powerless groups (see also Bentley 1908; Cortner 1993; Ivers 1992 and 1995; Olson 1984; Sorauf 1976; Way and Burt 1983). By initiating, financing, and providing attorneys for lawsuits, some "repeat player" groups succeeded in winning key Supreme Court cases and reshaping American law. Indeed, interest groups might now appear to have at least a greater opportunity for influence because participation (particularly through filing *amicus* briefs) is now quite common. Interest group participation may also help overcome the weaknesses of poor and otherwise disadvantaged litigants in state courts (Songer, Kuerstein, and Kaheny 2000).

Recent scholarship, however, raises serious questions about how successful many interest groups actually are (Epstein and Rowland 1991; McGuire and Caldeira 1993). Many groups litigate only the few cases in which their interests are most immediately at stake (Kobylka 1991). Some groups make ineffective arguments in their amicus briefs or during oral arguments (Epstein and Kobylka 1992). When interest groups appear to be successful, their very success may encourage competing groups to organize or upgrade their litigation efforts (Epstein 1985; Ivers and O'Connor 1987; O'Connor and McFall 1992; Wilcox 1992 and 1996). Interest group success rates at the Supreme Court also vary considerably over time. Indeed, groups may even decide not to pursue appeals if they perceive the Supreme Court to be hostile to their interests (Savage 1995; Wasby 1995).

Do interest group positions have a significant effect on Supreme Court decision-making independent of the solicitor general's position, American public opinion, Court composition, or the importance of a case? To measure interest group positions, I coded the litigation positions of a dozen types

of frequently-active interest groups. The categories of interest groups are listed in Table 1.¹ In a large majority of cases the interest group's position appeared in an *amicus* brief, not as a direct party to the case. If (less frequently) a group provided legal counsel, it was counted as a position. The dozen types of groups were then classified as taking either a politically-liberal position, no position at all in a case, or a conservative position, coded as +1, 0, and -1, respectively. American public opinion and the solicitor general's position (described further below) were also coded in the same manner.²

Public Opinion

Is American public opinion also a significant predictor of Supreme Court decision-making independent of interest group or the Solicitor General's position in a case?

Case study evidence indicates that at least at the margins, some interest groups do consider public opinion. Litigation-oriented groups may search for a likeable and well-respected plaintiff, or at least seek to file their lawsuit against an unsympathetic defendant. Interest groups regularly seek to influence elite opinion by putting out news releases, promoting favorable law journal articles, encouraging other groups to file an *amicus* brief in support of their position, seeking media coverage, or "spinning" the news after the decision is announced (Cortner 1968, 1988; Epstein 1985; Mezey 1996; O'Connor 1980; O'Neill 1985; Sorauf 1976; Vose 1957, 1959).

Even so, by the available evidence, public opinion is seldom more than a marginal consideration in the litigation strategies for interest groups. Interest groups may find themselves defending an apparently unpopular cause because they cannot control what cases are filed, where the cases are filed, what appeals are pursued, or even which attorneys argue the case (Kluger 1976; Kobylka 1991; Lawrence 1990; Manwaring 1962, 33; O'Connor 1980; Sorauf 1976, 95-114; Wasby 1995). Some interest groups knowingly pursue controversial or even unpopular causes because of their importance to the group, to raise the group's visibility or to raise funds, or to satisfy the demands of key members and supporters. There is no evidence that many groups go so far as to sponsor public opinion polls to help decide what cases to pursue or that most groups make any great effort to influence nationwide American public opinion. Poll results are sometimes offered in legal briefs, especially in trademark and death penalty cases (Marshall 1989). The rarity with which interest groups include polling evidence in appeals or *amicus* briefs is not surprising because several Supreme Court justices have been dismissive of public opinion poll results.³ Overall, nationwide public opinion and interest groups' litigation positions are statistically unrelated (Marshall 1989, 94-95).

Accurately measuring American public opinion on Supreme Court decisions is difficult. Political scientists have used three approaches to capture public attitudes. First, some accounts rely on trends in the “public mood,” a general index of liberal-conservative trends in American public opinion (Stimson 1991 and 1999; Mischler and Sheehan 1993 and 1994; Norpoth and Segal 1994; Flemming and Wood 1997; McGuire and Stimson 2000). The public mood measure, however, has serious problems in accurately measuring American public opinion toward controversies that reach the U.S. Supreme Court. General poll trends in the public mood are not tied to public opinion on specific Court decisions; nor are most of the repeat poll items that comprise the public mood closely related to the type of issues the Supreme Court hears (Best 1999). Several other accounts (e.g., George and Epstein 1992) take a second approach and rely on indirect measures of current public opinion, indirect measures such as the party affiliation of the president and of Congress.

This article uses a third approach to measuring American public opinion by matching specific nationwide public opinion polls to specific Supreme Court decisions. To measure American public opinion on Supreme Court decisions, nationwide public opinion poll results from major polling organizations were examined. Briefly, poll questions were “matched” with Supreme Court decisions if the poll question closely matched, in substance, an issue raised in the Supreme Court decision. On average, major pollsters such as Gallup Poll, Princeton Survey Research Associates, or *The New York Times* Poll query public opinion on about three or four full, written decisions per term. The resulting decisions are a diverse, but nonrandom, sample of all full written decisions. Public opinion was classified as liberal (coded as +1) or as conservative (coded -1) depending on the majority or plurality reported in the matching poll; if available polls were evenly divided (within the .05 confidence interval), public opinion was classified as taking no position (coded 0). Using the poll-matching method better allows an examination of the impact of nationwide public opinion on specific Supreme Court decisions while also allowing a broad mix of decisions to be examined. Public opinion is predicted to have a modest independent impact on Supreme Court decision-making.⁴

This article is based on a sample of 149 full, written decisions from the Warren Court through Rehnquist Court era (2000/2001 term) that could be compared (or matched) with nationwide public opinion poll results near to the time of the Supreme Court’s decision. Denials of *certiorari* or denials of a stay of execution were not counted, since interest groups that lose at the lower court often strategically decide not to file an *amicus* brief at this stage to avoid signaling the case’s importance and thereby increase the chances that a hostile Supreme Court will grant *certiorari* and hand down a full,

written opinion against the group's position (Caldeira and Wright 1988; McGuire 1994; McGuire and Caldeira 1993).

The Solicitor General

The U.S. Solicitor General's position on these 149 decisions also was coded. The solicitor general stands out as a remarkably successful repeat player either as an *amicus* participant or a direct litigant, even when controlling for case facts, lower court decisions, or new Supreme Court appointments (Caplan 1987; McGuire 1995; Salokar 1992; Sheehan, Mischler, and Songer 1992; Segal 1988 and 1990; Segal and Reedy 1988). During the early Rehnquist Court era, for example, the solicitor general was successful 66 percent of the time (Epstein et al. 1996). The solicitor general's success is often attributed to that office's careful selection of appeals, long litigation experience, or the relative inexperience of the opposing counsel.

The solicitor general's position also typically parallels the ideological focus of federal laws and policies by acting as the federal government's attorney before the Supreme Court. The solicitor general's office also often files an *amicus* brief in disputes over state or local laws and policies, even when no specific federal law or policy is immediately under challenge. The solicitor general's position was coded +1 for a liberal position, 0 if no position was taken, or -1 for a conservative position; the solicitor general's position is predicted to be strongly and positively correlated to Supreme Court decision-making.

As a specific example of interest group, public opinion, and the solicitor general's position, consider *Vance v. Bradley*, 440 U.S. 93 (1979), a decision upholding a mandatory retirement at age 60 for the Foreign Service system. The solicitor general argued the case for the federal government (and won), while the AFL-CIO (a labor group) filed an *amicus* brief opposing the mandatory retirement age (and lost). A 1977 Harris Poll reported that a 58-to-32 percent nationwide poll majority disapproved of the mandatory retirement age for federal employees; as a result, nationwide public opinion also is classified as losing in this instance.⁵

Court Composition

Political scientists have considered many other explanations for Supreme Court decision-making beyond interest groups, public opinion, and the solicitor general. Judicial values are now the most common explanation for Supreme Court decision-making. Under the "attitudinal model" justices bring well-formed liberal-conservative values to the Court and then typically, albeit imperfectly continue to vote these values for the rest of their

Court tenure (Segal and Spaeth 1993; Segal and Cover 1989; Segal, Epstein, Cameron, and Spaeth 1995; Epstein, Hoekstra, Segal, and Spaeth 1998). Under this model, Supreme Court decisions chiefly result from changes in the Court's membership, particularly during those times when several older justices retire and are replaced with younger justices who differ ideologically from the former justices (Mischler and Sheehan, 1993 and 1994; Norpoth and Segal 1994; Stimson, MacKuen, and Erikson 1995). To test for over-time Court composition changes, two dummy variables (1, 0) were included for the Burger and Rehnquist Courts, time periods during which the number of politically conservative appointees increased. Both eras are predicted to be strongly negatively related to the likelihood that the Supreme Court will hand down a liberal decision.⁶

Case Circumstances

These 149 poll-matched decisions vary widely across the issues involved, making it impossible to consider a single narrowly-constructed set of "case facts." Three separate dummy variables were coded for cases that raised fundamental freedoms (Bill of Rights or Fourteenth Amendment, but excluding criminal rights) claims, economic issues, or crime-related issues. Most notably, the "preferred position" theory provides a clear rationale for liberal, counter-majoritarian decision-making in fundamental freedoms cases. Overall, a third (32%) of these 149 Supreme Court decisions considered involved fundamental freedoms claims, while 28 percent involved economic claims, and 30 percent involved crime-related issues; the remaining 10 percent of cases raised a wide variety of other issues. Since the Supreme Court may behave differently in highly-visible cases (Marshall 1989), a sixth dummy variable also was coded for cases that raised a "most important problem" in the often-repeated Gallup Poll item.⁷

Data Analysis and Results

Table 1 reports the full probit equation results when all 20 variables previously described are included as independent variables and with the Supreme Court's decision (coded as +1 for a liberal decision and 0 for a conservative decision) as the dependent variable.⁸ Overall, Supreme Court decision-making during the Warren, Burger, and Rehnquist Court eras is relatively predictable. While only half (50.3%) of these 149 decisions are politically liberal (the base rate), nearly three quarters (72%) of the decisions can be correctly predicted from the full probit model in Table 1.

Of most direct concern is the relative explanatory power of the predictors. As expected, the solicitor general's position is the single variable in

**Table 1. Explaining Supreme Court Decisions,
Full Probit Model Results**

	MLE	S.E.	MLE/S.E.
<i>Interest Groups</i>			
Civil liberties/free speech/media	.22	.24	.92
States/counties/cities	.22	.18	1.23
Civil rights/race	-.04	.30	-.14
Education	.22	.41	.53
Corporations/associations	.30	.25	1.18
Labor	.01	.42	.01
Legal	-.29	.39	-.74
Feminist/pro-choice	.68	.37	1.86*
Liberal religious	-.09	.37	-.23
Catholic/pro-life	.86	.41	2.09*
Conservative	-.05	.28	-.19
Law enforcement	.57	.40	1.43
<i>Solicitor General</i>	.39	.17	2.33**
<i>Public Opinion</i>	.21	.12	1.75*
<i>Court Eras</i>			
Burger Court era	-.78	.49	-1.55
Rehnquist Court era	-1.15	.51	-2.25*
<i>Case Circumstances</i>			
Most Important Problem	.01	.32	.04
Fundamental freedoms	.31	.35	.89
Crime-related	.22	.37	.60
Economic	.07	.32	.23
Constant = .78			
Number of Cases = 149			
Base rate = 50.3% (liberal)			
Percent correctly predicted = 74%			
Improvement over base rate = 47%			
-2LLR = (significant at .01)			
*Significance levels: *p = .05; **p = .01.			

Table 1 most strongly linked to the chances that the Supreme Court would hand down a liberal decision. Court composition is also clearly important. The Burger Court and, even more importantly, the Rehnquist Court are both negatively linked to the chances of a liberal decision. American public opinion also significantly predicts Supreme Court decision-making, even given the numerous other predictors included in the probit model.

The evidence for interest groups is more mixed, and it fully supports neither the conventional wisdom hypothesis nor the limited effects hypothesis. Two types of repeat-player interest groups, discussed further below, show a significant impact on Supreme Court decision-making—feminist and pro-choice interest groups and Catholic and pro-life interest groups. No significant effects appear for the remaining 10 types of commonly-active interest groups.

None of the variables measuring the type of case involved are strongly tied to the ideological direction of Supreme Court decision-making. Not even the variable measuring fundamental freedoms claims reaches statistical significance, perhaps reflecting the greatly diminished appeal of this judicial philosophy in recent years. The predictors reflecting criminal claims, economic claims, or whether a top public concern was involved are also statistically insignificant.

Clearly the probit equation in Table 1 can be greatly reduced. On both theoretical and empirical grounds, only five of the original 20 variables were included in reduced probit model in Table 2. The predictors in Table 2 include variables for Court composition (Rehnquist Court era), the solicitor general's position, American public opinion, and the two most strongly significant interest groups (feminist/pro-choice and Catholic/pro-life interest groups).

The reduced probit model (Table 2) suggests that only a few predictors, most of them based strongly in the existing literature, help explain when the U.S. Supreme Court will hand down liberal decisions. The solicitor general's position remains the single most important predictor. At the same time, American public opinion, the coming of the Rehnquist Court era, the

**Table 2. Explaining Supreme Court Decisions,
Reduced Probit Model Results**

	MLE	S.E.	MLE/S.E.
Feminist/Pro-Choice	.69	.34	2.05*
Catholic/Pro-Life	.73	.34	2.17*
Solicitor General	.45	.15	2.98**
Public Opinion	.19	.11	1.71*
Rehnquist Court Era	-.45	.23	-1.97*
Constant = .30			
Number of Cases = 149			
Base rate = 50.3% (liberal)			
% correctly predicted = 73%			
Improvement over base rate = 45%			
-2LLR = (significant at .01)			

position of feminist and pro-choice groups, and the position of Catholic and pro-life groups also significantly predict the modern Supreme Court's ideological choices. None of the remaining 15 predictors achieved statistical significance (at the .05 level) when added one at a time to the reduced probit model.

To explain the probit results in Table 2, assume a (hypothetical) case from the Rehnquist Court era with feminist/pro-choice groups taking a liberal position, Catholic/pro-life groups taking a conservative position, nationwide public opinion being closely divided, and the solicitor general taking no position. In this example, the probability of a liberal decision is 42 percent. Then if the solicitor general took a liberal position, the odds of a liberal decision rise to 60 percent, and they drop to 26 percent if the solicitor general took a conservative position. Then with a conservative solicitor general position and conservative public opinion, the odds of a liberal outcome further drop from 26 to 20 percent, and the same odds rise from 26 to 33 percent if public opinion is liberal. With a liberal solicitor general position and conservative public opinion, the odds of a liberal Supreme Court decision drop from 60 to 53 percent, and they rise from 60 to 67 percent with liberal public opinion.

Conclusion and Discussion

These results present the first evidence of the relative impact of interest groups, case circumstances, Court composition, American public opinion, and the solicitor general across a broad range of specific Supreme Court decisions. Only two of 12 major types of repeat-player interest groups' ideological positions significantly influenced Supreme Court decision-making. These results neither completely support the "conventional wisdom" hypothesis (that interest groups have great influence on Supreme Court decisions) nor the "limited effects" hypothesis (that they have no significant impact) (Epstein and Rowland 1991). Rather, a few interest groups appear to have found a path to influence that most other interest groups have not.

That only feminist/pro-choice and Catholic/pro-life groups both significantly influenced the modern Supreme Court's full written decisions may seem counterintuitive and merits further analysis. True, both groups have been relatively active in sponsoring numerous cases and in filing *amicus* briefs, and both types of groups appear to have experienced attorneys, as have many other interest groups. In part, these two very different types of interest groups can both significantly affect outcomes because they often take positions in different disputes, and they do not always oppose each other's positions.⁹ Further research would be welcome on this question.

Most interest group positions were not significantly tied to Supreme Court decision-making at the full written opinion stage. This does not deny that interest groups can still influence the judicial process in many other ways. Interest groups often are active and apparently influential during fights over judicial nominations. Interest groups may indirectly influence the Court by passing federal laws and thereby winning solicitor general support during an appeal. Groups may finance and support lawsuits that would have otherwise not been filed or appealed. Groups may file *amici* briefs during the *certiorari* stage to raise the odds that an appeal will win full Court review. On balance, though, most interest groups have very little influence on Supreme Court decisions at the full opinion stage.

The U.S. Solicitor General's position clearly has the greatest influence on the modern Court's decision-making. Including the positions of a dozen types of litigation-oriented interest groups, changing Court composition, American public opinion, and case circumstances does not diminish the enduring impact of the solicitor general's office, typically acting in defense of federal laws and administrative decisions. In large part, the impact of the solicitor general's position may also reflect the modern Supreme Court's norm of regime deference to federal laws, federal regulatory agencies, and the current regime's political positions (Eskridge 1991; Molot 2000; Shapiro 1964 and 1968; Sheehan 1990; Solomine and Walker 1992).

That some Supreme Court eras—such as the coming of the Rehnquist Court—strongly explain the Court's ideological direction is hardly surprising. Newly-appointed justices often bring very different ideological values to the Court than those of their predecessors, and they then typically vote those values throughout their remaining Court tenure (Epstein, Hoekstra, Segal, and Spaeth 1998). When several seats on the Court change within a short period of time (as occurred near the beginning of the Rehnquist Court era), considerable impact is exerted on the Court's decision-making. By the data presented here, the coming of the Rehnquist Court had as much impact on the Supreme Court's decisions as did a change in the solicitor general's ideological position. An activist Court—whether ideologically liberal (such as the Warren Court) or ideologically conservative (such as the Rehnquist Court)—has considerable affect the direction of American law and politics.

American public opinion also has a modest independent impact on Supreme Court decision-making even when case circumstances, Court composition, and the positions of major interest groups and the solicitor general are taken into account. Perhaps not surprisingly, this impact is less than the solicitor general's impact. By the example above, American public opinion has about one-third the influence of the solicitor general's position. Whether these results would be replicated using the “public mood” measure (Mischler and Sheehan 1993; Norpoth and Segal 1994; Stimson 1991 and 1999) is

unclear. Yet, by another comparison, American public opinion has a more significant impact than do many experienced, repeat-player litigants, such as civil rights groups, conservative public interest groups, or liberal religious groups.

Why public opinion effects exist is less readily-apparent, and an explanation may be offered only with caution. Several justices have argued that the Supreme Court either does or should reflect public opinion either on high-profile issues or for major poll trends. Chief Justice Rehnquist's (1986; 1987, 98) "sense and share" argument is a well-known example of this view as is Justice O'Connor's opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992). From a much earlier time, Justice Holmes "felt [a] necessities of the time" argument (Holmes 1881, 347).¹⁰ So is Justice Ginsburg's (1998) argument that "... the good judge ... is affected by the climate of the age." So is Justice Scalia's comment that "it's a little unrealistic to talk about the Court as though it's a continuous, unchanging institution rather than to some extent necessarily a reflection of the society in which it functions. Ultimately, the justices of the Court are taken from society ... (and) however impartial they may try to be, they are going to bring with them those societal attitudes" (quoted in O'Brien 2000, 343). At an earlier time, both the well-known dissent of Justices Black and Douglas in *Dennis v. U.S.*, 341 U.S. 494 (1951), at 580, and Justice Murphy's dissent in *Korematsu v. U.S.*, 323 U.S. 214 (1944), at 239-240, accused the Court of being unduly influenced by current public opinion.

To be sure, still other justices have questioned whether the Supreme Court should consider public attitudes on a case, or whether the justices can even accurately determine what public opinion is (Marshall 1989, 32-55). Even so, if only a few justices correctly perceive American public opinion and also believe that public opinion should at least sometimes influence the Court's decisions, that might be decisive on some decisions, particularly on closely-divided 5-to-4 or 6-to-3 votes (Flemming and Wood 1997).¹¹ Further, some justices may perceive that agreeing with contemporary public opinion increases the odds of compliance with the Court's decisions and lessens the odds that Congress will trim back or overturn its decisions (McGuire and Stimson 2000).

NOTES

¹Because of the diversity of these decisions and the wide variety of interest groups involved, individual interest groups were combined by type. Among the more active and better-known groups in each category are civil liberties/free speech/media (ACLU, People for the American Way); civil rights/race (NAACP, MALDEF); education (NEA, National Association of School Boards, AAUP); corporations/associations (Chamber of

Commerce); legal/bar associations (ABA); labor (AFL-CIO); feminist/pro-choice (NOW, Planned Parenthood); Liberal religious (B’Nai B’Rith, National Council of Churches); Catholic/pro-life (Catholic Conference); conservative (Eagle Forum, NRA); pro-law enforcement (Americans for Effective Law Enforcement, FOP). States/counties/cities are most often represented by state attorney generals. Intra-group conflicting positions on cases occurred only rarely, in less than five percent of all positions taken.

²In very rare instances (less than 5% of all positions coded and most often for the category of corporations and associations) different interest groups within a category took conflicting positions, usually in *amici* briefs. When this happened the group was classified as if it had filed no position. In most cases, the interest group’s position was determined by the *U.S. Reports* classification of *amicus* briefs; where that was not clear, the brief was read for its recommended outcome. Overall, the success rates of interest groups did not differ significantly depending on whether they directly sponsored a case (e.g., *Reno v. ACLU*, 521 U.S. 884 (1997)) versus participated by filing an *amicus* brief—winning in 48 versus 52 percent of cases, respectively, with interest groups participating directly in 22 percent of these decisions. Neither the number of interest groups participating in a case or solely the number of *amicus* briefs filed by types of groups were correlated with interest group success, as per Tables 1 and 2.

³For opinions during the Rehnquist Court era casting doubt on the value of polls or opinions that would exclude most polls as evidence, see *Planned Parenthood of Southern Pennsylvania v. Casey* 505 U.S. 833 (1992) at 959; *Stanford v. Kentucky* 492 U.S. 361 (1989); *Penry v. Lynaugh* 492 U.S. 302 (1989) at 335; *Ramdass v. Angelone* 530 U.S. 156 (2000) at 30-34; or *Florida Bar v. Went For It, Inc.* 515 U.S. 618 (1995) at 640-641.

⁴Poll results are available through the Roper Archive, now available on-line. For a listing of specific Warren and Burger Court decisions and for a more complete description of the coding methods, see Marshall (1989), or for Rehnquist Court decisions, see Marshall (2001). Past research (Marshall 1989) suggests that re-weighting the sample of decisions for salience or to match the number of Supreme Court decisions per type of issue or per term do not significantly affect the importance of different explanations for agreement with nationwide public opinion. All the polls reported here are based on nationwide samples of U.S. adults.

⁵“... (favor or oppose) ... abolishing the mandatory age for people to retire from employment in the federal government?” *Source*: Lou Harris and Associates telephone survey of 1,491 national adults, conducted 8/13-20/1977—58 percent favor, 32 percent oppose, 10 percent not sure. The American Association of Retired Persons and the National Council of Senior Citizens (not coded as a category in this analysis) also filed an *amicus* brief opposing the regulation. Overall, no statistical differences appeared by whether the polls were taken before versus after the announcement of the decision.

⁶Court composition effects have been examined in several ways. The year of the decision and the average (pre-Court) ideological position of the justices also were coded, but they were no stronger predictors than the dummy variables for the Burger and for Rehnquist Courts included here. If dummy variables were instead included for the Warren and Rehnquist Courts, only the Rehnquist Court variable would be statistically significant in Tables 1 or 2. For this sample of cases, the percentages of liberal decisions during the Warren, Burger, and Rehnquist Courts were respectively 87, 55, and 37.

⁷A case that raised any of the top five “most important problems” in the year it was decided was coded 1, otherwise 0.

⁸Four otherwise available Supreme Court decisions that had no clear liberal-conservative content were excluded from this analysis.

⁹Feminist/pro-choice and Catholic/pro-life groups took opposing positions in 14 percent of these disputes, and they took the same position in only one percent of these disputes. Feminist/pro-choice groups took positions in another eight percent of these decisions; Catholic/pro-life groups took positions in yet another nine percent of these decisions; and neither type took a position in the remaining 68 percent of these disputes. As a caveat to Tables 1 and 2, feminist/pro-choice groups never took a conservative (-1) position, and Catholic/pro-life groups rarely took a liberal (+1) position.

¹⁰Also from earlier times is Justice Cardozo's comment (1921, 168) that "(T)he great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by." Justice Frankfurter commented that "to a large extent the Supreme Court . . . (reflects) . . . the general drift of public opinion" (Murphy and Tannenhaus 1990, 895).

¹¹Overall, chief justices and politically moderate justices are the most responsive justices to public opinion, perhaps not surprisingly considering the role of the Chief Justice as the Court's chief spokesperson and lobbyist (Flemming and Wood 1997; Marshall 1989 and 2001).

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