

# Ideological Proximity and Support for The Supreme Court

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**Abstract** Although the Supreme Court is a countermajoritarian institution by design, many scholars have contended that without concrete powers, the Court relies on public support for legitimacy. Accordingly, it is important to understand the relationship between people's ideological proximity to the Court and their support for it. Existing empirical research suggests a correspondence between public opinion and the Court's positions, but these studies do not directly compare masses and elites in a common space. To address these issues, we conducted an original survey asking respondents about their positions on ten recently decided Supreme Court cases. This allows us to estimate the positions of citizens and justices on the same ideological scale. Further, while some existing theories of perceptions of judicial legitimacy suggest similar relationships between ideological distance and various types of support for the Court, we propose a theory of heterogeneous responsiveness which posits that citizens' ideological distance from the Court should be negatively related to their approval of and trust in the institution, but positively related to their support for its countermajoritarian function. Our empirical approach finds support for the theory.

**Keywords** Supreme Court · Ideology · Public opinion · Representation · Legitimacy

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Although the Supreme Court is often viewed as a countermajoritarian institution that is insulated from popular pressure by design (e.g. Dahl 1957; Epstein and Knight 1998; Mishler and Sheehan 1993), its members are both nominated and confirmed by highly accountable political actors. Understanding the ideological location of the Court relative to the views of citizens is therefore of both scholarly and general importance. The Court's perceived legitimacy in the public sphere may impact its effective functioning as an institution, given its weakness relative to the other two branches of the federal government and the ambiguous constitutional basis of its chief power of judicial review. As Hamilton wrote in *Federalist No. 78*: "The judiciary, on the contrary, has no influence over either the sword or the purse...It may truly be said to have neither force nor will, but merely judgment." Consequently, people's perceptions of the Court's judgment—often communicated by elected representatives—may be consequential. Accordingly, it is important to understand the relationship between citizens' support for the Court and their ideological proximity to its position, differentiating between various forms that this support may take.<sup>1</sup> Specifically, we examine four measures of support for the Court: trust, approval, and two indicators of support for the Court's countermajoritarian role as a protector of citizen rights against incursion from the popularly elected branches of government.<sup>2</sup>

We ask citizens to decide on a set of cases in a binary fashion as justices would, allowing us to place the public and the Court on a common scale. In doing so, we build on prior studies of public opinion and the Supreme Court by creating a novel measure of ideological distance between individuals and the Court. Further, we introduce a theory of *heterogeneous responsiveness*. We posit that the relationship between ideological distance and support for the Court depends on whether one is considering, on the one hand, trust in and approval of the Court or, on the other hand, support for the Court's role as protector of minority rights and its institutional legitimacy. Distance from the Court should be negatively related to trust and approval but positively related to support for the institution's countermajoritarian purpose and the legitimacy of its decisions. This is distinct from existing theoretical and empirical approaches in the literature. In sum, by comparing institutional actions and mass-level attitudes, we shed light on the representativeness of the Court as well as the behavioral foundations of the Court's perceived legitimacy.

The approach used here also sidesteps a common challenge in understanding the relationships between people's proximity to the Court and their feelings toward it. By comparing respondent positions with the actual stances taken by the Supreme

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<sup>1</sup> We use the term "ideology" as it is used by the literature on ideal point estimation (e.g. Poole and Rosenthal 1985). We do not mean to imply that citizens have an extremely well-structured ideology when it comes to judicial issues as is conceived by Converse (1964). For readers uncomfortable with the use of our term "ideological proximity," a functionally equivalent term would be "congruence" or "policy proximity."

<sup>2</sup> As explained below, we do not employ a full scale of what previous scholars have referred to as "diffuse support" (e.g. Caldeira and Gibson 1992). Accordingly, this form of support may be thought of as measuring a component of this more general conception of longstanding goodwill for the Court.

Court and its individual members, we avoid relying on perceptual measures, which may be influenced by feelings toward the Court. Therefore, our results avoid the problem of projection in which people who approve of the Court or otherwise have positive feelings toward it tend to perceive it as being ideologically closer to themselves, while those who hold negative feelings toward the Court view it as farther away. We also employ an instrumental variables design in order to isolate only the portion of respondents' perceptions of agreement with the Court that is related to the Court's actual decisions. Further, we conduct a series of robustness checks to assess whether the estimated relationships between ideological distance and support are confounded by persuasion (i.e. people who support the Court may be convinced by its rulings).

Our research design allows us to answer two main questions. First, how do the attitudes of citizens on judicial matters compare to the views of individual justices and the position of the Court as a whole as revealed through their decisions on specific cases? Second, what is the relationship between citizen judicial ideology and different forms of support for the Court? Addressing the first question provides improved, confirmatory evidence of previous scholarship positing the congruence of mass ideology and the Court's positions. To address the second question, we introduce a novel theoretical framework and set of empirical tests. By estimating the ideological positions of citizens and justices directly on the same scale, we find that almost all recent justices have held positions that could be described as ideologically extreme relative to the distribution of views among the American public. But while recent natural courts may be stacked with extremists, the position of the Court as a whole during this period is located quite close to the median American, suggesting that, despite its intentional isolation from popular pressure, the Court's decisions are not far out of line with public preferences. Further, we find that proximity to the Court is directly related to approval of and trust in the Court. Respondents who are ideologically closest to the Court's position tend to exhibit the highest levels of trust and approval. However, we conversely find that those closest to the Court median (i.e. ideologically moderate citizens) have the *lowest* levels of support for the Court's countermajoritarian function, consistent with our theory of heterogeneous responsiveness. This is sensible given that people who are at the center of the ideological distribution should be the most majoritarian. This varying effect of proximity on different types of support for the Court is a previously unreported result and demonstrates important nuances in mass attitudes towards the judicial branch that are likely to have important consequences for the public's feelings toward the institution and potentially for the Court's actual behavior as well.

This article is organized as follows. We first review the extant literature on public opinion and the Supreme Court and lay out our theoretical and empirical contributions. Next we explain our research design, which allows us to place citizens and justices on a common ideological scale by asking citizens to state their own views on the same cases that the Court has recently decided. We then present descriptive statistics produced from our estimation technique. We next explore how citizens' proximity to the Court is related to their support for the institution, testing the theory of heterogeneous responsiveness by separately examining four different

measures of support. We conclude by discussing the implications of our findings for the study of the Supreme Court and mass opinion on judicial matters.

## Previous Literature

This study addresses two main literatures on public opinion and the Supreme Court. The first literature generally analyzes aggregate data to examine the correspondence between public opinion and Supreme Court decisions. The second literature examines individual-level survey data to assess perceptions of judicial legitimacy and support. Our analysis leverages the strengths of both approaches to explore how ideological proximity affects support for the Court. Like the aggregate-level studies, we tie public attitudes to a set of decisions issued by the Court. Our survey design provides more precise and more appropriate measures of mass judicial ideology. Like the individual-level studies, we assess the relationship between policy attitudes and various measures of support for the Court. We build on this research by showing how the effect of ideological distance varies by conception of support.

Numerous studies of aggregate-level data have documented a correspondence between public attitudes and the actions of courts (e.g. Flemming et al. 1997; Giles et al. 2008; McGuire and Stimson 2004; Mishler and Sheehan 1993; Stimson et al. 1995; Casillas et al. 2011). Scholars have proposed various explanations for this association. Because the Court must presumably maintain institutional legitimacy as it does not have the power to enforce its own decisions, it cannot stray too far from public opinion (Epstein and Knight 1998; McGuire and Stimson 2004; Casillas et al. 2011). Even if people are not closely following the Court's activities (particularly in the case of non-salient decisions), the Court may take public preferences into account to avoid the "fire alarm" being pulled and the public protesting against unpopular rulings (Casillas et al. 2011). The mechanism may also be based in selection. Because justices are appointed by the President and confirmed by the Senate—two institutions subject to electoral pressures—the justices that are selected to serve may be expected to be roughly in line with the median voter (Krehbiel 2007). Others, however, have argued that the correlation is due to simultaneity. There may be trends and social forces that move all entities in a society—masses and elites—in the same direction (Baum 1988; Epstein et al. 2007; Giles et al. 2008). Finally, experimental studies have found that the Court may have the ability to persuade the public (e.g. Bartels and Mutz 2009; Mondak 1992; Cummings and Shapiro 2006; though see Egan and Citrin 2011 for an alternative account).

The strength of these studies is that they tie public opinion to a broad set of actual decisions made by the Court over long stretches of time. However, reliance on aggregate data has important limitations. First, public opinion is often operationalized using measures of public mood and liberalism as opposed to people's attitudes on the specific issues dealt with by the Court. Hence, one cannot know for sure whether justices and citizens are being properly compared on a common scale, only that they tend to move roughly in the same direction. Moreover, precisely because these studies do not leverage individual-level data, they cannot assess how individual variation in proximity to the Court is related to variation in support. The

macro-polity is viewed as a monolithic unit, masking individual heterogeneity in the population. As described below, our empirical approach borrows the strengths of these studies by analyzing a broad and diverse set of actual decisions made by the Court. However, we also ask individuals their opinions on these specific issues, as well as assessing various forms of support for the Court.

The second literature we address concerns determinants of public support for the Supreme Court. Perhaps the most extensive body of research on this topic is that of Caldeira, Gibson, and colleagues, who (among other results) have found that the Court enjoys broad support from the American public and is generally viewed as legitimate (e.g. Caldeira and Gibson 1992; Gibson and Caldeira 2009; Gibson et al. 2003a). This “positivity bias” and reservoir of goodwill stems from the powerful symbols the Court projects, particularly among people who are knowledgeable about the Court. Not even acrimonious and partisan decisions such as *Bush v. Gore* (2000) have done lasting damage to people’s faith in the judiciary as an institution (Gibson et al. 2003a, b). In contrast, other studies have analyzed how various Supreme Court decisions reduce support among citizens who disagree with the decision (e.g. Caldeira 1986; Grosskopf and Mondak 1998; Hoekstra 2000, 2003; Mondak 1992; Egan and Citrin 2011). Similarly, recent research has posited that perceived ideological distance from the Court reduces perceptions of legitimacy (Hetherington and Smith 2007). A recent article by Bartels and Johnston (2013) argues that people’s perceptions of ideological distance are inversely related to support for the Court. These studies, however, do not attempt to place citizens and justices on a common scale and instead examine individual issues separately. Moreover, survey respondents in these studies are not asked questions that approximate the decisions made by the Court. In essence, in previous surveys of public opinion on the Court, masses and elites are taking “different tests,” precluding direct comparability. Finally, people’s self-reports of their own distance from the Court may be biased indicators given that respondents may be engaging in projection.

We bridge the strengths of both literatures to examine the relationship between ideological proximity and support for the Court. Building on aggregate-level studies, we consider a diverse set of actions taken by the Court and attempt to compare these directly to public attitudes on the same issues. Like individual-level studies, we measure support for the Court, as well as people’s positions on specific issues. Similar to the aggregate studies, we find that the Court is generally representative of public opinion, but we can be more confident in this claim given the direct comparability of our measures. We also build on the individual-level studies by showing how ideological proximity differentially affects distinct types of support, a phenomenon we term heterogeneous responsiveness.

Hence, the contribution of this manuscript is twofold. First, we present more precise empirical tests of a commonly posited relationship between mass and elite preferences. Our novel estimation approach increases our confidence in previous results. Second, we posit a theory of heterogeneous responsiveness to explain how ideological distance from the Court varies in explaining individuals’ approval of and trust in the institution vs. their defense of the Court’s legitimacy as a countermajoritarian body. Our data are consistent with this theoretical explanation.

## Theoretical Overview

One of the major contributions of Gibson and Caldeira's research agenda is building on Easton's (1975) work and distinguishing between specific and diffuse support for the Supreme Court. Whereas specific support is defined as approval of the Court's action at a given time, diffuse support reflects the perceived legitimacy of the institution and its role in American government. We posit a theory of heterogeneous responsiveness under which people's level of support for the Court should be related to their ideological proximity to its position, but where the nature of this relationship varies markedly for different types of support. More specifically, we contend that ideological distance from the Court should be negatively related to approval of and trust in the institution but positively related to support for its countermajoritarian purpose.

This theory stems from two key aspects of the Court's behavior and its role in the American political system. On the one hand, in exercising judicial review, the Court rules on individual policy matters. For example, it either upholds or rejects legislation passed by the popularly elected branches. Further, its members are both nominated and confirmed by popularly elected representatives. In this sense, the Court can be viewed as yet another veto point in the political system. Approval and trust reflect citizens' support for the current actions and decisions of the Court. Accordingly, these aspects of support are more likely to be related to ideological distance as reflected in ideal point estimates derived from decisions and positions on recent cases. People further to the right and left of the Court should exhibit low approval and trust while those close to the Court median should be more supportive along these dimensions since the Court's decisions reflect the policies they would like to see implemented. This prediction accords with recent work by Gibson and Caldeira (2009), who find that negative advertising surrounding the nomination of Samuel Alito reduced the perceived legitimacy of the Supreme Court because it cast the nation's highest judicial authority as just another political institution. Similarly, when people are determining whether they approve of or trust the actions of the Court at a given time, they assess it as they would a political body such as Congress or the executive which hands down decisions that either uphold or strike down their favored legislation. Approval of the Court is in this sense similar to job performance for the president or Congress.

On the other hand, the Court is the primary institution tasked with defending the rights of minorities, often against the preferences of the majority. More fundamental support for the Court's countermajoritarian role in government reflects belief in the institution's responsibility to sometimes defend the rights of the minority against the actions of the popularly elected branches. This more abstract notion of support reflects more long-term considerations about how the Court as an institution supports rights as opposed to short-term considerations of how the current Court deals with the issues of the day. Therefore, we posit that ideological extremists far from the Court's moderate position should be most likely to express support for the Court's role protecting minority rights and its institutional legitimacy. Conversely, the views of the median citizen are well reflected in the popular branches of government via the electoral connection. These people are therefore most likely to

support majoritarian institutions and be least likely to support the Court as a countermajoritarian force.

On its face, heterogeneous responsiveness is counterintuitive because it predicts completely different shapes for the relationship between spatial distance from the Court and seemingly similar conceptions of support. Indeed, studies of positivity bias have found a weak to moderate relationship between specific and diffuse support (Gibson and Caldeira 1992; Gibson et al. 1998). In our data, the correlations between approval and the two countermajoritarian function variables are .09 and .34; the correlations between trust and the two countermajoritarian function variables are .11 and .35.<sup>3</sup> However, we argue that although “support for the Supreme Court” is sometimes broadly used as a phrase, citizens make fundamentally different judgments when forming narrow opinions of approval or trust as opposed to developing attitudes on broader notions of institutional function and legitimacy. Whereas the former are malleable and influenced by reactions to concrete actions take by the Court (given that the object of evaluation is a particular institutional body making decisions at a particular time), the former are more fundamental conceptions of democratic governance that are not easily moved. Accordingly, we expect to see very different functions mapping ideological distance to these divergent conceptions of support.

The idea of heterogeneous responsiveness represents a new way of looking at different types of support for the Supreme Court. While extant research has distinguished between specific and diffuse support in measuring levels of support for the Court, previous studies have not considered how ideological distance may differentially predict whether citizens exhibit various forms of support. We hypothesize that, consistent with Gibson and Caldeira’s reasoning, people do meaningfully distinguish between different conceptions of support, and that spatial distance should uniquely be negatively related to short-term considerations of the Court’s actions as opposed to opinions about the Court’s role in the system of American government.

## Research Design

### Data

Our survey, which was fielded as part of the 2010 Cooperative Congressional Election Study (CCES), asked 1,500 respondents how they personally would have voted on each of ten recent Supreme Court cases (the Online Appendix contains complete question wordings). Each of these items was presented as a dichotomous choice, following the way that the Supreme Court must dispose of cases. The survey was administered over the Internet by YouGov/Polimetrix in October 2010 to a national sample of adults. All reported proportions and distributions are produced using post-stratification weights. Except stated otherwise, response options were randomly rotated (see Online Appendix

<sup>3</sup> We use polychoric correlations to account for the fact that these are all ordinal (binary in the case of countermajoritarian function) variables that reflect some underlying continuous attitude spectrum.

for further details). The order of case questions presented to respondents was also randomized. The CCES included a battery of common content questions shared across all researchers who participated in the cooperative survey, followed by the individual researchers' studies. YouGov uses a technique called sample matching to draw representative samples of the US population from its panel of survey participants (Rivers 2006). This procedure draws samples from nationally representative probability surveys (e.g. the American Community Survey, the Current Population Survey, the Pew US Religious Landscape Survey) and then matches panelists to this target sample based on observable characteristics such as age, race, education, technology usage, and several other factors. Recent studies have shown that YouGov samples do as well as more traditional data collection techniques (e.g. random digit dial telephone interviewing) at matching known population benchmarks (Vavreck and Rivers 2008; Ansolabehere and Brian 2011).

### Case Selection

The ten cases included in our survey, all of which were decided by the Court under Chief Justice Roberts, cover a wide range of issues and generally deal with important and salient topics that could also be explained to respondents in a reasonable number of words. Although these ten cases do not constitute a random sample of all cases considered by the Court in this time period, we nonetheless believe the outcomes reflect the general judicial ideology of the members of the Court.<sup>4</sup> To address concerns that these ten cases may be highly unrepresentative of the Court's overall behavior, we estimated justice ideal points using the full set of cases decided during the Roberts Court as well as the ten cases that we surveyed respondents about. As explained below, these two sets of ideal point estimates are highly correlated.

A list of the cases is presented in Table 1 along with the percentage of respondents who agreed with the Court's decision in the case, the percentage who accurately identified the Court's position, and the percentage of respondents who *perceived* that they agree with the Court's decision. There is great variation along each of these three measures. Further, there is substantial heterogeneity across cases in accurate perceptions, with respondents sometimes doing better than chance and other times doing worse. More detailed tabulations of respondent positions can be found in Online Appendix Table 1.

There are clear limitations to the case selection process due to the fact that only a limited number of items could be included in the survey. Nonetheless, we believe it is important to be up front about these issues in the research design and their implications for the results. The number of cases is somewhat small, most deal with social/moral issues, and many are characterized by conservative public majorities. The fact that we

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<sup>4</sup> It is unclear how, short of literally taking a random sample of the cases heard by the Court, one could come up with a representative set of questions. Furthermore, because the Court, through the *certiorari* process, decides what cases it hears, it could be argued that even the Court's actual docket is not a representative sample of all cases it could possibly hear. It also seems possible that public opinion affects the Court's decision to hear certain cases, perhaps inducing some sort of proximity between the Court's ultimate decisions and the views of the public. While these issues are important, we do not directly address them in this paper.



**Table 1** Supreme court case survey questions

Case name	Subject	Decision	Survey respondent positions		
			Agreement	Correct perception	Perceived agreement
<i>Citizens United v. FEC</i> (2010)	Campaign finance	5-4	44.7 %	64.5 %	61.3 %
<i>US v. Comstock</i> (2010)	Sex offenders	7-2	54.5	33.0	65.8
<i>McDonald v. Chicago</i> (2010)	Gun control	5-4	71.4	76.9	73.6
<i>Salazar v. Buono</i> (2010)	Religious symbols	5-4	62.1	41.2	60.1
<i>Ricci v. DeStefano</i> (2009)	Affirmative action	5-4	89.6	76.3	79.4
<i>Crawford v. Marion County</i> (2008)	Voter ID	6-3	81.6	71.6	79.0
<i>Baze v. Rees</i> (2008)	Lethal injection	7-2	78.8	79.5	75.3
<i>Parents Involved v. Seattle</i> (2007)	Race and schools	5-4	49.4	54.0	70.8
<i>Gonzales v. Carhart</i> (2007)	Partial birth abortion	5-4	55.0	51.3	68.2
<i>Hamdan v. Rumsfeld</i> (2006)	Guantanamo Bay	5-3	30.4	38.1	67.0
Average (%)			61.8	58.6	70.1

All data are weighted

only asked about ten cases actually does not pose any problems in terms of the estimation, as we can still obtain fairly precise estimates of the median respondent (due to the large number of surveyed respondents) and the median justice (by leveraging the full docket of cases during the Roberts Court). Of greater concern is that the topic areas mainly deal with moral issues. There are of course important exceptions (e.g. *Citizens United v. FEC*, *Hamdan v. Rumsfeld*). We chose cases that the media covered extensively (see below) and these naturally are topics dealing with social issues as opposed to more arcane cases on business or economic issues, for instance (Liptak 2013). Given that people mainly learn about the Court’s activity via these salient cases, they are precisely the subset to use in examining the relationship between ideological distance and support. On many cases, there are large conservative public majorities, but there are exceptions (e.g. *Citizens United v. FEC*, *Parents Involved v. Seattle*, *Gonzales v. Carhart*) as well as cases where the Court ruled against the conservative public majority (e.g. *US v. Comstock*, *Hamdan v. Rumsfeld*).

### Case Wording

In writing the items on specific cases, we faced two main issues. First, we wanted to accurately describe the main issue(s) of tension in the case. Second, we sought to

present this information plainly enough to be easily understood by our survey respondents. Of course, one could have worded cases in different manners or have selected different cases. Accordingly, we construct our estimates using multiple cases. We also show that our results are robust to the exclusion of any individual case, suggesting that the conclusions we reach are not sensitive to any particular question wording or selected case.

Obviously, a short, simple survey question does not perfectly mirror the intricacies of the facts in a given Supreme Court case or the subtle legal distinctions that the Court often considers. We do not assume that a survey response to a given question is equivalent to the complex procedures that the Court undertakes to reach a decision in the corresponding case. Cases involve complex justifications and are often marked by concurrences that exhibit complexity beyond the ruling issued by the Court. Indeed, judicial opinions are often viewed by scholars in terms of doctrine and not disposition (e.g. Lax 2011). For our estimates to represent meaningful comparisons of the views of citizens and the decisions of the Court, it suffices to assume that survey respondents would generally have preferred the Court to cast a decision in line with their own stated position on each case.

### Perceptions of Court Decision Making

In addition to asking people how they would vote on these ten cases, we also asked them how they thought the Supreme Court would vote on each case. This allows us to not only assess the relationship between actual Court decisions and citizen preferences, but also how people's attitudes towards the Court are related to their perceptions of what the Supreme Court does. These questions allow us to follow the literature on issue voting in Congress (e.g. Ansolabehere and Jones 2010), and assess whether perceptions meaningfully differ from reality in terms of explaining the relationship between proximity and support.

It should be noted that these perception items are not intended as measures of respondent knowledge about the Court. In fact, Martin et al. (2004) find that a panel of legal experts including former Supreme Court clerks, legal academics, and others correctly predicted <60 % of the outcomes from the Court's October 2002 term, demonstrating that high levels of knowledge about the Court do not imply strong abilities to predict its decisions. Instead, we treat these items as indicators of respondents' perceptions of the overall ideological position of the Court, assuming that respondents' perceptions of the Court's position on specific cases are generated from their beliefs about the Court's degree of liberalism or conservatism.

### Scaling Respondents and Justices

Based on all cases decided between October, 2005 and June, 2010 (beginning with the appointment of Chief Justice Roberts), we estimated the ideology of all eleven justices who heard cases during this period in a one-dimensional ideological space. We also include the Court as a whole as a separate voter in these data in order to estimate its overall position. To do this, we code the Court as agreeing with the

majority disposition on each case.<sup>5</sup> We also separately estimate the ideological locations of each of the first three Roberts natural courts by including them as “voters” whose votes are determined by the majority decision on each case.<sup>6</sup> The Court changed composition with the retirements of Associate Justices Sandra Day O’Connor and David Souter and with the respective appointments and confirmations of Justices Samuel Alito and Sonia Sotomayor. In our study, we did not ask about any cases voted on by the most recent natural court formed by the retirement of Justice John Paul Stevens and the appointment of Justice Elena Kagan, who did not decide any cases during the 2009/2010 term.

To jointly estimate the ideology of CCES respondents, justices, the Court as a whole, and the three natural courts, we followed the approach introduced by Clinton et al. (2004). A two-parameter ideal point model is assumed in which the probability of a given actor, whether a respondent, justice, the Court, or a specific natural court, agreeing with the Court’s majority on the disposition of a given case is assumed to be

$$P(v_{ij} = 1) = \Phi(x_i\beta_j - \alpha_j)$$

where  $v_{ij} = 1$  when actor  $i$  agrees with the majority on case  $j$  and equals zero when he or she disagrees,  $x_i$  is actor  $i$ ’s ideal point (ideological position) and  $\beta_j$  and  $\alpha_j$  are the discrimination and difficulty parameters, respectively, for case  $j$ .<sup>7</sup> This model is estimated through a Gibbs sampling algorithm using the `MCMCirt1d` function in the `MCMCpack` R library.<sup>8</sup> In order to identify the model, the restriction is imposed that estimated respondent ideal points have mean zero and standard deviation one and that higher (more positive) ideal points indicate more conservative ideological positions.<sup>9</sup> The key quantities of interest from the model will be the ideal points  $x_i$  for respondents, the Court, and individual justices.

<sup>5</sup> Strictly speaking, the inclusion of the Court’s majority position and each justice as a separate voter violates the conditional independence assumption of the ideal point model used. The results, however, are unaffected by this, with the estimates obtained by excluding or including the individual justices being correlated at well above .999. We therefore include these actors to provide estimates of the Court’s position without having to assume that the Court’s location corresponds with that of its median member.

<sup>6</sup> The votes of each natural court on cases that were decided during other natural courts are treated as missing, just as they are when a specific justice does not cast a vote on a given case.

<sup>7</sup> Votes for those who do not cast votes on a case, either because they skipped a survey question, recused themselves from consideration on the Court, or were not sitting on the Court at the time of a decision, are treated as missing.

<sup>8</sup> We use the function’s default settings for prior distributions, which assume independent standard normal priors on all ideal points  $x_i$  and independent normal priors with mean zero and variance 4 on all case parameters  $\beta_j$  and  $\alpha_j$ . The sampling algorithm was run for 1,100,000 iterations, with the first 100,000 iterations discarded and the remaining iterations thinned to save every 250th iteration, leaving a total of 4,000 iterations stored. As pointed out by Ho and Quinn (2011), item response models using “bridging” observations to link actors across different institutions can suffer from multimodal posterior distributions. In order to orient the ideological space appropriately, we restricted the ideologies of Justice Stevens to be negative and that of Justice Thomas to be positive. Furthermore, we restricted the ideologies of respondents who gave consistently liberal (conservative) responses to the surveyed cases to be negative (positive).

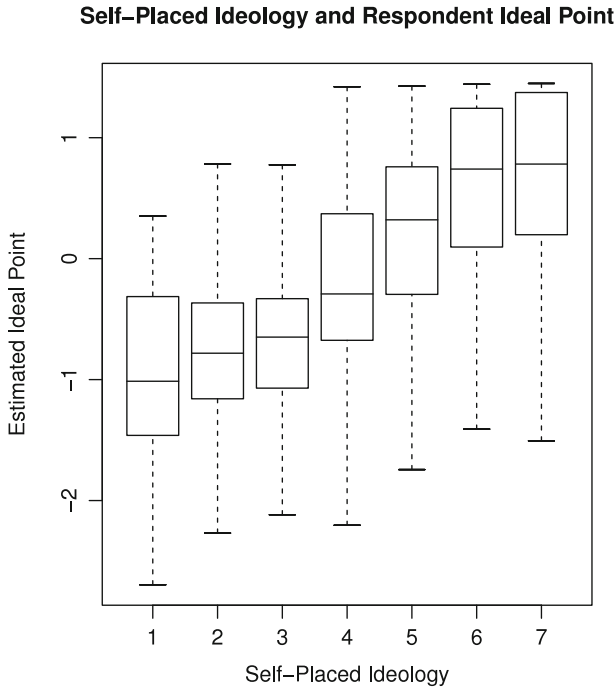
<sup>9</sup> The model is run in an unidentified state and the identifying restrictions are imposed afterward through post-processing each iteration.

The unidimensional structure assumed here for judicial ideology is necessarily a somewhat restrictive one. For example, Lauderdale and Clark (2012) introduce a different approach that allows justices' positions to vary across issues, even going so far as to identify the median justice separately for each individual case and concluding, among other things, that each justice serves as the median in at least some cases. We take a different, more standard, approach here because we are interested in identifying and analyzing what we might term the "primary" or "predominant" dimension structuring the judicial preferences of the Court and the American public. It should be noted that, in addition to providing a more parsimonious conception of ideology, the single-dimensional structure explains 80 % of the variation in case positions, and the addition of a second dimension provides a relatively small increase in explanatory power to 82 %.<sup>10</sup> Previous research has focused on the position of the median justice as a measure of the overall ideological position of the Court, motivated by the fact that the Court median is pivotal for most dispositional outcomes if not for concurrences (e.g. Martin et al. 2005; Anderson and Tahk 2007). By contrast, as described above, we include the Court as a separate actor in our statistical model in order to estimate its position without having to make strong assumptions about the median being always pivotal. In practice, though, this is largely inconsequential as evidenced by the nearly identical estimates for the Court's overall position and that of its median voter (see Fig. 3 below).

As shown in Fig. 1, the ideal points seem to correlate strongly with respondents' own self-reported ideology, a basic face validity check for our estimation procedure. This is not surprising since these issues would be ones that we expect to tap the traditional liberal–conservative dimension. These results, however, provide reinforcement of the idea that the estimated dimension for judicial ideology is both meaningful and strongly related to respondents' general political views.

Additionally, as noted above, the ideal points of justices and respondents are similar when estimated using only our ten selected cases or using the entire set of cases decided during the Roberts Court despite the relatively small number of surveyed cases for which we observe the votes of some justices (e.g. only four of the surveyed cases are voted on by Justice Sotomayor and by the third Roberts natural court). As shown in Fig. 2, there is a very strong relationship between these two sets of ideal points, assuaging concerns that the ten cases we asked about are unrepresentative of the actions of the Court. Respondent ideal points line up quite closely across these two scalings, correlating at nearly .99. The estimated positions of justices are also quite similar. In particular, the position of the Court as a whole, which is the central quantity of interest in many of our analyses, is estimated to have nearly identical positions relative to those of respondents in both of these sets of scalings. It should be noted that even if these ten cases were completely representative of the Court's full docket over this time period, we would expect there to be significant random variation due to the fact that we are, under one approach, estimating ideal points based on only ten observed votes. Casting one or two uncharacteristic votes, for example, can have a large effect on these estimates

<sup>10</sup> These numbers are calculated using the `predict.ideal` function in the `pscl` R library (Jackman 2009). The corresponding numbers for one- and two-dimensional models only on justice votes are 90 and 94 %, respectively, and for models fit only to respondent positions are 78 and 82 %.



**Fig. 1** Relationship between estimated respondent ideal points and self-placed ideology. Pane shows boxplot of estimated respondent ideal points against stated seven-point ideology

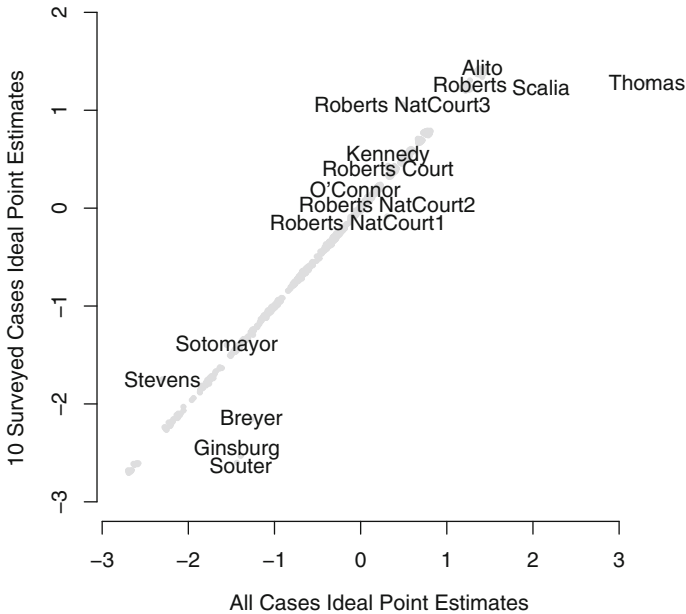
when using smaller samples. While this will be expected to wash out in the aggregate when we look across 1,500 respondents, the small number of justices makes it especially important that we utilize all available information to learn about their ideological locations. By using the whole set of cases decided over this time period, we are able to make more precise inferences about the positions of each justice and the Court as a whole.

**Dependent Variables**

We measured four distinct aspects of support for the Court. We first asked two questions tapping “satisfaction with the immediate outcome of the institution” (Gibson et al. 2003a, 356).

*Approval of the Court*

First, we asked: “How much do you approve of the performance of the Supreme Court?” (response options: “strongly approve,” “somewhat approve,” “somewhat disapprove,” and “strongly disapprove”).



**Fig. 2** Correspondence between ideal point scalings based on all cases and ten surveyed cases. Gray dots plot estimated respondent ideal points, with justice names plotted at their estimated ideal points. Names have been jittered to avoid overplotting

### *Trust in the Court*

Second, we asked: “Do you agree or disagree with the following statement: The Supreme Court can usually be trusted to make decisions that are right for the country as a whole?” (response options: “strongly agree,” “somewhat agree,” “somewhat disagree,” and “strongly disagree”). Although trust is sometimes conceived of as a measure of diffuse support, research on political trust has found that is often has ideological bias. In other words, asking about trust in political institutions does not generally get at trust more broadly but instead people’s specific support of the particular institution being studied (Gibson 2011). For instance, when Democrats (Republicans) control the White House, Republican (Democratic) survey respondents are less trusting of government (Citrin 1974).

The other two questions are intended to go beyond whether respondents approve of or are content with the decisions and performance of the current Court, and instead assess whether they think that the institution’s role and position in American government is appropriate. We specifically focus on the minority function of the Court, or its role as a check on the popularly elected branches of government. This is a particular aspect of what scholars have called “diffuse support” (Caldeira and Gibson 1992).

### *Minority Rights*

We first asked: “Which of the following two statements comes closer to your own point of view: (1) we should respect the rights of the majority and therefore the President and the Congress should have the power to enact the laws they want; (2) we should be careful of protecting minority rights and therefore the Supreme Court should have the power to overturn laws enacted by the President and Congress.”

### *Institutional Legitimacy*

Second, we asked: “Do you agree or disagree with the following statement: the US Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision” (response options: “strongly agree,” “somewhat agree,” “somewhat disagree,” and “strongly disagree”). This question is borrowed from Gibson et al. (2003a). Descriptive statistics for these four dependent variables are presented in Table 2.<sup>11</sup>

### *Conditioning Variables*

We also asked a series of questions to assess partisanship and knowledge of the Supreme Court, two variables we condition on in the analyses below.

### *Party Identification*

The CCES party identification item followed the standard, branched procedure used by the American National Election Study of first asking respondents: “Generally speaking, do you consider yourself a Republican, a Democrat, an Independent, or what?” and then asking stated partisans to report the strength of their attachment (“Do you consider yourself a strong or not strong Republican/Democrat?”) and non-aligned respondents to report whether they lean towards one party (“Are you closer to the Republican Party or the Democratic Party?”). Following Keith et al. (1992), learners are pooled together with partisans in the subsequent analyses.

### *Knowledge of the Court*

We asked three questions to assess how much knowledge people had about the Supreme Court: (1) “To the best of your knowledge, how many justices sit on the Supreme Court?” (response options: “seven,” “eight,” “nine,” “ten,” “eleven,” “not sure”); (2) “To the best of your knowledge, how are justices chosen for the Supreme Court?” (response options: “elected by voters,” “chosen by the president and confirmed by Congress,” “chosen by Congress and confirmed by the president,” “not sure”); (3) “To the best of your knowledge, who is the Chief

<sup>11</sup> One potential concern is that by asking about the issues before support, we are priming respondents to think about proximity, thereby inflating the relationship between proximity and support. However, as explained below, this cannot explain the divergent results among the four measures of support for the Court.

**Table 2** Descriptive statistics for Supreme Court support items

	Full sample	Republicans	Democrats	Independents	High knowledge	Low knowledge
<b>Approval</b>						
Strongly approve (%)	4.4	3.6	5.6	2.1	3.0	5.2
Somewhat approve	55.4	51.7	60.3	52.0	56.2	55.0
Somewhat disapprove	30.8	34.5	25.3	37.3	32.1	30.1
Strongly disapprove	9.4	10.3	8.9	8.7	8.7	9.7
<i>N</i>	1,499	645	654	194	733	766
<b>Trust</b>						
Strongly agree (%)	5.7	1.9	7.6	9.2	3.2	7.1
Somewhat agree	52.9	54.1	55.8	44.0	57.5	50.5
Somewhat disagree	33.9	35.8	30.7	38.5	32.8	34.5
Strongly disagree	7.4	8.3	6.0	9.3	6.6	7.9
<i>N</i>	1,500	645	654	195	733	767
<b>Minority rights</b>						
Respect rights of majority (%)	40.5	40.0	39.2	44.7	34.7	43.7
Careful about protecting minority rights	59.5	60.0	60.8	55.3	65.4	56.3
<i>N</i>	1,495	640	654	195	731	764
<b>Institutional legitimacy</b>						
Strongly agree (%)	15.3	13.6	17.0	13.5	22.4	11.4
Somewhat agree	44.0	42.8	48.2	37.0	47.5	42.1
Somewhat disagree	26.9	27.3	24.9	31.0	20.3	30.4
Strongly disagree	13.9	16.3	10.0	18.5	9.8	16.1
<i>N</i>	1,499	644	654	195	733	766

All data are weighted

Justice of the Supreme Court?” (response options were Chief Justice Roberts and the ten associate justices who served under him along with “not sure”). The order of the names of justices were randomized. Roughly half of respondents (48.9 %) answered all three of these questions correctly, making this a useful cutoff for bifurcating respondents into low- and high-information groups.

### Control Variables

Our goal in this paper is to examine the descriptive relationship between ideological proximity and support for the Court. Accordingly, we do not want to clutter the model with extraneous regressors (Achen 2002, 2005). Nonetheless, for readers concerned that ideological proximity is spuriously tapping some omitted variable, we have estimated versions of our model including a host of demographic control variables such as age, education, race, and gender (see Online Appendix Table 2; Online Appendix Fig. 1). The substantive and statistical significance of our results



are unchanged, and the point estimates are stable across various specifications as discussed below.

Finally, two well-known concerns in studying spatial distance and public opinion are the issues of projection and persuasion. In other words, people may project their own attitudes onto the Court (or be persuaded by the Court's decisions) if they support the institution. We address these issues in several ways. As explained above, in examining the relationship between ideological distance and support, we compare people's opinions to the actual decisions of the Court, meaning that we are not asking them about their subjective perceptions. Second, when we do examine their subjective perceptions, we adopt an instrumental variables approach to deal with projection as explained in further detail below. Third, we show that the results are not moderated by either issue salience or knowledge of the Court's decisions, meaning that persuasion is unlikely to explain the results, particularly the direct relationship between ideological distance and support for the Court's countermajoritarian role.

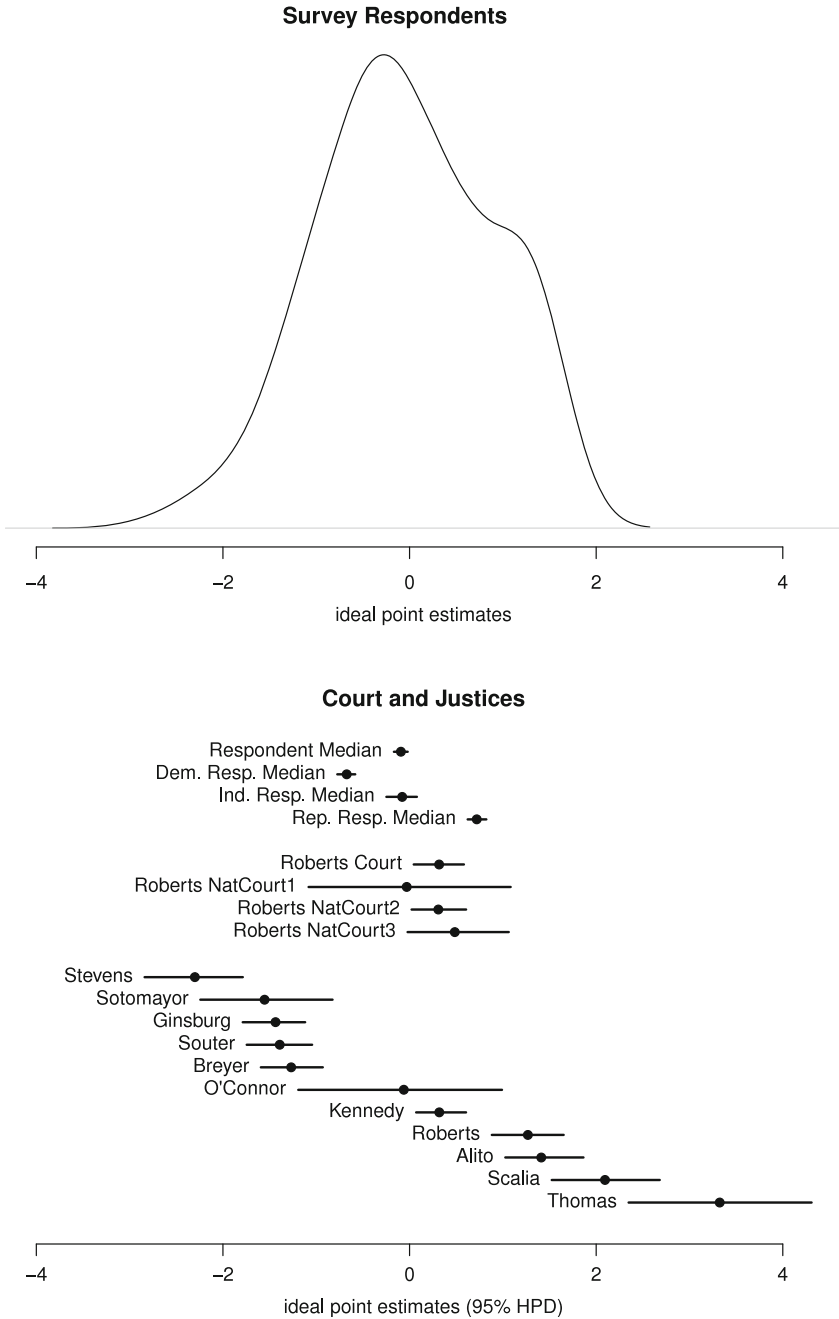
## Descriptive Statistics

We first discuss the ideal point estimates, comparing the distribution of ideology on the Court with that in the general American public. In Fig. 3, we plot both the density of estimated respondent ideal points along with the ideal point and 95 % highest posterior density (HPD) region for: the median respondent, the median Democratic/Independent/Republican respondent, the Court's majority opinion (along with the three natural courts separately), and the eleven individual justices.<sup>12</sup>

Perhaps the most striking result in Fig. 3 is the ideological extremism of the vast majority of justices in relation to the distribution of ideology among respondents. Although the Court is insulated from political pressure, its justices are appointed by the president and confirmed by the Senate, both of which are clearly accountable to the public. Therefore, it may be expected that its members would hold positions that generally reflect the opinions of moderates in the American electorate. This, however, is clearly not the case. Nine out of the eleven justices analyzed here hold ideological positions that are either well to the left or well to the right of the median respondent. In fact, all justices except O'Connor and Kennedy are well over one standard deviation away from the median of the distribution of respondent ideology. To put it differently, 76 % of respondents are estimated to hold ideologies between Breyer and Roberts, who are the two next most moderate justices during this period.

There may also be reason to expect that Supreme Court justices may be reflective of the median partisan of the appointing president's party rather than the median of the electorate as a whole given intraparty pressures and threats in primaries (Brady et al. 2007). Contrary to this expectation, however, these same nine justices out of the eleven are all more extreme than even the median Democratic or Republican partisans in our sample, with most of them being much more extreme.

<sup>12</sup> HPDs are a Bayesian analogue for confidence intervals. Formally, they are the smallest region that has at least 95 % probability of containing the true parameter value according to the posterior distribution for the unknown parameters given the data.



**Fig. 3** Respondent, Court and justice ideal point estimates. Top pane plots density of estimated respondent ideal points. Bottom pane plots estimated ideal points (posterior means) for the median respondent, for Democratic, Independent and Republican respondent medians, for the Court majority over the entire dataset, for each of the first three Roberts natural courts, and for each individual justice. Horizontal bars indicate 95 % HPDs

We can also compare Supreme Court ideology with that of the general public by examining where the Court and its various members would fall in the distribution of citizen ideology. For example, it is estimated that 39 % of respondents are more conservative than the Court while 61 % are more liberal, which suggests that the decisions of the Court generally fall relatively close to the ideological center of the American public, albeit somewhat more conservative than the median. This is not true, however, for all individual members of the Court. Justice Thomas, for example, is estimated to be more conservative than over 99 % of respondents, while Justice Scalia is estimated to be to the right of all but 4 %. It is further estimated that only 3 % of respondents are more liberal than Justice Stevens.

The position of the Court, whether estimated for any individual natural court or for the majority position across the entire time period in our study, falls quite close to the estimated position of the median respondent. As shown in Fig. 3, the ideal point of the median respondent is located at  $-.01$  with the Court's majority position slightly to the right of that position. This suggests that the Court is actually rather representative of the median voter's preferences despite having no direct electoral connection to the public and most of its members holding extreme positions. The estimated ideological distance between the median respondent and the Court's position is  $.32$ , less than one third of the standard deviation for respondent ideal points.

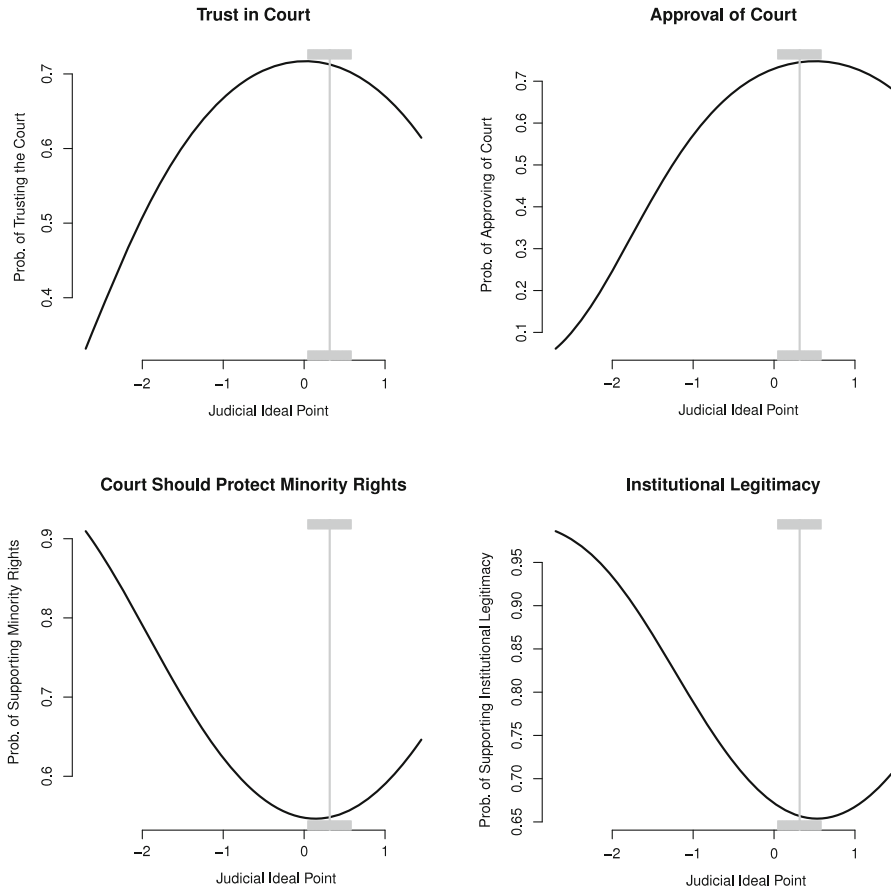
## Results

In Fig. 4, we plot the predicted probabilities of exhibiting support for the Court against respondent ideal points based on the ordered and binary probit models shown in Table 3, each predicting one of the four survey questions discussed previously. These models predict respondents' answers to each question using their ideal points and their ideal points squared.<sup>13</sup> Pane (a) of the figure shows that respondents whose views are most similar to the Court exhibit the highest trust in the Court, with trust decreasing as respondents move further away from the Court's location (in both directions). However, the lowest trust in the Court is among the most liberal respondents. As shown in Fig. 4b, a similar pattern exists for approval of the Court's performance.<sup>14</sup>

Conversely, we observe very different patterns when analyzing support for the Court's minority function as the dependent variable. As shown in Fig. 4c, respondents whose ideal points are near the Court are actually *least* likely to say that the Court should protect minority rights by overturning the actions of Congress and the President. This is a striking finding—those who agree with the specific

<sup>13</sup> Models for each of the four questions were also run including ideal point cubed (see Online Appendix Table 3; Online Appendix Fig. 2). Although the quadratic terms are highly significant in each of the models in Table 3 as well as those including cubic terms, none of the cubic terms achieved conventional statistical significance levels. Nonparametric loess fits also confirmed the general shape of these relationships. These results are available from the authors upon request.

<sup>14</sup> Note that the quadratic term is highly statistically significant in all models, meaning that the quadratic model represents an improvement in model fit above a simple linear specification.



**Fig. 4** Relationship between respondent ideal points and measures of support for the Supreme Court. Panes show predicted probability of giving supportive responses to questions regarding support for the Supreme Court. Predicted probabilities are from ordered probit models (binary probit in the case of the minority rights question) predicting support with respondent ideal point and respondent ideal point squared. Probability of support is defined as the probability of giving supportive (“strongly agree” or “somewhat agree” or “strongly approve” or “somewhat approve”) responses given the model’s estimates. Grey vertical lines show estimated position for the Court, with gray bars at top and bottom of the plots indicating 95 % HPDs

actions of the Court are least likely to support the Court’s institutional role. Similar results emerge when looking at the institutional legitimacy item—respondents’ agreement with the statement that the Court should have the right to say what the Constitution means, even when a majority of Americans disagree with its rulings (see Fig. 4d). Again, the people who are least supportive of this statement are those who hold views that are the closest to the Court’s actual position. Respondents with positions farther from the Court are actually more supportive of the Court’s countermajoritarian purpose.

Consistent with the theory of heterogeneous responsiveness, this pattern makes sense. It is precisely the median voter who should be a majoritarian. Although

**Table 3** Probit models of support for the Supreme Court

	Trust	Approval	Minority rights	Institutional legitimacy
(Intercept)	–	–	.12 (.04)	–
Ideal Point ( $x_i$ )	.00 (.05)	.22 (.05)	–.04 (.03)	–.18 (.09)
Ideal point squared ( $x_i^2$ )	–.14 (.04)	–.22 (.04)	.15 (.03)	.17 (.04)
Cutpoint 1	–2.55 (.11)	–2.54 (.11)	–	–1.82 (.09)
Cutpoint 2	–.57 (.07)	–.61 (.07)	–	–.44 (.07)
Cutpoint 3	2.72 (.12)	2.93 (.13)	–	1.59 (.08)
Log likelihood	–1580.0	–1542.2	–989.3	–1,893.7
<i>N</i>	1,500	1,499	1,495	1,499

Estimated coefficients and category cutpoints, with standard errors underneath for ordered probit models predicting trust, approval and institutional legitimacy as well as binary probit model estimates for support for the Court’s power to overturn laws to protect minority rights

conservative respondents exhibit somewhat more support for the Court’s institutional role, we observe the highest levels among liberals, precisely those respondents who did not exhibit specific support for the Court. Given the general right tilt of the contemporary Court, it is unsurprising that liberals disapprove of the Court’s specific actions but are most sensitive to minority rights. This finding is not simply the result of liberal respondents disagreeing with the Court but supporting minority rights. If the results were simply driven by this phenomenon, then we would not observe the significant quadratic relationship illustrated in Fig. 4c, d and found in the regression models. Rather, extremists on both ends of the distribution exhibit more institutional support for the Court than those in the center. Additionally, as explained in the next section, these results are also not an artifact of extremists being more politically sophisticated and therefore more tolerant (Sullivan et al. 1994). This relationship is also seen *among* citizens with a high level of knowledge about the Court. Further, the relationships between proximity and the different types of support look similar among both self-described moderates and non-moderates. This is consistent with: (1) the fact that the Court is representative of the median voter and the majority opinion; and (2) the median voter is generally less supportive of countermajoritarian institutions.

We also explored how *perceptions* of the Court’s ideological distance are related to support. Estimating this relationship is tricky due to the problem of projection. Specifically, we may worry that people’s perceptions of the Court’s position are determined by their support for the Court and not vice versa. For example, someone who trusts or approves of the Court, perhaps at least in part for non-ideological

**Table 4** Ordinary least squares estimates of perceived distance from the Court

	Coefficient (SE)
Intercept	-.05 (.01)
Actual proximity	1.05 (.004)
Standard error of regression	.25
R-squared	.97
<i>N</i>	1,500
F-statistic	50,680

reasons, may think that, because the Court is competent, legitimate, or trustworthy, it must be ideologically close to the individual's own views. The issue of projection likely cannot explain the direct relationship between distance and support for the institution's role noted above, but it could potentially pose problems for models that ignore this potential endogeneity. To address this possibility, we employ a technique previously used by Ansolabehere and Jones (2010) which leverages an instrumental variables approach to address the issue of projection. Because Court decisions can be expected to only affect respondents' views through respondents' perceptions of these decisions, actual proximity can be used as an instrument for perceived proximity. Thus, via two-stage least squares, we can estimate the relationship between instrumented perceived proximity and support cleaned of "projection." Because the Court's actual positions should only affect support via people's perceptions, this technique satisfies the exclusion restriction requirement of instrumental variables regression (Sovey and Green 2011). The second requirement of instrumental variables regression is that the instrument must strongly predict the endogenous variable in the first stage. As shown in Table 4, actual proximity is an extremely strong predictor of perceived proximity, with the F-statistic from the regression greatly exceeding commonly used cut offs for instrument strength (Staiger and Stock 1997).

In order to obtain estimates of respondents' perceptions of the ideological position of the Court on the same scale as their individual ideological positions and the actual positions of justices and the Court, we ran an ideal point model identical to the one described above, but this time also including respondents' perceptions about the decisions of the Court. It is assumed that each respondent's perceptions are dictated by the same ideal point model as are their own positions, but with the ideal point underlying their perceptions equal to their perception of the ideological position of the Court. These estimates are then used to calculate respondents' perceived ideological proximity to the Court—the squared difference between their own ideal point and their perception of the Court's position—as well as their actual ideological proximity to the Court—the squared difference between their own ideal point and the Court's actual position. The relationships found between perceived proximity and support for the Court in these instrumental variables analyses mirror earlier findings based on actual proximity. As shown in Table 5, perceived

**Table 5** Instrumental variables models of support for the Supreme Court

	Trust	Approval	Minority rights	Institutional legitimacy
(Intercept)	2.61 (.02)	2.65 (.02)	.56 (.02)	2.62 (.03)
Squared perceived distance from Court	-.03 (.01)	-.10 (.01)	.04 (.01)	.10 (.02)
Standard error of regression	.72	.71	.49	.91
N	1,500	1,499	1,495	1,499

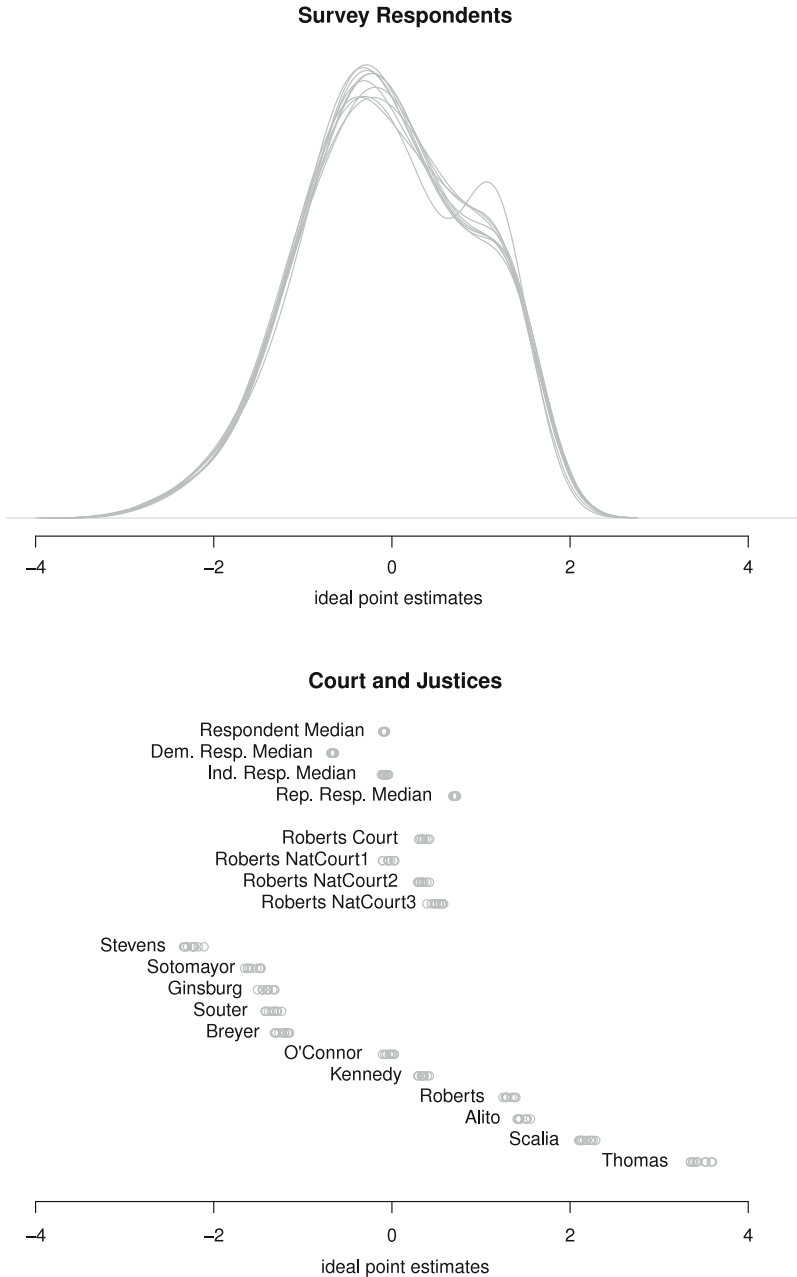
Estimated coefficients, with standard errors underneath in parenthesis, from instrumental variables regressions predicting support measures for the Court, using respondents’ squared ideological distance from the Court as an instrument for respondent’s squared perceived ideological distance from the Court. First stage results presented in Table 4 above

ideological distance from the Court is negatively and significantly related to trust and approval, whereas it is positively and significantly related to support for the Court’s countermajoritarian function. Hence, perception and reality with respect to proximity function in similar ways. This suggests that even after removing possible endogeneity that may result from respondents’ approval affecting their perceptions of the Court, our findings about the effects of ideological proximity on support remain consistent and strong.

**Robustness Checks**

A first concern about the ideology estimates presented here is whether any of the ten individual Supreme Court decisions included in our survey exert undue influence on the ideal point scalings we produced. In order to evaluate this possibility, we re-ran our scalings ten times, each time omitting one case. This allows us to determine whether our results are the consequence of including any individual decision or wording any individual case in a particular manner. Figure 5 shows the results of these ten scalings. The top pane plots the densities of estimated respondent ideal points, with each scaling represented by a gray line. The results show that the basic shape of these distributions is largely unaffected by the omission of any individual case. The bottom pane of the figure shows the estimated positions (posterior means) for each justice’s ideology and the positions of various Courts as well as the estimated medians for Democrats, Independents, Republicans, and all respondents. Again, these estimates are only slightly different when omitting each case. Overall, then, the results clearly show that our estimates are not driven primarily by the decision to include any single case, but instead appear relatively robust to the inclusion or exclusion of specific decisions.

Because the Court’s position is relatively close to the center of the ideological distribution of the American public, proximity to the Court is generally associated with centrism. Therefore, we may be concerned that our findings are more about being “moderate” or, more specifically, about viewing one’s self as near the center



**Fig. 5** Respondent, Court and justice ideal point estimates omitting each individual decision. Top pane plots densities of estimated respondent ideal points from ten separate ideal point scalings, each omitting one of the ten included Supreme Court decisions. Bottom pane plots estimated ideal points (posterior means) for the median respondent, for Democratic, Independent and Republican respondent medians, for the Court majority over the entire dataset, for each of the first three Roberts natural courts, and for each individual justice from these ten separate ideal point scalings



of the American political spectrum, than about distance from the Court. To examine this possibility, we also ran the models shown in Table 3 above separately for respondents who consider themselves “middle of the road” on the self-reported, seven-point ideological scale and those who do not (see Online Appendix Table 4; Online Appendix Figs. 3, 4). Although the number of moderates and the amount of variation in judicial ideology among them were both too small to make strong conclusions about this group, the basic pattern found above was consistent across moderates and non-moderates. Among self-described non-moderates, the results were nearly identical to those for the full sample, suggesting that ideological self-identification does not explain away our findings about the association between ideological proximity to the Court and variation in different types of support for it.

Another possible explanation for our results is that the Supreme Court persuades people. In other words, if people support the Court, then they will change their own opinions to mirror the positions of the Court if they are made aware of the outcome of a given case. At first glance, this hypothesis would seem tenuous because persuasion cannot explain the divergent patterns between different types of support for the Court and ideological proximity. Moreover, if persuasion were driving the results, then we should observe a stronger correspondence between citizen ideology and the Court’s positions on salient cases as compared to non-salient cases. Because people are more likely to be following salient cases, they are more likely to learn the Court’s positions and potentially change their own views to be in line with the Court’s if they generally approve of the Court. To measure saliency, we used Lexis–Nexis to count the number of stories appearing in major newspapers in the two weeks after the decision was announced to assess the level of media coverage of the Court’s decisions. There is a clear discontinuity that bifurcates the cases—five of the cases received over 160 news stories while the others received 85 or below. As shown in Online Appendix Figs. 5, 6, there is no large difference in the distribution of ideological positions when scaling by the salient versus non-salient cases. As an additional test, we replicated the analyses separately for high-knowledge and low-knowledge respondents. Presumably, those with a great deal of knowledge of the Court are more likely to follow its decisions and potentially be influenced by it.<sup>15</sup> However, as shown in Online Appendix Fig. 7, the distributions of ideal points of these two subgroups of respondents appear to not be significantly different.

Finally, we also replicated the probit and instrumental variables analyses separately using the high- and low-salience ideal point estimates and also separately for high- and low-information respondents (see Online Appendix Tables 5–10; Online Appendix Figs. 8–11). In all of these cases, the overall pattern of results is similar to those presented in the main text. While some of the coefficients failed to achieve statistical significance, presumably due the much smaller number of observations in each of these subsets, the vast majority are significant. Furthermore, all of the significant coefficients in these analyses are of the same sign as the corresponding coefficients in the analyses presented here. Lastly, when estimating pooled models including a dummy variable representing high-information

<sup>15</sup> Alternatively, those with the greatest level of knowledge may have well-formed opinions and therefore may be the least likely to update their positions in response to Court decisions (Zaller 1992).

respondents and an interaction term between ideological distance and information, in no case do we observe significant interactive effects.

## Discussion

We find that the Court is generally representative of the median citizen, despite the fact that the federal judiciary was not designed to be a majoritarian institution (although it is selected via representative institutions). Whereas ideological distance strongly predicts approval of and trust in the Court, with those holding ideological positions closest to the Court being the most supportive of it, the relationship between ideology and perceptions of the legitimacy of the Court's role in protecting minority rights are reversed. We term this phenomenon heterogeneous responsiveness.

As mentioned above, our findings contribute to two main literatures on public opinion and the Supreme Court. Studies of the macro-polity have shown a sharp correspondence between public mood and Court decision making, and have interpreted this relationship as suggesting that public opinion influences justices. Using more precise measures of the mass public's judicial ideology, our evidence is consistent with these findings—the median justice appears to be located close to the median citizen. These tests increase our confidence in the existing literature. Additionally, we build on individual-level analyses of opinion toward the Court by showing the differential relationship between citizens' ideological proximity to the Court and their levels of support for it, with the relationship for trust and approval differing sharply from that for support for the Court's countermajoritarian function and its institutional legitimacy. A theory of heterogeneous responsiveness suggests that the public does conceive of these types of support very differently.

These two literatures present somewhat of a tension. On the one hand, in aggregate-level studies, the Court appears to be concerned with not falling out of step with public opinion. On the other hand, the individual-level studies suggest that the Court enjoys a healthy reservoir of good will that is not subject to the whims of popular sentiment. Our findings reconcile these two perspectives to some extent. Being ideologically proximate to the center of the ideological distribution does not maximize support for the Court's minority function (which should be more stable), but it does maximize trust and approval. Hence, if the Court is trying to stay in line with public opinion, it may be most concerned with maintaining the trust and approval of the public. An open question is which type of support matters for strengthening the Court's institutional position and legitimacy vis a vis the other two branches of the federal government.

Another open question concerns the precise mechanisms by which the observed ideological congruence between the Court and the public arises. It is possible that this ideological proximity is influenced by the Court's decisions about which cases to decide. For example, public opinion may make the Court more or less likely to grant certiorari on a given case. Cases on which the Court's decision is likely to run contrary to strong public opinion may be less likely to be heard than those on which most of the Justices agree with the majority of the public. Directly investigating this possibility, however, may be

difficult because it is generally not known how the Court would have decided on cases that it declines to hear. Nonetheless, future research on the certiorari process and its relation to public opinion is warranted.

One important caveat in interpreting our results is that the data were collected at a single point in time, meaning it is possible that our findings—like any in political behavior that rely on a single cross-section—are potentially time bound. An interesting extension of the analysis presented here would be to replicate the design when there is a major shift in the median justice of the Court. For instance, if a conservative justice is replaced with a liberal appointed by a Democratic president, our findings suggest that the new median justice would be reflective of the preferences of the median voter. Moreover, our theoretical framework would predict similar relationships between distance from the Court median and the distinct types of support, even if the median leans slightly to the left.

Scholars replicating our survey design and empirical approach may also wish to include a larger and more diverse set of cases given the “proof of concept” presented in this article. However, we suspect that this would most likely introduce noise into people’s ideal point estimates since they likely do not follow cases that are not covered by the media, such as obscure business cases or those on arcane procedural issues. Therefore, it is likely the more limited set of ‘weighty’ issues that receive media coverage that truly determine both people’s judicial ideology and their support for the Court.

Our study lays groundwork for future research. We have provided an approach for comparing the ideological positions of citizens and justices, which can be applied to numerous other research questions. For instance, we have shown that actual and perceived ideological distance appear to have similar relationships with support. However, we have not attempted to explain the (mis)perceptions themselves. Future scholarship can explore when and why perceived ideological congruence diverges from actual congruence. Moreover, we have referred to but not explicitly analyzed the appointment process of justices. One could examine how state-level judicial ideology influences senators’ roll call votes on judicial confirmations, particularly when the appointment is expected to shift the Court median. The mechanism by which the public influences the Court may be through Congress. A plethora of recent work has underscored the importance of bridging the study of behavior and institutions in assessing the representativeness of government actions. This study has shown the value of extending this approach to understanding public opinion toward the Supreme Court.

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**Conflicts of interest** The authors declare no conflicts of interest.

## References

- Achen, C. H. (2002). Toward a new political methodology: Microfoundations and ART. *Annual Review of Political Science*, 5, 423–50.
- Achen, C. H. (2005). Let's put garbage-can regressions and garbage-can probits where they belong. *Conflict Management and Peace Science*, 22, 327–39.
- Anderson, R. IV, & Alexander, M. T. (2007). Institutions and equilibrium in the United States Supreme Court. *American Political Science Review*, 101(4), 811–825.
- Ansolabehere, S., & Brian, F. S. (2011). Re-examining the validity of different survey modes for measuring public-opinion in the US: Findings from a 2010 multi-mode comparison (unpublished manuscript).
- Ansolabehere, S., & Jones P. E. (2010). Constituents' responses to congressional roll-call voting. *American Journal of Political Science*, 54, 583–97.
- Bartels, B. L., & Johnston, C. D. (2013). On the ideological foundations of Supreme Court legitimacy in the mass public. *American Journal of Political Science*, 57(1), 184–99.
- Bartels, B. L., & Mutz, D. C. (2009). Explaining processes of institutional opinion leadership. *Journal of Politics*, 71, 249–261.
- Baum, L. (1988). Measuring policy change in the US Supreme Court. *American Political Science Review*, 82, 905–12.
- Baze v. Rees. (2008). 553 US 35.
- Brady, D. W., Han, H., & Pope, J. C. (2007). Primary elections and candidate ideology: Out of step with the primary electorate? *Legislative Studies Quarterly*, 32(1), 79–105.
- Bush v. Gore. (2000). 531 US 98.
- Caldeira, G. A. (1986). Neither the purse nor the sword: Dynamics of public confidence in the Supreme Court. *American Political Science Review*, 80, 1209–1226.
- Caldeira, G. A., & Gibson, J. L. (1992). The etiology of public support for the Supreme Court. *American Journal of Political Science*, 36, 635–664.
- Casillas, C., Enns, P. K., & Wohlfarth, P. (2011). How public opinion constrains the US Supreme Court. *American Journal of Political Science*, 55, 74–88.
- Citizens United v. Federal Election Commission. (2010). 558 US 310.
- Citrin, J. (1974). Comment: The political relevance of trust in government. *American Political Science Review*, 68, 973–988.
- Clinton, J., Jackman, S., & Rivers, D. (2004). The statistical analysis of roll call data. *American Political Science Review*, 98, 355–370.
- Converse, P. E. (1964). The nature and origin of belief systems in mass publics. In D. E. Apter (ed.), *Ideology and its discontents*. New York: The Free Press of Glencoe.
- Crawford v. Marion County Election Board. (2008). 553 US 181.
- Cummings, C., & Shapiro, R. Y. (2006). Can the Supreme Court lead public opinion? A novel experiment in survey design. *Public Opinion Pros*, March.
- Dahl, R. A. (1957). Decision making in a democracy: The Supreme Court as a National Policy Maker. *Journal of Public Law*, 6, 279–295.
- Easton, D. (1975). A re-assessment of the concept of political support. *British Journal of Political Science*, 5(4), 435–57.
- Egan, P. J., & Citrin, J. (2011). The limits of judicial persuasion and the fragility of judicial legitimacy (unpublished manuscript).
- Epstein, L., Martin, A., Quinn, K. M., & Segal, J. A. (2007). Ideological drift among Supreme Court justices: Who, when, and how important?. *Northwestern University Law Review*, 101, 1483–1541.
- Epstein, L., & Knight, J. (1998). *The choices justices make*. Washington, DC: CQ Press.
- Flemming, R. B., Bohte, J., & Wood, B. D. (1997). One voice among many: The Supreme Court's influence on attentiveness to issues in the United States. *American Journal of Political Science*, 41, 1224–50.
- Gibson, J. L. (2011). A note of caution about the meaning of 'The Supreme Court Can Usually be Trusted...' *Law and Courts: Newsletter of the Law and Courts Section of the American Political Science Association*, 21(3), 10–16.
- Gibson, J. L., & Caldeira, G. A. (1992). Blacks and the United States Supreme Court: models of diffuse support. *Journal of Politics*, 54(4), 1120–1145.

- Gibson, J. L., & Caldeira, G. A. (2009). *Citizens, courts, and confirmations: Positivity theory and the judgments of the American people*. Princeton, NJ: Princeton University Press.
- Gibson, J. L., Caldeira, G. A., & Spence, L. K. (2003a). Measuring attitudes towards the United States Supreme Court. *American Journal of Political Science*, *47*, 354–67.
- Gibson, J. L., Caldeira, G. A., & Spence, L. K. (2003b). The Supreme Court and the US Presidential Election of 2000: Wounds, self-inflicted or otherwise?. *British Journal of Political Science*, *33*, 535–56.
- Gibson, J. L., Caldeira, G. A., & Baird, V. A. (1998). On the legitimacy of National High Courts. *American Political Science Review*, *92*(2), 343–358.
- Giles, M. W., Blackstone, B., & Vining, R. L. (2008). The Supreme Court in American democracy: Unraveling the linkages between public opinion and judicial decision making. *Journal of Politics*, *70*, 293–306.
- Gonzales v. Carhart. (2007). 550 US 124.
- Grosskopf, A., & Mondak, J. J. (1998). Do attitudes toward specific Supreme Court decisions matter? The impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court. *Political Research Quarterly*, *51*, 633–654.
- Hamdan v. Rumsfeld. (2006). 548 US 557.
- Hetherington, M. J., & Smith, J. L. (2007). Issue preferences and evaluations of the US Supreme Court. *Public Opinion Quarterly*, *71*, 40–66.
- Ho, D. E., & Quinn, K. M. (2011). *Sparse data item response theory modeling with interest group political positions*. Working paper.
- Hoekstra, V. (2000). When the Court strikes close to home: The Supreme Court's impact on local public opinion. *American Political Science Review*, *94*, 89–100.
- Hoekstra, V. (2003). *Public reactions to Supreme Court decisions*. New York, NY: Cambridge University Press.
- Jackman, S. (2009). pscl: Political Science Computational Laboratory (R library).
- Keith, B. E., Magleby, D. B., Nelson, C. J., Orr, E., Westlye, M. C., & Wolfinger, R. E. (1992). *The myth of the independent voter*. Berkeley, CA: University of California Press.
- Krehbiel, K. (2007). Supreme Court appointments as a move-the-median game. *American Journal of Political Science*, *51*, 231–40.
- Lauderdale, B. E., & Clark, T. S. (2012). The Supreme Court's many median justices. *American Political Science Review*, *106*(4), 847–866.
- Lax, J. R. (2011) The new judicial politics of legal doctrine. *Annual Review of Political Science*, *14*, 131–157.
- Liptak, A. (2013). Friend of the corporation. New York Times May 5th: BU1.
- Martin, A. D., Quinn, K. M., & Epstein, L. (2005). The median justice on the US Supreme Court. *North Carolina Law Review*, *83*, 1275–1321.
- Martin, A. D., Quinn, K. M., Ruger, T. W., & Kim, P. T. (2004). Competing approaches to predicting Supreme Court decision making. *Perspectives on Politics*, *2*(4), 761–767.
- McDonald v. Chicago. (2010) 561 US 3025.
- McGuire, K. T., & Stimson, J. A. (2004). The least dangerous branch revisited: New evidence on Supreme Court responsiveness to public preferences. *Journal of Politics*, *66*, 1018–35.
- Mishler, W., & Sheehan, R. S. (1993). The Supreme Court as a countermajoritarian institution? The impact of public opinion on Supreme Court decisions. *American Political Science Review*, *87*, 87–101.
- Mondak, J. L. (1992). Institutional legitimacy, policy legitimacy, and the Supreme Court. *American Politics Quarterly*, *20*, 457–77.
- Parents Involved v. Seattle. (2007). 551 US 701.
- Poole, K. T., & Rosenthal, H. (1985). A spatial model for legislative roll call analysis. *American Journal of Political Science*, *29*, 357–384.
- Ricci v. DeStefano. (2009). 557 US 557.
- Rivers, D. (2006). *Sample matching: Representative sampling from internet panels*. Polimetrix white paper.
- Salazar v. Buono. (2010). 559 US 700.
- Sovey, A. J., & Green, D. P. (2011). Instrumental variables estimation in political science: A readers' guide. *American Journal of Political Science*, *55*(1), 188–200.
- Staiger, D., & Stock, J. H. (1997). Instrumental variables regression with weak instruments. *Econometrica*, *65*, 557–586.

- Stimson, J. A., MacKuen, M. B., & Erikson, R. S. (1995). Dynamic representation. *American Political Science Review*, *89*, 543–65.
- Sullivan, J. L., Avery, P. G., Thalhammer, K., Wood, S., & Bird, K. (1994). Education and political tolerance in the United States: The mediating role of cognitive sophistication, personality, and democratic norms. *Review of Education, Pedagogy, and Cultural Studies*, *16*(3-4), 315–324.
- United States v. Comstock. (2010). 560 US 126.
- Vavreck, L. & Rivers, D. (2008). The 2006 cooperative congressional election study. *Journal of Elections, Public Opinion and Parties*, *18*(4), 355–366.
- Zaller, J. (1992). *The nature and origin of mass opinion*. New York, NY: Cambridge University Press.