Solicitor General Influence and the United States Supreme Court*

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Abstract

Do Solicitors General influence Supreme Court justices to behave differently than they would like? Previous studies examining this question largely suffer from observational equivalence problems, limiting their findings. We employ unique archival data collected from the private papers of former Justice Harry A. Blackmun and find strong support for Solicitor General influence. In a substantial number of cases at the Supreme Court's agenda-setting stage, justices follow the Solicitor General's recommendations even when they are completely opposed to them. At the same time, we find that this influence is not boundless. Justices tend to discount Solicitors who favor policy at the expense of law.

On January 24, 1994, the United States Supreme Court ruled that federal racketeering laws apply to abortion protesters.[1] The decision paved the way for abortion rights groups to sue protesters for demonstrating at abortion clinics—a tremendous setback for pro-life groups. Remarkably, the case nearly failed to receive the Court's attention. Only Justices White, Blackmun, and Stevens cast clear votes to grant review. Chief Justice Rehnquist and Justices Kennedy, Scalia, Thomas, and Souter indicated their intent to deny review. As was so often the case during the Rehnquist Court era, Justice O'Connor was in the position to cast the key vote. If she voted to deny review to the case, it would receive no attention from the Court. If she voted to grant review, the Court once again would traverse the thicket of abortion politics. She voted to grant review. Importantly, however, O'Connor's original vote in the case was to *deny* review. Only after receiving the United States Solicitor General's brief, in which he recommended the Court hear and decide the case, did O'Connor switch her vote to grant. In short, but for O'Connor's vote switch—which itself turned on the Solicitor General's recommendation—the case never would have been decided.

This story, and others we could tell, leads us to ask two related and fundamental questions: Do Solicitors General influence justices' behavior, and is this influence bounded? Despite its importance, a robust answer to the question of SG influence has eluded scholars for decades. To be sure, studies find that the Solicitor General is highly successful before the Court. Nevertheless, success does not equal influence (Bailey, Kamoie and Maltzman 2005). The Solicitor General's success could be a function of numerous alternatives that have nothing to do with influence (Segal 1988, 553). Indeed, the problem with analyzing influence is that judicial outcomes may look the same whether influence exists or not (Segal and Spaeth 1996, 974). To determine whether the Solicitor General *influences* a justice, one must account simultaneously for a host of factors, chief of which is the justice's likely course

[1] *See National Organization for Women v. Scheidler*, 510 U.S. 249 (1994). The docket sheet and summary memorandum in this case (no. 92-780)—and thousands more like it—can be found in Epstein, Segal and Spaeth (2007).

of action *absent the SG's intervention.*

In what follows, we examine whether the Solicitor General influences the votes justices cast. We undertake this task in the context of the Supreme Court's agenda-setting process. We utilize primary archival data that allow us to observe actual SG influence. We are aided in this endeavor by a research design that contains two critical components. First, we account for justices' ex ante preferences in each case. By controlling for these prior beliefs, we can explore whether the SG leverages votes from justices that they otherwise would not cast. That is, we can predict how justices theoretically will vote and then compare their actual votes to their expected votes. Second, we address features that may limit the amount of influence the Solicitor wields. Drawing on recent literature which shows how law influences judicial outcomes, we witness the constraints on SG influence as well as the opportunities for it. Combined, we believe, these two factors make our analysis among the most comprehensive test of Solicitor General influence to date.

We find strong support for Solicitor General influence. Naturally, we observe that justices who agree with SGs are quite likely to follow their recommendations. More importantly, however, we observe that justices who completely disagree with the SG's recommendation and her ideology nevertheless follow that recommendation 32% of the time. We believe that following the recommendation of an actor with whom one disagrees so substantially is powerful evidence of influence. At the same time, though, we also discover that the SG's influence is bounded. Justices of all ideological persuasions—even those proximate to the SG—are less likely to follow an SG recommendation when it contradicts the weight of the law. In short, these results suggest that Solicitors General are quite influential, but that they will be most influential when they balance the often competing features of law and policy (Pacelle 2003).

The Solicitor General and The Court

The Solicitor General supervises and conducts government litigation in the United States Supreme Court and is intricately involved in every stage of the United States's ap-

pellate litigation (Pacelle 2003). Lawyers in the SG's office "do the bulk of the legal work in Supreme Court cases in which the federal government participates, including petitions for hearing, the writing of briefs, and oral argument" (Baum 2007, 88). According to Perry (1991), the Solicitor General serves at least three functions. First, he represents the interests of the United States before the Supreme Court. Second, he decides which cases the U.S. will appeal when it loses its cases in the lower federal courts. And, third, he decides whether the United States will file an amicus curiae brief or seek rehearing in any case involving the United States. The Solicitor General also synthesizes the government's sometimes varying legal positions. When federal agencies take competing positions on legal issues, the SG decides which side may appeal to the Supreme Court and what legal arguments the U.S. will pursue. The SG, then, coordinates the United States' long-term legal strategy in the judiciary and has tentacles spreading throughout the federal court system (Pacelle 2003; Zorn 2002).

The Solicitor General is a highly successful participant before the Court. During the Rehnquist Court era, the SG won over 62% of all cases in which the U.S. was a direct party and over 66% of cases in which he participated as amicus curiae (Epstein, Segal, Spaeth and Walker 2007). Numerous additional studies provide systematic confirmation of her success (e.g., Deen, Ignagni and Meernik 2003; Scigliano 1971; Segal 1990; Segal and Reedy 1988). Whether it is trying to persuade the Court to hear (or not hear) a case at the agenda setting stage (Black and Owens 2009) or winning a case at the merits stage (Bailey, Kamoie and Maltzman 2005; Jenkins 1983), the SG usually gets what she wants.

Still, scholars present various assorted theories on *why* she so commonly succeeds. The longest standing view of SG success argued that, much like a "Tenth Justice," the Solicitor General serves as an agent of the Court (Caplan 1988; Wohlfarth 2009). She plays a special role for the Court, screening cases and advocating positions that advance the goals of the Court as an institution (Salokar 1992). As one former clerk told us, the SG is expected to "play as an honest broker of the facts" when communicating with the Court. Perry's

(1991) seminal text likewise is replete with comments from justices who assert that the SG frequently serves as an arm of the Court. Stated one justice:

> Every solicitor general... has taken this job very seriously... not to get us to take things that don't require our attention relative to other things that do. They are very careful in their screening and they exercise veto over what can be brought to the board. (Perry 1991, 132)

In recent years, scholars took a different tack and applied signaling theory to examine the conditions under which justices accept the information provided to them by the Solicitor General (Bailey, Kamoie and Maltzman 2005). Given an asymmetry in information between sender and receiver, the receiver relies upon shortcuts, such as ideological agreement, to determine the accuracy of the sender's signal. If the sender and receiver generally share the same world view, the receiver has good reason to trust the information conveyed by the sender. Alternatively, if the sender and receiver hold competing world views, the receiver will discount the information *except* when it is contrary to the sender's self-interest (Calvert 1985). Applying this theory to the Court's relationship with the SG, Bailey, Kamoie and Maltzman (2005) find that justices who are ideologically proximate to the SG vote consistent with her position on the merits of the case but also that justices are likely to vote with the SG when she is more liberal (conservative) than the justice and happens to take a conservative (liberal) position in the case.

Other theories assert that the SG's success is due to separation of powers considerations (Epstein and Knight 1998; Johnson 2003). Because the Court relies upon the executive to enforce its decisions, justices defer to the SG (Epstein and Knight 1998). Consistent with this theory, Johnson (2003) finds that the Court is more likely to invite the SG to participate in cases where justices might expect resistance from the president due to his political strength. Along similar lines, Segal (1988) argues that SG success is due to general deference by the Court to its more democratically elected counterparts.

Others claim, however, that the SG's key to success is simply experience. Because she appears before the Court more often than any other litigant, the SG is "familiar with the

predilections of individual justices and the Court" (Pacelle 2003, 44). Accordingly, "the Solicitor General is merely one of many successful lawyers who appear before the Court... there is no evidence for the literature's frequent assertion that the [SG's] success is derived from an uncommon reputation as the Supreme Court's leading practitioner" (McGuire 1998, 506).

Finally, the selection effects theory considers whether the SG is successful because, where possible, she generally chooses to participate in cases she is favorably disposed to win (Nicholson and Collins 2008). Just as local prosecutors decide to litigate those cases where they are likely to obtain guilty verdicts (Albonetti 1987), Solicitors General may participate in cases they are most likely to win. What looks like influence may simply be the result of strategic behavior by forward-looking Solicitors General.

The aforementioned studies clearly improve our understanding of the Court's relationship with the Solicitor General; yet they largely do not answer whether the Solicitor General influences justices to behave differently than they would like. Certainly, justices appear to follow recommendations made by SGs, but will doing so deviate from the justices' preferred position? On this score, existing studies have largely been plagued by problems of observational equivalence, leaving them vulnerable (but see Nicholson and Collins 2008). To be sure, there is likely a role for all of these theories in explaining SG success. Nevertheless, the question of SG *influence* remains unresolved. No existing work of which we are aware examines the likely action a justice would take *but for the recommendation of the Solicitor General*. Only by controlling for a justice's ex ante desires in a case can we infer whether the Solicitor General has influenced her. It is to this task that we now turn.

Theory and Hypotheses

To examine whether Solicitors General influence judicial behavior, we focus on both policy (Bailey, Kamoie and Maltzman 2005) and legal (Pacelle 2003) considerations and the role they jointly play in justices' decisions to set the Court's agenda. We examine the Court's agenda stage for two reasons. First, justices set the Court's agenda so as to achieve their

policy goals. That is, justices set the Court's agenda by looking ahead to the expected policy the Court will make if it hears the case, and determining whether they like that policy or not. Few quotes make the point so clearly as the following, which comes from a Blackmun clerk in the markup to a cert pool memo in *Thornburgh v. Abbott* (no. 87-1344):

> "I think it pretty much comes down to whether you want to reverse the judgment below (the likely outcome of a grant). If you are pretty sure you do, you should vote to grant now. Otherwise, it's better to wait."

Systematic empirical studies likewise have shown the tremendous importance policy goals play in agenda setting. Justices commonly set the Court's agenda with their eyes on the policy they expect to make on the merits. For example, Black and Owens (2009) find that, all else equal, justices are more likely to vote to hear cases when the policy they expect the Court to make is better than the status quo. Justices who are closer to the expected policy location of the Court's decision are 75% more likely to grant review to a case than justices who prefer the status quo (see also Caldeira, Wright and Zorn 1999). Similar studies also find that justices are strategic, forward-looking agenda setters with policy on their minds (Boucher and Segal 1995; Benesh, Brenner and Spaeth 2002). Our second reason for focusing on the agenda setting stage turns on the fact that there are fairly well defined and measurable legal variables that can theoretically be pitted against policy motivations, which provides us leverage to examine the limits of SG influence. Similar objective legal factors at the merits stage are, to put it mildly, elusive to discover and code.[2]

[2]Of course, the agenda stage is not identical to the merits stage. There are factors that may influence decisions at one stage but not the other. Still, we believe that justices treat the agenda stage seriously—in large part because the policy the Court makes is a direct function of the choices made at this stage—and, therefore, any differences that may exist between the two stages are overshadowed by the solemnity justices attach to them both, as shown by the quote from Justice Blackmun's clerk above.

Within this context, then, we begin by analyzing how justices who generally agree with the SG (i.e., are ideologically compatible with her) will vote. Next, we analyze how justices with specific agreement with her (i.e., those who desire the same outcome in the particular case as the SG) will vote. We then examine the conditional relationship between general and specific policy agreement. Finally, we examine how legal factors condition this behavior.

General Ideological Agreement. Whether a justice follows the SG's recommendation likely depends, in part, on the ideological distance between the justice and the Solicitor General. Anecdotal evidence suggests that justices take the SG's general ideological proclivities into account when casting their votes. For example, in *National Advertising Company v. Raleigh* (no. 91-1555) Justice Blackmun's clerk stated: "As we know from [earlier cases this term], the SG's views will be very slanted." Indeed, Bailey, Kamoie and Maltzman (2005) show that justices follow the recommendation of the Solicitor General when they are ideological allies. Wohlfarth (2009), too, finds that the SG's success rate is, in part, due to her ideological relationship to the Court median. When the Court median becomes more liberal, Democrat SGs fare better; when the Court drifts more conservative, Democrat SGs do worse and Republican SGs do better. Accordingly, we expect that as the ideological distance between a justice and the SG decreases (increases), the likelihood of a justice following the SG's recommendation will increase (decrease).

Specific Policy Agreement. Justices also are more likely to follow the SG's recommendation when it accords with their preferred outcome in the specific case at hand. We draw on a host of studies to support this theory. For example, Segal (1988) examined justices' support for the Solicitor General's position based on the ideological position taken in her brief. Of the 20 justices in Segal's study, 13 exhibited significant differences in how they responded to liberal and conservative SG briefs. Indeed, Justice Marshall supported the SG 86% of the time when he filed a liberal brief but just under 30% when he filed a conservative one. Following these studies, we expect that a justice will be more likely to follow the SG's

recommendation when it supports her desired outcome in a case. Justices who wish to grant review to a case (and set favorable legal policy) should be more likely to follow a grant recommendation made by the Solicitor General. Conversely, justices who wish to deny review to a case to preserve the status quo should be less likely to follow a grant recommendation made by the SG.

The Conditional Relationship Between General and Specific Agreement. In addition to their independent effects, it is likely that general and specific agreement are conditionally related to one another. We expect that the presence of specific policy agreement and high general agreement should make it very likely that a justice will follow the SG's recommendation. At the same time, we expect that justices with low general agreement with the SG but high specific agreement in the case should be likely to follow her recommendation as well. This expectation accords with the signalling theory advocated by Bailey, Kamoie and Maltzman (2005) which, again, found that justices take heed when the SG makes recommendations contrary to her general stance.

Our argument is that to overcome concerns about observational equivalence and infer SG influence one must examine whether the SG succeeds in persuading justices to vote as they otherwise would not. Table 1 provides our intuition. Take, for example, justices with both general and specific agreement with the SG. These justices are quite likely to follow the SG's recommendations, as they are ideologically close to her and they both desire the same outcome in the case. Because we would *expect* such justices to follow the SG's recommendation, we cannot determine whether their votes stem from SG influence or simply from the pursuit of their own policy goals. Similarly, justices who lack general agreement with the SG but nevertheless have specific agreement with her in the case are likely to follow her recommendation—a dynamic similar to the outlier signal discussed by Bailey, Kamoie and Maltzman (2005). Again, however, as the justice follows the SG recommendation in a manner that suits her sincere preferences, we cannot attribute such voting to SG influence. To examine influence, we must look at the conditions under which justices are *unlikely* to

follow SG recommendations. That is, we must examine the bottom right cell in Table 1 and scrutinize those instances where the justice and the SG lack both general and specific agreement in the case.[3]

[Table 1 about here]

Legal Agreement. Of course, policy preferences do not fully explain the behavior of justices (Songer and Lindquist 1996). Indeed, a growing body of research documents the role played by legal factors at various stages of the Court's decision making process (Knight and Epstein 1996; Black and Owens 2009; Hansford and Spriggs 2006; Richards and Kritzer 2002). Building on this research, we argue that legal factors are likely to condition how justices respond to SG recommendations. After all, "politics *and* the law are at the intersection of the Solicitor General's responsibilities" (Pacelle 2003, 10)(Emphasis Supplied). Stated otherwise, we believe that legal considerations may create boundaries that could limit SG influence.

Our belief that justices view SG recommendations through a legal lens (as well as a policy lens) is supported by strong anecdotal reasons. For example, in *DeKalb Board of Realtors v. Thompson* (no. 91-1108), Blackmun's clerk told him:

> "The case should be denied. The decision below is consistent with [*Eastman Kodak Co. v. Image Tech. Services* (1992)]. The SG spends much of its brief... arguing that the rule of reason not per se should apply. This argument lost in [earlier cases], but the SG is trying to pretend it applies.

We expect that legal considerations will influence whether justices follow the SG's recommendation and, in turn, may place boundaries on SG influence. In particular, when legal factors counsel towards granting (rejecting) a petition, we would expect justices to

[3]Influence may be found under conditions in which justices have general agreement but lack specific agreement with the SG—i.e., the upper right cell in Table 1. The strongest evidence of influence, however, would arise in instances where the two actors disagree completely.

consider whether the SG's recommendation accords with those legal factors. When legal considerations support the granting of review and the SG recommends a grant, a justice will be more likely to follow that recommendation. Conversely, when the SG's recommendation clashes with the outcome predicted by those legal factors, a justice will be less likely to follow her recommendation.[4]

Measures and Data

To examine Solicitor General influence, we turn to the Court's agenda setting stage. We analyze every case coming from a federal court of appeals in which the Solicitor General filed an amicus curiae brief at the agenda stage between 1970 and 1993.[5] During the agenda stage, the SG makes recommendations to the Court as an amicus curiae either voluntarily or at the direction of the Court. That is, when the United States is not a party the SG may file an amicus brief with the Court stating why she thinks it should or should not grant review to a particular case. If the SG has not filed an amicus brief voluntarily, the Court can invite her to do so. When the Court invites the SG (called a "CVSG"), it issues a statement which reads: "The Solicitor General is invited to file a brief in this case expressing the views of the United States." In such cases, the SG submits a formal brief explaining why she believes the Court should or should not grant review to a case and how the Court should decide it. Our data include both invited and voluntary recommendations.[6]

[4]We explain these legal factors more fully below.

[5]We sample from Court of Appeals cases so that we may use the Judicial Common Space to place a legal status quo on the same scale as the policy preferences of both justices and the Solicitor General. No similarly scaled preference estimates exist for state courts.

[6]It is worth nothing that as an empirical matter invited participation by the SG outnumbers voluntary participation at the Court's agenda setting stage. Of the 277 unique cases included in our data, only 19 (roughly 7%) were voluntarily submitted. Due to data avail-

Our dependent variable is whether a justice casts a vote consistent with the SG's recommendation after it is received by the Court. If the justice voted in the manner recommended by the SG, the dependant variable equals 1; 0 otherwise. To make this determination, we examine the docket sheets and cert pool memos[7] of former Justice Harry A. Blackmun.[8]

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ability issues, we only could examine voluntarily filed briefs submitted by the SG between the 1984 and 1993 terms. We should note that these 19 cases between the 1984 and 1993 terms paled in comparison (10.92%) to the 174 cases the SG filed by invitation during that time period. To ensure that our findings were not the result of the truncated sample of voluntary briefs, we refit our models for just the 1984-1993 terms. Our findings remain unchanged.

Skeptical readers may argue that invited cases are of little importance since the SG elected not to file an amicus brief voluntarily. If this claim was true, one would have to accept the conclusion that tens of thousands of petitions seeking review during nearly one-quarter of a century were unimportant because the SG did not voluntarily file an amicus brief at the agenda-setting stage. This, we cannot believe. What is more, some of the Court's most important cases were those in which it invited the SG to participate (Epstein, Segal, Spaeth and Walker 2007). Further, invited cases routinely observe briefs filed by organized interests, which likely signals the importance of the case (Caldeira and Wright 1988). In short, while it may be that cases observing voluntary SG amicus briefs at the agenda stage are more visible, it cannot be true that invited cases are unimportant to either the SG or the Court.

[7]The cert pool is a labor-sharing agreement whereby each appeal or petition for certiorari is randomly assigned to one of the participating justices' law clerks. This law clerk (the pool memo writer) drafts a memorandum about the petition which summarizes the facts of the case, the arguments made by the parties (and amici), and concludes with a discussion that recommends how the Court should treat the petition. Currently, all the justices save Justices Stevens and Alito participate in the cert pool (Ward and Weiden 2006).

[8]We personally gathered all data for the 1970-1985 terms from the Library of Congress. The raw docket sheets and memos for the 1986-1993 terms come from Epstein, Segal and

We reviewed the docket sheet in each case to determine how each justice voted in every successive round of voting at the agenda stage. The cert pool memos provided information on the SG's recommendations. We examined only those cases where the SG recommended a clear outcome, such as recommendations to grant or deny review, note probable jurisdiction, or to affirm or dismiss the appeal. These recommendation types account for 91% of the recommendations between 1970-1993.[9] In what follows, we explain how we coded our independent variables.

General Agreement. To tap into the general policy agreement between a justice and the SG, we created a variable called *Justice-SG Distance*. Coding this variable required four steps. First, we needed to estimate the latent ideological preferences of each Supreme Court justice. To do so, we relied on the Judicial Common Space (JCS) (Epstein, Martin, Segal and Westerland 2007). Second, we needed to estimate the ideological preferences of the SG. To do this, we followed common practice (e.g., Bailey, Kamoie and Maltzman 2005; Nicholson and Collins 2008) and assumed that the SG's preferences reflect those of her appointing president, which we measure as the first dimension of a president's Poole and Rosenthal Common Space Score.[10]

Spaeth (2007).

[9]We cannot include other types of recommendations (e.g., holds or grant, vacate the lower court decision, and remand) because they do not provide the Court with clear policy guidance.

[10]Beyond the frequency with which this approach is used, there are two additional justifications for this choice. First, although there are potential reasons to believe that Solicitors General may not always mirror the preferences of their appointing presidents, previous empirical evidence suggests that, on average, they do (Segal 1988; Fraley 1996; Meinhold and Shull 1998). Second, as we describe below, we use data provided by Wohlfarth (2009) to weight our estimate of the SG's policy preferences by examining the actual frequency with which the SG takes the president's ideological side. As a result, to the extent there is some

Our third step to calculate general agreement between the SG and each justice was to multiply the SG's ideal point with the polarization measure adopted by Wohlfarth (2009). Wohlfarth (2009) analyzed the percent of partisan positions adopted by every recent SG in their amicus filings. The measure examines the directionality of the SG's amicus filings and how they comport with the expected preferences of the president (i.e., liberal for Democrats and conservative for Republicans).[11] High values of this percentage correspond to a Republican-appointed (Democrat) SG taking comparatively more conservative (liberal) stances in her briefs. We take this step to mitigate against any potential disconnect between a president's policy preferences and the positions taken by the SG. The measure also has the additional benefit of allowing for a dynamic perspective of how justices might expect the SG to behave within a term. As a president's JCS score is invariant with regard to time, we believe this step injects an important level of realism into the measure. We then calculated the absolute value of the difference between a justice's JCS score and our Wohlfarth-modified version of the SG's ideal point.

Specific Agreement. To measure specific policy agreement between a justice and the SG, we created a variable called *Policy Agreement.* We undertook five steps to create this variable. First, to measure each justice's ideology, we again relied on the Judicial Common Space. Second, we predicted the policy location of the Court's merits decision—that is, the policy we would expect the Court to make if it heard the case.[12] Third, following Black and

realized disconnect between a president's policy preferences and the SG's recommendation, our measurement strategy will ultimately capture it.

[11]More specifically, it measures "the percentage of all SG amici submitted prior to the decision date of a given case, advocating the president's ideological predisposition" (Wohlfarth 2009, 228).

[12]We calculated the Court's expected merits decision to be the JCS score of the median justice on the Court for the term in question (Hammond, Bonneau and Sheehan 2005). To determine which justice was the median, we referred to Martin and Quinn (2002). Recent

Owens (2009) we estimated the status quo.[13] Fourth, we computed spatial distances between the justice and the status quo, as well as the justice and the expected merits outcome. If a justice was ideologically closer to the expected merits outcome than to the status quo, we

empirical work suggests that the median justice controls opinion outcomes (Bonneau et al. 2007; Martin, Quinn and Epstein 2005). While Bonneau et al. (2007) found slightly stronger results for a second model which finds that the Court's policies are a function of the preferences of the opinion writer as well as the median justice, such a model is unworkable at the agenda-setting stage because justices lack *a priori* knowledge of who will assign and write the Court's opinion (Hammond, Bonneau and Sheehan 2005, 224). Of course, it should be pointed out that even in the Agenda Control model, the median justice's preferences play a very important role by constraining the location of the opinion to the median justice's preferred-to set of the status quo (Bonneau et al. 2007, 893). In short, while the median's policy position may not—in practice—always win out (Bonneau et al. 2007; Carrubba et al. 2007), justices have good reason to expect it to win out on average. It is the best guess a justice can make at the agenda stage and, therefore, is a reasonable compromise to allow the theoretical analysis to proceed.

We should also note that our findings are robust to different specifications of the location of the expected merits position. When we measure the expected policy of the Court as the median of the majority coalition median (by different value areas) for a fixed number of previous cases (ranging between the last 2 cases the Court decided on the merits in an issue area, up to the last 25 cases), our results remain the same.

[13]To do so, we examined the JCS scores of the judges who sat on the circuit court that heard the case. In the typical unanimous three-judge circuit court panel decision, the status quo is the JCS score of the median judge on the panel. In cases with a dissent or a special concurrence, where only two circuit judges constituted the winning coalition, we coded the status quo as the midpoint between those two judges in the majority. If the lower court decision was en banc, we coded the status quo as the median judge in the en banc majority.

expected her to vote to grant review. If the justice was closer to the status quo than to the expected merits vote, we expected her to vote to deny review. Finally, we compared the predicted policy-based cert vote for each justice with the SG's recommendation: If a justice was expected to grant (deny) review to a petition and the SG recommended a grant (deny), *Policy Agreement* equals 1; 0 otherwise.

Boundaries on Influence: Legal Factors. To determine and code the operative legal factors at the agenda stage, we turned to Perry (1991), who suggests that both legal conflict and legal importance apply. We also examined Stern et al. (2002), who argue that the exercise of judicial review in the court below and justiciability concerns make review more or less likely. We discuss each of these factors in turn.

One of the Supreme Court's most important duties is to resolve legal conflict, which occurs when two or more lower courts diverge over the interpretation or application of the law. When that occurs, the circuits are said to be in conflict. The Court's rules (see Supreme Court Rule 10) as well as statements made by the justices highlight that part of the Court's role is to resolve such conflict: "...I would say that there are certain cases that I would vote for...if there was a clear split in circuits, *I would vote for cert. without even looking at the merits.* (Perry 1991, 269)(Emphasis Supplied). To determine whether the lower courts conflicted over the interpretation of law, we reviewed the cert pool memos in each case. We code *Weak Legal Conflict* as 1 if the law clerk writing the pool memo—while acknowledging a split—suggests that it is shallow and tolerable. We also include *Strong Legal Conflict*, which is coded as 1 when the pool memo writer notes the existence of conflict that is neither shallow nor tolerable.[14]

When district court judges sat by designation on the circuit panel, or when the appeal was from a three-judge district court panel, we followed Giles, Hettinger and Peppers (2001).

[14]The coding of strong and weak conflict in the clerk's discussion required, on occasion some judgement on the part of the coders. Accordingly, we conducted an intercoder reliability study for a subset of the petitions in our sample. Our weak conflict measure had 86.7%

Legal importance is a second factor that motivates justices during the agenda stage. Perry (1991) tells us that justices believe themselves obligated to grant review to cases that are legally important. Importance likely turns on a number of factors but surely whether the lower court published its decision is one of them. Courts of appeals judges are allowed to dispose of easy or mundane cases through a brief opinion (usually no more than a few sentences) that they declare to be unpublished. Justices are hesitant to review such decisions because of their non-precedential nature.[15] Accordingly, if the lower court's decision was unpublished, justices might be less likely to vote to grant review to the case. To determine whether the lower court decision was published, we again examined the cert pool memo in the case. If the pool writer noted the case was published, *Published Opinion Below* equals 1. If the case was unpublished, the variables takes on a value of 0.

Judicial review is a third legal factor that is likely to affect agenda behavior and whether a justice follows the SG's recommendation. When a lower court strikes down a federal law as unconstitutional, legal norms compel the Supreme Court to grant review to the case (Stern et al. 2002, 244). That is, due to their legal goals of clarifying law and diminishing its uncertainty, justices grant review to cases where the lower court struck down

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agreement (Kappa = 0.640) and our strong conflict measure had 93.3% agreement (Kappa = 0.814). Both values of Kappa are statistically significant ($p < 0.001$) and correspond to "substantial" and "near perfect" agreement by a commonly-used metric (Landis and Koch 1977, 165).

[15]In *Calderon v. United States* (no. 91-6685), for example, the pool memo writer argued that the Court should deny review to the petition because the case was legally unimportant, as the lower court decision was unpublished: "I recommend denial [because the lower court's] decision is unpublished and therefore no 'rule' was created by the case."

While we do not suggest that every unpublished decision is irrelevant or somehow unworthy of attention, we feel confident making the assumption that, on average, unpublished decisions are less important than those the circuits elect to publish.

a federal statute. Justices themselves have made this point:

> [I]f a single district judge rules that a federal statute is unconstitutional, I think we owe it to Congress to review the case and see if, in fact, the statute they've passed is unconstitutional (Perry 1991, 269).

If the pool memo writer notes that the lower court struck down a federal legal provision as unconstitutional, *Judicial Review Below* takes on a value of 1; 0 otherwise.

Finally, justices must consider threshold issues such as justiciability concerns.[16] When the Court faces a petition that suffers from justiciability problems (i.e., ripeness, mootness, etc.) it is supposed to deny review unless compelling reasons direct otherwise. If the pool writer notes problems with justiciability, *Justiciability Concerns* takes on a value of 1; 0 otherwise.

We then were in the position to measure whether the SG's recommendation contradicted or accorded with any of these four legal factors. To measure *Legal Agreement* we examined the SG's recommendation in the case. If there were one or more legal reasons to grant (e.g., strong conflict or judicial review exercised below) and the SG recommended granting the petition, we coded *Legal Agreement* as 1. For the same reasons, if there were one or more legal grounds on which to deny the petition (e.g., no conflict, an unpublished lower court decision) and the SG recommended denial, we coded *Legal Agreement* as 1. *Legal Agreement* equals 1 for 30% of the petitions in our data. Conversely, when the SG's recommendation ran contrary to the legal cues embedded in the petition, we coded *Legal Agreement* as -1. For example, if there was strong legal conflict but the SG recommended denial, *Legal Agreement* would equal -1. Of the petitions in our data, 18% are coded with *Legal Agreement* as -1. Finally, we identified and categorized as legally neutral, those petitions that possessed no legal reasons to grant or deny review, as well as the small number of

[16]Justiciability refers to whether a case is "appropriate or suitable for a federal tribunal to hear or to solve" (Epstein and Walker 2005, 74). If a case is non-justiciable, (e.g., is moot or involves a political question), then the Court should be less likely to review it.

petitions (11 out of 277) where there are legal reasons both to grant *and* deny the petition. For example, a case may have genuine conflict but justiciability concerns. We note that separating them out into a fourth category (i.e., "Legally Ambiguous") does not appreciably alter the results we report below. We code *Legal Agreement* as 0 when petitions are legally neutral. 52% of the petitions in our data are coded this way.

To examine whether legal factors limit potential Solicitor General influence, we interacted legal agreement with general and specific policy agreement. We created six exhaustive and mutually exclusive dummy variables that correspond to each of the possible combinations of specific policy and legal agreement.[17] We then interacted each of these dummy variables with our *Justice-SG Distance* variable. Again, it is our contention that the best way to analyze whether the SG influences justices is to examine whether justices follow the SG's recommendation under conditions in which they are *least* likely to do so.

In addition to these covariates of interest, we control for a host of additional factors. We control for whether the case was politically salient, whether the voting justice was a freshman, whether the case was complex, whether the voting justice originally called for the views of the SG, whether the justice originally voted to support the position ultimately recommended by the SG, the SG's experience, whether the SG's submission was voluntary (instead of invited), and several separation of powers variables.[18] The appendix describes how we measured each of these variables.

[17]They are: (1) Policy Agree & Legal Agree, (2) Policy Agree & Legal Neutral, (3) Policy Agree & Legal Disagree, (4) Policy Disagree & Legal Agree, (5) Policy Disagree & Legal Neutral, and (6) Policy Disagree & Legal Disagree.

[18]Note, again, that our dependent variable is whether there is agreement between a justice's vote and the SG's recommendation. As such, we do not need to include the litany of variables one would use to model the decision of a justice to grant review.

Methods and Results

We report parameter estimates and substantive effects for our logistic regression model below. The model correctly predicts roughly 77% of the observations, which translates into approximately a 11% reduction in error over guessing the modal category. Our control variables perform largely as expected. Justices are somewhat less likely to follow the SG's recommendation in salient cases. Additionally, we find that justices are more likely to follow the SG's recommendation in complex cases. In other words, when the law is unclear, justices rely on the SG for clarification (Pacelle 2003). Perhaps not surprisingly, justices who voted to call for the SG's views in the case are more likely to vote consistent with her recommendation. Similarly, justices who, in the initial round of voting, cast the same vote as the SG later recommended were strongly likely to follow the SG's recommendation. That is, when the justice reveals a preference in the first round of voting (i.e., his colleagues voted to CVSG in round one while he cast a grant or deny vote) and that vote happens to be the same as the SG's recommendation—the justice, not surprisingly, sticks with his vote. Finally, we find that justices are more likely to follow the SG's recommendation when she voluntarily submits a brief at the agenda-setting stage.

[Table 2 about here]

We now turn to our covariates of interest. Because the statistical significance (and even the sign) of an interactive term cannot be ascertained from tabular results alone (Ai and Norton 2003; Kam and Franzese 2007), we follow the advice of King, Tomz and Wittenberg (2000) and Brambor, Clark and Golder (2006) and present our results visually.[19] We present three different scenarios: instances where the SG's recommendation accords with the law but

[19]The results we report in the figures and text were obtained through stochastic simulations similar to "Clarify." Unless otherwise noted, all other variables were held at their means or modes, as appropriate.

not with the justice's preferred outcome in the case; instances where the SG recommendation conflicts with the operative legal considerations in the case *as well as* the justice's preferred policy outcome in the case; and instances where the SG's recommendation conflicts with legal considerations but accords with the justice's preferred outcome in the case. These three contexts, respectively, show whether justices follow SG recommendations when there is legal support but no policy support for the SG recommendation, no legal support or policy support for the SG recommendation, and policy support but no legal support for the SG recommendation.

Legal Support But Policy Disagreement With the Justice. Figure 1 examines what happens when the law supports the SG's recommendation but the justice disagrees with it on policy grounds (i.e., she wants to grant/deny but the SG recommends deny/grant). The three panels in Figure 1 represent (from left to right) low, average, and high levels of general (i.e., ideological) agreement with the SG, as measured by our *Justice-SG Distance* variable. Low and high values correspond to one standard deviation below and above the mean, respectively. Within each panel, the squares represent the probability a justice follows the SG's recommendation when it comports both with the justice's policy preferences to grant or deny and legal considerations. The circles represent the probability a justice follows the SG's recommendation when it contradicts a justice's policy preferences to grant or deny but comports with legal considerations.

[Figure 1 about here]

A justice of average ideological distance from the SG has a 0.73 probability of following the SG's recommendation when the two agree on the policy outcome of the case and legal considerations support the SG's recommendation. When the SG's recommendation clashes with that same justice's preferred policy outcome, however, the probability that she follows the SG's recommendation drops to just 0.48. Justices who are ideologically proximate and ideologically distant from the SG are also significantly less likely to follow her recommendation when it conflicts with their policy views in the case. That is, across all observed values

of ideological distance, justices were more likely to follow the SG when they agreed with her recommendation on policy grounds than when they disagreed with it. This effect (paying less attention to the SG when she contradicts a justice's policy goals in a case), though, is no smaller (or larger) for ideologically divergent justices.[20] From a substantive perspective, this suggests that justices do not fixate on the *identity* of the messenger but instead on whether they agree with the *content* of the message, implying that one of the central findings of signaling theory (the outlier signal) does not apply to agenda setting interactions between justices and the SG.

No Legal Support And Policy Disagreement With the Justice. While it is reassuring from a statistical perspective to observe that justices who agree with the SG are likely to follow her recommendations, our central question is whether justices who disagree with her follow those recommendations. The most exacting test of SG influence thus comes from examining whether justices follow SG recommendations when they disagree with the SG on policy grounds *and* her recommendation contravenes the legal factors in the case. Figure 2 shows clearly that the SG influences justices. The figure shows the probability a justice will follow the SG's recommendation for a given value of ideology. Importantly, we find that *justices frequently follow SG recommendations even when they completely disagree with them.* In cases where the law opposes the SG's recommendation, justices who are ideologically close to her but disagree with her suggestion on policy grounds still follow her recommendation over 30% of the time. Moreover, as demonstrated by the flat slope of the line in the figure, even ideologically distant justices who disagree with the SG recommendation

[20]Note that the size of the raw difference decreases from 0.31 (left panel) to 0.26 (center panel) to 0.19 (right panel). To assess whether the size of the difference shrinks as distance increases, we computed the relative percent change for each panel and then compared these values across panels. None of the differences approached conventional levels of statistical significance. Put simply, the decrease in ideological distance does not matter in a systematic sense.

still follow her recommendation. Stated in more concrete terms, in just over 30 out of 100 cases, Justice Marshall remarkably would have followed the recommendation of President Reagan's Solicitor General Rex Lee even when he disagreed with that recommendation on policy *and* legal grounds. In short, the data suggest a strong SG influence on Supreme Court justices. Not only do ideologically proximate justices who agree with the SG's position follow her recommendation, *those justices most opposed to her recommendation still follow it in a substantial number of cases.*

[Figure 2 about here]

Boundaries on Influence: Policy Agreement With the Justice But No Legal Support. Justices, it turns out, are influenced by the Solicitor General. They follow SG recommendations even when they strongly disagree with them. But, is SG influence limited? Where are the boundaries on her influence? Figure 3 gives us clues. It highlights the importance of legal considerations by examining how justices vote when they agree with the SG on policy grounds but disagree with her recommendation for legal reasons. As we can see, justices are much less likely to follow SG recommendations when they contradict important legal considerations. Justices of all ideological stripes are more likely to ignore the SG when she makes recommendations that fail to comport with "legal priors." When the law supports the position taken by the SG and the justice agrees with the policy outcome of the SG's recommendation, a justice of average ideological distance from the SG has a 0.73 probability of following that recommendation. When, however, the SG recommends an outcome contrary to what the law suggests, that probability decreases to 0.44. Here, too, we find no significant difference in the extent to which law matters across levels of general ideological agreement. For example, Justice Scalia, an ideological ally (and former colleague) of Solicitor General Kenneth Starr, was just as likely to ignore a legally incongruent recommendation from Starr as Justice Marshall, an ideological opponent. These findings expand on Wohlfarth (2009) who found that as the SG exhibits a greater degree of politicization, her office enjoys less

success on the merits (see also Pacelle 2003). More generally, we find that while policy matters—and matters considerably—legal considerations can dampen SG influence.

[Figure 3 about here]

Discussion

We began this paper with a simple question—do Solicitors General influence Supreme Court justices' votes? Our results provide strong evidence in the affirmative. Solicitors General indeed influence the votes justices cast. We examined the agenda votes of justices who could be expected to follow the SG's recommendations as well as those who should be unlikely to follow those recommendations. Drawing upon archival materials and using a research design that allows us to examine influence directly, we find that justices of all ideological persuasions follow the SG's recommendations. Even those justices expected to disagree with the SG still follow her recommendations over 30% of the time. At the same time, we find that this influence, while powerful, is not limitless. Justices tend to discount SG recommendations when they contradict important legal features. This dynamic reinforces the prescient claims of Pacelle (2003), who contends:

> "The solicitor general operates in a dynamic political environment, but is charged with imposing stability upon the law and legal positions. The solicitor general must pursue a changing executive agenda, but also assist the Court in imposing doctrinal equilibrium" (10).

Ultimately, Pacelle (2003) argues, the SG is will be most influential when she balances the often competing features of law and policy.

Although somewhat indirectly, our results also contribute to the ongoing debate about *why* the SG is so successful. Our data show that insights from strategic separation of powers theory and signaling theory do not apply to the Court's agenda setting stage. Justices do not appear more or less likely to follow the Solicitor General's recommendations when the president has more support in Congress or other political features attached to the executive.

Nor do we find evidence to suggest that justices are more likely to follow recommendation made by outlier SGs. Both ideological allies and ideological foes tend to follow the SG's recommendations to roughly the same degree.

While this examination focused on the agenda stage–and most studies search for evidence of influence at the merits stage–we have every reason to believe that our findings apply to that later stage as well. Justices largely set the Court's agenda with policy in mind (Black and Owens 2009; Caldeira, Wright and Zorn 1999). Justices strategically anticipate whether the policy the Court will make at the merits stage will be better for them than the existing status quo. To be sure, setting the agenda is not the same thing as making a substantive decision on the merits; yet, failing to act strategically at the agenda stage sets up a justices to incur significant policy losses at that later stage. In many respects, then, justices make similar calculations at the agenda and merits stages.

Solicitors General influence Supreme Court justices. Justices who agree with them are likely to follow their recommendation but, more importantly, so do those who largely disagree with them. This, we argue, is strong evidence of Solicitor General influence. And, while justices are not lemmings who will unwittingly fall off legal cliffs for tortured SG recommendations, they nevertheless often go along with them even when we least expect them to.

Appendix

Control Variable Codings

[Table 3 about here]

References

Ai, Chunrong and Edward C. Norton. 2003. "Interaction Terms in Logit and Probit Models." *Economic Letters* 80:123–129.

Albonetti, Celesta A. 1987. "Prosecutorial Discretion: The Effects of Uncertainty." *Law and Society Review* 21(2):291–314.

Bailey, Michael A., Brian Kamoie and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49(1):72–85.

Baum, Lawrence. 2007. *The Supreme Court*. 9th ed. Washington, D.C.: CQ Press.

Benesh, Sara C., Saul Brenner and Harold J. Spaeth. 2002. "Aggressive Grants by Affirm-Minded Justices." *American Politics Research* 30(3):219–234.

Black, Ryan C. and Ryan J. Owens. 2009. "Agenda-Setting in the Supreme Court: The Collision of Policy and Jurisprudence." *Journal of Politics* 71(3). Forthcoming.

Bonneau, Chris W., Thomas H. Hammond, Forrest Maltzman and Paul J. Wahlbeck. 2007. "Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court." *American Journal of Political Science* 51(4):890–905.

Boucher, Jr., Robert L. and Jeffrey A. Segal. 1995. "Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials on the Vinson Court." *Journal of Politics* 57(3):824–837.

Brambor, Thomas, William Roberts Clark and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analysis." *Political Analysis* 14(1):63–82.

Caldeira, Gregory A. and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4):1109–1127.

Caldeira, Gregory A., John R. Wright and Christopher J.W. Zorn. 1999. "Sophisticated Voting and Gate-Keeping in the Supreme Court." *Journal of Law, Economics, & Organization* 15(3):549–572.

Calvert, Randall L. 1985. "The Value of Biased Information: A Rational Choice Model of Political Advice." *Journal of Politics* 47(2):530–555.

Caplan, Lincoln. 1988. *The Tenth Justice: The Solicitor General and the Rule of Law:*. Vintage.

Carrubba, Cliff, Barry Friedman, Andrew Martin and Georg Vanberg. 2007. "Does the Median Justice Control the Content of Supreme Court Opinions?" Paper presented at the 2nd Annual Conference on Empirical Legal Studies.

Deen, Rebecca, Joseph Ignagni and James Meernik. 2003. "The Solicitor General as Amicus 1953-2000: How Influential?" *Judicature* 87(2):60–71.

Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, & Organization* 23(2):303–325.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.

Epstein, Lee, Jeffrey A. Segal and Harold J. Spaeth. 2007. "Digital Archive of the Papers of Harry A. Blackmun." Available online at http://epstein.law.northwestern.edu/research/BlackmunArchive/.

Epstein, Lee, Jeffrey A. Segal, Harold J. Spaeth and Thomas G. Walker. 2007. *The Supreme Court Compendium: Data, Decisions, and Developments*. 4th ed. Washington, D.C.: CQ Press.

Epstein, Lee and Thomas G. Walker. 2005. *Constitutional Law for a Changing America*. Congressional Quarterly Press.

Fraley, George. 1996. "Is the Fox Watching the Henhouse? The Administration's Control of FEC Litigation through the Solicitor General." *Administrative Law Journal of the American University* 9:1215–1272.

Giles, Michael W., Virginia A. Hettinger and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3):623–641.

Hammond, Thomas H., Chris W. Bonneau and Reginald S. Sheehan. 2005. *Strategic Behavior and Policy Choice on the U.S. Supreme Court*. Stanford University Press.

Hansford, Thomas G. and James F. Spriggs, II. 2006. *The Politics of Precedent on the U.S. Supreme Court*. Princeton: Princeton University Press.

Jenkins, John A. 1983. "The Solicitor General's Winning Ways." *American Bar Association Journal* 69:734.

Johnson, Timothy R. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research* 31(4):426–451.

Kam, Cindy D. and Robert J. Franzese, Jr. 2007. *Modeling and Interpreting Interactive Hypotheses in Regression Analysis*. Ann Arbor, MI: University of Michigan Press.

King, Gary, Michael Tomz and Jason Wittenberg. 2000. "Making the Most of Statistical Analyses: Improving Interpretation and Presentation." *American Journal of Political Science* 44(2):347–361.

Knight, Jack and Lee Epstein. 1996. "The Norm of Stare Decisis." *American Journal of Political Science* 40(4):1018–1035.

Landis, J. Richard and Gary G. Koch. 1977. "The Measurement of Observer Agreement for Categorical Data." *Biometrics* 33(1):159–174.

Martin, Andrew D. and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10(2):134–153.

Martin, Andrew D., Kevin Quinn and Lee Epstein. 2005. "The Median Justice on the U.S. Supreme Court." *North Carolina Law Review* 83(5):1275–1322.

McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51(2):505–526.

Meinhold, Stephen S. and Steven A. Shull. 1998. "Policy Congruence Between the President and Solicitor General." *Political Research Quarterly* 51:527–537.

Nicholson, Chris and Paul M. Collins, Jr. 2008. "The Solicitor General's Amicus Curiae Strategies in the Supreme Court." *American Politics Research* 36(3):382–415.

Pacelle, Richard. 2003. *Between Law and Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation.* Texas A&M University Press.

Perry, Jr., H.W. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court.* Cambridge, MA: Harvard University Press.

Poole, Keith and Howard Rosenthal. 1997. *Congress: A Political-Economic History of Roll Call Voting.* Oxford University Press.

Richards, Mark J. and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96(2):305–320.

Salokar, Rebecca Mae. 1992. *The Solicitor General: The Politics of Law.* Temple University Press.

Scigliano, Robert. 1971. *The Supreme Court and the Presidency.* Free Press.

Segal, Jeffrey. 1988. "Amicus Curiae Briefs by the Solicitor General during the Warren and Burger Court: A Research Note." *Western Political Quarterly* 41(1):135–144.

Segal, Jeffrey. 1990. "Supreme Court Support for the Solicitor General: The Effect of Presidential Appointments." *Western Political Quarterly* 43(1):137–152.

Segal, Jeffrey A. and Cheryl D. Reedy. 1988. "The Supreme Court and Sex Discrimination: The Role of the Solicitor General." *Western Political Quarterly* 41(3):553–568.

Segal, Jeffrey A. and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices." *American Journal of Political Science* 40(4):971–1003.

Songer, Donald R. and Stefanie A. Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *American Journal of Political Science* 40(4):1049–1063.

Stern, Robert L., Eugene Gressman, Stephen M. Shapiro and Kenneth S. Geller. 2002. *Supreme Court Practice*. 8th ed. Washington, D.C.: The Bureau of National Affairs.

Ward, Artemus and David L. Weiden. 2006. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. New York: New York University Press.

Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics* 70(1):224–237.

Zorn, Christopher J.W. 2002. "U.S. Government Litigation Strategies in the Federal Appellate Courts." *Political Research Quarterly* 55(1):145–166.

		Specific Agreement: **Yes**	Specific Agreement: **No**
General Agreement	**Yes**	Follow	Less Likely to Follow
	No	Follow (Signalling Theory)	Not Follow

Table 1: Ex Ante Predictions for Following SG Recommendation and Whether Influence Exists. When justices and the SG generally and/or specifically agree, observational equivalence prevents the inference of influence. When the two generally and specifically disagree and the justice follows the SG's recommendation, one can infer influence.

Variable	Coefficient	Robust S.E.	Substantive Effect Baseline *Pr(Agreement)*: 0.44 [0.37, 0.52]
	...		
See Figure 1 and Figure 2 for Interactive Results			
	...		
Freshman Jusice	0.009	0.127	n.s.
Amicus Briefs	-0.194*	0.060	-0.05 [-0.02, -0.08]
Petition Complexity	0.977*	0.431	0.03 [0.01, 0.06]
Justice Voted to CVSG	0.977*	0.134	0.23 [0.17, 0.30]
Initial SG Agreement	3.012*	0.221	0.49 [0.42, 0.57]
Voluntary SG Recommendation	1.397*	0.230	0.32 [0.22, 0.40]
SG Experience	0.026	0.075	n.s.
Presidential Honeymoon	0.010	0.197	n.s.
Presidential Election Year	0.021	0.124	n.s.
Presidential House Strength	-1.825	2.235	n.s.
Presidential Senate Strength	3.182	3.550	n.s.
Observations	2151		
Log Likelihood	-1004.864		
Percent Correctly Predicted	76.8		
PRE	11.0		

Table 2: Logistic regression model of agreement between a justice's agenda setting vote and the recommendation of the Solicitor General. * denotes $p < 0.05$ (two-tailed test). PRE is the proportional reduction in error. The constant was suppressed (and therefore is missing from the table) instead of omitting a baseline category for our interaction variables. The "Substantive Effect" column reports the difference in the predicted probability between the baseline (with all variables at mean or mode) and a given counterfactual. For *Amicus Briefs* we report the difference between 0 (mode) and 1 brief (14% of observations); *Petition Complexity* is set at its mean (baseline) and mean plus one standard deviation (counterfactual). *Justice Voted to CVSG*, *Initial SG Agreement*, and *Voluntary SG Recommendation* take on a value of 0 (baseline) or 1 (counterfactual). All other variables were held at their mean or mode.

Variable Name	**Coding**
Freshman Justice	Is justice in her first two full terms of service on the Court (0 = No; 1 = Yes)?
Amicus Briefs	Total number of briefs filled either in support of or in opposition to the cert petition.
Petition Complexity	Proportion of cert pool memo devoted to discussion of procedural history and opinion below for a petition.
Justice Voted to CVSG	Did justice cast a vote to call for the views of the SG before the final cert vote (0 = No; 1 = Yes)?
Initial SG Agreement	Did the justice cast a vote consistent with the SG's ultimate recommendation but before the SG's views were called for (0 = No; 1 = Yes)?
SG Experience	Natural logarithm of the number of oral argument appearances by the Solicitor General or someone from her office.
Voluntary SG Recommendation	Did the Solicitor General file the amicus brief voluntarily or by invitation of the Court (0 = By Invitation; 1 = Voluntarily)?
Presidential Honeymoon	Was the president in the first year of his first term when the cert vote took place (0 = No; 1 = Yes)?
Presidential Election Year	Did the cert vote take place during a presidential election year (0 = No; 1 = Yes)?
Presidential House Strength	Absolute value of the president's ideological distance from the median member of the House. Common Space data collected from Poole and Rosenthal (1997).
Presidential Senate Strength	Absolute value of the president's ideological distance from the filibuster pivot. This is the 40th Senator for Republican presidents and the 60th senator under Democrat presidents. Common Space data collected from Poole and Rosenthal (1997).

Table 3: Coding rules used for control variables reported in Table 2.

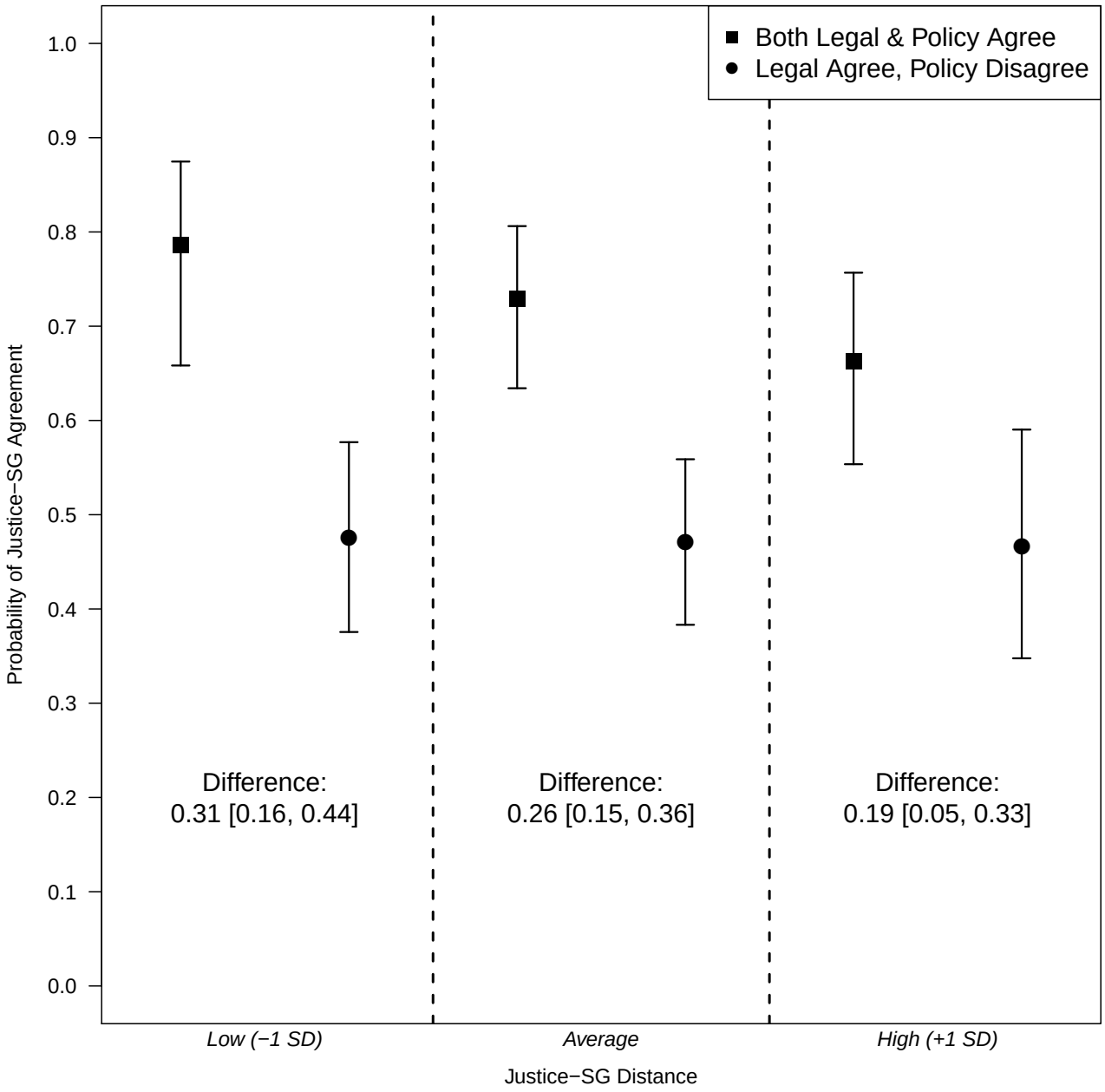

Figure 1: Predicted probability of Justice-SG agreement, conditional on *Justice-SG Distance* (different panels) and extent of congruence between the SG's recommendation and the legal and policy aspects of a petition (points within a panel). The vertical "whiskers" represent 95% confidence intervals around the *point estimate*. The quantity denoted as "Difference" reports the point estimate (and confidence interval) for the difference between the squares and the circles.

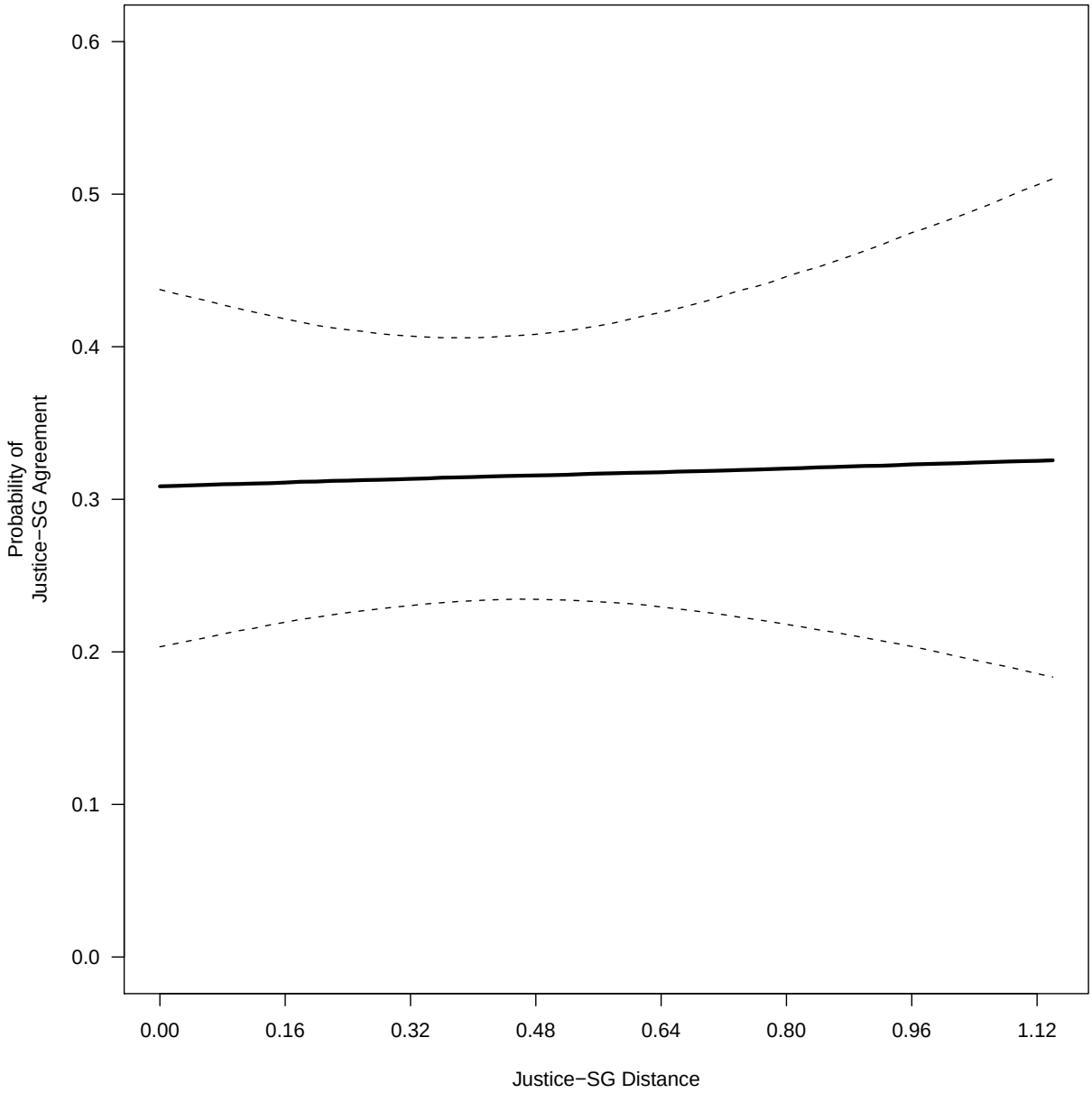

Figure 2: Conditioning effect of *Justice-SG Distance* in presence of both specific policy and legal disagreement. Dashed lines in both panels are the 95% confidence intervals around the point estimate.

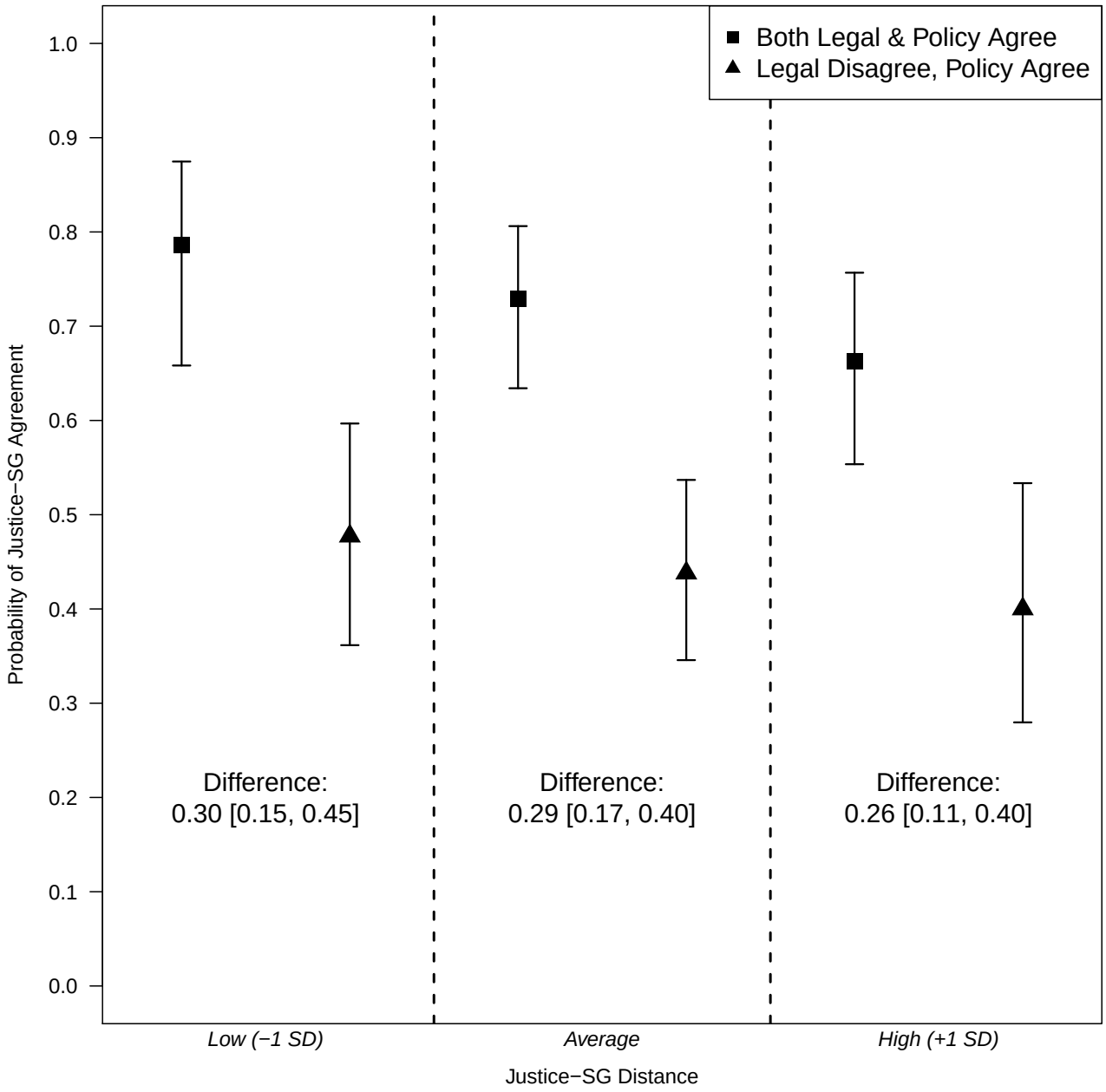

Figure 3: Predicted probability of Justice-SG agreement, conditional on *Justice-SG Distance* (different panels) and extent of congruence between the SG's recommendation and the legal and policy aspects of a petition (points within a panel). The vertical "whiskers" represent 95% confidence intervals around the *point estimate*. The "Difference" reports the point estimate (and confidence interval) for the difference between the squares and the triangles.