

Solicitor General Seduction: Influencing Supreme Court Justices to Overcome Their Preferences

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Abstract

Do justices follow Solicitor General recommendations even when they dislike them on policy and legal grounds? We employ archival data and a unique research design which allows us to examine SG influence directly. Our results could not be clearer. We find, first, that Solicitors General strongly influence Supreme Court justices. Even when a justice's prior legal and policy beliefs conflict with the SG's recommendation, she will nevertheless follow that recommendation in a substantial number of cases. Second, we find that Solicitors General cannot favor policy at the expense of law. Justices of all ideological persuasions—even those who are ideologically proximate to the SG—are between 25% and 34% less likely to follow the SG's recommendations when those recommendations contradict the weight of the law. In short, Solicitors General influence Supreme Court justices, but their influence is mitigated by legal considerations.

On January 24, 1994, the United States Supreme Court ruled that anti-abortion protesters were not immune from the Racketeer Influenced and Corrupt Organizations Act, paving the way for the National Organization for Women and other abortion rights organizations to sue protesters for demonstrating at clinics.¹ A potentially tremendous setback for pro-life groups, the case nearly failed to make the Court's docket at all. Absent Justice O'Connor's affirmative vote during the agenda-setting stage, the Court would have declined to hear the case. Remarkably, 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 take the case, did O'Connor switch her vote to grant.

What does it take to dislodge Supreme Court justices from voting for their preferred outcomes? Do justices, such as O'Connor in the above example, follow Solicitor General recommendations even when they dislike them on policy grounds? Or when the recommendations controvert legal expectations? Stated otherwise, does the Solicitor General influence the votes Supreme Court justices cast and, if so, how extensive is this influence?

The answers to these questions address questions of institutional influence and issues of normative concerns. Specifically, if Solicitors General—appointees who serve at the pleasure of the president—can persuade justices to vote against their prior policy beliefs or against strong legal considerations, then presidents have yet further powers to shape law and policy (Cameron 2000; Moe and Howell 1999). Moreover, understanding SG influence has enormous normative implications. Do we want justices to follow the political branches, or would we prefer they decide cases free from an electoral connection? Simply put, knowing whether the Solicitor General influences justices' votes provides important insight into how law is made and speaks to consequential debates about judicial independence.

Despite its importance, a robust answer to the question of SG influence has eluded

¹The case we describe here is *National Organization for Women v. Scheidler*, 510 U.S. 249 (1994). The docket sheet in this case (No. 92-780)—and thousands more—can be found in Epstein, Segal and Spaeth (2007).

scholars for decades. To be sure, studies find that the Solicitor General is highly successful before the Court. Nevertheless, success is not necessarily influence (Bailey, Kamoie and Maltzman 2005; Ditslear 2002). 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 of action *absent the SG's intervention*.²

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, with a research design that contains three 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. Second, by examining cases where the Court forces the SG to participate, we remove the possibility that the SG's success is caused by his ability to participate primarily in cases where he is most likely to win. Finally, we address both policy and legal considerations, drawing on recent literature which shows how law influences judicial outcomes. Combined, we believe, these three factors make our analysis the most comprehensive test of Solicitor General influence to date.

We find strong support for Solicitor General influence, as well as the conditioning effect of law. Our results suggest that even when a justice's prior legal and policy beliefs conflict with the SG's recommendation, she will nevertheless follow that recommendation between 30-38% of the time. That justices follow the SG's recommendations so frequently

²Our interest in this paper relates to direct influence. Surely, by exercising gatekeeping powers and refusing to allow the government to pursue some cases and arguments, the SG indirectly influences judicial outcomes. Yet, we seek to examine whether the SG more directly influences justices' votes.

when so opposed to them screams SG influence. Additionally, we find evidence to suggest that legal factors constrain Solicitors General from simply carrying water for the administration. Justices of all ideological persuasions—even those who are ideologically proximate to the SG—are between 25% and 34% less likely to follow the SG’s recommendations when those recommendations contradict the weight of the law. These results suggest that if they want to win, SGs must operate within the boundaries of the law and make recommendations consistent with legal factors. Ultimately, these results suggest that Solicitors General can seduce Supreme Court justices into disregarding their preferences, but that this ability to allure is constrained by legal considerations.

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 appellate litigation (Pacelle 2003).³ 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

³The Office was created in 1870, largely at the request of Attorney General Henry Stanbery, to aid Attorneys General in the execution of their statutory obligations and to create a lawyer who could successfully defend the interests of the United States in any court across the land. Congress quickly acceded to Stanbery’s request because the new office would spare it from having to pay to retain private counsel to argue the government’s cases (1 Op. Off. Legal Counsel 228 1977).

United States. The Solicitor General also synthesizes the government's sometimes varying legal positions. That is, federal agencies often 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 his success (e.g., Deen, Ignagni and Meernik 2003; Scigliano 1971; Segal 1990; Segal and Reedy 1988; Sheehan, Mishler and Songer 1992). While scholars agree that the SG wins significantly more often than other litigants, they present a variety of theories to explain *why* this is the case.

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). He 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)

Others argue that the SG's success is due in part to his close connection with the executive branch. 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. That is, by appearing 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" (1998, 506).

In recent years, leading scholars 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 his position on the merits of the case but also that justices are likely to vote with the SG when he is more liberal (conservative) than the justice and happens to take a conservative (liberal) position in the case.

Finally, the selection effects theory considers whether the SG is successful because he generally chooses to participate in cases he is favorably disposed to win. 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 (see e.g., Nicholson and Collins 2008).

While the aforementioned studies clearly improve our understanding of the SG and the Court, the question of SG *influence* remains unresolved for at least two reasons. First, while it could be the case that SG success is caused by some aggregation of these theories, no existing study has simultaneously controlled for all explanations, either through research design or the inclusion of relevant variables. Second, and of key importance for our purposes, none of the works we discussed above have tapped into the likely action a justice or the Court would take *but for the recommendation of the Solicitor General*.

What lingers, then, is an unanswered question that is fundamental to our understanding of the Supreme Court, its relationship with the other branches, and its role in society more generally. Does the Solicitor General influence the votes justices cast? It is to the task of answering this question that we now turn.

Theory and Hypotheses

To examine whether the SG influences justices, we focus on both policy (Bailey, Kamoie and Maltzman 2005) and legal (Pacelle 2003) considerations. We begin with simple predictions of judicial behavior and, to them, add various layers of complexity to determine our ultimate question of interest—whether the Solicitor General influences justices’ votes. We examine, first, how justices with general ideological agreement with the SG in a case will vote. Second, we analyze how justices with specific agreement with the SG will vote. Third, because we believe these two features interact with one another, we then examine the conditional relationship between general and specific policy agreement. As a fourth layer of complexity, we examine how legal factors might lead justices to support or oppose an SG recommendation and whether these legal factors condition policy-seeking behavior. After accounting for these four features, we analyze whether the Solicitor General influences

justices' votes. That is, we make inferences about SG influence by first setting up which justices should be most likely to follow the SG, and then examining the behavior of those justices least likely to follow him.

General Policy 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 advised that there was "[c]ertainly no need [to call for the views of the SG]. As we know from [earlier cases this term], the SG's views will be very slanted." Indeed, Bailey, Kamoie and Maltzman (2005) show that a justice is more likely to follow the recommendation of the Solicitor General as the ideological distance between the two actors decreases. Thus, 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 likely to follow the SG's recommendation when it accords with the justice's preferred outcome in the case. That is, justices who seek to have law reflect their policy preferences should—and do—pursue policy when “deciding to decide.” Indeed, justices who approve the policy they expect the Court to make if it hears the case on the merits are likely to vote to grant review to particular cases (Caldeira, Wright and Zorn 1999). 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.”

Quite simply, we expect that a justice will be more likely to follow the SG's recommendation when it supports her desired policy outcome in a case. Justices who wish to grant review to a case 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.

Legal Agreement. 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. For example, Knight and Epstein (1996) show that justices discuss the role of precedent during their private conference discussions. If, as others suggest (Segal and Spaeth 2002), law is merely window dressing for policy-driven justices, there would be little need for justices to discuss the constraining function of law in private, away from public view. Hansford and Spriggs (2006) examine how legal vitality conditions the interpretation of precedent, finding that the overall strength of precedent impacts whether justices positively or negatively treat a case. And, Richards and Kritzer (2002) argue that justices create jurisdictional regimes which channel judicial behavior.

We argue that legal factors are likely to affect 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). Indeed, there are strong anecdotal reasons to believe that justices follow the SG’s recommendations, in part, based on the legal factors surrounding his suggestion. 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.”⁴

We expect that legal considerations will influence whether justices follow the SG’s recommendation. In particular, when important legal factors counsel towards granting (rejecting) the petition, we would expect justices to grant (deny) review. That is, when legal

⁴Blackmun voted to deny the petition.

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 his recommendation.

But what are these legal factors and how might they matter? To obtain leverage on this broad but important concept, 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. Each of these four components, as we argue more fully below, is likely to impact whether a justice grants or denies review.

Legal Conflict. 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 tell us 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, for example, if there was a clear split in circuits, *I would vote for cert. without even looking at the merits.* (Perry 1991, 269)(Emphasis Supplied).

As the quote above suggests, conflict is a matter of degree. Marked differences exist between genuine and weak conflict. Genuine conflict occurs when "the issue has fully percolated among the lower courts, ... the conflict is widespread, and ... the conflict relates to an issue on which disagreement among the lower courts is intolerable" (Stern et al. 2002, 434). Weak conflict, by contrast, generally has significant deficiencies in one of these categories. For example, the split among the circuits is weak if it is new, involves few circuits, or has begun to resolve itself. The presence of genuine conflict likely leads a justice to grant review.

Legal Importance. 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. The public simply demands that the Court hear some cases. Perry’s analysis consists of numerous quotes from justices who tell us that the importance of an issue or a case can force the Court to hear it:

Sometimes the people just demand that the Supreme Court resolve an issue whether we really ought to or not. That does affect us sometimes. We just feel that the Supreme Court has to decide (Perry 1991, 259).

While the Court is more likely to grant review to legally important cases, it is also likely to deny review to legally *unimportant* cases. Importance likely turns on a number of factors but whether the lower court elected to publish its decision in the case surely 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) which they declare to be unpublished. Justices are hesitant to review such decisions because of their non-precedential nature. 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.”⁵ Accordingly, if the lower court’s decision was unpublished justices will be less likely to vote to grant review to the case.

The Exercise of Judicial Review in the Lower Court. Judicial review is a third legal factor that is likely to motivate justices to grant review. 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 a federal statute. Justices themselves have made this point:

⁵While 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.

[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).

Justiciability Concerns. Finally, when a petition presents justiciability concerns, justices are less likely to grant review.⁶ When the Court faces a petition that suffers from timing concerns (i.e., ripeness, mootness, etc.) it is supposed to deny review unless compelling reasons direct otherwise. Accordingly, we expect that, when faced with these considerations, justices will vote to deny review.

In summary, we have four broad legal components that we argue are related to justices' cert decisions. The general intuition that we wish to advance is that when the SG's recommendation is consistent with these legal cues, justices will be more likely to follow them than when it conflicts with these cues.

The Conditioning Effect of General Agreement on Specific Policy and Legal Agreement. As Bailey, Kamoie and Maltzman (2005) suggest, it is likely that, in addition to their independent effects, general, specific, and legal agreement are conditionally related to one another. In particular, we expect that, all else equal, the presence of specific policy agreement and high general agreement will make it very likely that a justice will follow the SG's recommendation. On the other hand, justices with specific policy disagreement in the case and little general agreement will be very unlikely to follow the SG's recommendation. The presence of *specific* policy agreement when *general* policy agreement is absent will be the same sort of "outlier signal" that Bailey and colleagues found at the merits stage. Finally, the presence of legal agreement (or disagreement) is likely to condition the effect of policy agreement. Whether justices follow the SG's recommendation turns on both policy agree-

⁶Justiciability refers to whether a case is "appropriate or suitable for a federal tribunal to hear or to solve" (Epstein and Walker 2005, 74). That is, the case cannot request the Court to offer an advisory opinion, nor may the suit be collusive (Id.). The dispute must be ripe for review (and, thus, not moot) and cannot involve purely political questions (Id.).

ment and legal agreement. When policy and legal agreement exists between the justice and the SG, we are most likely to observe the justice follow the SG’s recommendation.

Our argument is that to observe SG influence, one must examine whether the SG succeeds in persuading the justice to vote in a manner that she otherwise would not have voted. This approach required predicting how each justice would vote, all else being equal. Thus, for example, we argue that justices are most likely to follow the SG’s recommendations when they are ideologically closer to the SG (i.e. have high general agreement), desire the same outcome in the case as the SG (i.e. have high specific agreement), and legal considerations support granting (or denying) review (i.e. legal agreement exists). In these and similar scenarios (e.g., an outlier signal which consists of high specific agreement, low general agreement, and legal agreement) we would expect the justice to cast a particular grant vote regardless of the SG. The claim of influence in these instances would be impossible to falsify, as the vote is observationally equivalent with preference-driven behavior (Segal and Spaeth 1996). To overcome this problem, we analyze the circumstances when justices are *least* likely to follow those recommendations—when the justice and the SG want the opposite policy outcome on the merits (low specific agreement), the justice is ideologically distant from the SG (low general agreement), and when the law suggests an outcome that the SG fails to follow (legal disagreement exists). If justices follow the SG’s recommendations in this latter group, we will observe strong evidence of SG influence.

Measures and Data

To analyze whether the Solicitor General influences justices’ votes, we take advantage of the Court’s ability to force the SG to participate in a case. When at least four justices vote to call for the views of the Solicitor General (CVSG), the SG is forced to participate. When the Court invites the SG, 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 he believes the Court should or should not grant review to a case and how the Court should decide it. If the Court decides to hear the case, the SG remains active throughout the merits stage.

We focus our efforts on invited cases to inoculate the study against selection threats. That is, in cases where the United States is petitioner or a voluntary amicus participant, the Solicitor General elects to appear before the Court. This election may imply that the Solicitor General predicts victory (Nicholson and Collins 2008). If the SG participated overwhelmingly in those cases in which he anticipated victory, our examination of influence would be biased.⁷

To test whether the Solicitor General influences justices' votes, we analyzed every agenda-setting justice-vote in cases coming from a federal court of appeals in which the

⁷There is some discussion in the literature which suggests that the stakes or salience in invited cases are lower than those in non-invited cases (Pacelle 2003, 2005). While we acknowledge this potential, we are, for several reasons, ultimately not troubled by it. First, as an empirical matter, we have no evidence to support such a claim. Indeed, judging by the presence of amicus activity, CVSG cases are actually of higher salience. In our 256 CVSG petitions, 25.8% had some level of amicus participation. In a separate random sample of 341 non-CVSG petitions we observed an amicus participation rate of only 16.7%, which is significantly lower than the CVSG rate ($p < 0.01$). Accordingly, we may actually be biasing our results *against* finding SG influence (as influence is less likely in salient cases). Johnson (2003, 437-438) finds similar descriptive results. Second, as a practical matter, the SG cannot participate in every case—even among those in which he would like to participate. As a result, while there may be some invited cases that are less salient than voluntary ones, there will also be some invited cases in which the SG would have preferred to file a brief. Third, some of the Court's landmark decisions (Epstein, Segal, Spaeth and Walker 2007) observed a CVSG, suggesting that these cases are not simply mundane cases of little consequence.

Court called for the views of the Solicitor General between the 1970 and 1993 terms.⁸ We examine the docket sheets and cert pool memos of former Justice Harry A. Blackmun, which detail the SG’s recommendation and every justice’s vote during each successive round of agenda-setting votes.⁹

Our dependent variable is whether a justice cast a vote consistent with the SG’s recommendation in the round of voting that occurs immediately after the Court receives the SG’s recommendation. If the justice voted in the manner recommended by the SG, the dependant variable equals 1; 0 otherwise. We examined only those cases where the SG recommended a clear outcome, such as recommendations to grant review, deny review, note probable jurisdiction, or to affirm or dismiss the appeal.¹⁰

The way in which we measured our independent variables requires a bit of explaining. We begin first with *Justice-SG Distance*, which taps into the general policy agreement between a justice and the SG. To measure *Justice-SG Distance*, we took three steps. First, to determine the latent ideological preferences of the Supreme Court justice, we relied on the Judicial Common Space (JCS) (Epstein, Martin, Segal and Westerland 2007).¹¹ Second, to estimate the SG’s spatial location, we follow common practice (e.g., Bailey, Kamoie and Maltzman 2005; Nicholson and Collins 2008) and begin with the JCS score of the appointing president (which is simply the president’s first dimension Poole and Rosenthal Common

⁸As we discuss more fully below, we sample from Court of Appeals cases so that we may use the Judicial Common Space to obtain measures of the status quo in cases. No similarly scaled preference estimates exist for state courts.

⁹Data collected by the authors for the 1970-1985 terms. Data from the 1986-1993 terms come from (Epstein, Segal and Spaeth 2007).

¹⁰These recommendation types account for 91% of the 295 recommendations between 1970-1993. The main limitation with including other types of recommendations (e.g., holds or GVRs) is that they do not provide the Court with clear policy guidance.

¹¹Bailey (2007) is an alternative approach.

Space score).¹² We then multiply the president’s JCS score with the polarization measure adopted by Wohlfarth (2009), which is a dynamic measure of the percentage of partisan positions adopted by the SG in his amicus filings. In other words, 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). High values of this proportion correspond to a Republican-appointed (Democrat) SG taking comparatively more conservative (liberal) stances in his briefs. We calculated *SG-Distance*, then, as the absolute value of the difference between a justice’s JCS score and our Wohlfarth-modified version of a president’s JCS score.

To measure specific policy agreement between a justice and the SG, we undertook five steps. First, to measure each justice’s ideology, we again relied on the JCS. Second, we predicted the policy location of the Court’s merits decision—that is, the policy we would

¹²Meinhold and Shull (1998) find empirical evidence to support this approach. Baum (2007), too, suggests that presidents since Reagan have been particularly driven to appoint SGs who approximate their own preferences. Solicitors General themselves have pointed out their jobs are dependent on presidents (Starr 2002, 143). And both Fraley (1996) and Days (1994) note examples of direct presidential involvement in the SG’s litigation decisions. While we are mindful of literature that highlights the independence of the office, even those works suggest that presidents typically select SGs who can be expected to be supportive of the president’s policies, and that presidents occasionally intervene in the SG’s routine affairs (Days 1994).

expect the Court to make if it heard the case.¹³ Third, we located the status quo.¹⁴ 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 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 cert votes for each justice with the SG's recommendation. If a justice is expected to grant (deny) review to a petition and the SG

¹³We 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 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).

¹⁴To 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. 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).

recommends a grant (deny), *Policy Agreement* equals 1; 0 otherwise.

To measure *Legal Agreement* we began by reviewing the cert pool memos in each case to determine whether the pool writer noted the presence or absence of the four broad legal factors discussed above (i.e. strong, weak, or no conflict; legal importance; judicial review exercised below; and justiciability concerns).¹⁵ We then examined the SG’s recommendation in the case. If there were one or more legal reasons to grant (e.g., genuine conflict or judicial review exercised below) and the SG recommended reviewing the petition, we coded *Legal Agreement* as 1. Similarly, if there were one or more legal reasons to deny the petition (e.g., weak or no conflict, an unpublished lower court decision, or justiciability concerns) and the SG recommended denial, we coded *Legal Agreement* as -1. 32% of the petitions in our data are coded this way.

Conversely, when the SG’s recommendation ran contrary to the legal cues embedded in the petition, we code *Legal Agreement* as -1. That is, we code the variable as -1 when genuine legal conflict, for example, is present but the SG recommends denial. Likewise, if the pool memo writer notes justiciability problems but the SG recommends granting, *Legal Agreement* equals -1. 16% of the petitions in our data are coded this way.

We next identified and categorized as legally neutral, those petitions that possessed no overwhelming legal reasons to grant or deny review.¹⁶ We code *Legal Agreement* as 0

¹⁵The coding of genuine 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% agreement (Kappa = 0.640) and our genuine 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).

¹⁶Within this category, we also include the small number of petitions (11 out of 256) where there are legal reasons to grant *and* deny the petition. For in example, a case may have genuine conflict but justiciability concerns. We note that separating them out into a fourth

when petitions are legally neutral. 52% of the petitions in our data are coded this way.

We examine how general policy agreement, specific policy agreement, and legal agreement condition one another by interacting them. That is, we create a total of six exhaustive and mutually exclusive dummy variables that correspond to each of the possible combinations of specific policy and legal agreement. 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 his recommendation in those cases where they are least likely to do so.

Finally, we control for a host of additional factors that might lead justices to vote consistent with the SG's recommendation. 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, and a host of separation of powers variables. The measurement of these variables is described in the appendix.

Methods and Results

We report parameter estimates and substantive effects for our logistic regression model below.¹⁷ Our control variables perform largely as expected. Justices are less likely to follow the SG's recommendation in salient cases. In these cases justices are less susceptible to arguments that would cause them to deviate from their policy goals (Maltzman, Spriggs and Wahlbeck 2000). Additionally, we find that justices are more likely to follow the SG's

category (i.e., "Legally Ambiguous") does not appreciably alter the results we report below.

¹⁷We note that the model fits the data well. It correctly predicts roughly 78% of the observations, which translates into approximately a 14% reduction in error over guessing the modal category.

recommendation in complex cases. In cases where the law is unclear, justices rely on the SG for clarification. Perhaps not surprisingly, justices who voted to call for the SG’s views in the case are more likely to vote consistent with his recommendation. And finally, 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.

[Table 1 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 (Ai and Norton 2003; Kam and Franzese 2007), we follow the advice of others (see, e.g., King, Tomz and Wittenberg 2000; Brambor, Clark and Golder 2006) and present such results visually in Figure 1 and Figure 2.¹⁸

We begin by examining whether justices who agree with the SG in some fashion or another follow his recommendations. We then examine how justices predisposed to ignore his recommendations nevertheless follow them, the gold standard for analyzing influence.

We turn, first, to Figure 1. The three panels in Figure 1 represent (from left to right) low, average, and high levels of general 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 in the petition and the legal cues embedded within the petition and pool memo. The circles represent the same probability but for the absence of specific policy agreement.

[Figure 1 about here]

¹⁸The 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.

Figure 1 shows the importance of specific policy agreement when examining whether a justice follows the SG’s recommendation. For example, when the law supports the position taken by the SG, a justice of average ideological distance from him has a 0.73 probability of following his 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 plummets by over 35% to a value of just 0.47. Indeed, this effect of specific policy agreement holds *regardless* of the level of general policy agreement between a justice and the SG. That is, ideologically proximate and ideologically distant justices are both significantly less likely to follow the SG’s recommendation when it conflicts with their policy views in the case. Ideologically proximate justices are 31% less likely to follow the SG’s recommendation when it counters their policy goals, and ideologically distant justices are 20% less likely to follow that recommendation.

What is more, we find that this effect (ignoring the SG when he contradicts a justice’s policy goals in a case) is no smaller (or larger) for ideologically divergent justices.¹⁹ From a substantive perspective, this suggests that justices do not fixate on the *identity* of the messenger but rather simply 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.

[Figure 2 about here]

Additionally, as Figure 2 shows, we find strong evidence to suggest that legal considerations matter. Justices of all ideological stripes punish the SG when he makes recommendations that fail to comport with “legal priors.” Once again, when the law supports the position taken by the SG, a justice of average ideological distance from the SG has

¹⁹While the size of the raw difference decreases from 0.31 (left panel) to 0.20 (right panel), subsequent simulations of the “differences between differences” show that the differences were not statistically significant.

a 0.73 probability of following the SG’s recommendation when she agrees with it. When, however, the SG recommends an outcome contrary to what the law suggests, that justice is significantly less likely to follow the SG’s recommendation. Here, too, we find no significant difference in the extent to which law matters across levels of general ideological agreement. In substantive terms, Justice Scalia, an ideological ally of Solicitor General Kenneth Starr, was no less likely to ignore a legally incongruent recommendation from Starr than was an ideological opponent such as Justice Marshall. The upshot then, is that while policy matters, legal considerations strongly condition justices’ votes and set boundaries within which SGs can maneuver.

We also find results (and non-results) that allow us to update our beliefs about the applicability of existing theories of SG influence as we have applied them to the agenda setting stage. As stated above, we find that justices pay little attention to the identity of the sender, suggesting that the “outlier signal” applies only at the merits stage (Bailey, Kamoie and Maltzman 2005). Similarly, the data fail to support the notion that justices follow the SG for strategic separation of powers reasons, casting doubt on the Mouthpiece of Government theory. The data also fail to support the Repeat Player theory. If legal experience was the single driving force behind the SG’s performance we would, on average, expect to observe justices following experienced SGs more than rookie SGs. This simply does not occur.

But, does SG *influence* exist? Figure 3 provides a resounding, “yes.” The top panel in Figure 3 shows the probability a justice will follow the SG’s recommendation for a given value of ideology. The data offer two critical findings. First, overall, *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 him but disagree with his suggestion on policy grounds still follow his recommendation nearly 38% of the time.²⁰ More importantly, in cases where the law opposes the SG’s recommendation, ideologically

²⁰The probability these justices follow his recommendation is 0.379 [0.257-0.521].

distant justices who disagree with the SG recommendation still follow it 30% of the time.²¹ 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.

[Figure 3 about here]

The second important feature to observe in Figure 3 is that ideology does not condition the impact of following the SG even when you bitterly oppose his suggestion. The bottom panel of Figure 3 illustrates these results. The x-axis is a baseline value of ideological distance. The quantity reported on the y-axis is what happens to the probability the justice follows the SG recommendation when we move the hypothetical justice one standard deviation away from the SG. For example, the y point corresponding to the baseline x-value of 0.10 illustrates the impact on the probability of following the SG recommendation when distance shifts from 0.10 to 0.27 (1 standard deviation = 0.17). Because the confidence intervals on these shifts always contain zero, we can state that there is no statistically significant effect of ideological conditioning for these justices.

Building off the example in the last paragraph, this means that Justice Marshall would not be alone in those 30 cases where he follows the antipodean recommendation of Rex Lee—many of his colleagues would have followed suit. 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 his recommendation, *those justices most opposed to his recommendation still follow it a substantial number of times.*

²¹The probability these distant justices follow the SG recommendation is 0.301 [0.159-0.492].

Discussion

We began this paper with a simple question—does the Solicitor General influence Supreme Court justices’ votes? Was Justice O’Connor’s behavior in the introduction unique? Our results could not be clearer. Solicitors General indeed influence the votes justices cast. We examined the voting behavior of justices who could be expected to follow the SG’s recommendations as well as those who in theory should be likely to ignore 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.

Perhaps most importantly, however, we determined that even those justices expected to disagree with the SG still follow his recommendations between 30-38% of the time. That is, even when the deck is stacked against him, the SG still manages to win frequently. This, we argue, is strong evidence of SG influence. And, given that many cases are granted review with only four votes or denied review with three justices voting to grant, the impact of even one justice’s vote—like O’Connor’s in *National Organization for Women v. Scheidler* (1994)—can dramatically alter legal policy.

Although somewhat indirectly, our results also contribute to the ongoing debate about *why* the SG is so successful. While our data show that insights from strategic separation of powers theory and signaling theory do not apply to the Court’s agenda setting stage, we find strong support for the general intuition suggested by 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 so successful because he is able to balance the often competing features of law and policy. Our data reinforce his claim.

Finally, these results highlight a variety of interesting questions worthy of further

study. Our mechanism for isolating influence by controlling for a justice's ex ante inclinations in a case could just as easily apply to the Court's merits decisions, where scholars could examine the conditional effect of law or other features on justices' policy goals. That is, scholars could rely on our research design to examine whether law influences justices' votes, whether Congress and the president influence justices to cast votes they otherwise would not cast, or whether organized interests can influence the Court. These and other important questions demand further explication.

Appendix

Control Variable Codings

[Table 2 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. 2007. "Comparable Preference Estimates Across Time and Institutions for the Court, Congress, and Presidency." *American Journal of Political Science* 51(3):433–448.
- 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.
- Bailey, Michael and Kelly H. Chang. 2001. "Comparing Presidents, Senators, and Justices: Interinstitutional Preference Estimation." *Journal of Law, Economics, & Organization* 17(2):477–506.
- Baum, Lawrence. 2007. *The Supreme Court*. 9th ed. Washington, D.C.: CQ Press.
- 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.
- Brambor, Thomas, William Roberts Clark and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analysis." *Political Analysis* 14(1):63–82.
- 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.
- Cameron, Charles M. 2000. *Veto Bargaining: Presidents and the Politics of Negative Power*. Cambridge: Cambridge University Press.
- Caplan, Lincoln. 1988. *The Tenth Justice: The Solicitor General and the Rule of Law*. Vintage.
- Days, Drew S. 1994. "In Search of the Solicitor General's Clients: A Drama with Many Characters." *Kentucky Law Journal* 83:485–503.
- Deen, Rebecca, Joseph Ignagni and James Meernik. 2003. "The Solicitor General as Amicus 1953-2000: How Influential?" *Judicature* 87(2):60–71.
- Ditslear, Corey. 2002. Office Of The Solicitor General Participation Before The United States Supreme Court: Influences On The Decision-Making Process PhD thesis The Ohio State University.
- 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.
- 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.

- Maltzman, Forrest, James F. Spriggs, II and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.
- 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.
- Moe, Terry M. and William G. Howell. 1999. "The Presidential Power of Unitary Action." *Journal of Law, Economics, & Organization* 15(1):132–179.
- 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.
- Pacelle, Richard. 2005. "Amicus Curiae or Amicus Praesidentis-Reexamining the Role of the Solicitor General in Filing Amici." *Judicature* 89(6):317–325.
- Perry, Jr., H.W. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard 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.
- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
- Sheehan, Reginald S., William Mishler and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court." *American Political Science Review* 86(2):464–471.
- 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.
- Starr, Kenneth. 2002. *First Among Equals: The Supreme Court in American Life*. Warner Books.
- 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.

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.

Variable	Coefficient	Robust S.E.	Substantive Effect
			Baseline Pr(Agreement): 0.44 [0.37, 0.52]
...			
<i>See Figures 1-2 for Interactive Results</i>			
...			
Freshman Justice	0.019	0.131	n.s.
Amicus Briefs	-0.198*	0.063	-0.05 [-0.02, -0.08]
Petition Complexity	1.223*	0.442	+0.04 [0.01, 0.07]
Justice Voted to CVSG	1.014*	0.134	+0.024 [0.18, 0.30]
Initial SG Agreement	3.058*	0.223	+0.50 [0.43, 0.57]
SG Experience	0.127	0.079	n.s.
Presidential Honeymoon	-0.055	0.204	n.s.
Presidential Election Year	-0.156	0.127	n.s.
Presidential House Strength	-0.286	2.243	n.s.
Presidential Senate Strength	1.762	3.545	n.s.
Observations	1995		
Log Likelihood	-923.853		
Correctly Predicted	77.5%		
PRE	14.4%		

Table 1: 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 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). Both *Justice Voted to CVSG* and *Initial SG Agreement* take on a value of 0 (baseline) or 1 (counterfactuals).

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 filed 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 CVSG 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 his office.
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	Proportion of seats in the House of Representatives held by members of the president's party.
Presidential Senate Strength	Proportion of seats in the Senate held by members of the president's party.

Table 2: Coding rules used for control variables reported in Table 1.

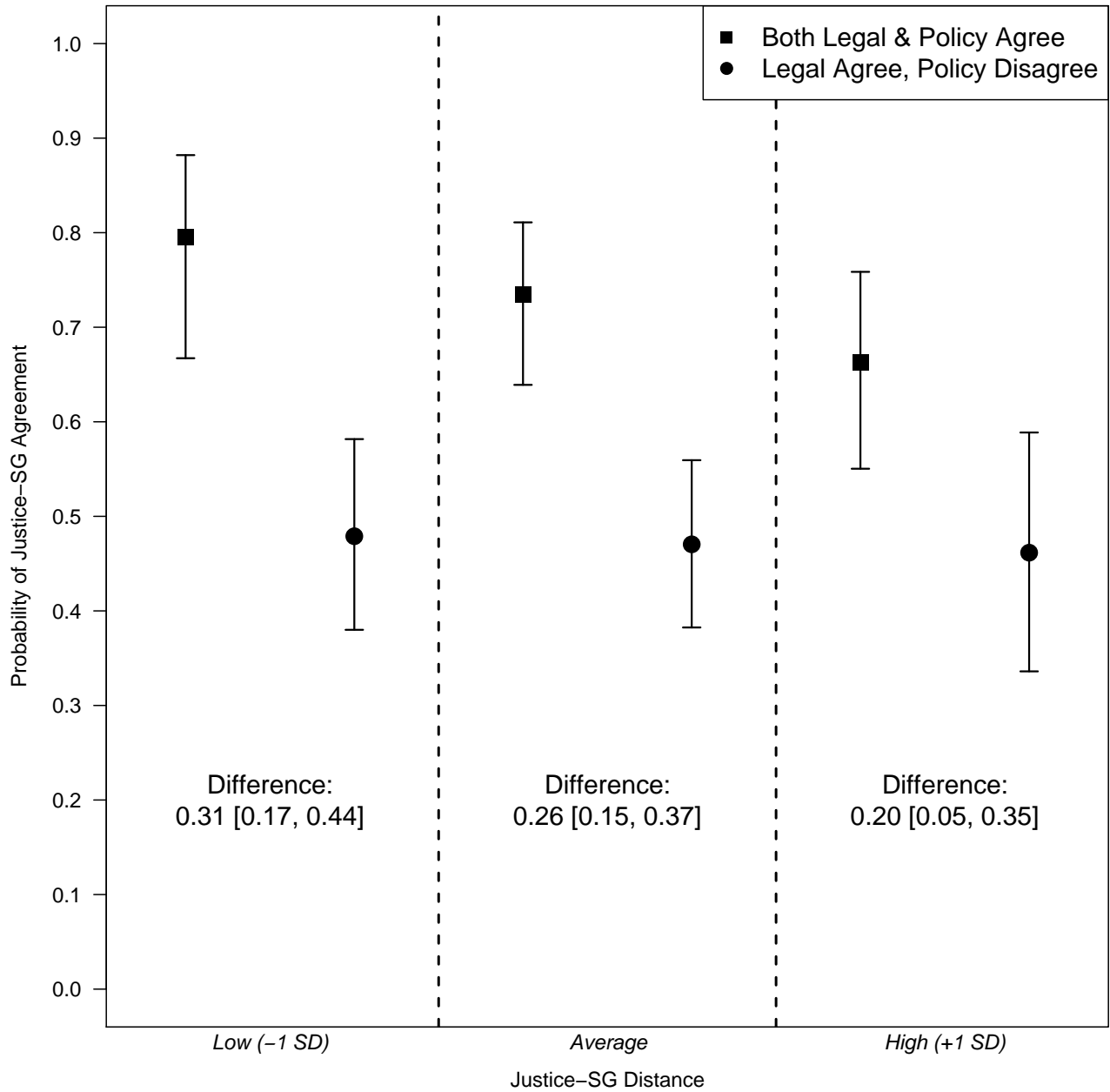


Figure 1: Predicted probability of Justice-SG agreement, conditional on *Justice-SG Distance* (different panels) and extent of congruence between the SG’s recommendation and the legal and policy aspects of a petition (points within a panel). The vertical “whiskers” represent 95% confidence intervals 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.

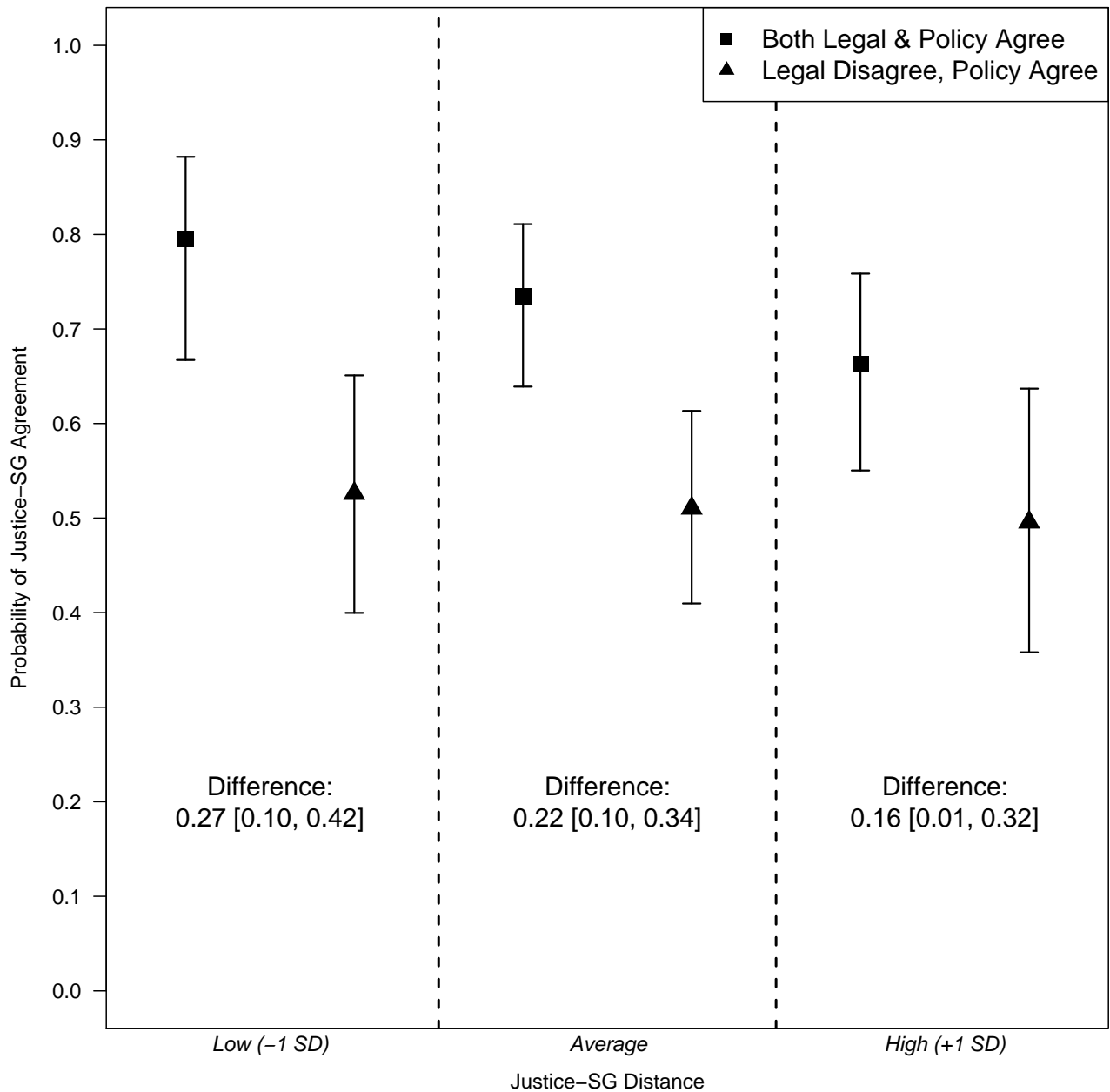


Figure 2: Predicted probability of Justice-SG agreement, conditional on *Justice-SG Distance* (different panels) and extent of congruence between the SG’s recommendation and the legal and policy aspects of a petition (points within a panel). The vertical “whiskers” represent 95% confidence intervals around the *point estimate*. The “Difference” reports the point estimate (and confidence interval) for the difference between the squares and the triangles.

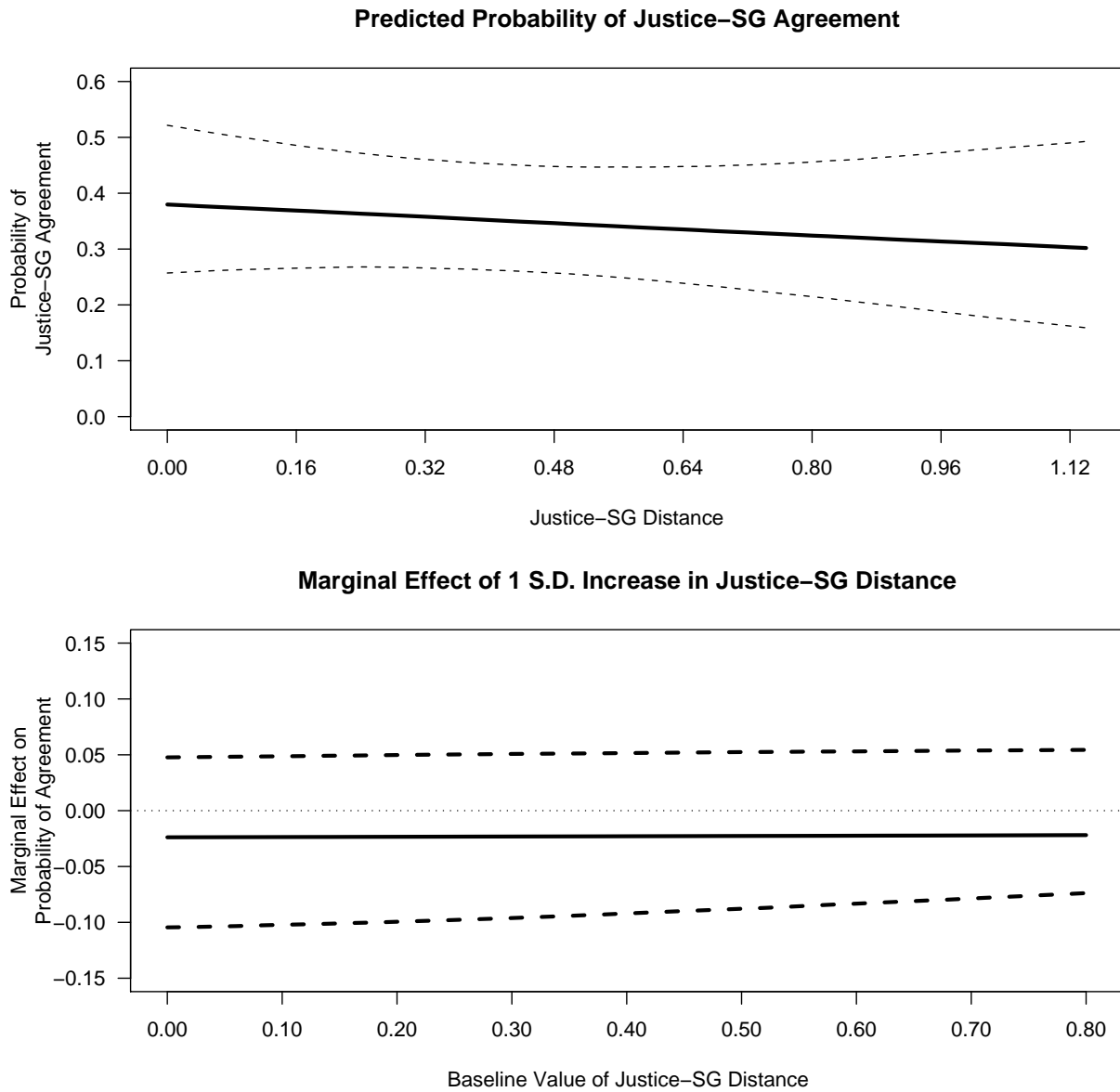


Figure 3: Conditioning effect of *Justice-SG Distance* on presence of both specific policy and legal disagreement. The top panel reports the point estimate for a given value of distance whereas the bottom panel shows the marginal effect of increasing distance on the likelihood that a justice will follow the SG's recommendation. Dashed lines in both panels are the 95 percent confidence intervals around the point estimate.