

**CHANGE IN INSTITUTIONAL SUPPORT FOR THE U.S. SUPREME COURT: IS THE COURT'S LEGITIMACY IMPERILED BY THE DECISIONS IT MAKES?\***

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## **Abstract**

Political pundits and scholars alike have recently noticed that public judgments of how well the U.S. Supreme Court is doing its job have plummeted. Yet, the meaning of this drop for the larger legitimacy of the Court is not as clear as the poll data themselves. Some believe that dissatisfaction with the Court's rulings threatens the institution's legitimacy. Conventional Legitimacy Theory, on the other hand, posits a "reservoir of goodwill" through which the translation of dissatisfaction into lowered legitimacy is blocked. Positivity Theory, with its focus on the legitimizing role of the symbols of judicial authority, provides at least a partial explanation of how legitimacy is maintained in the face of rising disappointment in the Court's rulings. Here, we focus specifically on the relationship between specific and diffuse support and the role judicial symbols play in undermining that connection, concluding that the Court's legitimacy is more secure than many imagine.

Those studying public opinion toward the U.S. Supreme Court have of late noted that the legitimacy of the institution may be on the retreat. Spurred by highly salient and unpopular Court decisions such as *Kelo*, *Citizens United*, and the Obamacare ruling, some have speculated that the institution’s “reservoir of goodwill” is facing (or beginning to face) a Texas-sized drought. This view has been forcefully stated in the scholarly literature (e.g., Bartels and Johnston 2013), and has even made its way into the *New York Times* (Liptak 2011) and into the research agenda of the Pew Research Center for the People and the Press (2013).

The question of the stability of the Court’s legitimacy is a matter of practical as well as theoretical import. A fragile Court is likely to act differently from a secure Court; or, more precisely, justices with heightened concerns about institutional legitimacy might even shape their votes in highly salient cases so as to protect their institution.<sup>1</sup> More generally, if an elemental function of the Supreme Court is to check majority opinion when it runs amok, then the so-called countermajoritarian dilemma is quite a dilemma indeed. Without a reservoir of goodwill, the Court is even more vulnerable than indicated by the many formal weaknesses of the institution.

That support for the Supreme Court would be so volatile runs counter to the conventional wisdom on the sources of the Court’s legitimacy. Court attitudes are typically thought of as

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<sup>1</sup> Crawford (2012) reports that Chief Justice Roberts acted strategically to protect the Court’s legitimacy during the opinion-writing process for *National Federation of Independent Business v. Sebelius*, changing his vote from one to strike down the Affordable Care Act to one preserving the legislation’s constitutionality.

obdurate because they are grounded in slow-moving attributes of citizens: more general support for democratic institutions and processes, levels of information and knowledge about the Court, and, to a much lesser degree, overall satisfaction with the institution's performance (Gibson and Caldeira 2009). Moreover, according to the theory of "value-based regeneration" – the process by which performance dissatisfaction recedes and Court attitudes revert to their grounding in support for democratic institutions and processes (Mondak and Smithey 1997) – short-term detours do not last long. Court support is not invariant – the literature reports a number of instances in which institutional support for a court has changed (e.g., Gibson and Caldeira 2009, on change in support for the Supreme Court that resulted from the controversy over the Alito nomination). Still, a puzzle exists: How can the recent decline in satisfaction with the performance of the Supreme Court be reconciled with theoretical and empirical work suggesting that such support is resistant to short-term dissatisfaction with the rulings of the institution?

The key to answering this question has to do with understanding the connection between performance evaluations and institutional support. The conventional wisdom is that the relationship is "sticky," with diffuse support (a "reservoir of goodwill") only diminishing after a sustained series of performance disappointments (e.g., Baird 2001; Gibson and Caldeira 1992).

However, it turns out that a set of scholars – the "specific-support revisionists" – has emerged who question whether diffuse support really is resistant to alteration by changes in specific support. Initiated largely by Bartels and Johnston (2013), and joined more recently by Christenson and Glick (2014) (and, to a lesser and somewhat different degree, Nicholson and Hansford 2014), this view posits a far stronger relationship between specific and diffuse support than heretofore thought. For example, Bartels and Johnston (2013, 196, emphasis in original)

conclude: ". . . we examined the influence of a *single decision*, so the size of the effects found is quite impressive and reinforces the importance of Court policymaking for citizen judgments of legitimacy." It is one thing to argue that *accumulated grievances* can undermine judicial legitimacy, or to suggest that blockbuster Supreme Court rulings, like *Bush v. Gore*, could have consequences for the Court's diffuse support. It is quite another to claim that *each unpopular Court decision*—particularly each run-of-the-mill decision—is potentially dangerous to the institution's health. If legitimacy cannot protect the institution when it makes unpopular decisions, then the Court must be understood as less independent of the majority because its legitimacy is so dependent upon satisfying the policy preferences of its constituents.

Despite concerns about the Court's weakening support, some research indicates that the institution enjoys a fairly deep reservoir of goodwill (Gibson, Caldeira, and Baird 1998; Gibson and Caldeira 2009), and that, most importantly, loyalty toward the institution mitigates the negative consequences of making highly controversial and politicized rulings (e.g., Gibson and Caldeira 2009). So, the literature now reports a direct empirical and theoretical conflict: diffuse support either is or is not highly responsive to changes in specific support.

The purpose of this paper is therefore to provide a new test of the hypothesis that institutional support for the U.S. Supreme Court is diminished by disappointment with the Court over its decisions. We introduce several important innovations to the study of this relationship. First, our research design acknowledges that *legitimacy is for losers* – that is, legitimacy is most relevant to those who hold views contrary to the Court's ruling. Second, we employ a nationally representative, survey-based design that includes both a true experiment and a quasi-experiment. Third, to provide a demanding test of the hypothesis, we focus on a legal issue *selected by the*

*respondent* as important to him or her. Finally, tipping our hat to verisimilitude, we incorporate symbols of judicial authority into our analysis. Thus, our test of the dissatisfaction/legitimacy hypothesis is a demanding, but a nonetheless important and realistic, one.

Our findings run strongly counter to those of the “specific-support revisionists.” Even when faced with an objectionable decision on legal issues of some importance to the respondents, support for the U.S. Supreme Court actually *grew* over the course of the survey. Moreover, our analysis points to an important moderating role of the symbols of judicial authority through which the Court’s legitimacy is protected. When people are simultaneously exposed to an unwanted decision and legitimacy-reinforcing symbols, the effects of disappointment with the unwanted decision are eliminated, just as the Positivity Theory of Gibson and Caldeira (2009) predicts. These empirical findings lead us to conclude that the Court’s legitimacy is not overly sensitive to its constituents’ dissatisfaction with its decisions – and that perhaps the specific-support revisionist theory is in need of further revision.

## **The Theory of Institutional Legitimacy**

By now, the theory of institutional legitimacy upon which this and an extraordinary body of recent research relies is well known (see Tyler 2006 for a review). Scholars distinguish between performance evaluations (“specific support”) and institutional support (“diffuse support”), and argue that institutional support provides a “reservoir of goodwill” (institutional loyalty) that allows the institution to go against the preferences of the majority, at least in the short-term. If citizens are willing to stand by the institution even when dissatisfied with its decisions, then the institution is free to do its job as it sees fit. Measuring and understanding citizen attitudes toward

the Supreme Court is therefore of considerable importance, and it is not surprising that a great deal of research effort has been devoted to analyzing institutional support.

Bartels and Johnston (2013) have recently introduced an important empirical finding to the literature on institutional support for the Supreme Court. They examine the effects of a single decision—one regarding federal monitoring of private communications—upon citizens’ evaluations of the Court’s legitimacy. Respondents in their experiment were randomly assigned to read a vignette stating that the Court had recently decided a case on this topic in either a liberal or conservative direction. They discover an interactive effect between citizens’ policy preferences and the ideological direction of the decision: individuals told about a decision not comporting with their own policy preferences tended to have lower evaluations of the Court’s legitimacy. This finding dovetails with their observational data, suggesting that, as citizens perceive the Court’s decisions to be in conflict with their policy preferences, their evaluations of the Court’s legitimacy decrease. In short, specific support can subtract from diffuse support.

Focusing on a highly salient case, Christenson and Glick (2014) investigated the effects of the Supreme Court’s decision on Obamacare, examining the consequences of Chief Justice Robert’s vote switch (from finding the law unconstitutional to judging it constitutional). Their basic hypothesis is that the American people judge Roberts’ actions as strategic and politicized behavior, thereby undermining the view that the Court is not an ordinary political institution. Like Bartels and Johnston, they conclude that “the decision provides new information that people can use to update their assessments of the Court’s ideology, and that these updates affect assessments of legitimacy” (Christenson and Glick 2014, 21).

An important challenge to Legitimacy Theory arising from the work of these scholars

thus concerns the stability of institutional support attitudes. Where scholars differ seems to be on the nature of the relationship between change in performance satisfaction and institutional support. Empirically, extant literature provides only the most limited evidence of change in legitimacy attitudes, mainly because no long-term panel data that include such measures exist. Still, using cohort analysis on cross-sectional data, Gibson and Caldeira (1992) show that the attitudes of African Americans toward the U.S. Supreme Court seemed to change over time, most likely owing to the slow accumulation of dissatisfactions with Court decisions that seemed to turn against the interests of African Americans. In addition, Gibson and Caldeira (2009) report panel data revealing that the confirmation battle over Samuel Alito took a swipe out of the Supreme Court's legitimacy. Furthermore, the mere fact that specific support and diffuse support are typically moderately correlated (Caldeira and Gibson 1992) indicates that change in one attitude is to some degree associated with change in the other attitude.

To explicate this relationship, Gibson and Caldeira (2009) likened institutional support to loyalty. Loyalty can be undermined and can change, but typically loyalty is not altered by a single disappointing transaction; it is not strictly a function of "what you have done for me lately." Still, repeated disappointments can cause loyalty to dissolve, reinstating an instrumental, quid-pro-quo calculus.

### ***Justifying the Research Hypothesis***

Our overarching hypothesis is that diffuse support for the U.S. Supreme Court is *not* undermined when the Court makes a decision with which people disagree. We ground this hypothesis in several fragments of theory and extant research findings.



First, specific and diffuse support for the Court are not inordinately interconnected. In their analysis of the legitimacy of high courts worldwide, Gibson, Caldeira, and Baird (1998) report an average correlation of diffuse and specific support of .33. Indeed, in his seminal exposition of the two concepts, Easton (1975, 442, n. 21) suggests that the relationship between the two types of support cannot be too strong (see also Gibson and Caldeira 1992).

Second, research indicates that the most important predictor of diffuse support is more general support for democratic institutions and processes, support that is thought to change little over time (Caldeira and Gibson 1992). The magnitude of the effects of democratic values dwarfs the predictive power of all other explanatory factors in Gibson and Nelson's (2014) study. This is important because some argue that, even when diffuse support is depressed by an unpopular decision, support bounces back in fairly short order through a process dubbed "values-based regeneration" (Mondak and Smithey 1997). Durr, Martin, and Wolbrecht (2000) also adduce some empirical evidence to support this proposition. Even if an unpopular decision does have some deleterious effect on judicial legitimacy, those effects should be short lived.

Third, case studies of important decisions such as *Bush v. Gore* do not indicate significant losses to Supreme Court legitimacy. The empirical evidence on the topic (e.g., Gibson and Caldeira 2009; Yates and Whitford. 2002) strongly suggests that even the most controversial decisions produce little identifiable shift in aggregate-level diffuse support.

Fourth, some believe that the threats to the Court's legitimacy most likely comes from *how* the Court makes its decisions rather than their content. For instance, some have hypothesized that divided opinions undermine legitimacy, although empirical support for this contention is limited (see Zink, Spriggs, and Scott 2009; Gibson, Caldeira, and Spence 2005; and Salamone

2014). Scholars have also looked more broadly to the consequences of perceptions of judicial decisionmaking on support for the Court. Baird and Gangl's (2006) experimental evidence suggests that citizens react more positively to press reports suggesting a legally-motivated decision than they do to the suggestion that judicial decisionmaking is politically motivated, and Ramirez (2008) finds that the public is more likely to accept decisions framed by the media as reached through fair, rather than unfair, procedures. Similarly, Simon and Scurich (2011) argue that the public's attitudes toward modes of decisionmaking may be a conditional one. They demonstrate that the effects of legal reasoning may only matter when individuals object to a ruling. Finally, Christenson and Glick (2014) argue that what affected public support for the Court in the Obamacare litigation was not necessarily disagreement with the Court's policy, but rather the strategic nature of Justice Roberts' behavior. At the same time, however, "the effects are relatively modest even in a case that is likely at the high end of potential impact . . . it appears that relatively few people learned about [the experiment's] version of events on their own" (Christenson and Glick, 2014, 23). In sum, perceptions of procedural fairness seem to cushion the consequences of disappointment in an unwanted Court decision.

Fifth, the Positivity Theory of Gibson and Caldeira (e.g., 2009) offers an understanding of the process by which the impact of unpopular decisions is dulled. Beginning with the well-documented empirical finding that increased awareness of the Court results in increased support for the institution, Gibson and Caldeira hypothesize that exposure to the symbols of judicial authority is the mechanism through which this process occurs. As citizens observe those symbols (e.g., temple-like courtrooms) that make courts unique, their institutional support increases.

Finally, were institutional legitimacy dependent upon placating the Court's constituents

with its decisions then the value of legitimacy would diminish greatly. Moreover, if judges believed that unpopular decisions would cost the institution its public support in a meaningful and permanent way, then judges who cared about the implementation and acceptance of their decisions would become increasingly unlikely to make decisions that run counter to the preferences of the majority of the American people. Rather than providing a “reservoir of goodwill” that protects the Court against reprisal for its policy decisions, institutional legitimacy would collapse into a nearly vacuous and impotent concept.

Thus, there are many good reasons for hypothesizing that the connection between disappointment in a Supreme Court ruling and institutional support is not overly strong. Consequently, our empirical analysis is designed to assess the consequences that flow when the Court makes an important decision that runs counter to the preferences of its constituents.

## **Research Design**

### *The Survey*

This research is based on a survey conducted for us by a grant from TESS (Time-sharing Experiments in the Social Sciences). Details on the survey, including its response rate, are reported in Appendix A.

Because Knowledge Networks (KN) panelists respond to questionnaires made available to them on the internet, limited control over the circumstances of administering the survey is possible. In this survey experiment, one of these factors is crucial: the length of the interview. The average length of interview was *246 minutes*, with a median of 12 minutes, and a range of 4 to 12,460 minutes. Obviously, this means that some respondents completed the interview in more

than a single session on their computer. This is important because some may have answered the “dependent variable” questions – change in institutional support for the Supreme Court – several days or even weeks after the initial measurement of institutional support. To control for this, we have confined our analysis to those respondents (85.3 % of the total) who completed the interview in 30 minutes or less.<sup>2</sup>

### ***The Survey Intervention***

The overall design of this study is fairly simple. After assessing the respondents’ institutional support for the U.S. Supreme Court, we informed them that the Court had ruled contrary to their preferences on an issue of some importance to the respondents.<sup>3</sup> The announcement of the decision was accompanied by the experimental manipulations (with random assignment to treatment condition). Finally, we re-measured institutional support, thereby providing an index of change in support over the course of the interview.

In order to provide a realistic and meaningful test of the change in support hypothesis, we focused the experiment on a substantive issue of some importance to the respondents. We did so by asking them to select from three possibilities the issue they considered most important. The

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<sup>2</sup> Respondents taking more than 30 minutes to complete the interview and those taking 30 minutes or less do not differ significantly on any of the key variables in this analysis (e.g., the correlation between interview duration and change in institutional support is .02).

<sup>3</sup> We interspersed distractor questions between the sections of the interview measuring initial support, exposure to the experimental manipulations, and the final measures of support.

choices were: (1) whether the government should be allowed to monitor citizens' searches on the internet; (2) whether the state governments should be allowed to require consumers to pay sales tax on items they buy on the internet and other purchases across state lines; and (3) whether children of foreigners and illegal immigrants who just happen to be born in the United States should be automatically given American citizenship. Thus, this is a classic “content-controlled” measurement approach (see Sullivan, Piereson, and Marcus 1982) in which all respondents are confronted with a court case of considerable importance to them, even if it is not the same case.

After the respondents selected an issue, we measured their substantive preferences on the matter. A total of 41.1 % of the respondents indicated that their position was strongly held. In the analysis below, we control for the intensity of the respondent’s position. Note that the three issues *do not* differ according to the intensity of the respondents’ position.

The purpose of this design was to set up the intervention by presenting *all* respondents with a Court decision contrary to their preferred position. Thus, everyone satisfied the “objection precondition” requirement in that all were asked to judge the Court after hearing about a ruling with which they disagreed, and on an issue of importance to them. If “legitimacy is for losers,” then this is an entirely appropriate, indeed essential, research design.

This portion of our research set-up represents a “one-group pretest-posttest” design. Because the design does not itself control for potentially confounding variables, the effect of the treatment cannot be specified with the causal certainty of a truly experimental design. Consequently, we must control for a variety of extraneous variables, as one would in a typical observational study.

To reiterate, because legitimacy is for losers, the theory focuses its concern on those who

are exposed to a Supreme Court decision with which they disagree. All respondents in this sample meet this objection pre-condition criterion.

***The Dependent Variable: Change in Institutional Support***

We measured support for the Supreme Court at the very beginning ( $t_1$ ) and very end of the survey ( $t_2$ ). In each case, we used four indicators.<sup>4</sup> Appendix B reports the frequencies on these various indicators, at both points in time. On these items, support for the Supreme Court varies fairly substantially, from less than one-third of the respondents who would not subject the Supreme Court to greater political control to a substantial majority who do not want to abolish the Supreme Court even if it made a string of counter-majoritarian decisions. Both the first and second measurements of support for the Court result in highly reliable indicators: at  $t_1$ , Cronbach's alpha = .85 (mean inter-item correlation = .59) and at  $t_2$ , alpha = .87 (mean inter-item correlation = .64). In terms of dimensionality and validity, both the  $t_1$  and  $t_2$  item sets are strongly unidimensional (the eigenvalue of the second factor extracted by Common Factor Analysis in both analyses is less than .50), and all factors load strongly (exceeding .70) on the first extracted factor. The psychometric properties of these two sets of measures are thus quite strong. We use as the measure of support a summated index of responses to the four indicators.

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<sup>4</sup> Our measures of this concept follow closely the recommendations of Gibson, Caldeira, and Spence (2003), the analysis of Gibson and Caldeira (2009), and other recent investigations of Supreme Court support (e.g., Bartels and Johnston 2013; Gibson and Nelson 2014; Christensen and Glick 2014).

In both instances, the summated indices correlate almost perfectly with the factor scores extracted from the Common Factor Analysis.

Responses to the Court at both time points are strongly intercorrelated:  $r = .87$ . In terms of the number of items on which the respondent expressed support for the Court, 59.2 % of the sample did not change from  $t_1$  to  $t_2$ .

At the same time, there is meaningful change in attitudes over the course of the interview. The mean of the difference in index scores between  $t_2$  and  $t_1$  is  $+.10$ , indicating an overall increase in support for the Court. Additionally, most of the individual-level change is also *positive*. Based on the number of items endorsed, only 10.9 % of the sample became less supportive of the Court while 29.9 % became more supportive of the Court. Using a continuous index that takes attitude intensity into account, 21.7 % of the respondents became less supportive of the Court, 35.4 % did not change in their level of support, and 43.0 % became more supportive. As reported in Appendix A, on every item in the four-item sets, support for the Court increased over the course of the interview. This by itself is a remarkable finding inasmuch as *all respondents were told that the Court made a decision on a salient and important issue that was contrary to their preferences*. Despite this, nearly 30 % of the respondents expressed more support for the Court at the end of the interview than at the start.<sup>5</sup>

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<sup>5</sup>When we stack the  $t_1$  and  $t_2$  responses on top of each other, we find a statistically significant difference between the  $t_1$  and  $t_2$  responses on both the support index ( $p = .003$ ) and the count of the number of supportive replies ( $p < .001$ ). In both instances, Court support increased at  $t_2$ .

As we have noted, the respondents were allowed to select from three legal issues the one they judged to be the most important. It turns out that change in institutional support is independent of the issue selected. We do observe a slight relationship between the strength of one's views on the issue selected and change in support, with those holding strong issue opinions not increasing the strength of their institutional support as much as those not holding strong opinions ( $p < .069$ ). We therefore include strength of opinion as a control variable in the multivariate analysis.

### ***The Experimental Manipulation***

This survey included an experiment with a simple 2x2 manipulation, based on two dichotomies (with independent random assignment to each condition): (1) judicial versus abstract symbols present on the computer screen, and (2) a legal commentator's criticism of the Court's decision as not grounded in legal principles versus no commentary. In this analysis, we focus only on first manipulation;<sup>6</sup> doing so produces no error because the two manipulations were orthogonal (by

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<sup>6</sup> Bartels and Johnston (2013) similarly ignore an orthogonal manipulation. We included a formal manipulation check on exposure to either the judicial symbols or the abstract shapes. A very large percentage of the respondents – 87.7 % (unweighted) – identified the image to which they were in fact exposed. The accuracy of the replies varied insignificantly ( $p > .05$ , two-tailed) according to whether the respondent was shown the abstract shapes or the judicial symbols. The manipulation check on exposure to the criticism produced unusual evidence. Here, 82.5 % of those not exposed to the criticism said that they did not remember seeing any statements from



virtue of the research design and random and independent assignment to treatment conditions).

[PLACE FIGURE 1 ABOUT HERE]

After the respondents declared their positions on their chosen issue, we presented a headline on the screen that read: “The U.S. Supreme Court decides an important case on [R’S ISSUE].” At that point, the direction of the decision was not revealed. The screen proclaiming the ruling was rimmed with either judicial or abstract symbols (with random assignment to condition). Figure 1 reports both the symbols condition and the abstract symbols screens (for an example of a comparable approach to creating “control” symbols see Weisbuch-Remington, et al. 2005, and Panagopoulos 2014).

Before revealing the Court’s decision to the respondent, we measured generalized affect toward the Court (see below). The next screen then announced the decision, keeping the symbols in place. Recall that, in every instance, the decision was contrary to the respondent’s preference.

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legal commentators, so the vast majority in this condition passed the manipulation check. However, 55.5 % of those shown the comments said that they did not remember seeing any. Moreover, another 5.8 % of these respondents remembered that the comments *praised* the Court’s decision. Only 38.7 % of those shown the comments fully passed this manipulation check. This failure rate considerably complicates any analysis that includes the criticism variable. We therefore defer analysis of the criticism variable to a later time.

### ***The Direct Effect of the Experimental Manipulation***

Something happened over the course of the interview to increase support for the Supreme Court. A simple t-test of the difference of means for change in support, however, shows that the explanation has nothing *directly* to do with being exposed to the symbols of judicial authority. It seems that the interview itself, including the block of questions about the Supreme Court, produced the change, not specifically the exposure to the Court's legitimizing symbols.

This finding is compatible with the theoretical and empirical positions adopted by Gibson, Lodge, and Woodson (forthcoming). They argue symbols do not *change* pre-existing levels of institutional support; rather, symbols activate dormant connections between considerations that already exist. This suggests that the symbols may have a conditional effect on change in support.

### ***Non-Experimental Determinants of Change in Court Support***

We next consider a handful of measures of the respondents' pre-existing attributes as possible explanations of change in institutional support. We focus on three variables in particular.

***Exposure to the Supreme Court.*** We hypothesize that those with greater prior exposure to the Supreme Court will be less likely to be phased by the unwanted Supreme Court decision. Earlier research has shown differences among those with lower or higher exposure to political institutions. For instance, Doherty and Wolak (2012) found that those lower in political sophistication are more likely to be guided by heuristics and prior beliefs, whereas those with higher sophistication are more likely to engage in effortful processing of information. Similarly, Kam (2005) has found that party cues have the greatest effect on the least knowledgeable. She

speculates that this is because those with less information rely upon heuristic information-processing processes. We posit a similar hypothesis with regard to the Supreme Court.

We measured exposure as follows: “How often do you read or hear news about the U.S. Supreme Court? Very often, often, somewhat often, not very often, almost never or never?” Like most Americans, our respondents were not particularly attentive, with a modal answer of “not very often” (39 %) and with only 32 % reporting having read or heard news about the Court at least “somewhat often.”

*Intensity of policy preferences.* As a simple control variable, we include a measure of whether the respondent holds strong views about the policy on which the Supreme Court ruled, under the hypothesis that strong views are associated with a decline in support for the Court.

*Decisional disappointment.* All respondents were presented with a ruling with which they disagreed. This does not necessarily mean, however, that the decision generated the same amount of disappointment. We hypothesize that those for whom the Court’s ruling is a violation of standing expectations that the Court will make “good” decisions – those who are actually disappointed by the ruling – will be more likely to withdraw support from the institution.<sup>7</sup>

Our measure of decisional disappointment is created from the feeling thermometer question asked immediately prior to the decision’s announcement. We posit that those feeling more favorable toward the Court are more disappointed with an important decision that runs

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<sup>7</sup> Christenson and Glick (2014) employ in their theory a similar notion of expectations and disappointment (e.g., p. 6). However, their empirical measures emphasize empirical perceptions of decision-making processes, not normative expectations.

directly counter to their preferences. Some comments on this measure are necessary.<sup>8</sup>

In an investigation of measures of specific and diffuse support, Gibson, Caldeira, and Spence (2003) concluded that feeling thermometer responses are influenced by both specific and diffuse support. Consequently, when a thermometer is included in a multivariate equation that also incorporates a direct measure of institutional support as an independent variable, the direct influence of the feeling thermometer is even more likely to reflect specific support attitudes – the belief that the institution is performing well in deciding cases. Treating this belief as a generalized expectation that the Court will decide cases “correctly” (i.e., consonant with the individual’s preferences), and juxtaposing that expectation against the announcement of an important Court decision contrary to the preferences of the respondent, we have a measure of disappointment. Because every respondent in the sample was told that the Court decided an important legal issue contrary to her or his preferences there is no variability on this “variable.” Thus, the role the disappointment measure plays is to introduce variability in how the respondents reacted to the adverse ruling. We hypothesize that those who were more disappointed in the ruling became less supportive of the Court as an institution.

***Initial levels of court support: Positivity Theory.*** Positivity Theory does not predict that everyone will react similarly to an unwanted Court decision. Instead, the nuanced hypothesis of

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<sup>8</sup> We acknowledge that our understanding of this variable is contrary to the theoretical rationale we originally envisaged. When confronted with a bivariate correlation with a sign opposite that which we expected, we sought a theoretical means of interpreting the contrary relationship. Owing to this post-hoc reasoning, one might place less confidence in this finding.

Positivity Theory is that, among those high in support for the Court, disappointment in a decision will have little or no effect on support, which is precisely a consequence of the reservoir of goodwill concept. Because institutional loyalty has developed, support is unlikely to be shaken by a single adverse event. Loyalty inoculates against disappointment.

Positivity Theory suggests something of an asymmetrical hypothesis regarding those not so high in institutional support. The theory posits that when people pay attention to the Supreme Court, they learn that the Court is not just another political institution, that there is something “special” about the institution, and that it differs from institutions such as Congress. The theory suggests that when people become attentive they learn not that justices are mechanical jurisprudes but rather that the divisions among the justices are principled, not self-interested and strategic. Gibson, Lodge, and Woodson (forthcoming) have produced some evidence in support of this view. When exposed to the symbols of judicial authority – the robes, the cathedral-like building, honorific forms of address – citizens are found to be more likely to accept decisions with which they disagree (although several of the important relationships they analyze are conditional in nature). Thus, the hypothesis favored by Positivity Theory is that any exposure to the institution is likely to increase support for it, especially among those initially low in support, and especially when attention to the Court provides collateral exposure to the symbols of judicial authority.

As we have noted, the data reveal that support for the Supreme Court increased significantly over the course of the interview. Yet, change is not constant across the levels of initial support (as measured by the number of supportive answers give to the  $t_1$  battery of support indicators). The greatest increase in institutional support is found among those with the lowest

levels of initial support: +.21 units. Moreover, the correlation between the number of supportive replies and the magnitude of the change in institutional support is  $-.19$ . Those least supportive of the Court increased their support the most. Without a reservoir of goodwill, disappointment in the ruling should have lowered levels of institutional support for these respondents.

Of course, one conclusion from this analysis is that it was difficult for those expressing high levels of support in the beginning of the interview to increase their support (a “ceiling” effect). For those scoring at 4 at  $t_1$ , there was practically no possibility for change in support over the course of the interview. Conversely, for those scoring 0 at  $t_1$ , no decline was possible (a “floor” effect).<sup>9</sup> Whether as a statistical artifact or a consequence of positivity bias, it is useful therefore to include a measure of the level of Court support at  $t_1$  in our analysis.<sup>10</sup>

## **Analysis**

Table 1 reports the results of regressing change in institutional support on these various measures. Several conclusions are supported by the coefficients in the table.<sup>11</sup>

[PLACE TABLE 1 ABOUT HERE]

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<sup>9</sup> On the continuous dependent variable used throughout this analysis, only 5.8 % of the respondents scored at the highest or lowest levels of institutional support at  $t_1$ . All other respondents could have increased or decreased their support over the course of the interview.

<sup>10</sup> Recall that the inclusion of a legitimacy measure as an independent variable also has the advantage of clarifying the meaning of the disappointment indicator.

<sup>11</sup> All independent variables vary from 0 to 1; the outcome variable varies from  $-2.25$  to  $+2.00$ .

First, two variables stand out as reasonably strong predictors of changing support for the Court: those expressing relatively low support for the institution at the beginning of the survey – on which we have already commented– and, to an even more substantial degree, those with greater prior exposure to the Supreme Court. Those with greater prior exposure were higher in support for the institution at the beginning of the interview ( $r = .20$ ; data not shown), but they also became even stronger supporters of the Court over the course of the interview.

Two other variables also contribute to increases in support for the Court, although to a considerably lesser degree. Institutional support grew among those with weaker issue preferences, as might be expected. In addition, those who were disappointed in the Court’s ruling were less likely to increase their institutional support.<sup>12</sup>

It seems that the interview itself generated a framing effect for answering the last battery of institutional support questions ( $t_2$  – the set that defines change in attitudes). The initial battery ( $t_1$ ) was asked without any context (as is typically the case in surveys) – the questions came “out of the blue.” The subsequent battery ( $t_2$ ) followed a series of questions requiring the respondents to think more about the Supreme Court. That invitation to think more about the institution, even in the context of learning about a disappointing decision, generated additional support for the Court. To us, this looks very much like a positivity bias.

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<sup>12</sup> When we added demographic variables (age, whether African American, whether Hispanic, level of education, gender, income, whether internet access, whether owns own residence, whether currently employed, party identification, ideological identification, and religiosity) to the equation reported in Table 1, the increase in  $R^2$  for the entire set of variables was trivial.

### *The Conditional Effect of Decisional Disappointment*

We hypothesize that the influence of disappointment is conditional upon exposure to the symbols of judicial authority. In a similar vein, Gibson, Lodge, and Woodson (forthcoming) found that the effect of disappointment with the Court's decision on willingness to challenge that decision was reduced to zero in the presence of the symbols of judicial authority. They speculated that the symbols activated thoughts about judicial fairness that absolved the Court of any blame for its decisions – in essence, the symbols activated the Court's "reservoir of goodwill." We test a similar logic with this analysis of change in institutional support.

In fact, the data support this hypothesis.<sup>13</sup> When we add the interaction of disappointment and exposure to judicial symbols to the equation reported in Table 1, we observe a statistically significant increase in  $R^2$  ( $p = .05$ ). In this simple equation, this means (by definition) that the regression coefficient of the interactive term is also significant at  $p = .05$ . We can readily manipulate this equation to illustrate the effect of being exposed to the judicial symbols. Appendix C reports the table showing the results of this analysis.

When the respondents were shown abstract symbols ( $X = 0$ ), the equation simplifies to:

$$\text{Change in support} = .25 - .30 \cdot \text{Decisional Disappointment} + \text{Etcetera}^{14}$$

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<sup>13</sup> Because none of the other two-way interactions between the symbols manipulation and the other independent variables is significant, we test only for this hypothesized interactive effect.

<sup>14</sup> These results are, of course, from the full equation. We are only focusing on the hypothesis that decisional disappointment interacts with exposure to the judicial symbols.



(Decisional disappointment varies from 0 to 1.) The coefficient for disappointment is statistically significant at  $p = .004$ . However, the equation for those exposed to the judicial symbols ( $X=1$ ) is:

$$\text{Change in support} = (.25 - .19) + (-.30 + .25) \cdot \text{Decisional Disappointment} + \text{Etcetera}$$

Thus, in the absence of judicial symbols, the regression coefficient for disappointment is  $-.30$ ; in the presence of these symbols, the coefficient declines to the trivial level of  $-.05$  (and, of course, the difference between these two coefficients is statistically significant).

These results seem to indicate that the presence of the judicial symbols impedes the conversion of decisional disappointment into a diminution of institutional support. When no symbols are present, disappointment decreases institutional support to a statistically significant degree – nothing blocks the conversion of disappointment into diminished legitimacy. In the presence of judicial symbols, however, the effect of being disappointed in the decision is essentially eliminated. This is a powerful role for judicial symbols to play.

This interaction can also be addressed from the point-of-view of decisional disappointment. Figure 2 reports the marginal effect of the symbols manipulation across the range of decisional disappointment, showing that the effect of seeing the judicial symbols varies by levels of disappointment in the Court's decision. When disappointment is relatively high (roughly above .5 on the measure), the effect of witnessing the symbols is indistinguishable from zero. At the same time, when disappointment is relatively low, the marginal effect of the symbols is to significantly reduce the influence of disappointment on attitude change.<sup>15</sup> Judicial symbols seem to have their greatest influence among those least disaffected by the Court's ruling.

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<sup>15</sup> About 30 % of the respondents score below .5 on the disappointment measure.

[PLACE FIGURE 2 ABOUT HERE]

Still, these effects, while statistically significant, are not gigantic. Recall that the dependent variable ranges from  $-2.25$  to  $+2.00$ , meaning that even the largest of these effects (no disappointment in the abstract symbols condition) is strong enough to move respondents only about 8% of the entire range of the variable. Thus, these results indicate that the ability of a single decision to move diffuse support is moderate, at best.

## **Discussion and Concluding Comments**

The most important finding of this analysis is its simplest finding: Despite being presented with a Court decision contrary to the respondents' policy preferences on an issue of importance to them, institutional support *increased* – a finding reminiscent of the fabled *Bush v. Gore* decision. This evidence runs contrary to the expectations of the specific-support revisionists.

Why did the adverse ruling by the Court not diminish its legitimacy? A portion of the answer to this question is that it *did*, although the effect of losing is diminished because it is bound up in expectations about the Court. The institutional support of those who generally expect the Court to make “good” decisions – those who are disappointed when the Court makes “bad” decisions – did indeed decline somewhat.

But there are some important caveats to this finding. First, we reiterate one more time that our measure of disappointment is imperfect. Second, the effect of disappointment is statistically significant, but still not overly strong. Third, all of the respondents in our sample “lost” on the issue being litigated, but losing was associated with disappointment for only a portion of the sample. Losing, *per se*, may not undermine legitimacy; instead, it depends on

one's expectations. Finally, and importantly, the effect of disappointment on changing legitimacy was eliminated when respondents were exposed to the symbols of judicial authority, a finding that seems to provide empirical support for the claims of Positivity Theory.

This last point is worthy of some further consideration. Most Americans get most of their political news from television. Although we admit to not having systematic data on this point, we suspect that most television reports on Supreme Court decisions are accompanied by images of the justices, the Court, and the other symbolic paraphernalia of the legal system.<sup>16</sup> Our evidence indicates that, absent these symbols, disappointment with a Court decision can harm the institution's legitimacy. However, instances where people learn about disappointing rulings without exposure to judicial symbols may not be particularly common. The experimental condition most closely connected to reality – the condition in which symbols are present – is one in which the effects of decisional disappointment are nullified. If we are correct about this, then this is a formidable role for symbols to play.

According to Gibson, Lodge, and Woodson (forthcoming), Positivity Theory does not necessarily predict a main effect of exposure to symbols. These authors argue that viewing symbols activates pre-existing associations relevant to law and courts. We found a similar effect. Among those respondents most disappointed with the Court's decision, the symbols were unable to reduce the effect of disappointment. Yet, among those who were only mildly disappointed with the ruling (and who might be thought of as "persuadable"), symbols did have an effect,

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<sup>16</sup> Christenson and Glick (2014, p. 7) note that when the Obamacare decision was announced in the original news story, the news was accompanied by a picture of the justices in their robes.

reducing the consequences of disappointment. Thus, the symbols do not necessarily create any attitudes; instead, they make pre-existing attitudes relevant, moving them into working memory.

Some support for that expectation is provided by this research. Exposure to the symbols of judicial authority appears not to change willingness to extend support to the institution of the Supreme Court. Our evidence is that change in Court attitudes was the same for those exposed to both the abstract symbols and the judicial symbols – even if being exposed to judicial symbols changes how other variables affect change in diffuse support. While this is certainly a finding requiring further inquiry, that symbols are influential because they activate pre-existing attitudes and considerations has myriad implications for both theory and research designs.

We (and others) focus on a single decision, albeit an important one. But we doubt that citizens form their attachments to institutions – their *loyalty* to institutions – based on a single ruling; few decisions, other than the rare highly salient opinion, invite individuals to revisit those attachments. Instead, citizens most likely react to the portfolio of decisions issued by the institution. Especially in the current context of a Court that makes conservative decisions in (roughly) one-half of its cases and liberal decisions in the other half, all citizens are likely to encounter many rulings that please them and many that do not. Despite the findings of this paper and of the specific-support revisionists, research focusing on the effects of a single decision on Supreme Court legitimacy will never provide a complete understanding of how people update their attitudes toward institutions. More research is essential to examine whether a single decision has any lasting effect, positive or negative, on how people feel about their institutions.

Research, including ours, also errs if it assumes that citizens judge the Supreme Court only on whether they agree with its rulings in cases. “Performance satisfaction” is a construct

that includes policy and ideological agreement, but that most likely also includes much more. We have already alluded to the important – perhaps even crucial – role that perceptions of procedural fairness play in institutional assessments. But we would add as well other aspects of the Supreme Court’s performance. Perhaps some citizens are affected by the unwillingness of the institution to televise its proceedings, or, more generally, the lack of transparency on the Court. Perhaps another group is not convinced that judges who decide so few cases should have so much time to write profit-generating books. And a final group may factor into their assessments criteria such as descriptive representation, including the dominance of the institution by those who hail from New York City and just two law schools. Students of voting have long abandoned models of choice based exclusively on policy preferences. Perhaps it is time for judicial scholars to do the same, and to redouble our efforts to understand the variability in performance satisfaction.

In the end, the thesis of the specific-support revisionists requires a great deal more evidence before it becomes part of the conventional wisdom on citizens’ attitudes toward the Supreme Court. And, if the revisionists are correct, then Legitimacy Theory itself may be much in need of further revisions. Thus, a great deal rides on getting the empirical evidence correct.

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*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012)

**Table 1. The Predictors of Changing Support for the U.S. Supreme Court**

	OLS Regression Results	
	b	s.e.
Institutional Support	-.24***	.04
Symbols Manipulation	-.05	.03
Exposure to the Supreme Court	.41***	.06
Strength of Issue Position	-.07*	.03
Decisional Disappointment	-.15*	.07
<i>Equation</i>		
Intercept	.17***	.05
Standard Deviation – Dependent Variable	.45	
Standard Error of Estimate	.43	
R <sup>2</sup>	.09***	
N	863	

Note: All independent variables are scored to vary from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R<sup>2</sup> = coefficient of determination

Significance of regression coefficients: \*\*\* p < .001    \*\* p < .01    \* p < .05

**Figure 1. The Symbols Manipulation: Judicial Versus Abstract Symbols**



Please read the headline below describing the Court's decision in that case. The "Next" button will appear in a moment.

**The United States Supreme Court has decided that the government should be allowed to monitor citizens' searches on the internet, without a warrant from a judge, including the internet searches of U.S. citizens, to watch for suspicious activities.**

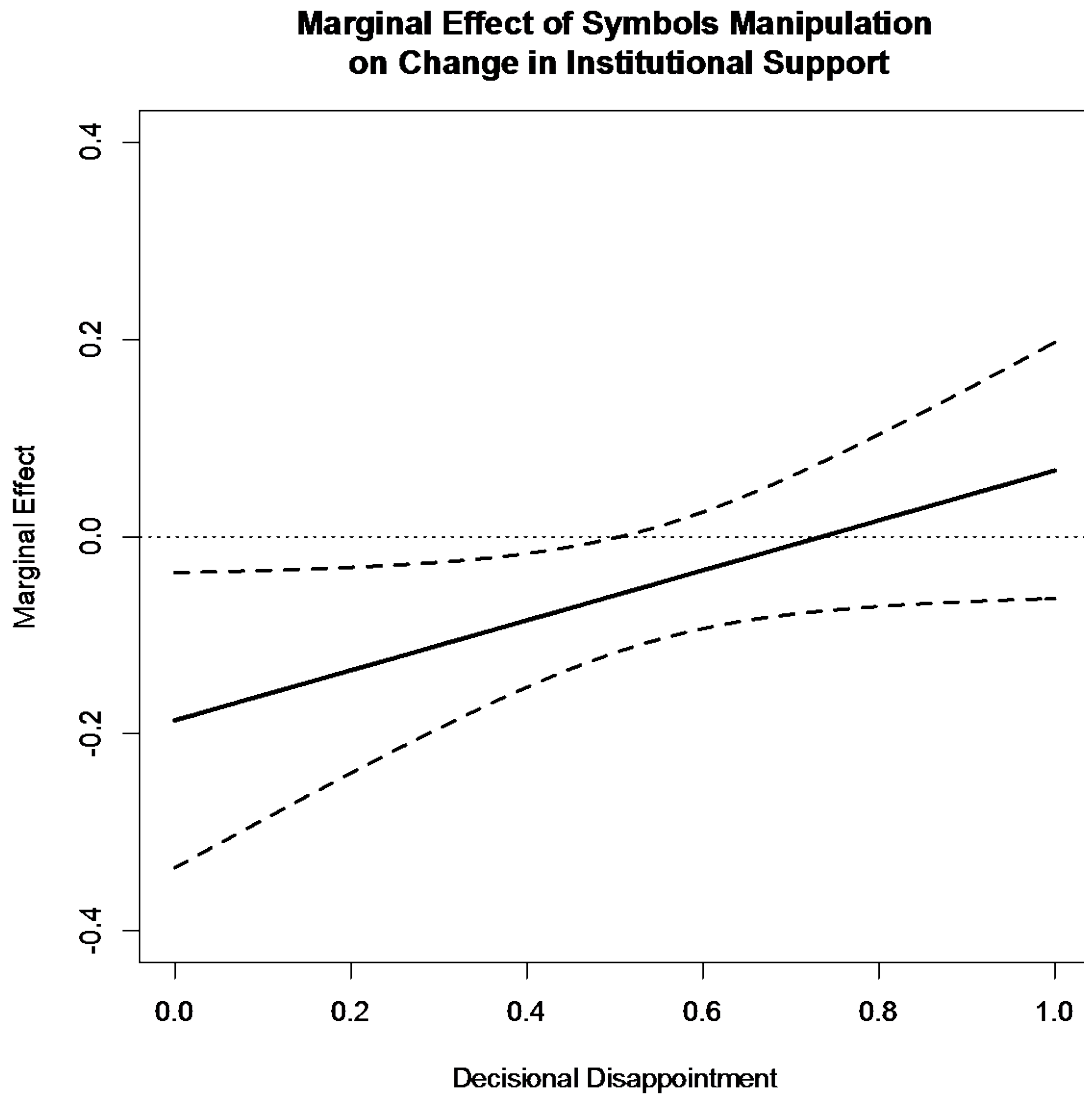


Please read the headline below describing the Court's decision in that case. The "Next" button will appear in a moment.

**The United States Supreme Court has decided that the government should be allowed to monitor citizens' searches on the internet, without a warrant from a judge, including the internet searches of U.S. citizens, to watch for suspicious activities.**



**Figure 2. The Marginal Effect of the Symbols Manipulation Across Levels of Decisional Disappointment**



Note: This figure reports the marginal effect of exposure to judicial (rather than abstract) symbols on change in institutional support across all possible values of decisional disappointment. The figure demonstrates the dampening effect of judicial symbols among individuals with low or moderate disappointment with the Court; among the most disappointed respondents, there is no effect of the manipulation on the amount of change in institutional support (the marginal effect is indistinguishable from 0).

## Supplemental Appendix A: Survey Details

This survey experiment was fielded as a TESS study. All TESS studies are based on the Knowledge Network internet panel, the KnowledgePanel. In the case of this study, the sample consisted of adults age 18 years old and older who were born in the United States.

### Description of KnowledgePanel®

KnowledgePanel® is a probability-based panel. By definition, all members of KnowledgePanel have a known probability of selection. As a result, it is mathematically possible to calculate a proper response rate that takes into account all sources of nonresponse. In contrast, opt-in web panels do not permit the calculation of a response rate since the probabilities of selection are unknown. Consequently, opt-in panels are mathematically capable of computing only the survey completion rate representing the final stage of gaining cooperation of survey research subjects, excluding the nonresponse resulting from panel recruitment, connection, and panel retention.

The panel sample selection methodology used for this study was developed by Knowledge Networks in recognition of the practical issue that different surveys target different subpopulations. The methodology was also developed to attempt to correct for nonresponse and noncoverage error in the panel sample that could be introduced at the panel recruitment, connection, and panel retention stages of building and maintaining the panel.<sup>1</sup> The panel sample selection methodology, which has been used by Knowledge Networks since 2000, provides statistical control on the representativeness of KnowledgePanel survey

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<sup>1</sup> In KN's patented solution (U.S. Patent No. 7,269,570), a survey assignment method uses a weighting factor to compensate for members which are temporarily removed from a panel because of an earlier draw of sample. This weighting factor adjusts the selection probabilities of the remaining panel members. The sample is drawn using systematic PPS sampling where the panel poststratification weights will be the Measures of Size (MOS). If the user requirements call for independent selection by stratum, the panel weights (MOS) are adjusted in the following procedure: Sum the MOS for each stratum, call this sum  $Sh$  for stratum  $h$ . Consider the user-specified or system-derived target sample size for stratum  $h$  to be  $nh$ . Then multiply each MOS for Members in stratum  $h$  by  $nh/Sh$ . Then use an interval of  $k=1$  and apply systematic PPS sampling to achieve the desired yield per stratum.

samples as measured by their proximity to population benchmarks.

### Response Rate Calculations

Field Start Date	Field End Date	N Fielded	N Completed	Completion Rate	N Qualified*	Qualification Rate	AAPOR RR3
3/22/2012	4/2/2012	1,790	1,130	63.1%	1,091	96.5%	6.3%

\* To qualify, a respondent must have not refused Q6 or been cleaned out as a constant refuser or “speeder.”

Below are the components of the response rate calculation and the actual calculations. An extended description of how to compute response metrics for online panels is found in Callegaro & DiSogra (2008).

### Household Recruitment Rate (RECR) = .155

Panel recruitment is done using RDD telephone methods and address-based sampling (ABS). The recruitment rate is computed using the AAPOR Response Rate 3 (RR3). If at least one member of the household is recruited, the household as a unit is counted in the household recruitment rate.

### Household Profile Rate (PROR) = .648

The study profile rate is computed as an average of the cohort profile rates for all households in the study sample. Although the average number of profiled panel members per household is usually greater than one, a household is considered “profiled” when at least one member completes a profile survey. In this study, an overall mean of 64.8% of recruited households successfully completed a profile survey.

### Study Completion Rate (COMR) = .631

For this study, one panel member per household was selected at random to be part of the sample. At the end of the fielding period, 63.1% of assigned members completed the survey. Substitution, or another

member of the same household taking the survey instead of the sampled respondent, was not allowed in this study. This is also the general policy for KnowledgePanel samples.

**Break-Off Rate (BOR) = .054**

Among all members who started the survey, 5.4% broke off before the interview was completed. It is the researcher's call to classify break-off as break-offs or partial interviews depending on the study design and the key variables to be measured.

**Household Retention Rate (RETR) = .389**

The retention rate is computed as an average of the cohort retention rates for all members in the study sample.

**Cumulative Response Rate 1 (CUMRR1) = RECR \* PROR \* COMR = .063**

Because one member per household was selected in computing the cumulative response rate, we use the household recruitment rate multiplied by the household profile rate and the survey completion rate.

**Cumulative Response Rate 2 (CUMRR2) = RECR \* PROR \* RETR \* COMR = .025**

In the cumulative response rate 2, retention is taken into account.

**Comparison of Response Rates**

It is important to note the differences between an RDD telephone or mail sample and KnowledgePanel, which are very different in nature. RDD telephone and mail samples can be compared because they are one-time surveys. However, an online panel such as KnowledgePanel is composed of people recruited at different times and, more importantly, committed to answering many surveys for a period of time and not just that single survey. Further, with KnowledgePanel, panelists must also complete profile surveys in order to become members of the panel. These differences are reflected in the recruitment and profile rates

reported above. These differences make directly comparing response rates between one-time surveys and Panel surveys difficult and perhaps not illuminating.

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## Supplemental Appendix B: The Distribution of The Support Indicators

**Table 1. Change Loyalty Toward the United States Supreme Court**

Indicator	Level of Diffuse Support for the Supreme Court			Mean	Std. Dev.	N
	Percentage					
	Not Supportive	Undecided	Supportive			
<b>Do away with the Court</b>						
t <sub>1</sub>	12.7	28.1	59.2	3.7	1.0	927
t <sub>2</sub>	13.4	21.7	64.8	3.7	1.0	927
<b>Remove judges who rule against majority</b>						
t <sub>1</sub>	26.1	33.1	40.7	3.2	1.1	924
t <sub>2</sub>	22.8	26.6	50.6	3.4	1.0	923
<b>Makes Court less independent</b>						
t <sub>1</sub>	39.0	25.0	36.0	3.0	1.2	927
t <sub>2</sub>	38.7	21.9	39.4	3.1	1.1	924
<b>Control the actions of the Supreme Court</b>						
t <sub>1</sub>	36.0	33.5	30.5	3.0	1.1	927
t <sub>2</sub>	32.8	30.1	37.0	3.1	1.1	917

Note: The percentage are calculated on the basis of collapsing the five-point Likert response set (e.g., “agree strongly” and “agree” responses are combined), and sum to 100 % across the three percentage columns (except for rounding errors). The percentage “Supportive” is the percentage of respondents giving a reply supportive *of the Court*, not the statement itself. The means and standard deviations are calculated on the uncollapsed distributions. Higher mean scores indicate more institutional loyalty. Data are reported for those who completed the interview in 30 minutes or less.

The propositions are:

**Do away with the Court:** If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.

**Remove judges who rule against majority:** Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge.

**Makes Court less independent:** The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

**Control the actions of the Supreme Court:** It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court.

Source: TESS Survey, 2011.

## Supplemental Appendix C: Interaction Analysis

**Table C.1. The Predictors of Changing Support for the U.S. Supreme Court, with Interaction**

	OLS Regression Results	
	b	s.e.
Institutional Support	-.24***	.04
Symbols Manipulation	-.19*	.08
Exposure to the Supreme Court	.41***	.06
Strength of Issue Position	-.07*	.03
Decisional Disappointment	-.30**	.10
Decisional Disappointment X Symbols Manipulation	.25*	.13
<i>Equation</i>		
Intercept	.25***	.06
Standard Deviation – Dependent Variable	.45	
Standard Error of Estimate	.43	
R <sup>2</sup>	.09***	
N	863	

Note: All independent variables are scored to vary from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R<sup>2</sup> = coefficient of determination

Significance of regression coefficients: \*\*\* p < .001    \*\* p < .01    \* p < .05