Agenda-Setting in the Supreme Court: The Collision of Policy and Jurisprudence*

Online Supplement

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Justice Vote Coding Notes

Our dependent variable is each justice's dichotomous vote to grant or deny review. We follow Spaeth's Expanded Burger Court Database (2001) and code votes "Join-3" votes and votes to "note probable jurisdiction" (in appeals) as votes to grant. We note, however, that if we treat Join-3 votes as missing data, our results remain the same. Relatedly, we code "dismiss" votes and votes to "dismiss for want of jurisdiction" (also in appeals) as votes to deny.

Adopting this coding scheme means we fall 198 votes short of the theoretical maximum for a nine-member body voting on 358 petitions (i.e., $358 \times 9 = 3222$). 66 of these missing values arose because fewer than nine justices sat on the Court (i.e., vacancy or non-participation) or because Justice Blackmun's docket sheets had missing entries. The remaining 132 missing values were votes to call for the views of the Solicitor General, votes to hold over the petition to a later date, or some other action that is not directly mappable onto a dichotomous framework. Rather than make arbitrary coding rules for these votes, we simply counted them as missing data. Similarly, rather than make a subjective decision about the coding of petitions where the outcome was to grant, vacate, and remand, we opted to exclude them from our analysis.

Alternative Measurement of Likely Merits Outcome (θ)

As noted in the text, there are several plausible ways to operationalize the likely merits outcome. We select the median justice's ideal point for its theoretical appeal (median voter theorem), empirical support in the recent literature (Bonneau et al. 2007), and because it performs best among a wide pool of alternatives considered while performing our data analysis.

We tested a variety of alternatives to measure the predicted policy outcome (θ). Following the approach of Caldeira, Wright, and Zorn (1999), we created a rolling issue-specific variable. To code this variable we first examined all cases decided in a particular Spaeth *value* area for the previous t terms, where t ranged anywhere from 1 to 7. For each set of cases in a value area, we extracted the JCS score of the median member of the majority coalition. From this vector of JCS scores we then took the median value, which produced our estimate of the policy outcome for a given value area in a given term.

In addition to this approach we also tested a variable where the number of cases that a justice would use to estimate the likely policy outcome was constant across issue areas. For example, we sorted all decisions in criminal procedure by the term of decision and extracted the JCS score of the median coalition member for the n most recent cases, where n ranged from 1 to 25. From this vector of JCS scores we again took the median value to obtain our estimate.

We also replicated both the rolling issue variable approach and the fixed number of cases approach but instead of extracting the JCS score of the median of the majority coalition, we used the JCS score of the majority opinion writer. Again, across these multiple specifications (nearly three dozen in total) our result for the *Merits Outcome Closer* variable remain unchanged.

Intercoder Reliability of Conflict Variables

To assess the reliability of our coding of *Alleged Conflict*, *Weak Conflict*, and *Strong Conflict*, we took a sample of 45 petitions from our dataset and one author who had not initially coded the petitions went back and coded for these variables. The results from the reliability analysis are reported below. Note that * denotes $p < 0.001$. By the standard metric used to interpret the Kappa statistic, the agreement values for *Alleged Conflict* and *Weak Conflict* are "substantial" while the value for *Strong Conflict* is "almost perfect." This metric comes from Richard J. Landis and Gary G. Koch, "The Measurement of Observer Agreements for Categorical Data," Biometrics 33:159-174 (1977).

Variable	**Agreement %**	**Expected Agreement %**	**Kappa Value**
Alleged Conflict	86.7	63.1	0.639*
Weak Conflict	86.7	63.0	0.640*
Strong Conflict	93.3	64.2	0.814*

Standard Error Specification for Figure 2

	Standard Error Type			
Variable	*Asymptotic*	*Robust*	*Justice-Clustered*	*Petition-Clustered*
Alleged Conflict	0.145	0.144	0.206	0.229
Weak Conflict	0.121*	0.122*	0.149*	0.187*
Strong Conflict	0.114*	0.114*	0.184*	0.190*
U.S. Supports Petition	0.123*	0.122*	0.113*	0.226*
U.S. Opposes Petition	0.112	0.113	0.136	0.200
Intermediate Reversal	0.091*	0.091*	0.110*	0.160*
Intermediate Dissent	0.110*	0.110*	0.126*	0.196
Intermediate Strike	0.218*	0.215*	0.214*	0.407*
En Banc Review	0.195	0.195	0.148	0.376
Unpublished Opinion	0.226	0.234	0.271	0.409
Amicus Briefs	0.039*	0.043*	0.057*	0.079*
U.S. Law Week Article	0.097*	0.095*	0.062*	0.172
Outcome Closer	0.093*	0.094*	0.171*	0.099*
Constant	0.152*	0.149*	0.223*	0.226*

Table 1: Alternative standard error estimates for logistic regression model of dichotomous justice agenda-setting votes. * denotes $p < 0.05$ (two-tailed test). N = 3024 for all models. See figure in article for coefficient estimates.

Standard Error Specification for Figure 4

Policy-Grant Model

	Standard Error Type			
Variable	*Asymptotic*	*Robust*	*Justice-Clustered*	*Petition-Clustered*
Weak Conflict	0.138*	0.140*	0.185*	0.217*
Strong Conflict	0.128*	0.128*	0.212*	0.210*
Intermediate Strike	0.282*	0.272*	0.280*	0.444*
Unpublished Opinion	0.294*	0.294*	0.199*	0.475*
Amicus Briefs	0.048*	0.054*	0.069*	0.088*
U.S. Law Week Article	0.117*	0.116*	0.084*	0.190*
Freshman Justice	0.156*	0.150*	0.245*	0.125*
Merits Outcome Uncertainty	0.229	0.230	0.368	0.371
Outcome-Status Quo Difference	0.335*	0.327*	0.287*	0.523*
Procedural Complexity	0.418	0.420	0.453	0.690
Constant	0.290*	0.288*	0.455*	0.481*

Table 2: Alternative standard error estimates for logistic regression model of Policy-Grant votes. * denotes $p < 0.05$ (two-tailed test). N = 1886 for all models. See figure in article for coefficient estimates.

Policy-Deny Model

	Standard Error Type			
Variable	*Asymptotic*	*Robust*	*Justice-Clustered*	*Petition-Clustered*
Weak Conflict	0.193*	0.191*	0.137*	0.245
Strong Conflict	0.172*	0.171*	0.139*	0.219*
Intermediate Strike	0.330*	0.341*	0.211*	0.488*
Unpublished Opinion	0.340	0.342	0.415	0.413
Amicus Briefs	0.061*	0.060*	0.060*	0.087
U.S. Law Week Article	0.162	0.163	0.194	0.224
Freshman Justice	0.278	0.257	0.150*	0.246
Merits Outcome Uncertainty	0.336	0.316	0.197	0.408
Outcome-Status Quo Difference	0.446	0.442	0.216*	0.579
Procedural Complexity	0.583	0.591	0.440	0.754
Constant	0.422*	0.413*	0.201*	0.534*

Table 3: Alternative standard error estimates for logistic regression model of Policy-Deny votes. * denotes $p < 0.05$ (two-tailed test). N = 1138 for all models. See figure in article for coefficient estimates.