

**Legitimacy, Politicization, and Ideological Cues: Public Perceptions of
Supreme Court Decisions that Cite Amicus Curiae Briefs**

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Abstract

Recent scholarship has identified an increase in citations to amicus curiae briefs in the Supreme Court's opinions over the past several terms (Franze and Reeves Anderson 2015; Kearney and Merrill 2000). However, we know very little about how the public responds to opinions that cite these friend-of-the-Court briefs that are often filed by ideologically overt interest groups. In this paper I use a survey experiment to assess how these citations can influence the public's perception of Supreme Court decisions using a sample of approximately 3,000 respondents from Survey Sampling International. Participants were asked to read about a Supreme Court ruling where the decision direction and filing interest of the cited brief were manipulated. I find that the public is less accepting of opinions that cite briefs filed by ideologically overt interests in the aggregate and that citations to briefs filed by moderate interests do not increase acceptance of the decision. I also find that citizens are more accepting of opinions that cite briefs filed by organized interests that are ideologically similar to their own preferences and that decisions that reference briefs filed by ideologically dissimilar groups can polarize opinion. These findings have important implications for how the public makes use of ideological cues as well as for how the justices' use of these citations can shape the legitimacy of the Court's decisions.

In 2010, Justice Anthony Kennedy issued the majority opinion in *Citizens United v. Federal Election Commission*, an extremely salient and controversial case where the Court determined that corporations and unions could use unlimited funds on political advertisements, and that any laws that restricted such use were a violation of free speech under the First Amendment. Kennedy's opinion was riddled with citations to various amicus curiae briefs filed by a plethora of interests. Kennedy referred to points made by what might be viewed as less politicized interests, such as the state of Montana and finance scholars. However, he also cited entities that can be viewed as more politicized or ideologically overt, such as the United States Chamber of Commerce (a conservative, pro-business organization), and former officials of the American Civil Liberties Union (a liberal organization). What does the public make of these citations? How do citations to amicus curiae briefs filed by ideologically moderate or ideologically overt interest groups shape perceptions of Supreme Court decisions?

Recent work has identified an increase in citations to amicus curiae briefs in Supreme Court opinions over the past few decades (Franze and Reeves Anderson 2015; Kearney and Merrill 2000). While the existing literature informs us of the ways the legal and non-legal justifications used in majority opinions can shape public perceptions of the Court and its decisions, we know nothing about how the public views citations to amicus curiae briefs. In other words, we know little about how the public reacts when Supreme Court justices cite extralegal organized interests in their majority opinions in order to justify their decision-making.

In this paper, I first offer a theory of how citations to amicus curiae briefs filed by organized interests might shape acceptance of the Supreme Court's decisions. I expect to find that citations to briefs filed by ideologically moderate interests can increase acceptance of Supreme Court decisions, as they should not make the Court appear biased or politicized, but

that citations to briefs filed by ideologically overt interests will decrease acceptance, due to their politicized nature. I also expect to find a source cue effect in that the public should respond to citations to ideological interest groups based on their own ideological affiliation. In other words, they should be more accepting of decisions that cite briefs filed by interest groups similar to their own ideological preferences and less accepting of decisions that cite briefs filed by ideologically dissimilar groups.

Next, I offer the details of a survey experiment with nearly 3,000 respondents, implemented via Survey Sampling International, to test the implications of this theory. I find that ideologically moderate citations do not increase acceptance of Supreme Court decisions, but that citations to ideologically overt interests decrease acceptance. I also find that citizens are more accepting of decisions that cite briefs filed by organized interests that are ideologically similar to their own ideological affiliation and less accepting of decisions that cite briefs filed by interests that are ideologically dissimilar.

Legality, Politicization, and Perceptions of the Court

Supreme Court opinions play an essential role in shaping both public acceptance of the Court's decisions and how the Court is viewed as an institution. Prior scholarship has identified how various aspects of opinion content can shape perceptions of the Court, often through the different types of authorities used to justify decision-making. For example, research has shown that the public is more supportive of the Court as an institution when legal justifications were used in majority opinions as opposed to public opinion polls or religious justifications (Farganis 2012). Further, the public is more accepting of decisions that adhere to, rather than overturn, precedent (Zink, Spriggs, and Scott 2009) and is disenchanted by news coverage that paints the Court as politically motivated rather than legally motivated (Baird and Gangl 2006).

While there appears to be an expectation of legality, evidence suggests the public also recognizes the Supreme Court as a somewhat political institution (Hansford, Intawan, and Nicholson 2018; Scheb & Lyons 2000), and relies on these political divisions as useful information that can help shape attitudes. For example, when the partisanship of the majority coalition is mentioned, the public responds to the Court's policy outputs as it would with other government actors, using partisan cues to help form attitudes (Nicholson and Hansford 2014). Further, research shows that individuals rate the Court as less legitimate when they perceive the institution and its policies to be ideologically distant from their personal preferences (Bartels and Johnston 2013).

Another area that might paint the justices as political actors involves their interaction with organized interests. A plethora of groups file *amicus curiae* or "friend of the Court" briefs in an attempt to influence policy outcomes. Scholars have identified an ongoing trend where Supreme Court justices are increasingly citing *amicus curiae* briefs in majority, concurring, and dissenting opinions (Kearney and Merrill 2000; Franze and Reeves Anderson 2015). In doing so the justices directly reference the filing interest or individual by name, typically identifying the first filer in situations where there are many cosigners. While scholars have worked to address the ways in which these citations can influence *amicus* success in terms of outcomes (Kearney and Merrill 2000) or encourage further *amicus* activity (Hansford and Johnson 2014), no work to date has looked at how the public responds to these citations.

In sum, there has been an increase in citations to organized interests' *amicus* briefs in the Supreme Court's majority opinions, and while we know that the legal and extralegal authorities used to justify decision making can influence how the public perceives the Court and its decisions, we know little about how the public views citations to interest groups and the

implications this might have. Theoretically, citations to organized interests should have various implications for legitimacy, as this wide array of groups includes some that are apolitical or neutral in nature as well as some that are highly politicized and even controversial in nature.

Organized Interests and Implications for Legitimacy

As previously stated, the public, while recognizing the Court as a somewhat political institution, expects the justices to make decisions grounded in legality (Schreb & Lyons 2000) and “procedural fairness” (Baird 2001). Relatedly, if the justices wish to maintain their image as unbiased, neutral actors that rely on the law to guide their decisions (Epstein and Knight 1998; Epstein, Landes, and Posner 2013; Posner 2010), they should avoid appearing ideological or politically motivated, as this might be harmful to perceptions of the Court and its decisions.¹ This is an important aspect of conferring legitimacy, and as such, it is plausible to expect citations to organized interests to play an important role in this process.

Before I proceed, it’s important to note that in order to make this externally valid, one must assume that the public is aware of these citations, to some extent. While I do not assume the average citizen reads the Court’s majority opinions, there are other ways that they become aware of these citations to amicus briefs. Citations are at times highlighted in national newspapers and interest groups often advertise these references to their briefs in Court opinions to their membership to make them aware of their work and “success” as advocates for various causes. For example, in *Grutter v. Bollinger* (2003) which upheld affirmative action in university admissions, Justice Sandra Day O’Connor cited briefs filed by American businesses such as 3M and General Motors, which made national headlines. In addition, groups like the American Civil

¹ In a related project I theorize about the justices’ use of amicus curiae briefs and the implications these citations might have on legitimacy. This theory rests on the assumption that citations to organized interests can have implications for how the public perceives the Court and its decisions. A central purpose of this paper is to test this assumption.

Liberties Union alert their membership when its briefs are cited in the Supreme Court's opinions.² As such, it is safe to assume that those in the attentive public, in other words, those that pay some amount of attention to the what the Court does, should be made aware of these citations.

I assume that citing organized interests in opinions can be viewed as highlighting agreement with these actors.³ The types of organized interests that the justices decide to cite can have different consequences for how the public views Supreme Court decision-making. While citations to ideologically overt interest groups can make the Court appear biased and ideological themselves, citations to moderate interest groups will not have this same implication. In fact, citations to ideologically moderate interest groups might work to enhance perceptions of the Court's decisions as they might strengthen the Court's argument. While it may, on its face, seem unlikely that citations to any organized interest can work to increase acceptance of decisions, prior work has established that the justices will cite extralegal sources such as the Federalist Papers (Corley, Howard, and Nixon 2005), rhetorical sources (Hume 2006), newspaper articles, magazines, and academic journals (Schauer and Wise 2000) in their majority opinions, especially when attempting to legitimize decisions (Corley, Howard, and Nixon 2005; Hume 2006). Further, certain types of interests, such as professional organizations, are not viewed as politicized groups. For example, the American Medical Association and the AARP are not

² Greenhouse, Linda. 2003. "The Supreme Court: Affirmative Action; Justices Back Affirmative Action by 5 to 4, but Wider Vote Bans Racial Point System." In *The New York Times*. (Accessed 1 September 2018). <<https://www.nytimes.com/2003/06/24/us/supreme-court-affirmative-action-justices-back-affirmative-action-5-4-but-wider.html>>

ACLU. 1999. "High Court Limits Out-of-Court Statements" *American Civil Liberties Union Website*. (Accessed 1 September 2018). <<https://www.aclu.org/news/high-court-limits-use-out-court-statements?redirect=content/high-court-limits-use-out-court-statements>>

³ I am assuming these citations are non-negative, or are not used to disparage interests, as negative citations would be received differently.

exactly known for being highly controversial interests with strong ideological preferences. On the contrary, highlighting agreement with ideologically overt interests such as the American Civil Liberties Union or the National Association for Evangelicals in majority opinions might decrease acceptance of Supreme Court decisions due to the more ideologically-charged nature of these groups. These assumptions about the public's expectation of the Court as a legal institution whose decisions are unbiased and grounded in the law leads me to two sets of hypotheses:

Legitimizing Hypotheses:

The public will be more accepting of Supreme Court decisions that cite ideologically moderate interests.

The public will view Supreme Court decisions that cite ideologically moderate interests as less politicized.

Politicizing Hypotheses:

The public will be less accepting of Supreme Court decisions that cite ideologically overt interests.

The public will view Supreme Court decisions that cite ideologically overt interests as more politicized.

In assessing public perceptions of citations to organized interests I would be remiss to ignore the extensive literature on the importance of partisanship and ideology in shaping political attitudes. I assume, that while the public expects Supreme Court decision-making to be grounded in legality (Baird 2001; Schreb and Lyons 2000), it also views the institution as, at least somewhat, politically motivated. Research suggests that the public perceives the Court to be less politicized than Congress, but more politicized than apolitical institutions (Hansford, Intawan, and Nicholson 2018). Further, it's been demonstrated that the public uses ideology to evaluate the Court (Bartels and Johnston 2013; Hetherington and Smith 2007) and its decisions (Bodderly and Yates 2014; Nicholson and Hansford 2014), and as such should rely on source cues to help form their attitudes towards the Supreme Court's policies.

The public is generally minimally interested in politics (Delli Carpini and Keeter 1996) and holds attitudes that are relatively unstable (Converse 1964; Zaller 1992). As such, citizens rely heavily on source cues to shape how they respond to their political environment, allowing them to make more informed decisions (Lupia 1994; Lupia and McCubbins 1998; Sniderman, Brody, and Tetlock 1991). The public often relies on source cues such as political party affiliation (Cohen 2003; Kam 2005), ideology (Brady and Sniderman 1985; Turner 2007), interest groups (Lupia 1994), and political leaders (Mondak 1993) among others, to form policy preferences. Citizens rely more heavily on cues when the information environment is complex, or in other words, when the policies at hand are difficult to understand (Bowler and Donovan 1998; Lupia 1994) and relies less on cues when policies are easier to comprehend (Nicholson 2011).

When it comes to Supreme Court decisions, the public does not have much information to use to evaluate their level of support for these policies. The average citizen does not read through these complex majority opinions and must rely on the media to help them make sense of these decisions. These cues of citations to briefs filed by organized interests can be particularly useful when the public is evaluating complex Supreme Court decisions in a low information environment. Research has shown that individuals were able to make informed policy decisions when they were made aware of the insurance industry's positions on ballot initiatives in the state of California (Lupia 1994). Similarly, citizens should be able to form policy preferences based on cues to interest groups in the Court's opinions. For example, knowing where particular interest groups, such as big businesses, stand on certain policies can help cue the public to their own preferences on the policy based on whether they agree or disagree with the general aim of the group. As such, I propose the following:

Agreement Hypothesis:

The public will be more accepting of Supreme Court decisions that cite interest groups that are ideologically similar to their own preferences.

Further, cues themselves have the ability to polarize support for policies. Research demonstrates that the public doesn't always respond to in-party cues, but that out-party cues can polarize opinion (Nicholson 2012). This logic of polarizing opinion extends to ideology as well, and ideological cues can work in a similar manner to partisan cues. For example, it's been shown that individuals are less accepting of Supreme Court decisions that are authored by an ideologically dissimilar justice (Bodderly and Yates 2014). The public is also attuned to the issue preferences of various groups, including liberals and conservatives (Brady & Sniderman 1985), and as such, I assume individuals should be able to make ample use of cues from ideologically overt interest groups. As such, I propose the following:

Polarization Hypothesis:

The public will be less accepting of Supreme Court decisions that cite interests that are ideologically dissimilar from their own preferences.

Research Design

To assess whether citations to organized interests can influence acceptance of Supreme Court decisions, I implemented a survey experiment using a Census balanced sample collected through Survey Sampling International which generated responses from 3,003 individuals in early August of 2018. Four respondents were removed for entering invalid responses in the age category, leaving a total of 2,999. In this study participants were asked to carefully read a brief description about a Supreme Court decision where the Court determined whether employers were required to offer health care insurance that included coverage for the costs of pregnancy and child birth. This hypothetical case was chosen in order to properly manipulate the decision

direction, which was altered to be either conservative, liberal, or moderate in direction. The interest group that was listed as being cited in the majority opinion was also manipulated. The interest was either liberal (the American Civil Liberties Union), conservative (Focus on the Family), or moderate/apolitical (the American Medical Association). Each decision direction also included a control where no interest group was cited, making for a 3 by 4 design with 12 cells in total. An example of the moderate condition is included below. The full set of treatment and control conditions can be found in the appendix. A pre-test was implemented to see how well individuals could identify the ideological orientation of various interest groups to determine which would be used in this study.⁴

Figure 1: Sample Treatment Conditions

| Moderate Decision Treatment | Moderate Decision Control |
|--|--|
| <p>The U.S. Supreme Court recently decided that federal law requires some employers to provide health care insurance that includes coverage for pregnancy and childbirth. Referring to arguments made in a brief filed by (the American Medical Association/American Civil Liberties Union/Focus on the Family), the Supreme Court’s majority opinion carefully weighed the economic and health care burdens faced by both employees and employers.</p> | <p>The U.S. Supreme Court recently decided that federal law requires some employers to provide health care insurance that includes coverage for pregnancy and childbirth. The Supreme Court’s majority opinion carefully weighed the economic and health care burdens faced by both employees and employers.</p> |

⁴ To determine which interest groups were used in the study, and to ensure respondents were able to properly identify the ideological orientation of various organized interests, I pretested a list of several groups with student (N=191) and Amazon’s Mechanical Turk (N=323) samples in March of 2018. The above-mentioned interests (the ACLU, Focus on the Family, and the AMA) were chosen based on whether they would conceivably file an amicus brief in this particular type of case and whether respondents were capable of correctly inferring their ideology. More information, including a table with the percentage of respondents that were able to correctly identify or infer the ideological orientation of the group in this pretest can be found in section A1 of the Appendix.

After reading the vignette on the case, respondents were then asked their views of the holding and how the Court came to its decision before being asked to evaluate the Supreme Court more broadly. The primary dependent variable is acceptance of the decision, as derived from Gibson, Caldeira, and Spence (2005). The question asks, “Do you accept or reject the Court's decision? That is, do you think that the decision ought to be accepted and considered to be the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?” Responses included four options ranging from “strongly accept” to “strongly reject.” Respondents were also given a manipulation check, a battery of demographic questions, and a few questions on knowledge of the Court.

Citations to Ideologically Moderate and Ideologically Overt Interests in the Aggregate

In order to test the first *Legitimacy Hypothesis*, that respondents will be more accepting of decisions that cite briefs filed by an ideologically moderate interest, and the *Politicization Hypothesis*, that citations to briefs filed by ideologically overt interests can decrease acceptance of decisions, I first code two separate variables indicating whether a respondent received the treatment of an ideologically moderate or ideologically overt interest. *Ideologically Moderate* was coded “1” if an individual received the American Medical Association as the treatment, regardless of what decision direction they received, and “0” otherwise. *Ideologically Overt* was coded “1” if an individual received the conservative (Focus on the Family) or liberal (ACLU) citation, regardless of what decision direction they received, and “0” otherwise. The dependent variable *Acceptance* was coded as described above. In modeling this, I control for *Court Knowledge* (the number, out of two, questions respondents got right), *Diffuse Support* for the Court (a factor score based on three questions that measure institutional support for the Court),

the *Ideology* of the respondent (a 7-pt scale from extremely liberal to extremely conservative), and whether the respondent was *Female*, since the decision is related to women's health.⁵

As evident in Table 1, the variable for *Ideologically Moderate* citations was negative in direction in the model, and was not statistically significant, and thus there is no support for the first *Legitimizing Hypothesis*, that citations to ideologically moderate interests can increase acceptance of decisions, in the aggregate. However, the coefficient for *Ideologically Overt* was negative in direction, and statistically significant in a one-tailed test, providing support for the *Politicization Hypothesis*.⁶ In other words, citations to briefs filed by ideologically overt interests decrease acceptance of Supreme Court decisions. These results provide support for the assumption that citations to organized interests can have implications for public support of the Court's decisions. While the justices might not be able to confer legitimacy by citing ideologically moderate sources, as my theory implied, citations to briefs filed by ideologically overt interests might affect the Court's legitimacy by decreasing support for its decisions.

*** TABLE 1 HERE ***

While these results are promising, one would expect them to be much stronger given the theoretical motivation. This coupled with the fact that individuals know little about organized interests,⁷ led me to evaluate whether respondents were effectively treated. The survey included a manipulation check after the full battery of questions assessing acceptance of the decision and perceptions of the Supreme Court more generally. Respondents were asked to identify which

⁵ In the sample 74 respondents stated they did not know their ideological orientation. So as to not lose 74 additional responses, I coded these individuals as moderate and included a dummy variable in the model that indicated which individuals were in the "don't know" category. The analyses show there is no statistically significance differences in responses between these individuals and those that provided their ideological orientation.

⁶ The estimates produced by Ordered Logit and Ordinary Least Squares models are very similar. However, OLS allows for a more straightforward interpretation, makes it easier to handle issues with the model, and is more flexible. In addition, research demonstrates the benefits of using OLS over non-linear models (Angrist and Pischke 2009).

⁷ See section A1 of the appendix on pre-test information

interest was cited in the selection they read and were then asked to identify the ideological orientation of the group on 7-point scale from extremely liberal to extremely conservative. Only 34% of respondents were able to correctly identify the interest and its ideological orientation, and as such, only a small proportion of the sample was properly treated. In subsequent analyses I restrict the data to include only these individuals who were properly treated and those who were in the control group of no citation. This is not ideal as it significantly reduces the sample from 2,999 to 1,528. However, this provides a more accurate picture of the results in that we are more confident that the treatment was actually received as intended.⁸

Note that removing respondents based on a question that is asked post-treatment removes us from the experimental world and can limit the ability to make strong inferences attributed solely to the treatment. As such, I used matching techniques to achieve appropriate balance between the treatment and control groups in an effort to bring these inferences back to the “experimental benchmark” (Diamond and Sekhon 2013). Matching techniques simulate ignorability by minimizing the compositional differences between the treatment and control groups and by ensuring there are no statistically significant differences between the two groups. This helps ensure that movement in the dependent variable is attributed to the treatment and not some external factor.

To test the *Legitimizing Hypotheses*, I took all respondents who were effectively treated and those who were in the control conditions (N=1,528) and used GenMatch (Sekhon 2007) to achieve balance on a number of variables that are known to shape ideology and thus political behavior. I match on relevant demographic variables listed below. The independent variable (or

⁸ Out of 2,238 respondents that received a citation treatment, 1,438 (64%) were able to correctly identify the group cited. Out of these individuals, 767 (53%) were able to also correctly identify the ideology of the interest group. Additional information can be found in section A5 of the Appendix.

treatment) used was a citation to an *Ideologically Moderate* interest. This was coded “1” if the respondent received a decision that cited the American Medical Association and “0” for those in the control groups of no citation. I then matched on the respondent’s age, education (whether or not they hold a college degree), whether they are registered to vote, their knowledge of the Court, ideology (on a 3 point scale), party identification (on a 3 point scale), whether the respondent is female, Diffuse support for the Court, and whether they are aware of Justice Kennedy’s retirement⁹ to ensure there were no meaningful differences between these treatment and control groups that could drive my results. The balance plot in Figure 2 shows the p-values for each variable pre and post matched. Blue boxes represent the p-values before matching and the gold boxes represent p-values after matching. The ideal p-value would be “1” if matching provided completely perfect balance between groups. While this ideal is not always achieved, the primary consideration when matching between treatment and control groups is to ensure there are no statistically significant differences between the groups on any of these variables. The vertical, dotted lines stemming from the X-axis in the balance plots indicate statistically significant p-values (.00, .05, and .10, respectively). So, ideally, the gold colored boxes, which indicate post-matching p-values, should be to the right of these lines to ensure appropriate balance. As evident in Figure 2, there are no variables that contain statistically significant differences between groups in the post-matching data.

** INSERT FIGURE 2 HERE **

⁹ As indicated in Footnote 5, a small number of respondents entered “don’t know” for their personal ideology and were coded as “moderate” in the data. An indicator variable labeled “1” for those who answered, “don’t know” and “0” otherwise was included in the matches. Diffuse support was calculated by creating a factor score based on the answers to 3 questions measuring institutional support for the Court. When producing the matches this was cut into quartiles. Finally, the survey included a question asking respondents if they could name the Supreme Court justice that recently announced his retirement. This was included to ensure nothing in the current political climate was influencing my results. A variable coded “1” for those who could identify Justice Kennedy by name and “0” if they could not is included in the matches.

To test these hypotheses, I use a simple difference of means test since the appropriate balance was achieved. As evident in Figure 3, there was no statistically significant difference ($p = .67$, two-tailed) in acceptance of Supreme Court decisions between the treatment of those who received a moderate citation and control group of those who received no citation. This suggests that, contrary to my expectations, citations to ideologically moderate interests in the Court's majority opinions cannot increase acceptance of said decisions. This is interesting in that while the justices might attempt to use extralegal or rhetorical sources to legitimize their decisions (Corley, Howard, and Nixon 2005; Hume 2006), citations to moderate interests do not have the ability to confer legitimacy.

** INSERT FIGURE 3 HERE **

Next, I test the second *Legitimizing Hypothesis*, that citations to ideologically moderate interests can make the Court's decision appear less politicized. Here, I used the question, "Do you think the Court's decision was based on law or politics?" as the dependent variable in this analysis. Respondents could answer "law", "both law and politics", or "politics." This variable is coded on a 3-point scale so that an increase indicates the view that the decision was more politicized. As evident from the figure, there is no statistically significant difference between the groups ($p = .28$, two-tailed), again suggesting that citations to moderate interests do not confer legitimacy in that they do not make the Court's decision-making process appear less politicized.

** INSERT FIGURE 4 HERE **

To test the *Politicizing Hypotheses*, that citations to briefs filed by ideologically overt interests will decrease acceptance of the decision and make the Court's decision appear more politicized, I adopt the same methodological approach above and use GenMatch (Sekhon 2007) to achieve balance between the treatment and control groups. In this scenario the treatment

variable *Ideologically Overt* was coded “1” if a respondent received a decision that cited the American Civil Liberties Union or Focus on the Family, and “0” for those who were in the control conditions of no citation. Figure 5 shows the p-values that indicate whether or not there was a significant difference between the treatment and control groups based on the variables mentioned above. As evident in the plot, there are no statistically significant differences between these two groups on any of the variables of interest in the post-matching data, suggesting the matching was successful and the balance is appropriate.

** INSERT FIGURE 5 HERE **

To test the first *Politicizing Hypothesis*, I conduct a simple difference of means test using the matched data. Figure 6 shows how citations to ideologically overt groups can influence support for the decision. Those who received a citation to an ideologically overt interest group as the treatment were less accepting of the Supreme Court’s decision. This is statistically significant ($p = .005$, two-tailed) and consistent with my theoretical expectations. This is interesting in that it suggests that citations to briefs filed by ideologically overt interest groups might make the Court appear biased and thus can have implications for the legitimacy of the Court’s decisions. In other words, the justices’ use of particular briefs can shape how the public perceives the decision.

** INSERT FIGURE 6 HERE **

Next, I test the second *Politicizing Hypothesis*, that citations to ideologically overt groups can make the decision appear more politicized. The same question measuring politicization of the decision used above was used here as well. Figure 7 below shows the results of this. As indicated by the figure, there is no statistically significant difference between those who received the treatment of an ideologically overt decision and those in the control ($p = .217$, two-tailed). Thus, there is no support for the second *Politicizing Hypothesis*. Taken together, these results

reveal that while citations to ideologically overt interests can decrease support for the Court's decisions, they do not tend to make the Court's decision appear more politicized or driven by political motivations. This is interesting because these two findings are not consistent with each other and might suggest that while these references are unpopular, they don't appear to damage perceptions of the Court's decision-making process. While one decision citing a brief filed by an interest group might not make the Court appear politicized in its decision-making, consistent references to these interests might erode the Court's legitimacy in the long run. Future work can address this claim. Next, I work to reveal whether citizens are responding to these citations based on their own ideological orientations.

** INSERT FIGURE 7 HERE **

The Role of Citizen Ideology

Next, I again use matching techniques to test the *Agreement* and *Polarization Hypotheses* to ensure there is appropriate balance between the relevant treatment and control groups in the reduced sample. In this portion of the analysis, I break down the citations based on whether they were liberal or conservative in order to assess how the public receives decisions that cite briefs filed by interests that are ideologically similar or dissimilar to their own ideological orientations. First, I create a variable *Liberal Citation* coded "1" if a respondent received a citation to the ACLU and "0" for those in the control groups of no citation. As shown in Figure 8, the matching achieved appropriate balance and there were no statistically significant differences between these groups on the variables of interest in the post-matching data.

** INSERT FIGURE 8 HERE **

To test the *Agreement Hypothesis*, that the public will be more accepting of citations to interest groups that are ideologically similar to their own preferences, and the *Polarization*

Hypothesis that the public will be less accepting of citations to interest groups that are ideologically dissimilar to their own preferences I interact the respondent's ideology with the type of citation (in this case a liberal citation). Since I am looking at citations to briefs filed by liberal interests, *Ideology* is reverse coded so that an increase in ideology is an increase in liberalism, as such I expect to find the interaction term between the *Liberal Citation* and *Respondent Ideology* to be positive in direction for the *Agreement Hypothesis*. Table 2 shows the results. The interaction term is positive and statistically significant, suggesting that as liberalism increases (decreases) those who received a liberal citation are more (less) accepting of the Supreme Court's decision. Specifically, for every one-unit increase (decrease) in liberalism, there is a .093-point increase (decrease) in acceptance of the decision for those who received the liberal citation, providing support for the *Agreement* and *Polarization Hypotheses*. Those who receive a citation from an interest group that is ideologically similar are more supportive of the decision, while those who receive a citation to an interest group that is ideologically dissimilar are less supportive of the decision.

** INSERT TABLE 2 HERE **

Next, I tested these two hypotheses using the data on conservative citations. The variable *Conservative Citation* was coded "1" for those who received a citation to Focus on the Family and "0" for those in the control groups of no citation. Unlike the previous iterations where matching achieved appropriate balance between the relevant treatment and control groups in the reduced sample, I was unable to achieve balance in the *Conservative Citation* condition. This is likely due to the fact that the number of conservative citations included in the reduced sample is small, given that respondents had a difficult time identifying the ideological orientation of Focus on the Family. For example, while 412 respondents in the "treated" sample received a liberal

citation, only 184 received a conservative citation. As evidenced by Figure 9, balance was actually better in the pre-matched sample. As such, I test the *Agreement* and *Polarization Hypotheses* on the unmatched data by modeling acceptance of the Supreme Court's decision controlling for the relevant variables that were matched on in previous models. While this is not ideal, it allows me to make stronger inferences that are less-plagued by alternative explanations outside of the treatment and is better than simply running the analyses on data with knowingly poor balance.

** INSERT FIGURE 9 HERE **

The results of this model can be found in Table 3. In this case, Ideology is coded so that an increase represents an increase in conservatism. The interaction term showing the relationship between a *Conservative Citation* and *Respondent Ideology* is positive and statistically significant. This suggests that as conservatism increases (decreases), those who received a conservative citation were more (less) accepting of the decision, providing additional support for the *Agreement* and *Polarization Hypotheses*. To be more specific, for every one-unit increase (decrease) in conservatism, there is a .064-point increase (decrease) in acceptance of the decision for those who received a conservative citation. This suggests that citizens are more accepting of decisions that cite briefs filed by interest groups that are ideologically similar to their own preferences, and less accepting of decisions that cite briefs filed by interest groups that are ideologically dissimilar to their own preferences.

** INSERT TABLE 3 HERE **

Taken together, these results indicate that the public uses citations to briefs filed by organized interests in Supreme Court opinions as informative source cues. These ideological cues help the public make sense of the Supreme Court's complex policies, just as other source

cues help them make sense of complex policy decisions in other information environments, such as determining support for ballot propositions (Lupia 1994).

Conclusion

One of the primary objectives of this study was to test the assumption that citations to amicus curiae filers can have implications for public perceptions Supreme Court decisions. Using a survey experiment, I tested whether citations to amicus briefs filed by ideologically moderate interests can increase acceptance of the Supreme Court's decisions (the *Legitimizing Hypotheses*) and whether citations to amicus briefs filed by ideologically overt interests can decrease acceptance (the *Politicizing Hypotheses*). Citations to moderate interests do not appear to increase acceptance of the Supreme Court's decision, nor do these citations make the Court's decisions appear less politicized. My results suggest that while justices might attempt to use extralegal sources to increase acceptance of their decisions, attempts to do so using citations to amicus curiae briefs filed by ideologically moderate interests are not effective.

Citations to briefs filed by ideologically overt interests, however, were shown to decrease support for Supreme Court decisions in the aggregate. This implies that citations to briefs filed by ideological interests might negatively impact public perceptions of the Court. This study also revealed that the public was more accepting of decisions that cited briefs filed by interests that were ideologically similar to their own preferences and was less accepting of decisions that cited briefs filed by interests that were ideologically dissimilar from their own preferences. This paper brings to light the notion that citations to organized interests can work as source cues that shape how the public forms attitudes on these policies and contributes to the existing literature on public perceptions of Supreme Court decisions by analyzing how extralegal justifications can impact support for the Court's policies.

The results of this study hint at some potentially serious real-world implications. One is that the Court might avoid citing briefs filed by ideological interests in situations where they are especially concerned with garnering legitimacy for their decisions, for example, in cases where they are overturning precedent or declaring a law to be unconstitutional. In the same manner, if the Court is deciding a very contentious, salient case and is more closely attuned to public preferences and maintaining their legitimacy, avoiding citations to ideologically overt interests altogether might help garner support for the decision and help protect their image as unbiased, neutral actors. Another important implication is that while these citations can serve as a useful heuristic for individuals trying to make sense of a particular policy, the public knows very little about these organized interests. Using these citations to form policy attitudes can have potentially negative implications if individuals are making incorrect inferences about the ideological affiliation of the group. This can be especially concerning if an interest carries a name that is confusing or perhaps even deceiving in nature. For example, the American Civil Liberties Union is a well-known, ideologically liberal organized interest, while the American Civil Rights Union, with a very similar name, is a less-known, ideologically conservative interest. While these citations to briefs filed by organized interests can be useful, citizens should use caution when inferring the ideological orientation of unfamiliar groups.

This study does not come without its limitations. The first is that it is obviously less than ideal that a considerable portion of the sample was not properly treated and thus eliminated from the analyses, restricting statistical power. However, matching techniques were used to account for this and provided the opportunity to make strong inferences about the effect these citations have on public acceptance of Supreme Court decisions among those who were properly treated. However, reducing the sample as such limited my ability to make inferences about how these

citations worked with various decision directions. Future work can assess whether cues that highlight agreement between the respondent and ideologically similar groups can increase support for a decision they would otherwise disagree with, and whether citations to ideologically dissimilar (or polarizing) groups can decrease support for a decision they would otherwise agree with.

Future work can also assess whether certain types of amicus filers can confer legitimacy in ways ideologically moderate interests cannot. For example, citations to state or local governments might increase acceptance of Supreme Court decisions. On this same note, given that the U.S. Solicitor General is an incredibly influential filer, and is cited more often than any other interest, future work can assess whether the public reacts to these citations and whether this varies contingent on the appointing president. In addition, future work can assess how citations to groups can influence acceptance based on non-ideological affiliations and negative affect.

Finally, future work can assess whether citations to organized interests in dissenting opinions have any implications for acceptance of the majority opinion. In other words, can certain citations to information provided by organized interests work to discredit the majority? The most recent Supreme Court term provided many examples of dissenting opinion authors citing briefs filed by organized interests. For example, Justice Sotomayor referred to a study highlighted in an amicus brief filed by the NAACP to express opposition to the majority's decision to uphold laws that purge voters from the rolls, since these laws disproportionately impact African American voters.¹⁰ In addition, Justice Kagan cited an amicus brief filed by the New York City Municipal Labor Committee to show the negative implications the Court's

10 Lopez, German. 2018. "Supreme Court's Conservative Justices Uphold Ohio's Voter Purge System" *Vox*

decision in *Janus v. AFSCME* will have on labor negotiations.¹¹ As these dissents become more prominent, future work can determine how citations to briefs filed by organized interests are viewed in this context and the implications this might have on support for the majority opinion.

¹¹ Kirby, Jen. 2018. “Elena Kagan’s Dissent Trashes Supreme Court as ‘black-robed rulers overriding citizens’ choices” *Vox*

Table 1. Acceptance of Supreme Court Decisions
Independent Variable

| | Model 1 |
|---------------------------------|--------------------|
| Ideologically Moderate Interest | -.022 (.051) |
| Ideologically Overt Interest | -.073* (.044) |
| Knowledge of the Court | -.146 (.026) |
| Diffuse Support | .145*** (.026) |
| Respondent Ideology | -.041 (.011) |
| Female | -.168*** (.037) |
| Constant | 3.38*** (.070) |
| N | 2,999 |
| R ² | .02 |

Entries are OLS estimates. Standard errors in parentheses

* $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (one-tailed test).¹²

¹² The model also includes an indicator variable for respondents who selected “don’t know” for Ideology and were thus coded as moderates, as explained in footnote 5 of the main text. This was not included in the table for simplicity. The variable was not statistically significant.

Figure 2: Balance Plot Pre- and Post- Match for Ideologically Moderate Citation Treatment

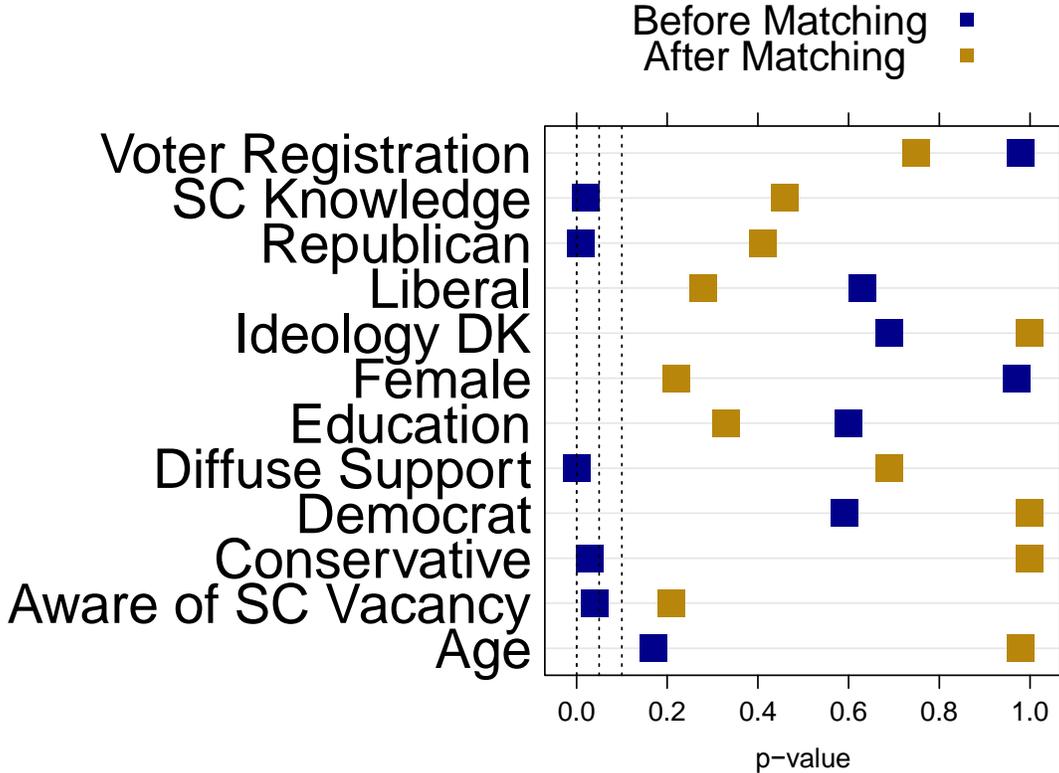


Figure 3: Ideologically Moderate Citations and Acceptance of Supreme Court Decisions

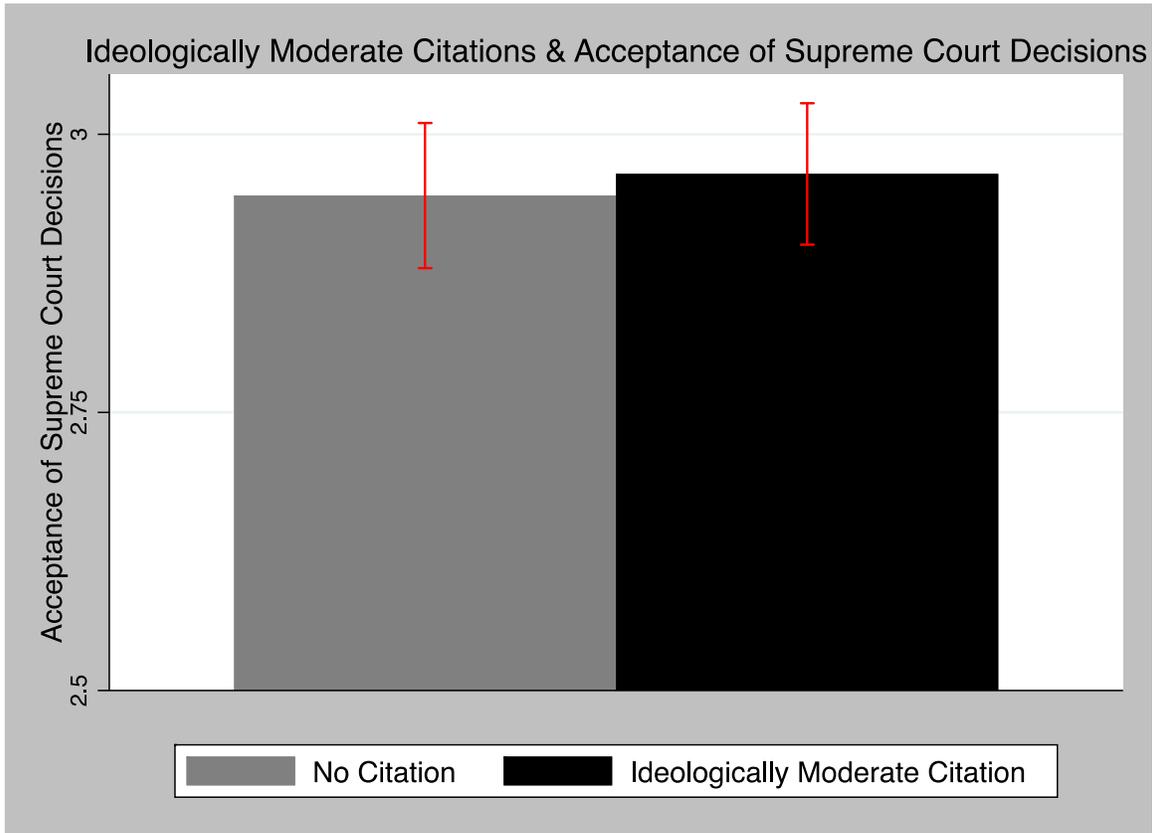


Figure 4: Ideologically Moderate Citations and Politicization of Supreme Court Decisions

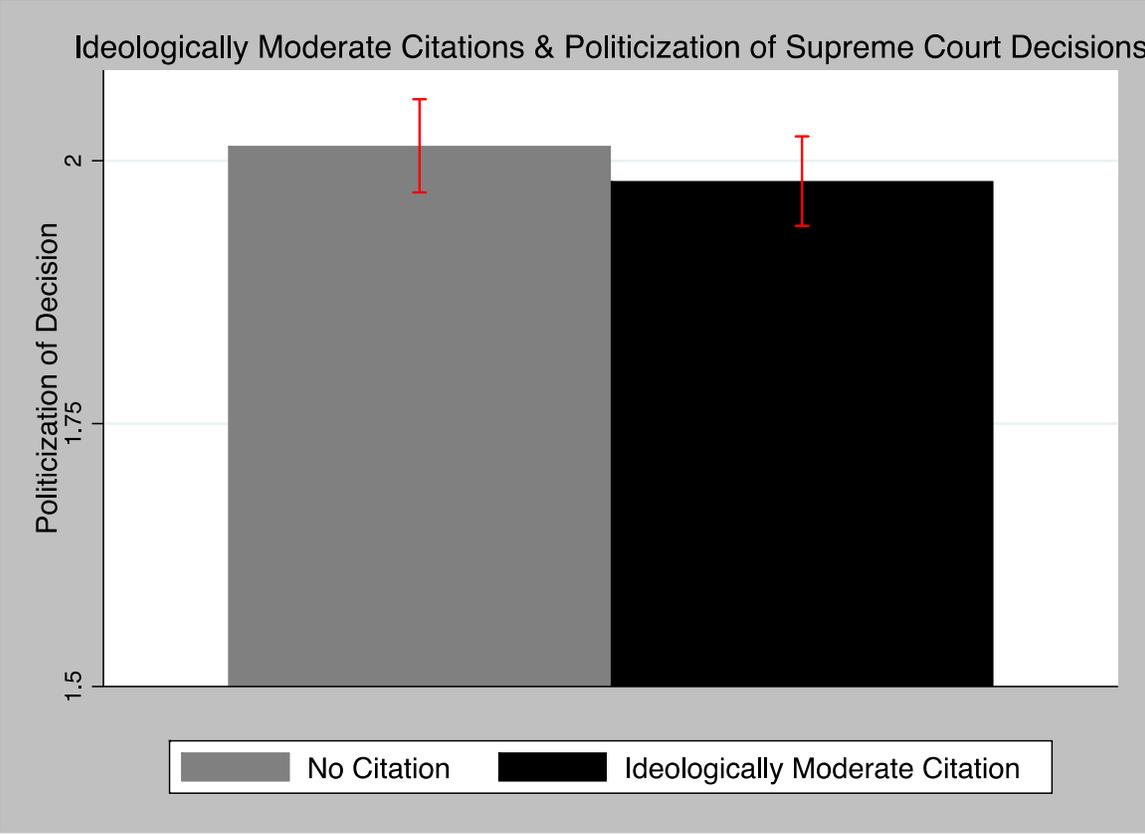


Figure 5: Balance Plot Pre- and Post- Match for Ideologically Overt Citation Treatment

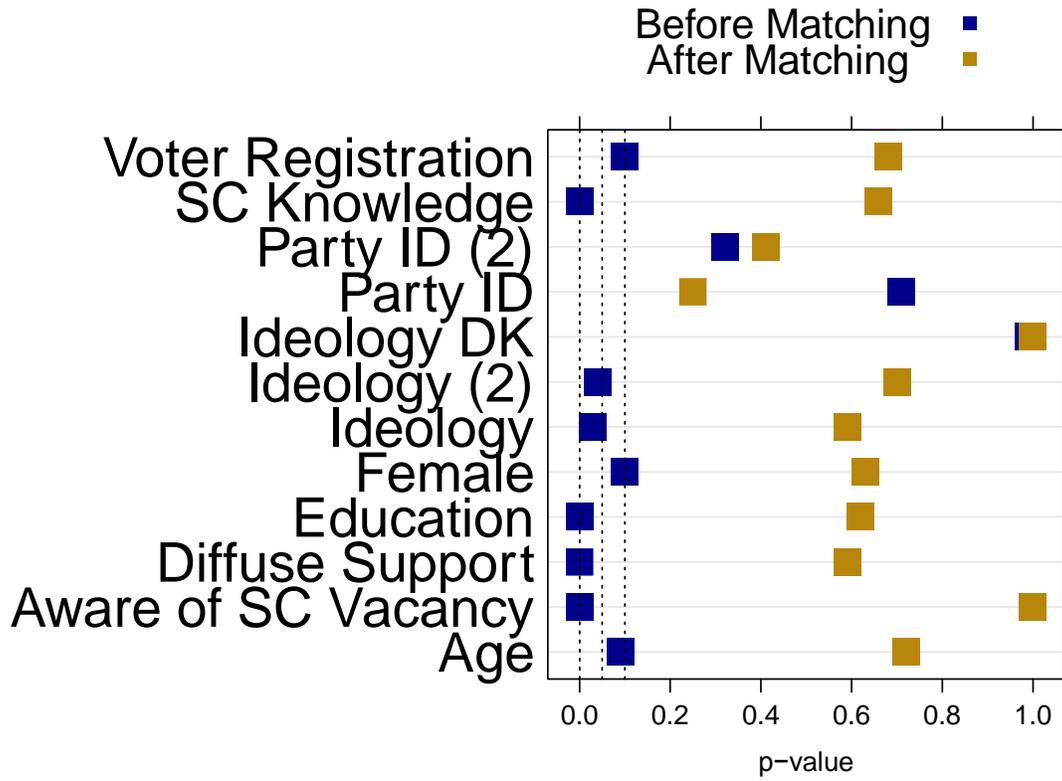


Figure 6: Ideologically Overt Citations and Acceptance of Supreme Court Decisions

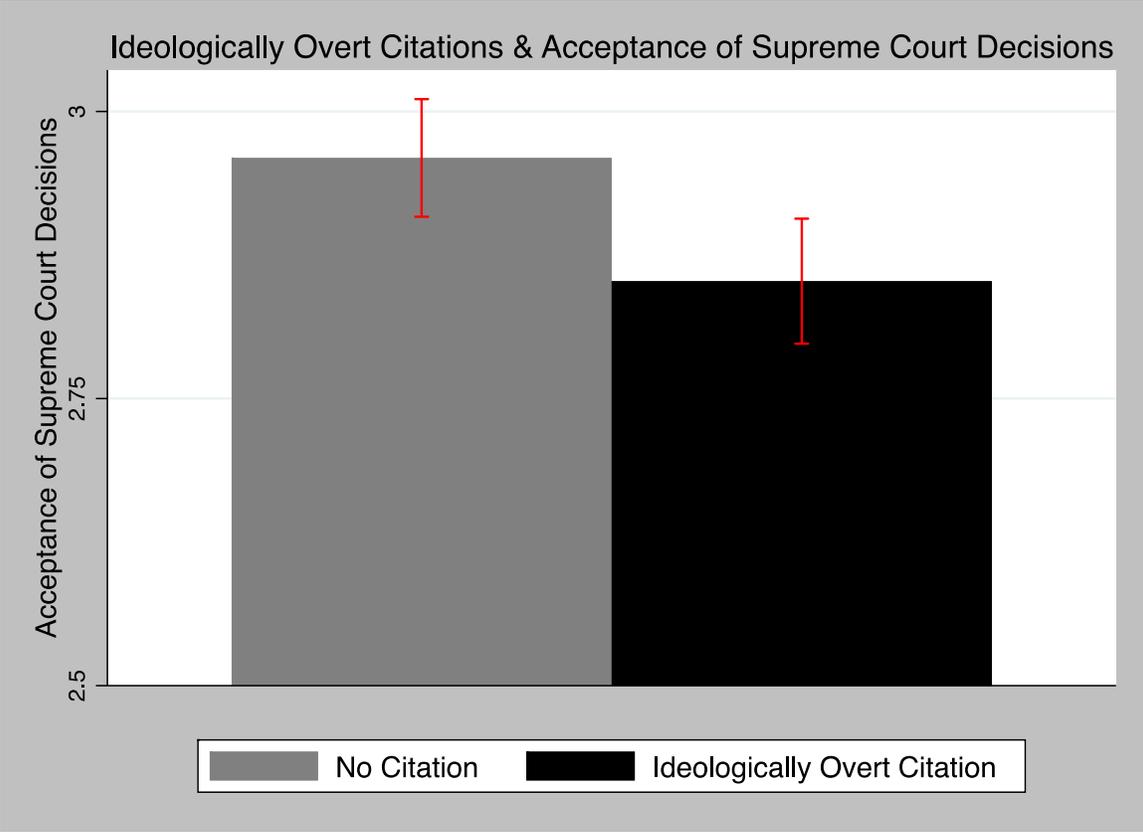


Figure 7: Ideologically Overt Citations and Politicization of Supreme Court Decisions

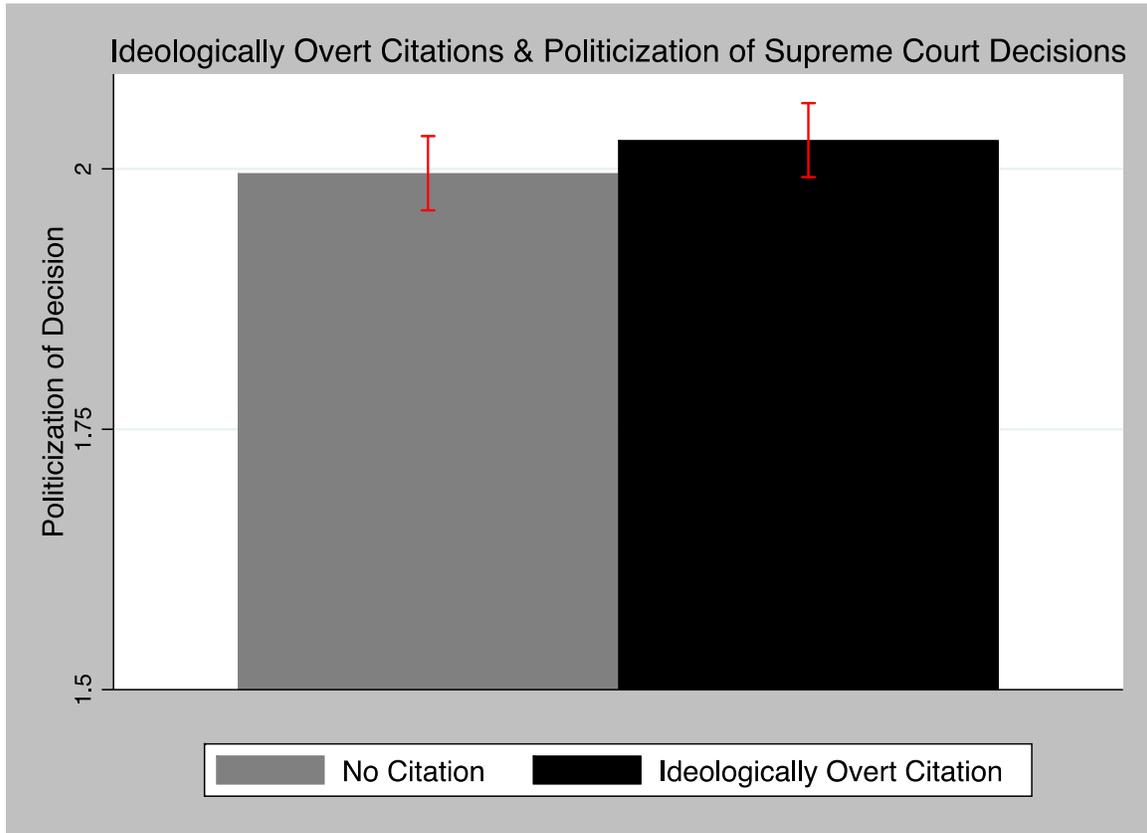


Figure 8: Balance Plot Pre- and Post- Match for Liberal Citation Treatment

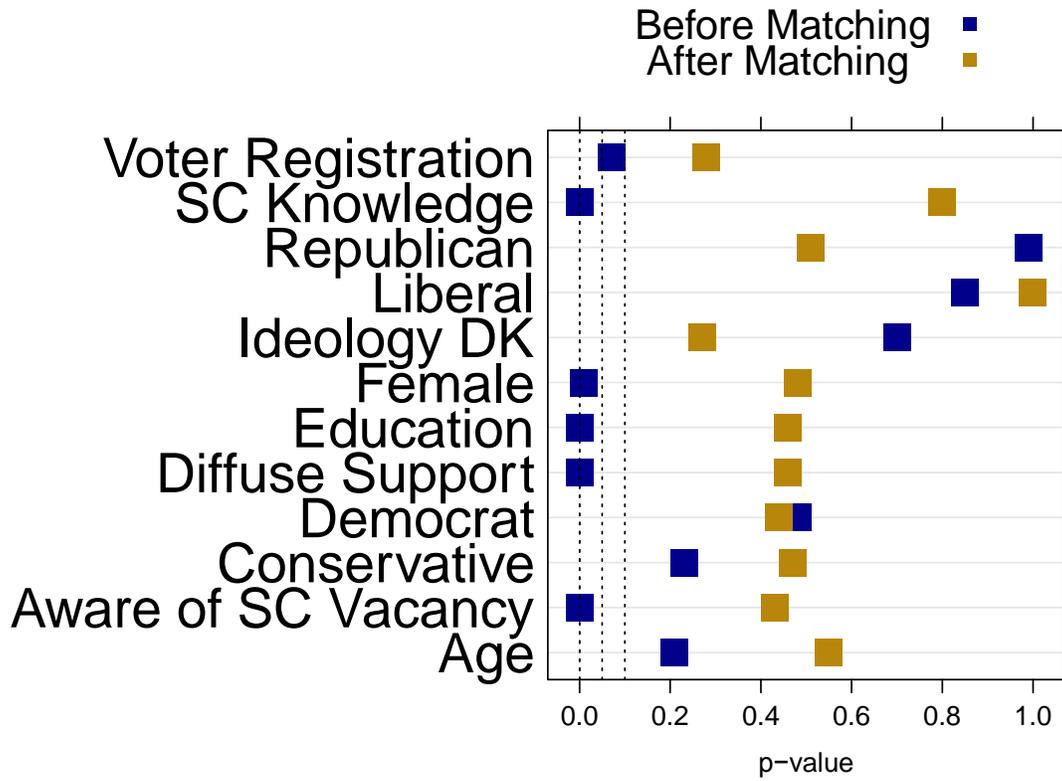


Table 2. Acceptance of Supreme Court Decisions
Independent Variable

| | Model 1 |
|--|-------------------|
| Citation to Liberal Interest | .080 (.101) |
| Respondent Ideology (Liberalism) | .049 (.016) |
| Citation to Liberal Interest X Respondent Ideology | .044* (.022) |
| Constant | 3.18*** (.072) |
| N (pre-matching) | 1,150 |
| N (post-matching) | 2,520 |
| R ² | .02 |

Entries are OLS estimates. Standard errors in parentheses

* $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (one-tailed test).

Figure 9: Balance Plot Pre- and Post- Match for Conservative Citation Treatment

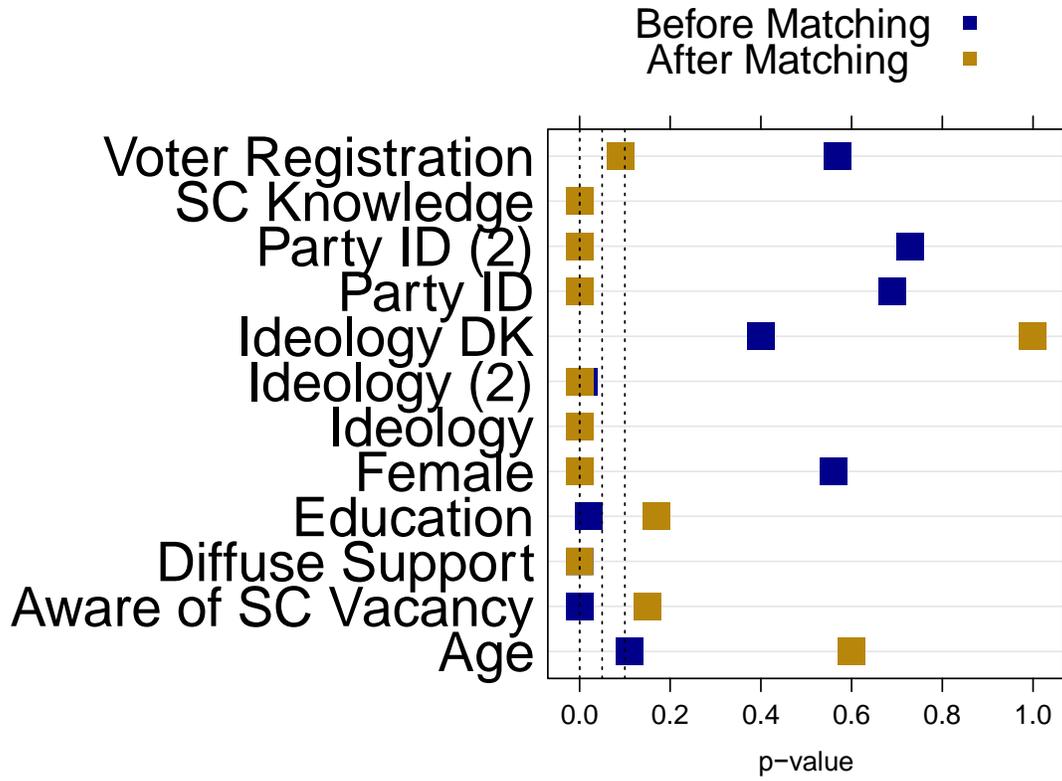


Table 3. Acceptance of Supreme Court Decisions

| Independent Variable | Model 1 |
|---|-------------------|
| Citation to Conservative Interest | -.691** (.246) |
| Respondent Ideology (Conservatism) | -.030 (.026) |
| Citation to Conservative Interest X Respondent Ideology | .094* (.051) |
| Age | -.003 (.002) |
| Education (College Degree) | .112 (.070) |
| Registered to Vote | .088 (.115) |
| Supreme Court Knowledge | -.202 (.058) |
| Diffuse Support | .128*** (.036) |
| Aware of SC Vacancy | .057 (.085) |
| Female | -.160* (.073) |
| Constant | 2.94*** (.224) |
| N | 941 |
| R ² | .05 |

Entries are OLS estimates, robust standard errors in parentheses

* $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (one-tailed test).¹³

¹³ The model also includes an indicator variable for respondents who selected “don’t know” for Ideology and were thus coded as moderates, as explained in footnote 5 of the main text. Model also includes dummies for party ID (also not significant). These were not included in the table for simplicity and were not statistically significant.

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**Legitimacy, Politicization, and Ideological Cues: Public Perceptions of
Supreme Court Decisions that Cite Amicus Curiae Briefs**

Kayla S. Canelo
Appendix Materials

Table of Contents

| | |
|--|-----------|
| A1: Pretest Information | p. 39 |
| A2: Treatment Conditions | p. 40 |
| A3: Descriptive Statistics | pp. 41-42 |
| A4: Question Wording | pp. 43-44 |
| A5: Proper Treatment | p. 45 |
| A6: Model Specification for Conservative Citations Model | p. 46 |
| A7: General Acceptance of Decisions | pp. 47-48 |

A1: Pretest Information

Participants were randomly assigned to one of two blocks, each containing a total of 12 interests that were also randomly assigned. This included four ideologically conservative interests, four ideologically moderate or apolitical interests, and four ideologically conservative interests. Respondents were shown one interest group at a time and then asked if they had heard of the group, the ideological orientation of the group, and how confident they were in their assessment of the group.

Table A1: Percentage of Respondents That Correctly Identified the Ideological Orientation of the Interest Group

| INTEREST NAME | MTurk Sample | Student Sample |
|--|--------------|----------------|
| American Civil Liberties Union | 71.4% | 53.3% |
| AARP | 64.3% | 65.2% |
| AFL-CIO | 31.6% | 27.2% |
| American Hospital Association | 82.6% | 89.9% |
| American Intellectual Property Law Association | 75.6% | 39.1% |
| American Medical Association | 83.3% | 79.4% |
| American Petroleum Institute | 62.5% | 40.2% |
| Americans For Effective Law Enforcement | 54.2% | 40.2% |
| Family Research Council | 48.8% | 13% |
| Feminist Majority | 85.8% | 77.8% |
| Focus on the Family | 69% | 25.3% |
| Intellectual Property Owners Association | 66.5% | 59.6% |
| NAACP | 80% | 69.7% |
| National Assn. of Manufacturers | 34% | 20.2% |
| National Assn. of Criminal Defense Lawyers | 18.5% | 20.7% |
| National Association of Evangelicals | 82.1% | 47.8% |
| National Federation of Independent Businesses | 44.5% | 44.4% |
| National League of Cities | 77.4% | 83.8% |
| National Organization of Women | 72% | 76.1% |
| National School Boards Association | 72.6% | 59.8% |
| National Taxpayers Union | 47.7% | 39.4% |
| News Media Alliance | 52.3% | 62.6% |
| Sierra Club | 31.6% | 17.2% |
| Southern Poverty Law Center | 56.8% | 31.3% |

A2: Treatment conditions

Below are the treatment and control conditions used in the study. Treatment conditions only contained one citation. There were 3 decision directions and 4 citation manipulations (including the control of no citation), making for a 3X4 design for a total of 12 cells.

Liberal Decision Direction Treatments:

The U.S. Supreme Court recently decided that federal law requires employers to provide health care insurance that includes coverage for pregnancy and childbirth. Referring to arguments made in a brief filed by the **American Civil Liberties Union/American Medical Association/Focus on the Family**, the Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by employees.

Liberal Decision Direction Control:

The U.S. Supreme Court recently decided that federal law requires employers to provide health care insurance that includes coverage for pregnancy and childbirth. The Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by employees.

Conservative Decision Direction Treatments:

The U.S. Supreme Court recently decided that federal law does not require employers to provide health care insurance that includes coverage for pregnancy and childbirth. Referring to arguments made in a brief filed by **Focus on the Family/American Medical Association/American Civil Liberties Union**, the Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by employers.

Conservative Decision Direction Control:

The U.S. Supreme Court recently decided that federal law does not require employers to provide health care insurance that includes coverage for pregnancy and childbirth. The Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by employers.

Moderate Decision Direction Treatments:

The U.S. Supreme Court recently decided that federal law requires some employers to provide health care insurance that includes coverage for pregnancy and childbirth. Referring to arguments made in a brief filed by the **American Medical Association/American Civil Liberties Union/Focus on the family**, the Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by both employees and employers.

Moderate Decision Direction Control:

The U.S. Supreme Court recently decided that federal law requires some employers to provide health care insurance that includes coverage for pregnancy and childbirth. The Supreme Court's majority opinion carefully weighed the economic and health care burdens faced by both employees and employers.

A3: Descriptive Statistics

Age: Mean of 45.9, Median 48. Ranges from 18 - 83

Race: (n, %)

African American: 390, 13%
Asian/Pacific Islander: 157, 5.24%
Caucasian: 2,062, 68.76%
Hispanic: 304, 10.14%
Native American: 35, 1.2%
Other: 42, 1.4%
Prefer not to say: 9, .3%

Education (n, %)

Did not graduate high school: (46, 1.5%)
High school grad: (660, 22%)
Some College: (731, 24.4%)
AA Degree: (385, 12.8%)
BA Degree: (826, 27.6%)
Post Grad Degree: (350, 11.7%)

Gender (n, %)

Male: (1,466; 48.2%)
Female: (1,549; 52.7%)
Self-Identify: (3, .1%)
Prefer not to say: (1, .03%)

Voter Registration (n, %)

Yes: (2,784; 92.8%)
No: (197, 6.6%)
Don't know: (18, .6%)

Party Identification (includes leaners; n, %)

Republican: (1,214; 40.5%)
Democrat: (1340; 44.7%)
True Independent: (401; 13.4%)
Other: (44; 1.5%)

Political Knowledge (number of questions correct; n, %)

Zero: (226, 7.5%)
One: (333, 11.1%)
Two: (492, 16.4%)
Three: (941, 32.4%)
Four: (1,007; 33.6%)

Ideology (n, %)

Extremely Liberal (216, 7.2%)

Liberal (473, 15.8%)
Slightly Liberal (304, 10.1%)
Moderate (864, 28.8%)
Slightly Conservative (321, 10.7%)
Conservative (513, 17.1%)
Extremely Conservative (234, 7.8%)
Don't know (74, 2.5%)

A4: Question Wording

Dependent Variables:

Acceptance of the Decision

Do you accept or reject the Court's decision? That is, do you think that the decision ought to be accepted and considered to be the final word on the matter or that there ought to be an effort to challenge the decision and get it changed?

Strongly accept
Somewhat accept
Somewhat reject
Strongly reject

Politicization of the Decision

Do you think the Court's decision was based on law or on politics?

Law
Both law and politics
Politics

Questions Measuring Diffuse Support (Gibson, Caldeira, and Spence 2003, 2005):

The right of the Supreme Court to decide certain types of controversial issues should be reduced.

Agree strongly
Agree somewhat
Neither agree nor disagree
Disagree somewhat
Disagree strongly

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.

Agree strongly
Agree somewhat
Neither agree nor disagree
Disagree somewhat
Disagree strongly

The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court's decision.

Agree strongly
Agree somewhat
Neither agree nor disagree
Disagree somewhat
Disagree strongly

Knowledge of the Court Questions:

Do you happen to know who the current Supreme Court Chief Justice is?

Mitch McConnell
William Gates
John Roberts
Clarence Thomas
Don't know

How are Supreme Court Justices selected?

Elected by the public every four years
Appointed by a nonpartisan commission on the judiciary
Appointed by the president, with the consent of the Senate
Elected by current federal judges
Don't know

Kennedy Retirement Question:

Do you happen to know which Supreme Court justice recently announced his retirement?

Clarence Thomas
John Roberts
Anthony Kennedy
Neil Gorsuch
Don't know

A5: Proper Treatment

As mentioned in the paper, the manipulation check revealed that only a small portion of the overall sample was effectively treated. Details on a breakdown of how many individuals correctly inferred the ideology of the groups mentioned is included below.

ACLU: 74% of respondents who received this citation correctly identified the group and correctly inferred its ideological orientation.

AMA: 39% of respondents who received this citation correctly identified the group and correctly inferred its ideological orientation.

FOCUS: 41% of respondents who received this citation correctly identified the group and correctly inferred its ideological orientation.

A6: Model Specification for Conservative Citations

Heteroskedasticity

A Breusch-Pagan test returned a Chi² value of 15.23 for the conservative cites model, suggesting heteroskedasticity was a problem. I therefore used Robust Standard Errors.

Multicollinearity

To establish whether multicollinearity was an issue in this model, I ran a variance inflation factor test in Stata. The results suggest multicollinearity is not a concern, and the results can be found in the table below.

Table A2: Variance Inflation Factor Test

| Variable | VIF | 1/VIF |
|---------------------|------------|--------------|
| Conservative Cite | 6.10 | .164 |
| Respondent Ideology | 2.07 | .483 |
| Interaction Term | 6.45 | .155 |
| Age | 1.27 | .787 |
| College | 1.07 | .932 |
| Voter Registration | 1.06 | .947 |
| SC Knowledge | 1.74 | .574 |
| Diffuse Support | 1.30 | .768 |
| Aware SC Vacancy | 1.52 | .659 |
| Female | 1.16 | .863 |
| PID 2 | 1.97 | .509 |
| PID 3 | 1.25 | .802 |
| Ideology "DK" | 1.02 | .976 |

A7: General Acceptance of Decisions

Below is a breakdown of acceptance of the three decision directions for those in the control condition. This provides an understanding of perceptions of the decision in the absence of an interest group citation treatment. The model below includes the full set of demographic control variables (indicators for race are included in the model but are left out of the table for simplicity. Note that an increase in conservatism leads to increased support for the conservative condition, and a decrease in support for the liberal condition. In other words, conservatives are more accepting of the conservative decision, while liberals are less accepting, and liberals are more accepting of the liberal decision, while conservatives are less accepting, as anticipated. Respondent ideology does not appear to influence support for the moderate condition.

Due to the recent current events of the Supreme Court vacancy, I asked respondents if they could identify which justice recently announced his retirement from the Court. This was meant to rule out the possibility that external factors were influencing evaluations of the decision in this survey. As evident in the table below, there is no statistically significant difference between those that could identify Kennedy as the retiring justice and those that could not.

Table A3. Acceptance of Supreme Court's Decision

| Independent Variable | Moderate Control | Conservative Control | Liberal Control |
|-------------------------------|---------------------|-------------------------|--------------------|
| Education | .070* (.041) | .087 (.056) | .028 (.035) |
| Female | .179 (.11) | -.521*** (.166) | .000 (.101) |
| Knowledge of the Court | -.099 (.090) | -.247** (.116) | -.309*** (.082) |
| Respondent Ideology | -.027 (.041) | .099* (.056) | -.099*** (.033) |
| Republican (Includes Leaners) | .154 (.159) | .059 (.230) | -.219 (.179) |
| Democrat (Includes Leaners) | .425** (.173) | -.185 (.238) | -.093 (.172) |
| Registered Voter | .293 (.223) | .194 (.301) | -.070 (.168) |
| Aware of Kennedy Retirement | -.018 (.056) | -.008 (.065) | .185 (.114) |
| Diffuse Support | .142* (.083) | .153 (.111) | .114 (.072) |
| Constant | 2.41*** (.408) | 2.05*** (.597) | 4.10*** (.343) |
| N | 260 | 226 | 274 |
| R ² | .09 | .17 | .14 |

Entries are OLS estimates. * p < 0.10; ** p < 0.05; ***p < .01 (two-tailed test).