Judicial Elections and the Countermajoritarian Difficulty

Charles Crabtree
University of Michigan
ccrabtr@umich.edu*

Michael J. Nelson
Pennsylvania State University
mjn15@psu.edu

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Abstract

Does the use of judicial review by unelected judges harm public support for courts? Scholars have often answered this question in the affirmative, arguing that judicial review of legislation by unelected judges creates a "countermajoritarian difficulty." We examine the extent to which the use of judicial review reduces the ability of judges to achieve acceptance of their decisions. Further, we test the extent to which decisions made by elected judges are more acceptable to the public. Our experimental evidence demonstrates that the public is more prone to accept decisions made by elected judges. However, there is no apparent difference in the public's willingness to accept judicial nullification of legislative polices based on whether the court was elected or not. The results have implications both for institutional design in the American states and the microfoundations of judicial independence.

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1 Introduction

Why does the public sometimes oppose judicial decisions? One explanation centers on judicial review. This is the nullification by a court of policies made by another branch of government. In most cases, judicial review involves an unelected court overturning a policy made by some political actor—a legislature or an executive—that has been directly elected by the people. In this sense, judicial review is *countermajoritarian*. To the extent that judicial review stifles the will of elected majorities, Klarman (1997, 495) explains, judicial review is "in tension with the principle of majority rule."[1]

This tension—between a countermajoritarian action and a commitment to majority rule—creates what Bickel (1962) termed the *countermajoritarian difficulty*. As Solum (2014) defines it:

> when unelected judges use the power of judicial review to nullify the actions of elected executives or legislators, they act contrary to "majority will" as expressed by representative institutions. If one believes that democratic majoritarianism is a very great political value, then this feature of judicial review is problematic.

This problem has "framed the central debates in American constitutional theory over the past fifty years" (Horwitz, 1993, 63). Scholars have been described as "preoccupied" (Amar, 1994, 495), "fixat[ed]" (Friedman, 1998, 335), and "obsess[ed]" (Winter, 1990, 1521) with the relationship between judicial review and majority rule.

Discussions of the countermajoritarian difficulty tend to focus on providing a normative justification for the use of judicial review by an unelected court, noting that judicial decisions often align with popular opinion (Dahl, 1957), or defending judicial review on the basis of strategic judicial action (e.g. Hall and Ura, 2015; Clark, 2009). In the latter studies, the defense of the countermajoritarian difficulty focuses on the strategic nature of judicial action, focusing on actions taken by *courts* to avoid exacerbating the "difficulty" which should, in

[1]For a review of the literature on the topic, see Graber (2005).

turn, cause the court to lose its public support. These studies suggest that courts treat judicial review as a costly action, likely under the theory that the use of judicial review can tap their public support.

This logic presupposes that the normative "difficulty" has practical consequences for courts' public support: decisions that nullify legislative policies should be costly to courts. Yet, despite the vast normative and empirical attention to judicial review, we know little about how the public judges judicial review, and, more importantly, whether decisions by unelected courts that rely on judicial review are less accepted by the public. The American states—where judges are both elected and appointed—provide a unique opportunity to examine the extent to which the public approves of the use of judicial review and whether their disapproval of the practice is mitigated when judges are elected.

Drawing upon an experimental design that addresses the use of judicial review in elected and unelected state supreme courts, we examine the extent to which the use of popular elections increases the efficacy of state judicial institutions, defined as their ability to achieve acceptance of their decisions. We argue that, because judicial elections provide courts with additional source credibility, the public should be more likely to accept decisions made by elected judges. Moreover, we test a key implication of the countermajoritarian difficulty: that the public is less willing to accept the use of judicial review by unelected courts compared to elected courts.

The experimental results lead us to join Epstein, Knight and Martin (2001) in "discount[ing] the seriousness" of the the countermajoritarian difficulty (584). While the use of judicial review does lower public acceptance of judicial decisions, the extent to which the use of judicial review lowers acceptance does not differ when the court is appointed or elected. The results have implications both for institutional design in the American states as well as the microfoundations of judicial independence both at home and abroad.

2 The Difficulties of Judicial Review

Scholars have attempted to "solve" the countermajoritarian difficulty in numerous ways (Epstein, Knight and Martin, 2001; Lemieux and Watkins, 2009). Many of these studies suggest that the countermajoritarian difficulty is a normative, rather than practical, problem. One of the most prominent lines of research has suggested that the countermajoritarian difficulty is mitigated, in practice, by the fact that courts typically make decisions in line with popular opinion (Marshall, 1989; Friedman, 2009; Ura, 2014; Hall, 2011). Or, as Dahl (1957) famously put it: "policy views dominant on the Court are never for long out of line with the policy views dominant among the lawmaking majorities of the United States" (285). Indeed, the U.S. Supreme Court's decisions follow the general ideological trends of the American people (Epstein and Martin, 2010), and, where issue-specific public opinion is available, tends to decide cases in line with issue-specific public opinion (Marshall, 2008). In fact, the Court generally declines to use the power of judicial review when doing so would contravene public opinion (Barnum, 1985). In other words, the extent to which the U.S. Supreme Court is countermajoritarian in practice is limited.

In the U.S. states, where most judges are directly tied to the public through popular elections, the same trend holds: judges often issue decisions congruent with public opinion, especially on salient issues (Canes-Wrone, Clark and Kelly, 2014). Moreover, as a result of their direct tie to the public, elected judges tend to follow public opinion at heightened levels (Brace and Boyea, 2008) and do so especially in highly salient issue areas (Cann and Wilhelm, 2011; Hall, 1987, 2001). The electoral rules used to retain judges condition the extent to which judicial elections magnify the relationship between public opinion and judicial decisionmaking, with contestable nonpartisan elections resulting in a particularly close linkage between opinions and decisions (Canes-Wrone and Clark, 2009; Canes-Wrone, Clark and Kelly, 2014).

At both the state and federal levels, the mechanism behind the relationship between public support and judicial review is difficult to determine. Scholars generally argue that, because

courts lack the power to implement their decisions, they avoid making grossly unpopular decisions in an attempt to increase the likelihood that their decisions will be implemented (Rosenberg, 2008). Public support of all kinds, but especially legitimacy, is important to all courts because it increases the extent to which courts achieve acceptance of their decisions (Gibson and Nelson, 2014; Tyler, 2006). Though ideological dissatisfaction has, in practice, only a negligible effect on a court's legitimacy (Gibson and Nelson, 2015),[2] courts purportedly act strategically, deciding cases in line with public opinion out of a desire to avoid raising the ire of the public (Hall, 1987, 1992).

Moreover, the Court's ability to decide cases in line with pubic opinion is aided by the findings of some studies which have suggested the Court can operate as a "Republican schoolmaster": simply by deciding a case in a particular way, the Court can change attitudes, moving public sentiment toward the Court's position over time (Franklin and Kosaki, 1989; Ura, 2014). However, the evidence is far from unanimous on this point (e.g. Marshall, 1989, 2008). Regardless of whether the Court can change public opinion or decides cases in ways congruent with public opinion to increase its public support, the fact remains: in practice, courts tend to be majoritarian, rather than countermajoritarian, institutions.

A second reason to doubt the practical consequences of the countermajoritarian difficulty stems from the public cost that courts face when they use judicial review and the strategic calculus judges employ to maintain their public support. The use of judicial review is associated with a decline in public support (Caldeira, 1986). As a result, courts are strategic in their use of judicial review; for example, the U.S. Supreme Court waited decades after first using the power of judicial review in *Marbury v. Madison* before it used the power again. One explanation for this gap is that the Court waited for its public support to reach a critical mass before it began using judicial review with frequency; courts tend to wait until

[2]But see Bartels and Johnston (2013) for a dissenting view. Where ideological disagreement has an effect, the size of that effect is generally quite small (Gibson and Nelson, 2015).

their legitimacy has solidified before making many unpopular decisions (Gibson, Caldeira and Baird, 1998).

Indeed, there is a systematic relationship between a court's public support and its decision to use its power of judicial review. Clark (2009) demonstrates that the Court is less likely to use judicial review when faced with signals that its legitimacy is low. On a similar note, Hall and Ura (2015) suggest that courts are less likely to use judicial review when majority support for a policy is high. More broadly, Epstein, Knight and Martin (2001) argue that judges consider the preferences of the elected branches of government and, by extension, the likelihood their decision will be overridden, when they make their decisions. As they put it, the resolution of the "countermajoritarian difficulty" rests in an important effect of the separation of powers system: "a strategic incentive to anticipate and then react to the preferences of elected officials" (585). Because of these high costs, it is unlikely that courts will issue the series of unpopular decisions necessary to have a lasting effect on a court's public support (Easton, 1965; Caldeira and Gibson, 1992).

Judicial review has a different character in U.S. state courts because the majority of judges on these courts rely on popular elections to keep their jobs. However, the evidence still suggests that courts are strategic in their use of judicial review. Shugerman (2010) notes that the initial adoption of judicial elections by U.S. states was based on a desire to encourage courts to use judicial review to strike down state budgets that were fiscally irresponsible. By freeing judges' retention from the will of state legislators, the initial adoption of judicial elections was successful. The use of judicial review by state supreme courts increased among those courts that became elected courts. By providing these judges with an independent source of judicial legitimacy, judicial elections empowered state supreme court judges to become full partners in governance, striking down legislative excess and restoring their states to fiscal health.

Today, some evidence suggests that judicial review is more common among elected (rather than appointed) judges. Langer (2002), in her comprehensive study of judicial review on

state high courts, demonstrates that courts who are tied to the legislator or governor for their continued service on the bench are less likely to use judicial review in salient cases. Moreover, Langer (2002) demonstrates that appointed judges may try to duck cases that require them to nullify legislative policies by failing to docket them: "Instead of serving as a countermajoritarian institution, when the issue resonates most with other branches of government state supreme court justices avoid getting involved in the first place" (127). Shepherd (2009) presents a somewhat different view, finding no overall difference in the use of judicial review by elected and appointed state supreme court justices, though appointed justices become increasingly less likely to use judicial review as their reappointment date approaches. This again suggests that retention politics affect the use of judicial review in state courts. More recently, Kastellec (2016) finds that state supreme courts have been more likely to strike down abortion policies in times and places where the public supported policy change. Thus, even at the state level, the evidence suggests that judges are strategic in their use of judicial review based, in part, on their retention calculus.

In short, the literature indicates that the countermajoritarian difficult is of greater normative than practical concern. First, courts are rarely countermajoritarian in practice, choosing instead to issue decisions that are broadly in line with public preferences. One explanation for this behavior is that judges believe making such decisions is an important way to preserve a court's public support. Second, because judicial review itself harms a court's public support, judges are reluctant to use their powers of judicial review when they perceive their court's public support to be in a precarious situation. However, both of these explanations are based in judicial behavior, suggesting that judges are strategic in their use of judicial review to avoid harming their public support. Two separate, but related, questions concern whether courts face adverse consequences from their use of judicial review and whether judicial elections insulate judges from those consequences. It is to these questions we now turn.

3 Empirical Expectations

Regardless of whether *judges* take actions that minimize the potentially harmful consequences suggested by the countermajoritarian difficulty, their strategic actions may be unnecessary because the use of judicial review does not have the harmful consequences for *public* support suggested by the countermajoritarian difficulty. To this end, we develop and test a set of expectations based upon Solum's (2014) definition of the countermajoritarian difficulty. In particular, we examine three elements that should affect public acceptance of a judicial decision if the countermajoritarian difficulty had deleterious consequences on public support. Recall Solum's definition: "when **unelected judges** use the power of judicial review **to nullify** the actions of elected executives or legislators, they **act contrary to "majority will"** as expressed by representative institutions." Our expectations are a function of: (1) judicial retention, (2) nullification, and (3) majority will.[3] We discuss the logic of these expectations from the perspective of the countermajoritarian difficulty and, based upon broader evidence, regarding how individuals form opinions and judge judicial decisions.

The first, and perhaps most important, element of the countermajoritarian difficulty comes in its emphasis on the fact that judicial decisions are made by *unelected* elites.[4] The

[3]These elements are also found in Bickel's (1962) original conception of the difficulty. Bickel writes: "The root difficulty is that judicial review is a counter-majoritarian force in our system... [W]hen the Supreme Court **declares unconstitutional** a legislative act or the action of an **elected** executive, it thwarts the will of representatives of the actual people of the here and now, it exercises control, not in behalf of the **prevailing majority**, but against it" (16-7).

[4]Indeed, a key advantage to studying the countermajoritarian difficulty in the American states comes in our ability to compare decisions of judges who are elected with decisions of those judges who will never face voters.

normative potency of the difficulty stems from the fact that decisions made by unelected judges are less likely to be supported by the public. After all, these judges are denied the ability to replenish their public support periodically through the ballot box.

Indeed, there are systematic differences in the public's decision to support a judicial decision (or a court) based on the method by which the judges on that court are retained (Nelson, 2016) and the vigor of the retention politics judges face (e.g. Woodson, 2015; Gibson, 2012). In a similar vein, Bartels and Mutz (2009) examine differences in elected and appointed federal institutions, finding that the U.S. Supreme Court is a more powerful opinion leader than Congress, though, under some conditions (such as when the issue at stake is a low-commitment one), the elected legislature can be more persuasive than the unelected Court.

The Bartels and Mutz (2009) study helps us formulate some expectations about the comparative persuasive ability of elected and unelected courts. Luckily, these predictions align with those suggested by the countermajoritarian difficulty. Bartels and Mutz (2009) suggest that the U.S. Supreme Court's advantage is based upon its (1) comparatively higher credibility and (2) the fact that it issues its decisions in written rulings accompanied by reasons. Of course, both elected and appointed courts issue written decisions, satisfying the second condition. However, the first factor—source credibility—differs between elected and appointed courts. Indeed, Mondak (1992) has shown that public support for institutions operates as a form of source credibility, especially in contexts—like most judicial decisions—where "analysis is minimal, because limited cognitive effort heightens the impact of cues such as source credibility" (473). In other words, differences in public support between elected and appointed institutions can operate as differences in source credibility that have downstream consequences for public support (see also Nicholson and Hansford, 2014).

Fortunately, a variety of studies have compared public support for elected and appointed courts. The bulk of this evidence implies that the use of popular elections *enhances* the

legitimacy of courts (Nelson, 2016; Gibson, 2012; Nownes and Glennon, 2016).[5] Indeed, states originally adopted judicial elections to increase public support for judicial institutions. Shugerman (2012) writes that reformers believed that judicial elections provide judges with an independent of base of public support that emboldened judges to use their power of judicial review to strike down legislative overspending. The fact that judicial elections were adopted to increase the use of judicial review suggests that these reformers believed that decisions based on judicial review would be supported by the public and implemented by the bodies who passed the newly-invalidated laws (Shugerman, 2012, 2010).

On the whole, judicial review should be less costly for elected judges because (a) thanks to their enhanced source credibility, the public is more likely to accept their decisions and (b) their election provides them with an independent reservoir of support from which they can draw to nullify legislative or executive policies.[6] This leads us to our *Judicial Retention Hypothesis.*

[5]Whether or not judicial elections are associated with higher support for courts is admittedly the subject of a lively debate. For dissenting views, see Benesh (2006) and Cann and Yates (2008, 2016). As an example of the nuance, Woodson (2017) demonstrates that, generally, judicial legitimacy is higher in states that use judicial elections; however, campaign activity can detract from legitimacy such that states that have vigorous judicial campaigns have less public support than states that do not use judicial elections.

[6]An alternative argument might suggest the opposite: elected courts may run a lower general risk of acceptance because the public knows that they will have the opportunity to replace the judges who made a decision. As a result, the public may be more likely to view any particular decision as impermanent and therefore should be less likely to take actions against that decision. To the extent that this is the case, our empirical analysis would show a positive relationship between the use of judicial appointment and acceptance of the judicial decision. As a preview, we do not find that.

Judicial Retention Hypothesis: Decisions by appointed judges should be accepted at lower levels than decisions by elected judges.

The second component of the countermajoritarian difficulty is its emphasis on the nullification of policies enacted by a popularly-elected branch of government. At the aggregate level, increased use of judicial review to nullify laws is associated with lower aggregate-level support for a court. Caldeira (1986) notes that confidence in the U.S. Supreme Court has declined during periods of time when the Court has actively invalidated congressional policies. Applied to the individual level, Caldeira's findings suggest that the use of judicial review should be associated with a decline in public support for the court.

This logic is based in the suggestion that nullification of a law is a hostile action taken by one branch against another.[7] Because citizens know that their laws are passed by a legislature to which they are tied through an electoral connection, citizens should be suspicious of decisions that nullify the decisions of their representatives. The public should therefore be less likely to accept decisions that state that decisions made by majority rule are "wrong." This deep-set assumption within the literature is stated in the *Nullification Hypothesis*.

Nullification Hypothesis: Decisions that use judicial review to overturn a law should be accepted at lower levels than decisions that uphold the constitutionality of a law.

Not all policies are equally costly to overturn. The countermajoritarian difficulty is based, in part, on the assumption that decisions passed by majority rule have majority support. Of course, that is not always true; legislatures occasionally pass unpopular legislation. Moreover, within a legislature, laws can pass with different amounts of majority support. Indeed, Hall

[7]This assumption may not be true. Graber (1993) and Whittington (2005) note that legislatures often rely on courts to invalidate laws that the legislature views as politically problematic.

and Ura (2015) demonstrate important variation in *legislative* majority support for a policy and the deference it is given by the judiciary.

Because of our interest in popular elections generally, we also address the level of *public*, rather than *legislative*, support for a law. This allows us to differentiate the effect of overturning a law passed by a popularly elected legislature (as suggested by our *Nullification Hypothesis*) from the effect of acting on a policy that is (or is not) supported by a majority of the public. We expect that policies favored by majorities should be more costly to overturn than those policies that are not favored by majorities. After all, the more people angered by the decision, the more people who will potentially take action to halt implementation of a decision or, for elected judges, to mobilize against those judges at the next election.

Indeed, the level of majority support for a policy should also alter individual-level decisions to accept a judicial decision. Pressures to conform have powerful effects on individual-level opinion formation and behavior (e.g. Asch, 1956; Watts and Dodds, 2007). With this in mind, Furth-Matzkin and Sunstein (2017) suggest that simply learning what the majority position on an issue can provide a powerful cue that can lead to opinion change. Their experimental data suggest that simply knowing that the majority of the population favors the opposing position can be enough to change an individual's position on an issue. Thus, the Furth-Matzkin and Sunstein (2017) study suggests that simply knowing that the public generally supports a policy should be associated with a decrease in the willingness of an individual to accept that decision. This logic—that, perhaps because of conformity effects, policies supported by majorities should be particularly costly to overturn—is highlighted in our *Majoritarian Hypothesis*.

> **Majoritarian Hypothesis:** Decisions that contravene majority public opinion should be accepted at lower rates than decisions that are congruent with majority public opinion.

Finally, the core of the countermajoritarian difficulty is the suggestion that the negative effect of nullification should be higher when the decision comes from an unelected court.

Because unelected courts are denied the ability to replenish their legitimacy at the ballot box, they need to be especially cautious about making decisions that defy public opinion. In those cases, the court both lacks an independent base of electoral support *and* is contravening the expressed will of a majority of its constituents. On the contrary, an unpopular decision made by an elected court is buffered by that institution's stronger source credibility and its independent base of electoral support. To the extent that the countermajoritarian difficulty is a practical difficulty, there should be lower levels of acceptance for decisions made by the unelected court compared to the elected court making its decision in an analogous way. This intuition is encapsulated in our *Countermajoritarian Hypothesis*.

> **Countermajoritarian Hypothesis:** Decisions that involve the judiciary overturning legislative action should be accepted at lower rates than those that do not. This negative effect should increase if judges are appointed.

4 Research Design

We test our theoretical expectations using a survey experiment. An experimental approach is particularly warranted because there may be an endogenous relationship between public acceptance of judicial decisions and judicial decisionmaking and institutions. This might be particularly the case in regards to judicial review. As discussed above, Clark (2009) demonstrates that the U.S. Supreme Court is less likely to use judicial review when its public support is low. Conversely, Caldeira (1986) finds a negative correlation between the use of judicial review and public support for the U.S. Supreme Court.

Sample

We conducted the experiment via Amazon's Mechanical Turk (MTurk) in May 2017. Though some research indicates that MTurk samples are not representative of the national population, it also shows that they are more representative of the general population than other

commonly used convenience samples, such as college students (Clifford, Jewell and Waggoner, 2015; Berinsky, Huber and Lenz, 2012). In fact, MTurk samples can be remarkably similar to the general public in some dimenesions (Huff and Tingley, 2015). As a result of this, scholars have successfully replicated important findings in law and psychology using MTurk samples (Firth, Hoffman and Wilkinson-Ryan, 2017). To the extent that our sample diverges in important ways from the general public, this would limit the external validity (i.e. generalizability) of our results. Our primary interest, however, is in assessing the causal effects of judicial review, retention, and majority opinion on public acceptance of court decisions. To make these inferences, we do not need a representative sample, but a research design that can provide us with internally valid claims.[8] In our case, one could argue that an MTurk sample is even better than a nationally representative one for our particular experiment. The idea here is that MTurkers are generally better educated and more politically knowledgeable than the mass public (Huff and Tingley, 2015), which means that they are more likely to be political taste-makers within their social networks and broader communities (Watts and Dodds, 2007). This means that we are identifying causal effects for an important subsample of the population.

We recruited 1412 MTurkers to complete our survey. We limited our MTurk sample to include only individuals living in the United States. From this sample, we drop 13 MTurkers who did not complete the full survey, leaving us with a sample of 1399 individuals.[9] In line with recent recommendations, we do not use an attention check to screen out inattentive

[8]As Crabtree and Fariss (2016) note, it is important to first verify the internal validity of theoretical claims before assessing the degree to which those claims extend to other samples. We think that a fruitful avenue for future work would be to test how our findings travel to other populations.

[9]One possible concern here might be that attrition is correlated with treatment assignment. We find no evidence that this is the case, however.

respondents (Vannette, 2017). By not excluding distracted individuals, we make it harder to find treatment effects. This is because our sample likely includes both individuals who 'complied' with our treatment and those who did not. As a result, any effect we observe (the average treatment effect [ATE]) is lower than the effect for compliers (the average treatment effect on the treated [ATT]) (Gerber and Green, 2012).

Experimental Design

The experiment comprised five stages. First, participants were asked a series of standard socio-demographic questions. These questions elicited information about the participant's gender, age, race/ethnicity, education, income, and political preferences. We present a full list of these questions in Appendix A. Next, participants were asked a series of questions about their judicial political knowledge. Those questions are presented in Appendix B. We asked both sets of questions for two reasons. First, we wanted to use these measures in a balance check to assess whether randomization was successful. Second, we wanted to investigate in an exploratory fashion whether treatment effects vary across individuals. We discuss our use of these questions in later sections.

Once participants answered these two sets of questions, they were asked to read "an excerpt from a recent *Associated Press* report." The fictional account described a recent state Supreme Court ruling on the constitutionality of a law that protects against discrimination.[10] We borrowed the language used in the vignette from many wire service reports. Our experimental intervention involved varying several details of the news story. Figure 1 presents one possible combination of our treatments.

[10]To ensure that individual political preferences about laws like this did not drive responses to our experimental cues, we varied whether the law supported or opposed protections against discrimination based on sexual identity. In our analysis, we average over these stances.

Figure 1: Fictional Associated Press Report

Today, the [Alabama Supreme Court] issued an important decision on a recent state law. <The judges of this court were appointed and will never seek election.> The case centered on the constitutionality of a law passed by the General Assembly that reinforces protections against discrimination based on sexual identity. According to the Pew Research Center, the <law was favored by a majority of voters>. After lengthy deliberations, the court ruled that <the law conflicted with [Alabama's] constitution. This means that the law will not stay in force.>

Note: Text in <> represents randomly assigned elements. Text in [] represents values based on users' socio-demographic answers. To fill out those areas of the report, we asked MTurk users the name of their state supreme court and the name of their home state.

To test our four hypotheses, we randomly varied the several attributes of the fictional wire service report. We use a fully crossed factorial design with 3 factors and 8 different combinations of cues ($2 \times 2 \times 2 = 8$).[11] Specifically, we varied (a) whether the court was elected or appointed,[12] (b) whether the law was favored by a majority of voters or, and (c)

[11] We embedded 2 additional cues in the vignette. As discussed above, we varied whether law supported or opposed protections against discrimination based on sexual identity. We also varied whether the news report described a case heard by the highest court in a respondent's state (e.g., the Alabama Supreme Court) or the Iowa Supreme Court. For our analysis here, we average over the cues. In a later section, we examine whether our treatment effects vary depending on which court issued the ruling.

[12] We are aware that the use of random assignment of selection method is potentially problematic for the subset of respondents who understand how their state's judicial selection system works. Prior to the vignette, we asked respondents whether their state supreme court was elected or appointed. We find, in line with existing survey evidence (e.g. Nelson, 2016), that about 50% of citizens do not know whether their state supreme court is elected or not. One might be potentially concerned that our treatments affect individuals differently based on whether the know the selection system used in their state or not. In

whether the court engaged in judicial review or not. Each of these 3 factors then had 2 levels. Table 1 presents all 8 treatment arms. Treatments were completely randomized with each participant having an equal probability of receiving any individual treatment.

While we fully crossed the treatments, we are only interested in some of these treatment combinations, presented in Table 1. To test our *Majoritarian Hypothesis*, we are interested in the interaction between the majority support and judicial retention cues. As a reminder, we expect public acceptance of the court decision to be lower when the majority supports (opposes) a bill struck down (upheld) by the court. Similarly, we examine the interaction between nullification and the judicial retention cues to test the *Countermajoritarian Hypothesis*. Since the literature provides very limited theoretical expectations regarding the interactions of of these treatments, we investigated them in an exploratory fashion and report the results below.

Table 1: Treatment Combinations and Interactions

Appointment	Majority Opinion	Judicial Review	Contravene Maj. Opinion	Counter-Maj.
Yes	Supports Bill	Yes	Yes	Yes
Yes	Opposes Bill	Yes	No	Yes
Yes	Supports Bill	No	No	Yes
Yes	Opposes Bill	No	Yes	Yes
No	Supports Bill	Yes	Yes	No
No	Opposes Bill	Yes	No	No
No	Supports Bill	No	Yes	No
No	Opposes Bill	No	Yes	No

Note: The first three columns denote treatment combinations. The last two columns denote combinations of treatments used to test the *Majoritarian Hypothesis* and *Countermajoritarian Hypothesis*, respectively. Treatments were completely randomized with each participant having an equal probability of receiving any individual treatment.

After reading the putative wire report, participants were asked to answer four questions

a series of tests, however, we find that knowledge about the selection system does not moderate treatment effects. This suggests that individuals who answered the judicial selection system question correctly might not be confident enough in their beliefs to reject the authenticity of our cues.

that capture the extent to which they accepted the court's ruling. In other words, we seek to assess the extent to which those decisions that pose the normative difficulty are empirically less likely to be supported by the public. We focus on the public's decision to *accept* a judicial opinion. Acceptance is one form of public support for the judiciary; while diffuse support—legitimacy—is important for courts, it is important, in part, because of its ability to secure acceptance of the court's decision (Tyler, 2006). We conceptualize acceptance in the same way as Gibson, Caldeira and Spence (2005): requiring "citizens to respect [the court's decision], to cease opposition and get on with politics" (194). In this way, our study is one of a burgeoning number of studies to examine acceptance rather than diffuse support (Woodson, 2015; Gibson, Lodge and Woodson, 2014; Nicholson and Hansford, 2014).

The items come from Gibson, Lodge and Woodson (2014) and have been repeatedly validated as capturing the same underlying concept.[13] The questions (answered on a 4-point scale) are listed in Table 2. We then conduct exploratory factor analysis. Table 2 presents the factor loadings and Chronbach's alpha values (α). Finally, we create a factor score for each participant based on their replies to this set of questions. The resulting variable, ACCEPTANCE, is our outcome measure.[14]

Prior to analyzing the results, we check the integrity of the randomization procedure by examining whether participants' covariates are balanced across treatment groups. We test this by comparing the log-likelihood statistics of a null model and a full model that regresses treatment assignment on responses to the demographic questions (Gerber and Green, 2012, 107). The results suggest that we cannot reject the null hypothesis that the full model fits the data better ($p \approx 1$). This means that covariate imbalance is no larger than might occur

[13]Once the participants had completed these questions, they were told that they had completed the survey and were debriefed about its real purpose.

[14]As a robustness check, we also created an index based on these questions, summing their values. We find similar results using this outcome measure.

Table 2: Outcome Questions

Questions	Mean Response	Factor Loadings	α
Because of this decision, would you support or oppose efforts to overturn this decision with a constitutional amendment?	52.14% Support	0.499	0.545
Because of this decision, would you support or oppose efforts to get more judges on the bench who agree with you?	71.25% Support	0.517	0.552
Because of this decision would you support or oppose efforts to remove justices who voted the wrong way on this case?	43.72% Support	0.572	0.504
Do you accept the decision made by the court? That is, do you think the decision ought to be accepted and considered to be the final word on the matter?	67.02% Accept	0.457	0.580
Test scale			0.616

Note: The first column contains one of our four outcome questions. Each captures the extent to which respondents accepted the court's ruling. They come from Gibson, Lodge and Woodson (2014) and have been repeatedly validated as capturing the same underlying concept. The second column contains the percentage of participants who answer the question in the affirmative. The third column contains factor loadings. The fourth column contains α values.

by chance (Gerber and Green, 2012), which is consistent with successful randomization. We now present the empirical results.

5 Results

Do our experimental cues influence public acceptance of court decisions in line with our theoretical expectations? To examine this, we first examine the simple bivariate relationships between our treatments and our outcome.

As we state in our *Judicial Retention Hypothesis*, we find that the public acceptance of judicial decisions is lower if justices are appointed. The effect of Appointed (-0.052) is statistically significant ($p < 0.01$) and meaningful, as it equates to about one-seventh of a standard deviation in the outcome (0.367). In line with our *Nullification Hypothesis* and the larger theoretical literature, we discover that the public is less likely to accept judicial decisions when they overturn legislative action. This is indicated by the effect of *Judicial Review* (-0.110), which is statistically significant ($p < 0.01$), and substantively important,

decreasing *Acceptance* by approximately one-third of a standard deviation. There is little support, though, for our *Majoritarian Hypothesis*. This is because the effect of CONTRAVENE MAJORITY OPINION (0.023) is small and estimated imprecisely.

In order to test our *Countermajoritarian Hypothesis*, we need to model the effects of our cues parametrically. This is because we want to see if the effect of judicial review varies based on means of judicial retention. Since our dependent variable is continuous, we use ordinary least squares (OLS) regression. We use robust standard errors with the Bell-McCaffrey modification to account for heterogeneity in the error term. The outcome measure for the model is ACCEPTANCE. On the right-hand side of the equation, we include binary indicators for the 'appointed court' cue, APPOINTED, for the 'Contravene Majority Opinion' cue, CONTRAVENE MAJORITY OPINION, and for the 'judicial review' cue, *Judicial Review*. These indicators are used to test our *Judicial Retention Hypothesis*, *Majoritarian Hypothesis*, and *Judicial Review Hypothesis*, respectively. Since our *Countermajortiarian Hypothesis* suggests that the effect of judicial review is conditional on judicial retention and judicial review, we also include the interaction term APPOINTED × JUDICIAL REVIEW.

Figure 2 displays the results of this model in graphical format and Appendix C contains the tabular results. The figure plots the estimated coefficients (black points) from the model along with 95 percent and 90 percent confidence intervals (dark gray and gray bars). The reference category in this model is the news report that includes the 'no judicial review', 'does not contravene majority opinion', and 'elected judges' cues.

Our results provide strong support for our *Judicial Review Hypothesis*. This is indicated by the negative coefficient estimate for *Judicial Review*. It indicates that individuals are less likely to accept court decisions when they invalidate legislative policies. The size of this effect is meaningful and equates to about a $\frac{1}{3}$ of standard deviation decrease in *Acceptance*. Our results thus replicate and extend the well-known Caldeira (1986) finding. They do this by demonstrating that the use of judicial review is costly for judicial institutions at the *individual* level.

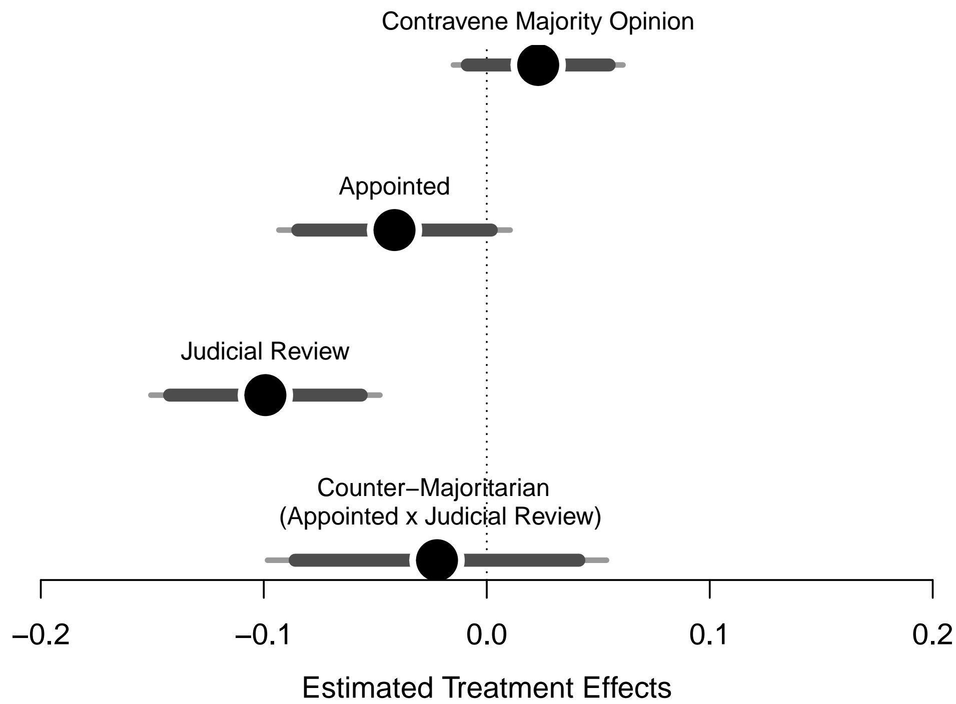

Figure 2: Results from an OLS model containing treatment indicators. The figure plots the estimated coefficients (black points) from the model along with 95 percent and 90 percent confidence intervals (dark gray and gray bars). The reference category in this model is the report that includes the 'no judicial review', 'does not contravene majority opinion the law', and 'elected judges' cues.

We again find strong support for our *Judicial Retention Hypothesis*. To assess this, we conduct a Wald test of the joint effect of APPOINTED and APPOINTED × JUDICIAL REVIEW, finding that we cannot reject the null hypothesis of no effect ($p < 0.022$) Our experiments suggests than that public acceptance of judicial decisions is lower for courts where judges are retained through appointment than through election. This result thus suggests another benefit to judicial elections — contrary to our expectations, it appears citizens are *more likely* to accept decisions when they know they have control over the policymaker's continued tenure in office.

While our results are in line with both our *Judicial Review Hypothesis* and *Judicial Retention Hypothesis*, they provide little support for our *Majoritarian Hypothesis*. In contrast to our expectations, the sign on CONTRAVENE MAJORITY OPINION is positive. It is also estimated imprecisely. This suggests that the public does not necessarily accept court decisions less if they cut against popular opinion. Future work should examine both the extent to which this finding replicates across other samples and why this might be the case.

Perhaps most importantly, our results indicate that concern over the countermajoritarian difficulty might be overblown. This is because the coefficient on APPOINTED × JUDICIAL REVIEW is not different from zero. That indicates that the negative effect of judicial appointment on public acceptance of court decisions *does not* vary depending upon whether judges rule against public opinion or not. This finding, taken together with the results for our *Majoritarian Hypothesis*, suggests the public can accept decisions that go against majority opinion but that it struggles to accommodate rulings made by unelected judges.

One might expect that the effects of APPOINTED, CONTRAVENE MAJORITY OPINION, and JUDICIAL REVIEW are conditional on each other. As we have shown above, there is little evidence to support the claim that effects of APPOINTED and JUDICIAL REVIEW modify each other. We also investigate other treatment combinations in an exploratory fashion, such as whether our APPOINTED, JUDICIAL REVIEW, and MAJORITY SUPPORT cues interact. We find little evidence, however, that our cues modify each other in any meaningful way.

This leads us to believe that effect of these cues on public support appears additive rather than conditional.

Similarly, it is reasonable to think that the effect of our cues might vary across participant subgroups. For instance, it might be the case that individuals who hold different political ideologies might react differently to our experimental treatments. We investigate the possibility of conditional treatment effects in a series of regression models. There is little evidence, however, of any meaningful treatment effect heterogeneity. This suggests that our participants largely evaluated the putative court decision in similar ways.

5.1 Robustness Checks

One possible concern with our results might be that they are specific to court decisions in individual's home states. This is because when they read the vignette, they are presented with information about a decision made by their state judiciary. Perhaps they might respond differently if they case occurred in a different state. In expectation of this possible objection, we randomly varied whether the decision was made by the highest court in the respondent's state of residence or by the Iowa Supreme Court.[15] This allows us to formally test the hypothesis that participants treated court decisions differently depending upon whether they are made in their own state or not. We do this by creating an External Court indicator for all respondents who received the Iowa treatment and interacting it with the treatment indicators. As we show in Appendix D, none of the interaction terms in this model are statistically significant. This suggests that respondents reacted to court decisions much the same no matter where they were made.[16] Future work might want to investigate whether

[15]No respondents identified as living in Iowa.

[16]We add one note of caution here. Due to an issue with randomization, the Iowa treatment was not fully crossed with the other treatments. One possible concern with this is that we cannot estimate if the effect of any particular joint combination of treatments differs

this finding travels to other participant pools.

Another possible concern is that our results are a 'statistical fluke'. Given the potential importance of our findings, we need to rule out that possibility. To do so, we conduct a Studentized permutation test (Gerber and Green, 2012). The test allows us to compare the t-statistics from our OLS model with the "average treatment effect ... under random reassignments of treatment that follow the same randomization scheme as the actual experiment" (Gerber and Green, 2012, 117). We simulate $10,000$ random reassignments and calculate p-values. The p-value returned from this test represents the fraction of test statistics strictly greater than the test statistic in our sample (Lin and Green, 2016). The results from this test are very similar to those reported above.[17] That increases our confidence in the findings from this experiment.

6 Discussion and Conclusion

Beginning with Bickel (1962), the voluminous literature on the countermajoritarian difficulty has often assumed that the use of judicial review by an unelected court is inherently problematic. Unelected judges, the argument goes, risk losing public support when they make decisions that nullify the actions of a popularly elected legislature or executive. In this pa-

based on whether respondents were provided information about a court case in their home state or one in Iowa. This is not a problem for our analysis, however, as we are not primarily concerned about estimating the joint effect of specific treatment combinations, but rather the additive effect of individual factors (i.e. *Appointed*, *Majority Support*, and *Judicial Review*). For the one treatment combination that we are substantively interested in, Appointed $\times$ Judicial Review, participants received versions of it with and without the Iowa treatment.

[17]Since we have a relatively large sample and use robust standard errors, it makes sense that the permutation test would corroborate our OLS results (Gerber and Green, 2012).

per, we have sought to test that assumption, examining whether citizens respond differently to decisions of elected and unelected courts and probing the extent to which courts need to be cautious when deciding cases that contravene public opinion. Our results show that the public does judge the use of judicial review harshly. Decisions that nullify the decisions of a popular elected legislature are less likely to be accepted by the public. These results corroborate previous findings at the aggregate level about the costliness of judicial review (Caldeira, 1986).

Moreover, we have uncovered evidence that institutional factors change the extent to which a court's decisions are accepted by the public. Our experimental results suggest that, when courts are imbued with additional legitimacy provided by the electoral process, their decisions are more likely to be accepted. This finding has wide-ranging consequences for institutional design and our understanding of judicial power. By providing courts with an independent base of support—the ballot box—it appears that judicial elections may raise the prominence and power of state supreme courts by enhancing their source credibility to voters. Future research needs to examine whether this independent base of support has wider-ranging consequences with respect to the relationship between the judiciary and the traditionally elected branches of government.

But perhaps the most surprising—and important—result of our experiment is the lack of an interactive effect between our treatments. The countermajoritarian difficulty suggests that decisions made by *unelected* courts are particularly problematic, suggesting that citizens should be more likely to judge positively the use of judicial review by an elected court. However, our experiment revealed is no evidence that judicial review is more harmful when used by an elected court than an unelected court. In this sense, the results suggest that the controversy over the countermajoritarian difficulty—while normatively important—has weaker empirical support than is often assumed. The "difficulty" with judicial review, it seems, stems less from its use by a court that is chosen and kept in office in a particular way and instead seems to be inherent in the tool itself. The extent and generalizability of this

finding is ripe for future research.

A major advantage of our experimental design is its ability to parse the support of opinion majorities (our majoritarian manipulation) from the typical assumption that any policy has majority support (represented in our experiment by the average across the majoritarian manipulation). Parsing these different types of support is particularly important in light of evidence that variation in the level of majority support for a piece of legislation can have important consequences for a Court's decision to use judicial review (Hall and Ura, 2015). However, after separating legislative and popular support for legislation, we find no evidence that judicial review is any more costly when courts use it to go against public opinion. Thus, while Hall and Ura (2015) suggest that *judges* differentiate among pieces of legislation, becoming more likely to strike down a law as its support weakens, our results suggest that the *public* does not engage in a similar calculation. The public dislikes the use of judicial review, but its dislike is not conditional upon whether or not the court is engaging in majoritarian or countermajoritarian judicial review.

These findings have implications for our understanding of judicial power and impact. Much of the motivating work on judicial impact suggests that the ability of courts to be impactful, in part, stems from a judicial caution that leads courts to wait to wait to intervene before settling important disputes on the most important issues of the day. This logic has been offered to explain the Court's reluctance to address school desegregation, abortion rights, same-sex marriage, among others (e.g. Rosenberg, 2008). Our results, however, suggest that this judicial caution may be unwarranted. If the public is equally likely to punish a court regardless of the level of majority support for a bill, strategic docketing of cases may be unnecessary action for courts to take. Moreover, given that the public punishes courts for appearing political (Gibson and Nelson, 2017; Hansford, Intawan and Nicholson, 2017; Woodson, 2017), such strategic case selection may only magnify the negative consequences of the Court's eventual use of judicial review if the public views it as political in nature.

On a different note, our results provide individual-level evidence for the logic suggested

by existing studies. For example, Clark (2011) suggests that courts engage in a form of conditional self-restraint, choosing not to use the power of judicial review when it has received signals of its low public support. Our evidence suggests judges who engage in this action are wise. Because decisions based on judicial review are less acceptable to the public, our evidence suggests, courts do risk a quickened erosion of support when they engage in the use of judicial review when their support is already lowered. Moreover, the fact that there is no difference across elected and appointed courts suggests that the logic of conditional self-restraint may extend beyond the U.S. Supreme Court originally analyzed by (Clark, 2011).

We have focused our efforts in this paper on the countermajoritarian difficulty. But, other difficulties with judicial review exist. In elected courts, scholars have argued, the difficulty with judicial review stems not from countermajoritarianism because the judges, like the policymakers whose laws they review, are also popularly elected. Instead, the normative issue with judicial elections in the U.S. states is what Croley (1995) terms the "majoritarian difficulty": "the likelihood that elected judges will apply the law so as to please their constituents, even when doing so may undermine the rule of law and compromise state and federal constitutional rights" (Frost and Lindquist, 2010, 722-3).[18] Worries about a majoritarian difficulty are not limited to the state courts. Dorf (2010) examines a similar majoritarian difficulty, asking "Are courts that roughly follow public opinion capable of protecting minority rights against majoritarian excesses?" (283). All of these difficulties raise important questions about how the public judges judicial decisions; future research should investigate how the public's willingness to accept judicial decisions is affected by the public's perceptions of the decision and the decisionmaking process by which the court adjudicated it.

[18] Graber (1993) adds a third "difficulty" suggesting the presence of a "nonmajoritarian difficulty" (see also Whittington, 2005; Stephenson, 2003; Rogers, 2001)

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Appendix A

In what year were you born?

How do you currently describe yourself?

- Male (1)
- Female (2)
- Transgender (3)
- Other / Prefer not to respond (4)

How often do you attend church services?

- Never (1)
- Less than once a year (2)
- About once or twice a year (3)
- Several times a year (4)
- About once a month (5)
- 2-3 times a month (6)
- Nearly every week (7)
- Every week (8)

What is your sexual orientation?

- Asexual (1)
- Bisexual (2)
- Gay (3)
- Straight (Heterosexual) (4)
- Lesbian (5)
- Pansexual (6)
- Queer (7)
- Questioning or unsure (8)
- Same-gender loving (9)

- Prefer not to disclose (10)
- Other / Prefer not to respond (11)

Are you of Latino or Hispanic origin, such as Mexican, Puerto Rican, Cuban or some otherSpanish background?

- Yes (1)
- No (2)

Are you white, black, of Asian origin or some other race?

- White / Caucasian (1)
- Black / African American (2)
- Asian (3)
- Alaskan Native (4)
- Pacific Islander (5)
- Other (6)

What is the highest grade or year of school you have completed?

- 8th Grade or Less (1)
- High School - Incomplete (Grades 9, 10, or 11) (2)
- High School - Complete (Grade 12) (3)
- Vocational / Technical School (4)
- Some College (5)
- Junior College Graduate (2 year, Associates Degree) (6)
- 4 Year College Graduate (Bachelor's Degree) (7)
- Graduate Work (Masters, Law / Medical School, etc.) (8)

When it comes to politics, some people think of themselves as liberal, and others think of themselves as conservative. How would you describe yourself? Are you...

- Very liberal (1)
- Liberal (2)
- Somewhat liberal (3)
- Moderate / Middle of the road (4)

- Somewhat conservative (5)
- Conservative (6)
- Very conservative (7)

Generally speaking, do you usually think of yourself as a Republican, Democrat, Independent, or what?

- Democrat (1)
- Republic (2)
- Other / Independent (3)

Do you own or rent your home?

- Own (1)
- Rent (2)

In what state do you live?

- Alabama (1)
- Alaska (2)
- Arizona (3)
- Arkansas (4)
- California (5)
- Colorado (6)
- Connecticut (7)
- Delaware (8)
- Florida (9)
- Georgia (10)
- Hawaii (11)
- Idaho (12)
- Illinois (13)
- Indiana (14)
- Iowa (15)

- Kansas (16)
- Kentucky (17)
- Louisiana (18)
- Maine (19)
- Maryland (20)
- Massachusetts (21)
- Michigan (22)
- Minnesota (23)
- Mississippi (24)
- Missouri (25)
- Montana (26)
- Nebraska (27)
- Nevada (28)
- New Hampshire (29)
- New Jersey (30)
- New Mexico (31)
- New York (32)
- North Carolina (33)
- North Dakota (34)
- Ohio (35)
- Oklahoma (36)
- Oregon (37)
- Pennsylvania (38)
- Rhode Island (39)
- South Carolina (40)
- South Dakota (41)
- Tennessee (42)

- Texas (43)
- Utah (44)
- Vermont (45)
- Virginia (46)
- Washington (47)
- West Virginia (48)
- Wisconsin (49)
- Wyoming (50)

What is the name of your state's supreme court?

- Supreme Court of Alabama (1)
- Alaska Supreme Court (2)
- Arizona Supreme Court (3)
- Arkansas Supreme Court (4)
- Supreme Court of California (5)
- Colorado Supreme Court (6)
- Connecticut Supreme Court (7)
- Delaware Supreme Court (8)
- Florida Supreme Court (9)
- Supreme Court of Georgia (10)
- Supreme Court of Hawaii (11)
- Idaho Supreme Court (12)
- Supreme Court of Illinois (13)
- Supreme Court of Indiana (14)
- Iowa Supreme Court (15)
- Kansas Supreme Court (16)
- Kentucky Supreme Court (17)
- Louisiana Supreme Court (18)

- Maine Supreme Judicial Court (19)
- Maryland Court of Appeals (20)
- Massachusetts Supreme Judicial Court (21)
- Michigan Supreme Court (22)
- Minnesota Supreme Court (23)
- Supreme Court of Mississippi (24)
- Supreme Court of Missouri (25)
- Montana Supreme Court (26)
- Nebraska Supreme Court (27)
- Supreme Court of Nevada (28)
- New Hampshire Supreme Court (29)
- New Jersey Supreme Court (30)
- New Mexico Supreme Court (31)
- New York Court of Appeals (32)
- North Carolina Supreme Court (33)
- North Dakota Supreme Court (34)
- Ohio Supreme Court (35)
- Oklahoma Supreme Court (36)
- Oregon Supreme Court (37)
- Supreme Court of Pennsylvania (38)
- Rhode Island Supreme Court (39)
- South Carolina Supreme Court (40)
- South Dakota Supreme Court (41)
- Tennessee Supreme Court (42)
- Texas Supreme Court (43)
- Utah Supreme Court (44)
- Vermont Supreme Court (45)

- Supreme Court of Virginia (46)
- Washington Supreme Court (47)
- Supreme Court of Appeals of West Virginia (48)
- Wisconsin Supreme Court (49)
- Wyoming Supreme Court (50)

Appendix B

How well do you think the [state court / Iowa Supreme Court] does its main job in government? Would you say it does a...

- Great job (1)
- Pretty good job (2)
- Not very good job (3)
- A poor job (4)

Some judges in the American states are elected; others are appointed to the bench. Do you happen to know if the justices of the [state court / Iowa Supreme Court] are elected or appointed to the bench?

- Elected (1)
- Appointed to the bench (2)

Some judges in the American states serve for a set number of years; others serve a life term. Do you know if the justices of the [state court / Iowa Supreme Court] serve for a set number of years or whether they serve a life term?

- Serve set number of terms (1)
- Serve life term (2)

When there is a conflict over the meaning of the [state / Iowa] Constitution, do you know who has the last say – is it the [state court / Iowa Supreme Court], the legislature, or the governor?

- state court / Iowa Supreme Court (1)
- Legislature (2)
- Governor (3)

In general, would you say that the [state court / Iowa Supreme Court] is too liberal, too conservative, or about right in its decisions?

- Too liberal (1)
- Too conservative (2)
- About right (3)

Appendix C

We present here the results from our main model. Since our dependent variable is continuous, we use ordinary least squares (OLS) regression. We use robust standard errors with the Bell-McCaffrey modification to account for heterogeneity in the error term. The outcome measure for the model is Acceptance. On the right-hand side of the equation, we include binary indicators for the 'appointed court' cue, Appointed, for the 'Contravene Majority Opinion' cue, Contravene Majority Opinion, and for the 'judicial review' cue, *Judicial Review*. These indicators are used to test our *Judicial Retention Hypothesis*, *Majoritarian Hypothesis*, and *Judicial Review Hypothesis*, respectively. Since our *Countermajortiarian Hypothesis* suggests that the effect of judicial review is conditional on judicial retention and judicial review, we also include the interaction term Appointed × Judicial Review.

Table 3: Primary Results

Treatment	Estimated Coefficient	Standard Error	t-stat
Appointed	-0.041	(0.026)	-1.564
Contravene Majority Opinion	0.023	(0.019)	1.189
Judicial Review	-0.099	(0.026)	-3.788
Appointed × Judicial Review	(-0.022)	0.039	-0.575

Note: Constant not presented. See text for more details about the model.

Appendix D

One possible concern with our results might be that they are specific to court decisions in individual's home states. This is because when they read the vignette, they are presented with information about a decision made by their state judiciary. Perhaps they might respond differently if they case occurred in a different state. In expectation of this possible objection, we randomly varied whether the decision was made by the highest court in the respondent's state of residence or by the Iowa Supreme Court. This allows us to formally test the hypothesis that participants treated court decisions differently depending upon whether they are made in their own state or not. We do this by creating an External Court indicator for all respondents who received the Iowa treatment and interacting it with the treatment indicators. As we show in Appendix D, none of the interaction terms in this model are statistically significant. This suggests that respondents reacted to court decisions much the same no matter where they were made. Future work might want to investigate whether this finding travels to other participant pools.

Table 4

Treatment	Estimated Coefficient	Standard Error	*t*-stat
Appointed	-0.086	(0.037)	-2.280
Contravene Majority Opinion	(0.033)	0.027	1.219
Judicial Review	-0.116	(0.035)	-3.289
External Court	-0.012	(0.040)	-0.297
Appointed × Judicial Review	0.013	(0.054)	0.238
External Court × Appointed	0.087	(0.053)	1.649
External Court × Contravene Majority Opinion	-0.020	(0.039)	-0.509
External Court × Judicial Review	0.033	(0.053)	0.634
External Court × Appointed × Judicial Review	-0.070	(0.078)	-0.903

Note: Constant not presented. See text for more details about the model.