

Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy

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The 2012 challenge to the Affordable Care Act was an unusual opportunity for people to form or reassess opinions about the Supreme Court. We utilize panel data coupled with as-if random assignment to reports that Chief Justice Roberts's decision was politically motivated to investigate the microfoundations of the Court's legitimacy. Specifically, we test the effects of changes in individuals' ideological congruence with the Court and exposure to the nonlegalistic account of the decision. We find that both affect perceptions of the Court's legitimacy. Moreover, we show that these mechanisms interact in important ways and that prior beliefs that the Court is a legalistic institution magnify the effect of updating one's ideological proximity to the Court. While we demonstrate that individuals can and did update their views for multiple reasons, we also highlight constraints that allow for aggregate stability in spite of individual-level change.

Since at least *Federalist No. 78*, observers have focused on the Supreme Court's legitimacy as the primary source of its influence and relevance. While the Court's legitimacy and power were in doubt at the founding, the modern Court generally benefits from high and stable levels of diffuse support (e.g., Gibson 2007). Because people appear to support the Court without much concern for particular decisions, understanding what, if anything, changes individuals' perceptions of the Court's legitimacy is vital to understanding its influence in politics. Thus, we ask: What affects individuals' diffuse support for the Court and for judicial review? Is ideological alignment with the Court distinct from assessments of its legitimacy? Is the Court's legitimacy stable in the face of controversial landmark decisions? Much like issues of representation and responsiveness in the elected branches, these questions link public opinion and institutional action in the judicial branch.

We explore these issues by focusing on individuals' evaluations of the Court when a salient case, such as the 2012 Affordable Care Act (ACA), provides

new information about it. Specifically, we ask whether individuals' support for the Court as an institution is driven by ideological agreement with it and/or by perceiving the Court as having different motivations than the political branches. These two mechanisms comprise some of the key arguments in an increasingly spirited debate over the sources of the Court's legitimacy (e.g., Bartels and Johnston 2013; Gibson and Nelson 2013). In addressing these questions in this case, we also speak indirectly to an arguably broader question that links institutions and behavior: Do people care *how* political institutions make or interpret laws, or do they just care about the end results?

The ACA case is particularly well suited for testing both the ideological and the "courts are different" mechanisms simultaneously. First, while high-salience cases are unusual, they are also the cases with the potential to provide the public with new information that makes reassessing the Court feasible. Second, the ACA case was not just salient, but also it revolved around a polarized national policy issue with clearly defined ideological and

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Authors are listed alphabetically. We would like to thank Doug Kriner, Graham Wilson, Jan Box-Steffensmeier, Herb Weisberg, Andrew Reeves, Brandon Bartels, Banks Miller, Christopher Johnston, Kathleen Winters, and Jim Gibson for helpful comments related to this project. Earlier drafts were presented at the 2012 Pacific Northwest Political Science Conference and at the 2013 CNISS Speaker Series at Washington University. Replication data and supporting information are available in the AJPS Data Archive on Dataverse (<http://dvn.iq.harvard.edu/dvn/dv/ajps>).

American Journal of Political Science, Vol. 00, No. 0, xxx 2014, Pp. 1–16

political sides. Even though the Court rendered a mixed opinion, the case still provided the ingredients for one to reconsider the Court's ideology. Third, and perhaps most unusually, the case also provided new information, exposing the public to the possibility that the Court can be strategic and motivated by nonlegal factors. As some may recall, the key question was whether Congress's enumerated powers were broad enough to include the authority to mandate individuals to have health insurance. While most of the oral arguments, and nearly all predictive analysis, focused on the Commerce and Necessary and Proper clauses as the potential source of the power, Chief Justice Roberts surprised many by saving the mandate under the taxing power despite ruling against the administration on the Commerce Clause question and on the Medicaid expansion. Not only was the tax power resolution surprising, but some analysts and some news reports attributed his decision to strategic motivations and suggested that he actually changed his mind to prevent public backlash. Combined, these factors mean that this case provides a rare opportunity for people to reassess how well the Court's ideology aligns with their own, and whether its decisions are rooted in legal factors or rooted in the kinds of considerations we often associate with the political branches.

In order to take advantage of the opportunities the case provides, we utilize a novel research design that allows for the possibility that legitimacy and/or ideological perceptions are stable or that they change with the Court's outputs. Specifically, we complement unique panel survey data collected around a landmark case, which allows for causal inferences about microlevel changes in response to the ACA decision, with a quasi-experiment exposing some respondents to news of Roberts's reported strategic flip. With this design, we directly observe the effects of new information about the Court, identify whose views change, disentangle potential endogeneity between legitimacy and ideological agreement, distinguish aggregate effects and stability from individual change, and separate the mechanisms behind individual change from the constraints on widespread change. In addition, we are able to study the mechanisms underlying legitimacy at the precise time people were forming real opinions in their natural environments about an actual event, thereby providing substantial external validity.

Legitimacy, Ideology, and Whether Courts Are Different

The Court generally maintains high levels of legitimacy and diffuse support, which is thought to serve as the

source of its influence (Gibson 2007; Gibson, Caldeira, and Baird 1998). The literature suggests at least two microfoundational mechanisms that may affect individuals' perceptions of the Court's legitimacy. One perspective asserts, with some permutations, that people evaluate the Court's responsiveness to their views. People support the Court and its power of judicial review when they tend to agree with it and withdraw support when they do not. This seemingly intuitive argument is actually a challenge to the dominant view, which rejects a connection between ideological agreement and legitimacy assessments (Gibson 2007; Gibson, Caldeira, and Spence 2003). While some documented links between individuals' ideology and views of the Court (Egan and Citrin 2011; Hetherington and Smith 2007; Hoekstra 2000) may speak more to "specific support" (e.g. Caldeira and Gibson 1992), Bartels and Johnston (2013) directly challenge claims that ideology has little effect on "diffuse support." They find that using people's subjective assessments of their ideological congruence with the Court reveals a link between ideology and legitimacy. The ongoing debate about ideological agreement and legitimacy, best highlighted by Gibson and Nelson's (2013) response to, and critique of, Bartels and Johnston (2013) motivates our first hypothesis, which differs from both in its dynamic conception.

Hypothesis 1: Ideological Congruence. Increasing (decreasing) perceptions of the ideological congruence between oneself and the Court increases (decreases) legitimacy assessments.

Skepticism about ideology's effects is rooted in arguments, especially those associated with positivity theory (e.g., Gibson 2007), that the Court can rely on a deep and stable reservoir of diffuse support that makes legitimacy insensitive to ideology. Even controversial decisions like *Bush v. Gore* (2000) do not undermine the Court's legitimacy (Gibson, Caldeira, and Spence 2003), implying that there are "few avenues through which the legitimacy of the Supreme Court might be threatened" (Gibson and Caldeira 2011, 200). Furthermore, only a sustained series of unpopular decisions can undermine diffuse support (Gibson and Caldeira 2009a; but see Grosskopf and Mondak 1998).

From this perspective, changes in the Court's legitimacy will be driven by views that "courts are different" because legitimacy is rooted in deeper democratic values. Diffuse support depends on the public seeing the Court as impartial, thoughtful, legalistic, and thus generally different from the other two branches (Gibson 2007; Gibson and Caldeira 2011). Specifically, positivity theory claims that exposure to the Court inherently reinforces the idea that courts are different (Gibson 2007; Gibson

and Caldeira 2009a, 2009c, 2011). For example, media coverage rarely depicts the Court as political (Baird and Gangl 2006). Key to positivity theory's challenge to ideological mechanisms is its focus on the fact that those who disagree are simultaneously exposed to symbols that legitimize the Court's decision and distinguish law from regular politics (Gibson and Caldeira 2009a, 2011; but see Johnston and Bartels 2010), and that they are less sensitive to disagreeable news about the Court (Curry and Miller 2008).

Hypothesis 2: When Courts Are Not So Different. Exposure to new information that the Court is not above politics will reduce legitimacy assessments.

While ideology and political courts are sometimes posed as alternatives or rivals, we expect them to interact in important ways. This expectation is consistent with positivity theory's claim that the Court can make ideologically unpopular decisions without losing legitimacy if it is seen as different. While we expect ideological updating to matter independent of seeing the Court as nonlegalistic, we also expect an interactive effect in which exposure to information that the Court is nonlegalistic magnifies the power of updating and increases the salience of ideology. The Court should be especially vulnerable to ideological proximity effects when it is also seen as nonlegalistic because people evaluate it more based on outputs when they do not see it as different from the other branches. Furthermore, we expect the strongest movement on the negative side. The largest change in legitimacy should manifest in those who learn the Court has become both less aligned with their views and more motivated by nonlegalistic concerns.

Hypothesis 3: Political and Incongruent. Believing the Court is both political and incongruous with one's beliefs will exacerbate legitimacy assessment loss.

Finally, we expect that individuals' prior beliefs that the Court is legalistic will mitigate the effects of new information. According to Gibson and Caldeira (2009b), those who believe that courts are different are likely to interpret information about judicial confirmations through a judiciousness frame. Extending this logic to our analysis yields expectations about the effects of new information about the Court's ideology (Hypothesis 1) and whether it is political (Hypothesis 2). Those who initially view the Court in legalistic terms should change their legitimacy assessments less when confronted with new information about the Court's ideology. Similarly, those who have more legalistic perceptions of the Court may be less likely

to change their views when confronted with new information that it is political.

Hypothesis 4: Legalistic Court. The legitimacy assessments of people who initially view the Court as legalistic will be less affected by new information about its ideology and political rationale.

This hypothesis is consistent with a broader story that the Court's legitimacy can be generally stable in the aggregate at the same time that individuals can change their assessments in systematic ways in response to new information. Prior legitimacy helps protect the Court from new information by reducing, but not eliminating, updating as new information is revealed. Moreover, while we largely base our expectations about prior beliefs and new information on positivity theory, one could also plausibly predict the exact opposite relationship, especially concerning information that the Court is nonlegalistic. That is, there is also a strong theoretical case to be made that those who view the Court in legalistic ways will be the most shocked by information that the Court is not behaving accordingly. Evidence supporting this alternative expectation, or challenging Hypothesis 4 more generally, would be contrary to the prevailing positivity theory model.

Research Design and Data

We are interested in the effects of two natural interventions that we expect to change legitimacy. The first is the decision itself, as it may have prompted people to reconsider their views of the Court's ideology. The second is news that Roberts's decision was motivated by more than a strictly legal interpretation. We rely on two key design features to make inferences about the causes of changes in legitimacy. The first design feature is four waves of panel data collected immediately around the ACA decision. Panel data are crucial to answering the important questions but are "woefully scarce" in this literature (Gibson and Caldeira 2009a, 5). Indeed, the panel design (which we believe to be the first of its kind in this literature) differs from the conventional cross-sectional approach, which may obscure individual change. By looking instead within the same individuals across time, we can explore how the decision affects perceptions of the Court's ideology and how these potentially changed perceptions affect legitimacy. Thus, we culled a sample of 1,242 American adults from Amazon's crowd-sourcing Internet marketplace, Mechanical Turk (MTurk). Our use of MTurk builds on prior work that investigates MTurk's properties (Berinsky, Huber, and Lenz 2012) and uses

it for experimental recruitment (e.g., Grimmer, Messing and Westwood 2012; Healy and Lenz 2014; Huber, Hill, and Lenz 2012) as well as convenience samples in panel studies (e.g., Druckman, Fein, and Leeper 2012; Gaines et al. 2007).¹ Participants for the first survey were recruited on MTurk, and those who successfully completed a wave were retained for the subsequent wave without replacement. We completed two waves before the decisions were released and two waves after.

The second design feature is an as-if randomly assigned and externally valid allegation that the Court's decision was motivated by nonlegalistic factors. While questions about public opinion and legitimacy are our primary focus, this treatment ties our study to work that asserts that the Court makes strategic decisions at times, particularly in contentious, salient cases (Clark 2010; Epstein, Knight and Martin 2004; Glick 2009; Graber 1999; Whittington 2003). While most work in this literature focuses on institutions (see, generally, Pacelle, Curry, and Marshall 2011), ours links an alleged strategic decision directly to mass opinion.

As soon as the Court released its ruling upholding the individual mandate as a tax, some began speculating that Chief Justice Roberts had gone out of his way to avoid overturning the law in a strategic retreat reminiscent of the Court's behavior in some other historical cases, such as *Marbury v. Madison*, *Cohens v. Virginia*, and the *Gold Clause cases* (Glick 2009; Graber 1995; Knight and Epstein 1996).² Our ability to incorporate an experimental treatment that suggests nonlegalistic motivations follows directly from a national news report consistent with these suspicions. On Sunday, July 1, CBS News's Jan Crawford (2012) reported that Chief Justice Roberts had initially sided with his conservative colleagues and drafted an opinion striking down the mandate but then changed his mind. The article also asserts that this switch prompted the more conservative justices to try to pull him back into their majority. According to Crawford, and fitting perfectly with legitimacy questions in political science: "As Chief Justice, he is keenly aware of his leadership role on the Court, and he also is sensitive to how the Court is perceived by the public. There were countless news articles in May warning of damage to the

Court—and to Roberts's reputation—if the Court were to strike down the mandate." The CBS story offered an unusually direct, mainstream claim of a Court that is influenced by some of the same factors that influence the other branches. Presumably anyone exposed to the article would have to at least consider whether courts really are different from other political institutions. Interestingly, in this case, Roberts was not accused of being political in the attitudinal sense since he actually ruled against his likely preferences. Instead, he was accused of being political in a more strategic sense in the face of pressure from outside the Court.

We are agnostic about whether the decision was actually strategic and/or attitudinal. Indeed, the veracity of these claims is much less important than the fact that the mainstream media article confronted its readers with a less legalistic portrayal of the Court's business than they would have had without it. Undoubtedly, some of the actual coverage was "legal" in the sense that it focused on the Commerce Clause's limits and attributed the outcome to the majority's interpretation of the power to tax and spend. This coverage was at times mixed with mentions of the 5–4 decision, references to liberals and conservatives, and other more political signals. In contrast, the treatment article highlights Roberts's changing his views, describes his concerns over public opinion, explicitly mentions ideological alliances, and reveals that Justice Kennedy and others were actively trying to wrangle Roberts back to their side.³ The article offers readers multiple reasons to question whether courts are truly different from other institutions. Therefore, it is better thought of as a general political courts treatment, or a nonlegalistic treatment, than as a purely strategic courts one.

We assigned respondents an experimental treatment, *Roberts flip* (Figure 2A in the supporting information), taken directly from the CBS article (Crawford 2012). We cut some descriptive paragraphs while maintaining as much of the original formatting as possible to create a concise yet realistic treatment of a nonlegalistic, or "politicians in robes," account of the Court.⁴ The treatment differs markedly from other attempts to study the concept that "courts are different," which have relied on self-reported views of the Court or on the presumption that more knowledge of the Court leads to a more realistic (and hence more aware of political realities) appraisal. Indeed, key to the stalemate between Bartels and

¹The supporting information includes a thorough discussion of the panel design, representativeness, and attrition, along with a more elaborate summary of the literature concerning and using MTurk samples.

²This speculation ranged from professors on legal blogs (e.g., Berstein 2012) to popular commentators on Twitter, such as TV writer Michael Schur's tweet: June 28, 2012 (aka "Ken Tremendous"), who immediately captured the strategic intuition by joking, "It would've been funny if Roberts's majority decision had just said, 'Here. Sorry about Citizens United.'"

³While Crawford (2012) focused on Roberts's concerns about public opinion, his strategic decision was also consistent with being concerned about what elites would think (Baum and Devins 2009).

⁴We included the picture of the Court that accompanied the original news story. Consistent with positivity theory (Gibson and Caldeira 2009a), the justices were depicted in their robes, a legitimizing symbol, even in this story of nonlegalistic motivations.

Johnston (2013) and Gibson and Nelson (2013) is disagreement over the inclusion of measures of support for democratic values in models estimating ideology effects. Inducing different views (and using panel data) is crucial for avoiding endogeneity concerns, since, for example, people who disagree with the Court may be more likely to see it as political. Our treatment differs substantially from the treatment in Baird and Gangl (2006), which exposed people to potentially good faith bargaining and compromise, and instead satisfies the implicit guidelines found in Gibson and Caldeira (2011) by portraying the Court as political and strategic. In addition, the fact that this article was likely only one piece of information alongside other reporting on the case greatly increases the study's external validity when compared to an experiment in which participants can only rely on the information provided by the researchers to evaluate the Court.⁵

As-If Random Assignment to Treatment

We launched the third wave of the survey on the morning after the Supreme Court released the decision. Hundreds of participants completed the third wave that Friday. Then, on Sunday, the CBS story broke. On Monday, we added a one-page version of the CBS story to the middle of the survey and sent a reminder email to the remaining participants as previously planned.⁶ Since the Roberts treatment was not randomly assigned, but rather determined by the timing of when one completed the survey, we demonstrate here the extent to which our identification strategy approximates a randomized experiment.⁷ Table 1 provides evidence of balance across the treatment and control groups that exceeds conventional expectations, and thus strongly validates the quasi-experimental design claims. The treatment and control groups are balanced across potential demographic confounders, including age, gender, race, and education. Likewise, their partisan and ideological compositions are virtually equal.

⁵The realities of the general media coverage imply that our treatment effect may be a conservative estimate of the true effect because the mainstream media coverage did not universally portray the decision as a purely legalistic one. General coverage of the case often mentioned the justices' ideologies and the contested 5–4 split, which means that our article was only one piece of information that the Court may have nonlegalistic motivations.

⁶The treatment was included on the survey after questions about the health care decision and ideology, but before the battery of legitimacy questions that make up the dependent variable (described below).

⁷We further discuss the as-if random assignment of the treatment in the supporting information.

Table 1 also shows that the groups are balanced in terms of their substantive views directly related to the study's core issues. When asked (before the decision was announced) which factor they thought would be dominant in the justices' minds, 52% of respondents in the control and 53% in the treatment chose "the Justices' analysis and interpretation of the law," whereas the rest chose less legalistic options. Thus, the treatment and control groups were no different in their prior expectations of the Court's reliance on legal interpretations. Even after the decision (but before reading the treatment article), those who responded earlier and later to the survey in Wave 3 were equally confident in the legal basis of the decision. This last fact importantly suggests that few were exposed to, or at least affected by, the Roberts story until we gave it to them as a treatment. Finally, not only were the groups balanced pretreatment, but also the treatment group's potential additional exposure to the decision's aftermath due to later responding did not induce other informational differences. Those who responded later knew as much about the Court's decision as those in the control. In sum, it appears that the opportunistic assignment mechanism worked extremely well, or at least as well as could be hoped for in a fully randomized experiment.

Measuring Change in Legitimacy and Ideology

The dependent variable is the change in a respondent's *legitimacy score*, which is based on an index of several measures of diffuse support for the Supreme Court (e.g., Gibson, Caldeira, and Spence 2003). We use respondents' ordinal level of agreement with five related statements concerning whether disagreeable decisions would lead respondents to "favor doing away with the Court," to view the Court as "too political," to say that the Court "favors some groups," and to hold the opinion that the Court can be "trusted to make decisions that are right for the country" and in the "best interest of the American people" (see Bartels and Johnston 2013; Gibson, Caldeira, and Spence 2003). The five responses are summed such that our dependent variable can range from 5 (minimum agreement and low legitimacy) to 20. Because we are particularly interested in the extent to which respondents' perceptions of legitimacy changed, we subtract the Wave 2 legitimacy score (measured just before the ACA decision) from the Wave 3 legitimacy score (measured just after the ACA decision). Thus, our dependent variable is the change in an individual's legitimacy score from just before to just after the decision. This variable can range from –15 to 15, though in the sample it only ranges from

TABLE 1 Treatment versus Control Comparison

| Variable | Control | Treatment | p |
|--|---------|-----------|-------|
| Female | 53% | 56% | 0.539 |
| White | 81% | 86% | 0.164 |
| Black | 6% | 6% | 0.896 |
| Age | 34.603 | 32.379 | 0.136 |
| Education (Mean of 1–5) | 4.431 | 4.466 | 1.000 |
| Ideology (Mean of 1–7) | 3.230 | 3.172 | 0.886 |
| Party ID (Mean of 1–7) | 3.166 | 3.276 | 1.000 |
| Legal Analysis Was Primary Factor | 59% | 54% | 0.322 |
| Legal Analysis to Be Primary Factor | 52% | 53% | 0.755 |
| ACA Ruling Factual Knowledge (Mean of 1–6) | 2.984 | 2.793 | 0.449 |
| N | 740 | 116 | |

Note: The p-values are from t-tests for binary variables and Kolmogorov-Smirnov tests for nonbinary variables.

–10 to 7. Positive values indicate increases in perceived legitimacy.

While ostensibly similar to other work in the literature, our approach is fundamentally different by focusing on the change in legitimacy. For example, it allows for the possibility that much of an individual’s diffuse support for the Court is rooted in stable factors, such as democratic values and information about the Court, but also sensitive to the Court’s outputs. Still, our measure of legitimacy is subject to the recent debate over its precise empirical composition. Specifically, Gibson and Nelson (2013) argue that the two “trust” items may contaminate the diffuse support index by tapping “specific support.” However, we find that the legitimacy variable appears to be internally consistent and a reliable indicator of institutional support. Our diffuse support items have similar structural properties to each other and demonstrate high reliability, with a Cronbach’s α of 0.79 for each wave. Moreover, the substantive findings from the models we present below are robust across a host of alternative legitimacy constructions, including those which exclude the contested trust items.⁸ The results therefore speak to changes in legitimacy, that is—diffuse support—around a single case.

The hypotheses also call for us to capture subjects’ potentially changing views about the Court’s ideology as a result of observing the health care decision. Here we build on Bartels and Johnston (2013) by specifying a measure comprising one’s own ideology and one’s subjective assessment of the Court’s. We measure this subjective ideological disagreement as the difference between

a respondent’s self-assessment of her own ideology (from Wave 1) less the respondent’s perception of the Court’s ideology given its “recent decisions” on the same scale. For example, a participant might say that she is “somewhat liberal” (2) and the Court is “on the conservative side” (5), for a 3-point gap.

This measure differs from those in previous studies of Court ideology by utilizing branching questions—in line with recommended practice in survey research (Aldrich et al. 1982)—to generate both individual ideology and Court ideology measures. For an individual’s ideology, the middle option of the scale is the “moderate” position, whereas for the Court’s ideology, the middle score is deciding on a “case-to-case” basis (see Bartels and Johnston 2013). In both measures, the branching provides follow-up questions asking those with responses in the middle category whether they perceive themselves and/or the Court “more on the liberal side or the conservative side.” This branching approach splits the difference in the debate between Gibson and Nelson (2013) and Bartels and Johnston (2013) over the middle category in assessments of the Court’s ideology. For responses outside of the middle category, respondents were asked whether they or the Court is “extremely or somewhat” liberal/conservative. Together, these questions provide 7-point ideology scores for both the Court and the individual.

Also different from existing studies that use static and abstract ideology measures, our research design focuses on the effect of updating one’s views of the Court’s ideology in the period surrounding the ACA decision. We observe the change in how individuals place the Court in ideological space from before and after the decision relative to themselves. To construct the ideological change variable, we take the absolute value of the respondent’s ideological disagreement with the Court from Wave 2 less

⁸The supporting information includes a discussion of the measure’s psychometric properties and the results of models using a variety of dependent variable specifications (see Table A5).

that of Wave 3. For this variable, Δ ideological proximity, a positive value indicates that the perceived ideological distance between the respondent and the Court has shrunk after the ACA decision. A negative value indicates that the respondent perceived the Court as having moved away from her.

Measuring change in ideological proximity marks a fundamental deviation from Bartels and Johnston (2013) and Gibson and Nelson (2013) in that these other studies use static assessments, though the former find responsiveness to decisions in ideologically predictable ways via a survey experiment. Indeed, much of the debate between the two is over other variables (including democratic values) that may be correlated with ideology assessments, or reverse causality in which views about the Court affect ideological perceptions. The within-individual change variables provide considerable leverage in discerning the effect of ideology from those who actually change ideological assessments. This approach allows us to observe whether legitimacy is stable conditional on ideological change, and/or whether ideological perceptions are stable in the face of decisions. Furthermore, it taps subjective ideological assessments and does not require assumptions about the actual direction of the ACA case, which comprised decisions on two provisions. Specifically, the Court faced two big questions: whether (1) the ACA's individual mandate and (2) the provision conditioning federal financing of Medicaid on expanding the program were each a valid exercise of enumerated federal powers. While most of the coverage focused on the liberal outcome in which the controversial mandate was sustained, the decision also included a conservative majority on the Commerce Clause interpretation and a major defeat on the Medicaid condition. The subjective ideological proximity variable allows, for example, one who focused on the mandate to move the Court to the left of one's previous assessment. It equally allows for one who mostly heard about the Medicaid rejection to place the Court further to the right, or for one who thought the different issues essentially cancel each other out or aligned with one's prior beliefs, to maintain one's previous assessment of the Court's ideology. All of these are meaningful evaluations for our study and are observed with this variable.

To demonstrate the comparative advantage of the pre-post design and micro-level approach, the top half of Figure 1 plots the density functions for legitimacy in Wave 2 (solid) and 3 (dashed), and the density function of each individual's change in legitimacy captured by the difference between his/her Wave 2 and 3 legitimacy scores (right panel), the latter of which is our dependent variable. Interestingly, we see that despite the high media profile of the ACA decision, little aggregate change in legitimacy is apparent across the waves such that the

Court maintained its well-documented diffuse support throughout this period. However, as the right panel plot of the change variable shows, there were considerable individual level changes in legitimacy from Wave 2 to 3, and these changes are symmetrically distributed around zero. This simple analysis implies that the observation of little aggregate change is masking microlevel change.

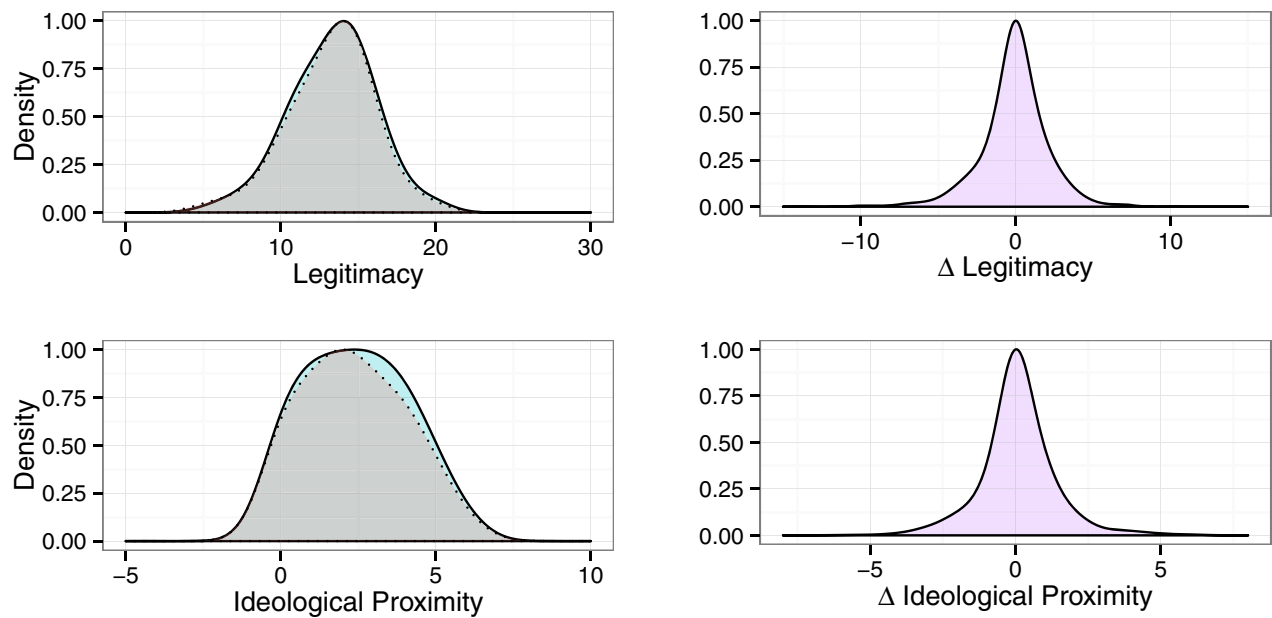
The bottom half of Figure 1 similarly shows that the aggregate subjective ideological proximity between the respondents and the Court did not change much from the period immediately before the ACA decision to the period immediately after it. Moreover, and similar to what we see for changes in legitimacy, change at the individual level is virtually normally distributed around zero. Those who perceived an increase in their distance from the Court were closely matched by those who perceived a decrease.

Overall, these plots are consistent with both individual-level updating and aggregate stability. For example, partisans were more likely to update in the expected directions. For Republicans, 35% moved the Court further from them on ideology, whereas 30% of Democrats moved it closer. Likewise, 50% of Republicans dropped their legitimacy evaluations after the decision, whereas 37% of Democrats raised them. Because both sides moved in opposite directions in roughly equal numbers the movers cancel each other out in the aggregate, which makes aggregate measures look stable despite individual change.⁹ For this reason, models that rely on static variables—measured either before or after the decision—are likely to detect correlation between ideology and decisions, but unlikely to detect correlation in the complex set of relationships among decisions, ideology, and legitimacy. That is, a static design would make it difficult, if not impossible, to parse out the microlevel change and macrolevel stability we find here and to test the causal relationships we have hypothesized above. On the contrary, our within-subject design is the first to offer evidence that helps reconcile the literature's mixed claims and findings concerning stability (largely in observational studies at the aggregate level) and change in response to the Court's outputs.

The ACA Decision and Court Legitimacy

The ordinary least squares (OLS) models presented in Table 2 test our first three hypotheses with controls for

⁹In the supporting information, we build on this analysis by showing in Figure A3 some of the other groups that changed their assessments of the Court.

FIGURE 1 Density Plots of Ideological Distance and Legitimacy

Note: In the left two panels, the solid line refers to Wave 2 and the dashed line to Wave 3. The right two panels refer to the change from Wave 2 to Wave 3.

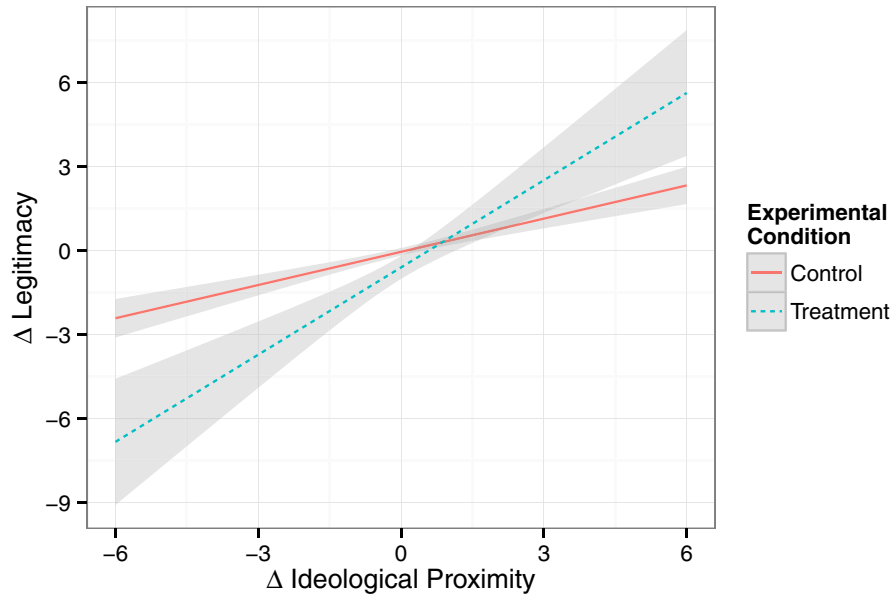
other variables known to affect perceptions of legitimacy (see, e.g., Bartels and Johnston 2013).¹⁰ The models explain approximately 12% to 13% of the variance in the change in perceived legitimacy. They show strong and consistent support for Hypothesis 1 (*Ideological Congruence*), Hypothesis 2 (*When Courts Are Not So Different*), and Hypothesis 3 (*Political and Incongruent*). Pertaining to Hypothesis 2, exposure to the political account of the decision (Roberts’s flip) is statistically significant and in the posited direction. Exposure to the story decreases the perceived legitimacy of the Court by more than .5. Substantively, the story amounts to a 4% reduction in legitimacy, on average. The coefficient for ideological congruence is also statistically significant and powerful. It is positive, as hypothesized, and its magnitude is similar to the nonlegalistic treatment effect. Across both models, we find support for the ideological congruence hypothesis. People who moved the Court closer to themselves in ideological space after observing its most salient decision

in years increased their legitimacy scores for it, whereas people who learned the Court’s ideology was less aligned with their own saw it as less legitimate than before the decision.

Perhaps the most interesting finding concerns our hypothesized interactive effect between exposure to the Court as political and perceptions of ideological proximity to it. The coefficient on the interaction term in Model 2 suggests that we can reject the null for Hypothesis 3. Not only do ideological congruence and political exposure additively affect legitimacy, but they do so multiplicatively as well. The magnitude of the interaction is notably larger, by over 20%, than either of the main effects. Because each of the measures in the interaction are differenced terms from immediately before and after the ACA decision, and thus not easy to interpret, they warrant some elaboration here. Figure 2 displays a plot of the interaction as the predicted effect of a change in ideological proximity on a change in legitimacy by treatment exposure, that is, the political story of Roberts’s flip. Recall that positive values in the dependent variable indicate gains in legitimacy from Wave 2 to Wave 3. Similarly, increases in our ideological proximity variable indicate a perceived ideological movement of the Court toward the respondent. Because the effects are in a similar direction, we provide shaded 95% pointwise confidence intervals around the fitted lines to highlight the values for which the interaction is truly different and significant.

¹⁰Consistent with the balance achieved by our as-if random assignment, we attain similar results in parsimonious models without controls in Table A4 in the supporting information. We also note that while the models in Table 2 use a *Court Awareness* variable that follows Bartels and Johnston (2013), we find similar results, and no change in our main findings, when including a measure of knowledge of the health care decision (see Table A5). Finally, Table A7 shows that our results are robust to different constructions of the dependent variable, including those which exclude controversial “trust” items (Gibson and Nelson 2013).

FIGURE 2 Interaction Effect of Roberts Flip with Δ Ideological Proximity



We see from Figure 2 that as proximity increases, legitimacy generally does as well. Interestingly, it does so faster for those who were exposed to the treatment than those who were not. Consistent with expectations, the results in the lower left quadrant show that individuals who concluded that the Court was less aligned with their views than they previously believed, and who were given a more political account of its behavior, were less forgiving than those who merely believed the Court was less aligned with their views than expected. The two lines are significantly and substantively different, and the 95% confidence intervals do not cross in the lower left quadrant of the graph, the area depicting people who moved the Court away from themselves ideologically.

Those who received the treatment and perceived an ideological movement closer to their views increased their legitimacy scores significantly more than those who merely perceived newfound ideological congruence. This finding, though not without a plausible post hoc explanation, is surprising, and we only briefly speculate about its cause here.¹¹ Perhaps people are happy to have a politically savvy Court that agrees with them or engage in motivated reasoning and look past the news about the politics. Alternatively, these people may have liked the decision as a sign of Roberts's reasonableness.

¹¹We tested the robustness of the interaction by removing outliers, subsetting the sample, and scaling the ideological measure. In all specifications, the interactive effect remained significant and substantively meaningful. It should be noted, however, that the relationship is strongest among those with unchanging and decreased ideological proximity (the center and left half of the graph), where there is the greatest number of observations.

A final possibility is that some liberals who read the story increased their scores because they saw that a fifth member of the Court was less conservative than they believed and was willing to stand up against the far right. Indeed, it is generally accepted that the credibility of political actors increases as a function of how costly it is to take a particular position (Lupia and McCubbins 1998).

One potential concern is that our results are artificially inflated because they were collected immediately after the decisions and immediately after those in the treatment read the CBS story. An additional benefit of our panel design is the ability to test whether these effects are fleeting. To that end, the third model in Table 2 similarly estimates changes in legitimacy, but this time at Wave 4, which we conducted three to four weeks after the decisions (i.e., the change in legitimacy from Wave 2 to Wave 4). The results are almost identical to the findings from immediately after the decision, suggesting that the effects of both ideological proximity and the political courts treatment are relevant even three weeks after the decision. Thus, Court decisions appear capable of engendering lasting change at the individual level, or at least something more than an ephemeral reaction.

While our focus is the effects of updated perceptions of the Court's ideology and of nonlegalistic behavior, our results concerning the direct effects of partisanship merit further attention. Although our main results do not rely on us making any assumptions about the decision's direction because we rely on subjective assessments, the effects of partisanship are consistent with most people perceiving the decision as a liberal one. Republican

TABLE 2 OLS Models of Change in Supreme Court Legitimacy

| | (1) | (2) | (3) |
|----------------------------------|----------------------|----------------------|----------------------|
| Intercept | -0.525 (0.563) | -0.577 (0.559) | -0.238 (0.640) |
| Roberts Flip | -0.552** (0.194) | -0.566** (0.193) | -0.567* (0.228) |
| ΔIdeological Proximity | 0.420*** (0.055) | 0.353*** (0.058) | 0.373*** (0.068) |
| Republican | -1.037*** (0.202) | -1.021*** (0.200) | -0.962*** (0.228) |
| Independent | -0.207 (0.147) | -0.209 (0.146) | -0.252 (0.165) |
| Supreme Court Awareness | 0.036 (0.040) | 0.039 (0.040) | 0.044 (0.046) |
| Political Trust | 0.030 (0.094) | 0.043 (0.093) | 0.224* (0.106) |
| Media Differential | 0.003 (0.018) | 0.006 (0.018) | 0.021 (0.020) |
| Age | -0.003 (0.006) | -0.003 (0.006) | -0.001 (0.007) |
| Education | 0.102 (0.098) | 0.100 (0.098) | -0.074 (0.109) |
| Female | -0.060 (0.138) | -0.030 (0.137) | 0.065 (0.155) |
| Black | -0.040 (0.276) | -0.114 (0.275) | -0.097 (0.304) |
| Latino | 0.066 (0.316) | 0.069 (0.313) | -0.314 (0.364) |
| Roberts Flip × ΔProximity | | 0.627*** (0.171) | 0.590** (0.202) |
| R ² | 0.119 | 0.133 | 0.122 |
| Adjusted R ² | 0.107 | 0.119 | 0.106 |
| Number of observations | 856 | 856 | 751 |

Note: Dependent variable is change in legitimacy from Wave 2 to Wave 3 for Models 1 and 2, and from Wave 2 to Wave 4 for Model 3. ***p < 0.001, **p < 0.01, *p < 0.05.

support for the Court, with respect to the Democratic baseline, decreased by nearly two points, or about two legitimacy question categories. Because our Wave 2 and Wave 3 responses tightly surrounded the decision, we can attribute these partisan effects to the decision itself rather than longer-term changes. This movement, resulting from (dis)satisfaction with the Court's output, is additional to the effect of ideologically relocating the Court toward (or away from) one's own ideology. It demonstrates the power of party above and beyond ideology. This partisan effect not only provides a validity check on our findings and suggests that ideological updating and policy agreement with outputs both affect legitimacy, but, as we explain in the discussion below, it

also helps reduce reverse causality concerns. Specifically, it alleviates the concern that legitimacy affects updating instead of updating affecting legitimacy. The partisanship variable was collected in the first wave and was thus unaffected by changes in perceived legitimacy.

Legalistic Court Prior

Our final analysis concerns how prior beliefs about the Court affect the impact of the ACA case on legitimacy assessments. A central tenet of the prevailing positivity theory model (e.g., Gibson, Caldeira, and Spence 2003; Gibson and Caldeira 2009b, 2011) is that the fact that people

TABLE 3 OLS Models of Change in Supreme Court Legitimacy

| | (1) | (2) | (3) | (4) |
|--|----------------------|----------------------|----------------------|----------------------|
| Intercept | -0.449 (0.559) | -0.501 (0.555) | -0.302 (0.558) | -0.444 (0.559) |
| Roberts Flip | -0.557** (0.193) | -0.570** (0.191) | -0.532** (0.192) | -0.798** (0.281) |
| Δ Ideological Proximity | 0.394*** (0.055) | 0.329*** (0.058) | 0.250*** (0.071) | 0.396*** (0.055) |
| Legality | -0.548*** (0.135) | -0.534*** (0.134) | -0.568*** (0.135) | -0.608*** (0.144) |
| Republican | -0.966*** (0.200) | -0.953*** (0.199) | -0.913*** (0.200) | -0.969*** (0.200) |
| Independent | -0.166 (0.146) | -0.169 (0.145) | -0.148 (0.145) | -0.167 (0.146) |
| Supreme Court Awareness | 0.042 (0.040) | 0.044 (0.040) | 0.037 (0.040) | 0.043 (0.040) |
| Political Trust | 0.087 (0.094) | 0.099 (0.094) | 0.080 (0.094) | 0.088 (0.094) |
| Media Differential | 0.005 (0.018) | 0.008 (0.018) | 0.005 (0.018) | 0.005 (0.018) |
| Age | -0.002 (0.006) | -0.002 (0.006) | -0.002 (0.006) | -0.002 (0.006) |
| Education | 0.094 (0.098) | 0.092 (0.097) | 0.083 (0.097) | 0.096 (0.098) |
| Female | -0.008 (0.137) | 0.019 (0.136) | -0.020 (0.136) | -0.014 (0.137) |
| Black | -0.077 (0.274) | -0.147 (0.272) | -0.061 (0.272) | -0.066 (0.274) |
| Latino | -0.001 (0.313) | 0.004 (0.311) | 0.024 (0.312) | -0.008 (0.313) |
| Roberts Flip \times Δ Proximity | | 0.608*** (0.170) | | |
| Legality \times Δ Proximity | | | 0.352** (0.110) | |
| Legality \times Roberts Flip | | | | 0.453 (0.384) |
| R ² | 0.136 | 0.149 | 0.146 | 0.137 |
| Adjusted R ² | 0.123 | 0.135 | 0.132 | 0.123 |
| Number of observations | 856 | 856 | 856 | 856 |

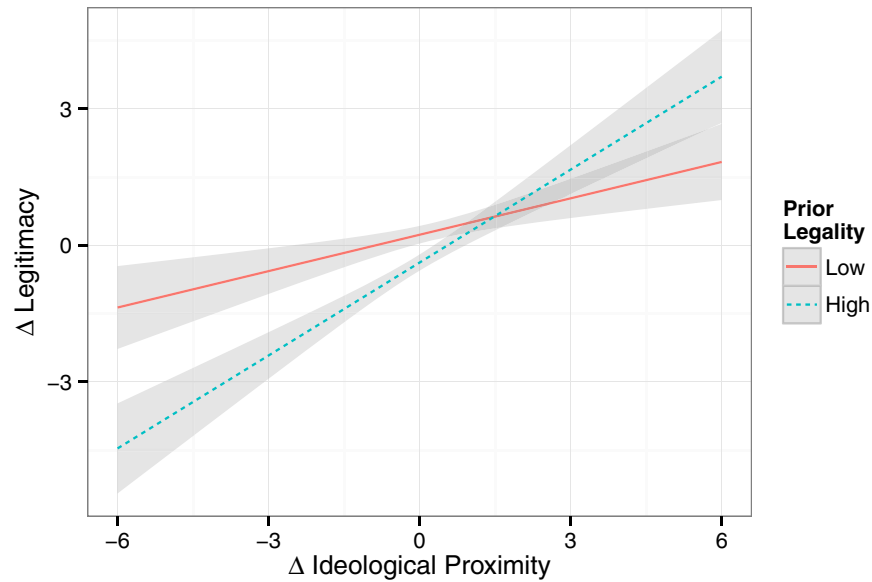
Note: Dependent variable is change in legitimacy from Wave 2 to Wave 3 for all models.

***p < 0.001, **p < 0.01, *p < 0.05.

view the Court legalistically insulates legitimacy from ideological updating effects. This notion provides motivation for the hypothesis (Hypothesis 4) that initial beliefs that the Court is legalistic will attenuate the relationships discussed above. To test Hypothesis 4, we followed the same modeling specification as above, but with two interactions meant to capture the potentially conditioning effect of prior beliefs that the Court is legalistic.

In order to measure respondents' attitudes about Court legality (the legalistic priors), we asked respondents in the second wave of the survey to tell us which factor was likely to play the greatest role in the Court's ACA decision. Respondents were able to choose from six options, including "whether the Justices themselves hold liberal or conservative views," "whether a Justice was appointed by a Republican or Democratic president," "the Justices' past

FIGURE 3 Interaction Effect of Legality Prior with Δ Ideological Proximity



personal experiences,” “the views of average Americans,” and “national politics.” Those who chose a final option (the response order in the survey was randomly assigned), “the Justices’ analysis and interpretation of the law,” are assumed to view the Court as a primarily legal institution and to have high “judiciousness” (Gibson and Caldeira 2009b). We assume that they were at least less cynical than those who chose any of the other options and thus possessed legalistic priors. More than half of the Wave 2 panel, 52%, responded that they believed this to be the case. We consider all other responses—capturing ideological, partisan, personal, or public opinion concerns—to be less legalistic.

Models 3 and 4 in Table 3 provide little, if any, evidence in support of Hypothesis. In Model 3, we present the results of the first test of Hypothesis 4, that the legitimacy assessments of people who initially view the Court as legalistic will be relatively less affected by new information about the Court’s ideology. Here we find a positive and significant interaction effect. In Model 4, we also find a positive coefficient for the interaction between legality and receiving the Roberts article, but the relationship is not statistically significant. The negative effect of the Roberts flip on changes in legitimacy assessments is consistent regardless of the respondents’ beliefs about the Court’s legality. That is, the effect of information about the Court’s alleged political rationale on respondents’ legitimacy assessments is not conditioned by a legalistic belief about the Court. Thus, we find that the legalistic prior only conditions the effect of updating ideological

congruence and not the effect of a political Court treatment. Moreover, the moderating effect is in the opposite direction of Hypothesis 4 and positivity theory’s expectations.

We further unpack the interaction effect from Model 3 in Figure 3. The figure refers to the effect of the change in ideological proximity on the change in legitimacy, conditional on the belief that the Court is a primarily legalistic institution. Here we see that those with a legalistic belief in the Court are more affected (steeper slope) by changes in ideological proximity.¹² While this relationship is somewhat obscure for those who saw the Court move closer to them after the ACA decision, it is particularly clear for those who saw the Court move away from them. That is, respondents who lowered their legitimacy assessments of the Court as a result of updating their beliefs about the Court’s ideology did so more emphatically if they initially thought the Court was legalistic. Rather than insulating individuals, legitimacy assessments from perceived changes in the Court’s ideology, having a prior legalistic belief appears to have made people more sensitive to them.

In sum, these findings are contrary to the expectations laid out in Hypothesis 4 and, thus, one of the central tenets of positivity theory. Existing views about the Court appear to be ineffectual in protecting the Court’s legitimacy from potentially damaging information that the

¹²An F-test confirms the use of the multiplicative term in Model 3, $F(1, 841) = 10.188, p = 0.001$.

Court is political. Perhaps more importantly, our evidence shows that not only did ideological updating affect legitimacy assessments, but that it also affected legitimacy assessments more for people who viewed the Court as legalistic. Indeed, the fact that prior legality exacerbates ideological updating raises questions about an important element of positivity theory.

Discussion

One year after the ACA case, the Supreme Court made a liberal Defense of Marriage Act decision that followed its conservative Voting Rights Act decision. These decisions prompted scholars, political leaders, and popular analysts to speculate again about the effects of salient cases on views of the Court. Some outwardly condemned the Court and questioned the legitimacy of its use of judicial review in each case. These reactions illustrate the fact that big cases inherently tap into some of the discipline's central questions about the relationship between the Court and the public.

One of our principal findings is that in practice, the key mechanisms are not the zero-sum competitors they have been characterized as in the literature. Consistent with positivity theory, the response to our treatment article shows that people care that courts are different. On the other hand, and consistent with challenges to positivity theory, our panel data show that ideological alignment matters too. For one, a simple partisanship variable is associated with changing assessments of the Court's legitimacy in ways consistent with the underlying politics of the ACA. Moreover, we find that the decision provides new information that people can use to update their assessments of the Court's ideology, and that these updates affect assessments of legitimacy. Moreover, as we note above and show in the supporting information, while the debate about measuring diffuse support will continue, our results are robust to excluding the controversial "trust" items (Gibson and Nelson 2013) and thus do not merely capture a "specific support" effect. Of course, while these partisanship and ideology findings are important given the prevailing literature, we note that the health care decision was tied to partisanship—and the president, in particular—more explicitly than in most landmark decisions, suggesting some caution in generalizing from this case in that it is likely an upper bound. On the other hand, while upholding the mandate was a liberal outcome, the case, and especially the Medicaid expansion, provided mixed signals about the Court's ideology and the direction of the case, which could make

our results conservative (empirically, not ideologically) in some respects.

We also find that ideological congruence and the portrayal of the Court as an institution that is responsive to politics along with law work together to affect legitimacy assessments. The Court has more ideological leeway when it is seen as being above politics. People who got bad news on both fronts—that is, read about the non-legal influences on the Court and came to see the Court as less congruent with their views than they previously believed—exhibited especially large legitimacy losses. In contrast, those who see the Court's decision as evidence of ideological movement toward them are not terribly concerned about the Court's political rationale. This intriguing finding suggests further study on the relative importance of outcomes and processes in the courts and in the other branches. Do people care about the conditions under which political and policy outcomes come about or simply that they get their preferred outcomes?¹³ While we are reluctant to make broad claims based on one case, we note that this implies the intriguing conclusion that at least in some legalistic contexts, people are willing to ignore the means if they are satisfied with the ends. Worrying about good legal opinions (or perhaps processes in general) is for the losers.

Even with panel data, questions remain about the potential for reverse causality between legitimacy assessments and ideological perceptions. While no design can perfectly resolve these causality issues, we do believe that ours offers distinct advantages. Because the key variables are change in ideological congruence and change in legitimacy, for the reverse causality story to hold, something unrelated to ideology would have had to have changed people's legitimacy assessments in the days immediately surrounding the decision such that these new legitimacy assessments could then affect perceived ideological proximity. Perhaps the best candidate for this scenario is new information about the Court that came with, but was distinct from, the direction of the decision. Of course, our study already incorporates this in the treatment article. The other possibility is that the salience of the decision prompted people to think about the Court, which caused changes in legitimacy assessments through priming. Our design helps us discount this possibility as well because the Court's salience increased through anticipation well before the decision was released and was largely captured in Wave 2. Therefore, the Wave 2 to Wave 3 legitimacy changes are unlikely the result

¹³For example, the losing side in policy battles often tries to generate outrage over procedural tricks, filibusters, special sessions, and backdoor executive actions that the winners may not care about.

of mere salience. Furthermore, the partisanship findings similarly ameliorate these concerns. While partisanship, measured in the first wave, does not capture people's updated perceptions of the Court, it shows that Democrats' and Republicans' legitimacy assessments moved in ways consistent with the story of ideological updating causing legitimacy updating.

Along with contributing new findings about the causes of change in the Court's legitimacy, our research also speaks to a persistent question on the stability of diffuse support. Synthesizing a number of our findings produces a decidedly mixed story. First, to be clear, our design and findings do not challenge the view that most decisions do not affect legitimacy. The Court makes dozens of routine decisions every year without engendering legitimacy updating through ideology. On the other hand, the real test of arguments that the Court's outputs do not matter comes in the rare cases when people are paying attention and have strong views. These are the cases when meaningful change can occur and the cases that make stability claims interesting and provocative. They are both infrequent and pivotal to the key issues since arguments about stable legitimacy are less interesting if they only apply to routine and mundane cases.

In this light, our finding that legitimacy assessments are changeable at all in response to new information from a single, albeit salient, case contradicts the more rigid claims of stability in the literature. On the other hand, our findings are also consistent with claims of general stability. The effects are relatively modest even in a case that is likely at the high end in terms of potential impact. Our findings also corroborate claims that there are real constraints on swings in the Court's legitimacy. For one, while our treatment affected those who received the information, it appears that relatively few people learned about this version of events on their own. Thus, while portraying the Court as "not different" from other institutions affects legitimacy, real events of this nature are rare and even when they do happen, few people are naturally exposed to the details. All of this suggests that while seeing the Court in a strategic and political light can undermine legitimacy, this mechanism is rarely actually activated, which further contributes to stability. This also suggests that if anything is going to drive aggregate changes in legitimacy in practice, it is more likely to be the ideological proximity updating based on simple case outcomes.

Finally, our data also show that even while ideology affects legitimacy, legitimacy can still appear stable in the aggregate. There are two substantial barriers to new information about the Court's ideology (e.g., decisions) having a widespread effect. For one, people's assessments of the Court's ideology itself may be fairly stable. Even in

the highly salient ACA case, only about half of the sample relocated the Court ideologically. Additionally, in this case, those who did update their assessments of the Court largely cancelled each other out, as some moved the Court left and some moved it right. We suspect this is common. Decisions that are salient and politicized enough to catalyze ideological updating are also likely to be polarizing enough to move individuals in both directions. In other words, legitimacy may have roots in ideology, but individual and aggregate ideology assessments may be highly resistant to change. In sum, we find the prevailing view that the Court's legitimacy is high and stable to be quite plausible but for some different reasons than previously offered. Our microlevel analysis of the response to the ACA decision provides evidence to explain the stability of diffuse support for the Court even while highlighting multiple pathways for change within individuals.

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

- 1.1 Panel Data Details
- 1.2 The Political Courts Treatment
- 1.3 As-If Random Assignment
- 1.4 Individual Level Change & Aggregate Stability
- 1.5 Static Models
- 1.6 Parsimonious Specifications
- 1.7 Court & Case Awareness
- 1.8 Measuring Legitimacy

Table A1: Sample Demographics and Comparison With Other Surveys

Table A2: Treatment vs. Control Comparison

Table A3: OLS Models of Supreme Court Legitimacy (Static)

Table A4: OLS Models of Change in Supreme Court Legitimacy (Parsimonious)

Table A5: OLS Model of Change in Supreme Court Legitimacy (Court Awareness Interaction)

Table A6: OLS Models of Change in Supreme Court Legitimacy (Case Awareness)

Table A7: OLS Models of Change in Supreme Court Legitimacy (Varying Index and Scale)

Figure A1: Panel traits by wave

Figure A2: The Treatment Condition

Figure A3: Bar Plots of Change in Ideological Proximity to Court