

**The Effect of State Supreme Court Selection Method
on Perceptions of the U.S. Supreme Court**

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What shapes gut-level perceptions of the degree to which the U.S. Supreme Court is political? Applying social psychology theory, we argue that implicit perceptions of the U.S. Supreme Court can be influenced by exposure to stimuli paired with other courts; namely state supreme courts. We hypothesize that people with lower levels of court knowledge will exhibit an *assimilation effect* in which residing in a state with an elected supreme court will increase perceptions of the U.S. Supreme Court being political. We expect people with higher levels of court knowledge and who are thus more likely to differentiate between U.S. and state supreme courts to demonstrate a *contrast effect*, meaning that the U.S. Supreme Court will be perceived as a less political institution in comparison to an elected state supreme court. We test these predictions by pairing Hansford, Intawan, and Nicholson's (2018) data on individual-level implicit attitudes toward the U.S. Supreme Court with information on each participant's state of residence and type of state supreme court selection system. We find evidence for both predictions, revealing that for both low and high knowledge people implicit perceptions of the Court are shaped by objectively irrelevant stimuli.

How do people fundamentally view courts? This question sits at the heart of theories of public evaluation of courts and their decisions, as scholars make critical assumptions regarding the degree to which courts are seen as political or legal institutions (e.g., Bartels and Johnston 2013; Gibson and Caldeira 2009). To better understand gut-level intuitions about the nature of the U.S. Supreme Court, in particular, Hansford, Intawan, and Nicholson (2018) develop an implicit association test (IAT) measuring the degree to which people subconsciously associate the U.S. Supreme Court with politics. These implicit perceptions of the level of politicization of the Court matter, as consistent with extant theory (Gibson and Caldeira 2009) they act to decrease diffuse support for the Court (Hansford, Intawan, and Nicholson 2018).¹

What shapes these gut-level intuitions about the Supreme Court? Gibson and Caldeira (2009) imply that perceptions of the Court as a less-than-fully political institution are due to exposure to the pairing of legal symbols with the Court. The U.S. Supreme Court is not the only court for which people may receive stimuli, however, and there is reason to believe that people receive information or stimuli about their state supreme courts. Importantly, it is likely that people living in states with elected supreme courts are exposed to pairings of political stimuli with their supreme court to a greater degree than people who live in states with appointed supreme courts. Applying theory from social psychology, we argue that implicit perceptions of the U.S. Supreme Court will be influenced by exposure to stimuli paired with other courts. We specifically hypothesize that people with lower levels of court knowledge will exhibit what is known as an *assimilation effect* in which residing in a state with an elected supreme court will

¹ There is also some evidence that implicit perceptions of the Court as a political institution can decrease specific support for a Court decision (Hansford, Intawan, and Nicholson 2018).

increase implicit perceptions of the U.S. Supreme Court as being political. We expect people with higher levels of court knowledge and who are thus more likely to differentiate between U.S. and state supreme courts to demonstrate a *contrast effect*, meaning that the U.S. Supreme Court will be perceived as a less political institution in comparison to an elected state supreme court.

We test these predictions by pairing Hansford, Intawan, and Nicholson's (2018) data on individual-level implicit attitudes toward the U.S. Supreme Court with information on each participant's state of residence and type of state supreme court selection system. Our results suggest that exposure to state judicial elections increases implicit perceptions of the U.S. Supreme Court as a political institution for low knowledge people. The opposite relationship holds for those with high levels of knowledge about the Court. These results reveal that, for both low and high knowledge people, implicit perceptions of the Supreme Court are shaped by stimuli that are objectively unconnected to and beyond the control of the Court.

Implicit Perceptions of the U.S. Supreme Court

While we should expect people to view much of government as highly political in nature, courts may be the exception as they take pains to avoid the appearance of politics and instead emphasize legal symbolism. Whether the U.S. Supreme Court, for instance, is fundamentally viewed as political or legal in nature matters as it influences both levels (e.g., Baird 2001; Gibson and Caldeira 2009) and predictors (e.g., Bartels and Johnston 2013; Boddery and Yates 2014; Clark and Kastlelec 2015; Hoekstra 1995; Mondak 1990; Nicholson and Hansford 2014) of the perceived legitimacy of this institution and its decisions.²

² Support for lower courts is similarly influenced by perceptions of politicization and/or procedural fairness (e.g., Benesh 2006; Cann and Yates 2016).

Hansford, Intawan, and Nicholson (2018) make the case that implicit perceptions of the degree to which the Court is a political institution are both a theoretically meaningful quantity of interest and a determinant of the Court's legitimacy. In contrast with explicit attitudes, implicit attitudes are gut-level intuitions that exist in the subconscious mind (Greenwald and Banaji 1995). Hansford, Intawan, and Nicholson (2018) show that at this implicit level, people on average perceive the Supreme Court as partially political and that those who implicitly perceive the Court as more political exhibit less diffuse support for it. Consistent with Gibson and Caldeira's (2009) positivity theory, implicit perceptions of the Supreme Court are theorized to form through repeated pairings of the Court with stimuli, such as legal symbols. The association of these apolitical symbols with the Court causes people to perceive the Court as somewhat less political than other governmental institutions.

Court Differentiation and the Effect of Political State Courts

While it occupies a uniquely prominent position in the judiciary, the U.S. Supreme Court is not the only court about which Americans might receive information or stimuli. In fact, surveys reveal that many Americans know a fair amount about their state supreme court (Cann and Yates 2016; Gibson 2012), which suggests that they may receive stimuli associated with this type of court.³ While it is likely that, as with the U.S. Supreme Court, state supreme court justices would prefer their institutions project an aura of legality, neutrality, and an absence of

³ People are less likely to receive stimuli about lower courts in their state and we therefore limit our theorizing and main analysis to state supreme courts. A supplementary analysis including method of selection for lower courts suggests that there is no connection between selection of these judges and how people perceive the U.S. Supreme Court (see Online Appendix, Table A2).

politics, variation in how these justices are selected should influence the type of stimuli or information environment associated with these courts. In particular, states in which supreme courts are elected will often witness the pairing of political stimuli with their courts, as elections and campaign activities are inherently political.⁴ While the overall effect of judicial elections on the legitimacy of courts is not necessarily clear (Cann and Yates 2016; Gibson 2012; Woodson 2017), campaign activities have been shown to decrease support for a state supreme court (Gibson 2012; Woodson 2017) which implies that the presence and nature of judicial elections are being received and processed by residents in states with this selection mechanism.⁵ In short, it is likely that people living in states in which they elect their supreme court are exposed to pairings of political stimuli with their supreme court to a greater degree than people who live in states with appointed supreme courts.

Why would stimuli about a state court influence perceptions of the U.S. Supreme Court? Social psychologists contend that when someone receives information about a specific object their judgment of a different, ancillary object can be affected (Schwarz and Bles 1992). An

⁴ In Table A3 of the Online Appendix, we test whether people living in “battleground” states in the proximate presidential elections perceive the Court as more political and find that they do not. This result implies that it is not sufficient to simply live in a politicized state environment; instead the political stimuli need to be paired with state supreme courts.

⁵ These same campaign activities also decrease ballot roll-off in judicial elections (Hall and Bonneau 2013), which is consistent with increasing political salience of these elections. It is also possible that the manner of state judicial selection can influence how people think about the selection of federal judges (Krewson and Owens 2019).

assimilation effect (e.g., negative information or stimuli about the target leading to negative evaluation of the ancillary object) occurs when the target of the information is perceived as an exemplar, while a contrast effect (e.g., negative information about the target leading to positive evaluation of the ancillary object) occurs when the ancillary object is differentiated from the target. For example, negative information about a specific politician could cause negative evaluations of another politician if they are perceived as being in the same political party as the target (assimilation effect) and could cause positive evaluations of a politician who is perceived as being in a different party (contrast effect) (Puente-Diaz 2015).

Will information or stimuli about a state supreme court lead to an assimilation or contrast effect when it comes to evaluations of the U.S. Supreme Court? The answer to this question depends on whether people fully differentiate their state supreme court from the U.S. Supreme Court. To draw a parallel with Puente-Diaz's (2015) study, are these two courts akin to candidates of the same party or are they sufficiently differentiated in someone's mind so as to be processed like candidates from different parties? We contend that the answer to this question depends upon how much someone knows about our judiciary. It is likely that those with lower levels of knowledge do not fully differentiate between different levels and types of court. Particularly at the implicit level, courts may be largely lumped together in someone's subconscious mind and thus any state supreme court stimuli received, including those that are political in nature, may be paired with a generic concept of courts. People with higher levels of court knowledge, though, should more clearly differentiate between courts and thus be less likely to implicitly pair stimuli associated with one court with a different court. In fact, stimuli paired with one court but not another should act to sharpen perceived differences in the courts for those who differentiate the two courts.

Putting the above together, we hypothesize that those with lower levels of court knowledge will exhibit an assimilation effect in which residing in a state with an elected supreme court will increase implicit perceptions of the U.S. Supreme Court as being political. Those with higher levels of court knowledge and thus differentiation will demonstrate a contrast effect, as the U.S. Supreme Court seems less political in comparison to an elected state supreme court. These people will implicitly perceive the Supreme Court as less political if they are exposed to an elected state supreme court.⁶

Data and Measures

To test our hypothesis regarding the knowledge-conditioned effect of state-level judicial context on implicit perceptions of the Supreme Court, we primarily rely on the Hansford, Intawan, and Nicholson (2018; HIN from this point forward) data on implicit attitudes. HIN measure implicit perceptions of the degree to which the U.S. Supreme Court is a political institution by employing an implicit association test (IAT) in which participants rapidly classify the Supreme Court with political and nonpolitical terms.⁷ The difference in the average reaction times between classifying the Supreme Court with political terms as compared to nonpolitical reveals the degree to which a participant implicitly pairs politics with the Supreme Court. These

⁶ It is also likely that U.S. Supreme Court stimuli may influence perceptions of state courts. This is not a hypothesis we can test here, as we do not have a measure of implicit perceptions of state courts.

⁷ The political terms/synonyms used are “political,” “politics,” “partisan,” “politician,” and “ideological.” The nonpolitical terms are “nonpolitical,” “neutral,” “nonpartisan,” “fair,” and “impartial” (HIN 2018, pp. 133-134).

reaction times are transformed into D-scores (Greenwald, Nosek, and Banaji 2003) that increase with a participant's implicit association of the Supreme Court with politics.⁸ These D-scores serve as our dependent variable.⁹

The relevant HIN data include 666 participants in a national convenience sample recruited through Amazon's Mechanical Turk (MTurk) in 2014.¹⁰ Though MTurk samples are not necessarily representative of the American public they are superior to local convenience samples and are now commonly used in social science research (Berinsky, Huber, and Lenz 2012). HIN's MTurk participants trend somewhat on the young and Democratic side, but they

⁸ This IAT also includes Congress as another "object" to be paired with political and nonpolitical terms. The assumption is that Congress represents a fully political baseline and the D-scores are thus a measure of how much less (or possibly more) political the Supreme Court is as compared to Congress. These scores are specifically calculated by subtracting the mean response times when the Supreme Court is paired with political terms from the mean response times for the when Congress is paired with political terms. This quantity is then divided by the pooled standard deviation over these two rounds of the IAT. Negative D-scores indicate that the subject is slower to match the Court with politics than she is to match Congress with politics whereas positive scores reveal the reverse pattern. For more details, see HIN (2018).

⁹ As with any indirect measure IAT-generated scores will have some degree of measurement error, which will act to increase the size of the standard errors of our coefficient estimates and thus decrease the likelihood of rejecting null hypotheses.

¹⁰ We exclude 87 of the 753 HIN participants because we cannot confirm their state of residence with their IP addresses.

report substantial variation on demographic and political variables.¹¹ Importantly for our purposes here, there is very good geographical representation in HIN's sample as 47 states are represented, meaning that there is plenty of variation in the type of selection system used for the participant's state supreme court. To be specific, 19.1% of participants are in states with an appointed supreme court, 32.1% are in states with hybrid appointment/retention election systems, 28.1% are in states with non-partisan elections, and 20.7% are in states with partisan elections.

We follow the lead of Cann and Yates (2016) and simply code each state as either having contestable elections (*Contestable Election*) for its supreme court or not (i.e., an appointment system or hybrid system with initial appointment and retention election).¹² The assumption undergirding our use of this measure is that contestable elections for seats on a state supreme court present a state-level context in which the state supreme court is more visibly and consistently linked with political symbols and a politically-tinged information environment. Note that we are not assuming that people are intimately familiar with how judges in their state are selected. Instead, our assumption is that contestable judicial elections are more likely to lead to an information environment in which courts and political stimuli are paired together. While it

¹¹ For example, HIN report that “27% of the sample are 40 years old or older, 24% identify as Republican (59% identify as Democrats), 50% are women, 22% are non-white (8% African American and 5% Hispanic/Latino), and 53% do not have a four-year college degree” (HIN 2018, p. 135, footnote 5).

¹² A few states have recently changed their method of selection for their state supreme courts. We code *Contestable Election* based on the method of selection in place in 2014 when the HIN survey was conducted.

may seem intuitive that partisan judicial elections are more political than those that are nonpartisan, we do not differentiate between these types of election in our main analysis as existing evidence indicates that both types of election are, in fact, equally partisan/ideological in the eyes of the public (Bonneau and Cann 2015).¹³

We argue that the effect of this state judicial context will be conditioned by someone's level of knowledge of the judiciary. *Court Knowledge* is measured as the total number of correct answers to three questions about the U.S. Supreme Court: "Who is the current Chief Justice of the U.S. Supreme Court?," "Can the U.S. Supreme Court declare an act of Congress unconstitutional?," and "How are Supreme Court justices selected?" Ideally, this measure would also include answers to factual questions about lower courts, as the conceptual variable of interest is general knowledge of the court system. Such questions were not included in the HIN study, though. Nonetheless, knowledge about the U.S. Supreme Court should serve as a good proxy for general knowledge about U.S. courts.

We include *Contestable Elections* \times *Court Knowledge* in our model and, deriving from our expectations regarding the assimilation and contrast effects, we predict that 1) the coefficient estimate/"main effect" for *Contestable Elections* will be positive (i.e., an assimilation effect

¹³ To assess this measurement choice, the Online Appendix presents the results of our model when we utilize a finer-grained measure of the political nature of the selection process for state supreme courts (*Political Selection Process*). This alternative measure is a four-point scale that ranges from appointment, hybrid/Missouri, non-partisan election, to partisan election systems. These results lead to the same inferences as those obtained with the binary *Contestable Election* (see Model 2 in Table A1).

when knowledge is low), 2) the coefficient estimate for the interaction term will be negative (indicating a transition from assimilation to contrast as knowledge increases), and 3) the conditional coefficient for *Contestable Elections* will be negative for high values of *Court Knowledge* (i.e., a contrast effect at high levels of knowledge). We control for the possible influences of demographic and attitudinal variables by including *Ideology*, *Party ID*, *Education*, *White*, *Female*, *Age*, and *Income* in our model.¹⁴

Results

We estimate an OLS regression model in which a participant's implicit perception of the U.S. Supreme Court as a political institution is the dependent variable. Figure 1 presents a plot of the coefficient estimates and their 95% confidence intervals.¹⁵ As we hypothesize, the estimate for the “main effect” of *Contestable Election* is positive and statistically distinguishable from zero. This result reveals that when *Court Knowledge* is zero (the lowest level of measured knowledge about the Supreme Court), residing in a state in which supreme court justices are

¹⁴ *Ideology* is the traditional seven-point scale that increases with self-reported conservatism. Participants who do not place themselves are coded as zero (i.e., moderate) and are then indicated by a dummy variable. *Party ID* is a seven-point scale with larger values for Republicans. *Education* is a six-point scale increasing with levels of educational attainment. *White* and *Female* equal one for participants who identify as such. *Age* is measured in years. *Income* is an 11-point scale, with those who decline to answer placed in the lowest category and indicated with a dummy variable.

¹⁵ The full table of results for this model is presented in the Online Appendix (Table A1, model 1).

elected leads to a greater association between politics and the U.S. Supreme Court. In other words, people with the lowest level of knowledge exhibit an assimilation effect.

*** Figure 1 Here ***

The estimate for *Contestable Elections* \times *Court Knowledge* is negative and statistically significant, which is also consistent with our expectations. The positive effect of *Contestable Elections* on perceptions of the Court as political diminishes and ultimately changes direction with increases in *Court Knowledge*. Interestingly, though consistent with HIN's (2018) results, none of the demographic or attitudinal variables help explain implicit perceptions of the Court. Only the combination of state judicial context and knowledge of the U.S. Supreme Court has any explanatory power here.

To illustrate the conditional effect of *Contestable Election*, Figure 2 plots the coefficient for this variable for each of the four possible values of *Court Knowledge*. The conditional effect of residing in a state with contestable elections for state supreme court seats on gut-level perceptions of the U.S. Supreme Court as a political entity is positive and significant for the two lower rungs of the *Court Knowledge* scale. The effect then switches direction and is negative for those with the highest level of measured knowledge regarding the Court, which is consistent with the contrast effect we expect for those with high levels of knowledge. Note that the 95% confidence interval for this particular conditional effect does just barely include zero, though a perhaps more theoretically appropriate (owing to our directional prediction) one-tailed test suggests that this effect is statistically significant ($p \leq .05$). To put the size of these effects in some context, the dependent variable has a standard deviation of just over 0.3. Thus, the range of effects associated with *Contestable Election* are nontrivial in size, though certainly not overwhelming either.

*** Figure 2 Here ***

These results support our contention that for those with relatively low levels of knowledge regarding the U.S. Supreme Court there is imperfect differentiation between fundamentally different types of court. Underlying conceptions of the Supreme Court are thus partly a function of symbols and bits of information about various courts, including the relevant state supreme court. Politicized state supreme courts add a political component to this court-related information environment and this manifests itself in implicit beliefs that the U.S. Supreme Court is a political institution. Those with high levels of knowledge, on the other hand, likely maintain distinct explicit and implicit understandings of the differences between their state supreme court and the U.S. Supreme Court. For them, a politicized state court appears to contribute to a contrast effect whereby the Supreme Court appears less political relative to an elected state supreme court.

Conclusion

Where do implicit, gut-level perceptions of the U.S. Supreme Court come from? Gibson and Caldeira (2009) point out the importance of exposure to legal symbols and their pairing with the Court, but judicial-oriented symbols and stimuli are not limited to the U.S. Supreme Court. State supreme courts are another possible source or target of such stimuli. Our primary contribution here is our argument and supporting evidence that implicit perceptions of the U.S. Supreme Court as a political institution, which have consequences for how people evaluate this institution (Hansford, Intawan, and Nicholson 2018), can be shaped by the extent to which the relevant state supreme court is linked to politics through the existence of judicial elections. For people who know little about courts and thus likely fail to fully differentiate between different types of court, exposure to the pairing of political stimuli with state courts leads to gut-level

perceptions that the U.S. Supreme Court is political (i.e., an assimilation effect). The opposite relationship manifests for those with higher levels of knowledge about courts (i.e., a contrast effect).

These results suggest several important implications about how people form impressions of the Supreme Court. First, the manner in which someone's state supreme court justices are selected, and thus the degree to which political and state-level judicial stimuli are paired, is objectively unrelated to the U.S. Supreme Court. And yet, it appears that people subconsciously incorporate this irrelevant information into their implicit evaluations of the Supreme Court. These results are thus yet another example of people using irrelevant information to judge political institutions or actors (e.g., Healy, Malhotra, and Mo 2010). In this particular case, it is interesting to note that both low and high knowledge individuals are incorporating irrelevant information into their evaluation of the Court, just in very different ways.

A second implication here is that the information environment resulting from the manner of selection of a state supreme court is not manipulable by the Supreme Court. There are many ways in which the justices can attempt to cultivate a legal aura for their institution and thus perhaps foster the impression that the Court is above politics. The justices have no control over variation in the political stimuli associated with state courts, however. No matter what they do, people who know little about courts and reside in states with elected supreme courts will see the Supreme Court as somewhat more political.

Third, Gibson and Caldeira (2011, 200) summarize the research examining the relationship between knowledge of high courts and explicit, self-reported perceptions of institutional legitimacy with the statement "To know the Court is to love the Court." Hansford, Intawan, and Nicholson (2018) find that this is also true when examining implicit perceptions of

the degree to which the Court is political (i.e., higher knowledge leads to perceptions of a less political Court). The results we present here suggest that people who know the Court *and who live in states with elected supreme courts* are particularly likely to see the U.S. Supreme Court as less political.

Finally, our results also support our assumption that, at least at the implicit, subconscious level, people vary in the degree to which they differentiate between different levels or types of court, which is a previously unrecognized aspect of public opinion regarding American courts. For some people, it may be the case that all courts fall into the same mental category and as a result any stimuli associated with one court can inform impressions and judgments about all courts.

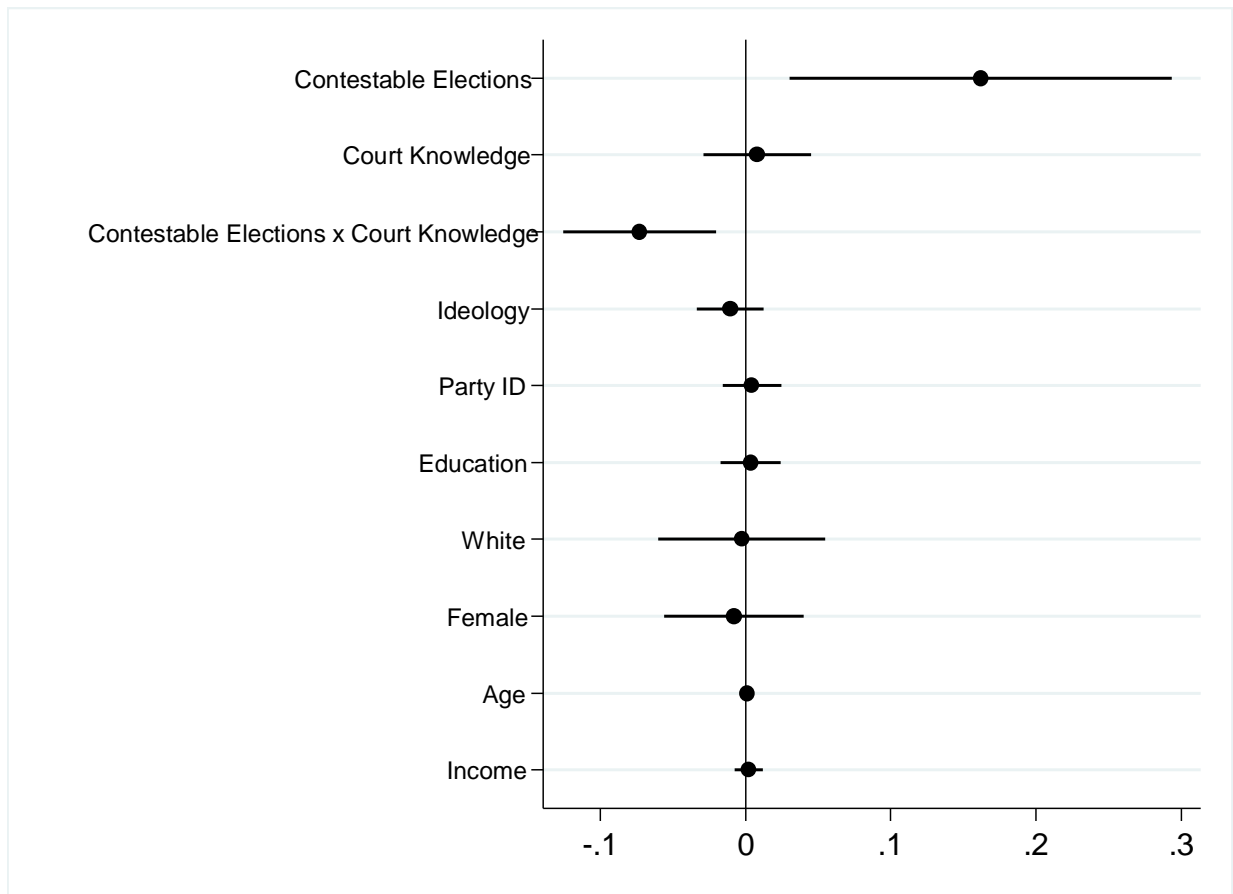
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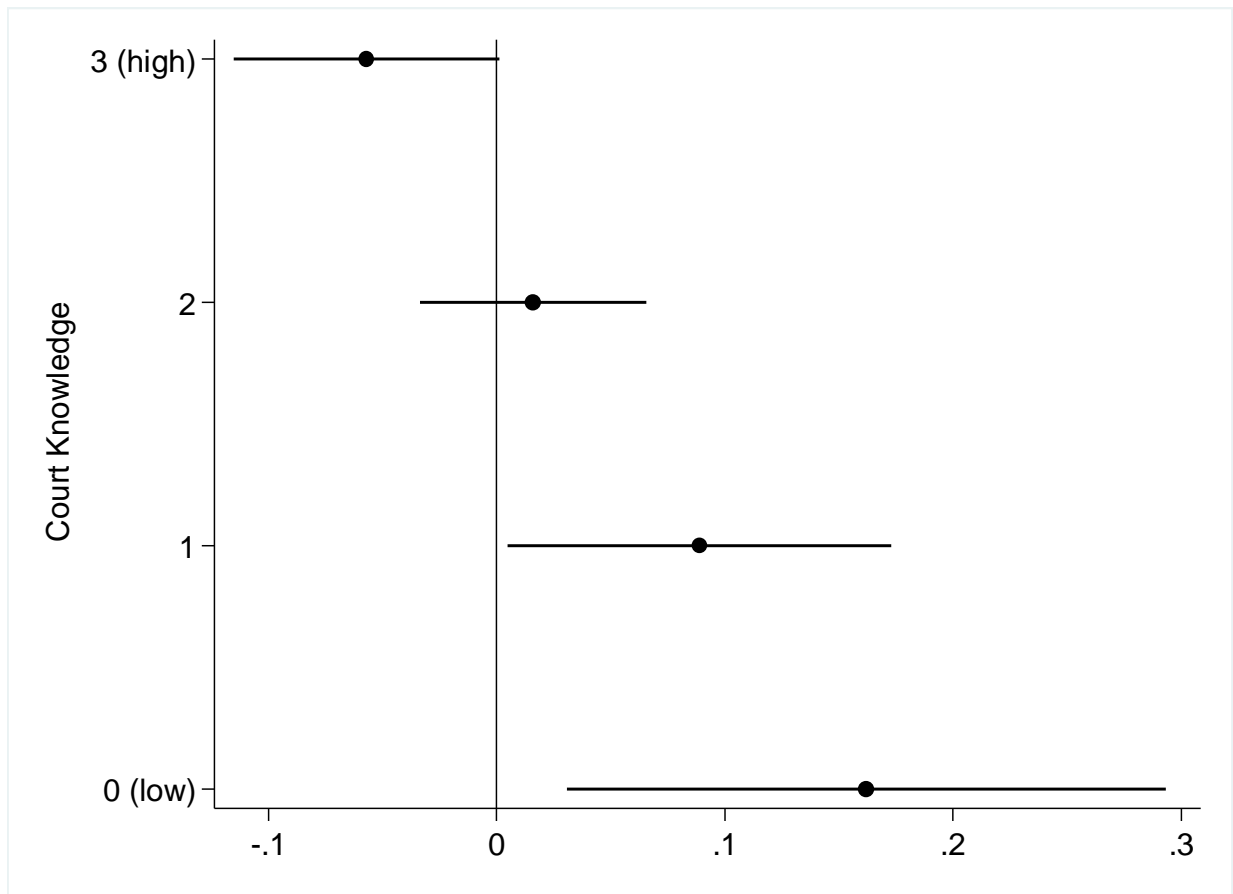
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Figure 1. Coefficient plot for model of implicit perceptions of the U.S. Supreme Court as political



Note: This plot provides the coefficients and 95% confidence intervals of an OLS regression model of implicit perceptions of the Supreme Court as a political institution. The table of results is provided in the Online Appendix (Table A1).

Figure 2. Conditional effect of contestable state judicial elections on perceptions of the U.S. Supreme Court as political



Note: This plot provides the conditional effect/coefficient (and 95% confidence intervals) for *Contestable Elections*, as conditioned by the participant's level of *Court Knowledge*.

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Online Appendix

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Table A1. Models of implicit perceptions of the Supreme Court as a political institution

Independent Variable	Model 1	Model 2
Contestable Elections	.162* (.067)	---
Contestable Elections × Court Knowledge	-.073* (.027)	---
Political Selection Process	---	.084* (.036)
Political Selection Process × Court Knowledge	---	-.039* (.014)
Court Knowledge	.008 (.019)	.032 (.026)
Ideology	-.011 (.012)	-.009 (.012)
Party ID	.004 (.010)	.003 (.010)
White	-.003 (.029)	-.002 (.029)
Female	-.008 (.024)	-.010 (.024)
Age	.001 (.001)	.001 (.001)
Income	.002 (.005)	.003 (.005)
Constant	-.152* (.073)	-.251 (.132)
N	666	666
F	1.56	1.50
R ²	.028	.029

* $p \leq .05$ (two-tailed test). Cell entries are OLS coefficient estimates (and standard errors). Models also include dummy variables indicating non-response to the ideology and income questions. *Political Selection Process* is measured on a four-point scale (0 = appointment, 1 = Missouri plan, 2 = non-partisan elections, 3 = partisan elections).

Table A2. Models of implicit perceptions of the Supreme Court as a political institution, including lower court selection

Independent Variable	Estimate (Standard Error)
Contestable Elections	.186* (.072)
Contestable Elections × Court Knowledge	-.090* (.029)
Contestable Lower Court Elections	-.096 (.109)
Contestable Lower Court Elections × Court Knowledge	.059 (.043)
Court Knowledge	-.034 (.037)
Ideology	-.011 (.012)
Party ID	.005 (.010)
White	-.002 (.030)
Female	-.008 (.024)
Age	.001 (.001)
Income	.003 (.005)
Constant	-.081 (.113)
N	
	666
F	
	1.59
R ²	
	.033

* $p \leq .05$ (two-tailed test). Cell entries are OLS estimates. Models also include dummy variables indicating non-response to the ideology and income questions. *Contestable Elections* equals one if the relevant state supreme court's justices are elected and *Contestable Lower Court Elections* equals one if there are elections for any lower courts in the participant's state.

Table A3. Models of implicit perceptions of the Supreme Court as a political institution, including measures of electoral competitiveness

Independent Variable	Model 1	Model 2
Contestable Elections	.159* (.067)	.164* (.068)
Contestable Elections × Court Knowledge	-.073* (.027)	-.073* (.027)
Court Knowledge	.008 (.019)	.008 (.019)
2012 Electoral Competitiveness	.048 (.123)	---
2016 Electoral Competitiveness	---	-.021 (.106)
N	666	666
F	1.45	1.44
R ²	.028	.028

* $p \leq .05$ (two-tailed test). Cell entries are OLS coefficient estimates (and standard errors). *Electoral Competitiveness* is Fraga and Hersh's (2011) measure of state-level competitiveness in the presidential election. This measure relies on the two-party vote share and can range from 0 to 1 (maximum competitiveness). Models also include Ideology, Party ID, White, Female, Age, Income, and dummy variables indicating non-response to the ideology and income questions.

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