The Impact of Supreme Court Activity on the Judicial Agenda: Calling to Action or Settling the Law

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January 31, 2011
Abstract

The ability of the Supreme Court to impact the federal judicial agenda is of primary importance in understanding both the policymaking power of the Court and the agenda of the entire federal judiciary. A traditional, legal perspective holds that the justices of the Court settle questions of law and close the door on future litigation, reducing agenda attention for policy areas. More recently, an interest group perspective suggests the sitting Court encourages litigation within prioritized policy areas through signals, enhancing future policy attention. I analyze the impact of Supreme Court activity on the overall judicial agenda and observe a pattern consistent with a legal perspective. When the Supreme Court issues a decision, it settles law in a policy area and reduces attention to that policy area throughout the judiciary.
The Supreme Court, quite correctly in my opinion,... seeks to pick from the several thousand cases it is annually asked to review, those cases involving unsettled questions of federal constitutional or statutory law of general interest. - Former Chief Justice William Rehnquist

Studies of the Supreme Court’s agenda have taken a variety of perspectives, dealing both with characteristics of cases and broad shifts in the Court’s overall agenda. In simplest considerations, the Supreme Court determines it’s own agenda through the certiorari process. The characteristics which qualify cases and areas of the law as deserving cert have therefore been the subject of extensive previous research. Studies in a traditional, legal perspective have held that the Court seeks to resolve unsettled areas of law. Other studies have found that the Court’s agenda-setting power is limited by the activity of litigants within policy areas. The Supreme Court can only choose cases from a pool created from litigant activity, therefore negating the ability of court to enact comprehensive policy change (Epp, 1998). More recently, research has suggested that the Court can impact this pool of available cases by signalling litigants to mobilize within policy areas the Court considers a priority (Baird, 2004, 2007; Baird and Jacobi, 2009).

At the confluence of these lines of research, the federal judicial agenda is impacted in opposite directions by Supreme Court activity. First, the legal perspective, captured in this paper’s opening quote, suggests that justices seek to resolve areas of unsettled law, therefore closing the book on future activity. This perspective leads us to believe fewer cases will be heard in lower courts as the law is settled by Supreme Court activity. Alternatively, more recent studies focusing on interest group influence of the Court’s agenda, embodied primarily in Baird’s litigant signal model, suggest that the activity of Supreme Court justices precedes increases in future Supreme Court activity within a policy area. By extension, this activity has been traced and hypothesized to exist in lower levels of the federal judiciary. In short, Supreme Court activity within a policy area under this model leads to the expectation of increased federal judicial attention to those policy areas.

Here, I seek to resolve the discrepancy in expectations arising from these previous lines of research. Utilizing filings on case terminations from the Administrative Office of the Federal
Courts, I construct a new database that offers a broad-based overview of the agenda of district and appellate courts across eight issue areas. In so doing, I am able to examine shifts in agenda attention across the entirety of the federal judiciary.

In accord with the legal perspective, I find evidence in both district and appellate courts that Supreme Court attention to policy areas subsequently leads to less litigation in those policy areas in lower courts. Moreover, I document shifts in the rate of reaction across courts and issue areas. A competing hypothesis for this decrease is also tested and indicates that increased interest group resources are not devoted to the fewer remaining cases. Taken together, these findings demonstrate the settling influence of Supreme Court activity while also suggesting separate dynamics may lie at the heart of interest group and litigant mobilization findings.

The Agenda of the Federal Courts

The policymaking power of the Supreme Court has long been acknowledged (Dahl, 1957; Casper, 1976) is dependent on the judicial agenda (Bachrach and Baratz, 1962) as the ability to have an issue discussed is the first, and possibly most integral, step in effecting policy change (Schattschneider, 1960; Pacelle, 1991). For Kingdon (2003), the agenda is defined, as it will be here, as the subjects and problems to which governmental and non-governmental actors are paying attention.

Despite the policy importance of the judiciary, the broad agenda of the federal courts has been the subject of relatively few studies. Within criminal law, Caldeira (1981) found the agenda to be

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1 I utilize in the analyses much of the data Baird utilized and makes available. The data I utilize from her study were compiled from a variety of sources funded by the National Science Foundation by Vanessa A. Baird at the University of Colorado at Boulder, and were distributed through the Department of Political Science at the University of Colorado, Boulder. Neither NSF, the original collectors of the data nor Baird bear any responsibility for the analysis reported here. I also utilize the Federal Court Cases Integrated Database conducted by the Federal Judicial Center and maintained by the Inter-University Consortium for Political and Social Research, ICPSR study numbers 8429, 3415, 4059, 4026, 4348, 4382, and 44685.
defined by incrementalism as “(e)verything about the Court militates against quick shifts in policy or agenda” (p. 469). Pacelle (1991, 1995) documents this incremental movement in the Supreme Court’s agenda from 1933 until the mid-1950s. Thereafter, he documents a faster shift, consistent with policy scholars who have found non-incremental shift to be an important aspect of the policy process (Baumgartner and Jones, 1993).

The Supreme Court’s agenda shifts, in ways consistent with other policymaking institutions but also uniquely. A primary consideration for researchers then is the power of the Court to determine these agenda shifts. With predominantly discretionary jurisdiction, the Court can choose the policy areas to which it will devote limited resources. Towards what ends does the Supreme Court use this power? Two theories are predominant but imply different responses in the federal judicial agenda.

The Legal Perspective

What I define as the legal perspective is embodied in former Justice Rehnquist’s quote. The Supreme Court, as the final arbiter in the interpretation of law, acts to settle questions and disputes. Whether unsettled due to a lack of direction to lower court judges or conflict in interpretations amongst or between lower court judges, the legal perspective holds that Supreme Court decisions are intended to reduce the future legal attention needed within a policy area. Further, the reduction of uncertainty following court decisions acts to reduce the total number of cases being litigated within a policy area as litigants settle (Priest and Klein, 1984).

Much of the Supreme Court’s agenda-setting literature has focused on what makes a case likely to be heard (see Tanenhaus et al., 1963; Ulmer, 1984; Brenner and Krol, 1989; Segal and Spaeth, 1993; Epstein and Knight, 1998). The early work of Tanenhaus et al. (1963) introduced cue theory, wherein case characteristics serve as signals of case importance. While the veracity of the original cue theory is up for debate (see Teger and Kosinski, 1980; Provine, 1980), there is indisputably correlation between certain characteristics and court consideration (Perry, 1991).

One of the most highly correlated cues of cert grants is conflict in the lower courts (Ulmer,
1984). This is unsurprising given the little information available to justices in voting on certiorari. Rule 10 of the Supreme Court Rules governs factors for Justice consideration in certiorari voting and specifically mentions conflict amongst courts of appeals decisions, between courts of appeals and state courts, or between state courts. Importantly, Rule 10 also states that consideration should be given when a lower court “...has decided an important question of federal law that has not been, but should be, settled by this Court or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” In short, the guidance provided by Rule 10 indicates the priority of settling law, whether the confusions arise from lack of Supreme Court direction or simply due to contradictory rulings in lower courts.

A focus on unsettled law and widespread impact can be seen both in Rehnquist’s vision of the Court’s agenda and the words of another former Chief Justice, Fred Vinson. In his words:

The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over lower federal courts....To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved.2

The emphasis here is on answering questions of widespread impact, with questions most obvious when lower courts conflict in interpretation. The effort is to settle an area of law. The necessity of doing so is seen in former Justice Brandeis’ admonishment in *Burnet v Coronado Oil & Gas Co.* that in most matters of law, it is more important the law be settled than that the law be settled right.

The effort to focus on settling areas of law also influences the agenda of the judiciary through

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litigant selection (Priest and Klein, 1984). As Supreme Court decisions reduce uncertainty, litigants garner more accurate assessments of the legal landscape, which increases the likelihood of settlement. Through this mechanism, the litigant selection model (Priest and Klein, 1984) would lead to a reduction in the total number of cases being heard in lower levels of the judiciary. Thus, from the legal perspective, justices choose the most important cases, provide direction to lower court judges through their decisions, and simultaneously reduce the likelihood of litigation through litigant selection.

This legal perspective leads us to believe that the justices of the Court seek primarily to quell rising tides of litigation in areas where there is confusion or dissensus, areas where decisions will have the most general interest impact. By acting, the Court reduces uncertainty throughout the legal universe and reduces the total number of cases within a policy area as litigants settle. The actions of Supreme Court justices should be envisioned then as efforts to enhance understanding in lower courts of the proper method of adjudicating similar disputes. The expected impact is a reduction in total agenda space allocated in the federal courts for issues where the Supreme Court has settled the law.

The Interest Group Perspective

It is clear from the above that the power to choose the cases the Court will hear enabled greater agenda control than previously imagined and the purposeful reduction in the total caseload during the Rehnquist years (Baumgartner and Gold, 2002) serves as evidence the court employs this discretionary power. Yet the Court remains dependent on litigation being brought in order to enact policy (Epp, 1998).

This importance of external actors has long been acknowledged across institutional settings (Truman, 1951). Interest groups are a critical component in our understanding of government. This understanding was updated in the context of the courts by Shapiro (1964), who supports the

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3While Priest and Klein focus only on civil cases, the concern still holds here. First, much of the court’s docket is composed of civil cases. Secondly, the reduction in uncertainty in litigant estimates of success should still change in response to Supreme Court decisions in criminal cases, though due to the stakes involved the likelihood of settlement may not change to the degree it will in civil cases.
The notion of the Supreme Court as a venue of interest group influence and activity. Building on these early interest group explanations of politics, scholars studying the court have focused on a variety of interest group influences including decisions granting certiorari, final judgments, and influences on the composition of the courts (see Kobylka, 1987; Epstein and Rowland, 1991; McGuire and Caldeira, 1993; Caldeira, Hojnacki and Wright, 2000). Importantly, none of this research disputes that interest groups are active participants in the activities of the judicial branch. Evidence of this activity can be seen in statistics reported by Collins (2007) showing that in recent terms over 90 percent of Supreme Court cases disposed of on the merits had amicus briefs. In short, interest groups are both an integral and active component of American jurisprudence.

Unsurprisingly, the impact of groups and litigants in shaping the agenda has been the subject of extensive previous study (Pacelle, 1991; Epp, 1998; Baird, 2004, 2007; Peters, 2007). These studies have been marked by a unique emphasis on long-term changes in the judicial agenda. Epp (1998) argues that policy change through judiciaries is dependent on the litigant community bringing cases comprehensively covering the area in need of Court attention. Due to the high costs and often low returns for pursuing cases, litigants must be highly motivated with broad financial support to enable the judicial branch to enact comprehensive shifts (Epp, 1998).

This relationship is elaborated upon by Baird, who postulates a dynamic model whereby the sitting justices impact the future agenda by signaling, whether purposefully or not. This litigant signal model holds that “(t)he incentive to support litigation in particular policy areas varies over time in accordance with litigants’ changing perception of Supreme Court justices’ policy priorities” (Baird, 2007, pg. 4). By necessity, these theories of Supreme Court agenda-setting include the lower courts through litigant mobilization, and thereby cover a wider gamut of judicial attention. They offer a glimpse of dynamic court attention across the entirety of the judiciary but with further

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4For our purposes, the definition of litigants is rather loose. In this paper, I adopt the definition used by Baird for members of the litigant community, defined as: "actors who desire to influence the direction and flow of political or legal change" (Baird, 2007, p. 3). This definition largely incorporates interest group activity in litigation.
agenda-setting power resting at the Supreme Court through signals to external actors.

Theoretically, all of the above is sound, but evidence for litigant mobilization has been under debate. Baird (2004, 2007) supported the notion of litigant mobilization through evidence of increased Supreme Court attention to policy areas five years after indications of policy priority in those areas and increased appellate court attention to those policy areas four years after the indications. There is further corroborative support in Baird (2007) in the increase of amicus activity in the Supreme Court and a sample of published courts of appeals cases. Finally, in more specific issue areas the relationship between Supreme Court attention and future Supreme Court attention was substantiated (Baird, 2007; Peters, 2007).

However, there is little evidence of actual mobilization in venues where it would be expected. Beyond disputed findings of increased amicus attention (Baird, 2007; Peters, 2007) there exists little evidence of increased litigant activity. Further, the counter-mobilization of litigants opposing judicial attention is unaccounted for. Solowiej and Collins (2009) found evidence that groups lobby the Court consistent with counteractive lobbying of a variety comparable to that mentioned in Kingdon (2003). Groups are also active in efforts to prevent issues from reaching the agenda, activity unaccounted for in explanations of the Supreme Court’s agenda shifts which rely on litigant mobilization.

In sum, we are presented with two theories of the Supreme Court’s agenda. A legal perspective leads us to believe the Supreme Court will seek to settle areas of debate, thereby shrinking the agenda space devoted to that issue. Meanwhile, the interest group literature indicates that litigants responding to Supreme Court signals may be able to positively impact future judicial agenda attention. Encouraged by signals from the Court, litigants pursue policy in an area the Court considers a priority and thus bring more cases.

Here, I seek to elaborate on the dynamics introduced when the Supreme Court takes action. I trace the reaction in caseload policy attention to signals of policy priority by the Supreme Court across levels of the federal judiciary. By including all appellate court activity, I am able to document the hypothesized effect of shifting incentives in shaping the cases available to the Supreme
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Court. By including the district courts, I am able to similarly examine, for the first time, the direct influence of Supreme Court activity on trial courts. In further examinations of the length to decision, I am able to test for changes in the quality of court cases. Cumulatively, this enables the broadest examination to date of the agenda dynamics introduced by indications of Supreme Court policy priority.

A New Dataset of the Federal Judicial Agenda

In previous analyses of the agenda of lower federal courts, scholars have utilized the Songer Court of Appeals data (1990). This extensive data collection effort was focused only on cases published in the United States Reports with full opinions, indicating precedential value. Importantly, these data thus only include a sample of published decisions meaning they are only a sample of a part of the total activity of the federal courts. The caseloads in each issue area are therefore far smaller than the actual agenda of the federal courts (Songer, 1990). The data comprising many previous studies are measuring only a fraction of the total agenda of the courts (Davis and Songer, 1989; Songer, 1990).

Beyond not measuring a large portion of the judicial agenda, the data are likely an inaccurate reflection. There are a number of differences between the published decisions comprising the Songer data and the total activity of the courts. Courts of appeals decisions, as Songer (1990) reviews, are published without clear guidance to the courts of appeals as to what qualifies a case as “publishable.” This has lead to different standards of publication across circuit courts, issue areas, judges, and litigants. Often the unpublished cases have precedential value with a large fraction of the cases being reversals of trial court decisions (Davis and Songer, 1989). A subset of unpublished decisions are thus still likely to have interest group support. Despite this, the appeals court decisions which are published will have a number of external influences which lead to disproportionate sampling of the overall agenda of the appellate courts. These cases will be disproportionately of certain issue types and from certain courts with certain litigants participating. Given the above points, it is likely that the cases which do reach full decisions will involve conflict
(with precedent, other circuit courts, district courts, or through dissents) and will have higher rates of participation of policy-minded litigants.

This leads to two important considerations for the judicial agenda. First, these unpublished decisions are certainly of a qualitatively different nature given the general guidelines for publication, often over-representing certain issue types (Davis and Songer, 1989). Secondly, these additional cases are not simply frivolous appeals (Songer, 1998). Instead, they are in many cases publishable decisions which are unpublished due to varying circumstances. Given that the subset is non-representative of the total appellate agenda, constructing a dataset which includes published and unpublished decisions is necessary. In doing so, I am able to examine the actual agenda of the federal courts. With all federal court case terminations rather than solely those which have been published, I gain insight into the overall lower court agenda influence of important Supreme Court decisions and the dynamics of issue attention across all federal court activity, all while not being subject to concerns over differing publication practices across courts of appeals.

In order to obtain these data, I utilized filings on case terminations made available from the Administrative Office of the United States Courts. Each case was categorized into issue areas similar to the widely-utilized United States Supreme Court Database and Songer Courts of Appeals data. Additionally, these issue areas were separated across the courts of disposition. Ultimately, this process results in two time-series cross-sectional datasets. The first covers activity on the appellate courts from 1971 to 2006. The second covers activity on the district courts from 1970 to 2005. Each year features panels of courts and issue areas within the courts, with the unit of

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5For more information on the data collection effort, see the appendix.

6 The eight issue areas for analysis were: Civil Rights, First Amendment, Criminal, Labor, Economic, Taxation, Due Process, and Federalism.

7Criminal data have not been made available for 2006 as of yet.
analysis being the issue area within a circuit (district) court. Each observation is the log of the count of cases within that court dealing with a subject which falls within that issue area. In the following section, I introduce the other measures of interest and in the remainder of the paper utilize these variables to analyze the federal judicial agenda.

**Measures of Independent Variables**

*Index of Policy Priority*

Determining what constitutes indications of Supreme Court policy priorities is difficult given the latency of the concept. While the Epstein and Segal (2000) measure of case salience was utilized in similar research previously (Baird, 2004; Peters, 2007), Baird’s later research employed an index of policy priority. The index is a composite of the Epstein and Segal salience measure, declarations of unconstitutionality, reversals of lower court decisions, and formal alterations of precedent. Within each area, each year observation is ranked by the number of occurrences for each type of indicator. Once ranked, these are scaled and given values from 0 to 1, with 0 representing the lowest amount of activity of that indicator type. Subsequently, the indicators are summed to create the index.

Baird’s index is employed here because it captures both policy salience and legal salience. While the index encompasses four indicators, the Epstein and Segal measure is simply whether or not a case appears on the front page of the *New York Times*. The interest group perspective relies on litigants interpreting Supreme Court actions and reacting with new strategies. While a useful proxy, there is no causal relationship between appearances on the front page and changes in legal strategy. Instead, the composite index offers indications of important changes in the legal context of issues. By indexing policy and legal salience, this measure more accurately captures the totality of Supreme Court policy attention. I therefore utilize this as the key independent variable.

8Because of the scale of the case counts and their positive skew, I calculate the log of each and utilize that as the dependent variable.
of interest, indicating policy priorities of the sitting Court.

Legislation

One of the primary impacts on the judicial agenda is congressional action. Research has addressed shifts in the agenda of the federal courts, as well as cross-institutional influences of agenda-setting including the Supreme Court (Flemming, Wood and Bohte, 1999; Epstein, Segal and Victor, 2002; Baird and Hurwitz, 2006). Outside of previously mentioned cues, a primary influence on the Court’s agenda are the elected branches of government. The directionality of this relationship is unclear (Flemming, Wood and Bohte, 1999). Despite the influence the Supreme Court may have on the legislative agenda, the causal relationship is likely reciprocal. As legislation is passed, court cases arise dealing with issues of implementation, the legislation itself, or a multitude of other issues. As Pacelle (1991) points out, the litigation response drives changes in the Supreme Court’s agenda.

The impact of legislation on the agenda of the courts is accounted for by an index, also created by Baird, that takes into account the attention policy areas receive in Congressional Quarterly and by the number of congressional hearings in that policy area. Similar to the index of policy priority, each of the indicators for the legislative index is normed so that it lies between 0 and 1. The indicators are then combined in an additive index reflecting legislative attention. This index is employed to control for the influence of legislative activity on the agenda of the federal courts.

Ideological Controls

Two controls are used for the ideology of the Supreme Court. If litigants are increasing activity to accord with the perceived ideological receptiveness of the Court rather than to signals through cases, then the results obtained in the analysis would be spurious. Therefore, I control for the perceived ideology of the Court as well as the mean ideological output of the Court.

The ideological makeup and output of the court are both measured by utilizing Martin and Quinn (2002) scores. Martin and Quinn scores represent the justice’s ideal space on a liberal-conservative continuum. These scores are allowed to vary over time and are updated to account
for decisions each year. Similar to Baird, I control for shifts in the Court’s ideology by using the absolute value change in the Martin and Quinn ideal point of the median justice. For the mean ideological output of the Court, Baird calculates the mean ideal point of the justices in majority coalitions across all decisions within an issue area, then averages these. This allows for a control on the ideological composition of the Court within policy areas. As before, this measure is employed in my analysis.

Both of these measures are meant to capture the receptivity of the Court. I anticipate that for each measure, changes in the ideological complexion of the Court, both broadly and within decisions, will correspond with increases in litigant activity. Simply, litigants perceive a higher likelihood of success in issue areas where a clear ideological majority exists, lessening their concerns over the cost of cases.

The Appellate Caseload

Beyond the above controls, an additional control for the appellate caseload is included in the model of district court activity. If litigants perceive likelihood of being heard at the appellate level, with the concomitant precedential value of decisions there, they may support litigation without regard to Supreme Court preferences. In short, the variable is included in order to account for the possibility that litigants take into account activity in the appellate courts instead of or in addition to considering the activity of the Supreme Court.

Multilevel Models of Litigant Response

Two multi-level models, one for district and one for appellate courts, are utilized in estimating the relationship between the Supreme Court’s attention to an issue area and the subsequent attention that issue area receives in lower level courts.\textsuperscript{9} Multi-level modeling allows coefficients

\textsuperscript{9} One alternative specification is panel-corrected standard error models with issue- and court-specific effects. This was untenable in my case because there is not available data overlapping every year for each panel due to my treatment of the Fifth Circuit split in the dataset. This treatment is explained further in the appendix.
to vary while avoiding a “no-pooling approach”, which would allow large and unreasonable variance across estimates in the the court issue area subgroups (Gelman and Hill, 2007). Between the extremes of large variance or no variance across court-issue areas, multi-level modeling will converge towards the correct pooling specification. Therefore, it offers an optimal approach to the structure of this data and the subject of interest.

With the model specification and data in hand, the legal and interest group perspectives can be tested. The legal perspective indicates total agenda attention in the federal courts should decrease in issue areas where the Supreme Court takes action, as the Supreme Court’s action will often be intended to settle uncertain areas of law. Formally, the legal perspective hypothesis states:

\[ H_1: \text{The caseload of the federal appellate and district courts will decrease in policy areas where the Supreme Court has given indications of policy priority.} \]

On the other hand, if litigant mobilization occurs in response to Supreme Court activity, the expectation is that total agenda attention devoted to that policy area in lower court will increase. Therefore, the interest group hypothesis is:

\[ H_2: \text{The caseload of the federal appellate and district courts will increase in policy areas where the Supreme Court has given indications of policy priority.} \]

Multi-level modeling also allows the model to account for differences in responsiveness across issue areas and across appellate and subsequently district courts. This avoids the unlikely assumption that circuit and district courts do not vary in the level of responsiveness while simultaneously avoiding an overfit model with a series of circuit-issue specific dummy variables.\(^{10}\) Variance

\(^{10}\) I also estimated the model on pooled counts of appellate and district issue areas, ignoring court-specific effects. Further, the model was estimated using OLS regression with panel corrected standard errors and a Prais-Winsten correction for autocorrelation, identical to Baird (2007). The results are substantively identical to the multi-level models reported here. Further, they are robust to the inclusion of the full six lags of the legislative index. Alternatively,
across issue types in Supreme Court activity has been documented previously (Link, 1995; Hurwitz, 2006), was controlled for in previous studies, and is a generally accepted premise.\textsuperscript{11} The differences within districts and circuits, the differences in issue foci and the differences in the involved attorneys would all lend credence to an expectation of variance across issue and court, accounted for via the multi-level modeling.

One consequence of multi-level modeling approach is that the distributed lag approach prevalent in previous research of these models becomes difficult to compute and interpret with the numerous varying components introduced by multiple lags of both legislative attention and Supreme Court attention. The inclusion of these twelve separate lagged variables introduces so much multicollinearity in multi-level models so as to make the results entirely unreliable. Additionally, the twelve lags results in a potentially overfit model. In overparameterized models it becomes difficult to distinguish between the effects of the lagged variables, especially when we know ex ante that they are highly collinear. Finally, the lags themselves have been included in previous models only up to a researcher-defined cutpoint due to lack of clear theory as to the expected time-lapse and relationship.

In lieu of including all of these lags, I heed recent research suggesting the appropriate approach with atheoretic lags is to estimate the model across a series of lags and present the results via rope-ladder plots (Cranmer, 2010). This approach allows for the inclusion of each control in a multi-level model while also heightening the precision of the standard errors by eliminating the collinearity concerns outlined above and accounting for court and issue specific variation. Thus, I estimate for both district courts and appellate courts a multi-level model with a single lag of both

the use of a lagged dependent variable in order to correct for autocorrelation does not appreciably alter the results, though standard levels of statistical significance are achieved only on the coefficients for the fourth- and fifth-year lags for appellate activity.

\textsuperscript{11} For additional evidence, see the summary statistics of appellate caseloads by issue area and by circuit in the appendix.
the index of policy priority and the legislative index, and report the results across each of the lags.

Finally, I include a lagged dependent variable in order to account for serial correlation, a precaution still necessary in multi-level modeling approaches (Shor et al., 2007). The multilevel model is thus,

\[ y_{ijt} = \alpha_{ijk} + \phi_0 y_{it-1} + \beta_{1ij} X_{i1t-1} + \beta_{2ij} X_{2t-1} + \ldots + \gamma Z + \epsilon_i \]

in which \( i \) is the observation, \( j \) is the issue and \( k \) is the circuit. The logged value of appellate cases within a circuit issue area is given by \( y_i \) and the varying intercepts is given by \( \alpha_{ijk} \). The first coefficient, \( \phi_0 \) is the coefficient on the lagged dependent variable. The expression \( \beta_{1ij} \) is the coefficient estimate, varying by circuit court and issue area, for the index of policy priority. The expression \( \beta_{2ij} \) is the coefficient estimates for the lag of the legislative index, which allows the intercept to vary.\(^{12}\) The control parameters are represented by \( \gamma Z \).

The district court model is similar to the above but with only one grouping variable, the circuit court issue area. In this way, I account for variation across circuit court issue areas and prevent any one circuit court issue area from driving the results. The alternative specification and the inclusion of additional variables at the district level causes identification problems in models allowing random effects across both the district courts and issue areas simultaneously, necessitating this approach. Beneficially, this approach still prevents the results from being driven by a specific court issue area while avoiding a no-pooling approach and the concomitant increase in indicator variables.

**Analysis**

Previous literature, examining only published decisions which account for a minority of the federal courts agenda, found an increase in the number of full decisions handed down at three, four, and five year lags. In Figure 1, the fixed effects results of the appellate models of all federal activity support a different dynamic, that suggested by the legal perspective. The total amount of

\(^{12}\text{This is intended to rule out circuit-specific effects.}\)
cases being terminated within a policy area decreases after Supreme Court indications of policy priority. The strongest effect is during the fourth year after the increase in policy attention at the Supreme Court.\textsuperscript{13}

\textit{insert Figure 1 about here}

Further evidence for this relationship is available through the district court model, with a similar decrease in issue area attention plotted in the rope-ladder plot of Figure 2. This importantly occurs at a lag which is consistent with the observations on the dynamics suggested in the appellate analysis. The decrease in terminations is strongest at the third year lag, with effects also present at the second year lag, indicating the drop occurs before the observed drop in appellate cases. This relationship maintains statistical significance even with the control for the issue area attention at the appellate level. In sum, the decrease in overall agenda attention to areas where the Supreme Court has exerted unusual influence exists at both appellate and district levels. In taking action, the overall impact of Supreme Court decisions is to lessen the amount of attention devoted to a policy area throughout the entirety of the federal judiciary.

\textit{insert Figure 2 about here}

\textbf{Qualitative Change: An Alternative Approach}

These results have stark implications for the robustness of the interest group perspective and litigant mobilization. If litigants are participating more, they are doing so within the context of reduced overall federal court caseloads in those policy areas where the Supreme Court has indicated policy priority.

One possibility consistent with litigant mobilization is that litigants are able to better identify and support a small group of qualitatively “better” cases, increasing the likelihood these cases will make their way to the Supreme Court. In this scenario, a drop in terminated cases is observed but the few remaining cases now have additional litigant effort, as litigants seek the precedential

\textsuperscript{13}The full results of the models appear in Table A.2.
benefits of full decisions. While this is consistent with the litigant signal model, it is a different dynamic operating than originally hypothesized. Rather than additional, “better” cases being brought, litigants are concentrating resources on a small subset of remaining cases and seeking full, precedential decisions. The concentration of resources deployed on the remaining cases leads to additional attention, such as an increase in the number of motions filed on a case. In short, the Supreme Court decisions may lead to fewer total cases in an issue area as the law becomes clearer, but may engender greater litigant activity on the remaining cases. These cases then are pursued to full decisions, accounting for Baird’s finding of a relationship after four years in the subset of Court of Appeals published decisions.

If litigants mobilize in an issue area where the Supreme Court has acted, their support should be evident in the length to disposition. As litigants shift resources to support litigation efforts, the combined effect of fewer cases and the concentration of resources on the remaining cases would lead to a shift in the time period passing before disposition of these cases. Research by Boyd and Hoffman (2010) indicates that the filing of motions may lead to shorter trial lengths as litigants settle in response to the additional information contained in briefs. Thus, I hypothesize that:

**H3: The time from filing to disposition for court cases within issue areas will decrease following decisions where the Supreme Court has indicated policy priority.**

In order to test this, I again utilized the Administrative Office data, focusing solely on appellate courts. The case filings include information on dates when the cases are filed and when the case reached full disposition. I created a new dependent variable which is the length of time that passed between filing and termination. These are compiled and averaged across policy areas and courts for each year. The resultant dependent variable is the average amount of days (logged) which passed between filing and termination within circuit-issue years.\(^{14}\)

\(^{14}\) In unreported analyses, I also utilized the untransformed interval as the dependent variable. There is no substantive change in the results. The summary statistics for the interval measure are available in the appendix.
Multi-level modeling was again used to calculate the model. I utilize the fourth year lag of the index of policy priority and the legislative index as those were previously the best fit model and the model where the observed effect is most likely to be evident. The Supreme Court ideology controls previously included are not included in this model as there is no clear reason to expect the Court’s ideology to exert an impact of the time to disposition. While these are excluded, the model allows for the inclusion of varying coefficients across both lags of the index of policy priority and the legislative index. The fixed effects estimates of this model are reported in Table 1.

It is clear in Table 1 that the Court’s indication of policy priority does not exert an observable and statistically significant ($p < .05$) fixed effect on the length to disposition of appellate court cases. In other words, there is no evidence in this test for the mobilization of litigants and the concomitant increase in resources after increased Supreme Court activity in a policy area. The lack of an observed change in case characteristics lends support to the previous finding of a decrease in terminations following from an actual reduction in the number of cases. From these tests, it appears that the effect of Supreme Court indications of policy priority on the judicial agenda is to depress attention to those policy areas at lower levels, settling the law in a manner consistent with former Chief Justice Rehnquist’s words.

**Implications and Concluding Thoughts**

Supreme Court activity decreases the total amount of cases arising in an issue area, consistent with what I have termed the legal perspective of Supreme Court agenda influence. Supreme Court decisions evidently settle areas of law marked by high levels of conflict and uncertainty. Further tests revealed there is no accompanying change on the length of time cases take to reach disposition, indicating no broad increase in the effort expelled on cases in areas the Court has indicated policy priorities. With fewer cases and no evidence these cases are receiving additional support or effort, the dynamics of the litigant mobilization perspective are questionable.
Examining individual venues of expected litigant reaction, Peters (2007) also found little evidence of litigant mobilization. Taken in conjunction with the research above, these findings suggest alternative dynamics may operate as the driving factors behind the increase in Supreme Court attention after five years. These findings thus also ask what to make of corroborative support (Baird, 2007) for litigant mobilization in the form of increasing dissensus and amicus activity in published lower court decisions. These observed increases are entirely consistent with the observed decrease in total agenda attention. With fewer total cases available to choose from, the number of litigant groups per case will increase completely independent of any increase in litigant mobilization. The lack of an increase in time to disposition in all courts of appeals cases, documented above, indicates there is little impact on the entire judicial agenda from these additional resources. However, litigant groups may identify, consistent with Baird, the few remaining cases which are viable policy vehicles and become active on those cases. These cases are then more likely to be published and to feature dissents, given the additional litigant participation.

Through this process, litigants are never mobilized to pursue more or better cases. Instead, they are directed by necessity to the few remaining cases of policy importance for their group. These cases, featuring greater amicus participation and dissent, eventually percolate to the Supreme Court, containing as they do two cues of primary importance in the cert process: conflict and widespread impact.

Although I have outlined above one hypothesis for what may operate to encourage the shift in Supreme Court attention, the causal dynamics of this relationship are still uncertain. Increased conflict in a smaller number of cases, cross-institutional influences, or other dynamics may be operating to encourage future Supreme Court attention. The decrease in overall agenda attention thus suggests the need for greater attention to the entire agenda of the courts in considerations of the litigant signal model.
The Supreme Court’s Impact on the Judicial Agenda

References


The Supreme Court’s Impact on the Judicial Agenda


(A) The Administrative Office Data

The Federal Courts Integrated Database, a compilation of data obtained from the Administrative Office of the United States Courts, contains information on the totality of activity in the 12 federal circuit and 94 federal district courts, offering comprehensive data on the agenda of the courts. I utilize data on terminations from these filings, available through ICPSR. In order to construct the agenda measures, the nature of suit and offense codes were then utilized to create a crosswalk categorizing cases into issue areas. Utilizing the nature of suit and offense codes did preclude inclusion of a subset of appellate court activity, non-civil and non-criminal appeals. These were generally administrative agency actions or original proceedings. Because of the unclear nature of these suits, they were not utilized in the construction of the dataset. In the end, the categorization of cases into court-issue panels results, in the appellate, in 104 unique panels, representing the combination of 104 unique circuit court issue areas. The district court data is compiled in a similar manner. For these data, there are 752 panels across thirty-five years, representing unique district court-issue areas.

Some court-issue panels do not cover the full time-series due to two issues. First, the split of the Fifth Circuit in 1981 necessitated the creation of thirteen circuit courts. Second, the AO data does not include reports of nature of suit or offense codes in 1991 in three circuit courts: the District of Columbia, the 5th and the 8th. These data are also treated as missing.
Table 1: Fixed Effects of Supreme Court Indications of Policy Priorities on Length to Disposition of Appellate Court Cases, 1971-1995

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient Estimates</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index of Policy Priority&lt;sub&gt;(t-4)&lt;/sub&gt;</td>
<td>0.024</td>
<td>0.017</td>
</tr>
<tr>
<td>Legislation&lt;sub&gt;(t-4)&lt;/sub&gt;</td>
<td>-0.070</td>
<td>0.098</td>
</tr>
<tr>
<td>Burger Court</td>
<td>0.021</td>
<td>0.011</td>
</tr>
<tr>
<td>Y-intercept</td>
<td>3.170</td>
<td>0.117</td>
</tr>
</tbody>
</table>

NOTE: N= 2,156; Circuits = 13; Issues = 8; * indicates p < .05; The dependent variable in this analysis is the log of the average time to disposition, in days, following the filing of an appeal in the district court. These are calculated within court issue areas for each year.
Figure 1: Rope-ladder plot of Fixed Effects Estimates on Lags of Supreme Court Policy Priority Index by Circuit Court and Issue Areas. Each mark represents a coefficient estimate. The whiskers represent the 95 percent confidence interval. For the full model, see Table A.4.
Figure 2: *Fixed Effects Estimates for District Court Model Across Lags of Policy Priority Index*

The dependent variable in this analysis is the total of a district court’s cases within a policy area, logged. Each mark represents the coefficient estimate for a model including the policy priority index at the lag indicated on the x-axis. The whiskers represent the 95 percent confidence intervals around the fixed effect estimate.
Table A.1: Summary Statistics for Pooled Count of Cases in Appellate & District Courts, 1971-1995

<table>
<thead>
<tr>
<th>Policy Area</th>
<th>Appeals</th>
<th>Log Appeals</th>
<th>District</th>
<th>Log District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination</td>
<td>4,313 (2,049)</td>
<td>8.24 (.55)</td>
<td>41,403 (25,889)</td>
<td>10.45 (.63)</td>
</tr>
<tr>
<td>Free Speech</td>
<td>146 (43)</td>
<td>4.95 (.28)</td>
<td>904 (112)</td>
<td>6.80 (.12)</td>
</tr>
<tr>
<td>Criminal</td>
<td>10,343 (6,047)</td>
<td>9.09 (.55)</td>
<td>71,068 (19,994)</td>
<td>11.14 (.27)</td>
</tr>
<tr>
<td>Labor</td>
<td>915 (374)</td>
<td>6.72 (.47)</td>
<td>10,263 (4,219)</td>
<td>9.15 (.45)</td>
</tr>
<tr>
<td>Economic</td>
<td>6,057 (2,079)</td>
<td>8.65 (.37)</td>
<td>90,798 (25,996)</td>
<td>11.37 (.30)</td>
</tr>
<tr>
<td>Taxation</td>
<td>575 (162)</td>
<td>6.32 (.29)</td>
<td>3,954 (922)</td>
<td>8.26 (.24)</td>
</tr>
<tr>
<td>Due Process</td>
<td>918 (474)</td>
<td>6.73 (.42)</td>
<td>5,782 (1,570)</td>
<td>8.63 (.26)</td>
</tr>
<tr>
<td>Federalism</td>
<td>338 (132)</td>
<td>5.77 (.33)</td>
<td>3,675 (1,575)</td>
<td>8.12 (.42)</td>
</tr>
</tbody>
</table>

NOTE: Each cell entry is the mean number of cases for that policy area for all courts at that level (Court of Appeals or District Courts). The standard deviation is in parentheses. The logged case counts are utilized in analyses. Environment, Judicial, and Privacy cases were coded but are excluded from analyses due to the infrequency of cases in lower levels of the federal courts.
Table A.2: Fixed Effects of Supreme Court Indications of Policy Priorities on Appellate Court Activity, 1971-1995

<table>
<thead>
<tr>
<th>Variable</th>
<th>( t-1 )</th>
<th>( t-2 )</th>
<th>( t-3 )</th>
<th>( t-4 )</th>
<th>( t-5 )</th>
<th>( t-6 )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index of Policy Priority (_{t-1})</td>
<td>-0.012 (0.043)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Index of Policy Priority (_{t-2})</td>
<td>-</td>
<td>-0.011* (0.039)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Index of Policy Priority (_{t-3})</td>
<td>-</td>
<td>-</td>
<td>-0.008 (0.058)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Index of Policy Priority (_{t-4})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-0.152* (0.045)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Index of Policy Priority (_{t-5})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-0.061 (0.083)</td>
<td>-</td>
</tr>
<tr>
<td>Index of Policy Priority (_{t-6})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.019 (0.034)</td>
</tr>
<tr>
<td>Legislation (_{t-1})</td>
<td>0.275 (0.177)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legislation (_{t-2})</td>
<td>-</td>
<td>0.148 (0.248)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legislation (_{t-3})</td>
<td>-</td>
<td>-</td>
<td>0.062 (0.079)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legislation (_{t-4})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-0.038 (0.206)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legislation (_{t-5})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.140 (0.281)</td>
</tr>
<tr>
<td>Legislation (_{t-6})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.079 (0.479)</td>
</tr>
<tr>
<td>Median Ideology Change</td>
<td>-0.013 (0.070)</td>
<td>-0.027 (0.070)</td>
<td>-0.034 (0.069)</td>
<td>-0.070 (0.071)</td>
<td>-0.009 (0.070)</td>
<td>0.004 (0.022)</td>
</tr>
<tr>
<td>Mean Ideology Output</td>
<td>0.029 (0.022)</td>
<td>0.044 (0.023)</td>
<td>0.036 (0.022)</td>
<td>0.045* (0.023)</td>
<td>0.046* (0.023)</td>
<td>0.050* (0.022)</td>
</tr>
<tr>
<td>Y-intercept</td>
<td>1.104* (0.162)</td>
<td>1.145* (0.149)</td>
<td>1.114* (0.162)</td>
<td>1.149* (0.127)</td>
<td>1.156* (0.163)</td>
<td>1.121* (0.159)</td>
</tr>
</tbody>
</table>

NOTE: N= 2148; Circuits = 13; Issues = 8. * indicates \( p < .05 \); The dependent variable in this analysis is the logged total of cases within a policy area within a circuit court during a year. A control for the Burger era was included but is not reported above. The time-dependency of the data was corrected for by including a lagged dependent variable as a fixed regressor. The 8 issue areas are the same as in previous analyses.
Table A.3: Fixed Effects of Supreme Court Indications of Policy Priorities on District Court Activity, 1970-1995

<table>
<thead>
<tr>
<th>Variable</th>
<th>t-1</th>
<th>t-2</th>
<th>t-3</th>
<th>t-4</th>
<th>t-5</th>
<th>t-6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-1&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-2&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-3&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-4&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-5&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Index of Policy Priority&lt;sub&gt;t-6&lt;/sub&gt;</td>
<td>-0.016 (0.015)</td>
<td>-0.050* (0.014)</td>
<td>-0.098* (0.016)</td>
<td>-0.025 (0.013)</td>
<td>-0.010 (0.013)</td>
<td>0.005 (0.011)</td>
</tr>
<tr>
<td>Legislation&lt;sub&gt;t-4&lt;/sub&gt;</td>
<td>0.284* (0.025)</td>
<td>0.281* (0.024)</td>
<td>0.257* (0.026)</td>
<td>0.284* (0.024)</td>
<td>0.277* (0.024)</td>
<td>0.284* (0.024)</td>
</tr>
<tr>
<td>Appellate Caseload&lt;sub&gt;t-1&lt;/sub&gt;</td>
<td>0.194* (0.007)</td>
<td>0.192* (0.007)</td>
<td>0.188* (0.007)</td>
<td>0.194* (0.007)</td>
<td>0.193* (0.007)</td>
<td>0.196* (0.007)</td>
</tr>
<tr>
<td>Median Ideology Change</td>
<td>0.030 (0.028)</td>
<td>0.026 (0.028)</td>
<td>0.026 (0.028)</td>
<td>0.019 (0.028)</td>
<td>0.029 (0.028)</td>
<td>0.023 (0.028)</td>
</tr>
<tr>
<td>Mean Ideology Output</td>
<td>0.043* (0.009)</td>
<td>0.047* (0.009)</td>
<td>0.041* (0.009)</td>
<td>0.0448* (0.009)</td>
<td>0.044* (0.009)</td>
<td>0.046* (0.009)</td>
</tr>
<tr>
<td>Y-intercept</td>
<td>0.762* (0.040)</td>
<td>0.798* (0.040)</td>
<td>0.917* (0.041)</td>
<td>0.759* (0.040)</td>
<td>0.791* (0.040)</td>
<td>0.722* (0.039)</td>
</tr>
</tbody>
</table>

NOTE: N = 17,738; District-Issue Areas = 752. * indicates p < .05. The dependent variable in this analysis is the logged total of cases within a policy area within a district court during a year. A control for the Burger era was included but is not reported above. The time-dependency of the data was corrected for by including a lagged dependent variable as a fixed regressor. The 8 issue areas are the same as in previous analyses. The Appellate Caseload variable is logged due to the scale and skew of the variable.