

# Are You Talking to Me? How Ideological and Gender Characteristics Moderate the Effect of Legitimizing Rhetoric on SCOTUS Legitimacy

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*Possessing neither purse nor sword, the unelected US Supreme Court relies on sustained public confidence in its institutional credibility to give force to its decisions. Previous research shows that Supreme Court justices are increasingly making public appearances to engage in a course of institutional maintenance to preserve its legitimacy. Amid a potential legitimacy crisis, justices seek to shore up the Court's public support in these public appearances by emphasizing the apolitical nature of the Court and its decision making. The question for a growing body of literature is whether these attempts at institutional maintenance do, in fact, lead to higher support for the Court. Using an original survey experiment where we manipulate the identity of the justice giving legitimizing rhetoric, we find that respondents' ideological preferences and female respondents' level of gender identity do impact the effectiveness of such rhetoric. These results build on previous work by demonstrating the importance of justice identity in conditioning how different ideologies respond to the Court's elite signals.*

## INTRODUCTION

As Alexander Hamilton noted in Federalist No. 78, the Supreme Court possesses “no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment.” This inability to compel compliance with its decisions forces the Supreme Court to rely on what scholars, pundits, and even justices themselves have called the Court’s institutional legitimacy or diffuse support,<sup>1</sup> the public’s broad and sustained belief in the credibility and validity of the Court as an institution with the authority to make controversial decisions for the

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1. Diffuse support, or institutional legitimacy, is conceptually distinct from specific support. Where diffuse support refers to the public’s belief in the Court as a credible and trustworthy institution, specific support is about approval of the Court’s decisions (Gibson and Nelson 2014; Strother and Glennon 2021).

nation as a whole (Easton 1965; Gibson and Caldeira 2009). The importance of the Court's legitimacy vis-à-vis its lack of enforcement is noted by Justices O'Connor, Kennedy, and Souter in their opinion in *Planned Parenthood v. Casey* (1992):

As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands.

Current justices recognize the role that the Court's legitimacy plays in the power it wields. In 2018, Justice Kagan remarked: "Every single one of us needs to realize how precious the court's legitimacy is . . . . The only way we can get people to do what we think they should do is because people respect us."<sup>2</sup> And Justice Thomas, speaking about media framing of the Court as partisan, warned, "That's a problem. You're going to jeopardise any faith in the legal institutions."<sup>3</sup>

However, the Court's concern for preserving its source of institutional support has become perhaps more urgent in light of what some pundits have called a "legitimacy crisis."<sup>4</sup> Speaking to NBC news regarding recent declines in public support<sup>5</sup> for the Supreme Court, Justice Sonia Sotomayor noted: "I think all of us worry about that. We think about ways in which we can comport ourselves, among ourselves, to ensure that the public has confidence in what we're doing."<sup>6</sup> While Sotomayor's comments suggest a strategic element to how justices portray the Court and its work, her comments reflect other justices' remarks that show how the nation's highest court seeks to depict itself before the public. These off-bench comments demonstrate that beyond recognizing the importance of its legitimacy to its power and influence, justices also take action to protect that legitimacy. Most often, these remarks emphasize the apolitical nature of the

2. Mark Sherman, "Bitter Fight over Kavanaugh Shadows a Conservative Court," *AP*, October 7, 2018, <https://apnews.com/article/north-america-us-supreme-court-anthony-kennedy-courts-supreme-courts-5de5bcd5a4744eacae624c703b62664e>.

3. Martin Pengelly, "Clarence Thomas Insists Supreme Court Justices Do Not Rule Based on Politics," *The Guardian*, September 17, 2021, <https://www.theguardian.com/us-news/2021/sep/17/clarence-thomas-supreme-court-justices-politics>.

4. Hassan Kanu, "Justice Roberts Minimizes U.S. Supreme Court Legitimacy Crisis," *Reuters*, January 5, 2022, <https://www.reuters.com/legal/government/justice-roberts-minimizes-us-supreme-courts-legitimacy-crisis-2022-01-05/>; Steve Vladeck, "The Supreme Court Is Nearing a Legitimacy Crisis," *Slate*, October 4, 2021, <https://slate.com/news-and-politics/2021/10/the-supreme-court-is-nearing-a-legitimacy-crisis.html>; Ruth Marcus, "The Supreme Court's Crisis of Legitimacy," *Washington Post*, October 1, 2021, <https://www.washingtonpost.com/opinions/2021/10/01/supreme-court-crisis-of-legitimacy/>.

5. See "Supreme Court," *Gallup*, <https://news.gallup.com/poll/4732/supreme-court.aspx>, which shows that as of September 2021, 53 percent of respondents disapproved of the way the Supreme Court is handling its job. The authors recognize that opinion polls such as Gallup are measuring specific support. However, comments like Kagan's above do provide evidence that the Court is cognizant of these polls and that justices are concerned about what declining approval portends for their institution.

6. Supreme Court Justice Sonia Sotomayor to NBC News, repeated in Devan Cole, "Sonia Sotomayor: Justices Think about How They 'Comport' Themselves amid Public's Worsening View of High Court," *CNN*, January 25, 2022, <https://www.cnn.com/2022/01/25/politics/sonia-sotomayor-supreme-court-trust-image/index.html>.

Court and are delivered to both legal (e.g., law school or bar association speeches) and lay audiences (e.g., late-night talk shows). For example, in a 2019 speech, Chief Justice John Roberts pushed back against the notion that the Supreme Court was part of the increasingly polarized American political system. “When you live in a polarized political environment, people tend to see everything in those terms. That’s not how we at the court function and the results in our cases do not suggest otherwise.”<sup>7</sup> Similar sentiments have been expressed by both junior and senior members of the Court, with Amy Coney Barrett remarking that “judicial philosophies are not the same as political parties”<sup>8</sup> and the Court is “not comprised of a bunch of partisan hacks,”<sup>9</sup> and Clarence Thomas lamenting that “the media makes it sound as though you are just always going right to your personal preference.”<sup>10</sup>

These comments are common regardless of a justice’s ideology and partisanship; Democratic appointee Stephen Breyer recently wrote “it is a judge’s sworn duty to be impartial, and all of us take that oath seriously,”<sup>11</sup> and remarked in an interview “I’m there for everybody. I’m not just there for the Democrats. I’m not just there for the Republicans. And I’m not just there because a president was a Democrat who appointed me.”<sup>12</sup> The above examples are just a small taste of the increasingly frequent off-bench comments that the justices make about the Court and its role (Schmidt 2013; Hasen 2015; Glennon and Strother 2019). But these comments do present a Supreme Court that is concerned with its perception among the public and engaged in a course of institutional maintenance (Hall 2014) to shore up that support.

This article joins a growing literature (Krewson 2019; Strother and Glennon 2021) that seeks to understand the role that justices’ public comments have in support for the Court and its legitimacy, a departure from previous literature, which often focused on the way that the Court responded to public opinion rather than the way it shaped public opinion. While recent research (Strother and Glennon 2021) demonstrates that such rhetoric can positively influence public support for the Court’s legitimacy, our study takes this a step further by considering how the identity and ideology of the justice delivering legitimizing rhetoric affects the public’s perception of the Court as a political

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7. Remarks made at Temple Emanu-El Streicker Center in Manhattan. See Andrew Chung, “U.S. Supreme Court Not Politicized, Says Chief Justice Roberts,” *Reuters*, September 24, 2019, <https://www.reuters.com/article/us-usa-court-chiefjustice/u-s-supreme-court-not-politicized-says-chief-justice-roberts-idUSKBN1WA08F>.

8. Ryan C. Williams, “Supreme Court Justices Say the Institution Must Be Nonpartisan – But They Make It Political,” *NBC News*, September 19, 2021, <https://www.nbcnews.com/think/opinion/supreme-court-justices-say-institution-must-be-nonpartisan-they-make-ncna1279280>.

9. Adam Serwer, “The Lie about the Supreme Court Everyone Pretends to Believe,” *The Atlantic*, September 28, 2021, <https://www.theatlantic.com/ideas/archive/2021/09/lie-about-supreme-court-everyone-pretends-believe/620198/>.

10. *Ibid.*

11. *Ibid.*

12. Pengelly, “Clarence Thomas Insists.” Moreover, in addition to stressing the lack of partisan influences in their work, the justices also seek to present themselves as part of a collegial institution. Recently, amid reports that Justice Neil Gorsuch had refused to wear a mask during oral arguments at the request of Justice Sotomayor, who is diabetic, the two justices issued a statement, noting that “while we may sometimes disagree about the law, we are warm colleagues and friends.” See Ariane de Vogue, “Sotomayor and Gorsuch Say They Are ‘Warm Colleagues and Friends’ amid Masking Dust-Up,” *CNN*, January 19, 2022, <https://www.cnn.com/2022/01/19/politics/gorsuch-sotomayor-masks-covid-supreme-court/index.html>.

institution and as legitimate. Specifically, we theorize that the public will be more responsive to this rhetoric when the remarks come from an ideologically congruent justice. Our findings largely confirming this hypothesis contribute to a long line of research showing that elite political actors can directly influence public opinion (Bullock 2011) and to more recent research that shows the effect of elite source credibility on shifts in public support for the Court's legitimacy and support for court-curbing proposals (Clark and Kestellec 2015; Nelson and Gibson 2019). Nelson and Gibson (2019) find that elite actors' (President Trump; law professors) criticism of the Supreme Court decreased support for the Court's legitimacy only among respondents who had high degrees of confidence in the actor. Our findings show that an elite actor, a Supreme Court justice, can not only impact their institution's support, but that impact is heightened for people who share ideological affinity with the justice.

## PUBLIC SUPPORT FOR THE SUPREME COURT AND ITS LEGITIMACY

Historically, the US Supreme Court has enjoyed higher levels of support and approval from the American public than other institutions of American government, particularly Congress (Gibson and Nelson 2015).<sup>13</sup> Scholars have long theorized that this greater public support stems from the way the Supreme Court and other courts present themselves to the public. This positivity theory argues that the legitimizing symbols of law and courts, such as black robes, gavels, and the use of legal language in opinions, teaches the lesson that courts are different from political institutions like Congress and the presidency, and, therefore, are credible and worthy of respect (Gibson, Caldeira, and Spence 2003; Gibson and Caldeira 2009). According to positivity theory, when the public is exposed to these symbols they are met with an image of courts as impartial, fair, and neutral arbiters of legal questions, not as political policy makers, which serves to enhance the Court's legitimacy among the public (Tyler 1990; Scheb and Lyons 2000; Gibson 2007). Thus, when the public subscribes to this "myth of legality," the Court's legitimacy is sustained even when it issues decisions that subsets of the public disagree with. In sum, the apolitical presentation of the Court emphasizing its supposed neutrality in decision making explains the broad diffuse support the public gives to the Supreme Court.

However, recent research has developed additional ways to understand the source of public support for the Supreme Court and its legitimacy. A number of studies have found that people believe that justices' personal politics and ideologies influence their decisions to at least some extent (Scheb and Lyons 2001; Baird and Gangl 2006; Gibson and Caldeira 2011). That the public views the Court as political is perhaps unsurprising. The confirmation process for Supreme Court nominees is mired in overt partisanship, and elected officials as well as interest groups frame the Court's decision in political terms. The assumption that people see the Court at least partly in political terms

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13. See Gallup polls: "Supreme Court," *Gallup*, <http://www.gallup.com/poll/4732/supreme-court.aspx>. Moreover, the prevailing scholarship finds that this diffuse support is largely stable over time, resisting long-term declines stemming from controversial case rulings (Nelson and Tucker 2021). As we note in the conclusion, recent research on the Court's *Dobbs* decision calls this finding into question.

underlies the more recent second strain of research on public support for the Court's legitimacy. This work finds that support for the Court and its legitimacy is tied to whether members of the public demonstrate ideological or partisan agreement with the Court's decisions, its perceived ideology, and the elite political actors praising or criticizing the Court (Bartels and Johnston 2013; Nicholson and Hansford 2014; Christensen and Glick 2015; Clark and Kestel 2015; Strother and Gadarian 2019). According to this research, support for the Supreme Court mirrors how the public assesses other political institutions: through the lenses of ideology and partisanship. Moreover, media coverage of the Supreme Court has an important role in increasing the ideological or partisan considerations the public uses to evaluate the Court. Research shows that media coverage of the Court has become increasingly partisan and increasingly frames the Court's decisions in terms of which political party wins and which loses in the case, thus encouraging viewers to see the Court in partisan or ideological terms (Linos and Twist 2016; Hitt and Searles 2018; Bass 2018). Taken together, this recent research on explaining the foundations of support for the Court's legitimacy suggests important ideological considerations on the part of the public. The public's view of the Court as partisan and ideological influences how they evaluate the institution.

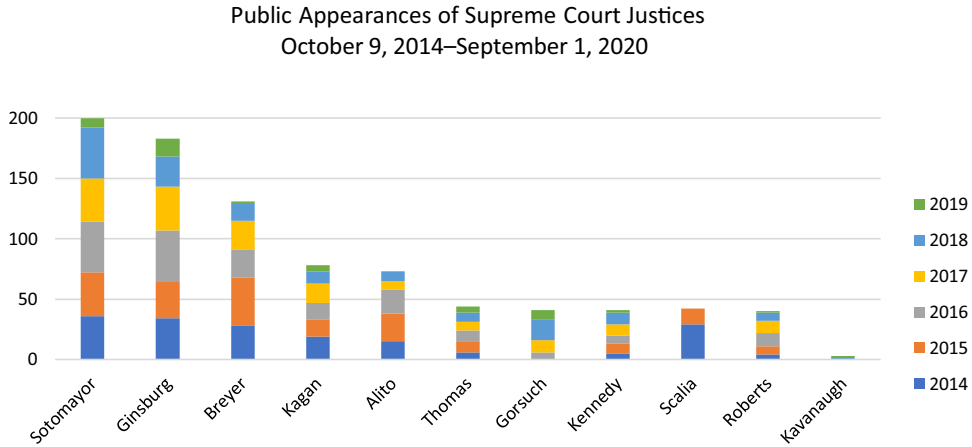
Importantly, this spatial/party cue understanding of public support for the Court is not diametrically opposed to positivity theory, as the public's perception of the Court likely reflects elements of both. Indeed, the public's view of the Court can be effectively described as "half-politics-half-law" (Bybee 2010, 4). Hansford, Intawan, and Nicholson (2018) echo this characterization in finding that the public perceives the Court to be less political than the overtly partisan Congress but more political than a traffic court.<sup>14</sup> Given this depiction of the Court as "somewhat political," both positivity theory and spatial/party cue inform our expectations regarding how the public will evaluate the Supreme Court in light of the Court's attempts at institutional maintenance.

## OFF-BENCH COMMENTS AND THE COURT'S LEGITIMACY

As demonstrated by the various examples of justices' recent public rhetoric presented above, the Supreme Court is not a bystander in how the Court's public perception is shaped. Previous research demonstrates that justices take both policy and nonpolicy actions out of consideration for their standing with other institutions, such as Congress, and their support among the public (Mark and Zilis 2018; Williams and Smith 2018). In their public rhetoric, justices actively frame their role in the political system as apolitical interpreters of law, emphasizing a nonpartisan professionalism to their process. As Posner (2008, 3) notes, justices consciously foster an aura of legality

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14. Hansford, Intawan, and Nicholson (2018) specifically measure the public's perception of the Supreme Court using an Implicit Attitudes Test (IAT). The authors argue that implicit and explicit attitudes reflect different evaluative processes. With respect to public opinion about the Supreme Court, self-report surveys measure explicit attitudes. The authors find that both respondents' implicit attitudes and respondents' explicit attitudes significantly predicted their level of support for the Court's legitimacy. The more the respondent implicitly or explicitly thought the Court was political, the less support the respondent had for legitimacy.



Source: [www.scotusmap.com](http://www.scotusmap.com).

**FIGURE 1.**  
Supreme Court Justices' Public Appearances.

that “exaggerates not only the professional’s skills but also his disinterest” in politics. By projecting an image of themselves as politically neutral, the justices ask the public to evaluate them on criteria rooted in law.

This deliberate attempt at image shaping seems to have grown, as in recent years, Supreme Court justices have increasingly appeared in public (Hasen 2015; Krewson 2019; Glennon and Strother 2019). For example, using crowd-sourced data on public appearances from [scotusmap.com](http://scotusmap.com), we find that justices together averaged about 144 public appearances a year from the 2014 through 2019 terms.<sup>15</sup> In fact, such is the growth in justice travel that scholars find the amount of such travel to be comparable to trips taken by members of Congress. Despite not needing to court voters for reelection, “on average, Supreme Court justices travel more domestically each year than a member of Congress travels domestically and abroad” (Black, Owens, and Armaly 2016, 372). These off-bench appearances frequently feature justices giving interviews, appearing on late-night talk shows (for example, Justice Breyer’s appearance on *The Late Show with Stephen Colbert* to promote his new book), and speeches to law schools, bar associations, and other groups. A look at the total number of public appearances by justice is presented in [Figure 1](#).<sup>16</sup>

Importantly, scholars argue that the purpose of these trips is often tied to shoring up the Court’s legitimacy (Davis 2011; Schmidt 2013; Black, Owens, and Armaly 2016; Glennon and Strother 2019). Black, Owens, and Armaly (2016, 378) argue: “By making public speeches or other appearances that accompany travel, justices might enhance public awareness of and support for the Court.” Moreover, in their study of

15. Note that the count of appearances for each term includes the summer months following the respective term. For example, the 2014 term count includes public appearances from October 2014 through September 2015.

16. Data collected from [scotusmap.com](http://scotusmap.com).

justices' televised media interviews from 1998 to 2014, Glennon and Strother (2019) find that the justices' primary focus is on reinforcing the Court's legitimacy.

The question then is whether justices' goals of preserving or increasing the Court's legitimacy with their public rhetoric is effective. Two recent studies have begun investigating this question (Krewson 2019; Strother and Glennon 2021). However, with respect to enhancing legitimacy, these studies present mixed findings, with Strother and Glennon (2021) finding more consistent evidence that off-bench judicial rhetoric increased legitimacy. In keeping with recent literature pushing back against positivity theory as the primary source of the Court's diffuse support, Strother and Glennon (2021) find that respondents who disagreed with the Court's decision were not affected by the legitimizing rhetoric.<sup>17</sup>

Our article makes two important contributions to this literature. First, neither of these articles test whether characteristics of the particular justice who is delivering the message influence the extent to which legitimizing rhetoric impacts perceptions that the Court is legitimate (and affects the sense that it is a legal or political body). However, in this hyperpolarized world, with several recent high-profile nomination hearings during Trump's presidency, it is likely that perceived ideological characteristics of the justices delivering this legitimizing rhetoric influence the extent to which it is effective.

Second, we also expect that the gender identity of the public could influence the extent to which individuals are convinced by their off-bench comments.<sup>18</sup> Thus, we test whether the strength of respondents' gender identities moderates the degree to which they are affected by justices' off-bench legitimizing rhetoric. Recent research finds mixed results regarding the impact of gender on approval of Supreme Court justices. This research focuses primarily on Supreme Court nominees. Badas and Stauffer (2018) find that sharing a gender identity with a Supreme Court nominee led to increased support for that nominee even among ideological opponents, as conservative women increased their support for Elena Kagan. However, Kaslovsky, Rogowski, and Stone (2021) find no evidence that respondents increase their support of judicial nominees that share their same gender identity. Nevertheless, we expect that women with strong gender identities will be more likely to be persuaded by the copartisan female justices whom they are exposed to, as shared social identities tend to lead to increased levels of support and sense of legitimacy among the public (Mansbridge 1999; Sapiro 1981; Plutzer and Zipp 1996; Fox 1997; Sanbonmatsu 2002; Brians 2005; Scherer and Curry 2010; Badas and Stauffer 2018).

Our article adds to a growing literature assessing whether this increased use of legitimacy-reinforcing rhetoric fulfills its purpose of increasing the public's support for the Court's legitimacy, which if pundits are to be believed regarding a "legitimacy

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17. It is worth noting that elite rhetoric from actors other than justices can impact the Court's legitimacy. Nelson and Gibson (2019) demonstrate that delegitimizing rhetoric from President Trump and law professors decreased support for the Court's legitimacy. However, this effect was only present for those who found the president or the law professors credible. The authors conclude that the limited credibility of the president lessened any effect his delegitimizing rhetoric may have had on the Court's long-term legitimacy, but that the greater credibility of actors like law professors signals the potential for stronger damage.

18. Our focus on gender identity follows from our choice of the justices delivering legitimizing rhetoric in our survey experiment. See section on Data and Methods.

crisis,” is more important than ever for the future viability of the Supreme Court. Importantly, our article contributes to recent research showing an ideological underpinning for the foundation of institutional support for the Supreme Court.

## HYPOTHESES

All hypotheses were preregistered with the Open Science Framework (see Appendix C available in the supplementary material).<sup>19</sup> In line with Strother and Glennon (2021), we expect that legitimizing rhetoric from Supreme Court justices will have the effect of reducing people’s view of the Court as a political institution and strengthening their view of the Court as legal and their support for the Court’s legitimacy. Such a finding would be consistent with positivity theory, as much of the justices’ rhetoric in their public appearances is geared toward presenting the Court as apolitical and as a legal institution. For positivity theory, “to know courts is to love them” (Gibson, Caldeira, and Baird 1998, 345), meaning that any exposure to law and courts should cause individuals to see the Court as apolitical and thus improve legitimacy support. This should be especially true for exposure to legitimizing rhetoric. Thus, we expect:

**Hypothesis 1a: Political Perception.** Legitimizing rhetoric from a Supreme Court justice will result in individuals seeing the Court as less political.

**Hypothesis 1b: Legal Perception.** Legitimizing rhetoric from a Supreme Court justice will result in individuals seeing the Court as more legal.

**Hypothesis 1c: Legitimacy Support.** Legitimizing rhetoric from a Supreme Court justice will result in individuals seeing the Court as more legitimate.

However, in line with recent research on ideological and party cues’ impacts on public support for the Court, we expect that the strength of individuals’ perceptions of the Court’s legal and political nature and legitimacy will depend on individuals’ ideological preferences and the identity of the justice providing rhetoric. Conservatives will be more likely to have higher ratings of Court legitimacy and to describe the Court as legal when they are met with legitimizing language from an ideologically similar justice. Conservatives will also have lower ratings of the Court as political. We expect the same for liberal respondents. This expectation echoes recent and developing research on the role of individuals’ policy preferences in driving public attitudes toward the Supreme Court. For example, Gadarian and Strother (2023) find “strong evidence that the Court’s hybrid legal-political nature enables a unique form of policy-motivated reasoning: respondents who agree with Court outputs view the Court and its work as more ‘legal’ in nature, while those who disagree view both as more ‘political’” (1). This leads to our second set of hypotheses:

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19. Note that there are more hypotheses preregistered than we have space to discuss in the context of one article. This large project will be split into multiple articles that tackle different elements of the preregistration.



**Hypothesis 2a: Ideological Moderation of Political Perception.** Individuals will be less likely to see the Court as political when the legitimizing rhetoric comes from an ideologically similar justice.

**Hypothesis 2b: Ideological Moderation of Legal Perception.** Individuals will be more likely to see the Court as legal when the legitimizing rhetoric comes from an ideologically similar justice.

**Hypothesis 2c: Ideological Moderation of Legitimacy Support.** Individuals will be more likely to see the Court as legitimate when the legitimizing rhetoric comes from an ideologically similar justice.

Our final hypotheses consider the role of gender identity in moderating public perception of the Court and support for its legitimacy. For women, high levels of identifying as a woman will lead to a greater effect of the justices' legitimizing rhetoric on these women's perceptions of the legal and political nature of the Court and belief in the Court's legitimacy, but only within partisanship/ideological groups, leading to our third set of hypotheses:

**Hypothesis 3a: Gender Identity Moderation of Political Perception.** Women with higher levels of gender identity will be less likely to see the Court as political when legitimizing rhetoric comes from an ideologically similar justice.

**Hypothesis 3b: Gender Identity Moderation of Legal Perception.** Women with higher levels of gender identity will be more likely to see the Court as legal when legitimizing rhetoric comes from an ideologically similar justice.

**Hypothesis 3c: Gender Identity Moderation Legitimacy Support.** Women with higher levels of gender identity will show greater support for the Court's legitimacy when legitimizing rhetoric comes from an ideologically similar justice.

## DATA AND METHODS

In order to evaluate these hypotheses, we fielded an original survey experiment through the firm Lucid in March 2022 (N = 1,351). While Lucid makes use of an online (opt-in) panel of respondents, like Qualtrics, Survey Sampling International (SSI), or mTurk, it has been demonstrated to track well with US national benchmarks and to be suitable for experimental research (Coppock and McClellan 2019). Respondents were recruited to match national distributions on gender, race, ethnicity, region, and age (see Appendix A for descriptive statistics). After consenting to the survey, respondents were asked a series of demographic and ideological questions pretreatment. Here, they reported their ideology (with the standard seven-point scale) and the extent to which they identified with their gender group (respondents were asked: How important is being [male/female] to your identity?).<sup>20</sup> Respondents also answered two attention-check items immediately before the treatment. Following

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20. We did give respondents the option to choose "non-binary" or "other [write in]" for their gender identity, but there was not a large enough sample size of individuals choosing non-binary to analyze

**The Supreme Court is Not “Political,” Justice [Kagan/Barrett] Says**

Jake Shafer, February 15, 2022

In today's world, it can be hard to imagine a place that politics does not touch. However, when a reporter recently asked Supreme Court Justice [Elena Kagan / Amy Coney Barrett] about the perceptions that the Supreme Court's decisions were influenced by politics, she responded: “I think it is crucial for people to understand that we are not a political branch of government.” She went on to say that “when we reach a decision, it is based on the law and not on policy preference... All we are doing is interpreting the law.”

Despite the fact that [Kagan is seen as a liberal justice / Barrett is seen as a conservative justice], when asked about disagreements that can arise on the court, she said, “While we may sometimes disagree about the law — and our interpretation of the law — at the end of the day, it is all about approaching a neutral interpretation of the law.”

Kagan/Barrett went on to say that the Supreme Court reaches its decisions in very different ways than the other branches of government. “Our system relies on principles that are more foundational than the whims of the political moment. One of the hardest things about our work is that there are no easy answers. Reasonable people can disagree, but we remain committed to reaching decisions based on interpretation of the law rather than political beliefs.”



*Note: the accompanying picture rotated to match the treatment*

**FIGURE 2.**  
**Treatment Text.**

Berinsky, Margolis, and Sances (2014), we did not exclude respondents who failed the attention checks from the data, but we retained them so that we could perform analyses on the full data set as well as on those respondents who passed at least one attention check.

Respondents were then randomly assigned to one of three conditions. In the first two conditions, respondents read a news article, presented in Figure 2, about the ways in which the Supreme Court is a legal, not political, body.<sup>21</sup> In the first treatment, the justice interviewed was Elena Kagan and in the second, it was Amy Coney Barrett. The respondents were also informed of the perceived ideology of the justices (i.e., “Kagan is seen as a liberal justice” and “Barrett is seen as a conservative justice”) and given a picture of the justice in her robes. Respondents in the control condition did not read a news article, following Strother and Glennon (2021). Note that between the two treatments, other than the shift in justice, the only manipulation is a single word (i.e., “liberal” or “conservative”). Otherwise, the text is identical.

We intentionally chose Justices Kagan and Barrett in order to keep the gender and race of the featured justice constant, while only varying the perceived ideology.

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statistically (and no one chose “other”). This gender identity question is standard; it is used on the American National Election Study (ANES) and other large, nationally representative surveys.

21. This article was modeled off of Strother and Glennon’s (2021) treatment, with supplemental content from current news coverage on the relationship between Justices Sotomayor and Gorsuch.

We made the choice to focus on white women given the constraints of the identities of sitting justices. While at the time of fielding the experiment, we could have used two white men with varying ideologies, it was already known that Justice Breyer, the white male on the Court that leaned liberal, would soon retire. We were unable to produce a pair of justices for which race could be held constant without using white justices (as, at the time, there was only one Latina and one Black male justice). Thus, we settled on using two white women, which the makeup of the Court allowed, to focus on varying *only* the perceived ideology of the justice. With that being said, it should be noted that Justice Kagan and Justice Barrett are by no means identical, even apart from their ideological differences. Justice Kagan is Jewish and from the North while Justice Barrett is Catholic and from the South. Nevertheless, sharing racial and gender identities is an important feature—as these identities are the most readily apparent and visible categories that others notice (Brewer and Lui 1989; Devine 1989; Devine and Elliot 1995). Thus, while there are certainly differences between Kagan and Barrett, they share two key identities while differing on ideology. We certainly recognize the potentially powerful role that other identities such as those relating to race and religion may play in impacting public perceptions of the Supreme Court’s legitimacy. However, our focus on gender identity reflects the constraints described above.

Further, focusing on *women* in particular is potentially problematic, as the presence of women and female leaders in institutions tends to lead to increased perceptions of legitimacy (Scherer and Curry 2010; Stauffer 2021) and less of a sense that an institution is corrupt (Armstrong et al. 2022). However, recall that we are building on previous work by Strother and Glennon (2021) and Krewson (2019), who both demonstrate that legitimizing rhetoric does increase perceptions of legitimacy (Strother and Glennon 2021) and institutional loyalty (Krewson 2019) for the Supreme Court when delivered by both female and male justices. Strother and Glennon (2021) demonstrate in multiple experiments that legitimizing rhetoric attributed to Chief Justice John Roberts, a man, effectively increased the extent to which the Court was perceived as legitimate by respondents. Krewson (2019) demonstrated the same effect, for language attributed to either Justice Sotomayor, a woman, or Justice Alito, a man. Thus, we build on previous research that demonstrates that legitimizing rhetoric from justices (both male and female) increases perceived legitimacy of the Court by uncovering the contours of these effects. We want to understand whether this connection varies based on the identity of the justice who is delivering the legitimizing message.

After the treatment, respondents answered a series of questions about the Supreme Court. First, respondents were asked: “How well does the word ‘political’ describe the Supreme Court?” (five-point scale ranging from “not well at all” to “extremely well”). Then, they were asked: “How well does the word ‘legal’ describe the Supreme Court?” with the same answer options. These items follow Strother and Glennon (2021), who use them to evaluate the extent to which respondents see the Court as a political or legal body—that is, the extent to which they were convinced by the legitimizing rhetoric of the justice.

Next, respondents indicated their level of agreement with a series of items measuring legitimacy (Gibson, Caldeira, and Spence 2003). This battery is the most common measure that is used to estimate the extent to which individuals see the Supreme Court as a legitimate body. This scale is composed of the following items, to which respondents indicate their level of agreement:

1. If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.\*
2. The right of the Supreme Court to decide certain types of controversial issues should be reduced.\*
3. The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.
4. The decisions of the U.S. Supreme Court favor some groups more than others.\*
5. The Supreme Court can usually be trusted to make decisions in the best interest of the American people.

The first, second, and fourth items were recoded so that for every item, higher levels of agreement meant greater perceptions of legitimacy. Then, all items were combined (linearly) into a scale, following previous work. Responses range from 1 to 6, with a mean of 3.69.

After respondents completed the dependent variables, they completed a manipulation check to ensure that they understood and retained the information presented in the article they read. Then, they were debriefed about the article—learning that it was a fabricated article but that it pulled information from real sources.

## ANALYSES

Before getting to the main analyses, note that balance tests revealed that randomization was successful and manipulation tests confirmed that respondents understood and retained all information from the treatments. These results can be found in Appendix A in the supplementary material.

To evaluate our first set of hypotheses, which followed previous research in expecting that reading either article containing legitimizing rhetoric from a justice would lessen perceptions that the Court is political (Hypothesis 1a) and lead to higher perceptions that the Court is legal (Hypothesis 1b) and legitimate (Hypothesis 1c), we regressed each of these dependent variables on treatment indicators using OLS regressions. Controls are not needed in experiments to estimate causal effects, as the randomization process ensures that groups are equal on both observable and unobservable characteristics (nevertheless, we include models with control variables in Appendix B in the supplementary material; results are robust to this specification for all models presented in the body of this article). The results for respondents who passed at least one attention check are presented in Table 1. Compared to the control condition, respondents in both treatment conditions were significantly less likely to say that the Court is political, significantly more likely to say that it is legal, and significantly more likely to see the Court as legitimate. Thus, this lends evidence for the first set of hypotheses and replicates previous findings: off-bench comments increase the perceived legitimacy of the Supreme Court.

To evaluate whether ideology plays a role in the extent to which a justice's rhetoric can preserve legitimacy and avoid perceptions of politicization of the Supreme Court, we turn to evaluating the second set of hypotheses. We expect that individuals' own ideological beliefs will likely moderate the extent to which the justice's off-bench comments deter perceptions of politics (Hypothesis 2a), strengthen belief in the Court's legality (Hypothesis 2b), and impact legitimacy (Hypothesis 2c). Table 2 presents the

**TABLE 1.**  
Average Treatment Effects

	Political	Legal	Legitimacy
Intercept	3.22*** (0.07)	3.44*** (0.06)	3.62*** (0.05)
T1: Kagan	-0.74*** (0.10)	0.24** (0.09)	0.21*** (0.08)
T2: Barrett	-0.58*** (0.10)	0.16* (0.09)	0.23*** (0.08)
R2	0.06	0.01	0.01
Adj. R2	0.06	0.01	0.01
Num. Obs.	908	908	908

Note: \* $p < 0.1$ , \*\* $p < 0.05$ , \*\*\* $p < 0.01$ ; includes respondents who passed at least one attention check. Models are OLS regression models. Models that include control variables presented in Appendix B in the supplementary material; results robust.

**TABLE 2.**  
Average Treatment Effects by Ideological Group

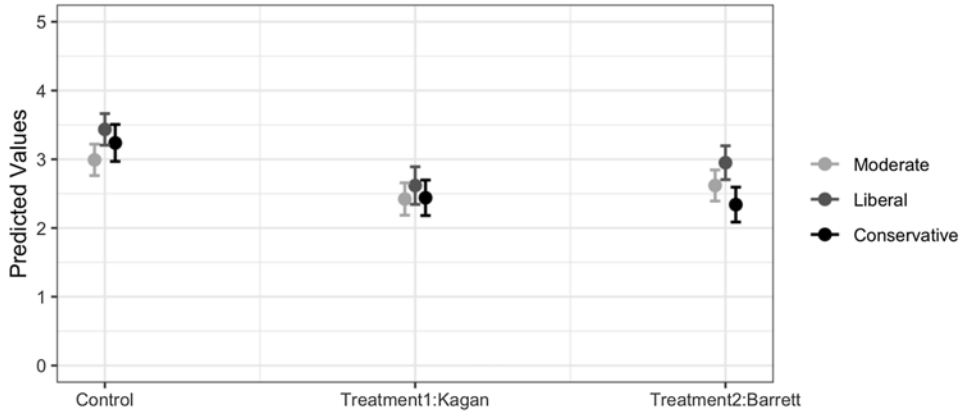
	Liberals			Conservatives		
	Political	Legal	Legitimacy	Political	Legal	Legitimacy
Intercept	3.43*** (0.11)	3.48*** (0.11)	3.42*** (0.08)	3.24*** (0.14)	3.52*** (0.12)	3.90*** (0.10)
T1: Kagan	-0.82*** (0.17)	0.16 (0.17)	0.30** (0.13)	-0.80*** (0.20)	0.41** (0.17)	0.25* (0.14)
T2: Barrett	-0.48*** (0.16)	0.04 (0.16)	0.07 (0.12)	-0.90*** (0.20)	0.40** (0.17)	0.49*** (0.14)
R2	0.07	0.00	0.02	0.08	0.03	0.04
Adj. R2	0.07	0.00	0.01	0.08	0.02	0.03
Num. Obs.	296	296	296	269	269	269

Note: \* $p < 0.1$ , \*\* $p < 0.05$ , \*\*\* $p < 0.01$ ; includes respondents who passed at least one attention check. Models are OLS regressions specified separately for liberals and conservatives; see Appendix B for OLS regression models that include moderates as well, which are used to make Figure 3 but are omitted here for ease of interpretation. Models that include control variables presented in Appendix B; results robust.

results from sets of OLS models predicting each of the dependent variables with the indicator for the treatment condition, within ideological groups. In the supplementary material, Table B1 presents the results from three OLS regressions in which the treatment condition is interacted with a naive measure of ideology that breaks respondents into the categories of liberal, moderate, and conservative, for interpretability (for use in generating Figure 3).

Table 2 demonstrates that liberals were less likely to see the Court as political after being exposed to legitimizing rhetoric. In both the Kagan and Barrett treatment conditions, the legitimizing rhetoric makes liberals see the Court as less political,

## (a) Predicted Belief that the Court Is Political (Higher Values Indicate More Political)



## (b) Predicted Belief in the Court's Legitimacy (Higher Values Indicate More Legitimacy)

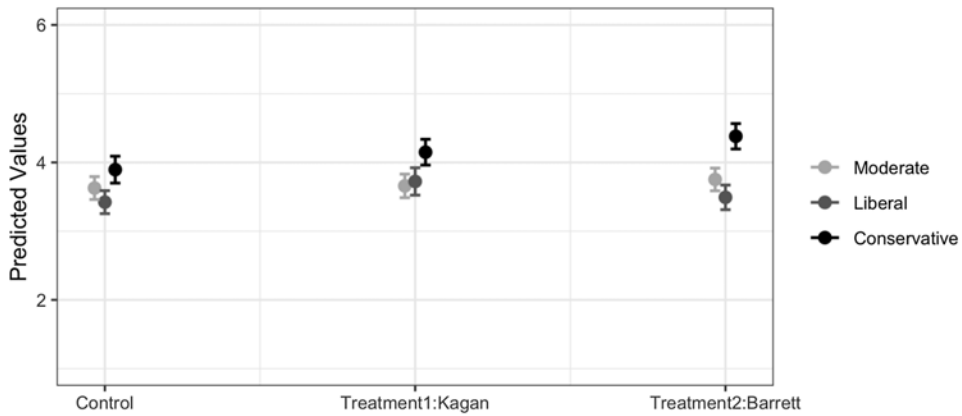


FIGURE 3. Predicted Perceptions that the Court Is (a) Political and (b) Legitimate, by Respondent Ideology.

compared to the control condition. However, note that this effect is almost double the size in the Kagan condition (the OLS regression coefficient, beta, is  $-0.82$ ) compared to the Barrett condition (beta =  $-0.48$ ). This difference in effect size between the Kagan and Barrett conditions is statistically significant. This means that liberals were more convinced that the Court is not political when exposed to Kagan than they were when exposed to Barrett. Similarly, liberals were more likely to see the Court as legitimate when exposed to Kagan's rhetoric, but there was no corresponding effect for exposure to Barrett's rhetoric, compared to the control (again, the difference between the Kagan and Barrett treatments is statistically significant when the control condition is omitted from the analysis). There are no effects for the extent to which liberals see the Court as legal.

On the whole, this lends support for Hypotheses 2a and 2c for liberals. Respondents in this ideological group were less likely to see the Court as political and more likely to see it as legitimate when exposed to Elena Kagan's legitimizing rhetoric, compared to when they were exposed to Barrett's. Indeed, reading a news article that includes Justice Barrett's contention that the Court is legitimate had absolutely no effect on the extent to which liberals believe the Court is legitimate.

Turning to the second set of models, we see that conservatives were swayed by both justices. Exposure to legitimizing rhetoric from Kagan and Barrett increased conservatives' agreement that the Court is not political and that it is a legal institution and legitimate. While the coefficient on the Barrett condition is often larger than that on the Kagan condition, the differences are not statistically significant between the two treatment conditions for conservatives like they were for liberals. This indicates that conservatives were similarly swayed by the legitimizing rhetoric, regardless of the source.

In order to better interpret these findings, in [Figure 3](#) we plot the predicted values for the first and third interaction models from the interaction model (Table B1 in the supplementary material) by ideology and treatment condition. [Figure 3\(a\)](#) shows that respondents in both conditions, regardless of ideology, reported lower levels of believing that the Supreme Court is political, relative to the control condition. However, it is also clear that respondents in the Barrett condition were more divided than they were in other conditions. Conservatives reported even lower levels of seeing the Court as political when they read Barrett's remarks, while liberals were less persuaded by Barrett than they were by Kagan.

Similarly, there was ideological divergence in the extent to which respondents saw the Court as legitimate, based on treatment condition. [Figure 3\(b\)](#) demonstrates that conservative respondents were more likely to see the Court as legitimate after reading either article, but they were most likely to see the Court as legitimate when they read the Barrett article (though recall that the difference between the Barrett and Kagan conditions is not statistically significant for conservatives). Liberal respondents, on the other hand, were more likely to see the Court as legitimate when they read the Kagan article (compared to the control), but they were no more likely (compared to the control) to see the Court as legitimate when they read the Barrett article. For liberals, the Kagan article persuaded them that the Court was legitimate more than the Barrett article did (and this difference between treatment conditions is statistically significant).

This incongruity could be due to differences between liberals and conservatives, but there may be other factors at play as well. Barrett was confirmed more recently than Kagan, with a hotly contested nomination by former President Trump, a particularly polarizing figure. So, Barrett may have elicited the strongest reactions because she was at the forefront of respondents' minds. Finally, and perhaps more likely as it requires respondents to possess less knowledge about the Supreme Court, conservatives may perceive the Court as more legitimate because it is currently dominated by conservatives, resulting in conservative rulings. Thus, even if they are unaware of the particular justices or ideological makeup, they may still hear about rulings from the Court that are in their (and their ideological group's) favor.

Thus, we find mixed support for our second set of hypotheses. Liberals were more persuaded when exposed to the liberal justice than when exposed to the conservative justice that the Court is legitimate, but conservatives were persuaded by *both* justices.

There are stark ideological differences in the effect that legitimizing rhetoric can have on perceptions of legitimacy by ideology, but these differences are largely contained to when Justice Amy Coney Barrett makes the off-bench comments. As a note, we also analyzed whether the treatment effects were moderated by partisanship, as partisanship and ideology are closely aligned. These models are presented in Appendix B in the supplementary material. For the most part, they corroborate the findings here. Democrats are more persuaded by Kagan than Barrett (though these differences are not statistically distinct), and Republicans are more persuaded by Barrett than Kagan (these differences are statistically distinct). We foreground the ideology models rather than the partisanship models as they more directly correspond to the manipulation in the treatment (i.e., saying that the justice is “liberal” or “conservative”). However, the additional partisan models lend credibility to the broad contention we put forth here: that the degree to which people are persuaded by off-bench comments depends on their own political views.

Last, we turn to analyses of whether the extent to which women in the sample identify as women affects their perceptions of the Supreme Court and its legitimacy after hearing a female justice make off-bench comments. We expect that it will, but that the effects will be constrained to respondents who share the same ideology as the justice to whom they are exposed. To evaluate this, we specify a series of OLS regression models that regress each of the three dependent variables on the measure of female identity, within ideological groups. Table 3 reports these findings. The first set of models do not subset female respondents by ideology, and it is clear that there are no overall interaction effects—this follows previous work demonstrating that female identity does not unite women above and beyond partisanship (Klar 2018). The second set of models only includes liberal respondents. Here, the interaction between the Kagan treatment and female identity is positive and statistically significant for the legitimacy battery. In the Kagan treatment condition, as female respondents’ level of gender identity increases, so too does their belief that the Supreme Court is legitimate, after reading an article in which Justice Kagan made such an argument. Similarly, the third set of models demonstrates that the interaction between the Barrett condition and gender identity is statistically significant and positive for conservative women, indicating that for conservative women, as the strength of their gender identity increases, they are more willing to adopt Barrett’s argument that the Supreme Court is legitimate. These effects do not hold for perceptions that the Court is political or legal (Hypotheses 3a and 3b), but instead are contained to the legitimacy battery (Hypothesis 3c).

In order to visualize these interaction effects, we plot the predicted values for the legitimacy battery as a function of the treatment condition and the strength of gender identity for women in the sample. These are presented in Figure 4. Figure 4(a) shows that for liberal women, as gender identity increases, so too does their evaluation of the Supreme Court as legitimate, but only when they are exposed to the Kagan condition. This effect does not hold for the Barrett condition, as expected. This effect is also not present in the control, which lends credibility to the finding that Kagan specifically elicited this response; there is no general link between gender identity and evaluation of the Supreme Court in the abstract. Figure 4(b) demonstrates that increases in gender identity led to increases in perceptions that the Supreme Court is legitimate for conservative women as well, but only in the Barrett condition, as expected. This link

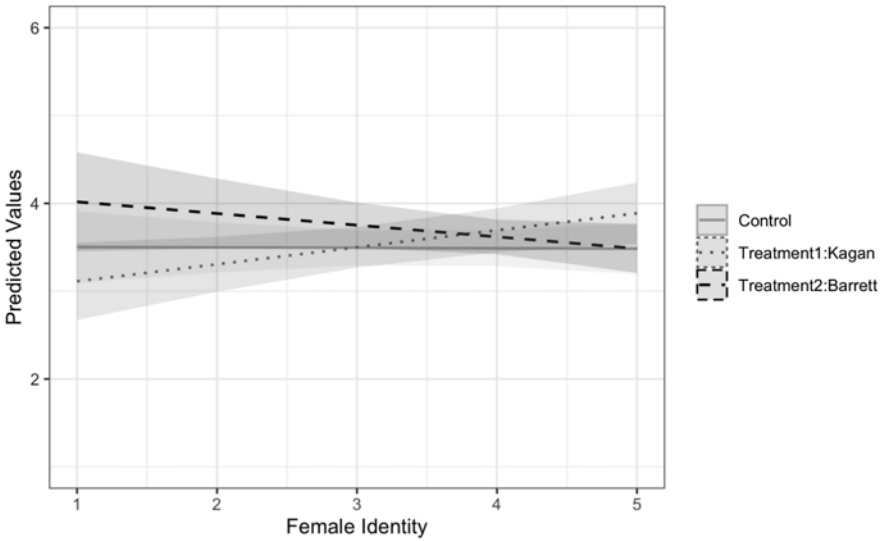


**TABLE 3.**  
**The Effect of Gender Identity on Perceptions of SCOTUS, by Treatment Condition and Respondent Ideology**

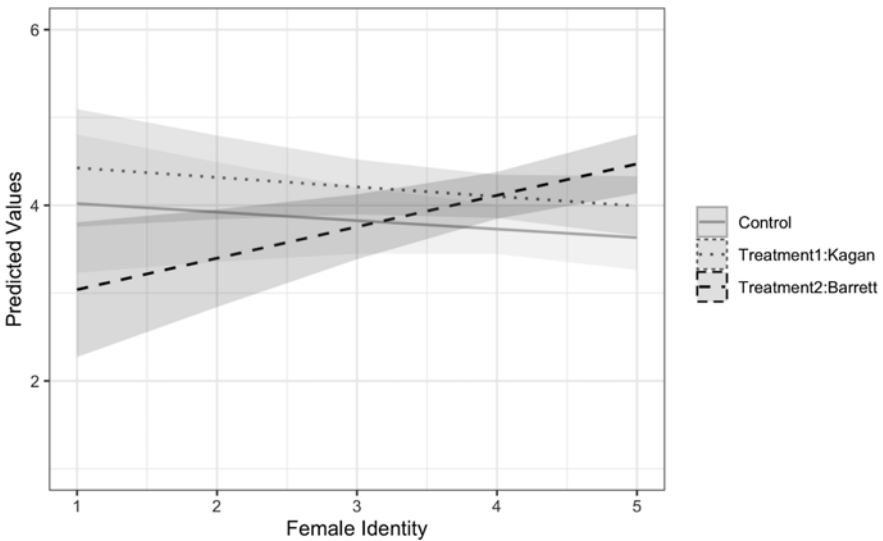
	Overall			Liberals			Conservatives		
	Political	Legal	Legitimacy	Political	Legal	Legitimacy	Political	Legal	Legitimacy
Intercept	2.48*** (0.31)	2.82*** (0.28)	3.55*** (0.22)	2.45*** (0.41)	2.84*** (0.41)	3.51*** (0.28)	2.42*** (0.72)	3.07*** (0.63)	4.12*** (0.52)
T1: Kagan	-0.45 (0.43)	0.12 (0.39)	-0.19 (0.31)	-0.05 (0.60)	0.16 (0.60)	-0.59 (0.41)	-1.47 (0.95)	0.14 (0.83)	0.42 (0.68)
T2: Barrett	0.01 (0.46)	-0.16 (0.42)	-0.11 (0.33)	-0.06 (0.69)	-0.31 (0.69)	0.64 (0.47)	-0.00 (1.01)	0.49 (0.88)	-1.44** (0.72)
Female Identity	0.20*** (0.08)	0.14** (0.07)	0.01 (0.05)	0.27** (0.11)	0.18* (0.11)	-0.00 (0.07)	0.25 (0.17)	0.07 (0.15)	-0.10 (0.12)
T1: Kagan * Female Identity	-0.09 (0.11)	0.05 (0.10)	0.12 (0.08)	-0.23 (0.16)	-0.04 (0.16)	0.20* (0.11)	0.14 (0.23)	0.13 (0.20)	-0.01 (0.17)
T2: Barrett * Female Identity	-0.16 (0.11)	0.09 (0.10)	0.09 (0.08)	-0.14 (0.17)	0.07 (0.18)	-0.13 (0.12)	-0.29 (0.24)	0.03 (0.21)	0.45*** (0.17)
R2	0.09	0.05	0.03	0.12	0.04	0.05	0.17	0.08	0.11
Adj. R2	0.08	0.04	0.02	0.09	0.02	0.02	0.14	0.05	0.08
Num. Obs.	529	529	529	176	176	176	141	141	141

Note: \*p<0.1, \*\*p<0.05, \*\*\*p<0.01; includes female respondents who passed at least one attention check. All models are OLS regressions. Models that include control variables presented in Appendix B; results robust.

(a) **Liberal Women Only**



(b) **Conservative Women Only**



**FIGURE 4.**  
**Predicted Perceptions that the Supreme Court Is Legitimate Based on Treatment Condition and Levels of Female Identity for Women, by Ideology.**

does not exist for conservative women exposed to the Kagan or control condition. Similarly, Amy Coney Barrett, a justice perceived as conservative, was able to activate conservative women’s gender identity for use in their evaluations of the Supreme Court.

We also analyzed whether *male* respondents’ gender identity affected the extent to which they were persuaded by the off-bench comments from two female justices. These results are presented in the supplementary material in Appendix B. Across these models,

we only see one significant interaction effect. Male respondents that strongly identify with their gender are less likely to say that the Court is political in the Kagan condition, compared to the control, and this effect is driven by conservative men. It is unclear exactly why this would be the case—it could be that these men are responding to another aspect of Kagan’s identity and, as a result, seeing her as more credible. However, to test this more rigorously, future work should vary the gender of the justice. Ideally, we would be able to examine how male identity impacts respondents’ reactions to justices when the justice is a male versus when the justice is a female. With the design of the experiment presented here, though, we are unable to do so.

On the whole, these findings illustrate that the extent to which off-bench comments can impact perceptions of the Supreme Court’s legitimacy *does* depend on the ideological and gender characteristics of the individuals exposed to the comments and the justices making the comments. Ideologically, liberals are more swayed by Kagan than they are by Barrett, while conservatives are swayed by both. Further, women’s sense of gender identity does matter when they hear female justices making off-bench comments—but only within ideological groups. A greater sense of female identity increases perceptions that the Court is legitimate, but only when the female justice conveying the message shares the same ideological identity. While all of these results are relatively minor shifts, this is common in experiments, especially one with such a minor intervention as this one (i.e., a short news article that only varies one word (“liberal” or “conservative”) between the treatments). Keep in mind that in the real world, media coverage would likely be more extensive in its coverage of the ideology of justices, which would likely produce stronger shifts in attitudes. Nevertheless, this minor intervention indicates that the effect of off-bench comments does depend on the ideology of the justice making the comment.

## DISCUSSION AND CONCLUSION

Overall, the survey results presented above demonstrate support for most of our hypotheses, with some mixed findings for the ideological and gender moderation hypotheses; while liberals were more swayed by Kagan than by Barrett, conservatives were swayed by both justices. That is, liberals in the Kagan condition had the highest level of support for the Court’s legitimacy and the least perception of the Court as political compared to liberals in either the Barrett or control conditions, as predicted. But conservatives in both the Kagan and Barrett treatment conditions viewed the Court as more legal and less political and had higher support for the Court’s legitimacy compared to the control condition (though it is noteworthy that the point estimate for conservatives was the highest in the Barrett condition, but not statistically distinguishable from conservatives in the Kagan condition). These results for our hypotheses are summarized in [Table 4](#).

Supreme Court justices’ off-bench rhetoric is a great example of justices recognizing the limitations of their institution and taking strategic action to ensure its continued efficacy. In taking such action, justices operate according to the long-theorized strategic model of judicial behavior. This strategic model of judicial decision making argues that Supreme Court justices make decisions based on their recognition of

**TABLE 4.**  
**Hypothesis Testing**

Hypothesis	Support
Political Perception	✓
Legal Perception	✓
Legitimacy Support	✓
Ideological Moderation of Political Perception	Mixed
Ideological Moderation of Legal Perception	Mixed
Ideological Moderation of Legitimacy Support	Mixed
Gender Identity Moderation of Political Perception	X
Gender Identity Moderation of Legal Perception	X
Gender Identity Moderation of Legitimacy Support	✓

Note: ✓ indicates hypothesis was supported by the empirical results; X indicates no support.

the constraints imposed on them by external actors, such as public opinion and Congress (Spiller and Gely 1992; Epstein and Knight 1998). Indeed, recognizing the Court's lack of enforcement power and concerned with declining approval among the public, justices strategically engage in public relations, presenting the Court in a singularly apolitical light in their speeches and interviews.

As scholars have demonstrated, this rhetoric (Justice Roberts's confirmation hearing comment "Judges are like umpires" is a prime example) aims to shore up the Court's institutional support among the public by teaching the public the lesson that courts are above politics and that courts are fundamentally different institutions than the other familiar institutions of government. In this regard, our research contributes to scholarship on how the Supreme Court takes both policy (e.g., responding to congressional court-curbing bills) and nonpolicy (e.g., attending the State of the Union address) actions to bolster its institutional and public support. Yet, the question that scholars are just beginning to explore is whether this rhetoric has the intended effect of increasing the public's confidence in the Court as a legitimate and credible institution worthy of respect and deference, even when the Court issues unpopular decisions. Judging from recent controversial Supreme Court nominations that split Republicans and Democrats in the Senate down the middle of the aisle and featured increased partisan rhetoric over the nominee's past (in the case of Brett Kavanaugh) and the timing and pace of confirmation (in the case of Amy Coney Barrett), the Court's attempt at presenting itself as apolitical is now more difficult than ever. These events combined with increased media coverage that frames the Supreme Court and its decisions in partisan and ideological terms present good reason to expect that the Court's attempts at institutional maintenance through legitimizing rhetoric will fall flat to a public increasingly socialized to see the Supreme Court as just another partisan institution. Scholars have responded to these changes by positing and finding that public approval of the Court is tied to people's own ideological compatibility with the Court and the decisions it makes, as well as with the cues given by the elite actors they trust.

Yet, despite these changes in media coverage and Supreme Court headlines, our research demonstrates that justices' institutional maintenance does have at least some of the desired effect, as we find that respondents presented with legitimizing rhetoric from ideologically different Supreme Court justices had higher perceptions of the Court's legitimacy. However, in line with recent research on the sources of Supreme Court public support, we do find that the public's own ideology and descriptive representation moderates the effect of this legitimizing rhetoric. These findings speak to the interplay between positivity theory and ideological/party cue explanations of public support for the Supreme Court. In the words of Hansford, Intawan, and Nicholson (2018), the public views the Court as neither "primarily legalistic or political." Symbols of law and courts, in this case, legitimizing rhetoric, can impact how the public views the Court (as a legal or political body) and its belief in the credibility of the institution. At the same time, such views are also shaped by individuals' own ideological and policy preferences and how those preferences align with the source of the rhetoric.<sup>22</sup> Keep in mind that while we do find that ideology moderates respondents' reactions to the justices, in line with previous work that finds ideology important in attitude formation about the Supreme Court, most Americans identify as ideologically moderate and are not particularly ideologically savvy (Converse 1964; Kinder and Kalmoe 2017).

In the future, work should investigate whether these findings hold for other justices as well. As women are often stereotyped as more trustworthy and brought in following scandals in order to increase legitimacy (Goetz 2007; Valdin 2019; Funk, Hinojosa, and Piscopo 2021), it could be that female justices are more capable of eliciting higher senses of legitimacy in the public than are male justices.<sup>23</sup> Similarly, future work could examine whether these effects persist at lower-court levels—as well as whether they extend to other important social identities, such as race. The confirmation of Justice Ketanji Brown Jackson presents the opportunity to investigate the role of racial identity in informing public perceptions of legitimacy. The Supreme Court now features a Black justice on either side of the ideological spectrum (Justice Jackson and Justice Clarence Thomas). Thus, future work should replicate the survey experiment described in this project and test how the interaction of white and Black respondents' ideologies and strength of racial identity affect support for the Court.

Moreover, important recent developments in the Court's jurisprudence make the continued study of justices' rhetoric and its impact especially timely. Namely, our survey experiment was fielded prior to the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022), which overturned the constitutional right to an abortion established in *Roe v. Wade* (1973). While public opinion polls show that the decision has decreased the Court's specific support, especially among Democrats,<sup>24</sup> new

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22. We note the increasingly compelling evidence for policy, partisan, and ideological preferences as important drivers of public attitudes toward the Supreme Court. See Strother and Gadarian (2019) and Gadarian and Strother (2023).

23. Note that Strother and Glennon (2021) demonstrate that off-bench comments from Sotomayor and Roberts increase perceptions of Supreme Court legitimacy, and Krewson (2019) finds some effect for Sotomayor and Alito.

24. "Majority of Public Disapproves of Supreme Court's Decision to Overturn *Roe v. Wade*," *Pew Research Center*, July 6, 2022, <https://www.pewresearch.org/politics/2022/07/06/majority-of-public-disapproves-of-supreme-courts-decision-to-overturn-roe-v-wade/>; "Positive Views of Supreme Court Decline Sharply Following Abortion Ruling," *Pew Research Center*, September 1, 2022,

research finds that this decision also had negative consequences for the Court's institutional legitimacy (Gibson 2023). As Gibson (2023) summarizes: "*Dobbs* produced a sizable dent in institutional support, perhaps an unprecedented dent" (abstract). This sizable drop in legitimacy calls into question the prevailing research finding that the Court's legitimacy is largely stable despite controversial rulings (Nelson and Tucker 2021) and that legitimacy bounces back given enough time (Mondak and Smithey 1997).<sup>25</sup> Given this landmark decision that has potentially unprecedented long-term negative effects on the Court's legitimacy, it may be a tall order for justices to restore that legitimacy using legitimizing public rhetoric. Of course, this won't stop them from trying. In characteristic fashion, Chief Justice Roberts sought to discourage tying disapproval of the Court's decision to questioning its legitimacy, remarking that "simply because people disagree with an opinion is not a basis for criticizing the legitimacy of the court" and noting once again that the role of the Court "doesn't change simply because people disagree with this opinion or that opinion or with a particular mode of jurisprudence."<sup>26</sup> Future research should seek to address the impact of justices' off-bench comments in this post-*Dobbs* era. Will legitimizing public rhetoric continue to positively shape public perceptions of the Court's legitimacy, or will the effects be seen primarily among conservatives who are more likely to support the Court's decisions? We suspect that the identity of the messenger will continue to matter, up to a point. In our survey, liberals were not responsive to conservative public rhetoric prior to *Dobbs*. This will certainly not change after *Dobbs*. However, for liberals upset with the Court's decisions, it remains to be seen whether even legitimizing rhetoric from like-minded justices will continue to have a positive effect on their perceptions of the Court's legitimacy.

In sum, this research continues to show the limits to our previous understanding of sources of support for Supreme Court legitimacy. Positivity theory, built on the supposed positive effects on public approval from exposure to legitimizing symbols of law and courts, including justices' rhetoric, predicts that this rhetoric will lead to unmoderated, higher support for the Court's legitimacy. While positivity theory's expectations are supported by our findings that legitimizing rhetoric increases support across ideological groups, our article contributes to a growing body of literature demonstrating the importance of ideology, partisanship, and descriptive representation to understanding how and why the public supports the Supreme Court.

## SUPPLEMENTARY MATERIAL

The supplementary material for this article can be found at <https://doi.org/10.1017/lsi.2023.69>

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<https://www.pewresearch.org/politics/2022/09/01/positive-views-of-supreme-court-decline-sharply-following-abortion-ruling/>.

25. Interestingly, Gibson writes: "Owing to the importance of the abortion issue to many Americans . . . my suspicion is that the Court's legitimacy will not soon rebound" (36).

26. Robert Barnes and Michael Karlik, "Roberts Says Supreme Court Will Reopen to Public and Defends Legitimacy," *Washington Post*, September 10, 2022, <https://www.washingtonpost.com/politics/2022/09/10/supreme-court-roberts-legitimacy/>.

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