

IDEOLOGICAL VOTING IN SUPREME COURT FEDERALISM CASES, 1953-2007*

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The Rehnquist Court's "federalism revolution" has provoked an increase in research regarding an apparent change in the pattern of Court decisions. While previous literature has discussed the ideological motivations of these decisions, this article conceptualizes attitudes toward federalism cases as having two dimensions: preferences regarding the structural division of government authority and preferences for different policy outcomes. This article provides a comprehensive analysis of individual justice votes in federalism cases from 1953 through 2007. While controlling for other institutional and legal factors that may influence decision making, the results show that individual ideology influences federalism voting in two ways: 1) conservative justices are generally more likely to vote in favor of states' rights, and 2) the size of this difference varies greatly depending on whether a states' right vote leads to a more or less liberal policy outcome.

Efforts to curb congressional power throughout the 1990s and into the 2000s by the Rehnquist Court have brought the issue of federalism back into political debate. Congress has steadily expanded its jurisdiction under the Commerce and Supremacy clauses since the New Deal, and this expansion was largely left unchecked by the Supreme Court until recently (Homan, 1995). For example, between 1952 and 1993, 44 federal laws were struck down by the Court compared to 355 state laws. Between 1994 and 2000, 24 federal laws were struck down along with 25 state laws (Pickerill and Clayton, 2004:233). The greatly increased relative focus of the Court on reviewing federal legislation has led many scholars and commentators to proclaim that the Rehnquist Court started a "federalism revolution" (for example, Chen, 2003; Clayton and Pickerill, 2004; Colker and Scott, 2002; Cross and Tiller, 2000; Pickerill, 2003). However, the causes and consequences of this increased focus on federalism are still widely debated. The Rehnquist Court's recent federalist decisions are also strongly intertwined with larger issues concerning judicial review and the Court's role in protecting federalism and state sovereignty.¹ In addition to the policy repercussions, the varying potential motivations behind federalism cases have different normative implications regarding the treatment of federalism by the Court, as well as for judicial review in general.

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¹ This debate regards Wechsler's (1954) assertion that political safeguards are in place to protect state sovereignty and, thus, judicial restraint should be practiced on federalism cases. Calabresi (1995) argues against this theory, claiming instead that judicial safeguards are needed to protect the constitutional authority of states. Justice Scalia's concurrence in *Gonzalez v. Raich* (2005) in which he went against his usual support for states' rights and sided with the federal government's authority to restrict the use of medical marijuana within states may be an example of a justice making a federalism ruling based on the policy rather than beliefs on the principles of federalism.

This article seeks to contribute to the analysis of this Federalism Revolution by analyzing a more complete conception of how ideology might influence voting on federalism cases. It does this by testing for two different dimensions of preferences that might influence a justice's decision, as opposed to much of the previous research, which considers a justice's ideology to be unidimensional. On the one hand, a justice's ideology may influence what he or she perceives is the proper division of power between the federal and state governments and, thus, lead to more principled decisions to either give the federal government more or less authority regardless of the issue at hand. A more policy-based attitudinalism, however, might influence voting in a different way. Justices may make decisions based on their beliefs regarding the specific policies in the cases, placing less of an emphasis on preferences for the structural arrangement of the federal system.² While the argument that justices vote ideologically (either in federalism cases or in general) is certainly not a new one (see, for example, Baybeck and Lowry, 2000; Cross and Tiller, 2000; Solberg and Lindquist, 2006), the literature on this topic provides an incomplete account of how the Supreme Court has dealt with federalism issues throughout its history. Much of the analysis is qualitative or focuses primarily on the Rehnquist Court. I seek to fill this gap by engaging in a thorough quantitative analysis of federalism cases over the span of multiple Courts.

Other explanations for the "Federalism Five's"³ support for states' rights have run the gamut of arguments regarding legal and principled decisions (Eskridge and Ferejohn, 1994; Young, 2005), the institutional and political context (Chen, 2003; Clayton and Pickerill, 2004; Pickerill and Clayton, 2004), and attempts by the Court to limit Congress's authority while increasing its own power over policy outcomes (Colker and Brudney, 2001; Whittington, 2001). There is still wide debate over the relative strengths of legal, institutional, and attitudinal influences, and these other influences are important to consider as competing models to control for in the analysis. After reviewing the literature regarding the recent Supreme Court federalism revolution, I hypothesize that much of the Rehnquist Court's support for states' rights has to do with the ideological nature of the state and federal policies under consideration, rather than preferences over the legal arrangement of the federal contract or other institutional or legal influences. In addition, I argue that this pattern of behavior is not a recent departure from previous voting patterns on the Supreme Court: voting on federalism cases in the post-war era has largely been driven by ideological concerns in the Warren, Burger, and Rehnquist courts. I test these theories using empirical data from Supreme Court federalism cases from 1953 through 2007.

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³ Chief Justice Rehnquist and Justices Scalia, Thomas, O'Connor, and Kennedy have typically made up the majority in cases ruling in favor of states' rights, and they have thus been given this label.

THEORIES OF COURT DECISION MAKING

A number of different arguments have been made in the scholarly research regarding the motivations behind the Rehnquist Court's rulings on federalism cases. In this section I will provide a brief rundown of these competing arguments and review some of the relevant literature.

Legal-Based Arguments. The first category of potential motivations for the voting behavior of justices argues that justices base their decisions on legal standards and are constrained by the Constitution and congressional statutes. The argument roughly follows that the Supreme Court has relied primarily on legal standards when deciding the outcomes of federalism cases. This is the position supported by Eskridge and Ferejohn (1994) in their discussion of what guides the disposition of Commerce Clause cases in the Supreme Court. The authors cite three different legal considerations when looking at the validity of a state or federal law. In cases regarding the constitutionality of state laws, they argue that the Court will be more tolerant of state allocative or development policies rather than redistributive policies that require greater national uniformity. In addition, they consider whether the state policy has large, uncorrected external effects on other states (and argue that the Court will uphold laws with only minor external effects, particularly if the policy is not a distributive policy). The third legal consideration applies to federal legislation, and the authors argue that the Court will be more supportive of federal laws that place a low level of burden on the states' core functions. Through a qualitative analysis of a sample of major federalism cases, the authors find that ideology plays a small role (in conjunction with legal considerations) in determining decisions regarding federal laws. The Court will be more likely to invalidate federal laws that place a large burden on core state functions and are enacted by an ideologically divergent Congress, while they are more likely to support federal laws with few burdens on the states that are enacted by an ideologically similar Congress.

While there is little consensus regarding how legal-based arguments should be tested, there are a few empirical observations we would expect to see if justices are truly voting based on legal considerations. For one, we might expect stronger deference to precedent (Brenner and Stier, 1996; Songer and Lindquist, 1996). This may be manifested in changes in patterns of ruling following landmark cases. In addition, following Eskridge and Ferejohn (1994), we might expect that different types of state policies will have an effect on the votes of justices. Policies addressing core functions of states may be supported more often than other types of policies, and we may also expect cases that are clearly related to interstate commerce will be more likely to be decided in favor of federal authority as opposed to other cases.

Ideological Arguments. Preference-based models of Court decision making hypothesize that justices will vote for or against states in a large part based on their policy preferences. There are strong theoretical reasons to expect that justices allow their personal policy preferences to influence their voting in Supreme Court cases. The

leading proponents of the attitudinal model of Supreme Court decision making, Segal and Spaeth (2002), outline a number of reasons why justices have the institutional freedom to decide cases based on their policy preferences. For one, Supreme Court justices are not electorally accountable and can only be removed in the extremely rare event of an impeachment by Congress. Therefore, we should not expect justices to be overly concerned with institutional constraints. The Court also has control over its docket and is the court of last resort. Thus, it can decide to hear cases that are the best vehicles to push their policies, if they so choose.

Under the attitudinal model, we should not expect that this leeway provided to the Court should be any different in federalism cases as opposed to other constitutional and statutory issues. There is just as much room for interpreting federalism doctrine in different ways as there is in other constitutional doctrines handled by the Court. Indeed the situations in which national authority is more appropriate than state sovereignty have not been clearly defined, and the Court's allowance of Congress to expand the scope of the Commerce Clause in the twentieth century has only further blurred the lines with regards to what constitutes interstate commerce and when national legislation should preempt state sovereignty (Friedman, 1997). Therefore, justices should be able to reasonably justify either a pro-state or pro-federal position in a case depending on how they feel about the substantive policy consequences of each disposition.

As mentioned above, there are two ways that preferences may come into play when considering voting on federalism cases. The first way pertains to the decisions made by the justices in regards to how authority should be divided between the federal and state governments. Young (2005), in response to claims that members of the Court are only selectively upholding federalism following the *Gonzales v. Raich* decision, argues that the "Federalism Five" have, in fact, consistently stuck to a principled stand in support of states' rights. In the *Raich* decision, the liberal justices who would be expected to support the liberal state policy legalizing medicinal marijuana under the attitudinal model instead voted in favor of the federal government. Likewise, Chief Justice Rehnquist, Justice O'Connor, and Justice Thomas all voted in favor of the liberal state policy, suggesting a principled commitment to states' rights. Only Justices Kennedy and Scalia broke from their normal federalism stances (and Young also argues that Scalia's vote is not completely out of line with his legal principles since he is an "executive branch conservative," p. 6). Thus, a discrepancy in voting by only one or two justices is not enough to discredit the principled federalism argument in favor of the ideological hypothesis. In addition, Young argues that we should not expect that justices are ruling based on policy preferences in federalism cases since they do not show this pattern in other areas of law. We do not think justices truly agree with the ideas of unsavory groups such as neo-Nazis, yet the justices still protect the freedom of speech of these groups in First Amendment cases despite their personal opinions regarding the speech at hand. Under this viewpoint we would expect individual justices to consistently vote for or against states' rights, regardless of the issue at hand.

However, along with having preferences toward the structure of federalism, justices also have preferences regarding the specific policies being considered in any given case. Justices may therefore have to weigh their preference for (or against) states' rights against their preference to uphold (or overturn) a policy. These different preferences may not be in conflict, but when they are the second ideological argument suggests that justices will care more about the policy-based preference than the structural preference. We should then see conservative justices who are normally supportive of states' rights voting in favor of federal authority when a pro-state vote would advance a substantively more liberal policy (and vice versa for liberal, pro-federal-government justices).

This is similar to the ideological theory proposed by Baybeck and Lowry (2000) and Cross and Tiller (2000). While these authors do advance a two-dimensional conception of ideology on federalism cases, there is still room to build on their research. Both studies look at a relatively small sample of cases; Baybeck and Lowry use a sample of 94 preemption cases from 1953 to 2007, while Cross and Tiller look at 85 federalism cases from 1985 to 1997. A larger sample of cases would allow scholars to determine how enduring the trends in federalism voting are and get a better idea as to how different Courts might behave. Their data show how liberal and conservative justices differ in voting along these two attitudinal dimensions by simply comparing the percentages of pro-state and pro-federal votes for liberal and conservative policies. A more expansive quantitative analysis can provide more information as to the strength and significance of these differences, while also allowing the researcher to control for other variables. Collins (2007) does perform an integrated, quantitative analysis of justice votes, finding strong effects for ideology as well as other institutional variables. However, his analysis is limited to the Rehnquist Court and, thus, does not explain behavior of previous Courts. The literature on federalism decision making lacks a comprehensive statistical analysis of cases over the span of multiple Courts.

Institutional/Separation-of-Powers Arguments. Another area of research has focused on explaining the federalism rulings of the Rehnquist Court by focusing on the institutional and political contexts of the rulings. This research tends to argue that the shift toward pro-state federalism rulings occurred due to the changing institutional environment in which the Court was operating, rather than changes in the ideological positions or legal interpretations of the justices. Clayton and Pickerill (2004) argue that the Supreme Court's stance on federalism shifted so drastically because it mirrored changes in the political environment regarding attitudes toward federalism. This argument relies on the expectation that the Supreme Court will issue rulings that are relatively close ideologically to the ruling coalition in the other branches of government for two reasons. The first is that the members of the Court are chosen by the ruling coalition, and thus these members are likely to have similar ideological positions. Second, in the case of transitions of power in government, the Court restrains its rulings due to the institutional checks on its power by the other branches. According to this separation-of-powers view, if the Supreme Court were to decide

cases too far ideologically from Congress, it would face potential punishments from Congress (Eskridge, 1991; Spiller and Gely, 1992).⁴ Clayton and Pickerill analyzed the campaign platforms of the Democratic and Republican parties from 1960 through 1996 and coded their statements on federalism, and thereby showed that both parties made a growing number of references to federalism in their platforms. In particular, the Republican Party emphasized a form of fixed federalism whereby the states and federal government had clear and separate powers. This resulted in the Republican Party nominating justices that emphasized a pro-state view of federalism and thus spurred the federalist revolution of the Rehnquist Court.

These institutional models of Supreme Court decision making suggest that the rulings of the Court will reflect the political context outside of the Court due to various institutional constraints on the Supreme Court. We would expect then that as the other branches of government become more or less supportive of federal authority, Supreme Court rulings should reflect these changing preferences. These constraints can reflect themselves in a couple of ways when it comes to federalism cases. On the one hand, the relevant preferences of Congress and the president may be those regarding the distribution of state and federal authority, as mentioned above. On the other, it may be the case that the substantive ideological preferences of Congress and the president matter more, and thus the general ideology of the other branches is a stronger constraint on the Court. Either way, if the institutional model of decision making is correct, we should expect that the preferences of Congress and the president are important influences on justices' rulings on federalism cases, rather than solely the justices' own preferences and interpretations of legal considerations. Likewise, the actions of other relevant actors, such as amicus briefs from the solicitor general or state attorneys general, may also influence the propensity of a justice to vote in favor of or against states' rights.

Power-Conflict Arguments. A third category of explanations of the federalism revolution of the Rehnquist Court emphasize some variation of the Court being motivated by a desire to limit the expansion of congressional power while increasing the Court's own power over policy. A milder version of this argument is made by Bednar and Eskridge (1995). They argue that cases such as *United States v. Lopez* (1995) can be seen as a "warning shot" to Congress. The expansive use of the Commerce Clause *had* stretched the bounds of constitutional authority for Congress, and *Lopez* served to remind Congress that its authority was restricted by constitutional constraints, and the Court would serve to monitor congressional actions. Colker and Brudney (2001) advance the most extreme version of this argument. They argue that the federalism revolution was a concerted effort by the Court to restrict the power of Congress while making the judiciary much more influential in deciding the nature and scope of federal policies. Furthermore, this behavior by the Court cannot be explained merely by the

⁴ While Congress may not be able to easily remove justices or cut their salaries, they may be able to overturn their rulings with new legislation or even pass legislation to restrict the jurisdiction of the Court.

Court trying to push their preferred policies, as the Court invalidated congressional legislation across a wide range along the ideological spectrum (p. 86). The authors argue that the Court has struck down legislation while also impeding Congress's future ability to craft legislation by creating unrealistic and sometimes impossible standards for Congress to follow in creating a legislative history that shows a clear need for legislation. In doing so the Court has attempted to treat Congress like a lower court and limit its ability to draft national policy.

The support for these arguments generally relies on qualitative analysis of specific rulings by the Court. This makes it very difficult to develop clear predictions regarding the behavior of the Court aside from an increase in the invalidation of federal statutes (which is the observation that spurred much of the research on federalism rulings in the first place). However, Whittington's (2001) work may point to one way to measure situations in which the Supreme Court may be more willing to try to strip some power away from Congress. His argument that institutional changes have decreased the likelihood and increased the costs of a congressional response suggests that we may be able to create a measure for the likelihood of Congress responding to a disliked ruling. Factors such as having a divided government or Congress, or low party unity in Congress, may decrease the ability of Congress to react to the Court effectively. Therefore, similar to the institutional model, we may expect that as institutional factors make a congressional response more costly (and thus less likely), the Supreme Court will be more likely to rule in favor of states' rights rather than federal government authority.

Each of these categories of explanations for the Rehnquist Court's federalism rulings provide sound theoretical arguments as to what has influenced Court decision making. However, they all suffer from common weaknesses in their empirical support. For the most part, the research testing these different theories has relied upon a qualitative analysis of small samples of cases, and there have been few attempts at a thorough statistical analysis of Court federalism rulings. There remain questions regarding how well these models explain the full sample of federalism rulings, as most of the literature mentioned has also focused solely on the Rehnquist Court. Therefore, the previous research does not provide a comprehensive explanation of Supreme Court federalism rulings throughout history and is unable to determine whether and how federalism rulings during the Rehnquist Court deviate from federalism rulings under other chief justices.

In this article, my hypothesis is that justices will vote for or against states in large part based on the ideological position the state takes relative to the national government, rather than simply basing their votes on principled views regarding federalism. Conservative justices will be more likely to issue a pro-state vote when such a vote results in a policy outcome that is more conservative than that of a pro-federal vote, and more likely to issue a pro-federal vote when the pro-state vote has a more liberal outcome than a pro-federal vote. Likewise, liberal justices will be more likely to issue a pro-state vote when the policy resulting from such a vote is more liberal than with a

pro-federal vote, and more likely to issue a pro-federal vote when the pro-state vote leads to a more conservative policy than a pro-federal vote. This is not to say that ideological preferences for or against state sovereignty will not have an impact, as more conservative justices may genuinely support states' rights, all things being equal. But the effect of this federalism dimension of ideology should be significantly constrained by the effect of the substantive policy outcomes of a justice's ideological preferences. I also consider and control for other possible explanations of Supreme Court voting in my analysis.

RESEARCH DESIGN

It is first important to briefly discuss what criteria I used to distinguish federalism cases from non-federalism cases. Clearly, state and federal laws are often challenged based on claims that they violate constitutional provisions or federal statutes, but they are not always federalism claims. What I am concerned with here is the authority that the Supreme Court does or does not provide to the states in areas where cases concern claims as to whether the state or federal government has jurisdiction. This can happen either from challenges to state laws that are inconsistent with federal or constitutional law or from challenges to federal laws that are inconsistent with the notion of state sovereignty (Collins, 2007). Going by this guideline, when a federal law is challenged I consider it to be a federalism case if the case challenges Congress's authority to pass legislation, excluding cases claiming violations of the Bill of Rights (although including cases concerning the 10th Amendment, which clearly deals with federalism). When state laws are challenged I also excluded cases dealing with violations of the first nine amendments and instead focused on cases in which the validity of the state law is challenged on the basis of federal preemption of state jurisdiction under the Supremacy Clause, the Commerce Clause, or the Enforcement Clause of the 14th Amendment.⁵

However, not all cases in these issue areas are directly related to federalism. Therefore these non-federalism cases were separated through careful reading and coding from those cases that do deal with issues of federal vs. state authority. Cases were only included if the challenge was based on a claim that a federal statute violated state sovereignty, or that a state law infringed on a jurisdiction under federal authority or was contrary to a federal statute. The primary characteristic looked for in the coding was a claim that one level of government (states or federal) lacked the authority to act because the jurisdiction lay with the other level. The case of *Reno v. Condon* (1999)

⁵ The Spaeth Database cross-identifies many different issues as constitutional issues related to federalism even if they are not coded as federalism. The cases coded as federalism cases for the sample included cases coded as federalism or national supremacy/preemption cases in the Spaeth Database, as well as cases in the issue areas covering state sovereignty over Native Americans, labor standards and labor-management disputes, state taxes, state regulation of businesses, federal utility and transportation regulations, and federal taxation. Not all cases in these areas were related to federalism claims, so these issue areas were used as a starting point for compiling cases and then the cases were further filtered through coding.

Table 1
Case Level Supreme Court Votes and Ideological Direction

Court	Decision	Pro-state Ideological Direction		N	
		Conservative	Liberal		
	Pro-State	115	193	308	47.98%
	Pro-Federal	111	223	334	52.02%
	N	226	416	642	
		35.20%	64.80%		

was thus coded as a federalism case since it involved a claim by South Carolina that the Driver's Privacy Protection Act (prohibiting state DMVs from releasing driver information to individuals or businesses) violated the 10th Amendment. The Court ruled in favor of the federal government, claiming that the DPPA fell under Congress's authority to regulate interstate commerce. However, cases like *Federal Power Commission v. Sierra Pacific Power Co* (1955) were not coded as federalism cases. Even though they were challenges to federal regulations, the challenges were based on the reasonableness of the regulation, and not a claim that the federal government or agency did not have the authority to issue the regulation.

The Supreme Court Database is an excellent and commonly used resource for analyzing Supreme Court decisions as it contains a very thorough collection of case-level data from the Warren Court to the present, including the ideological direction of rulings and the votes of the individual justices.⁶ Cases are also coded based on the constitutional or statutory issue under consideration and the votes of each justice for each case. Using the justice-centered data set from this database, I obtained data on all of the cases coded as federalism cases to develop a sample to use to test the competing hypotheses. For federalism cases, this database codes all cases in which the Court ruled in favor of federal-authority liberal decisions, and all cases in which the Court ruled in favor of state-authority conservative decisions (working under the reasonable assumption that conservatives favor states' rights and liberals prefer federal government authority). However, in addition to this structural dimension of federalism, these cases also have a substantive policy impact due to the state and federal policies that are being considered in the case. I therefore recoded the case data to include not only whether justices vote in favor of the state or federal government, but also the substantive ideological direction of those votes based on the policy that is either upheld or struck down. What is important here is whether a pro-state vote leads to a policy outcome that is more or less conservative than the outcome of a pro-federal vote. So if a case deals with the constitutionality of a liberal state policy (or a conservative federal policy), the ideological direction of a pro-state vote is coded as liberal.

⁶ The initial legacy version of the Spaeth justice-centered data set consisting of the 1953-2007 terms was used for this article.

Conversely, in a case dealing with a conservative state policy (or a liberal federal policy), a pro-state vote is coded as conservative.⁷

The relevant federalism cases for the project (using the criteria outlined above) were then read to determine the ideological positions involved in the cases. The dependent variable is a dichotomous measure of whether an individual justice voted in favor of federal authority (coded 1) or state authority (coded 0). Some federalism cases, such as land-ownership disputes between states and the federal government, did not have a clear ideological leaning, and were thus dropped from the sample.⁸ The remaining cases were then coded based on whether an outcome in favor of states' rights would result in a more conservative (coded 0) or more liberal (coded 1) policy than an outcome supporting the federal government's authority. The coding of the outcomes as liberal or conservative was based on the criteria outlined and used by the Supreme Court Database for all non-federalism cases.⁹

Table 1 provides a breakdown of how many of the cases in the dataset were coded as liberal and conservative by both the Spaeth Database coding and the new coding for the present purposes. Of the 642 cases in the data set, 52.02 percent of them were decided in the liberal direction by the traditional standard where pro-federal rulings are deemed liberal. Under the new coding, we see that 64.8 percent of the federalism cases in the sample dealt with cases where a pro-state vote would lead to a more liberal policy outcome, as opposed to the 35.2 percent of cases where a pro-state vote would lead to a more conservative policy outcome. This breakdown of the ideological direction of the pro-state position is particularly interesting since it is on those cases where the state position is more liberal that we should expect there to be the most conflict between the structural and policy attitudinal dimensions of justices. Conservative

⁷ In some cases, such as the highly salient *Lopez and U.S. v. Morrison* (2000) decisions, states actually lobbied in favor of the federal policies enhancing federal gun-control restrictions and domestic-violence prosecution, respectively. However, the pro-state position in these cases is still coded as conservative, since the pro-state decisions in these cases led to the striking down of liberal federal policies and, thus, a more conservative policy outcome. Therefore, the coding of the ideological direction of pro-state votes is a reflection of the policy outcomes rather than the actual policy preferences of the states. As the examples of *Lopez* and *Morrison* show, states may actually prefer liberal federal policies to be passed, but a states' rights vote that strikes down these policies still results in a more conservative policy outcome.

⁸ One example of such a case is *California v. United States* (1982), which considered the boundary of the high-water mark and the application of the Submerged Lands Act in determining whether California or the United States owned oceanfront land. *United States v. Florida* (1975) dealt with the definition of the seaward boundary of the continental shelf with regards to whether the U.S. or Florida held the rights to submerged natural resources. These two cases are typical of the land-ownership disputes heard by the Court, and it is not clear that granting land ownership to the federal government would result in a more liberal or conservative policy outcome than if ownership were granted to the states.

⁹ For example, the case of *Alden v. Maine* (1999) is coded in the Spaeth Database as having a conservative outcome since it upholds state immunity from private suits. It is also coded as having a conservative policy outcome (since the upheld state position is more conservative) under my coding since the decision ruled against employees claiming a violation of the Fair Labor Standards Act. In the case of *South Central Bell Telephone v. Alabama* (1999) the Supreme Court struck down a state franchise tax as being in violation of the Interstate Commerce Clause, and is thus coded as being a pro-federal and thus liberal ruling in the Spaeth Database. However, under my coding the state of Alabama's position of taxing businesses is a substantively liberal policy and, thus, the decision to strike down the state law in favor of the Commerce Clause had a conservative policy outcome.

justices must decide between their structural preference for greater state sovereignty and their preference to advance more conservative policies, while liberal justices have the opposite tradeoff between providing the federal government with more authority and upholding a liberal state policy. This conflict is present in almost two-thirds of the federalism cases in the sample (see Table 1), providing ample observations to determine how the individual justices deal with this conflict. Also note that the proportion of cases decided in the pro-federal and pro-state direction for each of the categories of state ideological position roughly matches the proportion of the decisions for the sample as a whole. So there is not a pattern of the Court as a whole ruling in favor of one government or the other based on the ideological direction of a pro-state vote. It also means that in almost two-thirds of the sample the ideological direction of the policy outcome is in the opposite direction of the structural coding of the Spaeth database. That is, a structurally conservative pro-state decision led to a more liberal policy, while a structurally liberal pro-federal decision led to a more conservative policy.

The primary independent variable of interest is the ideology of the justice. Two different measures were used for justice ideology. The first measure involved using the Martin-Quinn scores for each justice for each year of the study (higher values indicate more conservative justices). However, these scores are developed from the voting patterns of the justices, and thus present a potential endogeneity problem when they are used to predict the votes of justices.

There is good reason to believe that this is not a serious problem in this analysis since I am only attempting to predict votes in one area of Supreme Court cases. Furthermore, the ideological direction in federalism cases is typically measured by assuming that pro-federal government votes are liberal and pro-state government votes are conservative, which is a different conception of federalism ideology than I am using here. In my study I am trying to predict whether justices are supporting substantively liberal or conservative policies in their federalism votes, rather than just whether the justices are supporting the state or federal government. However, while I feel that endogeneity is not a serious problem, I test this assumption by using a second measure of justice ideologies. My second measure uses the Segal-Cover scores, which measure ideology based on newspaper editorials at the time of the justices' confirmation hearings. This variable is continuous from 0 to 1, with 1 being attributed to the most liberal justices and 0 being attributed to the most conservative justices. The coding for the Segal-Cover scores has been reversed so that both ideology variables are measured so that higher values indicate more conservative justices. For ease of interpretation, the Martin-Quinn scores have also been rescaled to match the scale of the Segal-Cover scores so that both measures range from 0 (most liberal) to 1 (most conservative).

Since I predict that the effect of ideology will vary based on the ideological direction of the state policy, the ideology measures are interacted with a state-vote-direction variable (coded 1 if a pro-state outcome is more liberal than a pro-federal outcome and coded 0 if the pro-state outcome is more conservative than a pro-federal

outcome). The constituent variable for ideology indicates the effect of ideology on a justice's vote in cases where the state's position is more conservative (and thus the interaction term is equal to zero). The coefficient is therefore expected to be negative, indicating that more conservative justices will be less likely to vote in favor of the federal government. However, my hypotheses predict that increasing conservatism will make a justice more likely to vote in favor of the federal government when the pro-state position is liberal, and thus the coefficient for the interaction should be positive and should be comparable in size to the coefficient for the constituent-ideology term. If justices are truly voting based on legal standards we would expect no significant impact of either the ideology variable or its interaction with state-vote direction. If the ideology variable is statistically significant, but the interaction term is not (or the interaction coefficient is the same sign as the constituent ideology coefficient), then that would suggest that justices are taking principled stands for or against state sovereignty, regardless of the ideological position of the state policy.

To test the other models, other case-level variables will be required. To test the legal-based variables, the cases can be coded for the type of state policy being considered based on the discussion above. Based on Eskridge and Ferejohn (1994), we should expect that federal authority is not necessary for basic allocative policies such as the regulation of marriage and families, health and safety, morals, and contractual relationships for intrastate business. In these cases then we should expect that the Supreme Court should defer to states' rights. The Commerce Clause is also a legal standard commonly used in federalism cases. However, it has been stretched by Congress over the decades to apply to cases that are not directly related to economic activity (see the *Lopez* [1995] and *United States v. Morrison* [2000] cases, for example). The Commerce Clause should carry more legal weight in economic cases, and thus we might expect justices to support federal authority more often in Commerce Clause cases dealing with laws that apply directly to economic activity. Dummy variables signifying whether an issue deals with an interstate commerce issue or an allocative state function are used to test these hypotheses. A dummy variable signaling whether a case came before or after the landmark *Lopez* case is also used to test the weight that this case's states' rights precedence held in later cases. These variables can be used to test a series of hypotheses related to the legal variables.

A variable to test the validity of the institutional explanations for voting on federalism cases is also included in the analysis. One prediction of the institutional model is that amicus briefs from relevant government actors may influence the Supreme Court's decisions. On the side of the federal government, the solicitor general is typically seen as having a significant influence on Court decision making (Bailey, Kamoie, and Maltzman, 2005; Bartels, 2011). A similar effect is likely to be seen if the U.S. government is a party in the dispute, as this is likely to place direct institutional pressure on the justices. There is also evidence that the Court will support federal authority less often when a state is a party in the dispute (Greve and Klick, 2006). Each case in the dataset was coded 1 if the United States was a party (either the peti-

tioner or the respondent), and coded 0 if the United States was not a party. There is also a separate dummy variable for whether an amicus brief has been filed by the solicitor general. Therefore, an institutional constraint hypothesis would predict that the U.S. party and solicitor general variables would have significant positive effects, indicating that justices are more likely to vote in favor of the federal government when the United States is a party in the dispute or when the solicitor general files an amicus brief. Furthermore, this variable should have a much stronger substantive effect than the ideology variables if the institutional-constraint hypothesis is correct. Since Bailey, Kamoie, and Maltzman (2005) argue that the signal sent by the solicitor general is particularly strong when it goes against expected preferences, I include a dummy variable for whether the solicitor general files a brief in favor of states' rights to test if this makes justices significantly more likely to vote against federal authority. Similarly, dummy variables for whether a state government is a party or filed an amicus brief are included, with the same expected effects.

To fully test the institutional and power-conflict models variables regarding the makeup and ideology of Congress need to be included. One hypothesis of the institutional-constraint model is that the Supreme Court makes their rulings keeping in mind the preferences of Congress. In federalism cases, which involve the invalidation of state or federal statutes, the Court may be concerned with how Congress views the Court's attempt to override the democratic process through judicial activism. Congress is likely to be less acceptant of this activism when it is ideologically divergent from the Supreme Court. Thus, an institutional-restraint hypothesis would suggest that the Court will have greater leeway to curb congressional authority when it is ideologically closer to the sitting Congress.¹⁰ Judicial common space scores (Epstein et al., 2007) can be used to determine how close the different branches of the government are and whether the ideological position of Congress affects justices' tendency to support federal authority. The distance between the median common space scores for Congress and the Supreme Court is used to determine the ideological distance between the two branches.

The power-conflict models discussed above are similar to the institutional models in that they rely on the relationship between the judicial and legislative branches in explaining Supreme Court decision making. However, they have very different

¹⁰ This may seem counterintuitive, as one might expect the Court to give more federal authority to a ideologically similar Congress. Congress is most likely to react negatively to a Court ruling if the decision gives more authority to the states rather than to the federal government. However, a Congress that is close to the Court ideologically may also be less likely to punish the Court for giving more authority to the states because it agrees either with the Court's structural preferences for the federal division of authority or with the policy outcomes the Court is trying to advance. On the other hand, an ideologically divergent Congress may be more likely to punish the Court for pro-state rulings if it disagrees with the structural and ideological preferences of the Court. We thus may expect that an ideologically similar Court has more leeway (and is more like to use this leeway) to issue pro-state rulings without fear of retribution from Congress. However, one could also imagine that the Court would be less willing to give an ideologically divergent Congress more authority, so if justices do not fear retribution at all they may be less likely to issue pro-federal decisions when there is a large ideological distance between the Court and Congress.

predictions regarding the influence of this relationship. Recall that this line of research is largely qualitative and, therefore, some measurable proxies are required to determine whether the Court is trying to take some authority over policy away from Congress. If this is in fact the goal of justices on the Court, we may expect that they would undermine federal authority more often when they believe that the costs or ability of Congress to react are prohibitive. One reason why Congress may not be able to react is if the Senate and House are controlled by separate parties, thus creating legislative gridlock. Another source of inaction may be if there is a large variance in the ideological preferences of the members within the majority party (which can be measured by nominate scores), or of the members of Congress as a whole. We may then expect justices to rule against federal authority more often when there is a divided Congress (using a dummy variable where 1 signifies the House and Senate being controlled by different parties) or when there is a high variance in the ideologies of members of Congress (as determined by the variance in the individual DW nominate scores of members of Congress as a whole).¹¹ Divided government (as opposed to just a divided Congress) may also be an impediment to congressional action, as a president of an opposing party may veto attempts of a unified Congress to punish the Court. Therefore, I include separate dummy variables for whether the Republican Party or the Democratic Party controls both houses of Congress and the presidency. The separate variable for each party tests the hypothesis that a unified government constrains the Court while also testing for any party influences on this constraint.

Another important case-level variable to include is the salience of the case. There are a number of studies suggesting that issue salience affects everything from deciding to grant cert (Perry, 1991) to voting on the disposition (Collins, 2007; Hettinger, Lindquist, and Martinek, 2004) to forming majority coalitions and writing opinions (Maltzman, Spriggs, and Wahlbeck, 2000). There is good reason to think that the salience of a case will affect how all of these competing models explain behavior. For example, it may be that in highly salient cases justices are more attentive to legal standards to maintain the Court's public image of integrity. On the other hand, justices may care more about the outcome of salient cases, and thus they may be more prone to interject their ideological preferences into their decisions. Finally, Congress may be more attentive to the Supreme Court's rulings on salient cases, and thus justices may be more wary of issuing rulings that are not preferred by Congress.

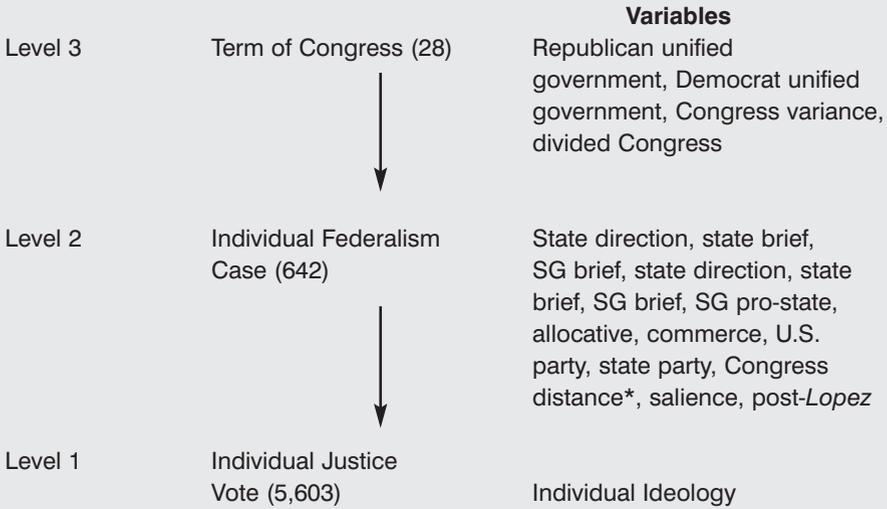
A common method of determining the salience of a case is to look at how much coverage the issue involved has received in major newspapers, such as the *New York Times*. Epstein and Segal (2000) create a dichotomous variable for whether or not the decision was reported on the front page of the *New York Times* the day after the decision. This same method can be used to determine the contemporaneous salience of

¹¹ While many scholars have argued that legislation is influenced heavily by committee and party leadership, I chose to use this measure of congressional variance based on findings that committees are preference outliers for narrow and homogenous jurisdictions (such as agriculture) and not for the judiciary committees (Cox and McCubbins, 1993; Hall and Grofman, 1990).

Table 2
Variables and Predicted Effects

Independent Variable	Measurement and Coding	Predicted Effect
<i>Ideological Hypotheses</i>		
Individual Justice's Ideology	Martin-Quinn Scores and Segal-Cover Scores (higher values mean more conservative)	Negative
State Position Direction	Measured through reading and coding of cases, 1=more liberal state position, 0=more conservative	Negative
Ideology*State Direction	Interaction of the variables discussed above	Positive (a finding of no effect combined with the effects for the ideology constituent variable supports the Principled Federalism hypothesis)
<i>Legal Hypotheses</i>		
Allocative Function	Measured through reading and coding of cases, 1=addresses a core allocative function of the state, 0=otherwise	Negative
Economic Commerce Case	Measured through reading and coding of cases, 1=addresses a clear economic issue related to the Commerce Clause, 0=otherwise	Positive
Post-Lopez	1=if the case was decided after the Lopez decision, 0=otherwise	Negative
<i>Institutional/SOP Hypotheses</i>		
Congress proximity	Distance between the medians of the Court and Congress using Judicial Common Space Scores	Positive
SG Brief	1=SG wrote a brief in favor of federal authority, 0=otherwise.	Positive
SG Pro State	1= SG Brief in favor of state authority, 0 = otherwise	Negative
U.S. Party	1=US government is a party, 0=otherwise	Positive
State Party	1=a state government is a party, 0= otherwise	Negative
<i>Power Conflict Hypothesis</i>		
Divided Congress	1=Senate and House controlled by different parties, 0=otherwise	Negative
Congress Variance	Variance of the ideology of members Congress using DW-Nominate Scores	Negative
Unified Government	Two separate variables with 1 = Republican (Democratic) Party controls both houses of Congress and the Presidency, 0 = otherwise	Positive

Figure 1
Structure of the Data and Variables



Note: Congress distance is counted as a case-level variable and not a Congress-level variable since it varies depending not only on the makeup of Congress, but also on the makeup of the Court. Since the Court's personnel can change between cases within the same Congress, the ideological distance between Congress and the Court is considered a case-level variable.

The number of observations at each level are in parentheses.

cases in this project. The variables outlined above can be used in a logit model to predict how they affect the probability that a justice will vote in favor of federal authority on a given federalism case

Table 2 provides an outline of the different variables for each theory that I am considering, their measurement, and the predicted direction of the effects given the expectations of the competing theories. Since the analysis includes justice-level, case-level, and Congress-level variables, the model is estimated as a multilevel logit model with cross-level interactions. The dependent variable is measured at the justice level (a justice's vote), and a multilevel approach allows the model to determine the effects of case- and Congress-level variables (such as the state position and whether there is a divided Congress), as well as justice-level variables. Since the data is organized as individual justice votes nested within cases nested within Congresses, this method is used to account for the fact that observations within cases or Congresses may not be independent from one another (i.e., unobserved case characteristics may be influencing the votes of all justices on a specific case). Because of this the error terms within individual cases may be highly correlated with one another, and the error variance may not be constant. A multilevel model can account for the unobserved differences

between cases and the fact that votes within cases are not independent from one another. Modeling the data this way also takes into account the possibility that the effects of justice-level variables vary between different Supreme Court cases as well as between different Congresses over time. The following model will then be used to test each of the theories:

(Level-1 Equation) $\Pr(\text{Pro-federal vote})_{ijt} = B_{0jt} + B_{1jt}\text{ideology}_{ijt} + E_{ijt}$

(Level-2 Equations) $B_{0jt} = Y_{00t} + Y_{01t}\text{state position}_{jt} + Y_{02t}\text{allocative}_{jt} + Y_{03t}\text{commerce}_{jt} + Y_{04t}\text{Post-Lopez}_{jt} + Y_{05t}\text{Congress distance}_{jt} + Y_{06t}\text{SG Brief}_{jt} + Y_{07t}\text{SG Brief pro-state}_{jt} + Y_{08t}\text{State Brief}_{jt} + Y_{09t}\text{US party}_{jt} + Y_{010t}\text{tstate party}_{jt} + Y_{011t}\text{salience}_{jt} + Y_{012t}\text{salience}_{jt} * \text{allocative}_{jt} + Y_{013t}\text{salience}_{jt} * \text{commerce}_{jt} + Y_{014t}\text{salience}_{jt} * \text{Congress distance}_{jt} + \mu_{0jt}$

$B_{1j} = Y_{10t} + Y_{11t}\text{state position}_{jt} + Y_{12t}\text{salience}_{jt} + \mu_{1jt}$

(Level-3 Equations) $Y_{00t} = \pi_{000} + \pi_{001}\text{Rep Unified Gov}_t + \pi_{002}\text{Dem Unified Gov}_t + \pi_{003}\text{divided Congress}_t + \pi_{004}\text{Congress variance}_t + r_{00t}$

$r_{00t} \text{ }_{011t} = \pi_{010} + \pi_{011}\text{Congress variance}_t + r_{01t}$

In this model “i” refers to an individual justice, “j” refers to a specific docket number for Supreme Court Cases, and “t” refers to a Congress.¹² The B_{0jt} equation can be thought of as modeling the average case-level propensity to issue a pro-federal vote. The B_{1j} equation models how case-level variables interact with an individual justice’s ideology to influence this same propensity. The third-level equations model the effects of Congress-level variables on voting propensity, as well as a cross-level interaction between the salience of a case and the ideological variance in a Congress. Figure 1 provides a visual depiction of the hierarchal structure of the data and the variables at each level.

For reasons of computational feasibility, the model was estimated using Bayesian simulation via Markov Chain Monte Carlo (MCMC), rather than a maximum-likelihood approach. Using this method of inference, one estimates the posterior distribution of the parameters as a function of prior distributions and the data. Uninformative priors were specified so that the posterior distribution would be dominated by the data. Summarizing the posterior distributions provides one with means, standard errors, and Bayesian credible intervals that are roughly analogous to the coefficients, standard errors, and confidence intervals estimated in classical statistics. The posterior distributions of the parameters and predicted probabilities were obtained using WinBUGS 3.0.3 (Spiegelhalter, Thomas, and Best, 2004).¹³

¹² The data contain 5,603 justice observations on 637 level 2 observations within 28 different Congresses.

¹³ Three parallel Markov Chains of 60,000 iterations were run for the simulation, and convergence of the chains was determined using the Gelman-Rubin diagnostic (Gelman and Rubin, 1992; see also Gelman and Hill, 2007). The first 30,000 iterations were used as a burn in, so the results are based on 30,000 samples.

RESULTS

The posterior means, standard deviations, and Bayesian credible intervals from the estimations using both the Martin-Quinn Scores and Segal-Cover Scores are provided in Table 3. The effects provide strong confirmation for the predictions of the ideological argument. Using both ideological measures, we see a statistically significant negative effect for the ideology constituent coefficient combined with a statistically significant positive (and only slightly smaller) effect for the interaction with the direction of the state policy.¹⁴ This suggests that when the state position is more conservative than the federal government position, conservative justices are more likely to vote in favor of states' rights than are liberal justices. However, when the state position is liberal the difference in the propensity for conservative justices to vote in favor of the federal government is significantly increased. The reliability of this effect is further supported by the statistically significant and negative coefficient for the state-direction constituent term for both analyses. The most liberal justices are less likely to vote in favor of the federal government when the state position is more liberal. Overall, these findings suggest that conservative and liberal justices are not merely taking principled stands for or against states' rights: they are considering the substantive policy impacts of their votes as well as the structural issue. The negative coefficient on the interaction between ideology and salience suggests that the effect of ideology is, in fact, enhanced in salient cases, but this effect is only significant when using Segal-Cover scores to measure ideology.

Although there is strong support for the ideological hypothesis, individual preferences are not the only determinants of voting behavior. The statistically significant negative impact of the allocative variable lends some support to the legal-based arguments. Justices are much less likely to vote against states' rights when the case deals with an issue that falls under a core function of the states. We also see some support for the institutional model in the strong positive effect of a solicitor general brief. Not surprisingly, we see that justices are much more likely to vote in favor of the federal government when the solicitor general writes a brief arguing in favor of federal authority. The signaling hypothesis of Bailey, Kamoie, and Maltzman (2005) is also supported, as a solicitor general brief in favor of states' rights has an even stronger effect in the opposite direction. Justices seem to trust the signal sent by a solicitor general taking an unexpected position.

However, the other effects do not lend strong support to the competing models. Justices are not significantly more likely to provide the federal government more authority in Commerce Clause cases, and they have not been more deferential to the states since the *Lopez* decision. The claim that justices are responsive to changes in Congress receives mixed support. The Congress distance measure has a statistically

¹⁴ Estimated parameters are considered statistically significant if they have 95 percent Bayesian credible intervals that do not contain zero. This is analogous to assessing significance in classical statistics through the development of 95 percent confidence intervals.

Table 3
Determinants of Justice Voting on Federalism Cases

	Martin-Quinn Scores				Segal-Cover Scores			
	Posterior Distributions				Posterior Distributions			
	Mean	S.D.	Bayesian 95% Credible Interval		Mean	S.D.	Bayesian 95% Credible Interval	
Justice Level								
<i>Ideology</i>	-5.641	0.551	-6.736	-4.575	-2.826	0.292	-3.419	-2.266
Case Level								
<i>State Direction</i>	-2.267	0.427	-3.109	-1.431	-0.957	0.345	-1.637	-0.281
U.S. Party	0.051	0.478	-0.895	0.991	0.019	0.421	-0.806	0.849
State Party	0.179	0.385	-0.572	0.940	0.1055	0.34	-0.558	0.773
<i>Allocative</i>	-2.497	0.409	-3.304	-1.705	-2.294	0.369	-3.03	-1.581
Commerce	-0.190	0.400	-0.978	0.597	-0.015	0.352	-0.713	0.671
Post-Lopez	0.033	0.909	-1.768	1.781	-0.081	0.842	-1.714	1.622
Congress Distance	-4.665	2.015	-8.64	-0.736	-3.067	1.797	-6.596	0.462
<i>SG Brief</i>	0.800	0.348	0.122	1.481	0.935	0.309	0.334	1.546
<i>SG Pro-State</i>	-3.962	0.822	-5.599	-2.375	-3.373	0.725	-4.811	-1.962
State Brief	0.012	0.408	-0.792	0.805	0.052	0.361	-0.666	0.747
Salience	-0.445	1.537	-3.48	2.652	-0.693	1.419	-3.484	2.045
SalienceXCommerce	0.977	1.232	-1.374	3.463	1.125	1.083	-0.943	3.31
SalienceXAllocative	1.000	1.041	-1.019	3.052	1.387	0.930	-0.420	3.221
SalienceXCongress Distance	-5.22	5.482	-16	5.602	-4.222	4.974	-13.99	5.601
Ideology Interactions								
<i>State Direction</i>	4.856	0.634	3.627	6.127	2.522	0.349	1.845	3.21
Salience	-1.041	0.841	-2.685	0.613	-1.030	0.532	-2.089	-0.012
Congress Level								
<i>Unified Republican Govt.</i>	1.451	0.728	0.019	2.891	1.305	0.623	0.094	2.541
Unified Democratic Govt.	-0.486	0.420	-1.296	0.334	-0.420	0.371	-1.156	0.307
Divided Congress	-0.380	0.491	-1.338	0.586	-0.154	0.439	-1.004	0.716
Congress Variance	-2.083	6.785	-15.17	10.77	-2.464	6.556	-16.43	10.31
Salience Interaction								
Congress Variance	3.687	7.598	-11.21	18.54	4.296	7.159	-9.804	18.45
Level-2 Variance Components								
Intercept	2.725	0.198	2.351	3.128	2.733	0.153	2.446	3.045
Ideology	3.76	0.356	3.076	4.478	1.324	0.271	0.759	1.841
Level-3 Variance Components								
Intercept	0.308	0.226	0.007	0.833	0.2459	0.183	0.012	0.685
Salience	1.811	0.912	0.178	3.747	1.478	0.784	0.125	3.162

Level-1 Units: 5,603 Level-2 Units: 642 Level-3 Units: 28

Bolded variables and values are statistically significant at the .05 level.

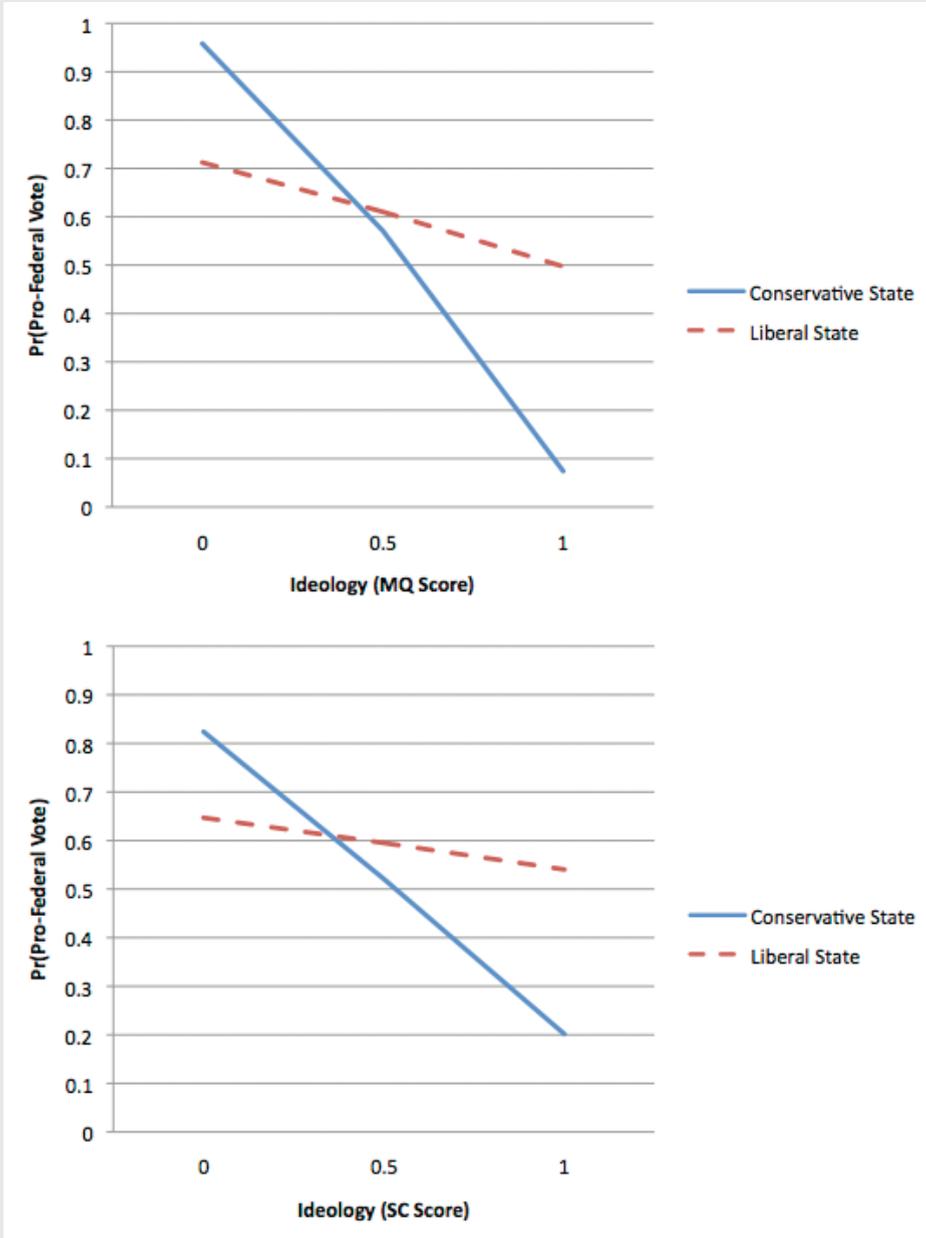
significant negative effect, suggesting that the Court is less likely to give more authority to an ideologically divergent Congress. This lends more support to the claims that the Court is in conflict with Congress rather than constrained, but the effect is only significant when using Martin-Quinn Scores to measure ideology, and not in the model with Segal-Cover Scores. There is a significant increase in the probability of issuing a pro-federal vote when the Republican Party controls the presidency and both houses of Congress. However, since over 70 percent of the observations with a unified Republican government came during the more conservative Rehnquist Court, this effect is likely a carryover of the effect of the Congress-distance variable, rather than a general preference for Republican leadership at the federal level. Voting behavior also does not seem to be affected by the presence either of state briefs or of the U.S. or state governments as parties in the dispute. Finally, the salience of the case does not seem to affect the null findings of the institutional or legal variables.

As with any probit or logit model, the raw coefficients (see Table 3) tell us little about the overall substantive size of the impacts of the independent variables. To further display that these findings are statistically and substantively significant, predicted probabilities of issuing a pro-federal vote were estimated. Figure 2 shows how the probability of a justice issuing a pro-federal vote changes as the state position and ideology of the justice change.¹⁵ Here we can very clearly see how ideology interacts with the substantive-policy dimension to influence the voting of justices. The flatter solid line shows that when the state position is substantively more liberal than the federal position the most liberal justices are about 20 percent more likely than conservative justices to issue a pro-federal vote. However, when the state position is more conservative than the federal position, we see a very drastic change. The most liberal justices are now over 20 percent more likely to vote in favor of the federal government than they were for liberal state positions, and we see an even larger swing in the opposite direction for the most conservative justices. As a result, when the state position is conservative, the gap between very liberal and very conservative justices grows from around 20 percent to over 80 percent using MQ scores (and from around 10 percent to 60 percent using SC scores). This growth in the ideological gap conforms to the expectation that the conflict between the two dimensions of ideology for all justices will be greatest when a pro-state vote results in a more liberal policy outcome and, thus, the ideological differences will be smaller. So while we do see evidence of a difference between liberal and conservative justices' preferences along the structural dimension of federalism, we also see a very strong and significant influence of the substantive-policy dimension on these cases.

Figure 3 provides an example of the effects of ideology on the probability of voting in favor of federal authority by showing these marginal differences in the probabilities between cases with liberal and conservative state positions for a sample of

¹⁵ Predicted probabilities were calculated by varying the values of the variables of interest while holding all other variables at their means.

Figure 2
Effects of Ideology on Federalism Voting



several conservative and liberal justices from all three Courts in the analysis. The justices are aligned on the Y-axis in order of their ideology scores, with more conservative justices at the top. The positive values in the marginal differences show that conservative justices like Scalia, Rehnquist, and Burger are significantly more likely to issue a pro-federal vote when the pro-state position is more substantively liberal. As we move down toward the more moderate justices, this difference shrinks toward zero and becomes less significant statistically. For the most liberal justices, the differences become significantly negative, and liberal justices like Marshall and Brennan are less likely to issue a pro-federal vote when the pro-state position is more liberal.¹⁶

To get a better idea as to how this effect compares to the legal effect of the allocative variable, Figure 4 reproduces the predicted probabilities from Figure 1 for cases dealing with both allocative and non-allocative issues. What we find is that whether or not a case deals with a core function of a state does not impact the pattern of effects of ideology and the state position. Across all ideologies and state positions we see that justices are significantly less likely to provide more authority to the federal government when the case deals with a core state function. The Supreme Court then seems to be more deferential to states' rights on these issues, but the overall pattern of ideological effects still remains the same. Liberal justices are much more likely to vote in favor of the federal government when the state position is more conservative, and conservative justices are much more likely to do the same when the state position is more liberal. Given the statistical insignificance of the other legal-based variables (the "commerce" and "post-*Lopez*" variables), it seems that these legal considerations do not override the effects of personal preferences on the voting patterns of justices.

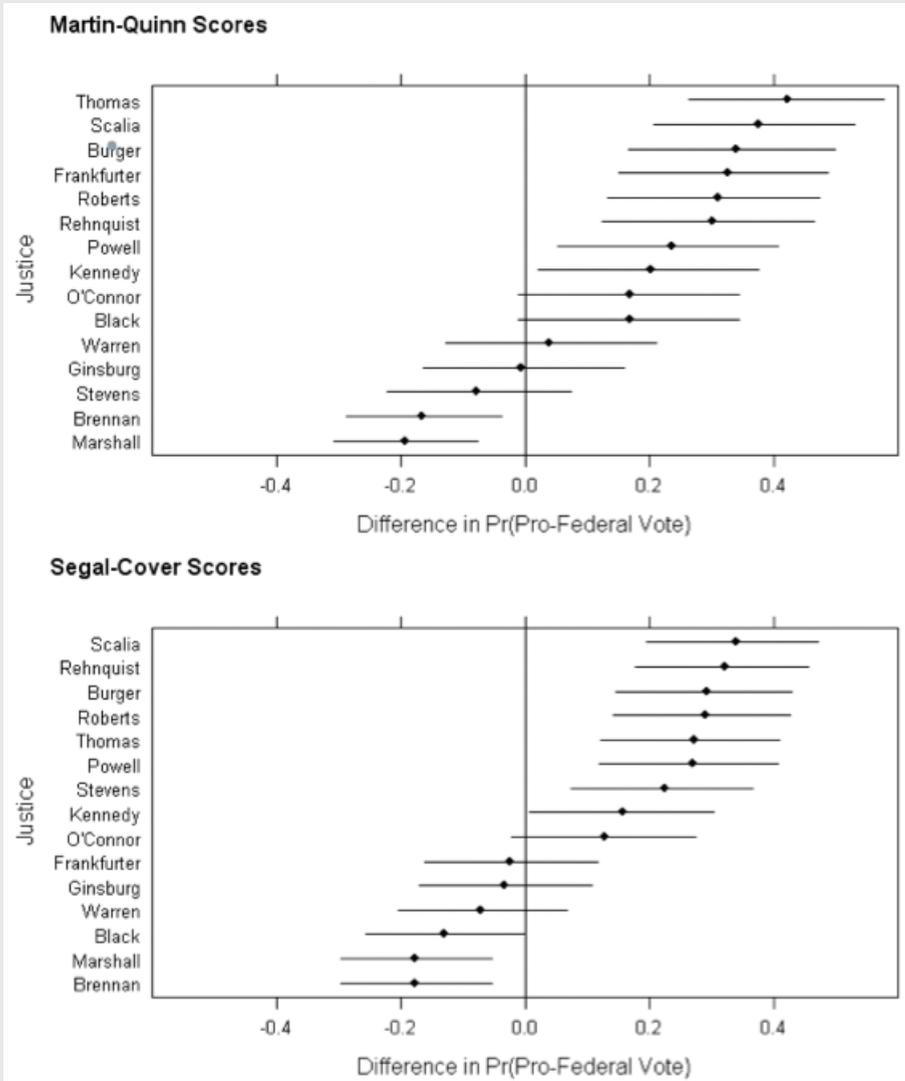
Although it is not shown in either of the figures, the presence of a brief by the solicitor general has similar effects on the predicted probabilities. A solicitor general brief supporting federal authority increases the probability of a pro-federal vote by about 20 percent across the spectrum of the ideological scale. A solicitor general brief supporting the pro-state position has a much larger effect, decreasing the probability of a pro-federal vote by over 50 percent, but neither effect changes the pattern of ideological voting based on the pro-state position.

DISCUSSION

The results of this analysis provide strong support for an attitudinal explanation of voting in Supreme Court federalism cases: the ideology of a justice has an impact on that justice's voting behavior that is both statistically and substantively significant.

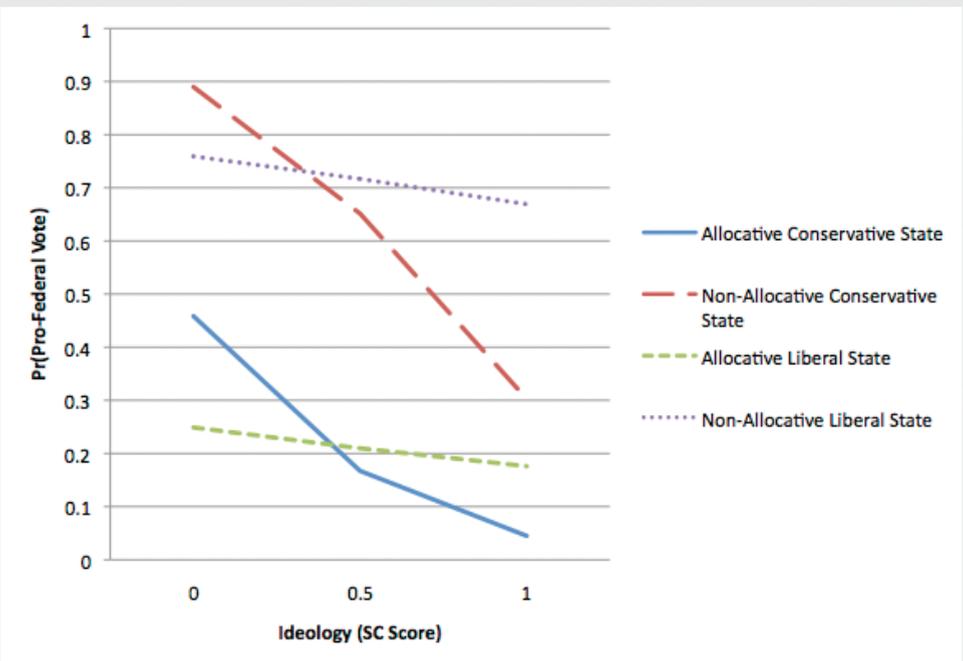
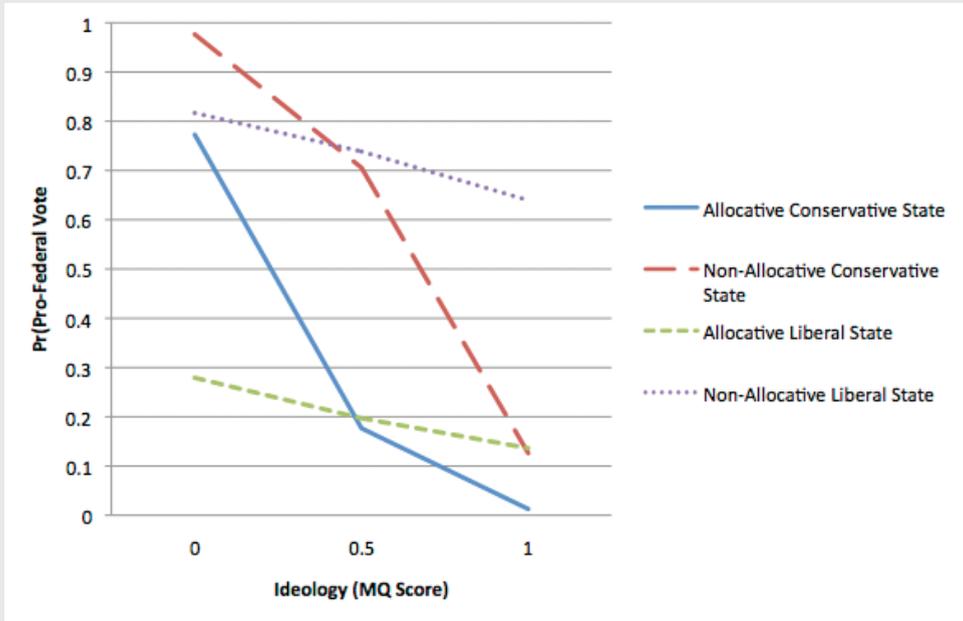
¹⁶ We do see some differences in the predicted values for specific justices like Black, Stevens, and Frankfurter based on whether Martin-Quinn Scores or Segal-Cover Scores are used. This is because Segal-Cover Scores are calculated before a justice begins voting on cases and do not change over time, while Martin-Quinn Scores change with the voting patterns of justices. So justices that may be expected to vote very conservatively or liberally during confirmation but then show an opposite tendency once on the Court will have very different scores on the two metrics and, thus, different predicted probabilities based on ideology. However, the difference in the two scores is not significant for most justices.

Figure 3
Marginal Differences in Vote Probabilities for Select Justices



Note: The marginal differences in the vote probabilities represent the probability of a pro-federal vote when the state position is liberal minus the probability of a pro-federal vote when the state position is conservative. The extended solid lines represent the estimated 95% Bayesian credible intervals for the differences.

Figure 4
Ideology, State Policies, and Vote Probabilities



Ideology also does not influence voting merely in the traditional manner of conservatives supporting states' rights while liberals favor federal-government authority. Rather, as hypothesized, the ideology of a justice interacts with the ideological direction of a pro-state vote to influence how a justice votes. Therefore, liberal justices will be more likely to support states' rights when the state policy is liberal, while conservative justices will increase their support for the federal government when the state policy is liberal. While there is some support in this analysis for the influence of legal and institutional variables, neither legal considerations nor institutional context affect the substantive pattern of ideological effects on justice voting.

This research also provides some interesting insight into how the ideology of a justice may influence decision making when there are competing pressures. Conservative justices are less likely to support the federal government than are liberal justices in all circumstances, but this effect of ideology is a less influential effect of ideology on Supreme Court voting. Justices are more strongly influenced by their beliefs regarding the specific policies at hand than they are by their principles regarding the proper structure of government authority. This analysis thus finds support for the attitudinal model, but also provides a more nuanced look at how this model applies to federalism cases when there are competing attitudinal dimensions. Justices seem to be influenced more by their policy-based ideology than they are by their principles regarding federalism.

Another interpretation of this effect is that justices may be engaged in a tradeoff between long-term and short-term policy attitudes along a single ideological dimension. Preferences for states' rights or federal authority may be grounded in the belief that this structural arrangement will lead to more favorable policies in the long run, but justices may have to sacrifice these long-term preferences to achieve short-term policy goals on specific cases. Therefore, there is only one dimension of ideology instead of two, and what I call the structural dimension is simply a long-term manifestation of policy-based preferences. However, even under this conception of ideology, the main point that the specific policy outcomes of a federalism case will often override the structural element of the case is still supported by the findings of this study. Whether these are two separate ideological dimensions or are merely short-term and long-term considerations of the same dimension is a question for future research.

There are some important normative implications following from this finding. Following the *Bush v. Gore* (2000) decision the Supreme Court was criticized for not obeying their oath to decide cases "without regard to parties" (Gibson, Caldiera, and Spence, 2003; Klarman, 2001; Nicholson and Howard, 2003). The Court may be subject to similar criticism for deciding federalism cases based on specific policies instead of the constitutional makeup of the federal system. Justices may not be fulfilling their publicly perceived obligations of impartially deciding on matters of legal and constitutional interpretation if they are setting the precedent for authority of state and federal governments based on their opinion of the ideological direction of a state's policy.

Although the analysis in this article is limited to federalism cases, it has a number of important implications. First, the Court's behavior on federalism cases has strong policy consequences in deciding the appropriate policy jurisdictions and constraints for the states and the federal government. Supreme Court decisions on federalism cases can also have clear policy consequences in addition to the structural effect of the division of authority in the American political system. Studying the effects that these decisions have on policymaking at the federal and state level is an interesting avenue for further research. By comparing several different theories of decision making, this analysis also contributes to the overall scholarship on decision making on the Supreme Court. There is little reason to believe that the way in which justices balance legal, institutional, and ideological considerations is significantly different on federalism cases than it is for other issue areas, so these results contribute to this ongoing debate.

Because federalism cases contain structural as well as policy dimensions, this analysis may also help to inform research regarding Court decision making in other situations where there may be competing dimensions of interest. For example, this two-dimensional conception of ideology may help explain how justices vote on cases dealing with expressive speech, such as flag burning and protesting outside of abortion clinics (such as *Hill v. Colorado* [2000]). It may also be relevant to cases regarding the practicing of religion through drug use (such as the landmark case *Employment Division v. Smith* [1990]) or other controversial activities.¹⁷ Finally, the longer time span of this study relative to other research on federalism cases allows for further analysis regarding how these trends in decision making may vary across different eras of the Court, as well as across different justices. **jsj**

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¹⁷ I am thinking here of a case like *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), which involved the legality of a city ordinance banning animal sacrifice for religious worship.

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