

# LOWER COURT INFLUENCE ON U.S. SUPREME COURT OPINION CONTENT

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The purpose of this Appendix is to present descriptive information regarding the variables under analysis and alternative model specifications and samples used to examine the influence of lower court opinions on U.S. Supreme Court majority opinions. Below, we provide a brief discussion of each table or figure.

- **Appendix Table 1. Summary Statistics**—this table reports the mean, standard deviation, and minimum and maximum values for the variables used in our analysis.
- **Appendix Table 2. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms, Showing Justice Dummies**—this table reports the results of Table 1 in the manuscript, including the justice-specific dummy variables.
- **Appendix Table 3. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms (Tobit Analysis)**—this table reports the results of our model using a Tobit analysis in place of OLS regression.
- **Appendix Table 4. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions (Random Sample of Cases from the 1985, 1987, and 1989 Terms)**—this table reports the results of our analysis using a random sample of 56 U.S. Supreme Court docket numbers from the 1985, 1987, and 1989 terms. Because the *Published Opinion* variable did not exhibit enough variation to include in the model, it is excluded. (Only five lower court opinions in this sample were not published opinions).
- **Appendix Table 5. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms (using alternative parameters for plagiarism detection software)**—this table uses alternative parameters for the plagiarism detection software. Specifically, we chose more conservative parameters by setting the shortest phrase to match at 10 words (instead of six). This resulted in an overall decrease in the percentage of the Supreme Court’s majority opinion that integrates language from lower court opinions (the mean of the dependent variable in the manuscript is 4.32, while the mean in this table is 2.52). However, the dependent variables are extremely highly correlated ( $r = 0.966$ ) and the substance of our results does not change. Note also that the *Percent from Petitioner Brief* and the *Percent from Respondent Brief* variables were calculated using the same settings as the dependent variable in Appendix Table 5.
- **Appendix Figure 1. Percentage of U.S. Supreme Court Majority Opinions from Lower Federal Court Opinions, by Justice (Random Sample of Cases from the 1985, 1987, and 1989 Terms)**—this figure reports a box plot of the dependent variable, by justice, for the random sample of cases used in Appendix Table 4.
- **Appendix Figure 2. Percentage of U.S. Supreme Court Majority Opinions from Lower Federal Court Opinions, by Justice, 2002–2004 Terms (using alternative parameters for plagiarism detection software)**—this figure reports a box plot of the dependent variable, by justice, for the data reported in Appendix Table 5 (using alternative parameters for the plagiarism detection software).

**Appendix Table 1. Summary Statistics**

Variable	Mean	Std. Dev.	Min.	Max.
Dependent Variable	4.316	4.382	0	23
Judicial Prestige	2.648	.493	1	3
Published Opinion	0.841	0.367	0	1
Court of Appeals Majority Opinion	0.458	0.499	0	1
District Court Opinion	0.287	0.453	0	1
Ideological Distance	.399	.255	.002	1.07
Opinion Length	6.920	13.504	0.036	187.907
Political Salience	−0.126	1.300	−2.323	8.755
Percent from Petitioner Brief	10.093	5.814	2	33
Percent from Respondent Brief	9.186	5.764	1	41
End of Term	150.852	66.179	62	297
Breyer	0.087	0.282	0	1
Ginsburg	0.043	0.204	0	1
Kennedy	0.130	0.337	0	1
O'Connor	0.139	0.347	0	1
Scalia	0.148	0.356	0	1
Souter	0.177	0.382	0	1
Stevens	0.122	0.327	0	1
Thomas	0.090	0.286	0	1

**Appendix Table 2. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms, Showing Justice Dummies**

Variable	Coefficient	Robust Std. Error
Judicial Prestige [+]	0.841*	(0.451)
Published Opinion [+]	2.24***	(0.552)
Court of Appeals Majority Opinion [+]	3.24***	(0.487)
District Court Opinion [+]	1.56**	(0.569)
Ideological Distance [–]	–0.582	(0.715)
Opinion Length [+]	0.119***	(0.036)
Political Salience [–]	–0.602**	(0.232)
Percent from Petitioner Brief [+]	0.108*	(0.051)
Percent from Respondent Brief [+]	0.185***	(0.042)
End of Term [+]	0.007*	(0.003)
Breyer	–1.641	(1.214)
Ginsburg	–1.128	(1.448)
Kennedy	–1.870*	(1.065)
O'Connor	–0.543	(1.160)
Scalia	–0.349	(1.111)
Souter	–1.291	(1.031)
Stevens	–0.143	(1.182)
Thomas	0.234	(1.311)
Constant	–5.49**	(1.931)
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R <sup>2</sup>	0.426	
F-test	9.49***	
N	345	

The unit of analysis is the lower court opinion-Supreme Court opinion dyad. The dependent variable is the percentage of the Supreme Court opinion taken from the lower court opinion. Entries are OLS regression coefficients. Numbers in parentheses are robust standard errors, clustered on docket number. The expected direction of the coefficients of the independent variables appears in brackets.

\*\*\*  $p \leq .001$ , \*\*  $p \leq .01$ , \*  $p \leq .05$  (one-tailed tests).

**Appendix Table 3. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms (Tobit Analysis)**

Variable	Coefficient
Judicial Prestige [+]	1.09* (0.574)
Published Opinion [+]	2.68*** (0.782)
Court of Appeals Majority Opinion [+]	4.10*** (0.581)
District Court Opinion [+]	2.36** (0.784)
Ideological Distance [–]	–0.769 (0.862)
Opinion Length [+]	0.152*** (0.048)
Political Salience [–]	–0.862** (0.306)
Percent from Petitioner Brief [+]	0.145** (0.061)
Percent from Respondent Brief [+]	0.195*** (0.050)
End of Term [+]	0.009* (0.004)
Constant	–8.844** (2.485)
McKelvey and Zavoina R-squared	0.426
F-test	9.43***
N	345

The unit of analysis is the lower court opinion-Supreme Court opinion dyad. The dependent variable is the percentage of the Supreme Court opinion taken from the lower court opinion. Entries are Tobit coefficients. Numbers in parentheses are robust standard errors, clustered on docket number. The expected direction of the coefficients of the independent variables appears in brackets. The model includes eight justice-specific dummy variables (results not shown). \*\*\*  $p \leq .001$ , \*\*  $p \leq .01$ , \*  $p \leq .05$  (one-tailed tests).

**Appendix Table 4. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions (Random Sample of Cases from the 1985, 1987, and 1989 Terms)**

Variable	Coefficient
Judicial Prestige [+]	1.082* (0.634)
Court of Appeals Majority Opinion [+]	1.983** (0.753)
District Court Opinion [+]	2.134* (1.319)
Ideological Distance [−]	−0.044 (1.384)
Opinion Length [+]	0.577*** (0.114)
Political Salience [−]	−0.223 (0.947)
Percent from Petitioner Brief [+]	0.445*** (0.101)
Percent from Respondent Brief [+]	−0.028 (0.094)
End of Term [+]	0.007 (0.007)
Constant	−6.291* (2.496)
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R <sup>2</sup>	0.609
F-test	24.89***
N	126

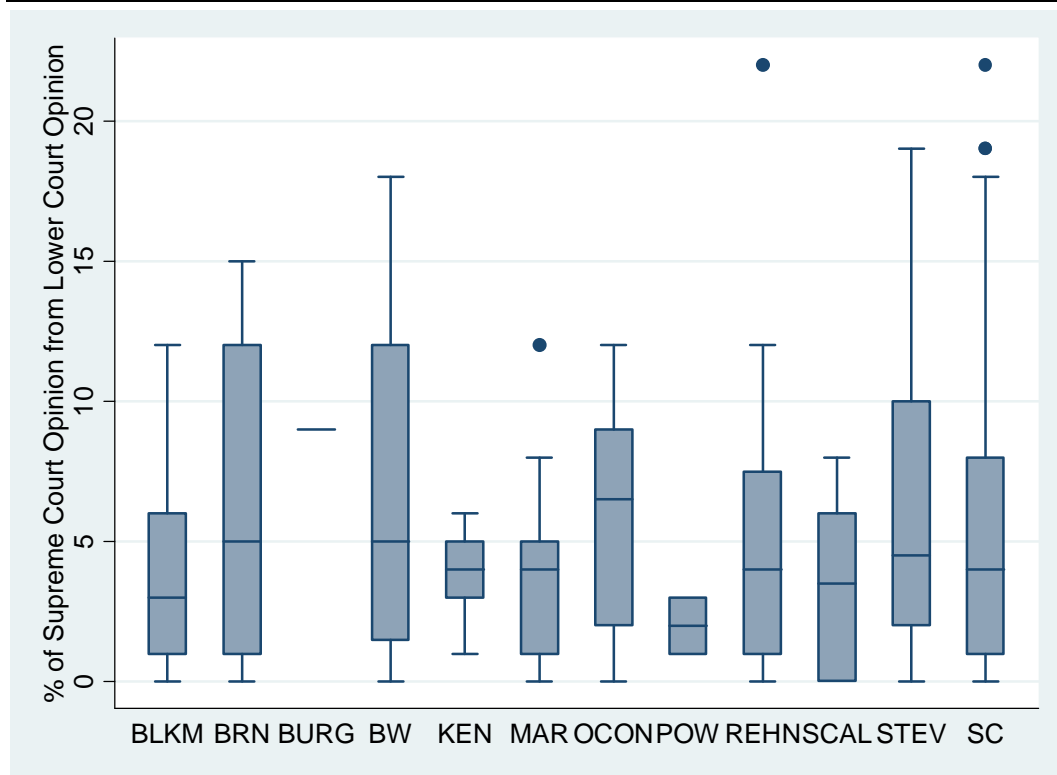
The unit of analysis is the lower court opinion-Supreme Court opinion dyad. The dependent variable is the percentage of the Supreme Court opinion taken from the lower court opinion. Entries are OLS coefficients. Numbers in parentheses are robust standard errors, clustered on docket number. The expected direction of the coefficients of the independent variables appears in brackets. The model includes nine justice-specific dummy variables (results not shown). \*\*\*  $p \leq .001$ , \*\*  $p \leq .01$ , \*  $p \leq .05$  (one-tailed tests).

**Appendix Table 5. The Influence of Lower Federal Court Opinions on U.S. Supreme Court Majority Opinions, 2002–2004 Terms (using alternative parameters for plagiarism detection software)**

Variable	Coefficient
Judicial Prestige [+]	0.497* (0.324)
Published Opinion [+]	1.36*** (0.384)
Court of Appeals Majority Opinion [+]	2.06*** (0.369)
District Court Opinion [+]	0.862* (0.394)
Ideological Distance [–]	–0.752 (0.556)
Opinion Length [+]	0.070*** (0.020)
Political Salience [–]	–0.405** (0.166)
Percent from Petitioner Brief [+]	0.106* (0.048)
Percent from Respondent Brief [+]	0.172*** (0.040)
End of Term [+]	0.005* (0.003)
Constant	–3.00* (1.43)
R-squared	0.384
F-test	7.97***
N	345

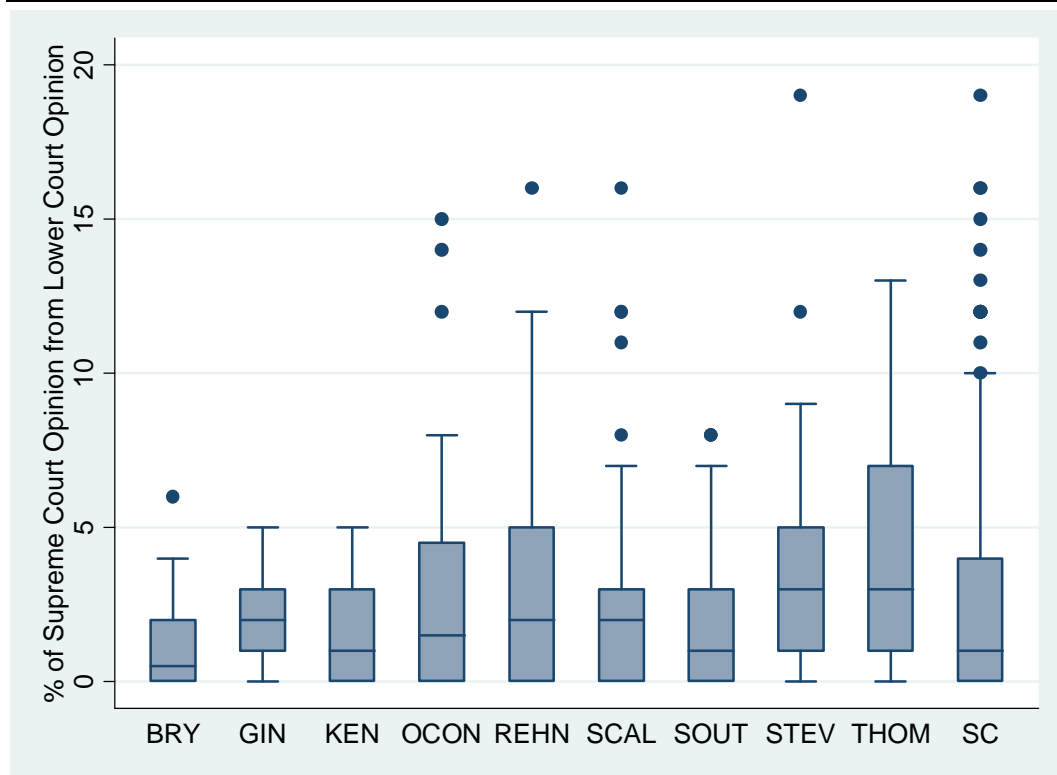
The unit of analysis is the lower court opinion-Supreme Court opinion dyad. The dependent variable is the percentage of the Supreme Court opinion taken from the lower court opinion. Entries are OLS regression coefficients. Numbers in parentheses are robust standard errors, clustered on docket number. The expected direction of the coefficients of the independent variables appears in brackets. The model includes eight justice-specific dummy variables (results not shown). \*\*\*  $p \leq .001$ , \*\*  $p \leq .01$ , \*  $p \leq .06$  (one-tailed tests).

**Figure 1. Percentage of U.S. Supreme Court Majority Opinions from Lower Federal Court Opinions, by Justice (Random Sample of Cases from the 1985, 1987, and 1989 Terms)**



Note: BLKM = Justice Blackmun; BRN = Justice Brennan; BURG = Chief Justice Burger; BW = Justice White; KEN = Justice Kennedy; MAR = Justice Marshall; OCON = Justice O'Connor; POW = Justice Powell; REHN = Justice/Chief Justice Rehnquist; SCAL = Justice Scalia; STEV = Justice Stevens; SC = Supreme Court

**Appendix Figure 2. Percentage of U.S. Supreme Court Majority Opinions from Lower Federal Court Opinions, by Justice, 2002–2004 Terms (using alternative parameters for plagiarism detection software)**



Note: BRY = Justice Breyer; GIN = Justice Ginsburg; KEN = Justice Kennedy; OCON = Justice O'Connor; REHN = Chief Justice Rehnquist; SCAL = Justice Scalia; SOUT = Justice Souter; STEV = Justice Stevens; THOM = Justice Thomas; SC = Supreme Court