# Behind the Mask of Method: Political Orientation and Constitutional Interpretive Preferences

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**Abstract** Debate about how to best interpret the Constitution often revolves around interpretive methodologies (e.g., originalism or expansive interpretation). This article examines whether individuals' political orientation influences the methodologies they prefer to use to interpret the Constitution. We study this proposed relationship using a survey of federal law clerks and an experimental study with college students. The survey results indicate that, compared to conservatives, liberal clerks prefer the current meaning or the most plausible appealing meaning of the constitutional text, while conservatives prefer the original meaning of the text. Liberal clerks also prefer to interpret the Constitution much more expansively. The second study manipulates the policy implications of expansive interpretation and finds this manipulation differentially affects liberals' and conservatives' expansiveness preferences.

**Keywords** Constitutional interpretation · Originalism · Interpretive methodology

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Legal scholars and judges often write as if their conclusions about the meaning of the Constitution follow from a principled choice of rules for constitutional interpretation. For example, some judges believe the Constitution's modern meaning should be interpreted expansively, while others rely on a more restrictive interpretation of the text's original meaning. Lawyers commonly use rules like these to understand the Constitution, and it is often argued that a comprehensive set of interpretation rules, an interpretive methodology, can improve constitutional decision-making. Legal scholars value methodologies for providing consistency across different cases and ultimately the objectivity and fairness that result from a consistent application of rules.

Methodological reasoning is also used as a shield against claims of political bias. When overturning laws, judges assert that their rulings are determined by a methodological understanding of the Constitution, not their own policy values. Judicial nominees propose that their personal beliefs will be irrelevant to their future judicial decisions, because they have methodological preferences to guide their decisions. If scholars oppose constitutional rulings, they can be criticized on valid methodological grounds. Constitutional opinions based on wholly legal reasoning are more convincing and accepted (Burton 1992), and methodologies can provide such legal justification.

The clean demarcation between methodological reasoning and policy-based reasoning requires the assumption that methodological choice is based only on constitutional values, and not on considerations of policy extraneous to the Constitution. Otherwise, methodological reasoning might just be policy reasoning behind a jurisprudential mask. This assumption seems reasonable since methodological preferences are often justified as a preference for certain constitutional values, and these justifications appear

entirely sincere. However, individuals are not always aware of the true cause of their beliefs (Nisbett and Wilson 1977; Kunda 1990). If methodologies' policy implications influence interpretive preferences, then methodologies are not entirely nonpolitical reasoning, since a methodological choice may be unwittingly adopted to further an individual's policy goals.

The idea that political orientation influences methodological preferences is certainly not new (Ely 1980, p. 2; Brennan 1990; Bork 1990; Perry 1994; Rakove 1996, p. xv; Howard 1981, p. 176). However, there has been little research demonstrating an empirical relationship between constitutional methodological preferences and political orientation (Cross 1997). The limited empirical work examining legal interpretive preferences often focuses on nonconstitutional interpretation (Redding and Reppucci 1999; Scheb et al. 1991). For example, Redding and Reppucci asked law students and judges whether "judges should construe or interpret the law strictly and narrowly or more liberally and expansively" and found a significant relationship between preferences for expansive interpretation and liberalism. However, other studies have found mixed associations between political orientation and attitudes toward judicial intervention (Scheb et al. 1991; Howard 1981), and one study finds, contrary to common belief, that liberal judges are more likely to engage in originalist interpretation (Sisk et al. 1998). This inconclusive literature probably exists because methodological preferences were typically an ancillary topic in previous studies and there were often confounds.

# **Psychological Mechanisms**

In this article, we study two dimensions of a coherent interpretative methodology: source and breadth of interpretation. Source refers to the type of information the judge should use to understand the constitutional language when it is unclear. Five potential sources are studied in this article: original intent, original meaning, current meaning, plausible appealing meaning, and precedents (see Phelps and Gates 1991; Bobbit 1982, for similar classifications). Breadth of interpretation refers to how broadly the applicable constitutional language should be interpreted (Perry 1994; Dworkin 1986; Bork 1990; Scalia 1997; Tribe and Dorf 1992). The Constitution can be interpreted expansively, meaning, for example, the interpreter uses the values that inspire constitutional provisions and also protects fundamental rights that may not be explicitly mentioned, or the Constitution can be interpreted restrictively, meaning the interpreter understands provisions as they have traditionally been interpreted and only overturns a law if the law clearly violates a specific provision. The theoretical and empirical analysis in this article will focus on interpretation involving individual rights.

Lawyers typically justify their methodological preferences using jurisprudential values and the principles discussed in the Constitution. These justifications imply that methodological preferences arise out of agreement with the basic values that underlie the methodologies, i.e., individuals decide which constitutional values are most important and then choose the methodology that promotes those values. For example, an individual who favors the value of legislative deference will likely favor restrictive interpretation.

Psychological evidence indicates that abstract choices, like methodological preferences, often result from initial intuitions (Haidt 2001). We believe that methodological intuitions are based on the perceived policy outcomes of implementing a methodology, a consideration that is easily discernable and where individuals usually have clear, preexisting preferences. This initial preference for a methodology causes individuals to react favorably to arguments supporting their preference, while subjecting opposing arguments to more scrutiny (Kunda 1990; Dawson et al. 2002; Ditto and Lopez 1992; Ditto et al. 1998). This biased reasoning process ultimately results in a cohesive, comprehensive explanation why one methodology is preferred (Simon et al. 2001). Individuals may be unaware of their policy preferences' impact on their intuitions or reasoning.

The particular values underlying each source tend to favor specific types of policies, and this tendency is quickly realized. For example, the value of stability that underlies originalist interpretation (Kay 1996) uses the beliefs of historical individuals to understand the Constitution, and thus will result in more traditional, and often socially and economically conservative policies. The value of progress, motivating current meaning interpretation, emphasizes modern norms and will often result in more liberal policies. Once individuals associate a value with preferred policy implications, an initial preference for that value and the associated source forms, without the individual necessarily realizing the policy-based origin of their preference.

In a similar manner, breadth preferences are determined by a realization of the likely policy implications of judicial restraint. A clear, and quickly recognizable difference between expansive and restrictive interpretation is that restrictive strongly emphasizes judicial restraint. Paradigmatic Supreme Court rulings, especially *Roe v. Wade*, provide a context for determining the likely policy outcomes of emphasizing judicial restraint. We believe that because modern paradigmatic Supreme Court decisions have resulted in predominantly liberal outcomes, individuals will typically perceive judicial restraint to favor



conservative outcomes.<sup>1</sup> There is evidence that opinions about the Supreme Court can be affected by the policy implications of a Supreme Court decision (Mondak 1991; see also Grosskopf and Mondak 1998).

In this article, two studies employing two different methods were used to examine the relationship between political orientation, our proxy for policy preferences, and interpretive preferences. Study 1 surveyed federal law clerks to examine whether a relationship exists between political orientation and interpretive preferences. We hypothesize that conservatives will be more likely than liberals to favor original intent and original meaning, while liberals will be more likely than conservatives to favor current meaning. The policy implications of precedents or the text's most plausible appealing meaning are unclear and we have no a priori hypotheses about any ideological differences in preferences for these sources. We also hypothesize that the more liberal the clerk the more they will prefer expansive interpretation, and the more conservative the clerk the more they will prefer restrictive interpretation.

Study 1 aims to establish a real-world relationship between policy preferences and interpretive preferences among one population of interest. As with most observational work, it is possible that any relationship in Study 1 could be explained by a third factor that causes both political orientation and interpretive preferences. Study 2 used experimental methods to establish the proposed mechanism by manipulating the policy implications of judicial restraint and examining whether this manipulation influenced preferences for expansive interpretation. We hypothesize that for liberals, exposure to a Supreme Court ruling that had a liberal policy consequence will increase their preferences for expansive interpretation compared to when they are exposed to a conservative Supreme Court ruling. We expect the opposite pattern for conservatives that exposure to a Supreme Court ruling that had a liberal policy consequence will decrease their relative preferences for expansive interpretation.

# Study 1: Survey of Law Clerks

# **Participants**

Participants were law clerks employed by district and appellate federal judges throughout the United States (excluding the Fifth Circuit). Five hundred judges were

<sup>&</sup>lt;sup>1</sup> If one assumes that the paradigmatic cases of the first half of the twentieth century was Lochner v. New York 198 U.S. 45 (1905), our hypothesis would imply that liberals of that era were more likely to favor judicial restraint.



randomly selected to receive a mailing (Wants 2003). The mailing was addressed to "Law Clerk in the Chambers of" followed by the judge's name. Each mailing included a cover letter, a survey, an addressed return envelope with postage, and a pocket edition of the United States Constitution. The cover letter informed clerks that their responses were anonymous and they could complete the survey using the enclosed paper survey or using an identical version posted on the Internet. Thirty-two percent (N = 162) of the contacted chambers completed the survey, and data from 156 surveys were analyzed (two judges completed the survey and four clerks who failed to follow instructions were excluded). Roughly 41% of the respondents were female, 7% were African–American, 6% were Asian–American, and 4% were Latino.

#### Materials

The survey was composed of three sections. The first section asked clerks to rank the influence of five potential sources on their constitutional decision-making. The second section asked clerks to indicate their level of agreement with multiple statements about how expansively the Constitution should be interpreted. The final section measured demographic characteristics and political orientation.

The instructions for the first section described the purpose of source preferences. Clerks were then provided with five "traditional" types of additional information and were asked to place a number next to each source with the purpose of ranking the source "in order of its influence on your constitutional decision-making." Respondents were instructed to give two or more sources the same ranking if they believed the sources would have the same amount of influence. Finally, they were instructed to place an X next to a source if they believed that the source should not be used at all to interpret the Constitution. The survey presented five sources: original intent, original meaning, current meaning, plausible appealing meaning, and precedents. To ensure that preferences were based on content not presentation, the source descriptions were similar in format.

The second section asked clerks to read six statements about constitutional interpretation. Each statement measured a slightly different aspect of the respondent's beliefs about whether constitutional clauses should be interpreted as protecting broad principles or specific rights. After reading each statement, clerks were asked to select whether they "strongly disagree," "moderately disagree," "slightly disagree," were "neutral," "slightly agree," "moderately agree," or "strongly agree." Numbers were later assigned to the responses such that *strongly oppose* was coded as -3

and *strongly support* was coded as +3 and intervening numbers were matched with appropriate terms (half the statements were phrased so that agreement indicated a preference for restrictive interpretation, and these responses were reverse coded). Responses to the six statements were averaged to form an overall preference for expansive interpretation (alpha = .80).

In the last section, clerks answered questions about their gender, race, and two items that measured their political orientation. The first item was a common ideology measure that asked clerks to rate their political views on a liberalconservative continuum ("Below is a scale on which the political views that people might hold are arranged from extremely liberal to extremely conservative. Where would you place yourself on this scale?," Knight 1999). The second item asked participants the degree to which they felt closer to the Democratic or Republican parties (see Barnes et al. 1988). Numbers were assigned to the labels clerks actually chose in the following manner: Extremely Liberal and Very Close to Democrats were coded as +3, Extremely Conservative and Very Close to Republicans were coded as -3, and intervening numbers were matched with appropriate terms. The responses to these two questions were averaged to form a measure of political orientation (r = .90). To facilitate presentation, we also classified the clerks into three groups based on their orientation. If the clerk's average response to the ideology and partisan question was greater than the scale midpoint, the clerk was classified as a liberal (n = 107); if the average response was less than the midpoint, the clerk was classified as a conservative (n = 41); and if the average response was at the midpoint the clerk was classified as neither (n = 8). Finally, clerks were asked to list the Supreme Court decision that "first comes to mind" when they thought about expansive constitutional interpretation. Our theory implies that clerks will be more likely to list rulings resulting in liberal policy outcomes, especially Roe v. Wade.

# Results

The source rankings were analyzed with multinomial logistic regression (see Table 1). This type of regression is used to analyze preferences when an individual faces a choice with more than two options.<sup>2</sup> The dependent

**Table 1** Multinomial logistic results for source preferences (N = 138)

Variable	В	SE B	Risk ratio
Intercept: original intent	-1.576**	.351	
Intercept: original meaning	812**	.274	
Intercept: current meaning	-2.734**	.768	
Intercept: plausible appealing meaning	-4.256**	1.293	
Liberal: original intent	050	.193	.951
Liberal: original meaning	592**	.155	.553
Liberal: current meaning	1.221**	.348	3.391
Liberal: plausible appealing meaning	1.580**	.552	4.853

Note: The baseline source is precedents

variable was equal to 1 for the source ranked first and 0 for all other sources. Responses from those participants who ranked two or more sources as their first choice (n = 18) or did not have a first choice (n = 1) were excluded from the analysis because these participants did not have a unique first preference, an assumption of the model (N = 138). The independent variable was *Liberal*, the clerk's political orientation, created by averaging the ideology and partisan measures. The results are mostly consistent with our hypotheses (see Table 1 and Fig. 1): liberalism was positively associated with a first preference for current meaning (risk ratio = 3.39, z(130) = 3.82, p < .01) and negatively associated with a first preference for original meaning (risk ratio = .55, z(130) = 2.86, p < .01), but there was no significant relationship between political orientation and first rankings of original intent (risk ratio = .95, z(130) = 0.26, p > .50). There was a positive relationship between liberalism and preferences for plausible appealing meaning (risk ratio = 4.85, z(130) = 3.51, p < .01), but no clear relationship between liberalism and preferences for prece-(Cramer's V = -.02,  $\chi^2(1, N = 130) = 0.06$ , dents p > .80).

Our hypothesis also implies that clerks would be more likely to fully reject a source if they disliked its policy implications. Five binomial logistic regressions were used to analyze rejection preferences. The dependent variable was coded as 1 if a clerk rejected a source and 0 if not, and the independent variable was *Liberal*. Liberal clerks were

## Footnote 2 continued

models were both inappropriate in this context. Ultimately, the large differences in liberals' and conservatives' source preferences are compelling evidence of ideological effects, even if the significance tests are somewhat questionable. Effect sizes for this model are calculated as risk ratios that can be interpreted in the following way: a risk ratio for current meaning of 3.39 means that for each one point increase in *Liberal*, the likelihood of choosing current meaning over precedents (the baseline choice) increases by 3.39.



<sup>&</sup>lt;sup>2</sup> The multinomial logistic model does make the assumption of Independence of Irrelevant Alternatives (IIA). This assumption states that adding another potential choice will not change the ratio of choice probabilities between existing alternatives. In this case, both original intent and original meaning (and potentially precedents) favor traditional values, implying that the assumption would likely be violated. There are two other discrete choice models that do not make the IIA assumption, nested logit and multinomial probit, but these

<sup>\*\*</sup> p < .01

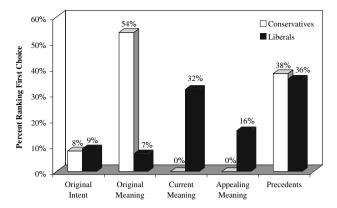


Fig. 1 Source preferences by political orientation (N = 130). Note: This figure only displays first preferences for those clerks who had a unique first preference and an identifiable political orientation

significantly less likely to reject current meaning and plausible appealing meaning than conservative clerks (odds ratio = .499, z(154) = 4.25, p < .01 and odds ratio = .573, z(154) = 4.60, p < .01). For example, while 27% and 39% of conservatives rejected current meaning and plausible appealing meaning respectively, only 3% and 8% of liberals did. Less than 5% of clerks rejected either original intent or original meaning and there were no significant ideological differences in the rejection of these sources (both p-values > .50). No clerk rejected using precedents.

The relationship between breadth of interpretation preferences and political orientation was analyzed using OLS regression with the same independent variable, Liberal, and with average expansiveness preference as the dependent variable. We hypothesized that the more liberal the participant the stronger the preference for expansive interpretation, and the coefficient on Liberal was substantial, statistically significant ( $\beta = .75$ , t(156) = 14.25, p < .01) and positive, consistent with our hypothesis. The  $R^2$  was .57, indicating that fully 57% of the variation in expansiveness scores can be explained solely by political orientation. Finally, when asked to choose the decision that "first came to mind" when they thought of expansive interpretation, over 45% of the clerks that listed a decision listed Roe v. Wade and 14% listed Griswold v. Connecticut. another reproductive rights case. Roughly 90% of the cases listed resulted in liberal policy outcomes.<sup>3</sup>

The following decisions were classified as resulting in conservative policy outcomes: Alden v. Maine 527 U.S. 706 (1999), Bowers v. Hardwick 478 U.S. 186 (1986), Bush v. Gore 531 U.S. 98 (2000), Lochner v. New York, Terry v. Ohio 392 U.S. 1 (1968), and United States v. Lopez 514 U.S. 549 (1995). Three decisions were not classified as either liberal or conservative because of the current consensus across the political spectrum as to the merits of these decisions. Namely, Marbury v. Madison 5 U.S. 137 (1803) and Youngstown Sheet & Tube Co. v. Sawyer 343 U.S. 579 (1952) are today all-but-universally regarded as correct, while Dred Scott v. Sanford 60 U.S. 393 (1857) is now universally regarded as wrong.



#### Discussion

These results establish, for the first time, a clear empirical relationship between constitutional interpretive preferences and political orientation. However, any significant result from this survey cannot be used to infer that interpretive preferences are caused by political orientation or policy preferences. It is possible that another factor causes both political orientation and interpretive preferences or that there is a component of political orientation besides policy preferences that causes the association between political orientation and interpretive preferences (e.g., simpler reasoning, see Tetlock et al. 1985; but see Gruenfeld 1995). Study 2 experimentally tested whether policy preferences can influence initial expansiveness preferences.

# Study 2

The goal of Study 2 was to examine whether changing the policy implications of expansive versus restrictive interpretation changes participants' preferences about using an expansive versus restrictive interpretation. This was done by experimentally manipulating the Supreme Court decisions an individual thinks about while evaluating the merits of judicial restraint, the key value underlying expansiveness preferences. In this study, undergraduates were presented with a Supreme Court ruling that either implemented a liberal policy (Roe v. Wade) or a conservative policy (Bush v. Gore). The ruling the participant received was randomly assigned. Although the constitutional reasoning in Bush v. Gore and Roe v. Wade is very different, for purposes of this experiment the pairing is appropriate because these two decisions were likely to elicit strong, opposing partisan reactions and the participants were undergraduates who were likely unaware of any legal differences between the cases. After receiving their assigned ruling, participants were provided with descriptions of expansive and restrictive interpretation and asked which method they preferred. All participants received identical information, except for the Supreme Court ruling.

# **Participants**

Participants were 170 undergraduate and graduate students at Carnegie Mellon University and Duquesne University who were paid \$10 to participate. Students were chosen, because unlike lawyers or even law students, these participants were unlikely to have already formed interpretive preferences and were also less likely to be familiar with previous Supreme Court decisions. If participants in this study already had a strong awareness of previous Supreme

Court rulings, the experimental manipulation would not have the potential to alter perceptions of the Court's previous rulings. Eleven participants were excluded from the analyses for various reasons (e.g., they were law students or were not U.S. citizens). Fifty-five percent of the participants were female, 19% were Asian–American, 9% were African–American, and 5% were Latino.

## Materials

Participants were exposed to their assigned Supreme Court ruling twice at the beginning of the experiment. Upon arrival each participant was given a consent form and a booklet composed of the experimental materials. The cover of the booklet contained an altered New York Times article describing either the *Roe v. Wade* or *Bush v. Gore* decision (first exposure) along with other legal references. After the consent forms were completed and collected, each participant was given sufficient time to read the cover and was then told to open the booklet and begin. The first page of the booklet informed participants about judicial review and constitutional interpretation. Each of the concepts was illustrated using either the *Roe v. Wade* or *Bush v. Gore* ruling (second exposure). The policy implication of the relevant ruling was described in detail.

After reading their assigned ruling, participants were informed that judges often use interpretive methodologies to encourage consistency in their constitutional decision-making. The instructor then told participants that they would be asked about their preferences for two types of methodologies: expansive and restrictive. Participants were next provided with definitions for restrictive and expansive interpretation. Each definition consisted of three statements, and the language and format was similar for both definitions. Participants were then told that supporters of restrictive interpretation believe that it is more democratic because unelected judges defer to decisions by elected legislators, and that supporters of expansive interpretation believe that it is more democratic because independent judges protect individual rights.

To promote thoughtfulness and provide insight into participant reasoning, the next page of the booklet asked participants to think about and then list reasons why they preferred one type of interpretation. They were also reminded that they would be entered in a raffle with a \$100 prize if their reasoning was judged satisfactory. Participants were given two-thirds of a page to write reasons explaining their preferences. These reasons were evaluated and classified by two independent coders (kappa = .73) to determine whether the primary reason was to respect democratically elected institutions or whether the participant provided another reason. One coder was unaware of

the participant's condition and the other coder was unaware of both the investigators' hypotheses and the participant's condition. The coders resolved initial disagreements by discussion.

The following page contained the dependent measures. Participants responded to five statements measuring their breadth preferences. The five statements were about: their overall preference, whether judges should respect legislatures more, if expansive interpretation was more consistent with their values, whether judges should protect the broad constitutional values they believe inspire the Constitution, and whether the country would be better off if judges used restrictive interpretation. Participants responded on a Likert scale with numerical endpoints -3 and +3. After reverse coding responses to the second and fifth questions, the responses to the five statements were averaged (alpha = .87) to form an overall expansiveness preference.

On the next page participants answered a series of questions measuring whether they understood and remembered the differences between restrictive and expansive interpretation. In general, participants were able to remember the concepts presented and to differentiate between the two types of interpretation; 76% correctly answered all three-comprehension questions. The participants who did not demonstrate an adequate understanding by accurately answering all three questions were excluded (N = 121).

Participants were next asked to use a seven-point scale to describe how much they liked, disliked, or were neutral toward the policies that resulted from  $Roe\ v$ . Wade and  $Bush\ v$ . Gore. These measures were used to verify that liberals liked  $Roe\ v$ . Wade more than  $Bush\ v$ . Gore and conservatives liked  $Bush\ v$ . Gore more than  $Roe\ v$ . Wade. Participants then answered questions about their race, age, and gender. Finally, participants completed the same ideology and partisan measures used in Study 1 (r=.81). The average response to these two questions formed our political orientation variable.

We predict that preferences for expansiveness will depend on the participants' political orientation and the case they received. Specifically, we hypothesize that for liberals, exposure to *Roe v. Wade* will lead to a greater preference for expansive interpretation, relative to exposure to *Bush v. Gore*. For conservatives, we predict the opposite pattern: that exposure to *Roe v. Wade* will lead to a lower preference for expansive interpretation, relative to exposure to *Bush v. Gore*.

## Results

As expected, liberals in this study strongly liked *Roe v*. Wade (M = 2.18, SD = 1.06) and moderately disliked *Bush* 



v. Gore (M = -1.95, SD = 1.51), and these opinions were significantly different t(79) = 19.43, p < .01; conservatives moderately liked Bush v. Gore (M = .74, SD = 1.99) and moderately disliked Roe v. Wade (M = -.83, SD = 2.49), and the differences were significant t(33) = 2.76, p < .01. All these values are also significantly different from the neutral point on the scale: for liberals, Roe v. Wade t(79) = 15.81, p < .01 and Bush v. Gore t(79) = 11.56, p < .01; for conservatives: Roe v. Wade t(33) = 1.93, p = .06 and Bush v. Gore t(33) = 2.16, p < .05.

We hypothesized that being presented with Roe v. Wade as opposed to Bush v. Gore would increase liberals' preffor expansive interpretation and conservatives' preferences. To test this hypothesis, we estimated a regression where the dependent variable was the expansiveness preference measure, the participant's average response to the five questions measuring preferences for expansive interpretation. The independent variables were: RW, a variable equal to 1 if the participant was presented with the Roe v. Wade ruling and equal to 0 if the participant was presented with Bush v. Gore, Liberal the participant's political orientation created by averaging the ideology and partisan measures, and an interaction between RW and Liberal. Our hypothesis implies that the coefficient on the interaction will be negative.

The coefficient on the interaction was negative and significantly different from zero ( $\beta$  = .31, t(117) = 2.49, p = .01) indicating that being exposed to *Roe v. Wade* (as opposed to *Bush v. Gore*) affected liberals' expansiveness preferences differently than conservatives' expansiveness preferences (see Table 2 and Fig. 2). The coefficient on the interaction indicates that when the participant was exposed to *Roe v. Wade*, as opposed to *Bush v. Gore*, the more liberal the participant the higher the support for an

**Table 2** Summary of regression analysis for expansiveness preference (N = 121)

Variable	В	SE B	β
General expansivenes	ss preference		
Intercept	.632**	.199	
RW	494	.291	166
Liberal	013	.106	014
$RW \times Liberal$	.407*	.164	.306
Specific preference fo	or legislative defer	rence	
Intercept	511**	.197	
RW	348	.288	115
Liberal	007	.105	007
RW × Liberal	.535**	.162	.395

*Note*: The item measuring legislative deference was reverse-coded to be consistent with the overall expansiveness preference (i.e., a preference for legislative deference means more negative numbers)

<sup>\*</sup> p < .05, \*\* p < .01



expansive interpretation. Another regression was conducted to examine whether a similar interaction occurred when participants were only responding to the one statement (Item 2 reverse-coded) that specifically referred to the principle of legislative deference, a core concept of interest. Again, the interaction was significant ( $\beta$  = .40, t(117) = 3.31, p < .01) and the predicted effect was in the hypothesized direction. When the participant was exposed to *Roe v. Wade* (relative to *Bush v. Gore*), the more liberal the participant the lower the support for legislative deference.

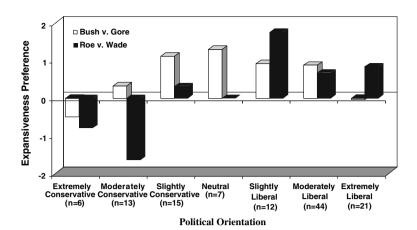
To examine whether written justifications were affected by the experimental manipulation and political orientation, a logistic regression (the dependent variable was equal to 1 if the participant listed respecting democratic institutions and 0 if not) was conducted using the same independent variables as the previous analyses. The results reveal a significant interaction (odds ratio = .272, z(117) = 2.40, p < .05) between political orientation and being presented with Roe v. Wade (see Table 3). Specifically, liberals were less likely to cite respecting elected institutions when exposed to Roe v. Wade as opposed to Bush v. Gore (M = 0% for Roe v. Wade; M = 15.6% for Bush v. Gore,z(80) = 2.44, p = .01), while conservatives were insignificantly more likely to cite respecting elected institutions when exposed to Roe v. Wade as opposed to Bush v. Gore  $(M = 29.4\% \text{ for } Roe \ v. \ Wade; \ M = 17.6\% \text{ for } Bush \ v.$ *Gore*, z(34) = 0.81, p > .40).

# Discussion

Data from this study indicate that being exposed to *Roe v. Wade* (as opposed to *Bush v. Gore*) shifted liberals' and conservatives' expansiveness preferences in opposite directions. For liberals, exposure to a Supreme Court decision that was consistent with their policy preference increased their support for expansive interpretation and reduced their support for legislative deference. For conservatives, exposure to a Court decision that differed from their policy preferences reduced their support for an expansive interpretation and increased their support for legislative deference.

As the participants were not lawyers, these results cannot be used to assert that lawyers' and judges' expansiveness preferences are caused by the policy implications of previous Supreme Court rulings. Similarly, the use of only one experimental manipulation presenting two, particular contrasting cases means that further tests are needed to determine robustness. However, the goal of this study was only to establish that beliefs about previous Court rulings could influence initial preferences for legislative deference and judicial intervention.

**Fig. 2** Expansive preference by political orientation and case (N = 121)



**Table 3** Logistic results for deference to democratic institutions (N = 121)

Variable	В	SE B	Odds ratio
Intercept	-1.505*	.343	_
RW	-1.178	.881	.347
Liberal	145	.184	.931
$RW \times liberal \\$	-1.359*	.579	.272

<sup>\*</sup> p < .05

#### **General Discussion**

The empirical results were consistent with our hypothesis that political orientation influences the legal reasoning that forms interpretive preferences. The survey of law clerks found a strong and robust association between political orientation and interpretive preferences. Liberal clerks were more likely than conservative clerks to prefer the current meaning and the most plausible appealing meaning of the constitutional text, while a majority of conservative clerks preferred the original meaning of the Constitution. There were also large and significant ideological differences in breadth of interpretation preferences: the more liberal the clerk, the more likely they were to favor expansive interpretation, and the effect size was large.

Although these results substantially conformed to our hypothesis, this was a first study and important gaps remain. First, only federal law clerks were surveyed. Some of the findings in this study may be unique to law clerks (e.g., law clerks may especially value precedents because they are responsible for ensuring that their judge's rulings conform to precedents). Future studies should include judges, obviously the population of most interest. Second, while the response rate to this study was acceptable by social science norms, it is certainly possible that nonrespondents might have different interpretive preference patterns than the clerks who did complete the survey (it was not possible to contact each clerk multiple times as the

survey was not mailed to a specific clerk, but any clerk working for the judge). Third, this research only examined two components of an interpretive methodology, source and breadth preferences, and it focused specifically on breadth preferences regarding individual rights. Fourth, research should examine whether judges consistently use a particular methodology to reach decisions, even when using the methodology would result in outcomes that conflict with their policy preferences (see Howard and Segal 2002; Phelps and Gates 1991).

The second study used experimental methods to examine whether political orientation influences initial breadth of interpretation preferences. The data indicate that manipulating the perceived policy implications of judicial restraint can change initial preferences. The more conservative the participant, the less likely they were to prefer expansive interpretation if they had been presented with *Roe v. Wade* compared to *Bush v. Gore*, and the reverse was true for liberals.

Further research is needed to determine the robustness of the relationship. For example, robustness could be demonstrated using a stimulus sampling approach that varies case primes and examines multiple constitutional values. Moreover, this study only examined how *initial* interpretive preferences are affected by a short presentation of information. While the first study in this article examined more established interpretive preferences, neither study explored the cognitive processes that convert initial leanings into firm preferences. Future work could also study whether individuals are aware of how their policy preferences influence their methodological preferences.

If future research confirms that political orientation influences methodological preferences, this does not imply that methodological reasoning should be discouraged. Methodologies encourage lawyers and judges to use similar reasoning across different cases, and thus foster consistency and predictability, two values that should be promoted in the law. Moreover, there is no plausible



nonpolitical alternative to methodological decision-making. Studies usually find that judges' rulings in legal cases are associated with their political orientation (Pinello 2001; Sisk and Heise 2005).

These results do, however, imply that methodologies are not apolitical constitutional reasoning. Currently there is no clear answer about what might reduce the influence of policy preferences. Encouraging lawyers to focus on legal considerations will not work if legal reasoning is unknowingly biased by political orientation (Rowland and Carp 1996; Schroeder 2002). Maybe more skepticism, and less certainty would help (Holmes 1918; Hand 1952, p. 190). Although there is relative agreement that policy preferences should have a minimal effect on legal decision-making, there is still disagreement about how to reduce the influence of policy preferences. Building a consensus will require more data and a better understanding of the cognitive processes that cause policy preferences to be influential.

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