Agenda Setting on the Vinson Court

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The paper that follows is one of a series of papers I wrote regarding agenda setting on the Vinson Court. As each paper was completed updates and corrections may have changed some of the specific numbers presented in earlier papers, but the general results did not change. The papers were eventually combined into a book titled, *Supreme Court Agenda Setting: The Vinson Court* (available on Amazon.com). The individual papers became chapters in the book and the updated numbers were used for that version.

Again, the paper that follows is the original version. Some numbers may have been updated for the version included as a chapter in the book version, but the changes were usually minor and did not affect the overall results.

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Paper 11: Administrative Action as a Factor

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Abstract

Although thousands of petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review, with perhaps a few hundred more disposed of summarily. Because of this low acceptance rate scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels. Although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars, previous studies have usually focused only on cert petitions, specific issues, particular terms, or sampling for their data collection. A more comprehensive examination of the cases filed before the Supreme Court will provide a clearer picture of how the justices set their agenda.

Drawing from an ongoing database project this study examines all cases filed before the Vinson Court (1946 to 1952 Terms) on its appellate docket. The specific question addressed in this paper is whether cases involving administrative action were treated differently by the Court in terms of the review decision. The results show that cases with administrative action were more likely to be granted review by the Court. More specifically, cases with either federal or state administrative action had a higher acceptance rate than cases with no administrative action. At the federal level there were also some differences depending on the particular agency.

Agenda Setting on the Vinson Court
Paper 11: Administrative Active as a Factor

This is the eleventh paper in a series examining agenda setting on the Vinson Court. The examinations are largely empirical, but with a general grounding in familiar aspects of behavioral judicial politics. Although part of a series, I would like each paper to stand on its own. Thus, some explanatory material will be repeated from one paper to the next to provide background or context.

The decisions on the merits of cases made by the justices of the United States Supreme Court may be the most important aspect of judicial policy making, but scholarly examination of other aspects of the judicial decision making process have contributed to our overall understanding of judicial behavior and politics. A few examples of such research includes examination of opinion writing of the Supreme Court justices (Maltzman, Spriggs, and Wahlbeck 2000), acclimation effects of new justices (Hagle 1993), the use of precedent on the Supreme Court (Segal and Spaeth 1999), and dealing with the lack of precedent in the federal courts of appeal (Klein 2002).

Of course, agenda setting and its attendant strategic considerations have also been the focus of many studies. *Marbury v. Madison* (1803) may have been the earliest and most famous example of strategic agenda setting or decision making by the Supreme Court. Despite a general view at the time that judges were not policy makers—at least not along the lines of executives and legislators (see, for example, Spaeth 1979, chapter 1)—histories of the Court have certainly recognized strategic aspects to the Court's

decision making (e.g., Rodell 1955). Walter Murphy's *Elements of Judicial Strategy* (1964) is one of the earliest and most important examinations of how strategic considerations may affect judicial decision making. Other scholars have expanded and refined Murphy's arguments (e.g., Epstein and Knight 1998). A related line of research focuses more specifically on the ideological preferences of judges (e.g., Segal and Spaeth 2002) and a book by Brenner and Whitmeyer (2009) compares various models of strategic judicial behavior.

One aspect of strategic judicial behavior lies in agenda setting, which means how the Supreme Court decides which cases it will take to decide on the merits. Although several thousand petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review (i.e., full briefs submitted, oral arguments held, and opinions written), with maybe a few hundred more disposed of summarily (i.e., the Court simply affirms, reverses, or vacates in a very short per curiam opinion, sometimes as little as "Judgment affirmed."). Thus, scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels (e.g., Hagle 1990).

In his book-length examination of Supreme Court agenda setting Perry (1991) notes that aspects of agenda setting have been of interest to judicial scholars at least since Schubert (1959). Perry also notes that a few years later Tanenhaus, Schick, Muraskin, and Rosen, (1963) formulated "cue theory" as a way of explaining how the justices were able to navigate the "sea of work that must be processed" (1991, 114). As Perry goes on to note, cue theory fell out of favor when later, more sophisticated,

studies failed to replicate the initial results (1991 116). Nevertheless, although a study by Ulmer, Hintze, and Kirklosky rejected two of the three cues Tanenhaus et al., found significant, a third—the federal government as a petitioning party—was significant and the authors concluded that cue theory retained some viability (1972, 642).

Regardless of how cue theory itself has developed, like these two early examinations of the Supreme Court's agenda setting many later studies focused on how the justices deal with the large number of petitions for writs of certiorari.[1] Caldeira and Wright (1988), for example, examined organized interests in agenda setting with respect to the cert petitions filed during the Court's 1982 Term. In a recent edition of his text on the Supreme Court, Baum (2013, 88) provides an example of recent work examining litigant status (Black and Boyd 2012). Thus, although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars previous studies have usually focused only on cert petitions (Tanenhaus et al. 1963), specific issues (Caldeira and Wright 1988; Black and Boyd 2012), particular terms (Ulmer, Hintze, and Kirklosky 1972), or sampling for their data collection (Tanenhaus et al. 1963; Perry 1991). A more comprehensive examination of the cases filed before the Supreme Court will provide a

[1] Cases come before the Supreme Court via two basic methods: petitions for writs of certiorari and appeals. Because this study will not distinguish between "cert" petitions and appeals, I hesitate to wade too deeply into their differences. Briefly, however, cert petitions are discretionary, which means that the justices are free to grant or deny them as they see fit. No legal meaning is attached to a denial except that the Supreme Court chose not to hear the case. Technically, the Supreme Court must hear cases that come as appeals, but the justices may avoid review by indicating that a case was not properly presented as an appeal for one reason or another. The Court may then treat the appeal papers as a petition for a writ of certiorari and grant or deny the petition. See Perry (1991, Chapter 2) for more on the difference between cert petitions and appeals. See also Stern and Gressman (1978) for a more extended discussion of the topic. Of course, changes to the law in 1988 (Public Law No: 100-352) removed several categories of the Supreme Court's mandatory jurisdiction in appeals.

clearer picture of how the justices set their agenda. To that end, this study will examine all cases on the Vinson Court's appellate docket.[2]

Administrative Action

In the seventh paper in this series I found that the presence of government parties in cases filed before the Supreme Court was related to the chances that a case would be accepted for review. In many instances there was an increased chance of acceptance, but in a few situations the chances were decreased. In particular, Table 3 in that paper showed that the chances were lessened when the government party was the appellee in the case.[3]

In the eighth paper in this series I began to look at specific types of parties and the focus of that paper was on law enforcement parties.[4] The ninth paper in the series then examined a different aspect of criminal cases by focusing on cases with criminal defendants.[5] Consistent with the findings of prior papers, comparisons with law

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[2] Until the Court changed its numbering system for filed cases there were essentially three dockets: appellate, miscellaneous, and original. The appellate docket contained what are usually referred to as the "paid" cases, the miscellaneous docket contained the "unpaid" cases (also known as paupers, *in forma pauperis,* or *ifp* cases), and the original docket contained those cases coming to the Court via its limited original jurisdiction. Given my concern about excluding cases on appeal from prior analyses one might reasonably wonder why I do not examine all cases on the Court's three dockets. The original jurisdiction cases can be excluded because they are so few and are of a fundamentally different character. It is well documented that the *ifp* cases on the Court's miscellaneous docket are treated differently, on average, than cases on the appellate docket (e.g., Perry 1991, Chapter 2; Baum 2013, 96-100). Nevertheless, the Court sometimes grants review to unpaid cases (and sometimes grants *in forma pauperis* status to cases on the appellate docket). See below for more on how these cases are treated for this study.

[3] The paper is titled, "Agenda Setting on the Vinson Court, Paper 7: Government Parties as a Factor."

[4] The paper is titled, "Agenda Setting on the Vinson Court, Paper 8: Law Enforcement Parties as a Factor."

[5] The paper is titled, "Agenda Setting on the Vinson Court, Paper 9: Criminal Defendants as a Factor."

enforcement parties or criminal defendants proved to have a higher acceptance rate in some instances and a lower rate in others.

In the tenth paper the focus changed to administrative parties.[6] As with the examination of cases with law enforcement parties the basic justification was the idea of importance noted by Perry as a criterion for acceptance (1991, 253-260). Of course, as also mentioned previously Ulmer, Hintze, and Kirklosky (1972) mention the role of the federal government as a petitioning party. It seemed reasonable to believe that those factors would apply to an examination of administrative parties as it seemed to for law enforcement parties and the results confirmed this to be so, particularly when a federal administrative entity was the party.

Of course, not all cases with administrative parties involve administrative action. Although specifics of the data are described below, I will note that there are 158 cases in the database where there are administrative parties (federal, state, or local) but no administrative action related to the case. An example of this could be where a new law was passed and a lawsuit was filed to challenge it with the appropriate administrative unit as the defendant party. Conversely, there are also 169 cases with no named administrative parties, but administrative action. One possible scenario for such cases is when an employee sues an employer over benefits as determined by an administrative entity.

Just as the Court might view cases involving administrative parties as more worthy of review than those without such parties, so too might the justices view cases

[6] The paper is titled, "Agenda Setting on the Vinson Court, Paper 10, "Administrative Parties as a Factor."

with administrative action as more worthy of review. Although the vast majority of cases with administrative parties will also have administrative action, it is still worth exploring possible differences from this slightly different perspective.

Unlike in prior papers where the focus was on a specific type of party, and whether that party was an appellant or an appellee, here I examine different aspects of administrative action.

Data

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket from the 1946 Term on. Data are complete for the Vinson Court (1946 through 1952 Terms) and provide a relatively stable period in which to examine the Court's docket.

Information on the cases in the database was drawn from several sources including the *United States Law Week*, various reporters for the state and federal courts, LEXIS, and other online sources. Every case that received an appellate docket number during the 1946-1952 Terms is included in the database. This results in 5,905 cases. Included in this number are 156 cases originally filed before the 1946 Term (the first term of the Vinson Court). The review decision for 95 of these 156 cases was made prior to the 1946 Term and those cases are not included in the dataset for this study. At the end of the Vinson Court 121 cases eventually received a 1953 Term (the first term of the

Warren Court) or later docket number.[7] The review decisions for 72 of these 121 cases were made after the 1952 Term but are included in the dataset given that those cases were initially filed during the Vinson Court. Also, included in the dataset are 67 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[8] Not included in the dataset are 64 cases that were dismissed on the motion of the petitioner prior to the review decision, 18 cases that were dismissed by a Supreme Court rule (e.g., late filing, failure to pay fees), and one case where no review decision could be found.[9] This results in a dataset of 5,727 cases.

An additional note on the coding for this examination is necessary before proceeding. Defining "administrative action" is relatively straightforward, but there can be some cases more difficult to classify. In general, most actions by administrative entities would be considered administrative actions. That is why there is such a high correlation between cases with administrative action that also have administrative parties. Instances when the administrative entity simply filed a lawsuit would not

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[7] Prior to the 1971 Term cases held over to the next term, before or after a review decision, were renumbered at the start of each term and there was no two-digit term indicator. For example, *Brown v. Board of Education* was initially filed during the Court's 1951 Term and given the docket number 436. It was held over to the 1952 Term with the new docket number 8, and again for the 1953 Term with the docket number 1.

[8] Through the Vinson and Warren Courts, cases originating on the miscellaneous docket (sometimes referred to as the "pauper's docket") that were granted review were usually moved to the appellate docket (sometimes referred to as the "paid docket") and given a new docket number. The Expanded United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 26 cases with a miscellaneous docket number (with an "M" in the DOCKET field, meaning they were not transferred to the appellate docket) during the 1946-1952 Terms. Of these, 17 were granted review (with eight of those disposed of in a short per curiam), but are not included here. On the other hand, this dataset includes 19 cases initially filed on the appellate docket for which the Court granted *in forma pauperis* status to one of the parties (only one of which was granted review). (This is an older version of the Supreme Court Database before it was moved online, which, as of this writing, can be viewed at http://scdb.wustl.edu.)

[9] Without going into great detail, it appears that the case in question was withdrawn shortly after filing and refiled a month later with a new docket number. The latter case, *Deena Products Co. v. National Labor Relations Board* (1952) is included in the database and was denied review.

generally be considered administrative action, unless it could be determined that the entity conducted some action that prompted the filing of the lawsuit. It is also possible for a governmental entity that is not considered administrative to engage in administrative action. The example used in the previous paper was if the FBI, a law enforcement agency, made a personnel decision and was sued over it. Not included in administrative action are instances when a legislative or executive body is making decisions within its regular powers. For example, a county board of supervisors that makes a zoning decision. On the other hand, if a county zoning commission made the same decision it would be considered administrative action.

In addition to coding the existence of administrative action, any such action is also coded based on whether the action was taken by a federal, state, or local administrative entity. As indicated in prior papers government parties are coded based on whether they are federal, state, or local (e.g., county, city, township) entities. The same three levels are coded for administrative action. Thus, for example, a personnel decision could be coded as federal, state, or local depending in which governmental level took the indicated action.

Results

I begin by noting that of the 5,727 cases in the dataset the Court accepted 1,169 of them for review. That resulted in an overall acceptance rate of 20.4%

Table 1 shows the comparison of those cases with administrative action with those cases that did not have administrative action. No distinction is made for the level of administrative action (federal, state, or local) for this table.

TABLE 1 ABOUT HERE

As can be seen from Table 1, almost exactly one-third of the cases filed before the Supreme Court involved administrative action at some level (1,892 of 5,727 cases for 33.0%). Of the 1,892 cases with administrative action the Court accepted 530 for review (28.0%). In contrast, of the 3,835 cases without administrative action the Court accepted 639 for review (16.6%). Thus, the Court was much more likely to accept cases with administrative action than those without and the difference is significant at the $p < .001$ level.

The results shown in Table 1 are very close to those shown in Table 1 of the prior paper.[10] This is not surprising given the overlap between cases with both administrative parties and administrative action. Even so, the 29.2% acceptance rate for cases with administrative parties is very close to the acceptance rate for cases with administrative action. Similarly, the acceptance rate for cases without an administrative party was 16.7%, which is the same (given rounding to one decimal place) as for those cases without administrative action.

TABLE 2 ABOUT HERE

[10] To make it easier to refer to the tables of the prior papers from this point on I will use the notation indicating the prior paper number and the table number. For example, Table 1 of the 10th paper will be indicated as 10-1, and so on.

The next step is to examine the different government levels that took the administrative action. Table 2 shows the comparison between cases with federal administrative action and those cases without administrative action. Note that for Tables 1 through 5 the Without Administrative Action row is the same.

There were 1,514 cases with federal administrative action and the Court granted review to 430 of them (28.4%). Once again it should not be surprising that the Court was much more willing to review cases with federal administrative action. The results shown in prior papers strongly suggested that the Court was more likely to grant review to cases involving federal governmental entities (Tables 8-4 and 10-4). Although we are not looking at parties for this examination, that the federal government took action prior to a case being filed would suggest a higher level of importance that the Court would notice.

TABLE 3 ABOUT HERE

Table 3 shows the comparison of the combined number of cases with either state or local administrative action with those cases without administrative action. There were far fewer cases with either state or local administrative action, only 378, and the Court accepted 100 for review (26.5%). This acceptance rate is only slightly below the rate for cases with federal administrative action and still reaches a high level of statistical significance when compared with cases not involving administrative action.

TABLE 4 ABOUT HERE

Although the number of cases becomes smaller in each category, it is worth examining administrative action at the state and local levels separately. To that end,

Table 4 shows the comparison of cases with state administrative action with cases without administrative action. There were 308 cases with state administrative action and the Court accepted 89 of them for review (28.9%). This acceptance rate is actually slightly above the rate for cases with federal administrative action as shown in Table 2. Although the number of cases with state administrative action was much smaller than those with federal administrative action, the comparison still reaches a high level of statistical significance.

TABLE 5 ABOUT HERE

Table 5 shows the comparison of cases with local administrative action with cases without administrative action. There were only 70 cases with local administrative action and the Court accepted just 11 for review (15.7%). The acceptance rate for these cases was slightly below the rate for cases without administrative action. Although the number of cases with local administrative action was relatively small, it appears that the Court does not give them special consideration one way or the other. It is easy to think of very important Supreme Court decisions involving local administrative action, but these are apparently rare.[11]

The next step is to compare the acceptance rates among the three governmental levels. These comparisons are shown in the next three tables.

TABLE 6 ABOUT HERE

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[11] Although it was decided during the Warren Court era, a famous case involving local administrative action that comes to mind is *Tinker v. Des Moines Independent Community School District* (1969).

Table 6 shows the comparison of the acceptance rate of cases with state administrative action with cases with federal administrative action. The rows for federal and state administrative action are the same as in Tables 2 and 4, respectively. As we saw from Tables 2 and 4, the acceptance rate for cases with state administrative action was 28.9%, which was just slightly higher than the acceptance rate for cases with federal administrative action, which was 28.4%. Although this small difference is not statistically significant, it is interesting nevertheless. We might expect that the acceptance rate for cases with federal administrative action would be higher than those with state administrative action. On the other hand, in Tables 10-4 and 10-7 we saw that the Court was more likely to grant review to cases with state administrative parties (35.9%) than cases with federal administrative parties (28.8%). There were additional differences based on whether the administrative parties were appellants or appellees. In particular, the Court was far more likely to grant review to cases with the federal administrative party as the appellant (70.2%, Table 10-5) than with the state administrative party as the appellant (43.7%, Table 10-8). The examination in this paper focuses on the action rather than the parties, but it is still interesting that the Court's acceptance rate for cases with state and federal administrative action is nearly equal.

TABLE 7 ABOUT HERE

Table 7 shows the comparison of the acceptance rates between cases with local administrative action and those with federal administrative action. Given what we saw previously in Tables 2 and 5, it is no surprise that there is a substantial difference in the

acceptance rates. This difference reaches a traditional level of statistical significance despite the relatively small number of cases with local administrative action.

TABLE 8 ABOUT HERE

To complete this set of comparisons, Table 8 shows the comparison of the acceptance rates of cases with local administrative action with cases with state administrative action. Given that the acceptance rates for federal and state cases with administrative action are so similar, as shown in Tables 2 and 4, it is no surprise that there is a substantial difference between the acceptance rates for cases with local and state administrative action. As with the prior comparison, the difference in acceptance rates between cases with local versus state administrative action is substantial and reaches statistical significance.

Specific Agency Action

In looking at the many cases with federal administrative action three particular agencies stand out: the Internal Revenue Service (IRS), the Interstate Commerce Commission (ICC), and the National Labor Relations Board (NLRB). In particular, of the 1,514 cases with federal administrative action, 442 involved IRS action, 146 involved ICC action, and 145 involved NLRB action. The numbers dropped off quickly after these three agencies with the next largest number at 62 for the Office of Price Administration, 46 for the Securities and Exchange Commission, and other federal agencies well below that. Given the number of cases involving action by these three

agencies it is worthwhile to consider their acceptance rates compared to other cases with federal administrative action.

TABLE 9 ABOUT HERE

Beginning with the IRS, Table 9 shows that there were 442 cases involving IRS administrative action and the Court granted review to 60 of them (13.6%). The comparison here is with cases involving action from another federal administrative unit. There were 1,072 such cases and the Court granted review to 370 of them (34.5%). Not surprisingly, this large difference is statistically significant. We have seen previously that the Court was generally more likely to accept cases for review when a federal administrative entity was the appellant (Table 10-5) and less likely to do so when the federal administrative entity was the appellee (Table 10-6). This difference helps to explain the cases with IRS action. More specifically, 376 of the 442 cases with IRS action also involved the IRS as a party. There were 47 cases with the IRS as the appellant and the Court granted review to 20 of them (42.6%). In sharp contrast, there were 329 cases with the IRS as the appellee and the Court only accepted review for 21 of them (6.4%). The nature of these IRS cases is that once the IRS makes a determination the taxpayer makes the decision to go to court. The IRS would never be the original plaintiff. If a lower court sides in favor of the taxpayer, then the IRS could be the appellant when the case comes before the Supreme Court. Given that the Court is far less likely to grant review to a case where the IRS action has been upheld in the courts below than when it has been overturned, it appears that the Court may be showing respect to the determinations of a coequal branch of government.

TABLE 10 ABOUT HERE

In Table 10 we see the comparison of cases involving action by the NLRB with all other cases involving federal administrative action. There were 145 cases involving administrative action by the NLRB and the Court granted review to 41 of them (28.3%). There were 1,369 cases involving other federal administrative action and the Court granted review to 389 of them (28.4%). The nearly identical acceptance rate is a little surprising. On the other hand, unlike the cases with IRS action, those with action by the NLRB provide a greater mix. Once the NLRB makes a decision or issues an order it may be the party to go to court to enforce it. Also, where the IRS decisions that end up in court will always be contrary to the interests of the taxpayer, NLRB decisions can be for the employer or for the employee or union. Thus, the mix of cases involving NLRB action does not provide as clear an indicator for the Court to distinguish them from the mix of other cases involving federal administrative action.

TABLE 11 ABOUT HERE

Table 11 shows the comparison of cases involving ICC administrative action with all other cases involving federal administrative action. There were 146 cases in which the ICC took administrative action and the Court accepted 95 of them for review (65.1%). In contrast, there were 1,368 other cases with federal administrative action and the Court accepted 335 of them for review (24.5%). This substantial difference is not completely surprising. In the sixth paper in the series we saw that there was a very

high acceptance rate if a case came directly to the Supreme Court from a federal district court (see Table 6-7).[12]

Without getting too deeply into the details, federal statutes in place during the Vinson Court era required that most cases challenging an ICC order had to be heard by three-judge federal district courts. As Stern and Gressman point out, the decisions of these three-judge courts were "subject to review only on direct appeal to the Supreme Court" (1978 137). In the second paper in the series we saw that the Court was more likely to accept cases on appeal as opposed to petitions for writs of certiorari, particularly when the case came from a federal court (see Table 2-2).[13] Of the 146 cases involving ICC action indicated in Table 11, 85 of them came to the Supreme Court directly from a federal district court, all 85 were on appeal, and the Court accepted all of them for review.

TABLE 12 ABOUT HERE

The last comparison involving federal administrative action or parties to examine involves cases were there was federal administrative action but the federal government was not a party to the suit. In Table 12 we see the comparison of cases involving federal administrative action that did not have a federal governmental party with all other cases involving federal administrative action. There were 153 cases with federal administrative action but no federal governmental party and the Court granted review to 47 of them (30.7%). There were 1,361 cases with federal administrative action but

[12] The paper is titled, "Agenda Setting on the Vinson Court, Paper 6, "Court Level as a Factor."
[13] The paper is titled, "Certiorari and Appeal on the Vinson Court Agenda."

with at least one federal governmental party and the Court granted review to 28.2% of them. The difference here is rather small suggesting that it does not matter particularly in terms of the acceptance rate whether federal governmental parties are named parties in a case when federal administrative action has occurred.

Court Level

Given the finding from Table 11, it is worth taking an additional brief look at court level in relation to federal administrative action. In particular, the final two tables examine the acceptance rate for cases in which the first court to hear the case was the only one to do so before the case was appealed to the Supreme Court. As mentioned previously, cases involving challenges to ICC orders were usually heard by three-judge federal district courts and then appealed directly to the Supreme Court. There were also some instances when cases from single-judge federal district courts were appealed directly to the Supreme Court.

In addition to cases coming directly from a federal district court, there are two types of cases in which the first court to hear a case (the origin court) is also the last court to do so (the source court) before going to the Supreme Court. One type involves some federal specialty courts such as the Court of Claims. The second and more numerous example involves cases that come from certain federal regulatory agencies whose decisions are appealed directly to a federal Court of Appeals. For example, cases involving the NLRB generally go directly to a Court of Appeals. The same is true for agencies such as the Federal Trade Commission and the Securities and Exchange

Commission. Without getting into the specifics as to why some cases are heard by only one lower federal court, the question is whether the Court treats these cases differently for purposes of granting review.[14]

TABLE 13 ABOUT HERE

In Table 13 we see the comparison between cases involving federal administrative action where the source court was also the origin court with all other cases involving federal administrative action. There were 528 cases involving federal administrative action and where the source court was also the origin court. Of these, the Court granted review to 210 (39.8%). There were 986 cases involving federal administrative action and where the source court was not the origin court. Of these the Court granted review to 220 (22.3%). That difference is substantial, and statistically significant, but there is a bit of a catch. The number of cases where the source and origin courts are the same includes all the cases involving ICC administrative action that came from three-judge district courts on appeal. Although that group certainly qualifies for this comparison, we also know they form a distinct group. More generally, although there is no table for it, there were 119 cases that came to the Supreme Court directly from a federal district court and the Court granted review to 112 of them (94.1%).

Thus, to better isolate the question of whether the Court treats cases where the source court and the origin court are the same it would be better to only look at those cases coming from federal Courts of Appeals.

[14] See Stern and Gressman, Chapter 2, for details on the Supreme Court's jurisdiction on hearing cases from federal courts.

TABLE 14 ABOUT HERE

Table 14 shows the comparison of cases involving federal administrative action where the source court was also the origin court which was a federal Court of Appeals with all other cases involving federal administrative action where the source court was not the origin court. There were 304 cases in the former category of which the Court granted review to 81 of them (26.6%). There were 961 remaining cases of which the Court granted review to 207 of them (21.5%). Although it seems the Court has a slight preference for cases coming from the Courts of Appeals where it was the only lower court, the difference does not reach a traditional level of statistical significance.

Concluding Comments

The results of this examination clearly show that the Supreme Court during this period treated cases involving administrative action differently than other cases for purposes of granting review. This finding is consistent with the finding from the prior paper that examined acceptance rates for administrative parties. The finding is also not surprising given the large overlap between cases with administrative action and administrative parties.

As in prior examinations, it is important to drill down into various aspects of administrative action. In doing so we find that once again the Court was more accepting of cases with federal administrative action. This could represent some combination of the Court's view that federal administrative action is important and the Court's willingness to oversee the federal system. Then again, the Court was slightly

more accepting of cases involving state administrative action. The argument here could be that the Court feels a particular duty to ensure that the states are not violating federal law in their administrative actions. Somewhat contrary to that suggestion is the fact that cases involving local administrative action were accepted by the Court at a rate slightly lower than cases that did not involve administrative action. Although the Court has certainly granted review to and decided some famous cases involving local administrative action, in general it would seem that the Court does not feel such cases have the reach or importance of cases with either state or federal administrative action. It is also worth keeping in mind that this examination does not classify the particulars of the administrative action. Thus, it could be that very few local administrative actions involve the types of substantive issues of interest to the Court.

The large number of cases with federal administrative action allowed for the examination of a few particular agencies. In examining the acceptance rates for the IRS, NLRB, and ICC we saw how the nature of the agencies and the cases involving their decisions can affect the acceptance rate. Cases involving IRS action will always begin with the taxpayer initially filing suit. This is because if the IRS makes a determination agreeable to the taxpayer then neither party will go to court. Thus, every case involving IRS action starts as a challenge to federal agency action. The IRS is usually the appellee when the case comes to the Supreme Court, but not always if a lower court disagrees with the IRS action. As we saw in prior papers, the Court is less inclined to grant review to cases in which the federal administrative party is the appellee, and that

finding was reflected in the data for Table 9 given the high percentage of cases involving IRS action in which the IRS was the appellee.

In contrast to cases with IRS action, there was little difference in the acceptance rate for cases involving NLRB action compared with other cases with federal agency action. As noted above, cases with NLRB action involve more of a mix in that the NLRB itself can be the party to initially file suit to enforce its decision. Also, unlike IRS actions which generally involve just the IRS and a taxpayer NLRB actions generally involve two adverse parties, such as an employer and employee or employer and union. That means that regardless of the NLRB's action one of the parties might be sufficiently dissatisfied to go to court. The acceptance rate for cases with NLRB action was nearly identical to the acceptance rate for other cases with federal administrative action. This lack of a difference may have been due to the more complex mix of cases involving NLRB action or because that mix did not provide the Court with clearer indicators that the cases were more or less worthy of review.

The third agency whose actions examined were those of the ICC. In terms of substance, cases involving ICC action were more like those of the NLRB than the IRS, but the cases with ICC action presented a different aspect that caused those cases to have a very high acceptance rate. More specifically, a large percentage of the cases with ICC action came directly from three-judge federal district courts and the Court granted review to all these cases. Needless to say, that skewed the acceptance rate for this group.

The unusual nature of the cases with ICC action that came directly from three-judge federal district courts raised the question as to whether the Court was more or less willing to hear cases where the first court to hear a case (the origin court) was also the only court to do so before being appealed to the Supreme Court (the source court). The cases from the three-judge courts presented a problem in addressing this question. Focusing instead on cases where the origin and source court was the same and a federal Court of Appeals found that the Supreme Court was a bit more likely to accept such cases for review, but the difference did not reach a traditional level of statistical significance. Many of these cases involved administrative action by what are known as quasi-judicial agencies. Thus, it seems that the Court was not overly concerned that cases from these agencies received only one level of judicial review before being appealed to the Court.

Once again, the findings presented here provide additional details on several aspects of the Court's agenda setting. Of course, and as I have noted in prior papers, although these bivariate comparisons provide insight into the Court's agenda setting, more will need to be done to provide even more detail and in a multivariate setting.

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Table 1

Acceptance Rates for Cases With Administrative Action Compared With Cases Without Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Administrative Action	530	1,362	1,892	28.0%*
Without Administrative Action	639	3,196	3,835	16.7%
Column Total	1,169	4,558	5,727	20.4%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 2

Acceptance Rates for Cases With Federal Administrative Action Compared With Cases Without Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Action	430	1,084	1,514	28.4%*
Without Administrative Action	639	3,196	3,835	16.7%
Column Total	1,069	4,280	5,349	20.0%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 3

Acceptance Rates for Cases With State or Local Administrative Action Compared With Cases Without Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State or Local Administrative Action	100	278	378	26.5%*
Without Administrative Action	639	3,196	3,835	16.7%
Column Total	739	3,474	4,213	17.5%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 4

Acceptance Rates for Cases With State Administrative Action Compared With Cases Without Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State Administrative Action	89	219	308	28.9%*
Without Administrative Action	639	3,196	3,835	16.7%
Column Total	728	3,415	4,143	17.6%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 5

Acceptance Rates for Cases With Local Administrative Action Compared With Cases Without Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Action	11	59	70	15.7%
Without Administrative Action	639	3,196	3,835	16.7%
Column Total	650	3,255	3,905	16.6%

Table 6

Acceptance Rates for Cases With State Administrative Action Compared With Cases With Federal Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State Administrative Action	89	219	308	28.9%
With Federal Administrative Action	430	1,084	1,514	28.4%
Column Total	519	1,303	1,822	28.5%

Table 7

Acceptance Rates for Cases With Local Administrative Action Compared With Cases With Federal Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Action	11	59	70	15.7%*
With Federal Administrative Action	430	1,084	1,514	28.4%
Column Total	441	1,143	1,584	27.8%

* $p < .01$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 8

Acceptance Rates for Cases With Local Administrative Action Compared With Cases With State Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Action	11	59	70	15.7%*
With State Administrative Action	89	219	308	28.9%
Column Total	100	278	378	26.5%

* $p < .01$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 9

Acceptance Rates for Cases With IRS Administrative Action Compared With Cases With Other Federal Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With IRS Administrative Action	60	382	442	13.6%*
With Other Federal Administrative Action	370	702	1,072	34.5%
Column Total	430	1,084	1,514	28.4%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 10

Acceptance Rates for Cases With NLRB Administrative Action Compared With Cases With Other Federal Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With NLRB Administrative Action	41	104	145	28.3%
With Other Federal Administrative Action	389	980	1,369	28.4%
Column Total	430	1,084	1,514	28.4%

Table 11

Acceptance Rates for Cases With ICC Administrative Action Compared With Cases With Other Federal Administrative Action on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With ICC Administrative Action	95	51	146	65.1%*
With Other Federal Administrative Action	335	1,033	1,368	24.5%
Column Total	430	1,084	1,514	28.4%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 12

Acceptance Rates for Cases With Federal Administrative Action but No Federal Party Compared With Cases With Federal Administrative Action and a Federal Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Administrative Action Without Federal Party	47	106	153	30.7%
Federal Administrative Action With Federal Party	383	978	1,361	28.1%
Column Total	430	1,084	1,514	28.4%

Table 13

Acceptance Rates for Cases With Federal Administrative Action and Source and Origin Courts are the Same Compared With Cases With Federal Administrative Action and Source and Origin Courts are Different on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Source and Origin Courts the Same	210	318	528	39.8%*
Different Source and Origin Courts	220	766	986	22.3%
Column Total	430	1,084	1,514	28.4%

* $p < .001$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 14

Acceptance Rates for Cases With Federal Administrative Action and Source and Origin Courts are Courts of Appeals Compared With Cases With Federal Administrative Action and Source and Origin Courts are Different on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Source and Origin Courts the Same	81	223	304	26.6%
Different Source and Origin Courts	207	754	961	21.5%
Column Total	288	977	1,265	22.8%