Exploring Dissent in the Supreme Court of Argentina

I. INTRODUCTION

In collegial courts, judicial disagreement is inevitable. Legal systems address the possibility of judicial disagreement in a variety of ways. Early in its history, the Supreme Court of the United States replaced the traditional seriatim decision (in which each Justice enters her own opinion) by the current system of an opinion on behalf of the entire court with the opportunity for separate opinions (concurs or dissents). In the United Kingdom, judges in the Appellate Committee of the House of Lords historically issued their decisions seriatim, a practice picked up by the new Supreme Court (Raffaeli, 2012). By contrast, in the French *Cour de Cassation* deliberations are made secret by law and there are no dissenting opinions.[1] Many other courts have mixed practices whereby dissents are allowed, but efforts are routinely made to find common ground and achieve consensus, as described in the quote at the beginning of this article for the specific case of the Supreme Court of Argentina (*Corte Suprema de Justicia de la Nación* - hereafter, CSJN).

It is a widespread characteristic that high courts are collegial in their nature of entertaining litigation under appeal. As they have increased responsibilities in error correcting and lawmaking, they tend to have more members than lower courts. Moreover, court decision is the outcome of collective deliberation. In effect, the specialized literature points out that a larger number of judges should improve accuracy in adjudication (Good and Tullock, 1984; Posner, 1985; Kornhauser and Sager, 1986; Shavell, 1995). Yet their collegial nature, together with the

[1] See "The Role of the Court of Cassation", official document available at https://www.courdecassation.fr/about_the_court_9256.html (last access October 15, 2018).

distinct role of high courts in any given legal system (addressing primarily points of law rather than assessing facts), seems prone to a degree of internal judicial disagreement. At the same time, there are norms of consensus in all legal systems (Gerber and Parker, 1997). It is intuitive that too much disagreement is dysfunctional and excessively costly. So, within an efficiency theory of court norms, some pressure for consensus is clearly rational.

Jurisdictions around the globe (and across time)[2] have different approaches towards disagreement within a court. While the practice of producing and publicizing dissents is extended across common law countries, the tradition in civil law jurisdictions was to prohibit dissenting opinions (Fon and Parisi, 2006). Still today, in the case of the Belgian Court of Cassation or the Italian Constitutional and Cassation Courts, publishing individual views of judges made in secret deliberations constitutes a criminal offense (Raffaeli, 2012).[3]

When dissents are allowed, judges must decide whether or when to write them (Wood, 2012). This depends on a set of determinants, including limited resources, extent of the disagreement, internal practices of the court, and working environment. Rational dissent theory (Epstein et al., 2011; Fischman, 2011; Edelman et al., 2012) explains these determinants with a model of self-interested federal judges who enjoy life tenure. In this model, as judges make the decision whether or not to dissent, they trade off their desire for leisure and good collegial relations with their aspiration for a good reputation and their willingness to express their opinion to influence the law.[4] As a result, judges may choose not to dissent even if they do not share the opinion of

[2] See Epstein et al. (2011).

[3] Art. 685 of the Italian Criminal Code criminalizes the publication of the names and votes of judges sitting in criminal cases. However, since 1988 (when the new law on judicial civil liability was enacted), dissents, and the grounds therefore, may be recorded, upon the dissenter's request, but are kept in a sealed envelope.

[4] Fischman (2011) conceptualizes the trade off in terms of suppressed dissent, which occurs when a judge decides to join a majority even if her preferred outcome would differ from the one voted by her colleagues.

the majority. Epstein et al. (2011, hereafter, ELP) refer to this as "dissent aversion". Tests of rational dissent theory have shown that the probability of dissent is influenced positively by the ideological differences among judges (ELP, 2011), the number of judges in the court or panel (Hazelton et al., 2017), and the importance of a case (ELP, 2011); and negatively by the size of the caseload (ELP, 2011) and by sociodemographic variables (for example, whether judges work in the same city; Hazelton et al., 2017).[5] Others have emphasized other costs generated by dissenters, such as the harm they may cause to a court's perceived legitimacy or reputation (Stack, 1996).

While the main insights of rational dissent theory have been documented and corroborated in several studies, there has been much less empirical testing on how different types of dissent may affect the likelihood of dissent. Dissents in more salient cases, or more forceful dissents, may have stronger legal effects than dissents appearing in less relevant cases or very narrowly constructed dissents. Our article aims to fill that gap in the literature by seeking to isolate varying levels of appeal intensity and types of dissents in the Supreme Court of Argentina.

CSJN is a collegial high court with discretionary appellate jurisdiction. It reviews constitutional and federal questions potentially impacting many other cases[6] as well as due process adjudication (whose effects are restricted to the appeal at stake). In addition, CSJN issues rulings on appeal's admissibility and on the substance of the case within the same decision. These special features allow us to identify different types of dissents (for example, certiorari denied or formulaic dissents vs reasoned dissents) as well as cases with different level of importance (for example, federal or constitutional appeals vs due process violations).

[5] Earlier papers (Walker et al., 1988) discussed the possibility that a more significant caseload could enhance levels of individual expression, as judges would not have the time to build consensus and construct compromises.

[6] While Argentina's formal lack of stare decisis means that CSJN's decisions are not binding on other courts, CSJN's decisions on constitutional or federal questions carry significant authoritative value. See section III below.

Consistently with previous results (mainly the work by ELP, 2011), we found that more important cases have a lower likelihood of carrying a dissenting opinion. Nevertheless, when we breakdown dissents by type between reasoned dissents and formulaic boilerplate dissents, we find that majority decisions carrying dissents tend to be longer, but only in cases of reasoned dissents. Furthermore, we show that reasoned dissents are more likely in important cases, suggesting that Justices choose to exert the effort needed to produce a reasoned dissent when the potential benefits, for example in terms of legal aspiration, are higher. Overall, our study highlights that not all dissents should be treated alike as different types of dissent carry different levels of collegial and effort related costs. These costs affect the likelihood of dissent in different and complex ways.

The paper proceeds as follows. In section II we present the legal and institutional background of CSJN. In section III we present the theoretical framework and construct our hypotheses. In section IV we succinctly describe our data. Section V presents our main findings. Section VI briefly concludes.

II. CSJN'S INSTITUTIONAL CONTEXT

In this section, we briefly explain CSJN's procedural rules, and describe the Court's organizational structure and jurisdiction. CSJN intervenes both through its original jurisdiction (that is, first instance court in very specific matters) and as the appeal court of last resort.[7] Only the latter is relevant for our purposes here.[8] CSJN's appellate jurisdiction[9] includes cases decided

[7] When the Argentine parliament established the Supreme Court appellate jurisdiction, it followed closely the U.S. Judiciary Act of 1789.

[8] Its original jurisdiction is used for cases related to foreign ambassadors, ministers or consuls, or cases between provinces or a province and a foreign state. Constitution of Argentina, article 117 and article 1 of Act 48 (Organización y Competencia de los Tribunales Nacionales).

by courts of federal, national (*i.e.*, local courts of the city of Buenos Aires),[10] federal/national (*i.e.*, criminal cases from federal or national standing that reach the Federal Criminal Cassation Court), or provincial jurisdiction.

The standard appellate jurisdiction is known as Extraordinary Appeal (*Recurso Extraordinario Federal*; hereinafter, *REF*) and it has three different sources. A first possibility arises when a case questions the validity of a treaty, federal law or action undertaken under federal authority and the local court holds against the validity of the treaty, law or the federal authority. A second alternative arises when the validity of a provincial law, decree or act has been questioned as unconstitutional or contrary to a treaty or federal law, and the provincial court decides in favor of the validity of the provincial measure. Finally, the Supreme Court may intervene when a party invokes a constitutional clause, a treaty, a law, or a grant of federal authority and the provincial court decides against the norm or privilege invoked.[11] Under exceptional circumstances, an

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[9] In most of these cases, the Supreme Court possesses appellate jurisdiction, save for those cases concerning foreign ambassadors, ministers and consuls, and in those cases in which a province shall be a party, where the Court has original and exclusive jurisdiction. See article 117 of the Constitution of Argentina. An unofficial English version of the Constitution is available at http://www.biblioteca.jus.gov.ar/argentina-constitution.pdf (last access October 15, 2018). See, accordingly, article 1 of Law N° 48, available in Spanish at http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116296/texact.htm (last access October 15, 2018).

[10] Article 4 of Law N° 48.

[11] Article 14 of Law N° 48, available in Spanish at http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116296/texact.htm (last access October 15, 2018).There is a separate kind of mandatory appellate jurisdiction known as ordinary appeals, which are reserved for cases in which the state is a party and the amount of the claim exceeds a certain figure. This latter form of appellate jurisdiction is subjected to different rules. It is not addressed in this study.

appeal may be granted on the grounds that the decision of the lower court was arbitrary (*Recurso Extrarodinario por sentencia arbitraria*, hereinafter, *Arbitrariedad*).[12]

In order to reach CSJN, petitioners must file complaints – commonly referred to as *Recurso extraordinario* (hereinafter, REX) – in the relevant lower court of appeal (or provincial supreme court), which decides whether the appeal meets the substantive and procedural requirements after affording an opportunity for respondents to file appropriate replies. If the lower court considers that all requirements are satisfied, the appeal is sent to CSJN. If the lower court considers they are not, the appeal is denied; in that case, litigants may directly ask CSJN to reconsider their cases through a *Recurso de Queja* (hereinafter, RHE). In this case, CSJN will review whether the lower court legitimately denied the appeal.

Once the appeal reaches the CSJN, it is distributed to the Judicial Department specialized in the specific area of the appeal.[13] The relevant Judicial Department conducts a preliminary assessment on the basis of the formal requirements.[14] The specialized Judicial Department often keeps the file for internal drafting before circulating it among the justices if the appeal arrives through RHE. When the appeal is granted by the lower court, the specialized Judicial Department usually distributes it across the justices, often starting with one with particular specialization in an area (before going to the others).[15] An initial majority draft is crafted in the office of the first Justice to review a REX appeal. If a Justice proposes a different solution, that second opinion is added to the circulating file. Eventually, the latter opinion may become the majority opinion.

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[12] See, *e.g.*, Supreme Court decisions in Fallos 302:1191, and Fallos 300:535.

[13] A description of the thematic area of specialization of each JD in provided in Table A.1 in the appendix.

[14] On the appeal document's formal requirement, see Muro et al. (2018).

[15] Tax law appeals are always analyzed by the relevant JD (Secretaría Judicial N° 7). Interview A-3.

There is no rule that limits the period during which (or the number of times) a file may circulate across Justices. In addition, *Arbitrariedad* and *REF* files will typically be sent to the office of the *Procurador General de la Nación* (hereinafter, PGN) for a non-binding opinion.[16] Each Justice will usually make a decision on the petition after reviewing the appeal file by issuing (or joining in) a reasoned opinion or a boilerplate one, or by making a remission to a previous case decision or to the non-binding opinion of the PGN.[17] Justices opinions may come in the form of a majority vote, a separate concurring vote (classified by CSJN as *por su voto*), a dissenting vote (partial or total) (classified by CSJN as either *en disidencia* or en *disidencia parcial*) or even a no vote.[18] Formally, the decisions are made on Tuesdays, the days Justices officially get together to sign the opinions they have made on the different cases. Such meetings may also serve to discuss other cases in the pipeline.[19] Proper hearings are extremely rare.[20]

The fact that CSJN has jurisdiction over a case does not guarantee that the court will arrive at a decision on the intrinsic merits of the appeal. In 1990, Congress reformed the Code of Civil and Commercial Procedure, giving CSJN discretion to dispose of appeals based on a lack of

[16] The PGN is often equated to the figure of the Attorney General in the US. It formally sits outside the structure of the executive and judicial power and is charged with the protection of the general interests of society and the defense of the constitution (see Article 120, Constitution of Argentina.) The PGN is nominated by the president, and is confirmed by two thirds of the members of the Senate.

[17] It should be noted that there is no rule mandating a minimal amount for circulation of each file or that each Justice should receive the file through the circulation process.

[18] Not voting on a case is a fairly widespread practice in Argentine collegial courts, commonly attributed to the large docket sizes those courts handle.

[19] When discussing cases, Justices may question officers leading the relevant specialized JD on the details of the case. Informal meetings where Justices (or their clerks) discuss cases are somewhat frequent.

[20] On this, see Benedetti and Sáenz (2016).

substantive importance.[21] This type of decision is referred to as *Article 280*. Since then, CSJN has routinely made use of the discretionary power to reject appeals on the grounds that the matters raised by the appellant are either insignificant or inconsequential. In order for CSJN to reject an appeal, it must deliver a decision,[22] typically of the boilerplate type. Rulings on appeal's admissibility and, eventually, on the substance of the case are included in the same decision. As a result, some admitted appeals carry *Article 280* dissents and some rejected appeals have dissents admitting the appeal and analyzing the merits. At the time of our study, CSJN had seven members. In practical terms, it means that at least four Justices had to vote in order to produce a legal outcome.[23]

[21] Articles 280 and 285, *Código de Procedimiento Civil y Comercial de la Nación, Ley 23.774* (1990), available in Spanish at http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#5 (last access on March 15, 2018).

[22] Notably, this type of decision has the same majority requirements as a decision on the merits.

[23] In 2014, CSJN composition was reduced from seven to five justices. Hence, with the new composition, at least three justices have to vote now to reach a decision. It should also be noted that a majority vote is reached for dismissal even if a vote provides other grounds for appeal dismissal in a separate opinion.

III. THEORY AND HYPOTHESES

III. 1. REVIEW OF THE LITERATURE

The normative debate surrounding the possibility of dissenting has a long history. Arguments in favor of voicing dissent are rooted in free speech and judicial independence (Vitale, 2014), the moral obligation a Justice has when her interpretation differs from the majority (Brennan, 1985), an outcome consisting of a better argued majority opinion (Haire et al., 2013), and the benefits for the evolution of the law (McCormick, 2012). Arguments in favor of decisions *per curiam* are based on the negative effects dissents may pose on public confidence on the court and on court legitimacy (Stack, 1996; Zink et al., 2009; Salamone, 2013), on legal certainty, on the efficient use of court resources (Vitale, 2014) and on compliance with court decisions (Naurin and Stiansen, 2016).

While the debate over the overall benefits of dissents is far from settled, when judges do have the option to dissent available to them, they face a somewhat complex choice (Berzon, 2012; Wood, 2012). According to rational dissent theory (Edelman et al., 2012; ELP, 2011; Fischman, 2011; Niblett and Yoon, 2015), a potential dissenter must balance the costs and benefits of actually writing a dissenting opinion. As such, a potential dissenter recognizes that reaching a different outcome than the majority of the court requires effort, which represents an important cost. Furthermore, the dissenting vote will demand additional effort from the majority to answer the arguments of the dissenter (either in terms of revising the original opinion to accommodate the point of view of the dissenter or to respond to her objections). Repeated or forceful dissents may make it more difficult for the dissenter to gain the support of her peers in future cases and may even affect job satisfaction (ELP, 2013), generating a collegiality cost. Finally, dissents may

harm the legitimacy of the court (Salamone, 2013) and even diminish the probability of compliance with its orders (Naurin and Stiansen, 2016).

Against these costs, potential dissenters assess the benefits of a dissenting opinion. These benefits include the desire for a good judicial reputation and to express their opinion - which may include the satisfaction for doing so or the chance to influence the case law (Wahlbeck et al., 1999; Harnay and Marciano, 2003; Hettinger et al., 2004; Sunstein, 2015). As a result of the balance of costs and benefits, a judge may ultimately forgo the opportunity to dissent even if her ideological preference is different from the one expressed by the majority vote.

Researchers have found evidence supporting the validity of some testable hypotheses emanating from rational dissent theory. First, and as per costs of dissent, ELP (2011) found that caseload is negatively related to the probability of dissent at both Supreme Court and appellate courts, suggesting that the marginal cost of writing a dissenting opinion increases with a heavier workload. At the US Supreme Court level, ELP (2011) found evidence for the additional effort demanded from the supporting judges as majority opinions tend to be longer when more than one dissent is present. Similarly, they found that majority opinions in US appellate courts are longer when there is a dissenting opinion. In terms of collegiality costs, Hazelton et al. (2017) document that US Court of Appeals judges who work in the same city are less likely to dissent with one another. They also showed that judges on circuits with fewer active judges, who are more likely to be in a panel together in the future, as well as judges who have served longer with other judges in the same circuit, are less likely to dissent with one another.[24]

Second, ELP (2011) showed evidence on the benefits of dissenting. In their study, dissent at the appellate courts slightly increases the chances that the Supreme Court will grant certiorari. Those dissents are rarely cited inside or outside the circuit, diminishing the likelihood of reputation-

[24] Hazelton et al. (2017) found a similar co-tenure effect in the Supreme Court.

building or of influencing the law. In the case of the Supreme Court, when a decision has more than one dissenting opinion or when the case is more important (proxied by the number of citations received by the majority opinion) it increases the likelihood of citing those dissents. In the same vein, McCormick (2012) recently found that an initial minority became a majority in roughly one in every four divided panels in the Supreme Court of Canada.[25]

III.2 THEORY

While rational dissent theory accounts for costs and benefits, so far the prevailing way for empirically accounting for these costs and benefits has not been particularly granular. Specifically, how different types of cases and petitions shape the likelihood of dissent is an open question. On the one hand, a dissent which carries unduly criticism of the majority opinion[26] may not be received as lightly as one where the language accounts for the complexity of the issue and makes an effort to limit the areas of disagreement. On the other hand, it is implausible that dissenting is oblivious to the importance of a case. Even if the level of criticism in a dissenting opinion remains constant, a dissent which appears in an important or salient case may generate more collegiality costs, or more harm to the legitimacy of the court, than others. It could also offer higher reputational rewards.

We can, therefore, suggest two different relevant decisions. First, judges must consider whether or not to dissent. According to rational dissent theory, they will balance costs and benefits. Therefore, judges should dissent in cases where the possible benefits (for example, impact in the law or external recognition) outweigh costs. Second, if dissenting, judges must decide which

[25] Other commonly intervening factors seem to play a role in dissents too. For instance, ELP (2011) showed that ideological differences among judges at both Supreme Court and appellate courts increase the chances of a dissent.

[26] See Vitale (2014) for illustrative examples of accusations of improper motives and other unduly criticisms.

kind of dissent to cast – a long detailed reasoned dissent or a boilerplate dissent. By backwards induction, the decision on whether or not to dissent should take into account the subsequent decision concerning type of dissent.

Let us assume that a dissent is being drafted. A rational judge would go for a reasoned dissent when the matter justified a long legal pondering of arguments. The same rational judge should opt for boilerplate or formulaic dissents when the case does not answer a very important legal question. The immediate consequence of these observations is that dissenting in important matters is more costly (because it involves long and complex reasoned dissents) while dissenting in less important cases is less costly (since the judge will file something like a template).

At the same time, we can envisage that individual benefits from dissenting are also more acute in important cases (at least, in terms of external visibility) than in less important cases (which have little impact on the law or on legal and political debates).

Therefore, rational dissent theory cannot predict the exact outcome on the balance of costs and benefits. In fact, it could be that the net benefit is positive for important cases (because legal impact is more significant than drafting a reasoned dissent), for less important cases (because filing a boilerplate dissent is almost costless) or for both. It seems that only empirical evidence can respond to this question.

CSJN's institutional setting allows us to investigate these matters. A key element of the institutional setting is that the process is primarily written (not oral, as in common law systems) and the role for litigants, albeit in a few exceptional cases,[27] is limited to the filing of the appeal and the written response. The norm, then, is for CSJN to decide on appeal admissibility and on the substance of the case (if necessary) in the same decision. Consequently, dissenting opinions may consist of argued positions on the subject matter or merely a denied certiorari. A denied

[27] See Benedetti and Sáenz (2016).

certiorari dissent typically does not include an explanation on why the appeal should be dismissed. As a result, such a dissent should demand less from the Justices in the majority who do not have to respond to any particular argument.

CSJN issues three types of decisions on extraordinary appeals.[28] *REF* decisions involve appeals concerned with constitutional review while *Arbitrariedad* decisions focus on whether or not the inferior's court decision was arbitrary, typically due to violations of due process or the right to a reasoned opinion. In turn, *Article 280* decisions are certiorari denied cases (based on lack of substantive importance of the appeal). As *REF* appeals involve constitutional or federal issues, typically raising questions about fundamental values. This is often not the case with *Arbitrariedad* cases. Furthermore, while Argentina does not formally recognize stare decisis, *REF* precedents typically carry greater authoritative value and are more often than not followed by lower courts.[29] *Arbitrariedad* decisions, by the nature of the underlying appeal, apply merely to the case at stake.[30] Finally, *Article 280* decisions apply to both appeals asking for constitutional review or to overturn an arbitrary decision and are issued when a majority of Justices believes that the appeal lacks substantive importance. By definition, *Article 280* cases are those whose importance does not warrant the attention of the Court. Combined, these reasons suggest that *REF* cases are, on average, more important than *Arbitrariedad*, and that each of them is, in turn, more important than *Article 280* appeals.

IV. DATA COLLECTION AND PROCESSING

[28] CSJN also issues decisions to dismiss appeals on formal grounds, for instance when the appeal document did not comply with certain requirements or for lack of autonomous reasoning (Muro et al. 2018).

[29] See Legarre (2011); interview with Cristian Abritta, a former senior officer of CSJN (retired in 2018).

[30] See Carrió (1967).

The focus of this study is on individual votes concerning the decisions (*REF*, *Arbitrariedad* and *Article 280*) arising out of extraordinary appeals (REX and RHE) issued by CSJN in 2012 and 2013, *i.e.*, in the subset of cases where litigants decided to appeal to CSJN.[31] CSJN publishes online every opinion it issues, along with information on case history and other background information. Starting on 2012, CSJN's jurisprudence office has categorized every opinion according to different criteria. It also introduced a search engine which allows looking for opinions meeting any of the pre-determined criteria. One such criterion is the outcome of the opinion. We used the search engine to find every decision on *Arbitrariedad* and *REF* grounds that CSJN made during 2012 and 2013, excluding pension cases.[32] In addition, we randomly selected one fourth (500) of all opinions issued in 2012 decided on *Article 280* grounds, excluding again pension cases.[33] After discarding repeated opinions and opinions which were mistakenly classified as *Arbitrariedad*, *Article 280* or *REF*, we ended up with a working database

[31] CSJN decides thousands of appeals each year. During the 2012-3 period, the court issued about 14,000 decisions, including pension cases. Most of those decisions (83%) were appeal dismissals. At the time, about half of the court's decisions to dismiss appeals were boilerplate or formulaic decisions on procedural grounds (such as for failing to comply with formal requirements or failing to produce a self-contained appeal document). The rest were certiorari denied decisions based on Article 280.

[32] Pension cases are somewhat particular and therefore we decided to exclude them from the analysis. Specifically, almost every pension case arises out of disputes between pensioners and the government due to lack of adjustments made to the pension amount over the years. Typically, lower courts would order the government to adjust those amounts according to a specific criterion and the government has adopted a policy which mandates its legal department to appeal each case up to the Supreme Court. Therefore, there are thousands of similar cases reaching the Supreme Court each year which do not merit much attention for present purposes.

[33] For data availability issues, we only used *Article 280* decisions from 2012. As these are certiorari denied opinions, we have no reason to believe the decisions in 2013 (or other years) would differ in terms of dissent probability or average length of the opinion.

consisting on the following decisions: 918 *REF*, 320 *Arbitrariedad*, 496 *Article 280*.[34] Given the methodology used, we find this to be consistent with a random sampling for the purpose of statistical testing.

Because we were interested in looking at an individual level information to assess the factors shaping the probability of dissent, we then assessed the data to capture the votes of each Justice in every single case. We classified individual votes as dissents (total or partial) and classified separate concurring opinions following CSJN's own classification. This procedure resulted in a database consisting of the following individual votes: 6,426 *REF*, 2,240 *Arbitrariedad* and 3,472 *Article 280*.

V. RESULTS

The object of this article is to assess the effects of different cases and dissents on the probability of dissent. To address this issue, we started with a database of extraordinary appeal decisions which excluded those decisions rejecting appeals on formal grounds.[35] Table 1 describes the decisions in our database. *REF* decisions comprise 53% of the total number of decisions used in this article, while *Arbitrariedad* and *Article 280* represent 18% and 29% respectively. Most of *REF* decisions were originated out of REX appeals (75%), while most *Article 280* decisions arose from RHE appeals (78%). Taken together, these figures suggest a certain level of agreement between lower courts and CSJN on which appeals should be entertained by CSJN, as

[34] The cases identified by the methods described above were coded by student research assistants. Prior to the student coding, the authors developed a template to structure the coding and a coding protocol. After review of the performance of the form, the protocol and the students in an initial set of cases, the form and the protocol were revised. The students used that revised form and protocol to code the cases, under the supervision of the authors.

[35] There are several formalities appeals must comply with in order to be reviewed. For more on this point, see Muro et al. (2018).

CSJN only gets to review REX appeals when a lower court grants the leave for appeal. *Arbitrariedad* decisions are more evenly distributed, with 51% of them arising from REX appeals.

[Insert table 1 here]

Table 2 reports the number of decisions issued according to the subject matter of appeals and categorized according to the type of decision. The prominence of subject areas varies greatly with the type of decision. For instance, 46% of *REF* decisions (418) came about on the public/administrative law area. In turn, tort/insurance law is the most frequent subject matter area in *Arbitrariedad* decisions, accounting for 44% (137) of them. Finally, *Article 280* decisions most frequently appear in criminal law/criminal procedure appeals.

[Insert table 2 here]

Consistent with a court that aims for consensus, dissenting votes are somewhat rare. Only 4% of the Justices' votes come in the form of a dissenting or partially dissenting opinion. Dissenting votes are somewhat rare in all type of decisions, though they seem to appear more frequently in *Arbitrariedad* votes (10%). By contrast, only 2% of *REF* votes and only 3% of *Article 280* votes are dissenting ones. As table 3 shows, dissenting votes are rare in all areas of the law, being more prominent in criminal law (except for *Article 280* decisions).

[Insert table 3 here]

All Justices have low levels of dissents. Nevertheless, Justice Argibay[36] was clearly the Justice with most dissents as 11% of her votes were cast as dissenting opinions and 1% as a partial dissent. The Justice with the second highest dissenting rate, Highton de Nolasco[37], issued a dissenting or partially dissenting vote in just 5% of the decisions. Even though dissent rates are quite low, it does not translate into overwhelming levels of consensus. The reasons for this is that it is very common for Justices to decide not to cast a vote. For instance, Justice Fayt[38] decided not to vote in 58% of the decisions in our sample.

[Insert table 4 here]

Dissent probability and appeal relevance

In order to assess dissent probability, we started by looking at appeals potentially carrying different weights. *REF* decisions typically involve constitutional or federal questions and they tend to have an authoritative effect on lower courts handling similar cases. *Arbitrariedad* decisions generally involve due process violations and their effects are limited to the case at stake. In turn, *Article 280* (i.e. certiorari denied) decisions arise out appeals assessed to lack substantive importance by the majority of the court. Hence, we expect more important REF cases to involve higher rewards for dissenters but also to produce higher collegiality costs. At the other end of the spectrum, we expect dissents in *Article 280* decisions to carry lower rewards and lower collegiality costs. As it was described in table 3, dissents appear to be more frequent in

[36] Justice Carmen Argibay (1939-2014) became a member of the Court in 2004 by choice of President Néstor Kirchner.

[37] Justice Elena Highton de Nolasco (1942) was nominated by President Néstor Kirchner in 2004. She has been Vice-President of the Court since 2005.

[38] Justice Carlos Fayt (1918-2016) was nominated by President Raúl Alfonsín in 1983.

Arbitrariedad cases. To test this issue in a multivariate context, we run several binomial multiple regression models. The dependent variable takes value "1" if a dissenting or partially dissenting vote is cast and "0" otherwise (including no vote).[39] Our main independent variable is *decision type*, a categorical value with three levels (*REF*, *Arbitrariedad* and *Article 280*).

To account for CSJN's institutional setting, appeal and Justices' characteristics, we also included several control variables in different specifications. As previous studies found ideology to play a role, we included a variable called *Justice distance to median* based on Gonzalez Bertomeu et al. (2017), which captures the distance between each Justice and the median Justice. It measures some form of more radical judicial philosophy and so we expect it to have a positive impact on the probability of dissent.

Seniority may be related to lesser pressure to join the majority, so we have the variable *Justice's seniority.* Similarly, we included a dummy variable *CSJN pres in majority* to account for the cases with Chief Justice Lorenzetti[40] in the majority. Because dissent may be affected by the participation of the executive branch in the appeal, we included a dummy variable *national government as party.* More complex cases may require additional study at each Justice's office. Hence, we included a variable capturing the number of times an appeal file circulated through Justice's offices *(total times at Justices offices*). To capture the effect of remissions by the majority opinion (a common practice in CSJN), we included two dummy variables for possible remissions: *remission to PGN* and *remission to a previous decision*. Given that separate concurring opinions may also have an effect on dissent probability, we incorporated a dummy variable called *separate opinion* which is equal to one if there is at least one other judge in the

[39] See tables A.2-A.3 in Appendix for the binomial logit regressions when "no vote" is excluded. The results are largely consistent with tables 5-6. The number of individual observations is reduced from 11,102 to 7,643.

[40] Justice Ricardo Lorenzetti (1955) is the President of the Court since 2007. He was nominated to the Court by President Néstor Kirchner in 2004.

panel presenting a separate concurring opinion and zero otherwise.[41] Similarly, we added a dummy variable called *additional dissents* to control for those decisions containing more than one dissenting vote. To account for possible differences between appeals granted by the lower court and direct appeals, we included a dummy accounting for *REX* and *RHE*. We also included a dummy variable for decisions issued in 2013 (*decision in 2013*) to capture any possible caseload effects.[42] To capture the subject matter of each appeal we included Judicial Department's fixed effects. Finally, we also controlled for the rapporteur in each CSJN decision. For sake of independence, all standard errors are clustered on each CSJN decision.[43]

Table 5 shows the logistic regression results. Consistent with the descriptive statistics presented in table 3, when compared to *REF* decisions, *Arbitrariedad* cases are associated with higher probability of dissent in all seven specifications, a result which is highly significant in all regression specifications (p-value < 0.01). In turn, *Article 280* is associated to a lower chance of dissent in five specifications (p-value < 0.01). Ideological extremism (measured in terms of distance to the median Justice) is positively related to the probability of dissent in a highly statistically significant manner (p-value < 0.01) and in all specifications. The dummy for the year of the decision, as well as the control for Justice's seniority, fail to show any statistically significant effect on the probability of dissent. As per decisions based on remissions, the

[41] On separate concurring opinions, see Amaral-Garcia and Garoupa (2017).

[42] CSJN publicizes only information on decisions issued. Hence, it is not possible to precisely assess its caseload on a given year.

[43] Notice also that we run several specifications in order to acknowledge that some variables might raise concerns in terms of identification. Our main variable of interest (decision type) could potentially be influencing the existence of *separate opinions* or *additional dissents,* as well as the number of times a file circulated through Justice's offices. Hence, our base regression does not include any of these control variables. The results obtained are consistent across different specifications.

decisions with remissions to the PGN are negatively related to the probability of dissent in all seven specifications (p-value < 0.01). Interestingly, decisions with remissions to previous decisions fail to show any statistically significant difference in dissent probability, suggesting that dissents in the remitted decision tend to be replicated in later cases. Cases that originated in Judicial Department N4 (administrative law cases) and cases originated in Judicial Department N7 (tax law cases) were both associated to a lower probability of dissent compared to cases that went through Judicial Department N5 (p-value < 0.1, in all but two specifications). Direct appeals to CSJN (RHE), arising after a lower court rejected the grant of leave for appeal petition, are less likely to generate a dissenting vote (p-value < 0.05 in all but three of the regression specifications).

Let us now consider variables excluded from the base regression. Case complexity, as proxied by *Total times at Justices offices*, is positively related to the likelihood of dissent in four specifications (p-value < 0.01). Decisions carrying separate concurring opinions fail to show any statistically significant difference in the likelihood of dissent. In contrast, decisions carrying an additional dissent are positively associated with the probability of dissent (p-value < 0.01). When the national government is a party the probability of dissent is smaller in two specifications. Finally, the variable controlling for the rapporteur of the case fails to show any statistically significant effect on dissent probability.

[Insert table 5 here]

Unobserved judicial characteristics could be affecting our results. For instance, as *Arbitrariedad* is a CSJN-made doctrine, a particular judicial taste for *Arbitrariedad* could be driving the results.

To account for this possibility, we rerun our regressions including Justices fixed effects.[44] The results are presented in table 6. The regression results are generally the same and consistent with previous interpretation. *Arbitrariedad* decisions are more likely to carry a dissenting opinion than *REF* decisions in all specifications (p-value < 0.01). In turn, *Article 280* decisions are associated to a lower probability of dissent (p-value < 0.01, in all but one specification). As compared to Justice Highton, Justice Argibay is more likely to dissent (p-value < 0.01), while Justices Fayt, Lorenzetti and Maqueda[45] are less likely to dissent (p-values < 0.01). No statistically significant difference is detected for Justices Petracchi[46] and Zaffaroni.[47]

[Insert table 6 here]

We also run the same exercise at decision level, rather than with individual votes. This robustness test addresses concerns about the non-independence of individual votes and the dynamics of aggregation of preferences at the court level. The results we derived with previous approaches are replicated at decision level as we can see from table 7. In particular, the empirical observations concerning *Arbitrariedad* and *Article 280* are unchanged.

[Insert table 7 here]

The results presented in tables 5 to 7 show that the net benefits of dissent are not sufficient to have a higher likelihood of dissent in more important cases (*i.e.*, *REF* appeals). To further

[44] These regressions also have clustered standard errors.

[45] Justice Juan Carlos Maqueda (1949) was nominated to the Court by President Eduardo Duhalde in 2002.

[46] Justice Enrique Petracchi (1935-2014) was nominated by President Raúl Alfonsín in 1983. He died in 2014, while still a member of CSJN.

[47] Justice Eugenio Zaffaroni (1940) was nominated by President Néstor Kirchner in 2003. He retired in 2015.

investigate why dissents are more likely in *Arbitrariedad* decisions, we compared the different types of dissents Justices voiced in *REF* and *Arbitrariedad* decisions. Of the 218 *Arbitrariedad* dissenting votes, only 10 (about 5%) came in the form of reasoned opinions. This figure is relatively much smaller than the 38 votes out of 210 *REF* dissents (18%) which came in the form of reasoned opinions.[48] These numbers suggest that the actual average cost of casting a dissenting vote, and of responding to a dissenting vote, is larger in *REF* than in *Arbitrariedad* decisions, and higher incidences of dissent seem to be related to lesser cost of dissenting.[49]

Effort related cost to the majority

In order to assess whether different dissents entail different cost levels, we turn to the reactions of the majority produced by different types of dissenting opinions. To study the different cost

[48] In unreported results, we ran several multinomial regression models to test the effects of the type of decision on the type of dissents. The results obtained in those regressions confirm that REF decisions are associated to a smaller probability of formulaic dissents -relative to reasoned dissents- (p-value < 0.01 in all regression specifications).

[49] Alternative specifications have been studied. One alternative specification is to define the dependent variable as "1" if a dissenting vote, a partially dissenting vote or no vote occur and "0" otherwise (including concurring vote). A second alternative specification is to code "1" if not voting with the majority (including concurs) while "0" otherwise. The results are reported on tables A.4-A.5 and tables A.6-A.7 respectively. There are two significant changes. First, *Arbitrariedad* has the same positive sign, but is not statistically significant on tables A.6-A.7. Second, *Article 280* has now a positive impact (i.e., by comparison with *REF*) and is statistically significant in all specifications. The former effect is likely dependent on lumping together concurring and dissenting opinions. Separate concurring opinions in *Arbitrariedad* and *REF* are reasoned (costlier) opinions. Given the lesser importance of *Arbitrariedad* cases, it is consistent with the theory to have fewer separate concurring opinions in these cases (relative to *REF* ones), which may explain the lack of significance in these regressions. The latter effect is directly dependent on including no votes in the dependent variable, as CSJN has a practice to stop file circulation when a majority is reached in cases of appeals dismissals, and only those Justices who have seen the file typically vote on a case. Therefore, the specifications discussed in the text are more robust to judicial motivations.

levels, we focused on CSJN decisions as our unit of observation. We excluded from our database cases decided on *Article 280* grounds as they are run-of-the-mill decisions with little to no length variation.[50] Table 8 shows summary statistics for the number of words in the majority opinion. The table shows two distinct types of scenario according to whether the majority opinion issued its decision based on a remission to a previous decision or not. The former decisions are on average much shorter (158 words on average), regardless of whether or not a dissent was present. The latter decisions are much longer on average (1,637 words), especially so when there is a reasoned dissent. Focusing on decisions with no remission, decisions carrying reasoned dissents are on average 4,148 words long, more than three times as many words as the average decision carrying no dissent. Consistent with our hypothesis, decisions with formulaic dissents tend to be much shorter, containing on average 895 words.

[Insert table 8 here]

To test these results in a multivariate setting, we run a series of multiple least square regressions. Our dependent variable is the log of the total number of words in the majority opinion.[51] Our key independent variable is dissent type, a categorical variable taking one of four values: no dissent, formulaic dissent (a boilerplate decision; typically based on *Article 280* or *Acordada 4/2007* grounds), remission dissent (a dissenting opinion which merely refers to one or more previous opinions), or reasoned opinion. We included several control variables to take into account CSJN's institutional setting and case characteristics. Given CSJN's practice of relying on

[50] In the past, these decisions were issued by imprinting a large stamp on a piece of paper. While the technology has been upgraded, the practice remains largely the same.

[51] The total number of words includes footnotes, though footnotes are seldom used in CSJN's opinions.

previous decisions, we included the variable *remission* to control for the decisions where the majority grounds its opinion on a previous decision or on the opinion of the PGN. Initial drafts of decisions are typically included in the memos written by the thematically specialized Judicial Department. Hence, we included the variable *Judicial Department* (with seven levels, one per Judicial Department) to control for differences in writing style within each office. We also included a dummy variable for decisions issued in 2013 *–decision in 2013*- to capture any possible caseload effects.

Differences in jurisdictional source were captured by a categorical variable taking four levels (*Federal, Fed/Nat, Local* and *National*). To account for possible differences between appeals granted by the lower court and direct appeals, we included a dummy taking value "1" for *RHE* and "0" for *REX*. Because cases of greater importance may generate longer majority opinion, we introduced a dummy variable taking value "1" for cases raising federal/ constitutional questions (*REF*) and taking value "0" for cases decided on due process grounds (*Arbitrariedad*). For comparison purposes, we also included a dummy variable (*dissent*) taking value "1" if a decision included a dissent or partial dissent and "0" otherwise.

Separate concurring opinions may also have an effect on the majority, as the later seems to take the former into account. Hence, we incorporate a dummy variable called *separate opinion*. More complex cases may require more study at each Justice's office or at each Judicial Department and may generate longer opinions. Hence, we included a variable capturing the number of times an appeal file circulated through Justice's offices - *total times at Justices offices*. Finally, opinions with more dissenters may require more effort from the majority. To account for this, we incorporated a dummy variable (*2 or more dissenters*) to the regressions.

Table 9 reports the results. While dissent has a statistically significant effect on majority opinion length, most of the effect seems to be attributed to opinions with reasoned dissent. As compared

with decisions containing formulaic dissents, decisions with reasoned dissents tend to be longer, a result which is statistically significant (p-value < 0.05). This result is not only statistically significant, but also has practical implications. On average, a decision with a reasoned dissent tends to be 47% longer than a decision with a formulaic dissent. In turn, we fail to find a statistically significant difference in majority opinion length between decisions carrying no dissent (or remission dissents) and those carrying a formulaic dissent.

Decisions where the majority makes remissions to the opinion of the PGN or to previous decisions tend to be shorter than decisions without remission, a result which is highly statistically significant (p-value < 0.01). Also, decisions including at least one separate concurring opinion or decisions issued in 2013 tend to be longer on average (both results with a p-value < 0.01). Decisions carrying an additional dissent tend to be longer (p-value < 0.1). In turn, *REF* decisions tend to be longer, though this result is statistically significant in only 3 of our regression specifications (p-value < 0.05). Finally, as an appeal file circulates more through Justices offices majority opinions tend to be shorter (p-value < 0.01). The results presented in table 6 are consistent with different types of dissents generating different levels of costs. Specifically, they show that only reasoned dissents generate the need for a stronger reaction by the majority, suggesting that some dissents (such as formulaic or remission ones) may carry much lower collegiality costs.

[Insert table 9 here]

Taken together, our results strongly suggest the hypothesis that not all dissents do carry equal weight. In fact, different types of dissent do not only generate different response levels in the majority (in terms of the majority opinion extension), but also have different likelihood of

occurrence according to the importance of the case. Consistent with the cost side of rational dissent theory, more important (*REF*) decisions are less likely to carry dissenting opinions. Meanwhile, reasoned dissents are more likely to occur in important cases (in line with the benefits side of rational dissent theory).

VI. CONCLUSION

In this article, we showed that the probability of dissent at the CSJN is affected by multiple factors. Specifically, and complementing previous results by ELP (2011), we showed that the probability of dissent is positively associated to less important decisions (*i.e*., based on *Arbitrariedad* grounds). In turn, *Arbitrariedad* dissents are more likely to be formulaic or boilerplate than those appearing in more important decisions (*i.e*., *REF* ones). The formulaic nature of *Arbitrariedad* dissents reduces the cost of producing a dissent. Further, more important *REF* cases (offering relatively more benefits to dissenters) are more likely to carry reasoned dissents.

In addition, we showed that different types of dissents generate different costs to the majority in terms of reacting to the dissenting opinion. Specifically, reasoned dissents are associated with longer majority opinions than those carrying formulaic or boilerplate dissents, a result which is statistically significant at 5%. Further, we failed to observe a statistically significant difference in majority opinion length in cases carrying no dissent relative to cases with formulaic dissents. These results highlight the importance of the types of dissent in terms of their propensity to impose additional costs on the majority. Formulaic dissents likely entail lower collegiality costs because the majority is not required to exert additional effort to account for those dissents. In addition, these types of dissents are unlikely to ignite direct confrontations. Hence, we suggest that the lower cost of introducing dissents helps to explain their prominence in *Arbitrariedad*

decisions. Also, the higher benefits of reasoned dissents helps to explain the higher likelihood of dissent in more important appeals.

More generally, our results point to the fact that not all dissents carry equal weight. Hence, the frequency of dissents is dependent also on the specific costs and benefits that each type of dissent introduces in a particular type of case. When dissent costs fall dramatically, as it is often the case in *Arbitrariedad* cases, Justices dissent rate grows accordingly even if the benefits are small too. In turn, the higher probability of reasoned dissents (which are costly to produce and induce higher collegiality costs) in more important cases is consistent with the larger benefits and with the results obtained previously in the literature (ELP 2011). Further efforts by the literature to quantify the costs and benefits of dissents may offer a clearer window to the implicit calculations Justices make when deciding whether or not to dissent and what type of dissent to cast.

Table 1. Number of decisions by appeal type and decision type

	2012	2013
REF		
REX	314	379
RHE	107	118
Arbitrariedad		
REX	82	82
RHE	86	70
Article 280		
REX	105	0
RHE	391	0

Table 2. Percentage of decisions by type and subject area

	REF	*Arbitrariedad*	*Article 280*
Bankruptcy/ Corporate Law	0.03	0.02	0.03
Civil Procedure	0	0	0
Constitutional Law/ Health Law	0.03	0.03	0.01
Contract Law/ Financial Contracts/ Consumer Law	0.01	0.06	0.03
Criminal Law/ Criminal Procedure	0.06	0.12	0.39
Family Law/ Estates	0.01	0.01	0.02
Human Rights Law	0.03	0.01	0.02
Labor Law	0.08	0.13	0.16
Property Law	0.1	0.02	0.04
Public/ Antitrust Law	0.46	0.15	0.15
Social Security Law	0	0	0
Tax Law	0.16	0.02	0.11
Tort/ Insurance Law	0.04	0.44	0.05

Table 3. Proportion of dissents or partial dissents by area of law and decision type

	No dissent	Partial or total dissent
REF		
Private Law	0.99	0.01
Constitutional Law	0.96	0.04
Criminal Law	0.92	0.08
Labor Law	0.95	0.05
Public/ Tax Law	0.97	0.03
Arbitrariedad		
Private Law	0.9	0.1
Constitutional Law	0.86	0.14
Criminal Law	0.88	0.12
Labor Law	0.87	0.13
Public/ Tax Law	0.95	0.05
Article 280		
Private Law	0.99	0.01

Table 3. Proportion of dissents or partial dissents by area of law and decision type

	No dissent	Partial or total dissent
Constitutional Law	1	0
Criminal Law	0.98	0.02
Labor Law	1	0
Public/ Tax Law	0.97	0.03

Table 4. Percentage of vote types by Justice

	With majority	Concurring	No vote	Dissent	Partial dissent
Argibay	0.35	0.03	0.5	0.11	0.01
Fayt	0.37	0.04	0.58	0.01	0
Highton	0.71	0.01	0.24	0.04	0.01
Lorenzetti	0.73	0.02	0.24	0.01	0
Maqueda	0.85	0.01	0.12	0.02	0
Petracchi	0.6	0.02	0.34	0.04	0
Zaffaroni	0.75	0.01	0.2	0.03	0.01

Table 5. Binomial logit regression results

	Dependent variable:						
	Dissent or partial dissent = 1						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Justices distance to median	0.712***	0.719***	0.719***	0.719***	0.723***	0.942***	0.547***
	(0.053)	(0.053)	(0.053)	(0.053)	(0.061)	(0.080)	(0.085)
Arbitrariedad	0.979***	1.032***	1.010***	1.004***	0.949***	1.066***	0.726***
	(0.156)	(0.156)	(0.158)	(0.158)	(0.178)	(0.154)	(0.176)
Article 280	-1.342***	-0.992***	-1.023***	-0.980***	-1.093***	-0.436	-0.494*
	(0.312)	(0.335)	(0.336)	(0.344)	(0.415)	(0.283)	(0.257)
Remission to PGN	-0.832***	-0.920***	-0.927***	-0.922***	-1.051***	-0.509***	-0.661***
	(0.213)	(0.205)	(0.205)	(0.206)	(0.249)	(0.183)	(0.177)
Remission to previous decision	-0.292*	0.062	0.053	0.048	0.073	0.069	-0.102
	(0.168)	(0.180)	(0.180)	(0.180)	(0.215)	(0.167)	(0.155)
Decision in 2013	0.076	-0.061	-0.057	-0.048	-0.008	0.160	-0.176
	(0.131)	(0.131)	(0.131)	(0.131)	(0.148)	(0.112)	(0.144)
Judicial Department N1	-0.707**	-0.592*	-0.592*	-0.602*	-0.557	0.070	
	(0.313)	(0.325)	(0.329)	(0.331)	(0.412)	(0.330)	
Judicial Department N2	-0.191	-0.078	-0.080	-0.100	-0.059	0.531*	
	(0.304)	(0.317)	(0.322)	(0.323)	(0.418)	(0.322)	
Judicial Department N3	0.506*	0.463	0.465	0.462	0.584	0.524	
	(0.289)	(0.296)	(0.302)	(0.301)	(0.389)	(0.358)	
Judicial Department N4	-0.587*	-0.723**	-0.734**	-0.747**	-0.697*	-0.144	
	(0.319)	(0.322)	(0.322)	(0.323)	(0.409)	(0.325)	
Judicial Department N6	0.210	0.143	0.141	0.135	0.062	-0.107	
	(0.314)	(0.320)	(0.324)	(0.324)	(0.423)	(0.367)	
Judicial Department N7	-1.107***	-1.083***	-1.087***	-1.084***	-1.035**	-0.230	
	(0.330)	(0.333)	(0.336)	(0.337)	(0.409)	(0.331)	
RHE appeal	-0.260*	-0.371**	-0.370**	-0.368**	-0.292*	-0.602***	-0.465***
	(0.145)	(0.151)	(0.151)	(0.151)	(0.176)	(0.148)	(0.161)
Seniority	-0.00001	-0.00002	-0.00002	-0.00002	0.0002	-0.0001	-0.012
	(0.007)	(0.007)	(0.007)	(0.007)	(0.008)	(0.009)	(0.010)
Total times at Justices offices		0.083***	0.083***	0.084***	0.078***	-0.018	0.028
		(0.016)	(0.016)	(0.016)	(0.019)	(0.015)	(0.020)
Separate opinion			-0.191	-0.186	-0.176	-0.268	-0.046

			(0.214)	(0.215)	(0.231)	(0.263)	(0.238)
CSJN pres in majority				0.159	0.115	0.239	0.360**
				(0.186)	(0.210)	(0.152)	(0.145)
Nat'l government as party					-0.009	-0.396***	-0.357**
					(0.185)	(0.150)	(0.157)
Additional dissents						3.838***	3.573***
						(0.157)	(0.134)
Rapporteur Lorenzetti							-0.586
							(0.461)
Rapporteur Maqueda							-0.690
							(0.513)
Rapporteur Petracchi							-0.388
							(0.455)
Rapporteur Fayt							-0.300
							(0.481)
Rapporteur Zaffaroni							-0.389
							(0.454)
Rapporteur Highton							-0.106
							(0.464)
Constant	-3.303***	-3.979***	-3.939***	-4.068***	-3.993***	-5.242***	-4.237***
	(0.339)	(0.390)	(0.385)	(0.430)	(0.536)	(0.478)	(0.583)
Observations	11,102	11,102	11,102	11,102	8,827	8,827	6,489
R^2	0.166	0.179	0.180	0.180	0.173	0.406	0.384
chi^2	561.161*** (df = 14)	605.961*** (df = 15)	607.297*** (df = 16)	608.661*** (df = 17)	469.176*** (df = 18)	1,139.560*** (df = 19)	750.381*** (df = 19)
Note:							*p<0.1; **p<0.05; ***p<0.01

Table 6. Binomial logit regression results, Justices fixed effects

	Dependent variable:					
	Dissent or partial dissent = 1					
	(1)	(2)	(3)	(4)	(5)	(6)
Argibay	1.061***	1.073***	1.074***	1.074***	1.124***	1.523***
	(0.134)	(0.134)	(0.134)	(0.134)	(0.156)	(0.206)
Fayt	-1.588***	-1.597***	-1.597***	-1.598***	-1.591***	-1.891***
	(0.271)	(0.272)	(0.273)	(0.273)	(0.313)	(0.360)
Lorenzetti	-1.588***	-1.597***	-1.597***	-1.598***	-1.516***	-1.808***
	(0.269)	(0.270)	(0.270)	(0.270)	(0.295)	(0.343)
Maqueda	-0.936***	-0.943***	-0.943***	-0.943***	-0.876***	-1.081***
	(0.199)	(0.201)	(0.201)	(0.201)	(0.219)	(0.267)
Petracchi	-0.058	-0.059	-0.059	-0.059	-0.000	0.000
	(0.152)	(0.153)	(0.153)	(0.153)	(0.173)	(0.225)
Zaffaroni	-0.219	-0.221	-0.221	-0.221	-0.117	-0.152
	(0.160)	(0.161)	(0.161)	(0.161)	(0.171)	(0.222)
Arbitrariedad	0.984***	1.038***	1.016***	1.010***	0.954***	1.083***
	(0.156)	(0.157)	(0.159)	(0.158)	(0.178)	(0.154)
Article 280	-1.346***	-0.994***	-1.026***	-0.983***	-1.095***	-0.449
	(0.313)	(0.336)	(0.337)	(0.346)	(0.416)	(0.287)
Remission to PGN	-0.837***	-0.926***	-0.933***	-0.928***	-1.056***	-0.521***
	(0.214)	(0.206)	(0.206)	(0.207)	(0.250)	(0.185)
Remission to previous decision	-0.294*	0.062	0.053	0.048	0.072	0.075
	(0.169)	(0.181)	(0.181)	(0.181)	(0.216)	(0.170)
Decision in 2013	0.077	-0.061	-0.056	-0.048	-0.007	0.160
	(0.132)	(0.132)	(0.132)	(0.132)	(0.148)	(0.111)
Judicial Department N1	-0.709**	-0.595*	-0.595*	-0.605*	-0.558	0.059
	(0.314)	(0.326)	(0.331)	(0.332)	(0.413)	(0.332)
Judicial Department N2	-0.193	-0.079	-0.080	-0.101	-0.059	0.519
	(0.305)	(0.319)	(0.324)	(0.325)	(0.419)	(0.325)
Judicial Department N3	0.510*	0.466	0.469	0.465	0.589	0.537
	(0.290)	(0.298)	(0.304)	(0.303)	(0.390)	(0.362)
Judicial Department N4	-0.588*	-0.726**	-0.737**	-0.750**	-0.699*	-0.159
	(0.320)	(0.323)	(0.323)	(0.324)	(0.410)	(0.329)
Judicial Department N6	0.212	0.143	0.141	0.135	0.062	-0.109
	(0.316)	(0.322)	(0.326)	(0.327)	(0.425)	(0.370)
Judicial Department N7	-1.109***	-1.085***	-1.089***	-1.086***	-1.036**	-0.240

	(0.331)	(0.334)	(0.337)	(0.338)	(0.409)	(0.334)
RHE appeal	-0.261*	-0.372**	-0.371**	-0.370**	-0.293*	-0.596***
	(0.145)	(0.151)	(0.152)	(0.152)	(0.177)	(0.149)
Total times at Justices offices		0.084***	0.084***	0.084***	0.078***	-0.018
		(0.016)	(0.016)	(0.016)	(0.020)	(0.016)
Separate opinion			-0.192	-0.187	-0.177	-0.258
			(0.215)	(0.216)	(0.232)	(0.262)
CSJN pres in majority				0.160	0.116	0.248
				(0.187)	(0.210)	(0.154)
Nat'l government as party					-0.009	-0.402***
					(0.186)	(0.152)
Additional dissents						3.885***
						(0.159)
Constant	-2.384***	-3.057***	-3.017***	-3.147***	-3.114***	-4.166***
	(0.310)	(0.374)	(0.371)	(0.400)	(0.499)	(0.442)
Observations	11,102	11,102	11,102	11,102	8,827	8,827
R^2	0.183	0.196	0.196	0.197	0.189	0.423
chi^2	618.981*** (df = 18)	664.048*** (df = 19)	665.393*** (df = 20)	666.773*** (df = 21)	512.444*** (df = 22)	1,189.593*** (df = 23)

Note: *p<0.1; **p<0.05; ***p<0.01

Table 7. Binomial logit regression results. Decision level

	Dependent variable:						
	Dissent or partial dissent = 1						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Arbitrariedad	1.772***	1.827***	1.785***	1.773***	1.611***	1.882***	1.486***
	(0.182)	(0.185)	(0.186)	(0.187)	(0.194)	(0.239)	(0.292)
Article 280	-1.128***	-0.898***	-0.957***	-0.849***	-0.959***	-0.598	-0.922**
	(0.306)	(0.314)	(0.316)	(0.317)	(0.319)	(0.415)	(0.441)
Remission to PGN	-0.957***	-1.071***	-1.080***	-1.075***	-1.062***	-0.693**	-1.208***
	(0.234)	(0.235)	(0.235)	(0.236)	(0.234)	(0.301)	(0.341)
Remission to previous decision	0.014	0.284	0.271	0.253	0.244	0.311	-0.130
	(0.200)	(0.213)	(0.214)	(0.214)	(0.213)	(0.289)	(0.299)
Decision in 2013	0.077	-0.014	-0.007	0.022	0.105	0.195	-0.421
	(0.160)	(0.164)	(0.164)	(0.165)	(0.168)	(0.209)	(0.259)
Judicial Department N1	-0.696*	-0.599	-0.603	-0.622	-0.498	-0.405	
	(0.395)	(0.398)	(0.397)	(0.397)	(0.403)	(0.562)	
Judicial Department N2	0.162	0.246	0.253	0.210	0.175	0.220	
	(0.381)	(0.383)	(0.383)	(0.384)	(0.388)	(0.546)	
Judicial Department N3	0.992**	0.987**	0.993**	1.011***	0.983**	1.178**	
	(0.387)	(0.390)	(0.389)	(0.390)	(0.394)	(0.548)	
Judicial Department N4	-0.768**	-0.883**	-0.902**	-0.935**	-0.839**	-0.823	
	(0.382)	(0.386)	(0.386)	(0.387)	(0.394)	(0.581)	
Judicial Department N6	0.068	0.019	0.018	0.004	0.011	-0.259	
	(0.408)	(0.410)	(0.410)	(0.410)	(0.411)	(0.606)	
Judicial Department N7	-1.237***	-1.213***	-1.215***	-1.201***	-1.086***	-0.767	
	(0.390)	(0.391)	(0.391)	(0.392)	(0.396)	(0.559)	
RHE appeal	-0.578***	-0.650***	-0.648***	-0.635***	-0.694***	-0.682***	-0.573**
	(0.171)	(0.174)	(0.174)	(0.174)	(0.175)	(0.221)	(0.263)
Total times at Justices offices		0.066***	0.065***	0.067***	0.059***	-0.036	0.031
		(0.019)	(0.019)	(0.019)	(0.019)	(0.027)	(0.036)
Separate opinion			-0.365	-0.351	-0.353	-0.369	0.125
			(0.244)	(0.245)	(0.247)	(0.318)	(0.370)
CSJN pres in majority				0.418**	0.411**	0.855***	0.910***
				(0.202)	(0.203)	(0.293)	(0.331)
Nat'l government as party					-0.301	-0.666**	-0.647**

					(0.196)	(0.265)	(0.276)
Additional dissents						13.799	13.294
						(24.247)	(22.618)
Rapporteur Lorenzetti							-1.742**
							(0.814)
Rapporteur Maqueda							-1.619*
							(0.838)
Rapporteur Petracchi							-1.230
							(0.752)
Rapporteur Fayt							-2.103*
							(1.264)
Rapporteur Zaffaroni							-0.652
							(0.763)
Rapporteur Highton							-1.112
							(0.764)
Constant	-1.095***	-1.606***	-1.532***	-1.885***	-1.634***	-2.348***	-1.157
	(0.370)	(0.402)	(0.406)	(0.441)	(0.449)	(0.634)	(0.861)
Observations	1,586	1,586	1,586	1,586	1,486	1,486	1,113
R^2	0.302	0.312	0.314	0.317	0.319	0.606	0.578
chi^2	336.227*** (df = 12)	348.489*** (df = 13)	350.840*** (df = 14)	355.296*** (df = 15)	342.877*** (df = 16)	736.692*** (df = 17)	485.843*** (df = 17)
Note:							*p<0.1; **p<0.05; ***p<0.01

Table 8. Summary statistics, number of words in majority opinion

Dissent	Remission	Mean	Median	25th quantile	75th quantile	Standard Deviation
Formulaic dissent	No	895.17	822	609	1054	480.77
No dissent	No	1359.82	885.5	505.5	1631.5	1343.77
Reasoned dissent	No	4147.95	1763	1295.5	4202.5	5021.14
Remission dissent	No	1832.62	1733.5	1484.25	2057.5	791.57
Formulaic dissent	Yes	149.06	159	98	175	66.52
No dissent	Yes	158.8	119	89	189	134.68
Reasoned dissent	Yes	124.67	85.5	75.75	107.5	127.84
Remission dissent	Yes	180.41	118.5	105.25	132	311.71

Table 9. Regression results, robust standard errors

	Dependent variable:				
	Log number of words in majority opinion				
	(1)	(2)	(3)	(4)	(5)
Dissent	0.115**				
	(0.045)				
Remission	-2.063***	-2.020***	-2.071***	-2.054***	-2.052***
	(0.087)	(0.080)	(0.081)	(0.077)	(0.076)
Judicial Department N2	0.234***	0.254***	0.228***	0.224***	0.225***
	(0.069)	(0.070)	(0.073)	(0.072)	(0.072)
Judicial Department N3	-0.169	-0.158	-0.136	-0.191	-0.187
	(0.159)	(0.147)	(0.190)	(0.180)	(0.180)
Judicial Department N4	-0.116*	-0.121*	-0.073	-0.059	-0.057
	(0.064)	(0.064)	(0.071)	(0.070)	(0.070)
Judicial Department N5	0.119	0.086	0.105	0.090	0.086
	(0.123)	(0.116)	(0.125)	(0.123)	(0.121)
Judicial Department N6	0.069	0.066	0.095	0.090	0.080
	(0.099)	(0.099)	(0.102)	(0.099)	(0.099)
Judicial Department N7	0.243***	0.239***	0.260***	0.266***	0.269***
	(0.066)	(0.065)	(0.069)	(0.068)	(0.067)
Decision in 2013	0.127***	0.122***	0.144***	0.131***	0.131***
	(0.041)	(0.040)	(0.039)	(0.039)	(0.039)
REF	0.142***	0.112**	0.103**	0.066	0.059
	(0.050)	(0.050)	(0.049)	(0.049)	(0.049)
RHE	0.010	0.006	0.031	0.037	0.031
	(0.039)	(0.038)	(0.039)	(0.039)	(0.039)
Fed/Nat jurisdiction	-0.070	-0.047	-0.034	0.019	0.023
	(0.137)	(0.123)	(0.173)	(0.164)	(0.164)
Local jurisdiction	0.088	0.093	0.118	0.083	0.085
	(0.094)	(0.092)	(0.096)	(0.092)	(0.092)
National jurisdiction	0.171**	0.168**	0.183***	0.159**	0.173***
	(0.067)	(0.067)	(0.066)	(0.064)	(0.065)
No dissent		-0.032	-0.024	-0.054	-0.009
		(0.049)	(0.052)	(0.053)	(0.057)
Reasoned dissent		0.443**	0.488**	0.415**	0.387**
		(0.206)	(0.209)	(0.202)	(0.195)
Remission Dissent		0.105	0.134	0.109	0.076
		(0.102)	(0.113)	(0.108)	(0.110)

Total times at Justices offices			-0.016***	-0.013***	-0.014***
			(0.005)	(0.005)	(0.005)
Separate opinion				0.315***	0.312***
				(0.062)	(0.062)
2 or more dissenters					0.133*
					(0.079)
Constant	6.623***	6.646***	6.743***	6.733***	6.698***
	(0.114)	(0.103)	(0.114)	(0.110)	(0.110)
Observations	1,138	1,137	1,092	1,092	1,092
R2	0.629	0.633	0.638	0.651	0.652
Adjusted R2	0.624	0.628	0.632	0.645	0.646

Note: *p<0.1; **p<0.05; ***p<0.01. The number of observations is lower in regressions (3)-(5) due to missing observations. Robust standard errors in parentheses.

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APPENDIX

(alternative explanation)

It could be possible, though, that the legal theory explaining appeal admissibility (not the cost of dissent) justifies our *Arbitrariedad* results. In fact, some legal scholars and CSJN officials believe that *Arbitrariedad* admissibility is based on a standard while *REF* admissibility is based on a rule.[52] As a result, different Justices may interpret differently whether *the required Arbitrariedad standard* has been met, making *Arbitrariedad* decisions more prone to dissents, regardless of costs considerations.

To explore this hypothesis, we reviewed each *Arbitrariedad* decision to identify the type of problem prompting each Justice in the majority to consider the arbitrariness of the lower court's decision. To that effect, we used a classification established by Carrió (1967), adding a couple of additional levels admitted by CSJN later on. Then, for each case we classified the *Arbitrariedad* criterion as a rule or a standard. To be precise, we classified an *Arbitrariedad* decision as being based on a rule if at least *one rule criterion* was used to justify the decision. Table 10 shows the types of *Arbitrariedad* and whether we classified them as a rule or a standard.

[Insert table 10 here]

We used this information to compare dissents in *Arbitrariedad* decisions based on whether the majority opinion made a remission[53] and on whether at least one of the grounds for finding the lower court decision arbitrary was a rule. Table 11 presents the results.

[52]While the idea that CSJN uses a standard for *Arbitrariedad* is conceivable, many of the *Arbitrariedad* decisions we reviewed failed to explicit the use of a standard. Further, there is no unique standard used by the court.

[53] In those cases where the majority made a remission, we traced the opinion the majority referenced to identify the type(s) of *Arbitrariedad* invoked.

[Insert table 11 here]

The dissent rate is higher in decisions based on rules than on standards, both in cases with remission and without remission. In cases without remission, at least one dissenting opinion appears in about 44% of the decisions based on one or more standards, while appearing in 48% of the decisions based at least in one *Arbitrariedad* rule. Similarly, in cases where the majority opinion made a remission to a previous decision at least one dissenting opinion appears in 40% of the decisions based on one or more standards, while appearing in 61% of the decisions based at least on one *Arbitrariedad* rule. Finally, the percentage of partial or fully dissenting votes in *Arbitrariedad* decisions based at least on one rule is 10%, a result similar to the rate for all *Arbitrariedad* decisions reported above. These results suggest that the degree of uncertainty is not driving the higher rate of dissent observed in *Arbitrariedad*.

Table 10. Classification of type of *Arbitrariedad* as rule or standard

Type of Arbitrariedad	*Rule/Standard*
Not deciding issues brought up	Rule
Deciding issues not brought up	Rule
Taking the Judge the role of the legislator	Standard
Leave aside the applicable norm	Rule
Apply non-current law	Rule
Ground the decision in excessively lax terms	Standard
Leave aside decisive proofs	Standard
Invoke non-existent proofs	Rule
Contradict other elements of the case	Standard
Ground the decision in dogmatic claims	Standard
Excessive ritual rigor	Standard
Self-contradiction	Standard
Violation of a final decision	Standard
Omit the analysis of precedents	Standard
Lack of substantial coincidence on decision grounds	Standard
Other	Standard

Table 11. Number of *Arbitrariedad* decisions, by rule or standard

	No remission	Remission
Standard in *Arbitrariedad*		
No dissent	10	60
Dissent	8	40
Rule in *Arbitrariedad*		
No dissent	15	66
Dissent	14	101

(mostly not intended for publication)

Table A.1. Thematic area of specialization of each Judicial Department

	Area of specialization
Nº 1	**Commercial Law, Legal Fees, Intellectual Property and Conflicts of Competence (except for criminal ones)**
Nº 2	**Civil Law, Social Security Law, Freedom of Expression and Lawyers Sanctions**
Nº 3	**Criminal Law and Conflicts of competence pertaining to Criminal Cases**
Nº 4	**Public Law and Election Law**
Nº 5	**Institutionally Relevant Cases and Human Rights Law**
Nº 6	**Labor Law**
Nº 7	**Tax Law, Customs Law and Banking Law**

*** Adapted from Sabelli (2007).**

Table A.2. Binomial logit regression results, excluding abstentions

	Dependent variable:					
	Dissent or partial dissent = 1					
	(1)	(2)	(3)	(4)	(5)	(6)
Justices ideal points	0.653***	0.639***	0.667***	0.668***	0.662***	0.410***
	(0.042)	(0.041)	(0.042)	(0.042)	(0.046)	(0.055)
Arbitrariedad	0.981***	0.993***	0.942***	0.930***	0.883***	0.682***
	(0.152)	(0.152)	(0.153)	(0.153)	(0.174)	(0.200)
Article 280	-0.824**	-0.780**	-0.847**	-0.786**	-0.791*	-0.824**
	(0.325)	(0.325)	(0.331)	(0.345)	(0.408)	(0.405)
Remission to PGN	-0.825***	-0.822***	-0.831***	-0.827***	-0.916***	-1.104***
	(0.196)	(0.196)	(0.197)	(0.198)	(0.237)	(0.262)
Remission to previous decision	0.143	0.158	0.143	0.144	0.211	-0.060
	(0.169)	(0.170)	(0.174)	(0.175)	(0.209)	(0.216)
Decision in 2013	-0.171	-0.180	-0.180	-0.170	-0.148	-0.273
	(0.125)	(0.125)	(0.127)	(0.127)	(0.144)	(0.179)
Judicial Department N1	-0.580*	-0.573*	-0.614*	-0.619*	-0.599	
	(0.306)	(0.306)	(0.316)	(0.319)	(0.388)	
Judicial Department N2	-0.196	-0.165	-0.214	-0.225	-0.213	
	(0.300)	(0.299)	(0.309)	(0.310)	(0.396)	
Judicial Department N3	0.327	0.338	0.313	0.311	0.460	
	(0.280)	(0.281)	(0.294)	(0.294)	(0.375)	
Judicial Department N4	-0.837***	-0.833***	-0.890***	-0.905***	-0.921**	
	(0.313)	(0.312)	(0.325)	(0.327)	(0.410)	
Judicial Department N6	0.035	0.036	0.012	0.012	-0.099	
	(0.298)	(0.298)	(0.309)	(0.310)	(0.403)	
Judicial Department N7	-1.243***	-1.245***	-1.332***	-1.334***	-1.342***	
	(0.327)	(0.327)	(0.340)	(0.342)	(0.408)	
RHE appeal	-0.309**	-0.320**	-0.318**	-0.315**	-0.245	-0.164
	(0.144)	(0.144)	(0.145)	(0.146)	(0.168)	(0.200)
Total times at Justices offices	0.084***	0.083***	0.084***	0.085***	0.081***	0.133***
	(0.015)	(0.015)	(0.016)	(0.016)	(0.019)	(0.024)
Justice's age		0.018***	0.019***	0.019***	0.022***	0.011**
		(0.004)	(0.004)	(0.004)	(0.005)	(0.005)
Separate opinion			-10.030***	-10.002***	-10.124***	-9.600***
			(0.172)	(0.175)	(0.202)	(0.355)
CSJN pres in majority				0.179	0.081	-0.071
				(0.184)	(0.205)	(0.207)
Nat'l government as party					0.032	-0.256
					(0.182)	(0.187)
Rapporteur Lorenzetti						-1.095**

						(0.547)
Rapporteur Maqueda						-1.573***
						(0.600)
Rapporteur Petracchi						-1.318***
						(0.507)
Rapporteur Fayt						-0.216
						(0.591)
Rapporteur Zaffaroni						-0.569
						(0.518)
Rapporteur Highton						-0.818
						(0.508)
Constant	-2.475***	-3.768***	-3.693***	-3.885***	-3.985***	-2.750***
	(0.340)	(0.420)	(0.437)	(0.536)	(0.651)	(0.679)
Observations	7,643	7,643	7,643	7,643	6,113	4,536
R^2	0.205	0.209	0.225	0.225	0.219	0.143
chi^2	604.819*** (df = 14)	616.403*** (df = 15)	663.907*** (df = 16)	665.594*** (df = 17)	518.798*** (df = 18)	235.069*** (df = 18)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regressions (5) and (6) due to missing observations. Clustered standard errors at the decision level. Regression (6) includes rapporteur's fixed effects

Table A.3. Binomial logit regression results (excluding abstentions), Justices fixed effects

	Dependent variable:			
	Dissent or partial dissent = 1			
	(1)	(2)	(3)	(4)
Argibay	1.826***	1.954***	1.953***	1.991***
	(0.154)	(0.157)	(0.157)	(0.184)
Fayt	-1.061***	-1.039***	-1.045***	-0.957***
	(0.289)	(0.290)	(0.290)	(0.337)
Lorenzetti	-1.602***	-1.583***	-1.640***	-1.577***
	(0.272)	(0.272)	(0.292)	(0.321)
Maqueda	-1.056***	-1.055***	-1.062***	-1.035***
	(0.202)	(0.202)	(0.203)	(0.222)
Petracchi	0.286*	0.326*	0.338**	0.367*
	(0.167)	(0.167)	(0.168)	(0.189)
Zaffaroni	-0.215	-0.209	-0.212	-0.135
	(0.165)	(0.166)	(0.166)	(0.177)
Arbitrariedad	1.015***	0.965***	0.940***	0.922***
	(0.158)	(0.161)	(0.162)	(0.184)
Article 280	-0.963***	-1.060***	-0.950***	-0.939**
	(0.337)	(0.349)	(0.358)	(0.425)
Remission to PGN	-0.829***	-0.843***	-0.837***	-0.922***
	(0.201)	(0.202)	(0.204)	(0.244)
Remission to previous decision	0.147	0.121	0.124	0.194
	(0.173)	(0.180)	(0.182)	(0.218)
Decision in 2013	-0.161	-0.168	-0.146	-0.132
	(0.129)	(0.131)	(0.132)	(0.150)
Judicial Department N1	-0.624**	-0.684**	-0.696**	-0.731*
	(0.312)	(0.326)	(0.331)	(0.400)
Judicial Department N2	-0.226	-0.304	-0.328	-0.342
	(0.307)	(0.321)	(0.323)	(0.410)
Judicial Department N3	0.255	0.212	0.206	0.326
	(0.288)	(0.304)	(0.304)	(0.384)
Judicial Department N4	-0.888***	-0.966***	-0.999***	-1.094***
	(0.320)	(0.336)	(0.340)	(0.422)
Judicial Department N6	-0.010	-0.046	-0.050	-0.196
	(0.307)	(0.320)	(0.323)	(0.415)
Judicial Department N7	-1.355***	-1.498***	-1.502***	-1.580***
	(0.334)	(0.352)	(0.355)	(0.419)
RHE appeal	-0.311**	-0.308**	-0.302**	-0.217
	(0.149)	(0.151)	(0.151)	(0.175)
Total times at Justices offices	0.088***	0.091***	0.092***	0.088***
	(0.016)	(0.017)	(0.017)	(0.020)
Separate opinion		-9.812***	-9.772***	-9.838***
		(0.194)	(0.191)	(0.222)

CSJN pres in majority			0.329*	0.215
			(0.194)	(0.218)
Nat'l government as party				0.140
				(0.193)
Constant	-2.781***	-2.670***	-2.938***	-2.882***
	(0.349)	(0.371)	(0.409)	(0.503)
Observations	7,643	7,643	7,643	6,113
R^2	0.257	0.273	0.275	0.268
chi^2	764.027*** (df = 19)	816.178*** (df = 20)	821.846*** (df = 21)	642.482*** (df = 22)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regressions (5) and (6) due to missing observations. Clustered standard errors at the decision level.

Table A.4. Binomial logit regression results

	Dependent variable:					
	Dissent, partial dissent or abstention = 1					
	(1)	(2)	(3)	(4)	(5)	(6)
Justices ideal points	0.433***	0.417***	0.433***	0.435***	0.458***	0.474***
	(0.018)	(0.018)	(0.018)	(0.018)	(0.020)	(0.024)
Arbitrariedad	0.112***	0.118***	0.074*	0.103***	0.113**	0.128**
	(0.038)	(0.040)	(0.039)	(0.039)	(0.046)	(0.064)
Article 280	0.386***	0.409***	0.354***	0.290***	0.356***	0.454***
	(0.061)	(0.065)	(0.064)	(0.062)	(0.071)	(0.086)
Remission to PGN	-0.007	-0.007	-0.031	-0.042	-0.019	-0.040
	(0.054)	(0.057)	(0.057)	(0.055)	(0.065)	(0.071)
Remission to previous decision	0.186***	0.197***	0.181***	0.195***	0.227***	0.243***
	(0.055)	(0.058)	(0.059)	(0.056)	(0.065)	(0.074)
Decision in 2013	0.055*	0.059*	0.081**	0.044	0.020	-0.029
	(0.032)	(0.034)	(0.035)	(0.034)	(0.040)	(0.054)
Judicial Department N1	-0.064	-0.068	-0.086	-0.067	-0.018	
	(0.082)	(0.087)	(0.088)	(0.086)	(0.099)	
Judicial Department N2	0.056	0.060	0.053	0.057	0.107	
	(0.080)	(0.085)	(0.085)	(0.084)	(0.097)	
Judicial Department N3	0.009	0.010	0.021	-0.049	0.052	
	(0.078)	(0.083)	(0.083)	(0.082)	(0.098)	
Judicial Department N4	-0.014	-0.014	-0.036	-0.023	-0.007	
	(0.079)	(0.084)	(0.085)	(0.083)	(0.095)	
Judicial Department N6	0.029	0.031	0.037	0.052	0.083	
	(0.084)	(0.089)	(0.089)	(0.087)	(0.099)	
Judicial Department N7	-0.082	-0.086	-0.079	-0.119	-0.113	
	(0.078)	(0.082)	(0.085)	(0.082)	(0.094)	
RHE appeal	-0.038	-0.040	-0.053	-0.070**	-0.045	0.013
	(0.033)	(0.035)	(0.034)	(0.033)	(0.039)	(0.046)
Total times at Justices offices	-0.020***	-0.021***	-0.023***	-0.022***	-0.022***	-0.0002
	(0.004)	(0.004)	(0.004)	(0.004)	(0.005)	(0.007)
Justice's age		0.046***	0.049***	0.049***	0.054***	0.048***
		(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Separate opinion			-12.225***	-12.302***	-11.292***	-11.189***
			(0.091)	(0.092)	(0.108)	(0.151)

CSJN pres in majority				-0.358***	-0.358***	-0.348***
				(0.028)	(0.035)	(0.039)
Nat'l government as party					0.053	-0.002
					(0.040)	(0.046)
Rapporteur Lorenzetti						-0.287
						(0.214)
Rapporteur Maqueda						-0.191
						(0.216)
Rapporteur Petracchi						-0.268
						(0.209)
Rapporteur Fayt						-0.133
						(0.251)
Rapporteur Zaffaroni						-0.304
						(0.214)
Rapporteur Highton						-0.145
						(0.212)
Constant	-0.435***	-3.819***	-3.932***	-3.656***	-4.094***	-3.629***
	(0.096)	(0.173)	(0.175)	(0.174)	(0.202)	(0.293)
Observations	11,102	11,102	11,102	11,102	8,827	6,489
R^2	0.089	0.156	0.187	0.192	0.213	0.198
chi^2	741.426*** (df = 14)	1,337.598*** (df = 15)	1,626.389*** (df = 16)	1,674.266*** (df = 17)	1,481.417*** (df = 18)	1,001.745*** (df = 18)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regressions (5) and (6) due to missing observations. Clustered standard errors at the decision level. Regression (6) includes rapporteur's fixed effects

Table A.5. Binomial logit regression results, Justices fixed effects

	Dependent variable:			
	Dissent, partial dissent or abstention = 1			
	(1)	(2)	(3)	(4)
Argibay	-0.362***	-0.336***	-0.334***	-0.321***
	(0.071)	(0.076)	(0.076)	(0.084)
Fayt	-1.481***	-1.555***	-1.564***	-1.595***
	(0.077)	(0.079)	(0.080)	(0.091)
Lorenzetti	-1.757***	-1.816***	-1.819***	-1.999***
	(0.086)	(0.087)	(0.087)	(0.098)
Maqueda	-2.423***	-2.500***	-2.513***	-2.715***
	(0.103)	(0.105)	(0.105)	(0.123)
Petracchi	-0.966***	-1.020***	-1.025***	-1.152***
	(0.069)	(0.070)	(0.071)	(0.080)
Zaffaroni	-1.807***	-1.883***	-1.892***	-1.904***
	(0.088)	(0.088)	(0.089)	(0.100)
Arbitrariedad	0.120***	0.072*	0.102***	0.112**
	(0.041)	(0.040)	(0.039)	(0.046)
Article 280	0.415***	0.354***	0.288***	0.354***
	(0.066)	(0.065)	(0.063)	(0.072)
Remission to PGN	-0.007	-0.034	-0.044	-0.022
	(0.057)	(0.058)	(0.056)	(0.065)
Remission to previous decision	0.200***	0.181***	0.196***	0.227***
	(0.059)	(0.059)	(0.057)	(0.065)
Decision in 2013	0.059*	0.082**	0.043	0.019
	(0.035)	(0.036)	(0.035)	(0.041)
Judicial Department N1	-0.068	-0.091	-0.072	-0.023
	(0.088)	(0.089)	(0.087)	(0.100)
Judicial Department N2	0.061	0.056	0.060	0.109
	(0.086)	(0.086)	(0.085)	(0.098)
Judicial Department N3	0.010	0.019	-0.053	0.048
	(0.084)	(0.084)	(0.083)	(0.099)
Judicial Department N4	-0.015	-0.041	-0.027	-0.010
	(0.085)	(0.086)	(0.084)	(0.096)
Judicial Department N6	0.032	0.034	0.049	0.080
	(0.091)	(0.090)	(0.088)	(0.100)
Judicial Department N7	-0.088	-0.087	-0.129	-0.122
	(0.084)	(0.085)	(0.083)	(0.095)
RHE appeal	-0.041	-0.053	-0.070**	-0.046
	(0.035)	(0.035)	(0.034)	(0.040)
Total times at Justices offices	-0.021***	-0.024***	-0.022***	-0.022***
	(0.004)	(0.005)	(0.004)	(0.005)
Separate opinion		-12.241***	-12.320***	-11.319***
		(0.091)	(0.093)	(0.109)

CSJN pres in majority			-0.367***	-0.367***
			(0.029)	(0.035)
Nat'l government as party				0.053
				(0.040)
Constant	0.473***	0.615***	0.921***	0.879***
	(0.113)	(0.116)	(0.115)	(0.134)
Observations	11,102	11,102	11,102	8,827
R^2	0.175	0.206	0.211	0.230
chi^2	1,510.290*** (df = 19)	1,802.548*** (df = 20)	1,851.968*** (df = 21)	1,610.556*** (df = 22)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regression (4) due to missing observations. Clustered standard errors at the decision level.

Table A.6. Binomial logit regression results

	Dependent variable:					
	Not with majority = 1					
	(1)	(2)	(3)	(4)	(5)	(6)
Justices ideal points	0.449***	0.431***	0.433***	0.435***	0.458***	0.474***
	(0.018)	(0.018)	(0.018)	(0.018)	(0.020)	(0.024)
Arbitrariedad	0.003	0.003	0.074*	0.103***	0.113**	0.128**
	(0.037)	(0.039)	(0.039)	(0.039)	(0.046)	(0.064)
Article 280	0.221***	0.237***	0.354***	0.290***	0.356***	0.454***
	(0.059)	(0.064)	(0.064)	(0.062)	(0.071)	(0.086)
Remission to PGN	-0.066	-0.071	-0.031	-0.042	-0.019	-0.040
	(0.054)	(0.058)	(0.057)	(0.055)	(0.065)	(0.071)
Remission to previous decision	0.119**	0.127**	0.181***	0.195***	0.227***	0.243***
	(0.056)	(0.060)	(0.059)	(0.056)	(0.065)	(0.074)
Decision in 2013	0.084**	0.090**	0.081**	0.044	0.020	-0.029
	(0.034)	(0.037)	(0.035)	(0.034)	(0.040)	(0.054)
Judicial Department N1	-0.084	-0.089	-0.086	-0.067	-0.018	
	(0.086)	(0.092)	(0.088)	(0.086)	(0.099)	
Judicial Department N2	0.073	0.079	0.053	0.057	0.107	
	(0.081)	(0.086)	(0.085)	(0.084)	(0.097)	
Judicial Department N3	0.042	0.045	0.021	-0.049	0.052	
	(0.078)	(0.084)	(0.083)	(0.082)	(0.098)	
Judicial Department N4	-0.066	-0.070	-0.036	-0.023	-0.007	
	(0.081)	(0.087)	(0.085)	(0.083)	(0.095)	
Judicial Department N6	0.061	0.065	0.037	0.052	0.083	
	(0.084)	(0.090)	(0.089)	(0.087)	(0.099)	
Judicial Department N7	-0.093	-0.100	-0.079	-0.119	-0.113	
	(0.081)	(0.087)	(0.085)	(0.082)	(0.094)	
RHE appeal	-0.055*	-0.059*	-0.053	-0.070**	-0.045	0.013
	(0.032)	(0.034)	(0.034)	(0.033)	(0.039)	(0.046)
Total times at Justices offices	-0.022***	-0.024***	-0.023***	-0.022***	-0.022***	-0.0002
	(0.004)	(0.005)	(0.004)	(0.004)	(0.005)	(0.007)
Justice's age		0.049***	0.049***	0.049***	0.054***	0.048***
		(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Separate opinion			12.780***	12.694***	11.757***	11.881***
			(0.105)	(0.103)	(0.118)	(0.150)

CSJN pres in majority				-0.358***	-0.358***	-0.348***
				(0.028)	(0.035)	(0.039)
Nat'l government as party					0.053	-0.002
Rapporteur Lorenzetti						-0.287
						(0.214)
Rapporteur Maqueda						-0.191
						(0.216)
Rapporteur Petracchi						-0.268
						(0.209)
Rapporteur Fayt						-0.133
						(0.251)
Rapporteur Zaffaroni						-0.304
						(0.214)
Rapporteur Highton						-0.145
						(0.212)
Constant	-0.207**	-3.819***	-3.932***	-3.656***	-4.094***	-3.629***
	(0.100)	(0.173)	(0.175)	(0.174)	(0.202)	(0.293)
Observations	11,102	11,102	11,102	11,102	8,827	6,489
R^2	0.093	0.170	0.212	0.217	0.237	0.220
chi^2	787.899*** (df = 14)	1,476.776*** (df = 15)	1,879.362*** (df = 16)	1,927.239*** (df = 17)	1,684.469*** (df = 18)	1,130.488*** (df = 18)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regressions (5) and (6) due to missing observations. Clustered standard errors at the decision level. Regression (6) includes rapporteur's fixed effects.

Table A.7. Binomial logit regression results, Justices fixed effects

	Dependent variable:			
	Not with majority = 1			
	(1)	(2)	(3)	(4)
Argibay	-0.304***	-0.336***	-0.334***	-0.321***
	(0.076)	(0.076)	(0.076)	(0.084)
Fayt	-1.572***	-1.555***	-1.564***	-1.595***
	(0.079)	(0.079)	(0.080)	(0.091)
Lorenzetti	-1.788***	-1.816***	-1.819***	-1.999***
	(0.085)	(0.087)	(0.087)	(0.098)
Maqueda	-2.484***	-2.500***	-2.513***	-2.715***
	(0.102)	(0.105)	(0.105)	(0.123)
Petracchi	-1.016***	-1.020***	-1.025***	-1.152***
	(0.070)	(0.070)	(0.071)	(0.080)
Zaffaroni	-1.888***	-1.883***	-1.892***	-1.904***
	(0.087)	(0.088)	(0.089)	(0.100)
Arbitrariedad	0.003	0.072*	0.102***	0.112**
	(0.040)	(0.040)	(0.039)	(0.046)
Article 280	0.240***	0.354***	0.288***	0.354***
	(0.065)	(0.065)	(0.063)	(0.072)
Remission to PGN	-0.072	-0.034	-0.044	-0.022
	(0.059)	(0.058)	(0.056)	(0.065)
Remission to previous decision	0.129**	0.181***	0.196***	0.227***
	(0.061)	(0.059)	(0.057)	(0.065)
Decision in 2013	0.092**	0.082**	0.043	0.019
	(0.037)	(0.036)	(0.035)	(0.041)
Judicial Department N1	-0.091	-0.091	-0.072	-0.023
	(0.093)	(0.089)	(0.087)	(0.100)
Judicial Department N2	0.080	0.056	0.060	0.109
	(0.088)	(0.086)	(0.085)	(0.098)
Judicial Department N3	0.045	0.019	-0.053	0.048
	(0.085)	(0.084)	(0.083)	(0.099)
Judicial Department N4	-0.071	-0.041	-0.027	-0.010
	(0.088)	(0.086)	(0.084)	(0.096)
Judicial Department N6	0.066	0.034	0.049	0.080
	(0.092)	(0.090)	(0.088)	(0.100)
Judicial Department N7	-0.101	-0.087	-0.129	-0.122
	(0.088)	(0.085)	(0.083)	(0.095)
RHE appeal	-0.060*	-0.053	-0.070**	-0.046
	(0.035)	(0.035)	(0.034)	(0.040)
Total times at Justices offices	-0.024***	-0.024***	-0.022***	-0.022***
	(0.005)	(0.005)	(0.004)	(0.005)
Separate opinion		12.781***	12.707***	11.766***
		(0.118)	(0.116)	(0.135)

CSJN pres in majority			-0.367***	-0.367***
			(0.029)	(0.035)
Nat'l government as party				0.053
				(0.040)
Constant	0.739***	0.615***	0.921***	0.879***
	(0.119)	(0.116)	(0.115)	(0.134)
Observations	11,102	11,102	11,102	8,827
R^2	0.190	0.230	0.235	0.254
chi^2	1,662.387*** (df = 19)	2,055.521*** (df = 20)	2,104.942*** (df = 21)	1,813.608*** (df = 22)

Note: * p<0.1, ** p<0.05, *** p<0.01. The number of observations is lower in regression (4) due to missing observations. Clustered standard errors at the decision level.