Dear Roundtable Participants,

Thank you, in advance, for your time and attention to this project.

What follows is a ***very*** preliminary peek at the results of a project that aims to discern what has been "important" to the Supreme Court, as that word has been used the Supreme Court's rules regarding the considerations governing review on writs of certiorari. See S. Ct. R. 10(c). Essentially, I'm trying to discern how the Court has exercised its discretion to shape its own docket.

To try to conform with Marin's instructions to limit ourselves to only a few pages, I've trimmed this down to [1] an introductory motivating example, [2] a brief description of the method, and [3] some very preliminary results. I've kept some citations and references, but these are still rather incomplete.

I hope that this will be enough to give you a sense of the project and its direction, and will enable you to tell me what works, what doesn't, and what you think I should explore further with the data I have. I'd also ask that, given the very-early-stage nature of these results, you please keep this draft within the confines of the roundtable group. These are still preliminary, and subject to spot-checks and other tweaks. I look forward to your thoughts and comments.

With gratitude,

WHAT'S "IMPORTANT" TO THE SUPREME COURT

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Though the Supreme Court is known to grant review in cases presenting conflict among the federal Courts of Appeals and the states' Supreme Courts, the Court also reserves a substantial portion of its docket for other "important" cases—cases presenting questions that have not been, but should be, settled by the Supreme Court. This importance standard, set out in Supreme Court Rule 10, has been variously criticized as "murky," "hopelessly indeterminate," or even "intentionally vague." These critics allege that the Court's process for setting a substantial portion of its docket is essentially standardless, leaving everyone else basically clueless as to what cases will merit review.

We can, in fact, say more about what's important to the Supreme Court. We simply must look beyond the Supreme Court's Rules. The Court's merits decisions sometimes offer a brief yet informative description of the Court's decision to grant review. In some cases, the Court seems to suggest that its review is founded on concerns for interbranch comity or aimed at structuring intrajudicial authority, among other examples. In this article, I present a text and data analysis of several thousand Supreme Court opinions describing (to varying degrees of specificity) the reason for review, thereby collectively describing what has been "important" in the Court's view.

INTRODUCTION

In 2019, the Supreme Court agreed—seemingly unusually—to review an odd case about copyright and piracy.[1] The case, *Allen v. Cooper*, asked whether the State of North Carolina could be held liable for infringing the copyright held by a videographer who filmed the salvage of Blackbeard's famed ship, *Queen Anne's Revenge*. Could North Carolina be forced to pay damages for pirating this film about, well, pirates?[2]

The Court's decision to review a case about state sovereign immunity isn't so unusual—the Court, after all, regularly decides cases in the interstices of federal power and state sovereignty. What *is* unusual is that the Court agreed to review a case that it had, in significant part, already decided. The Copyright Remedy Clarification Act (CRCA) was enacted in the late 1990s as one part of a package of reforms attempting to hold states liable for intellectual property infringement.[3] The attempt failed. In 1999, the Supreme Court reviewed the constitutionality of the CRCA's two companions—the Trademark Remedy Clarification Act (TRCA) and the Patent and Plant Variety Remedy Clarification Act (PPVRCA)—and concluded that Congress could not have constitutionally abrogated the states' sovereign immunity under its Article I intellectual property and commerce powers

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[1] *Allen v. Cooper*, 139 S. Ct. 2664 (2019) (mem.) (granting certiorari).

[2] *Allen v. Cooper*, 589 U.S. ____ (2020); cf. Oral Arg. Tr. at 55–56, *Halo Elecs. v. Pulse Elecs.*, 579 U.S. __(2016) (No. 14-1513) (statement of Roberts, C.J.) (loosely characterizing some patent infringement disputes as about "pirates" and some as about "trolls").

[3] Pub. L. No. 101-553, 104 Stat. 2749 (1990).

nor under the Fourteenth Amendment.[4] Since then, every Court of Appeals to have considered the CRCA has concluded that that statute is likewise unconstitutional.[5]

So why, twenty years later, would the Supreme Court grant the petition for certiorari in *Allen v. Cooper*? It is well established that the dominant standard for certiorari is conflict: The Supreme Court is likely to grant review where there is a split in authority among, say, the federal Courts of Appeals.[6] But, as noted, the circuits were not split over the CRCA's constitutionality. And while the Court will sometimes agree to review cases that are obviously inconsistent with the Supreme Court's prior rulings,[7] the Fourth Circuit's decision here faithfully applied the Supreme Court's *Florida Prepaid* cases (reviewing the TRCA and the PPVRCA).[8] Hence, given the standard view of the Court's usual criteria for certiorari, there was little reason to believe that the Court would agree to hear the case. Indeed, the Court's decision to grant review in *Allen* appeared to puzzle some notable commentators.[9]

But the Court's opinion in a seemingly unrelated case—*Iancu v. Brunetti*—might have offered such commentators a hint of the Court's certiorari-stage reasoning in *Allen*.[10] In *Brunetti*, the Court was asked to review the constitutionality, under the First Amendment, of a limit on federal trademark protection. There, the Federal Circuit—applying the Supreme Court's recent decision invalidating a closely-related provision, *Tam v. Iancu*—found the statute unconstitutional. The Court agreed to review to *Brunetti* even though it, too, presented no split and faithfully applied the Court's precedent.[11] Why? The Court's opinion explains its decision to grant certiorari: "As usual when a lower court has invalidated a federal statute, we granted certiorari."[12]

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[4] See, respectively, *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666 (1999) (TRCA) and *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627 (1999) (PPVRCA) (collectively, the *Florida Prepaid* cases).

[5] E.g., *National Ass'n of Boards of Pharmacy v. Board of Regents of the University System of Georgia*, 633 F.3d 1297 (11th Cir. 2011); *Chavez v. Arte Publico Press*, 204 F.3d 601 (5th Cir. 2000).

[6] SUP. CT. R. 10(a); SUP. CT. R. 10(b); see H.W. Perry, Jr., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT 246 (1991) ("Without a doubt, the single most important generalizable factor in assessing certworthiness is the existence of a conflict or 'split' in the circuits."); Amanda Frost, *Overvaluing Uniformity*, 94 VA. L. REV. 1567, 1631–32 (2008) ("[T]he presence of a conflict remains by far the most important criteria in the Court's case selection . . . ."); see also, e.g., Tejas N. Narechania, *Certiorari, Universality, and a Patent Puzzle*, 118 MICH. L. REV. 1345, 1359–1362 (2018).

[7] See, e.g., *James v. City of Boise*, 577 U.S. __ (2016) (summarily reversing the Idaho Supreme Court for ignoring the Court's decision in *Martin v. Hunter's Lessee*, 1 Wheat. 304, 348 (1816) (among other cases)).

[8] See *Allen v. Cooper*, 589 U.S. ____ (2020) (affirming the Fourth Circuit's decision and explaining that its result was compelled by precedent, namely, the *Florida Prepaid* cases, *supra* note __).

[9] See, e.g., Mark Lemley, TWITTER, March 23, 2020, at https://perma.cc/5Q49-NJHN (cheekily paraphrasing the Court's opinion in the case as "we decided this issue 20 years ago, and we're not sure why we took this case"). I should note that I was also among those commentators who thought it unlikely that the Court would agree to hear this case. See Steven Seidenberg, *U.S. Perspectives: In U.S., No Remedies For Growing IP Infringements*, IP WATCH (Mar. 4, 2019), 2019 WL 1007292.

[10] 139 S. Ct. 2294 (2019).

[11] *Iancu v. Brunetti*, 139 S. Ct. 2294, 2295(2019) (affirming the decision below, holding that the statute under review "infringes the First Amendment for the same reason [as the one under review in *Tam*]").

[12] *Iancu v. Brunetti*, 139 S. Ct. 2294, 2298 (2019).

And *Allen* confirms that it shared *Brunetti*'s standard for certiorari: In *Allen*, the Court explained that it agreed to review the case "[b]ecause the Court of Appeals held a federal statute invalid."[13]

Allen and *Brunetti* thus offer one recent example of the Court's approach to certiorari in cases presenting potentially important—but splitless—questions. At one basic level, these cases suggest that the Court is likely to review cases holding a statute unconstitutional—such cases, that is, are sufficiently "important" to merit review.[14] This is so even when the statute's fate seems a *fait accompli*, and even where there appears little for the Court to add in view of the judgment on review.[15]

More significantly, these cases present an example of a more generalizable certiorari-related phenomenon that is notable for at least two reasons.

First, the Court's opinions in these cases articulate a standard for certiorari that is not clearly set out anywhere else. Supreme Court Rule 10 provides practitioners with some (scant) guidance regarding the "considerations governing review on writ of certiorari." There, the Court set outs what many observers already know: one, the Court is comparatively likely to grant review in cases presenting conflict; and, two, it will also grant review in other "important" cases. This latter importance-based standard, however, has been variously criticized as "murky," "hopelessly indeterminate," or even "intentionally vague."[16] But the Court's opinions (here, *Allen* and *Brunetti*) sometimes offer a clear articulation of what cases are likely to qualify as important and thereby merit Supreme Court review (here, cases holding a federal statute unconstitutional).

Second, by setting out its certiorari standard in its opinions, the Court has both retained and exercised significant flexibility in defining "importance" over time. *Allen* and *Brunetti*, for example, not only offer a clear statement regarding one aspect of its current certiorari standard, they may also offer a *new* statement of what it takes to get the Supreme Court's attention: To the extent *Allen* suggests that the Court will always review a decision striking down an act of Congress, such a standard may suggest a relatively new tack in the Court's certiorari jurisprudence. Though the Supreme Court was previously required to review a variety of cases holding a federal statute invalid, Congress, in 1976 and again in 1988, moved such cases out of the Court's mandatory jurisdiction and into its discretionary docket.[17] But *Allen* hints that what might have been discretionary after these amendments

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[13] *Allen v. Cooper*, 589 U.S. ____ (2020). *Allen* does not, however, cite *Brunetti* (or anything at all) as precedent for this standard. *Brunetti*'s assertion of the relevant certiorari standard is likewise citationless. See *Iancu v. Brunetti*, 139 S. Ct. 2294, 2298 (2019).

[14] SUP. CT. R. 10(c).

[15] See *Allen v. Cooper*, 589 U.S. ____ (2020) (concluding that "*Florida Prepaid* all but prewrote our decision today").

[16] See, respectively, Edward A. Hartnett, *Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill*, 100 COLUM. L. REV. 1643, 1723 (2000) (quoting H.W. Perry, Jr., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT 34 (1991)), Samuel Estreicher & John E. Sexton, *A Managerial Theory of the Supreme Court's Responsibilities: An Empirical Study*, 59 N.Y.U. L. REV. 681, 790 (1984); and THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 154 (Kermit L. Hall et al. eds., 2d ed. 2005).

[17] Pub. L. No. 110–352, 102 Stat. 662 (1988); see also H.R. Rep. No. 100-660 (explaining that the "bill substantially eliminates the mandatory or obligatory jurisdiction of the Supreme Court" including in various cases holding federal and state statutes unconstitutional); Eugene Gressman, Stephen M. Shapiro, and Robert L. Stern, *Epitaph for Mandatory Jurisdiction* 74 AM. BAR. ASS'N J. (12) 66, 68 (Dec. 1988) (similar).

is in fact practically automatic. Moreover, the Court has, in recent memory, turned away opportunities to review judgments rendering a federal statute inoperative.[18] Hence, *Allen* and *Brunetti* might be understood as marking a change in the Court's certiorari jurisprudence, namely, a shift back toward routine Supreme Court review of decisions finding federal laws invalid…

A METHOD FOR DEFINING IMPORTANCE

The Court's opinions, describing the basis for its review, therefore offer an opportunity to study that institution's preferences—preferences that have further effects nationwide, helping to set the nation's agenda and to shape discourse around major questions of law and policy. But if those opinions do not themselves constitute a coherent body of certiorari doctrine, how might legal scholars study them? By treating the Court's opinions as data.[19]

Dataset. I begin on October 5, 1925, the first day of the first complete Term (October Term 1925) after the enactment of the 1925 Judges' Bill.[20] I relied on the Supreme Court Database (developed at the Washington University School of Law), to identify every case arising under the Court's certiorari jurisdiction since October 5, 1925. Moreover, the Supreme Court Database also helpfully codes the reason for certiorari. Though the Database's documentation lists 13 distinct code values, many overlap (for my present purposes), and so I set aside those cases granted to resolve any form of confusion or conflict among the federal and state trial and appellate courts, retaining only those cases granted "to resolve [an] important or significant question," granted "to resolve [the] question presented," granted for some other specified reason, or granted for no specified reason.[21] This gave rise to a list of 7084 cases through October Term 2016—4275 cases granted for no apparent reason (under the Database's coding methodology), and 2809 cases granted for any other reason (other than conflict or confusion).

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[18] See, e.g., Child Online Protection Act, Pub. L. No. 105-277, 112 Stat. 2681-736 (1998), *invalidated by ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd sub nom. ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008), *cert. denied*, 129 S. Ct. 1032 (2009); see also *Binderup v. Attorney General*, 836 F.3d 339 (3d Cir. 2016) (holding 18 U.S.C. §922(g)(1) unconstitutional as applied) *cert. denied sub nom. Sessions v. Binderup*, 137 S. Ct. 2323 (2017); *W. Va. CWP Fund v. Stacy*, 671 F.3d 378 (4th Cir. 2011) (concluding that various statutory provisions were repealed by implication), *cert. denied*, 133 S. Ct. 127 (2012). Some readers might disagree with my decision to include *Stacy* in this list, contending that decisions holding that statutes have been repealed by implication are meaningfully different from decisions holding statutes unconstitutional. That may be so. But my point, which I elaborate in greater detail below, is that we do not know what the Court means to include and exclude when it says that certiorari is warranted in cases "invalidat[ing]" a federal statute. Do repeals by implication count? As-applied challenges? This uncertainty has important implications for the Court's (and the Supreme Court Bar's) certiorari practice.

[19] Many legal scholars, of course, are employing similar approaches to study and understand a range of terms in a range of contexts. See, e.g., Michael A. Livermore, Allen B. Riddell, & Daniel N. Rockmore, *The Supreme Court and the Judicial Genre*, 59 ARIZ. L. REV. 837 (2017); see also James Hicks, *Informative Patents? Predicting Invalidity with the Text of Claims* (2020); Jennifer Mascott, *Who Are "Officers" of the United States*, 70 STAN. L. REV. 443 (2018) (using data analysis approaches to study the meaning of "officer" in the Founding Era); [*add*]; see, also, generally Stephen C. Mouritsen, *The Dictionary Is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning*, 2010 B.Y.U. L. REV. 1915.

[20] See 39 Stat. 726 (1916) (providing that the "Supreme Court shall hold … one term annually, commencing on the first Monday in October"); 43 Stat. 936 (1925) (Judges' Bill of 1925).

[21] I provide more detail on how I treated each of the 13 coded values in the Methods Appendix.

Next, I obtained access to the full text of the opinions in 7076 of those cases. Hence, the dataset is nearly complete through October Term 2016, missing only 8 (0.1%) of the cases from OT1925 through OT2016.

Finally, I sharpened focus in those opinions to those sections discussing the Court's reason for granting certiorari—statements like those highlighted above—by selecting for discrete paragraphs that contain the term "certiorari."[22] Here, the research design takes advantage of a relative conservatism in the style of Supreme Court opinions: Many of the Court's opinions since the Taft Court follow a roughly similar cadence that includes, near the beginning of each opinion, a summary of the case's procedural history that frequently—though, as noted, not always—concludes with the Court's decision to grant certiorari.

The decision to focus on paragraphs containing the term "certiorari" is not, of course, without trade-offs. One, not all opinions include such paragraphs. Indeed, the dataset includes text from only 6102 opinions (approximately 86% of cases for which I have the opinion's full text).[23] Two, some decisions contain multiple paragraphs containing the term certiorari—sometimes, for example, a dissent or concurrence may grumble about the majority's failure to address the issue at which the certiorari grant was directed.[24] In short, this approach is both overinclusive and underinclusive. But that overinclusivity may yet yield important insights about the Court's approach to certiorari at any given time; a dissent's discussion of a decision to review may provide some insight into the Court's general approach to its docket discretion.[25] And this underinclusivity helps to avoid confounding the certiorari-centered analysis with content that is far afield from the Court's decision to grant review (when, for example, the Court grants review to decide a question of environmental law—but decides the case on unrelated grounds of standing or mootness). Hence, I ultimately concluded that the benefits of limiting focus to any paragraph containing the term "certiorari" were likely to outweigh the costs of this approach.

This collection of paragraphs from 6102 cases provides the dataset—the corpus—for further analysis.

Analysis. In order to discern what's been sufficiently important to merit review, I built an index of salient terms. That index began with a complete list of all 1,546 terms and phrases that appeared in more than one percent of the retained cases (i.e., any term or phrase that appeared in more than 61 cases). As expected, not all of these terms proved useful for approximating the Court's standard for importance: The top two results, for example—"court" and "we granted certiorari"—do little to tell us what has struck the Court as important over the years. And so I filtered that list into a series of more usable

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[22] I provide more detail on how I extracted the relevant text in the Methods Appendix.

[23] Most (811) of the 974 cases that did not include the term "certiorari" and were therefore ultimately excluded from our final dataset were coded in the Supreme Court Database as providing no reason for the grant. Only 163 cases of the excluded cases came from cases coded as offering some nonconflict-related reason for review.

[24] See, e.g., *Siegert v. Gilley*, 500 U.S. 226, 236 (1991) (Marshall, J., dissenting) ("The majority today decides a question on which we did not grant certiorari.").

[25] See, e.g., *Siegert v. Gilley*, 500 U.S. 226, 236 (1991) (Marshall, J., dissenting) (describing the question decided as regarding "the extent of a government employee's constitutional liberty interest in reputation")

indices that retain and group those terms that seem likely to bear on the Court's decision to grant review.[26]

Armed with these indices, I rank and scale these terms according to two metrics: frequency (i.e., in how many cases did the term appear?) and proximity (i.e., how close was the term to the focus for analysis?).[27] My emphasis on these two metrics is informed by both domain-specific knowledge and general principles of natural language processing. Data scientists frequently rely upon both frequency and proximity metrics to approximate the meaning of terms in a corpus.[28] And these general data science insights are reinforced by those that lawyers and scholars might intuit from reading a number of the Court's opinions: A series of statements, across a number of opinions, explaining that the Court has "granted certiorari to decide an important question of [tax *or* patent *or* bankruptcy *or* constitutional] law" suggests that frequency matters.[29] And whether an index term appears near the word "important" would suggest that tax law (or constitutional law) is important.

In short, this method yielded a list of salient terms (grouped, as appropriate) that would frequently appear near the word "important" (among other focal terms) in the Court's descriptions of its decision to grant review.

WHAT'S IMPORTANT TO THE SUPREME COURT

Results

So, what has been "important" to the Supreme Court? Of course, I cannot say definitively. I can only draw inferences regarding the meaning of importance based on frequency and proximity—and limited by the accuracy of the various filters applied to my

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[26] Specifically, I filtered the initial list of 1,546 terms into two subsequent lists, a "first pass" list and a "second pass" list. The "first pass" list eliminates terms that seemed obviously unhelpful (like "court" or "judgment"). This list consists of 493 retained terms. The "second pass" list keeps (from the first pass list of 493 terms) only those terms that, standing alone, seem likely helpful in discerning the types of the cases that the Court has been willing to grant. This list is 201 terms long.

From the "second pass" list, I created two further lists. The first manually groups etymologically similar terms (Congress and congressional) and close synonyms (e.g., attorney and counsel). This yields a list of 111 unique terms. I did not apply standard text normalization techniques here because of the unique features of our legal corpus. Most legal audiences know, for example, that "damage" and "damages" can mean very different things. So too with "execute" and "executive," or with "federal" and "federalism." And so I chose not to apply standard stemming and lemmatizing algorithms to the terms in our index, opting instead to build these term groupings manually. The second manually groups thematically linked terms (e.g., witness and evidence). This list contains 23 themed groups. I have provided more comprehensive detail on the construction of these lists in the Methods Appendix, *infra*.

[27] The Methods Appendix includes more details on our ranking methodology.

[28] E.g., Peter D. Turnet & Patrick Pantel, *From Frequency to Meaning: Vector Space Models of Semantics*, 37 J. ARTIFICIAL INTELLIGENCE RES. 141-188 (2010).

[29] Here, I should elaborate on the meaning of an "important question of basketweaving law" (for example) and a "question important to basketweaving law." It may be that a given question is important to the development of basketweaving doctrine, but that there is still some uncertainty as to whether that question is important enough to garner the Court's attention. In such cases, I predict—indeed, my analysis depends upon—a view that questions important to basketweaving law are only important enough to merit certiorari if basketweaving law is itself important. And, conversely, if basketweaving law is important, then questions important to basketweaving law are likely to merit review. Hence, when the Court grants review "to decide Fan important question of basketweaving law," it implies that basketweaving law is itself important.

indices. But acknowledging those limits, here's a brief summary of what may have been important to the Supreme Court since 1925.

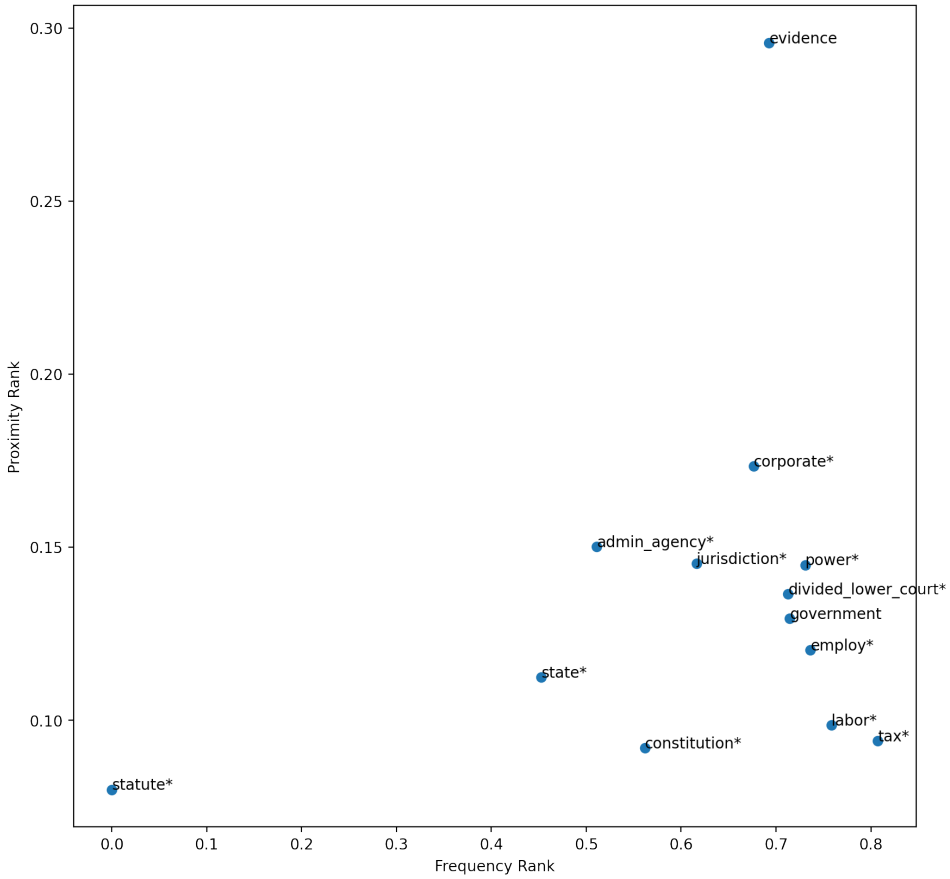
Table 1.

All	Importance
statute*	**0.07992**
state*	**0.466474**
admin_agency*	**0.532501**
constitution*	**0.569296**
jurisdiction*	**0.633242**
corporate*	**0.698222**
divided_lower_court*	**0.725666**
government	**0.726158**
power*	**0.745127**
employ*	**0.746115**
evidence	**0.753189**
labor*	**0.764563**
tax*	**0.812724**

This table presents the list of 14 terms (out of 132) whose importance measure is more than one standard deviation greater than the mean. (Note that the terms through "jurisdiction" are two standard deviations greater than the mean.)

Here's a visual plot of those same results, which helps to describe the importance measure. Each term is given two scores: A scaled score (from 0 to 1) for its frequency in the corpus, and a scaled score (from 0 to 1) for its proximity in the corpus. Each term is then plotted in a two-dimensional space (one axis for frequency, another for proximity), and ranked by its distance from the origin, where the origin represents a word that is most frequent and most proximate. Hence, closer to the origin indicates more important.

Figure 1.



Some of these results are expected. I suspect that most readers would not be surprised to find that constitutional questions or questions of statutory meaning (or, together, questions about a statute's constitutionality) ranked near the top of the Court's priorities. But those terms, standing alone, do little to tell us *which* statutes and constitutional provisions most caught the attention of the Justices. And so some of the other results may be somewhat more surprising or noteworthy: It bears emphasizing that the Court seems to have dedicated some significant focus, over time, to issues in labor and employment law, to tax law matters, and to questions of procedure (perhaps emphasizing criminal procedure). It's also potentially interesting that property law—typically a matter of state law—seems to have occupied so much of the court's attention. But it is also worth remembering that this list encompasses years before *Erie* was decided in 1938.[30] Moreover, the Court decided many more cases in those early years of certiorari jurisdiction than it does now, giving those early years a relative advantage vis-à-vis more recent decades (given a research design emphasizing frequency).

[30] *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). *Erie*, of course, is a railroad case.

Hence, given these significant changes over time, this list, standing alone, is probably too all-encompassing to be useful. Much has changed since 1925, and so too, we might expect, much has changed with the Court's approach to certiorari. We can examine smaller time horizons instead.

[see Table 2, appended to end]

We may also be interested in changes over time: How have priorities changed? We can get a sense of this by trying to see which index terms are most volatile—which ones have risen the most in these rankings, or which ones have fallen the most.

Here's the table of the terms that changed the most, no matter where they fall on the whole list of priorities.

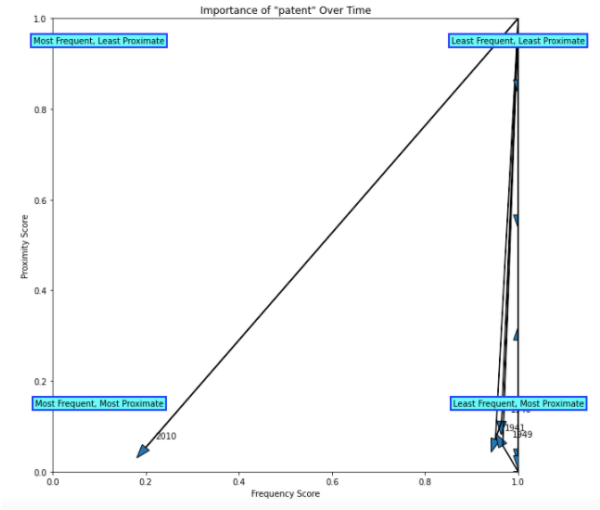
[see Table 3, appended to end]

And here's a table describing the amount of change for the "priorities" of each Court (defined by a Chief Justice's tenure). Note that a negative number indicates an increase in importance (i.e., a decrease in the term's distance from the origin).

[see Table 4, appended to end]

Hence, we can trace the change in any one term over time. One interesting result (well, interesting to me, at least), is the Roberts's Court attention to patent cases.

Figure 2.



Finally, we may be interested in aggregate change—change over the entire set of priorities, rather than in any given term.

[see Figure 2, appended to end]

This figure provides a measure of change in the Court's for each "natural court"—a construct denoting each distinct set of nine Justices—as compared to the preceding natural court of nine Justices. For example, the bar extending from 1981 to 1986 reflects the average change in importance scores for a Supreme Court comprising {Burger, Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens, O'Connor} as compared to the natural court extending from 1976 to 1981 comprising {Burger, Brennan, Stewart, White, Marshall, Blackmun, Powell, Rehnquist, Stevens}. And the relatively low value of this bar suggests that the Court's priorities did not change substantially with Justice Potter's retirement in 1981 and Justice O'Connor's subsequent appointment.

Moreover, each event line in the figure indicates the appointment of a Justice to replace one with different ideological priors. Using Martin-Quinn scores, the graph identifies those moments when a so-denoted "liberal" Justice has replaced a "conservative" one (in blue), or vice versa (in red).

Notably, there are a few periods in recent history—after 1974, when Congress began to institute a second series of reforms that gave the Court even more control over its docket—where the Court's priorities seem to have changed substantially (denoted by the more vibrantly colored purple bars). Each of these periods seems to have been preceded by an ideology replacement event—and each such replacement event coincides with a subsequent shift in priorities. When Justice Stevens replaced Justice Douglas, the Court's main priorities shifted more than with any other change in the Court's personnel. Likewise, after Justices Souter and Thomas replaced Justices Brennan and Marshall (respectively), the Court's certiorari priorities shifted significantly yet again. And the same is true after Justices Ginsburg and Breyer replaced Justices White and Blackmun.

Roundtablers: You may note there's a short lag here, especially with successive appointments, that makes interpretation tricky. Is it Ginsburg or Breyer that really made the difference? Souter or Thomas? Frankly, it's hard to tell. The one-year natural court between those appointments both (1) has comparatively less data, and (2) is somewhat confounded by the fact there's a bit of a lag between the time cert. is granted and the decision issues. So decisions issued during the one-year period between Justice Ginsburg and Justice Breyer's appointment may reflect questions on which cert. was granted prior to Justice Ginsburg's appointment. I'm not totally sure what to do about this and would appreciate your input. But despite these difficulties, I think judicial ideology matters to these cert.-stage decisions. Do you agree? Or am I reading too much into these?

And what, then, should we make of the pre-1974 results?

Table 2.

Taft	Hughes	Stone	Vinson	Warren	Burger	Rehnquist	Roberts
statute*	statute*	statute*	statute*	statute*	statute*	state*	state*
jurisdiction*	state*	admin_agency*	admin_agency*	admin_agency*	constitution*	constitution*	statute*
constitution*	admin_agency*	corporate*	divided_lower_court*	jurisdiction*	state*	statute*	admin_agency*
state*	corporate*	state*	government	state*	admin_agency*	jurisdiction*	evidence
construction*	constitution*	divided_lower_court*	state*	constitution*	jurisdiction*	admin_agency*	divided_lower_court*
power*	tax*	evidence	corporate*	corporate*	congress*	power*	first_person*
	jurisdiction*	tax*	employ*	evidence	government	government	counsel*
	bankruptcy*	employ*	evidence	employ*	power*	first_person*	constitution*
	power*	jurisdiction*	jurisdiction*	labor*	divided_lower_court*	counsel*	language
	labor*	constitution*	constitution*	power*	first_person*	procedure*	patent
	employ*	labor*	power*	government	procedure*	evidence	procedure*
	evidence	property*	tax*	divided_lower_court*	construction*	congress*	death_sentence*
	government	government	labor*	jury*	labor*	divided_lower_court*	precedent*
	property*	contract*	fair	congress*	evidence	jury*	rules
	congress*	commerce*	property*	criminal*	employ*	habeas*	criminal*
		construction*	habeas*	construction*	federal_courts	employ*	corporate*
		power*	commerce*	procedure*	school*	regulation*	government
		railroad*		tax*	criminal*	criminal*	executive*
				counsel*	injunction*	rules	habeas*
					officer*	first_amendment	health
					corporate*	labor*	
					remedy*		
					fourteenth_amendment*		

Table 3.

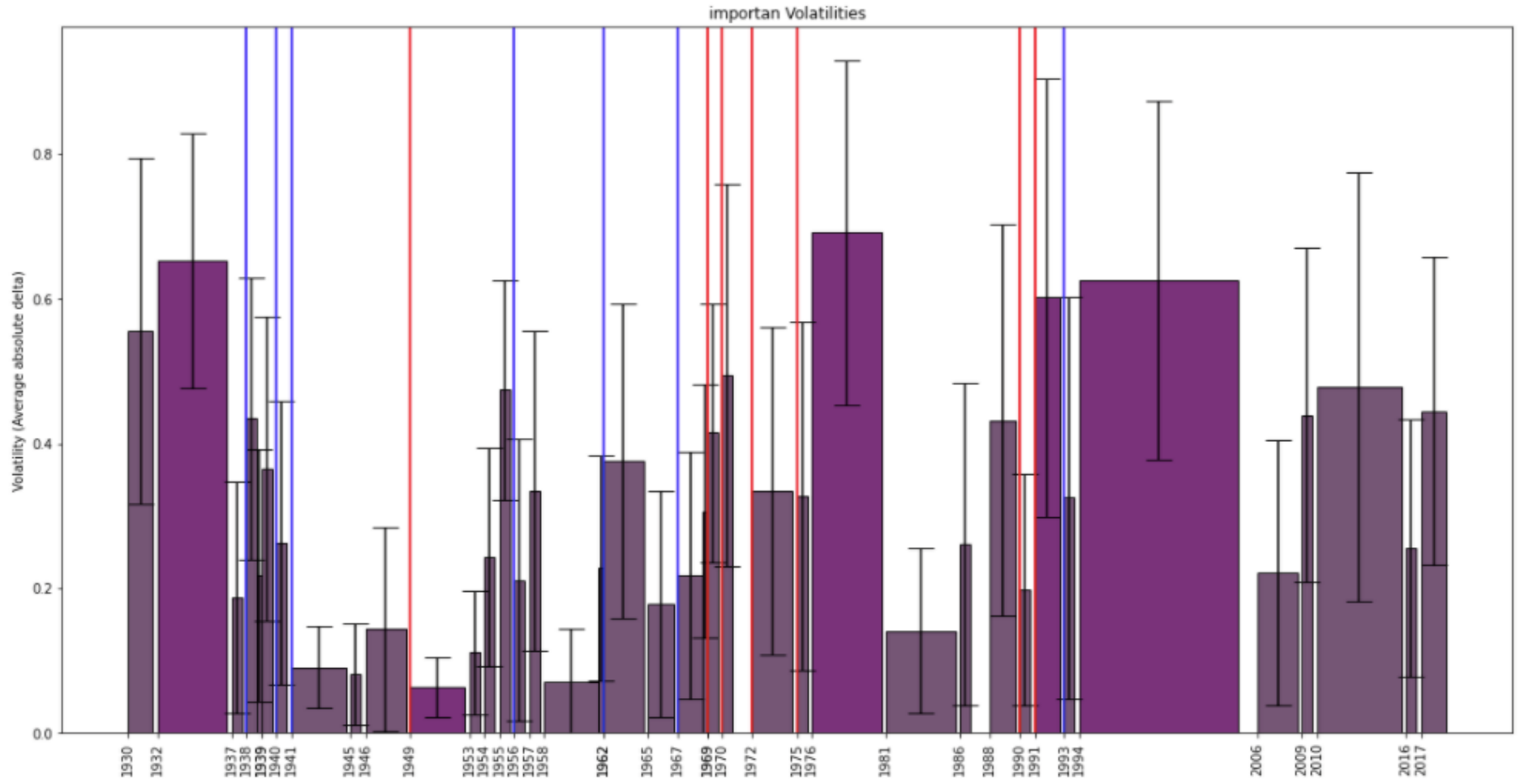
Hughes	Stone	Vinson	Warren	Burger	Rehnquist	Roberts
bankruptcy*	vote	immigration	definition	title_vii	scalia	military*
employ*	rate*	first_person*	water	constitution*	prejudice	river
property*	moot	air	election	eighth_amendment*	ineffective	press
congress*	water	health	history	state*	aggravating	securities*
equity*	settlement	murder	equal_protection	first_person*	commerce*	fine
procedure*	river	probable_cause	fine	school*	racial	trust
federal_courts	witness*	punishment	grand_jury	congress*	clearly_established	patent
railroad*	first_amendment	fourth_amendment	discrimination	federal_courts	fraud	language
divided_lower_court*	civil_rights	interstate	expert	procedure*	arrest	evidence
injunction*	grand_jury	douglas	ineffective	privilege	counsel*	equity*

Table 4.

Hughes	**Δ**	**Stone**	**Δ**	**Vinson**	**Δ**	**Warren**	**Δ**	**Burger**	**Δ**	**Rehnquist**	**Δ**	**Roberts**	**Δ**
bankruptcy*	-0.68	divided_lower_court*	-0.18	habeas*	-0.15	jurisdiction*	-0.24	constitution*	-0.47	counsel*	-0.35	patent	-0.37
employ*	-0.64	contract*	-0.11	admin_agency*	-0.14	state*	-0.13	state*	-0.34	rules	-0.29	language	-0.36
property*	-0.60	commerce*	-0.10	divided_lower_court*	-0.13	constitution*	-0.12	first_person*	-0.26	jury*	-0.29	evidence	-0.26
congress*	-0.58	construction*	-0.09	government	-0.12	labor*	-0.11	school*	-0.20	state*	-0.18	divided_lower_court*	-0.22
admin_agency*	-0.41	evidence	-0.05	statute*	-0.09	congress*	-0.09	congress*	-0.18	jurisdiction*	-0.17	executive*	-0.21
tax*	-0.33	railroad*	-0.03	fair	-0.07	jury*	-0.09	federal_courts	-0.17	constitution*	-0.16	precedent*	-0.20
statute*	-0.26	employ*	-0.03	power*	-0.03	power*	-0.09	procedure*	-0.16	habeas*	-0.13	death_sentence*	-0.19
corporate*	-0.25	property*	-0.02	employ*	0.00	construction*	-0.08	fourteenth_amendment*	-0.14	regulation*	-0.13	counsel*	-0.18
labor*	-0.23	labor*	0.00	state*	0.03	criminal*	-0.06	injunction*	-0.13	first_amendment	-0.11	corporate*	-0.16
state*	-0.22	government	0.01	evidence	0.03	evidence	-0.04	government	-0.11	evidence	-0.10	first_person*	-0.16
evidence	-0.21	statute*	0.01	commerce*	0.03	employ*	-0.03	remedy*	-0.11	power*	-0.08	admin_agency*	-0.11
government	-0.06	power*	0.08	constitution*	0.04	procedure*	-0.02	construction*	-0.11	first_person*	-0.08	rules	-0.08
power*	-0.01	corporate*	0.08	jurisdiction*	0.05	corporate*	-0.01	officer*	-0.11	statute*	-0.07	criminal*	-0.05
constitution*	0.20	jurisdiction*	0.14	property*	0.05	counsel*	0.00	admin_agency*	-0.10	procedure*	-0.06	statute*	-0.05
jurisdiction*	0.24	tax*	0.15	labor*	0.06	tax*	0.04	divided_lower_court*	-0.08	criminal*	-0.05	state*	-0.03
		admin_agency*	0.17	corporate*	0.06	admin_agency*	0.04	power*	-0.08	employ*	-0.03	procedure*	-0.03
		constitution*	0.18	tax*	0.08	statute*	0.06	criminal*	-0.03	government	-0.02	government	0.08
		state*	0.21			government	0.07	labor*	0.00	divided_lower_court*	-0.01	constitution*	0.48
						divided_lower_court*	0.18	evidence	0.02	congress*	0.03		

employ*	0.03	admin_agency*	0.05
jurisdiction*	0.06	labor*	0.06
statute*	0.08		
corporate*	0.11		

Figure 2.


importan Volatilities
Volatility (Average absolute delta)
0.0
0.2
0.4
0.6
0.8
1930
1932
1937
1938
1939
1940
1941
1945
1946
1949
1953
1954
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2016
2017