

*Stare Decisis* and Stylistic Devices:  
How Rhetoric Impacts the Supreme Court and Its Majority Opinions

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## *Stare Decisis* and Stylistic Devices: How Rhetoric Impacts the Supreme Court and Its Majority Opinions

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### Abstract

This research examines the rhetoric of the Supreme Court, using a combination of *stare decisis*, ethos, audience perceptions, and rhetorical reading as a framework. A textual analysis of Justice Scalia's majority opinion in *Employment Division v. Smith* (1990) was completed to identify stylistic trends in his writing and the broader genre of majority opinions. To gauge how an audience might respond to these rhetorical or stylistic moves, a questionnaire was then distributed to York College students. Literature identified the importance of rhetoric to the Supreme Court, noting its role in establishing the legitimacy of the Court and its rulings to its various audiences. This study, however, highlights a paradox: though the Court utilizes stylistic moves to enhance ethos and clarity, survey participants largely cited the legal language and jargon, as well as the length of the piece, as the main impediments to their understanding. This, in turn, creates a more critical view of the Supreme Court and their ruling in this case.

Key words: rhetoric, style, U.S. Supreme Court, legal rhetoric

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### Introduction

Rhetoric and stylistic choices exist in nearly every type of writing. These choices may be obvious or subtle, but each genre dictates certain standards and parameters writers must follow. One area in which rhetoric is valuable is the legal sphere, namely the Supreme Court of the United States (SCOTUS). This is the highest tier of the US legal system; a precedent set by SCOTUS must be acknowledged and obeyed by all lower court systems. This precedent is outlined in the language of a given case's majority opinion. A single justice, representing the majority view of SCOTUS, pens an opinion to explain and justify the ruling. Clearly, these opinions must be constructed with attention to language and its potential to impact policy.

Accordingly, Supreme Court majority opinions lend themselves to stylistic analysis. Justice Antonin Scalia's opinion for the 1990 case, *Employment Division, Department of Human Resources of Oregon v. Smith* (*Employment Division v. Smith*), examines the constitutionality of a state law that, in one view, violated freedom of religion. Scalia writes that ingesting a drug classified as illegal under Oregon law, even if for religious purposes, is illegal. Further, this act's consequence, refusal of unemployment benefits, is not unconstitutional. While this case's content is undeniably important in establishing precedent, the form is also significant in regards to audience impact. The audience is an important component in rhetoric and law and can take many forms: field experts, future parties in related cases, and the general public. All are affected by the precedent the Court sets

using *stare decisis* (“to stand by things decided”), which asserts “that past decisions should stand as precedents for future decisions” (Stephens and Scheb D-22). Majority opinions are written to follow this reasoning or defend the rationale to overturn it.

The majority opinion for *Employment Division* offers a context with which to examine the relationship between law and rhetoric. Analyzing the document for stylistic trends and surveying a sampling of the general public to gauge perceptions of it shows that, although the Court uses language to clarify and emphasize its points, this audience category still views legal writing as challenging jargon. This could negatively impact the writing’s persuasiveness. Ironically, the very writing utilized to justify and clarify the Court’s interpretation is shown to have the opposite effect, which is problematic for public perceptions of the Supreme Court and its rhetorical strength.

### Review of Literature

Several scholars in the legal and writing fields have examined the writing styles of various Supreme Court justices and the language of specific court case opinions. This interdisciplinary approach creates a multilayered view that asserts rhetoric’s value in the Court’s writing and discusses this language’s importance to justices, audiences, and a decision’s legitimacy. Certain documents and figures in legal rhetoric also help to continue political discourse.

In connecting rhetoric and law, many authors demonstrate that the former is valuable to the latter. One issue with rhetoric, in any field, is the question of its impact on rhetors, audiences, and messages. In “Rhetorical Analysis: Understanding How Texts Persuade Readers,” Jack Selzer notes that “To the general public *rhetoric* most commonly seems to denote highly ornamental or deceptive or even manipulative speech or writing” (280). However, Selzer combats this by writing that rhetoric is seen as “not just as a means of producing effective communication, but also as a way of understanding communication” (280). Such an understanding is relevant to the legal field. Majority opinions, for example, allow the Court to communicate with those who may be affected by their interpretations. Expanding and contextualizing this definition, Erwin Chemerinsky’s “The Rhetoric of Constitutional Law” rejects the dismissive view of rhetoric as well, articulating that “the Supreme Court opinions are a rhetorical enterprise and that this

fact profoundly influences much of what the Court does and also how the Court’s decisions should be evaluated” (2035). The Court is very aware of how its rhetorical strategies reinforce a decision’s validity; rhetoric is not a decoration, but a necessity.

The opinions of past Supreme Court Justices can support the value of rhetoric. For example, in “Aphorisms, Enthymemes, and Oliver Wendell Holmes, Jr. on the First Amendment,” Robert Danisch highlights the titular themes of Justice Holmes, explaining, “Holmes’s decisions can be used to qualify, in specific ways, the relationship between rhetoric and law *and* to offer philosophical justification for considering the language of law before questions of peace” (220). This is logical, as the legal system is entirely devoted to interpreting this language. Though the content matters, the text’s format—the process of how it is recorded—should also be held in esteem.

There are other ways to present the relationship between rhetoric and law, such as the approach taken by Michael Kleine, a rhetorician, and Clay Robinson, a lawyer, in “The Dialogic Rhetoric of the Supreme Court: An Interdisciplinary Analysis.” They connect legitimacy and stability to rhetoric, suggesting, “common-law constitutionalism has been a source of stability because it permits change, but, retarded by the doctrine of *stare decisis*, at a measured pace” (416). Like Chemerinsky and Selzer, Kleine and Robinson defend rhetoric, but apply it to the concept of legitimacy—preserving the Court’s authority as it sets a precedent via *stare decisis* to later assess legal principles and tests. Chemerinsky also traces these concepts, writing that precedent is particularly relevant when the Court overrules a previous case. Such an action risks the stability that Kleine and Robinson discuss. Robert J. Hume takes a similar approach in “The Use of Rhetorical Sources by the U.S. Supreme Court.” He believes that justices use rhetorical sources—documents not directly related to the case but held in legal esteem—most heavily “when the legitimacy of their holdings is in doubt, such as when they are overturning precedents or invalidating statutes” (Hume 818). These controversial situations require rhetorical fortification. Justices do not want to risk their reputation or rule by ignoring rhetoric that could sincerely strengthen their argument.

The role of ethos, of either legal documents or the Court, is a prominent point of the rhetorical triangle for these authors. Hume agrees with Kleine and Robinson and Chemerinsky in his discussion of ethos. Rhetorical

sources are ethical appeals and “such techniques can be effective, even among elites” (Hume 821). Even if an audience is lower in the hierarchy, justices should not ignore the opportunity to make an ethical appeal. *Stare decisis* also aids the Supreme Court, guiding justices to decisions that agree with previous rulings or allowing them to determine where it is reasonable to break with precedent. Sometimes, “Opinions are written to appear consistent with precedent, even when they are not” (Chemerinsky 2010). Using Bakhtin’s philosophy, Kleine and Robinson add that studying *stare decisis* allows for better understanding of the use of ethos to maintain power and an ongoing conversation (424). This conversation perpetuates the democratic principles of the US legal system.

Other sources discuss the ongoing conversation that the Supreme Court’s language perpetuates. Alaina Brandhurst’s “Using Rhetoric to Sustain Democracy: Rhetorical Devices Utilized by Justice O’Connor in *Kelo v. City of New London*” especially emphasizes how language determines who can participate in the conversation. In this case, O’Connor used plain language so that “her dissent could enter the realm of public discourse” (Brandhurst 104). Furthermore, O’Connor’s translation connected the legal and public spheres, “enabling her to effectively reach an audience and propel our ever-evolving democracy forward” (Brandhurst 105). Similarly, Danisch looks at Holmes’ use of aphorisms and enthymemes to connect with the audience. Holmes’ pragmatic style “allows Holmes to conceptualize law as a kind of perpetually unfinished task that requires careful attention to language” (Danisch 220). Interestingly, Hume reinforces this point by using Holmes’ work as an example of a rhetorical source. Based on Danisch’s points, Holmes probably would appreciate being used as a rhetorical force; it keeps his rulings relevant to modern legal proceedings.

All of these aspects of the value of the Supreme Court’s language—its ability to enhance legitimacy, adhere to or reject precedent, and extend the legal conversation—leave an impression on its audience. The specific impression depends on the audience, which Chemerinsky categorizes in many ways. Lower courts and future case parties must follow the Supreme Court’s example. Government officials enact policies to enforce the Court’s interpretations. Lawyers are part of the discourse community equipped to examine Court opinions. Lastly, while public perceptions may not be the initial audience that the Court considers, opinions should be

written clearly “so that the public...can understand the Court’s reasoning and the basis for its conclusion” (Chemerinsky 2030). The public is important to, but distanced from, decisions. In contrast, Brandhurst believes that inviting the general public to interact with the Supreme Court, through O’Connor’s dissenting language, is a positive and effective rhetorical goal. Such language can actively engage this audience with the Court. Selzer substantiates Brandhurst’s points, writing that deliberate or legislative rhetoric is “organized around the kinds of decisions a civic or social organization must make about a *future* course of action” (284). The connection between legislation and language is particularly strong in how it lays the foundation for the future.

It is natural to want to measure the impact of judicial language and style on audiences. The technique utilized by Christina Haas and Linda Flower in “Rhetorical Reading Strategies and the Construction of Meaning” offers one way to do this. Haas and Flower define rhetorical reading as “an active attempt at constructing a rhetorical context for the text as a way of making sense of it” (167-168). Readers engage with a text fully and analytically, rather than superficially for basic comprehension. This kind of strategy would be prudent and necessary for approaching Supreme Court opinions. Stylistic devices, such as those discussed in Robert A. Harris’s *Writing with Clarity and Style: A Guide to Rhetorical Devices for Contemporary Writers* could also factor prominently in analyzing the written structure of this text.

Many of these articles use multiple Supreme Court decisions to demonstrate their points and identify the need to continue the legal conversation. However, most of these scholars do not expand past textual analysis in their primary research. Hume uses a more quantitative approach, assigning numerical values to specific factors; tracing them; and pointing out the links between the Court, its legitimacy, and rhetoric. But he does not measure the audience. Surveying the audience of the general public allows for a more detailed and concrete conclusion about audience perception and persuasion to be reached. Altogether, these sources reinforce the connections between style and rhetoric and Constitutional law. They also note that rhetoric should not be dismissed as manipulative or superficial; it can be implemented strategically and sincerely to persuade an audience. The literature forms a collective framework that combines legal doctrines with writing studies concepts. Additionally, it explains how rhetorical reading strategies could allow audiences to construct meaning from a document

like a Supreme Court majority opinion. This gives law a rhetorical overlay with which to examine the effectiveness of the Supreme Court's attempts to use language persuasively, as well as the roles and strategies of the general public audience.

### Methods

This study implemented a mixed methods approach. The first method was a textual analysis of Justice Scalia's majority opinion for *Employment Division v. Smith* (1990). It was necessary to interact with an example from this genre and find stylistic patterns (that either supported or refuted claims from the literature review) before creating a questionnaire for the document. The full text was coded to identify stylistic devices and their rhetorical effects. Then, an abbreviated version of the opinion was created, with sections of text removed to create a more concise document to be distributed in the second portion of primary research. Portions were only removed if the tone, format, and devices were already present in other areas. This allowed participants to see the stylistic aspects of the full opinion without reading the entire document.

An 11-question survey was then constructed with prompts about participants' class and area of study, familiarity with law or rhetoric, and general responses about the challenges or interesting aspects of understanding the abbreviated opinion. The survey included a brief synopsis so that students understood the basic background, constitutional question, and outcome. The majority of questions allowed for free responses in order to encourage more critical engagement and to minimize the risk of a participant completing the survey without reading the document. Potential participants received an informed consent form explaining the confidentiality and usefulness of the study, the abbreviated opinion, and a link to the questionnaire via email. All potential participants were undergraduate students enrolled at York College of Pennsylvania during the spring 2015 semester. Assuming that all emails were delivered, 107 students received them. Additionally, an administrator for the pre-law society emailed the 31 students in that group. A total of 16 participants responded during a three-week period. These responses were then examined for patterns, unexpected information, or observations.

## Findings and Discussion

### Stylistic Analysis of *Employment Division v. Smith*

An analysis of the writing in Justice Scalia's majority opinion for *Employment Division v. Smith* outlines several stylistic elements. These include sentence structure and variation, tone, legal terms and jargon, citations to other cases, emphatic devices, and concrete language. Alongside his command of the principles of Constitutional law, these devices and choices help to craft Scalia's tone and ethos and to accentuate the main evidence in his claims.

One element of Scalia's opinion is his sentence construction. He uses a combination of cumulative and periodic sentences to explore the case's background and justify the Court's ruling. For instance, to introduce the case, he writes the cumulative sentence:

The Oregon Supreme Court reasoned, however, that the criminality of respondents' peyote use was irrelevant to resolution of their constitutional claim—since the purpose of the “misconduct” provision under which respondents had been disqualified was not to enforce the State's criminal laws, but to preserve the financial integrity of the compensation fund, and since that purpose was inadequate to justify the burden that disqualification imposed on respondents' religious practice. (Employment Division)

Later, Scalia uses a periodic construction to differentiate this case from a previous one, writing:

We held that distinction to be critical, for, if Oregon does not prohibit the religious use of peyote, and if that prohibition is consistent with the Federal Constitution, there is no federal right to engage in that conduct in Oregon, and the State is free to withhold unemployment compensation from respondents for engaging in work-related misconduct, despite its religious motivation. (Employment Division)

These variations are meant to engross the reader by delivering information in a deliberate order. Presenting modification first and the main idea last, periodic sentences “force the reader to pay close attention” (Harris 90). In contrast, cumulative sentences begin with the main idea and then modify it, so they “feel natural and familiar to readers” (Harris 90). Combining the two structures keeps readers engaged; they must absorb all of the modifying information before reading the crux

of the sentence. It is logical for Scalia to want to build justification, even at the sentence level, for the Court's interpretation of the case and its context. However, Scalia also inserts cumulative sentences, perhaps to avoid discomforting readers. This organizational method also prevents the longer sentences from becoming too unwieldy or incoherent.

Scalia varies his sentences in terms of length as well. For example, after several dense paragraphs detailing Oregon state law and the previous courts' decisions, Scalia simply states, "We again granted certiorari" (Employment Division). Reading a four-word sentence following larger paragraphs and the legal language is refreshing for the reader. It is a concise conclusion following the lengthy, albeit necessary, justification. The legal term it uses, "certiorari," is a writ "issued to the lower court, directing it to provide the record in a given case so that the higher court may conduct its review" (Stephens and Scheb 350). So, though a general reader may see it as legal jargon, simply referring to it as "certiorari" and not explaining the process it implies keeps the sentence short for readers who know the term. While there are not many of these relatively short sentences, their presence does break up the textual monotony.

One other stylistic aspect is the use of expletives. For example, Scalia notes, "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires" (Employment Division). In discussing the respondents in this case, he explains, "They assert, in other words, that 'prohibiting the free exercise [of religion]' includes requiring any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires)" (Employment Division). This sentence also employs chiasmus, inverting the elements in the parentheses to add contrast; the pause "brings focus and emphasis to that part of the sentence" (Harris 15). In Scalia's utilization, it accomplishes this goal and injects tone into the dense legal jargon.

Still, some of the legal jargon is difficult to embellish. Citations to previous cases must follow a specific format, e.g. "*Sherbert v. Verner*, 374 U.S. 398 (1963)," to provide details such as the parties, year in which the case was decided, etc. (Employment Division). In this opinion, Scalia cites more than 40 court cases. He also refers to judicial tests and the US Constitution to defend the Court's decision. His thoroughness and scope reinforce the precedent with which the Court has deter-

mined its ruling and the Court's ethos as it demonstrates its knowledge base.

Scalia does find some appropriate places for concrete and creative language. It would be impossible for him to avoid taking a side, or the entire document would have no point. In this case, Scalia makes his side clear, but employs a plainer style to prevent the Court from appearing too subjective. Still, Scalia incorporates tone by writing phrases like, "To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs...contradicts both constitutional tradition and common sense" (Employment Division). He also illustrates his points with the example, "it would doubtless be unconstitutional, for example, to ban the casting of 'statues that are to be used for worship purposes,' or to prohibit bowing down before a golden calf" (Employment Division). Lastly, in refuting his fellow justices' opinions, Scalia writes, "It is a parade of horrors because it is horrible to contemplate that federal judges will regularly balance against the importance of general laws the significance of religious practice" (Employment Division).

In one respect, these sentences add clarity to a document already saturated with legal terminology and theory and illustrate Scalia's legal and rhetorical attitudes. In *A First Amendment Profile of the Supreme Court*, Craig R. Smith explains that "Justice Scalia's harsh criticisms, use of hyperbole, and hostile metaphors reveal his emotional attachment to the law and his argument" (80). Stephens and Scheb show how this style matches Scalia's legal philosophy, a strict constructionism approach that draws on the ideas of the original creators of the Constitution. So, "Scalia's rejection of the compelling governmental interest test was the most controversial aspect of this decision" (Stephens and Scheb 235). Following Hume's points about Court legitimacy, Scalia has to be particularly cognizant of which devices to use to defend this decision. Smith explains that Scalia's rhetoric is an attempt to encourage the public to read rulings. Such an attempt, though not its results, are evident in *Employment Division v. Smith*. The scathing nature of his writing is somewhat subdued, perhaps because this is a majority opinion (reached by a Court consensus) and not a dissenting one, which would require him to highlight his frustrations with the majority. Rhetoric still matters because the need for legitimacy is there, but it is not as urgent as it would be in a dissenting opinion.

This analysis of *Employment Division* shows that Scalia considers audience, ethos, and clarity alongside legal

precedent, *stare decisis*, and other judicial constructions. The questionnaire addresses the effectiveness of this attempt. Looking at the opinion's specific language presents some generalizations about the Supreme Court's or Scalia's rhetoric and stylistic patterns as they contribute to the ongoing collection of law to be used in future cases. These concepts informed the questions in the survey and ideas to code in the responses.

### Questionnaire for *Employment Division v. Smith*

The majority of the respondents (14 of 16) were Professional Writing majors with varying minors. Three of these students did not disclose minors; other minors included: English Literary Studies, Film Studies, Creative Writing, Communications, Religious Studies, Public Relations, Theater, and Sociology. The two non-Professional Writing participants were a Marketing major with an Advertising minor and an Information Systems major. None identified as pre-law. There were three fifth-year seniors, seven seniors, five juniors, and one sophomore. Most Professional Writing students had taken or were enrolled in Advanced Composition, Interdisciplinary Writing, and/or Rhetorical Theory. One had taken a Constitutional law class in high school and some mentioned taking political science courses in college. No participants were already familiar with this case. Not being familiar with Constitutional law might have put participants at a disadvantage. They had to interpret legal language and jargon with little guidance other than a brief synopsis in the survey. However, having a working knowledge of stylistic and rhetorical devices might have provided a framework for students to reference.

In classifying the tone of the opinion, respondents' answers varied. Answers included: "pretty objective," "very objective," "neutral and unbiased," and "informative as well as neutral." Others wrote that it was "formal and authoritative," "academic," and "professional and distanced." Some participants recognized it as "Cold and clinical," "putting me to sleep," "coldly logical," and "dry—parched even." These general perceptions of the opinion hint at the disconnect between the legal and public spheres, even though they theoretically should be able to coexist and overlap, where necessary and appropriate.

Looking at these descriptions of the opinion's tone, it is not surprising that there was a range of factors that were challenging in the document, such as not understanding the entire context or legal jargon used. One re-

spondent commented that "The overall thoroughness of the document was very intimidating. This is definitely a field in which clarity and details are required." One found the formatting and references confusing, writing, "It almost hinders the validity of the argument to me when people aren't able to construct common paragraphs." Another wrote that "because many of the sentences were long and complex, it was sometimes easy to get lost." Only one respondent wrote, "the document was precise and to the point," indicating that he or she did not encounter reading challenges. This array of answers displays the variations that occur among the general audience in understanding the majority opinion. Still, the number of responses that indicated easy interaction with the document was small, which underscores the general audience's difficulty in engaging with the document.

When asked to identify a part of the document that was easy to read, there were mixed opinions as well. Some indicated that they understood the background and outcome of the case without much difficulty, citing that the document was fairly clear. But another wrote, "I honestly have to say that very little of this document seemed 'easy to read' to me." These statements reinforce the variation in audience members' understanding, despite the lack of variation in majors. The participants who cited jargon as a main challenge to comprehending the document confirm just how essential understanding terminology is, even when reading to answer questions not strictly related to content.

When commenting on any interesting aspects of the case, two participants referred to the line about the golden calf. They first thought the line was "pretty funny because banning people from using peyote is about as ridiculous as banning the worship of idols." The second wrote that the "Biblical reference struck me as almost literary, and also may illuminate a slight bias toward Christianity, as the writer seemed to assume the audience would be familiar with the allusion." Others commented more generally on the intersection of church and state. Participants may have cited the golden calf statue because it was an unexpected and slightly sarcastic example. It also was presented directly and simply, without legal vagueness or flourish.

Participants also assessed the document's persuasive strength. Six participants indicated that they were not persuaded. They cited difficulty in understanding the document (one reasoned, "I cannot be persuaded by an argument if I do not understand the machinations of the argument itself") or bias against the Court or legal

jargon. Seven agreed with the Court's decision based on its rhetoric, finding the interpretation fair, believing in the precedent's validity, appreciating the document's thorough and unbiased nature, or admitting that he or she is "easily swayed by rhetorical strategies." One even noted, "I actually have changed my answer. I originally sided with the respondents representing the peyote men, but now I stand with the writer." The remaining three were more indecisive. One agreed with the opinion's content, but clarified that he or she was not persuaded by the language, but by the legal principles. Another admitted, "I am still torn on the matter," but saw the Court's argument as reasonable. The last undecided participant wrote, "I don't find the argument incredibly convincing, but it doesn't exactly fill me with rage." Even when a justice tries to craft a very clear opinion, not all readers are swayed to completely agree or disagree.

One unexpected finding from the questionnaire came from unsolicited responses. Google forms would not allow for text to be provided without some sort of answer prompt. As a result, the synopsis had a blank space below it even though no response was required. However, 12 participants still responded to the question of unconstitutionality here. More importantly, for four participants, the responses that they offered in this space contrasted with their answers about being persuaded to agree with the Court or not. In this optional blank space, these four wrote that it was unconstitutional to deny benefits to the workers. However, they later wrote that they were persuaded by the ruling (which determined it was not unconstitutional to deny benefits). This response speaks to the Court's persuasiveness. Scalia's opinion evidently persuaded these four people who initially saw the situation as unconstitutional, read the text, and then changed their views.

All of these responses show the range of interpretations that the Court opens itself to when it rules on a case. The survey also suggests the limits of ethos in some situations; acceptance of a document and its idea is not guaranteed simply because it is produced by the Supreme Court. Respondents were still skeptical of the Justices' reasoning. The opinion itself shows the process of adhering to *stare decisis* and establishing precedent, while the document's writing illustrates how stylistic devices can be employed to hopefully temper legal jargon and provide clarity.

The results of the survey also reinforce Hume's points about justices writing opinions to continue the legal conversation and Brandhurst's argument about the

need for plain language when trying to include the general public. Many respondents still demonstrated a reluctance to engage, as represented by their opinions about the document. Only one participant mentioned rhetorical terms, syllogism, and enthymeme. As the majority of respondents were upper-level Professional Writing majors, it was expected that they mention specific devices. However, it is possible that they were reading for basic comprehension rather than using rhetorical reading strategies. The questionnaire attempted to discourage this superficial reading by avoiding content-based questions and instead asking about the overall document and its writing style.

Haas and Flower's observations about the readers' strategies also seem relevant. They write, "readers construct meaning by building multi-faceted, interwoven representations of knowledge" that draw on the readers' past experiences and experiences with the document (168). Also, they contend that "it is the reader who must integrate information into meaning" (168). The readers who participated in this questionnaire, even if they were not completely or consciously employing rhetorical reading strategies, seemed to be exemplifying this technique. For example, the readers did comment that personal biases might have informed the way they made meaning and applied their knowledge of rhetoric to this legal document.

Though some literature warns about Scalia's strong and sarcastic style, no participants described the tone in the opinion as such. This indicates that in this specific case, Scalia maintained his voice and judicial philosophy without needing to use harsh or offensive language. Conversely, no participants were pre-law, and only a few were familiar with Constitutional law. They may have simply been unfamiliar with Scalia's character or did not intend to comment on it.

The responses also support Klein, Robinson, and Chemerinsky's views of the general public as an important audience to Supreme Court opinions. Though they wrote about this audience, they emphasized their own roles as lawyers and rhetoricians, rather than general observers. This study adds feedback from participants and shows that a general audience can interpret Supreme Court opinions, even with little background knowledge. The responses also hint at the exclusivity that legal jargon creates and show the difficulty that the general population has in deciphering legal decisions.



## Conclusion

This research examines the role of rhetoric in Supreme Court decisions, as it could be measured by surveying college students. Admittedly, there were several limitations involved. First, the free-response format of the questionnaire, intended to encourage critical reading and writing, required participants to craft their own responses after reading a six-page document. This process may have seemed unappealing. Future studies could utilize a different method of collecting information, such as a focus group or interview or a different demographic, either from within a college or outside of the institution. The fact that many respondents were Professional Writing majors introduced some bias as well, as they were more familiar with the discipline. In terms of documents, a different opinion focusing on any aspect of Constitutional law, from Scalia or another justice, could be used. Any of these could lead to different or more effective methods for qualitatively measuring the relationship between the Supreme Court; its ethos, rhetoric, and style; and the general public.

Even with its limitations, this study still reinforces the importance of rhetoric to the Supreme Court and its shaping of ethos and precedent. The Court's reputation and decisions are perceived and received by several audiences, an important one being the general public. The Court tries to write its opinions strategically, incorporating stylistic devices to emphasize and clarify its points to these audiences, as well as enhance its legitimacy in the legal sphere. Unfortunately, the majority of the views expressed by participants demonstrate that these goals are not always accomplished. This observation suggests that judges should be aware of the distance that legal jargon inherently creates and how it constrains the Court's ability to appeal to the general public.

Additionally, studying rhetoric's role in disciplines such as the legal field demonstrates the concept's flexibility and how it can have an impact beyond its place in a document's text. When rhetoric is interwoven with legal content, it may negatively influence clarity in regards to a general audience. Ironically, this is the opposite of the intended effect. Though it is not possible to craft opinions completely removed from judicial theory, perhaps judges should recognize that, depending on the audience, the goals of clarity and emphasis are not always met. This could be relevant to understanding how language shapes perceptions of legal jurisprudence and subsequent policies. The United States court system, es-

pecially at the national level, is designed to determine the constitutionality of legislation and to give citizens an understanding of their rights. Accordingly, SCOTUS must be aware of the impressions that decisions leave on audiences and how they relate to the basic principles of the government and legal system.

Democracy and separation of power are core elements of the United States political system. However, these abstract terms are sometimes difficult to appreciate in daily life. This is also often the situation with rhetoric as well, with various arguments for and against its potentially manipulative nature. This research gives some specific examples of impressions of legalese that can contribute to ongoing discourse about judicial activism or restraint, especially in terms of the Supreme Court's place in shaping society, politics, or policy. Since it is so profession-specific, legalese can foster a lack of connection between the legal process and the people affected by it. This is not necessarily negative—indeed, it is sometimes unavoidable—but it is something that should be recognized and perhaps amended. It is important to appreciate the stylistic choices and potential influence of careful sentence construction in a legal decision. Rhetoric, legal or otherwise, plays a role in the basic, yet vital, balance between the three branches of government as each creates, evaluates, and enforces policy that, in turn, affects the American citizenry.

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