

PRIMING IDEOLOGY?
WHY PRESIDENTIAL ELECTIONS AFFECT U.S. JUDGES

DANIEL L. CHEN*

Abstract Politicians' behavioral changes as an election nears have typically been attributed to the incentive effects of an election. I document that behavioral changes can occur even for unelected judges. Using data from 1925-2002 on U.S. appellate judges, who are appointed for life, I find that just before presidential elections they increase by roughly 100% the rates at which they vote along partisan lines and achieve an outcome reflecting the political views of the appointing president's party. Exploiting monthly campaign ads in judges' states of residence, dissents increase with campaign advertisements in states where judges reside and with the closeness of the state's popular vote when that state has more electoral votes. Elections can explain 23% of all dissents. I rule out a number of incentive-based explanations. Topic of dissents, replication in concurrences (disagreement about reasoning), and judge heterogeneity support a transient priming mechanism reflecting the contexts and characteristics that make individuals more susceptible to and timing of priming. If elite U.S. judges are in fact susceptible to priming via the partisan nature of electoral cycles, then highly trained individuals may be susceptible to other forms of priming regardless of their professional commitments to be unbiased.

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*Daniel L. Chen, daniel.chen@iast.fr, Toulouse School of Economics, Institute for Advanced Study in Toulouse, University of Toulouse Capitole, Toulouse, France. Work on this project was conducted while I received financial support from the Alfred P. Sloan Foundation (Grant No. 2018-11245), European Research Council (Grant No. 614708), Swiss National Science Foundation (Grant Nos. 100018-152678 and 106014-150820), Agence Nationale de la Recherche, John M. Olin Foundation, Ewing Marion Kauffman Foundation, and Templeton Foundation (Grant No. 22420). I acknowledge financial support from the Petrie-Flom Center, Program on the Legal Profession, and the Center for American Political Studies at Harvard.

1 Introduction

This study examines the effects of electoral priming on judicial decision-making, set within the broader context of declining trust in nonpolitical institutions. In political economy, the influence of non-elected, non-legislative entities is often overshadowed by the focus on voters and politicians. Yet, these nonpolitical institutions play a crucial role in shaping political outcomes and public policy. This paper specifically investigates how external factors such as elections can prime judges, thereby influencing their decisions. This phenomenon raises profound questions about the procedural fairness of judicial processes. This concern is not just academic: when judges are ideologically biased, even intermittently, it may have significant legal, social, and economic repercussions. Trust in the judiciary is not merely a legal prerequisite but a cornerstone of societal order and economic stability (Acemoglu et al. 2020).

Recent experimental work has highlighted the influence of group identity on various aspects of behavior, from economic decisions to ethical judgments (Fong and Luttmer 2009; Benjamin et al. 2010; Benjamin et al. 2013; Cohn et al. 2015; Gerber et al. 2010). This paper extends this inquiry to explore how group identity, specifically political identity, impacts judicial decision-making in the United States. Judicial impartiality is often taken for granted (Edwards and Livermore 2008), yet there is evidence suggesting that judges' decisions can reflect their demographic backgrounds and political leanings (Peresie 2005; Sunstein et al. 2006). This raises critical questions about the extent to which personal biases, conscious or unconscious, influence legal judgments (Sunstein and Thaler 2008). I explore this issue by examining the decisions of U.S. federal appellate judges, who are theoretically insulated from electoral pressures due to their lifetime appointments.

The core of this study is an analysis of over 18,686 randomly selected cases, a 5% sample, from 1925-2002, focusing on the patterns of dissent and partisan alignment in judicial decisions. The findings reveal a marked increase in both dissent rates and partisan voting in the periods leading up to presidential elections. This trend challenges the traditional view of judges as detached arbiters, suggesting that even life-tenured judges are not immune to the political

climate.

I explore various possible explanations for this phenomenon, including the role of media priming and judges' professional backgrounds. I find that the electoral cycle, particularly the heightened political atmosphere around presidential elections, seems to subtly influence judges' perceptions and decisions. The analysis suggests that this influence is likely unconscious, a result of priming rather than deliberate bias. I present field evidence for what experimental studies have documented regarding factors that make individuals more susceptible to priming, namely contentious environments (Srull and Wyer 1979), inexperience (Iyengar et al. 1982; Krosnick and Kinder 1990), and previous associative links (Kimball 2005). Electoral cycles in dissents and partisan voting are stronger in more polarized environments, inexperienced judges, and judges who previously had political appointments such as being a federal prosecutor whose job involves exercising significant discretion in law enforcement (Engstrom 1971, Gordon 2009).

Moreover, the paper examines how different contexts, such as wartime or national reconciliation, can prime judges towards consensus rather than dissent. Corroborating the priming channel, judges and panels that are more likely to be primed by elections for dissensus are also the ones that are more likely to be primed by wartime for consensus. Appellate judges are randomly assigned in panels of three to a case, so the pattern of partisan alignment in judicial decisions extends to the establishment of precedent. Outcomes of cases are less likely to follow precedent before a presidential election: Panels are also twice as likely to achieve an outcome consistent with the political views of a judge's party of appointing president. This adds a nuanced understanding on rule of law and how external factors can have indelible consequences on the development of law (Gennaioli and Shleifer 2007).

This paper also uncovers—and explains—a notable anomaly: a significant rise in monthly judicial dissents peaking three months prior to elections. This pattern appears counterintuitive, as one might expect the influence of election priming to persist until the election itself. The explanation for this pre-election dissent spike is linked to the primary season, a period focused

on selecting party representatives for the election. Notably, primaries conclude approximately three months before the election, marking the point at which parties finalize their candidates for the general election (Goldberg 2016; Brady et al. 2007). My findings show that dissents start to decline in states where the electoral outcome is less pivotal, but continue to be elevated in key battleground states. Furthermore, I directly link the spatial and temporal variations in electoral intensity to the frequency of campaign advertisements in the states where the dissenting judges reside, observing a correlation between increased monthly ad campaigns and dissent rates.

Another intriguing aspect is the average duration of legal cases, typically extending over eight months. This duration highlights the peculiarity of the observed election cycle pattern based on the date of opinion publication. Intriguingly, when replacing the publication date with “placebo” dates (such as the date of oral argument or other earlier case stages), the electoral cycle in judicial behavior disappears. This suggests that the decision to dissent—as a result of priming—is being made closer to the opinion publication date rather than at the oral argument stage, which is traditionally when dissent decisions are believed to be made (Hart et al. 2006; Epstein et al. 2013).

This tendency for last-minute judgment is further evidenced by a similar pattern in judicial concurrences, which see a 50% increase prior to Presidential elections. Unlike dissents, concurrences express disagreement with the majority opinion’s reasoning rather than its verdict. They typically involve writing a separate opinion and are decided after the majority opinion’s initial draft circulation, significantly post-oral arguments. Lastly, an increase in dissents without a separate written opinion also points towards this phenomenon of late-stage judgment.

I then employ a comprehensive dataset characterized by high-frequency and spatial diversity across multiple elections to examine the intensification of polarization under conditions where identity factors are prominently activated. The variation in polarization is notably more pronounced in scenarios where the state’s popular vote margin is narrow and the state in ques-

tion possesses a substantial number of electoral votes. This phenomenon is primarily driven by the judge issuing the dissent, rather than the other panel members. Specifically, the likelihood of a dissent correlates significantly with the electoral dynamics specific to the state of the dissenting judge. Additionally, I investigate a separate set of U.S. Senate elections, which occur at different times across states, and observe a similar pattern of increased dissents. These findings reinforce the notion that the polarization effect is distinctly associated with the state of the dissenting judge.

In summary, this research presents novel insights into the subtle yet significant ways in which group identity and political climates can shape judicial decision-making. It contributes to the broader conversation about bias and impartiality in the legal system, offering evidence that even highly trained, professional judges are susceptible to the subconscious influences of their social and political environments.

The remainder of the article is organized as follows. Section 2 presents background, Section 3 data and specification, Section 4 the electoral cycles, Section 5 evidence for priming, Section 6 the role of identity, and Section 7 concluding remarks.

2 Literature Review and Background

2.1 Literature Review This article contributes to three key literatures, the first of which focuses on political identity and judicial decision-making (Harris and Sen 2019). By and large, U.S. judges contend there is no evidence for ideological bias. Some say that only a small fraction of cases are legally indeterminate and that as experienced members of the legal community, they recognize which arguments have greater plausibility within the legal community, even in difficult cases (Edwards and Livermore 2008). Edwards and Livermore (2008) estimate that 5 to 15% of cases in their Circuit, and therefore thousands of cases over all courts of appeals, are indeterminate from a legalistic standpoint. Yet the view of judges as impartial and unbiased decision-makers has been questioned by studies showing that demographic and other background characteristics predict judicial decision-making over a range of legal issues and, in particular, that judges' voting behavior reflects partisan preferences

(see e.g., Peresie 2005; Sunstein et al. 2006). Furthermore, laboratory studies document that even when parties have the same information, they will come to different conclusions about what a fair judicial decision should be (Babcock et al. 1995).

The interpretation of correlations between judges’ decisions and their demographic characteristics, however, remains an open question. Even if judges vote along partisan lines, are judges simply following legal philosophy (e.g., different formal rules) rather than demonstrating bias? Among the three main theories of judicial behavior—legal, attitudinal, and self-interested—the first posits that judges follow formal rules or legal philosophy (Kornhauser 1999). The latter two assume some form of bias: e.g., the attitudinal model posits that judges follow political preferences (Cameron 1993) and the self-interested model posits that judges maximize their utility (Posner 1973). The distinction between legal and attitudinal is subtle: for instance, a judge can adhere to a strict interpretation of the Constitution while not necessarily simply hewing to the preferences of a political party. Legal philosophy, the preferred interpretation by jurists regarding the correlations between background characteristics and judicial decision making, is difficult to test (Posner 1998). For example, that Republican judges prefer an originalist interpretation of the U.S. Constitution while Democratic judges prefer a living interpretation of the U.S. Constitution is somewhat tautological, or as Posner (1993) puts it, metaphysical.

I contribute to this vibrant literature by documenting electoral priming affects judicial behavior. The paper’s central premise is investigating the effect of electoral cycles on U.S. federal appellate judges’ decisions. It posits that the heightened political atmosphere around elections subtly influences judges’ perceptions, likely through unconscious priming rather than deliberate bias. A literature documents the relationship between proximity of a judge’s retention election and a judge’s sentencing behavior (see e.g., Huber and Gordon 2004; Gordon and Huber 2007. Lim 2013; Berdejó and Yuchtman 2013; Abrams et al. 2023). Other studies include bias by sports referees (Garicano et al. 2005; Dohmen and Sauermann 2015; Pope et al. 2013) and traffic court judges (Shayo and Zussman 2011) and vignette-based literature suggesting

that judicial decision-making is affected by heuristics, e.g., anchoring, status quo bias, and availability (Mussweiler and Strack 2000; Englich et al. 2005; Guthrie et al. 2007). This paper is the first to document priming as a mechanism that affects judicial decision-making.

The second literature to which I contribute is an experimental literature on group identity effects (Zhang et al. 2022). Studies like Fong and Luttmer (2009), Benjamin et al. (2010), Benjamin et al. (2013), Cohn et al. (2015), and Gioia (2017) have experimentally demonstrated the impact of group identity on a range of decisions, from charitable choices to ethical judgments. These works primarily utilize laboratory settings to establish causal links, highlighting the potency of group identity in shaping behaviors and choices. In this paper, I examine the causal link between group identity and ideas. Social scientists have also long speculated whether different ideas cause individuals to select into different groups or whether group identity causally imparts a set of ideas. By documenting field evidence of group identity effects, I complement the laboratory literature and document causal evidence of group identity causally imparting a set of ideas.

The third literature is one on priming (Cohn and Maréchal 2016; Alempaki et al. 2019). Many economic models have incorporated cognitive effects like priming and salience (Laibson 2001; Bernheim and Rangel 2004; Bordalo et al. 2013) and even applied to judicial decisions (Bordalo et al. 2015). Some economists have tried and failed to find evidence of priming in the field.¹ To understand how priming operates in the context of judicial decision-making, let us examine key psychological studies that underpin the theory of priming. These studies provide foundational insights into how subtle cues and environmental factors, akin to those present during elections, can unconsciously influence decision-making processes: (i) cueing effects - when a recovering drug addict walked by a subway station where he once bought drugs, the station functioned as a stimulus that triggered physical withdrawal symptoms (Laibson 2001); (ii) stereotype threat - when secondary school students taking a math exam were reminded

¹John List said, “I believe in priming. Psychologists have shown us the power of priming,” and he tried “everything” to induce priming in field experiments, but could not. “Interview: John A. List,” *Federal Reserve Bank of Richmond Region Focus*, Second/Third Quarter 2012.

of their gender in a word problem, it caused girls to perform worse than boys (Spencer et al. 1999); (iii) conceptual priming - when participants identified as likely to be sexual harassers were primed with the concept of power in a pronunciation task, they were more attracted to a female confederate (Bargh et al. 1995). The literature also refers to these phenomena as passive or implicit priming. The key mechanism is that an activated concept becomes more likely than before to influence conscious judgments.

The ideal empirical strategy for detecting priming in the field follows individual behavior over time as well as individual demographic characteristics before a prime to see if individuals from different groups diverge after the prime. Several aspects of this setting overcome challenges that make the field detection of priming effects difficult—1) priming is isolated from incentives or learning mechanisms²; 2) high-frequency data helps pick up extremely short-lived priming effects—the longest laboratory study documents priming effects one week after the initial stimulus (Tulving et al. 1982; Ostergaard 1994; Hassin et al. 2007); and 3) a large sample and rich data on the contexts and characteristics of judicial decision-making in the Courts of Appeals allows me to examine whether the characteristics that make individuals more susceptible to priming in the lab are also found in the field.

To corroborate the priming channel, I present field evidence for what experimental studies have documented regarding factors that make individuals more susceptible to priming, namely contentious environments (Srull and Wyer 1979), inexperience (Iyengar et al. 1982; Krosnick and Kinder 1990), and previous associative links (Kimball 2005). Campaign messages can activate chronic identities (Ansolabehere and Iyengar 1997), so if judges have partisan identities, priming may influence judges’ perception of cases brought before them. Such influence may be implicit and subconscious: in electroencephalogram studies of political priming, people do not recall the stimulus (Morris et al. 2003); neurocorrelates of behavioral change are activated by advertisements that affect population behavior, even when individuals do not believe these

²In political science, priming refers to an increase in the prominence of an issue leading individuals to increase the weight given to it in regression analyses of self-reported voting preferences (Druckman 2004). However, the increase in issue weight could also be due to learning as individuals learn about parties’ positions (Lenz 2009). The current article’s research design is completely different in scope and context.

advertisements to be effective at changing behavior (Falk et al. 2012). When judges are explicitly primed, however, they control the influence of unconscious bias (Rachlinski et al. 2009). Given judges' strong professional commitment to be unbiased, the potential priming effect of electoral cycles may be due to implicit, subconscious, priming.

The policy implication and policy-making setting of the courts makes the contribution clear. While market pressures may drive identity effects in savings and risk preferences towards the rational model (List 2003) and drive out other forms and sources of ideological bias, such as media slant (Gentzkow and Shapiro 2010; DellaVigna and Kaplan 2007), behavioral anomalies in a context such as judicial decision-making can have more indelible consequences on the development of law (Gennaioli and Shleifer 2007). Furthermore, even if there is judicial bias, whether the bias is automatic (i.e., unconscious) or reflective (i.e., conscious) is another important question. A finding of unconscious rather than conscious bias would suggest different remedies for judicial partisanship (Sunstein and Thaler 2008) that address Type I thinking such as self-reflection or cognitive behavioral interventions.

2.2 Background on U.S. Federal Courts The U.S. Courts of Appeals (also known as the Federal Appellate Courts or Circuit Courts) rest near the apex of the U.S. common law system, where judges apply – and make – the law. Decisions in current cases become precedent for future cases in the same court and in lower courts of the same jurisdiction. There are three layers of federal courts: U.S. District, Circuit, and Supreme Court. The 94 U.S. District Courts serve as the general trial courts, where a jury may be drawn to decide *issues of facts*. If a party appeals the decision, the case goes up to a Circuit Court, which decides *issues of law*; they have no juries and usually take facts as given from District Courts. Courts of Appeals judges affirm or reverse the District Court decision, and often remand (send the case back) for the lower court to decide in a manner consistent with the law set out in the Circuit Court decision.

Cases that reach the Courts of Appeal focus on new interpretations or distinctions of preceding cases and statutes, which expand or contract the space in which an actor is allowed to

act. Courts of Appeals judges are appointed for life by the U.S. President and are confirmed by the Senate. They preside in one of 12 U.S. Circuits and are appointed to particular geographic locations within the Circuit (called *duty stations*), where they do most of their writing. Three judges, out of a pool of roughly 8 to 40 judges in a Circuit, are randomly assigned by a staffing office to each case. A judge who disagrees with the verdict usually must write a dissent explaining why. A judge who agrees with the verdict (affirm or reverse) but disagrees with the reasoning is said to concur and also usually writes an opinion explaining why. Dissents and concurrences cannot be cited as binding precedent and are costly in terms of time and collegiality (Epstein et al. 2011). Less than 1% of Courts of Appeals cases are heard again in the U.S. Supreme Court, so the roughly 170 elite Circuit Court judges decide the vast majority of cases that create legal precedent, constitute law school curricula, and impact economic outcomes.

A variety of professional norms and institutional mechanisms are designed to limit the influence of extrajudicial factors, such as bias. Federal judges are restricted from the appearance of impropriety. They are prohibited from receiving honoraria or compensation for speeches, appearances, articles, or service to a profit or non-profit organization.³ They are also prohibited from making speeches for political organizations, publicly endorsing or opposing candidates, soliciting funds, making contributions, or attending or purchasing tickets for events sponsored by political organizations or candidates.⁴ They are further prohibited from personally participating in any fundraising activities, soliciting funds for any organization, or using or permitting the use of the prestige of their judicial office for fundraising purposes.⁵ There is no prior evidence that U.S. federal judges are part of Presidential elections or any election, with the unusual exception of *Bush v. Gore*. By contrast, state judges⁶, many of whom are themselves elected and, if appointed, rarely have life tenure—have exhibited electoral cycles

³*Guide to Judiciary Policy* Canon 4H. <http://www.uscourts.gov/uscourts/rulesandpolicies/conduct/vol02a-ch02.pdf>

⁴*Guide to Judiciary Policy* Canon 5.

⁵*Guide to Judiciary Policy* Canon 4C.

⁶State judges handle issues of state rather than federal law.

in their rulings, and the natural interpretation of these results is the incentives facing elected judges (Huber and Gordon 2004; Gordon and Huber 2007; Berdejó and Yuchtman 2013).

Random assignment in Courts of Appeals has been examined in other work. Surveys of the Courts of Appeals find that case assignment procedures fall into two categories. In some courts, two to three weeks before oral arguments, a computer program randomly assigns available judges (occasionally including any visiting judges from other Circuits or District Courts and, in rare instances, other Federal judges) to panels that will hear cases. In other courts, the random assignment of panels occurs before the random assignment of cases: panels of judges are set up to hear cases on a yearly basis, randomly assigned together by a computer program and given dates for hearings. There are “holes” left in some of the panels by the program into which visiting judges are inserted. Occasionally, if a panel of judges has previously looked at a case, it will be sent back to them (for example, if it was remanded by the Supreme Court to resolve a particular issue). If a judge must recuse himself or herself, the case is taken off the calendar and placed back in the pool for reassignment. Chen and Sethi (2016) use data from Boyd et al. (2010) and Sunstein et al. (2006), who code 19 case characteristics as determined by the lower court for 415 gender-discrimination Circuit Court cases, and find that case characteristics are uncorrelated with judicial panel composition. More specific to this context, omnibus tests indicate case and litigant characteristics vary little over the electoral cycle: the p-values from regressions of case characteristic on the quarter-to-election are compared against the p-value of the dissent cycle. The appendix reports similar tests for court caseloads and characteristics of judges authoring or sitting on the panel.

The Circuit Courts have no juries. Instead, every judicial case gets assigned three judges from the court’s pool. We refer to these three judges as the **panel**. The panel decides on a binary verdict (affirming or overturning the lower court’s verdict), where a majority of two judges is needed to set the verdict (formerly called “disposition”). The panel also composes an **opinion** (i.e., a text) motivating the verdict. The opinion serves as precedent for future cases and as such has a large impact on society and policy. A judge has to write a separate (minority)

opinion if she either **dissents** (votes against the binary verdict) or **concurs** (votes for the verdict but for a different reason, as manifested in her minority opinion). Both dissents and concurrences are costly in terms of time and collegiality and they cannot be cited as binding precedent. Note that, for a judge, dissenting and concurring are two mutually exclusive actions that both imply expressing dissatisfaction with the court’s decision—a form of confrontation.

3 Data and Specification

In my research, I have integrated various datasets to analyze judges’ identity, characteristics, ideology, and the ideological leaning of their verdicts, alongside the dynamics within the U.S. Circuit Courts. This comprehensive approach allows for an investigation of judicial behavior in relation to political and ideological contexts.

The core of my data on judges’ decision-making processes comes from the U.S. Courts of Appeals Database Project.⁷ This resource provides a random sample of approximately 5% of appeals-court decisions from 1925 to 2002, including hand-coded information on the ideological content of each verdict. The coding aligns with the conventional notions of "liberal" and "conservative" within the public law literature.

A key aspect of my study is the use judges’ biographies. The Appeals Court Attribute Data and the Federal Judicial Center provide detailed information on judges’ identity, characteristics, and their service in which Circuit Courts.⁸ In my analysis, I focus on whether there was a dissenting or concurring opinion, and then merge each judge with their specific characteristics, such as age, previous work experience, judicial experience, and whether they are candidates for the Supreme Court (Nemacheck 2007).

To delve into the ideology of a judge’s actions in court, I use two features of the available data. First, I use Judges’ ideology score from the Judicial Common Space (JCS) database, which assigns judges the ideology of their appointing politicians. This score is based on the idea that appointing politicians leverage their opportunities to assign ideologically aligned judges,

⁷Documentation and data available at <http://www.cas.sc.edu/poli/juri/appctdata.htm>.

⁸Documentation and data available at <http://www.cas.sc.edu/poli/juri/auburndata.htm>.

given the rarity of vacancies and the significant policy impact of Circuit Courts. The score, ranging approximately between -0.7 and +0.7, represents a spectrum from "very liberal" to "very conservative." It is predetermined, thereby allowing for a clear analysis of how a judge's pre-court ideology impacts their behavior.

The second feature of the data to investigate the ideology of a judge's actions is the judge's vote ideology. This measure reflects the ideology of verdicts a judge signs, calculated based on whether the judge dissented or not. On the definition of vote ideology (or valence, a terminology used in the Courts of Appeals Database Project), the documentation states that for most, but not all issue categories, these will correspond to notions of "liberal" and "conservative" that are commonly used in the public law literature. The directionality used in the data source parallels closely the directionality codes in the Spaeth Supreme Court database. For example, decisions supporting the position of the defendant in a criminal procedure case, the plaintiff who asserts a violation of her First Amendment rights, and the Secretary of Labor who sues a corporation for violation of child labor regulations are all coded as "liberal." The decision valence thus captures the court's decision directionality (liberal = 1, conservative = -1, and mixed or unable to code = 0). A vote for the majority would be assigned the decision ideology as its valence. A vote that is a dissent would be assigned the opposite value as its valence.

In terms of methodology, my analysis primarily focuses on three-judge panels, encompassing a substantial number of decisions across multiple decades. The study includes 18,686 decisions (56,058 votes) for 1925-2002, with about 8% of opinions from 1925 to 2002 featuring dissents. Appendix Table A displays summary statistics. I encountered some limitations due to missing biographical data on judges, which necessitated a reduction in sample size for certain analyses.⁹ Using these datasets, I construct the variable for divided panel, defined as panels having at least one Democrat and one Republican. The database assigns each judge to

⁹Missing data include elevation to the Supreme Court and previous service as Assistant U.S. Attorney or U.S. Attorney. The regressions that use this data have a reduction in sample size of 10%. In addition, I exclude the votes by judges sitting on cases when they have less than 0 years of experience or greater than 35 years of experience, as these experience data are likely with error. These regressions have a 13% reduction in sample size.

one of the following parties: republican, democrat, liberal, conservatives and independents. I group liberal judges with Democratic judges, conservative judges with Republican judges and independent judges with the party of the appointing President. I also construct fixed effects for the legal issue; I use the following classification provided in the database: criminal, civil rights, constitutional (i.e., First Amendment, due process and privacy cases), labor relations, economic activity and regulation, and miscellaneous.

The data also contains the reason for dissent (i.e., procedural or merit).¹⁰ When a judge decides a case on the merits, they are evaluating and making a judgment based on the actual facts and legal issues central to the case. This means looking at the evidence, the arguments presented by both sides, and how the law applies to these specifics. In contrast, deciding a case on procedural grounds involves making a judgment based on whether the legal process was followed correctly, such as whether the case was filed on time or if court rules were adhered to, without delving into the actual substance of the case. Therefore, a procedural decision could be construed as less substantive, as it does not delve into the actual merits and deeper issues of the case.

When a higher court reviews a decision made by a lower court, it has several options. It can affirm the decision, meaning it agrees with and upholds the lower court's ruling. Alternatively, it can reverse the decision, indicating disagreement and overturning the lower court's ruling. When a higher court reverses with remand, it not only disagrees with the lower court's decision but also sends the case back to the lower court for further action, such as a new trial or additional findings. In contrast, reversing without remand means the higher court takes the final action itself, without sending the case back. Therefore, a remand typically means less work for the higher court compared to reversing without remand, as the circuit court does not need to write the final opinion; instead, the lower court is tasked with further proceedings based on the higher court's guidance.

Beyond the core datasets previously mentioned, I have incorporated several additional

¹⁰The Courts of Appeals Database codes whether the dissent addresses a procedural issue or addresses a merits issue.

sources to enrich my analysis. Data on subsequent outcomes in the Supreme Court, when relevant, are sourced from the Shepardized Courts of Appeals database. This linkage between the U.S. Courts of Appeals Database and the Supreme Court adds a crucial layer to understanding the appellate process. The variables in the Supreme Court database allow me to examine whether the Circuit Court decisions are reversed on appeal and whether the Supreme Court decided to “listen” to the case. Both of these are proxies of error. Typically a dissenter is viewed as a whistleblower, so this analysis also allows me to see whether the whistleblowing matters or whether the Supreme Court is less likely to view the case as needing to be reversed. Other metrics of quality of a Circuit court decision include overall citations and citations by subsequent dissents, which can be interpreted as contributing to an issue of potential legal innovation.¹¹

To capture the political climate, besides using the date of the case, which allows me to construct electoral proximity for each quarter to the upcoming Presidential election, I also sourced election information from the CQ Voting and Elections Collection.¹² These data include, for example, winning margin in the Electoral College, political environment such as the party of the incumbent President, the electoral vote count of the state where the judge resides, and the winning margin in the state where the judge resides. During a presidential election, voters in each state cast their ballots not directly for a presidential candidate. The candidate who wins the majority of votes in a state typically receives all of that state’s electoral votes. The total number of electoral votes is 538, and this is distributed roughly by population of the state.

The influence of political campaigns is examined using data from the Wisconsin Ads project. This includes the aggregate number of presidential campaign advertisements in major media

¹¹I winsorize this variable at the 1% level, that is, I censor all observations outside of 1% to 1%. Citation data come from Lexis’s *Shephards* service. Newer cases have less time to accumulate citations, but controlling for year fixed effects addresses this censoring. Data is not available to distinguish whether the dissent or the majority opinion is being cited.

¹²Table 30-1 Divided government, 1860–2006. (2008). In Guide to Congress, 6th ed. (Vol. 2). Washington: CQ Press. Retrieved May 12, 2010, from CQ Press Electronic Library, CQ Voting and Elections Collection, <http://library.cqpress.com/elections/g2c6e2-973-36489-1842592>. Document ID: g2c6e2-973-36489-1842592.

markets for the 1996, 2004, and 2008 elections. The data allows me to verify which states undergo increasing politicization due to the primary season. Primary season in the United States is the period when political parties hold primary elections and caucuses to select their nominees for the presidency. This season, which typically spans several months in an election year, unfolds state by state and is crucial for candidates to accumulate delegates and gain momentum. The outcomes of these primaries and caucuses determine the party nominees for the general election, setting the stage for the national political contest. For a broader public perspective, this data is complemented with an analysis of 230,709 New York Times articles from 1900-2007 that mentioned both “Republican” and “Democrat,” sourced from ProQuest. Additionally, all newspaper articles mentioning Courts of Appeals decisions or their dissents for 1981-2013 were collected from NewsBank.

The final data source is The Administrative Office of the U.S. Courts (AOC), which provides critical data on all significant dates for cases filed in Federal Courts, allowing for precise tracking of case progressions for 1971-2006. I achieve a match of 75% by successively attempting to match using different docket numbers, where the two-digit portions of the docket number are successively assigned to years preceding the publication date. This data allows me to examine whether the mental decision to dissent occurs near the publication date or during the oral arguments, as conventionally assumed.

By combining these diverse datasets, I constructed variables to capture dissent, its reasons, electoral proximity, panel composition, legal issues, opinion citations, judicial backgrounds, political environment, decision valence, and treatment of lower court rulings. Decision valence, in particular, captures the ideological direction of a court’s decision, providing a standardized measure of a decision’s ideological lean. My approach offers a comprehensive view of the judicial process, shedding light on how judges’ backgrounds, ideologies, and the political environment shape their decisions and actions within the U.S. legal system.

The theoretical framework underpinning this study, along with the corresponding model specifications, is detailed in the appendix. This provides the foundational basis for my empiri-

cal analysis. Transitioning from the theoretical underpinnings to the econometric specification. Central to this specification is the concept of ideology, which is inherently latent. As ideological extremity intensifies, the likelihood of observing dissent correspondingly increases. This relationship forms the core of our empirical approach, which is operationalized through a probit model (as detailed in Appendix Table B) for specific analyses and a linear probability model (utilized in the main body of tables).

4 Electoral Cycles in Judicial Behavior

4.1 Dissents

- H1: Priming increases the probability of dissent, as agents put greater weight on the group identity norm.

$$(1) \quad Y_{cit} = \beta_1 \mathbf{Proximity}_t + \beta'_2 \mathbf{Z}_{cit} + \eta_{cit}$$

My outcome of interest Y_{cit} is an indicator variable equal to 1 if a dissent was filed on case c in Circuit i and time t . $\mathbf{Proximity}_t$ is the set of quarter-to-election fixed effects and \mathbf{Z}_{cit} contains dummy indicators that potentially control for fixed effects that represent Circuit, year, seasonality, legal topic, etc. I compare to quarter 16, i.e., the quarter immediately following an election, which is the omitted quarter, so the interpretation is akin to a regression discontinuity design. I cluster standard errors at the quarter-by-year level.¹³

In the basic results, dissents increase and are most frequent in the quarters preceding a Presidential election. Figure 1A presents group means indicating a low of 6% to a high of 11% in the quarter before the election. Table 1 shows that the increase before an election is robust and sharpens with the inclusion of fixed effects for panel composition, year, and Circuit (Column 1) as well as fixed effects for legal issue and season (Column 2). The rate of dissent is elevated in each of the three quarters before an election and is highest in the quarter immediately preceding an election. The effect size in the final quarter is equivalent to roughly a 100% increase over the baseline average dissent rate in Columns 1-2. For comparison, panels

¹³Analyses of data collapsed to the quarter-year level do not cluster standard errors.

with Republicans and Democrats are 1.5 percentage points more likely to have a dissent, but panels in the quarter before an election are 6.4 percentage points more likely to have a dissent.

The result is robust to higher-frequency analysis. Dissents are elevated for ten months leading up to a Presidential election. Figure 1B shows that the electoral cycle remains statistically significant when broken down to the monthly level throughout the primary season. This and subsequent figures are visualizations of regression coefficients with standard errors. Consistent with this elevation, before elections, the news cycle is amplified along partisan lines (Figure 2A shows that the number of *New York Times* articles mentioning both “Republican” and “Democrat” in the same article increases in the quarter before Presidential and—to a lesser extent—midterm elections and Figure 2B shows the same pattern at the monthly level—in particular, it shows that the number of articles is elevated up to ten months leading up to a Presidential election). Ten months before the Presidential election is roughly when the Presidential primaries begin in earnest, when each party chooses the candidate to compete in the general election and when candidates begin to target the median voter within their party.

The main result is robust to different specification models and controls. Controlling for season does not change the results, and no seasonal pattern appears in the monthly figures. Accordingly, Appendix Table B (Column 3) reports that the results are robust to shifting seasonality controls by one month (January through March, etc.). The results are also robust to including dummy indicators for each type of panel composition (DDD, DDR, RRD, RRR) (Column 4) and using a probit specification (Column 5), where notably, the ordinary least squares coefficients are similar in magnitude to the marginal effects of the probit specification. The results are robust to clustering standard errors at the Circuit level (Column 6) and controlling for the presence of a concurrence (Column 7). Concurrences also display electoral cycles (Column 8); the effect size is equivalent to 50% of the baseline in the two quarters preceding the election. Appendix Table C shows that my results are robust to using a linear measure of the number of quarters to an election and to dropping one Circuit at a time. To ensure that the documented effects are not spurious, I rerun my basic specification with each

quarter randomly assigned to a different “quarter-to-election” (a natural bootstrap with 200 draws); the 95% interval for t-statistics is between -2.62 and +2.62. Figure 4A shows that the true t-statistic of 4.01 lies far to the right of all the other simulated t-statistics. Several other simulated t-statistics are close to the true t-statistic, but this is to be expected, since the second and third quarters before an election also display significant increases in dissents.

The electoral cycles in dissent for these unelected judges with life tenure are larger and more statistically significant than electoral cycles for judges running for re-election. A recent study documents that within a sample of 276,119 decisions by Washington state judges, criminal sentencing lengths increase by 10% and deviations from criminal sentencing guidelines increase by 50% in the two quarters before a judicial election (Berdejó and Yuchtman 2013). Among my sample of 18,686 cases, the ratio of coefficients to standard errors is twice as large as in the Washington state sample. While these effects among unelected judges may seem large compared to the effects for elected judges, partisanship may be heightened in a group decision-making setting. A sizable share of dissents also appears attributable to electoral proximity, and this share is larger than the share of prison sentence lengths that has been attributed to electoral proximity. Using a linear measure of proximity to election, an estimated 5.9% of total prison time for sentenced criminals is attributed to electoral proximity (Huber and Gordon 2004; Gordon and Huber 2007). Using the same specification,

$$(2) \quad Y_{cit} = \beta_1 \mathbf{LinearProximity}_t + \beta_2' \mathbf{Z}_{cit} + \eta_{cit}$$

I estimate a specification that replaces $\mathbf{Proximity}_t$ with a linear measure of time to election (Appendix Table C). In this model, an estimated 23% of all dissents is attributed to electoral proximity. Each additional quarter-to-an-election reduces the dissent rate by 0.24% (Appendix Table C, Column 1). Since the average case is 7.5 quarters before the next election, multiplying 7.5 by 0.24% and dividing by the average dissent rate of 8% results in 23%.

4.2 Voting Valence While the analysis of dissents in Section 4.1 provides crucial insights into the influence of electoral proximity on judicial behavior, this perspective only captures part of the picture. To gain a more comprehensive understanding of how electoral cycles affect judicial decision-making, it is imperative to examine the subtler but equally important aspect of vote valence or vote ideology. This approach allows us to explore not just the instances of overt disagreement, as manifested in dissents, but also how judges’ underlying ideological leanings subtly shift in alignment with their political affiliations, particularly as elections approach. Therefore, Section 4.2 investigates the nuances of voting valence, scrutinizing how legal precedents and judges’ political appointments intertwine and evolve in the context of approaching Presidential elections.

Vote ideology measures a behavior that is different from dissents. For example, if legal precedent dictates a liberal decision, a unified Republican panel should make a liberal vote. In the months leading up to a Presidential election, however, such a panel may instead cast a conservative vote. While there would be no dissent, an alignment between the decision and the judges’ party of appointment could occur. However, the ideological difference between Democratic and Republican appointees doubles in magnitude in the quarter before an election. To investigate this pattern, I run the following regression:

$$(3) \quad Y_{cijt} = \beta_1 \mathbf{Proximity}_t * Democrat_j + \beta_2 \mathbf{Proximity}_t + \beta_3 Democrat_j + \beta'_4 \mathbf{Z}_{cit} + \eta_{cijt}$$

My outcome of interest Y_{cijt} is vote directionality (liberal = 1, conservative = -1, and mixed or unable to code = 0) by judge j on case c in Circuit i and time t . $\mathbf{Proximity}_t$ is the set of quarter-to-election fixed effects or simply the last quarter before the election. $Democrat_j$ is whether the judge is appointed by a Democratic president.

The positive coefficient in the first row of Table 2 shows that Democratic appointees typically cast more liberal votes than Republican appointees. The interpretation of the coefficient

on political party in Column 4 is that Democratic appointees are 3.5 percentage points more likely than Republican appointees to cast a liberal vote than a neutral or conservative vote, but this difference doubles before an election. Column 1 shows that these estimates are robust to maintaining only a parsimonious set of controls (party of appointment, last quarter before the election, and their interaction), and Column 2 shows that the results are similar from a saturated model (all quarter-to-election dummies in **Proximity_t**). The results are also similar when all quarter-to-election dummies are interacted with the party of appointment: the interaction coefficients are presented in Figure 3A. This means that the ideological effect is similar whether comparing to the quarter after an election or to all other quarters. Figure 3A shows that the partial correlation before the election is a little over 0.15, which is roughly twice the average partial correlation and consistent with the results reported in Table 2A Columns 1-2. Figure 3A reveals that midterm elections increase ideological polarization. The magnitude of the correlation between the party of appointment and voting valence increases by 100%. Comparing across columns, the point estimates in Columns 3 and 4 add up to the point estimates in Column 2, which suggests that judges switch their vote valence from conservative to liberal (and vice versa) rather than to or from a neutral or hard-to-code valence. Appendix Table J shows a robustness check with case fixed effects and double-clustering standard errors at quarter-year and case level. The patterns are very similar.

Figure 3B summarizes the role of ideology in a different manner. The flatter line represents the average voting valence by ideology score quintile when it is not the last quarter before a Presidential election, while the steeper line indicates the average voting valence by score quintile during the last quarter before an election. Judges to the left of the median score vote more liberally, while judges to the right of the median vote more conservatively. The most conservative quintile may be libertarian, which makes coding voting valence difficult (difficult-to-code votes are coded as 0). These judges also become more conservative in the last quarter before a Presidential election. The vertical shift for judges in quintiles 2 and 3 represents a one-decile shift in more extreme ideology score while judges in quintiles 1, 4, and 5 shift by

one-quintile in more extreme ideology score.¹⁴ The one-decile shift is similar to that found by Hollibaugh Jr. (2011), who observes that the extent to which state supreme court judges in competitive partisan elections exhibit polarizing behavior in election years is equivalent to a shift of 8%-10% in ideology score. My magnitudes are similar and slightly larger, on average.

4.3 Legal Outcomes and Impact on Precedent Having explored the nuances of voting valence and its shifts in relation to electoral cycles, we now turn our attention to the broader legal implications of these findings in Section 4.3. Specifically, we examine how these electoral influences extend beyond individual voting behavior to impact legal precedents in both Circuit and District Courts. The previous section investigates the tendency of judicial panels to render decisions that align with their political affiliations, particularly as Presidential elections draw near. I analyze the direct consequences of such partisanship on the nature of legal outcomes, considering the potential shift in legal precedent and the decisions' direct influence on lower court rulings. By doing so, I aim to understand not only the ideological shifts within the judiciary but also the tangible effects these shifts have on the legal landscape and the development of law.

In Circuit Courts, Table 2, Panel B reports that decisions issued by unified panels (RRR or DDD) are more likely to be partisan in the months leading up to a Presidential election. Because case types should be evenly distributed in terms of panel composition and across the electoral cycle, one might expect there to be no correlation between the panel's party of appointment and the case outcome. Precedent dictating a liberal outcome should be just as likely to appear before Democratic panels as Republican panels. In the quarter before a Presidential election, however, unified panels are 125% more likely to issue partisan opinions. Like in Panel A, the fact that summing the point estimates on the interaction terms in Columns 3 and 4 yields the point estimate on the interaction term in Column 2 again suggests that judges switch to a conservative/liberal vote valence rather than to or from a neutral valence.

The magnitudes are equivalent to the proportion of cases that judges estimate to be legally

¹⁴To obtain the horizontal shift, I compare the vertical shift against the slope represented in quintiles 1-4.

indeterminate. Columns 3 and 4 show that panels appointed by Democrats are 10 percentage points more likely to make liberal precedent than those appointed by Republicans in the last quarter before an election. Only 5–15% of cases are legally indeterminate according to judges’ estimates (Edwards and Livermore 2008). On average, the party of appointment shifts the vote valence of the same number of cases as those that are deemed legally indeterminate. It is possible that vote valence may even shift in cases with little legal ambiguity. Interestingly, this pattern does not appear for decisions issued by divided panels; that is, RRD and DDR panels are not significantly more likely to issue decisions that reflect the party of appointment of the majority of the panel. The presence of a minority judge (a whistleblower) appears to be sufficient to prevent at least this kind of ideological effect on the setting of legal precedent.

Valence of precedent is one way that judges’ decisions affect the development of law; the direct impact on the District Court decisions is another. In the even-numbered columns, Table 3 shows that Courts of Appeals judges are 10% less likely to affirm¹⁵ and 20% more likely to reverse lower court decisions in the quarter before an election. These results are statistically robust to specifications with different sets of controls, comparing the odd- and even-numbered columns. Notably, judges’ decisions appear to be increasing in the type of reversal that requires less work: reversals with remand increase by 25% before Presidential elections, while those without remand do not. Reversals without remand require Courts of Appeals judges to be specific about the outcome of the case—such that the District Court no longer needs to adjudicate it. The majority of reversals have remands, which means the lower court has to decide the case again. A loose analogy for a reversal without remand would be a referee report that writes the final article for the author (6.5% of cases) as opposed to a reverse and remand that advises changes to follow the guidelines (20% of cases); the former requires more work than the latter.

4.4 Type of Case After exploring the nuances of dissents, vote valence, and their relationship with electoral cycles, Section 4.4 turns our attention to a more specific facet of

¹⁵5.8 percentage points out of the baseline of 56.8% translates to about 10%.

judicial behavior: the types of cases most affected by these electoral influences. By examining the nature of cases that undergo significant changes in judicial approach during election periods, this section aims to provide a more granular understanding of how electoral proximity may heterogeneously impact different legal domains.

- H2: Cases on topics associated with the prime should experience greater changes (e.g., economic policy constitutes 70% of campaign ads during elections).

Table 4 shows that dissents increase in a variety of legal categories.¹⁶ Criminal cases and economic activity cases show more accentuated electoral cycles. When I break the sample into finer case categories, electoral cycles are greatest for federal criminal cases, commercial cases (e.g., contract breach), and property cases (e.g., eminent domain).¹⁷ Notably, legal areas—such as civil rights and due process—that are typically politically divisive (i.e., dissents are 4-10% more likely in politically divided panels) do not increase in dissents before elections, whereas legal areas—like economic activity—which typically do not divide along political lines, do display electoral cycles.¹⁸ Seventy percent of campaign ads mention economic policy, while only 0.26% of ads mention civil rights or civil liberties. Appendix Table J runs the same regressions without fixed effects. Criminal cases and economic activity cases again show more accentuated electoral cycles. To be sure, this proportion can change across elections, yet research indicates that US presidential campaigns and debates do focus significantly on economic policy (Vavreck 2009). Nevertheless, these patterns should be interpreted as identifying which types of cases, on average, display statistically significant changes in the quarter before the election.

4.5 Summary Justice and Decision Quality Having thoroughly examined the influence of electoral cycles on various aspects of judicial behavior – from the increased likelihood of dissents and shifts in voting valence to the impact on legal outcomes and precedents – Section 4.5 shifts the focus towards an underexplored yet crucial dimension: the quality of

¹⁶The listed groupings are the 1-digit case category provided in the database.

¹⁷The database provides 2-digit legal case categories. I consider each 2-digit sub-category within the 1-digit category of criminal cases and economic activity.

¹⁸Criminal cases are 2.5 percentage points more likely to dissent with divided panels and also increase in dissents before elections.

judicial decisions. This section delves into whether the observed electoral cycle effects extend beyond mere quantitative changes in judicial behavior, influencing the very substance and nature of judicial reasoning. Specifically, it probes whether the increased frequency of dissents and ideological shifts in decision-making around elections are reflective of more hasty or procedurally focused judgments, potentially impacting the depth and robustness of judicial reasoning. Thus, Section 4.5 aims to explore the ramifications of electoral cycles on the foundational quality of justice administration, examining if and how the proximity to elections might affect the substantive soundness of judicial decisions.

- H3: Dissents based on procedural quibbles should increase more when primed than the increase in substantive dissents.

Do the reasonings reflect more hasty decisions? Table 5, Columns 3-4, shows that before elections, judges dissent more on issues related to procedure than merit. On average, 9% of dissents mention procedural (but not merit) reasons for the dissent. In the quarter immediately before an election, this motivation increases by 10 percentage points, a doubling of the baseline, when compared to all other quarters. However, the database only codes the reasoning for dissent between 1997–2002. For the entire 1925–2002 time period, I find that only four case characteristics significantly varied with the electoral cycle: (1) whether there were “other issues” related to juries, (2) whether some “other evidence” besides confession and evidence obtained through search and seizure was inadmissible, (3) whether the attorneys’ fees favored the appellant, and (4) whether there was some “other issue” of civil law. About 1-6% of the cases mention these issues. What is notable about all four of these issues is that they are highly discretionary (e.g., attorneys’ fees are only to be awarded to the appellant in exceptional circumstances (*Rolax v. Atlantic C. L. R. Co.* 186 F2d 473)). This is consistent with judges, consciously or subconsciously, looking for easier, less direct reasons to dissent before elections. If judges do appear to be dissenting based on procedural issues, in particular on miscellaneous procedural issues, these decisions could happen at the last minute and be of lower quality.

- H4: Dissents generally occur in cases with weak legal precedent, but priming increases

dissents more for those with strong legal precedent (i.e., less likely to be cited by subsequent dissents, less likely to contribute to the development of legal innovations, and less likely to be reversed by the Supreme Court).

$$(4) \quad Y_{cit} = \beta_1 \mathbf{Proximity}_t * Dissent_c + \beta_2 \mathbf{Proximity}_t + \beta_3 Dissent_c + \beta'_4 \mathbf{Z}_{cit} + \eta_{cit}$$

My outcome of interest Y_{cit} is citation count of case c in Circuit i and time t . $\mathbf{Proximity}_t$ is the set of quarter-to-election fixed effects or simply the last quarter before the election. $Dissent_c$ is whether the case has a dissent or not. The analyses presented in Table 5 show how dissents before Presidential elections are subsequently treated by the courts. I first examine citations by subsequent dissents, which suggest legal ambiguity or legal innovation when dissenting opinions seek to follow a new precedent. Cases with dissents are cited more often in subsequent opinions and dissents. Opinions with dissents written in the quarter preceding an election, however, are cited less often by subsequent dissents than similar cases decided in other quarters.¹⁹ This reduction is equivalent to 70% of the typical association between dissents and citations by subsequent dissents. These results are consistent with judges dissenting on less controversial cases before elections or reducing their quality.²⁰ Note that the correlations I report can reflect either selection effects (judges choose to dissent on different types of cases) or treatment effects (the election itself affects the subsequent treatment by courts).

4.6 Does the Supreme Court Notice and Adjust for Lower Decision Quality?

Having delved into the quality of judicial decisions in Section 4.5, Section 4.6 presents a critical examination of how these behavioral patterns are perceived and potentially adjusted by the U.S. Supreme Court. This section addresses a fundamental question: Does the Supreme Court recognize and compensate for the variations in decision quality that emerge in lower courts around election times? By analyzing how cases with dissents prior to elections are treated by

¹⁹Year fixed effects ensure that the results are not simply due to censoring, for example, when newer dissents have had less time to accumulate citations.

²⁰The citation data does not distinguish between citation to the majority opinion or the citation to the dissent.

the Supreme Court, this section seeks to understand if the highest court in the land acts as a corrective force, adjusting for lower courts' potentially election-influenced decisions. This analysis is crucial for comprehending the broader implications of electoral cycle effects, not just within individual circuits or districts but across the entire judicial hierarchy, thereby shedding light on the systemic checks and balances at play in the American judiciary.

Table 5 Panel B reports how cases with dissents are subsequently treated by the U.S. Supreme Court. My outcome of interest Y_{cit} is future Supreme Court treatment of case c in Circuit i and time t . Unlike Courts of Appeals, which must hear all appeals from District Courts, the Supreme Court can choose whether to take the case. Only 2–3% of published Circuit Court cases are heard in the Supreme Court, but cases with dissents are two to three times more likely to be heard. This increase is the same regardless of whether the dissent occurs before an election. Dissents before elections thus appear to crowd the court docket, which can have a long-run impact. Crowding the court docket can be welfare-decreasing, as it has been documented (in Circuit Courts) to decrease the attention judges are able to spend on cases, and change their decisions on unrelated cases (Huang 2011).

Does the Supreme Court recognize that cases with dissents before elections may be different, potentially less controversial, and use more discretionary reasons for the dissent? The motivation for this test is analogous to one in experimental economics, according to which if a player recognizes the bias in a second mover and accounts for it (e.g., by issuing a different ultimatum game offer), then the presence of the bias is supported. Columns 3 and 4 suggest that the Supreme Court partially corrects for the behavioral anomalies due to elections. I link the 607 appealed (out of 18,686) Courts of Appeals cases to their outcomes in the Supreme Court. The Supreme Court reverses 71% of its cases, and this reversal rate is generally the same for cases with a dissent, but cases with dissents before elections are significantly less likely to be reversed: It reverses only 30% of cases with dissents before elections (Column 3). These results are consistent with Circuit Court judges dissenting on cases with stronger legal precedent before elections, since the Supreme Court is more likely to affirm the majority

opinion when there is strong legal precedent. If I assume that the doubling of the dissent rate means that half of these dissents receive the typical 71% reversal rate and the other half face almost 0% reversal, the average would be roughly the 30% reversal that I observe in the raw data. Under this calculation, the Supreme Court seems to recognize which cases have potentially spurious dissents.

This result does not undermine the policy impacts of this behavioral bias. I already discussed the vote ideology may be more significantly impacted than the decision to dissent. The content of opinions can change. The presence of a dissent still affects court crowding. Courts of Appeals reversals of District Court decisions that do not have dissents do not seem to be easily overturned: I investigate whether the Supreme Court reverses the reversals made by Courts of Appeals before elections, and whether the Supreme Court corrects for and reverses cases decided by unified panels that issue partisan precedent before an election (Column 4). No significant effects are found.²¹ In sum, the Supreme Court does not appear to notice the potentially spurious dissents when deciding to hear the case, does appear to notice and fully correct for them after hearing the case, and does not address other behavioral effects, such as the Circuit Court decisions to reverse or issue partisan precedent before elections.

In summary, Section 4 presents a comprehensive analysis of the multifaceted impacts of electoral cycles on judicial behavior within the U.S. legal system. Beginning with an exploration of dissent rates in Section 4.1, it establishes a clear pattern of increased dissents as elections approach, suggesting heightened judicial responsiveness to group identity norms. This trend is further corroborated by the examination of voting valence in Section 4.2, which reveals notable shifts in judges' ideological leanings in line with their political affiliations during election periods. Section 4.3 extends the analysis to the broader legal implications, uncovering how these electoral influences not only affect individual voting behavior but also shape legal precedents and lower court rulings. In Section 4.4, the focus narrows to the types of cases

²¹The sample size is particularly small for the analysis of how precedents issued by unified panels are treated. Only 183 decisions issued by unified panels from 1925-2002 in the 5% dataset were heard in the Supreme Court, which necessitated the removal of year fixed effects in Column 4. More parsimonious specifications with fewer controls yield similar insignificant results.

most susceptible to electoral cycle effects, indicating a more pronounced impact in certain legal categories such as federal criminal and economic cases. Finally, Section 4.5 and 4.6 delve into the quality of judicial decisions and the Supreme Court’s role in addressing potential decision-quality variations. The findings across these sections paint a nuanced picture of how the proximity to elections subtly yet significantly alters judicial conduct, impacting the very fabric of legal decision-making and precedent-setting in the U.S.

5 Priming

5.1 Political Debate Across States As we transition from the examination of judicial behavior and electoral influences within the courts in Section 4, Section 5.1 shifts the lens to the broader political environment, specifically examining the impact of political debate across states on judicial decision-making. The intensity of political priming, as reflected in heightened campaign activities, can correlate with stronger influences on group identity norms among judges. The rationale behind this hypothesis is rooted in the observation that regions inundated with political discourse, particularly those pivotal in presidential elections, may exert a more pronounced influence on judicial behaviors. This section commences by contrasting patterns of campaign advertising in different states and then delves deeper into the varying degrees of electoral cycles across states, elections, and even within individual elections, offering a comprehensive analysis of how the local political climate potentially shapes judicial decisions.

- H5: The greater the number of primes, the stronger the overall priming effect (the weight on group identity increases).

Some regions of the country are more likely to be saturated with political debate before Presidential elections. This can be seen in heightened levels of campaign ads in electorally pivotal states (contrast Figures 5A and 5B). These states’ media markets are an attractive target for campaigns because swing states count heavily in the Presidential election, in which the winner of a plurality of a state’s votes wins all of that state’s electoral votes. I begin this analysis by presenting simple splits of the data (in subsequent sub-sections, I use more granular variation across states, across elections, and within elections). More formally, I begin

with the following regression:

$$(5) \quad Y_{cijt} = \beta_1 \mathbf{Proximity}_t + \beta_2' \mathbf{Z}_{cit} + \eta_{cijt}$$

My outcome of interest Y_{cijt} is dissent by judge j on case c in Circuit i and time t . $\mathbf{Proximity}_t$ is the set of quarter-to-election fixed effects or simply the last quarter before the election.

Investigating the possibility that a judge’s local environment drives electoral cycles is motivated by the observation that electoral cycles are larger in Circuits with electorally pivotal states and in Washington, D.C. For example, electoral cycles are more pronounced in the Sixth Circuit, which includes the historically electorally pivotal states of Ohio and Michigan—large states that have a heavy influence on the election outcome (Appendix Table C, Column 4). In fact, the average increase in dissents before a Presidential election is three times larger when a judge resides in the eight states ranked highest in electoral vote count (California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, and Michigan)²² and the District of Columbia (Table 6). Judges’ increase in dissents in the quarter before a Presidential election is 2.9 percentage points compared to 0.8 percentage points for judges residing in other regions of the country. In another split of the data, the average increase in dissents before a Presidential election is 3-4 times larger when they reside in states likely to be electorally pivotal²³ and the District of Columbia; in the 1996 election, these states had almost 2,000 more campaign advertisements and 900 more negative campaign advertisements per media market.²⁴ States in the top quartile of campaign ads display electoral cycles twice as large as other states.

5.2 Political Debate Across States and Across Presidential Elections Building upon the exploration in Section 5.1, which illuminated how the intensity of political debate

²²I rank states according to electoral vote counts during the recent time period when polarization has been greatest.

²³These states are Michigan, Ohio, Pennsylvania, Florida, and California, which since the 1970s have voted for different parties and been more political before elections.

²⁴This difference is statistically significant at the 1% level.

across states influences judicial behavior, Section 5.2 digs deeper into the dynamics of this phenomenon across various presidential elections. This section extends the analysis to assess how the political climate in specific elections, particularly those with tight popular vote margins, interplays with the electoral significance of states, as denoted by their electoral vote counts. The hypothesis is that states with higher electoral stakes and closely contested races become focal points for heightened political debate, which in turn may have a more pronounced effect on judicial dissent.

Rather than splitting the sample according to states that on average experience more political debate than others, I utilize an interaction model that considers both the tightness of a state's popular vote and its electoral vote count:

$$(6) Y_{sjt} = \beta_1 \mathbf{PopularVoteTightness}_t * \mathbf{ElectoralVoteCount}_s + \beta_2 \mathbf{PopularVoteTightness}_t + \beta_3 \mathbf{ElectoralVoteCount}_s + \beta'_4 \mathbf{Z}_{st} + \eta_{sjt}$$

My outcome of interest Y_{sjt} is dissent for the three quarters before an election by judge j in state s and election t . I anticipate the environment to be more political in tight Presidential races, and I expect states with high electoral vote counts to be the target of more campaign ads. The idea is that campaign advertisements would be focused on competitive large states. To make the regression easier to interpret, I construct a measure of election competitiveness, where positive values indicate a closer Presidential race.²⁵ Next, I construct a state-level measure of the impact of Presidential elections on dissents—the average dissent rate in the three quarters before the election. I construct a separate measure for each state and each election, and I use the number of votes as regression weights. Table 7 presents an analysis of

²⁵I calculate the tightness of a state's popular vote by taking the negative of the absolute difference in the fraction of votes received by the Republican candidate and the Democratic candidate for the Presidential election, so this number ranges from 0 to 1.

the impact on the average dissent rate, conditioning on Circuit and election fixed effects and double-clustering standard errors at the election and state levels. I find that dissents are more elevated for judges residing in states with high electoral vote counts when their states have close Presidential races.

To interpret the magnitude of 0.0024 in Table 7, Column 1, going from a popular vote tightness of 5% to 0% (statistical tie) for a large state with 30 electoral votes would result in an increase of 0.4 percentage points in the dissent rate above the baseline of 2.4%, roughly a 20% increase. The interaction term is statistically significant at the 5% level. Notably, it is the political environment of the dissenting judge, not the environment of the author of the majority opinion or the third panel member, that is significantly associated with dissent (contrast Column 1 with Columns 2 and 3). The absence of significant correlations in Columns 2 and 3 suggests that the dissenting judges' local environment is driving the electoral cycles (though the point estimates suggest that the majority author may also be less willing to compromise with the dissenter). Each column presents the reduced form relationship between the local political environment of one peer and the presence of a panel dissent.

5.3 Political Debate Across States and Across Types of Elections Expanding upon the insights gained in Sections 5.1 and 5.2 about the influence of presidential elections on judicial dissent, Section 5.3 explores the impact of political debate across states in the context of various types of elections, including U.S. Senate and gubernatorial races. The regression model introduced in this section thus differentiates between the proximity to Senate, governor, and presidential elections, offering a more comprehensive view of how local electoral climates, shaped by different electoral contests, can influence judicial dissent across the United States:

(8)

$$Y_{csjt} = \beta_1 \mathbf{PresidentialProximity}_t + \beta_2 \mathbf{SenatorProximity}_{st} + \beta_3 \mathbf{GovernorProximity}_{st} + \beta'_4 \mathbf{Z}_{cst} + \eta_{csjt}$$

My outcome of interest Y_{csjt} is dissent by judge j on case c in state s and time t . **PresidentialProximity_t** is the quarter before the Presidential election, **SenatorProximity_{st}** is the quarter before a state's Senator election, and **GovernorProximity_{st}** is the quarter before a state's governor election. Senators have six-year terms, and only one-third of states have Senate elections at a time. Using this variation, I can separately distinguish the effects of U.S. Senate elections in Appendix Table 1. The effect of Senate elections is equivalent to half the effect of Presidential elections.²⁶ In Column 4, which includes both elections, the coefficients become more similar. Note that this comparison omits the importance of the second and third quarters before an election that appears for the Presidential election but not the midterm elections in Table 1, Columns 3-4. In the full set of coefficients, the dummy for the 9th quarter-to-election is insignificant, which suggests a negligible role of U.S. House elections relative to U.S. Senate elections in explaining the midterm effect. The larger effect of U.S. Senate elections relative to House elections is consistent with the much larger amount of money spent on U.S. Senate elections.²⁷ Elections for state governor are held every four years (only nine states hold them at the same time as Presidential elections). No effect is found before state governor elections. One reason for this may be that spending for a U.S. Senate election is roughly 50% more than spending for a gubernatorial election.²⁸

5.4 Political Debate Within Elections Over Time As we move from the examination of political debates across states and various types of elections in Sections 5.1 to 5.3, Section 5.4 shifts the focus to the evolution of political debate within the timeframe of elections, specifically during the primary season. This section delves into how the primary election process, with its distinct ideological and strategic nuances, influences judicial dissent over time. The primary elections, characterized by intra-party competitions and shifting voter dynamics, present a unique political environment where candidates often target the more extreme wings

²⁶Comparing with the midterm effects estimated in Table 1 further supports view that the local political environment of the dissenter is driving the dissent.

²⁷<https://www.opensecrets.org/overview/topraces.php>

²⁸According to a report by Center for Public Integrity Analysis, spending in 36 Governors' races was almost the same as the spending in 36 Senator races (<http://time.com/3558262/governors-elections-spending/>). However, there are roughly 12 Governor races per year and roughly 34 Senator races per two years.

of their parties. This section and the next section explore the hypothesis that the heightened ideological fervor and strategic jockeying during primaries have a tangible impact on judicial behavior. By examining the pattern of dissents during the primary season, compared to the general election period, this section aims to uncover how the temporal progression of political debates within an election cycle, including the shift from proportional to plurality systems in delegate allocation, affects the nature and intensity of judicial dissent.

Elevated dissents appear for many months prior to an election in Figures 1B and 1C throughout the primary season. Primaries have always played an important role in Presidential elections. Before the modern era, party leaders would select candidates for the Presidential election. The alternative would have been a general election with many candidates, which could result in unintentionally electing someone who would not otherwise win. Primaries ameliorated this problem by narrowing the field to a few candidates. During the primaries, candidates compete against other candidates from the same party to be the nominee. Since the primary season involves choosing a candidate to represent a particular party, candidates target more extreme wings of their parties. The median voter within a party is more extreme than the median voter in the general election. Accordingly, candidates are more extreme during the primaries but often move towards the middle after winning the primary (Brady et al. 2007). The Presidential primaries thus entail salient ideological differences even between voters for the same party (Goldberg 2016).²⁹ Moreover, different states hold primary elections at different times in the season, and momentum is very important. The primary season ends around the third month before the election, and parties generally coalesce around the candidate who will represent them in the general election. The nominating conventions can be viewed as a rally and call for party unity.

Many states also use a proportional system to allocate delegates during the primaries, whereas all states use a plurality system to allocate delegates for the general election. The plurality system in the general election is well known to make swing states more important.

²⁹The primaries may bring out ideological perfectionists who perceive concave costs to voting for candidates they disagree with politically or morally (Osborne 1995; Chen et al. 2015).

The shift in how delegates are allocated, along with the importance of momentum during the primaries and the elevated focus on activists within the party, can heighten the relative importance of electorally non-pivotal states, which decreases precipitously after the nominating conventions.³⁰ I can verify this change in states' relative importance by observing that campaign advertisements only double from their pre-nominating convention peak for non-pivotal states; they increase fivefold in pivotal states (Figures 5A and 5B). Corresponding to these differences in local levels of political debate, dissents begin declining three months before Presidential elections in electorally non-pivotal states but remain elevated in pivotal states (Figures 6A and 6B display the original results from Figure 1B in two separate samples).³¹ Another interesting feature of Figures 6A and 6B is that the dissent elevation is higher in the electorally pivotal states. In the next section, I test for significant differences using exact timing of campaign ads.³²

5.5 Political Debate Across States Within Elections Over Time Section 5.5 extends the previous analysis of Section 5.4 by formally testing the relationship between the temporal dynamics of political campaigning and judicial dissent. This section leverages data on campaign advertisement fluctuations to examine their correlation with shifts in judicial behavior. I expect changes in judicial behavior to coincide closely to changes in the political environment. Priming effects have only been documented one week after the stimulus (Tulving et al. 1982; Ostergaard 1994; Hassin et al. 2007). Yet few studies evaluate many experimental stimuli over a long period, so the exact timing of the response and decay is not known from laboratory studies. The regression is:

³⁰This means that, for example, a candidate who wins 51% of California's popular vote receives 51% of its delegates during the primaries (proportional rule) but 100% during the general election (plurality rule). One explanation for why Barack Obama won the Democratic nomination over Hillary Clinton in 2008 is that he focused more on the smaller states while she focused only on the big states during the primary season. She won states like New York, California, Texas, Pennsylvania, and Florida, while he won many of the small states in the Mountain West and South. In particular, his efforts rendered large vote margins in small caucuses. Democrats allocate their delegates proportionally in every state during the primaries. Republicans also allocate their delegates proportionally in many states during the primaries.

³¹Since there are more judges in non-pivotal states than in pivotal states, Figure 1B shows an overall decline.

³²The number of campaign ads can be correlated with other priming factors, e.g., partisan newspaper articles or television news, which increase with the importance of different states during different parts of the election cycle.

$$(9) \quad Y_{csjt} = \beta_1 \Delta \mathbf{CampaignAds}_{st} + \beta_2' \mathbf{Z}_{cst} + \eta_{csjt}$$

My outcome of interest Y_{csjt} is dissent by judge j on case c in state s and time t . $\Delta \mathbf{CampaignAds}_{st}$ is the increase in campaign advertisements in a state over the previous month. Table 8 thus exploits variation in the timing and magnitude of campaign advertisements in judges' states of residence. It shows that judges' dissent rates coincide with increases in campaign advertisements in the state of their duty station. The importance of different states at different points in time during the 2008 election cycle predicts the monthly stimulus in different states for prior elections. Note that I only have daily campaign advertisement data for the 2008 election, so I assign the monthly increase in campaign advertisements for some month before November 2008 to the same month before the November in other elections. The identification assumption is similar to the assumption used in a large economics literature that employs historical instrumental variables to cross-sectionally identify the causal effects of institutional conditions over many years. In my case, the identification assumption is that the timing of different states' primaries in a particular month in the 2008 season is uncorrelated with non-election factors that influence the dissent rate of a judge in that state and month in previous elections. I am effectively estimating the reduced form of a two-stage least squares specification, where the first stage is whether the timing and degree to which different states' primaries elevate that state's importance in different months before the election are similar across elections (the calendar months in which states vote over the primary season is fairly stable across elections). To interpret the magnitudes, an increase of 10,000 campaign advertisements in the prior month increases the dissent rate by 0.5 percentage points by the judge in that state (Column 1). The effect is significant at the 5% level; it is robust, and increases, when adding lags and leads. Similar effects are found with the inclusion of fixed effects for Circuit, year, and judge (Columns 4-5).

5.6 Placebo Dates In order for the local temporal environment of the dissenting judge to explain the timing of elevated dissents before an election, it must be the case that dissents are issued around the same time as the “treatment event.” Administrative data on every important milestone of a Federal Court case’s development suggests that the exact time at which a judge makes the mental decision to dissent may be shortly before publishing an opinion. I merge the Administrative Office of the U.S. Courts database to obtain docketing date, the date of filing in District Courts, the date the notice of appeal was filed, the date the original notice of the brief was issued, the date of the last brief filing, the date the appeal was submitted on the merits, and the date the appeal was orally argued (this occurs, on average, two or three months before the publication date). The judges confer immediately after the oral argument and determine how the case should be decided (Hart et al. 2006; Epstein et al. 2013). When the judges disagree, the greater number becomes the majority of the court on that case. In cases without oral arguments, these opinions are most often decided unanimously (Skotnicki 2012). We should expect electoral cycles in dissents using the date of oral arguments, if the decision to dissent occurs at that time.

Accordingly, I substitute the publication date with dates for any of seven earlier milestones of the case. If electoral cycles correspond to these “placebo” dates, such as the date of filing, this could suggest that the effect of elections occurs on the filing date (e.g., litigants file more controversial cases before elections). If electoral cycles appear for the date of the oral argument, this could suggest that the effect of elections occurs when the case is heard rather than when it is published. I find no electoral cycles for those alternative dates (Table 9). Columns 1 through 8 use alternative dates in the AOC data.

This null finding using date of oral argument suggests that judges make the mental decision to dissent very near the publication date rather than at oral arguments. Thus, the conventional view that judges convene right after a hearing to decide how they will vote, and whether someone will write a dissent, seems incomplete. In at least some cases, judges may decide at the last minute to dissent (or not), and this last-minute decision could be less likely to occur

before an election. I take this as suggestive evidence that the decision about whether to dissent may occur quite late in the opinion-writing process. The fact that concurrences also display electoral cycles corroborates the view that these decisions are made very late, since they occur after the first draft of the majority opinion has been circulated. To be sure, the judges could also be primed to stick to their dissent when they might otherwise drop the dissent.

6 Identity

Section 6 explores the role of identity, examining how latent partisan affiliations and political contexts shape judicial behavior. This section is structured to methodically unravel the layers of influence that these identities exert on judicial dissent and voting patterns.

6.1 Latent Partisan Identities In 6.1, I explore 'Latent Partisan Identities' to understand how hidden political biases among judges might surface and influence their rulings during periods of heightened political activity.

- H6. Politically divided panels should experience greater changes as priming moves judges further apart.

Campaign messages can activate latent partisan identities (Ansolabehere and Iyengar 1997), so if judges have partisan identities, priming may influence their perception of cases brought before them. To investigate this hypothesis, I show that a judge's ideology score plays a role in behavioral changes before elections. Rows 1-4 of Figure 7A report group means.³³ A large proportion of the increase in dissents comes from ideologically divided panels. For unified panels, the dissent vote rate is 1.9% (increasing to 2.2% before Presidential elections), while for divided panels the dissent vote rate is 2.4% (increasing to 3.9% before Presidential elections).

- H7: Minority judges on divided panels will be particularly likely to increase their dissents.

Among divided panels, a significant proportion of these increases come from minority judges (D on DRR panels or R on RDD panels), who almost double their rate of dissent (Rows 6

³³The first four rows are presented as case-level dissents in Berdejo and Chen (2017) and as judge-level dissents here.

and 8), while majority judges increase their dissent rate by 50% (Rows 5 and 7).³⁴

The increase in dissent by one of the two majority judges may seem counter-intuitive. However, I observe that the increase in dissent is largely due to the majority judge with the more extreme ideology score (ranked first or third when the ideology scores are sorted from left to right) (Rows 1-4 of Figure 7B). Finally, Rows 5 and 7 show that when the minority judges share the same ideology score as a judge in the political majority, this minority judge triples the dissent rate in the quarter before a Presidential election from a non-election dissent rate that is lower than average. Notably, in the quarter before a Presidential election, they dissent at the same rate as those with a different ideology score (Row 6). These results suggest that the increase in dissents does not only reflect a shift in mood, which would affect all judges.

6.2 Landslide and Wartime Elections Subsection 6.2 shifts to examine how the extremities of political climates, be it polarized elections or unifying wartime elections, impact judicial dissent.

- H8: The more ideologically polarized the environment (during close elections or in the recent time period), the greater the priming effect, holding judges' ideological baseline constant. The opposite is true during reduced ideological polarization, such as during landslide elections or wartime.

$$(10) \quad Y_{cit} = \beta_1 \mathbf{Proximity}_t * ElectionType_t + \beta_2 \mathbf{Proximity}_t + \beta_3 ElectionType_t + \beta'_4 \mathbf{Z}_{cit} + \eta_{cit}$$

My outcome of interest Y_{cit} is dissent on case c in Circuit i and time t . $\mathbf{Proximity}_t$ is a dummy indicator for three quarters before an election. $ElectionType_t$ is a dummy indicator for the election type, whether it is a close election, a landslide election, or a wartime election.

Partisan identities are more likely to be activated in close Presidential elections. Table 10 Panel A shows that close elections—defined as the winning party achieving less than 55% of the Electoral College vote—increase the rate of dissent during the contested period before an election by 200% (Column 1). Landslide elections—when the winning party achieves more

³⁴Analyses of the vote valence also confirm that when judges dissent, their vote is politically liberal if appointed by Democrat and conservative if appointed by Republican.

than 95% of the Electoral College vote—reduce the increase in the rate of dissent before an election by 80% (Column 2). Wartime elections are unifying; they reduce the dissent rate by 0.6 percentage points (Column 3). This analysis is limited by the handful of landslide and wartime elections. To exploit more variation, in Panel B, I use the universe of cases from 1950 to 2007 and construct circuit-by-election electoral dissent spikes by taking the difference between the dissent rate in the three quarters before an election and the dissent rate in the three quarters after an election. As the Electoral College percent drops from 100 to 50, the dissent spike increases by 1.0 percentage points, roughly 1.5 times the average dissent spike, which is 0.7 percentage points. This finding is consistent with the finding that dissents are elevated in states with many electoral votes when the Presidential election is close in that state (Table 7).

6.3 Political Environment Next, 6.3 addresses the landscape of political polarization in the U.S. correlates with changes in judicial decision-making patterns. Many studies document that politics in the United States has become more polarized (McCarty et al. 2006; Bernhard et al. 2012; Gentzkow et al. 2015). Cross (2003) finds evidence that the Reagan and George W. Bush judicial appointees have been the most ideological of any judicial appointees since the late 1940s. Consistent with their findings, Appendix Table F shows that Reagan, George W. Bush, and Clinton appointees are the most likely to display electoral cycles. The increase in the dissent rate three quarters before a Presidential election has been growing sharply: close to 0 and statistically insignificant for every appointee before Reagan; then increasing to 2%, 5%, and 5% for the last three sets of appointees; and statistically significant at the 1%, 1%, and 10% levels, respectively.

Figure 8 displays the moving average correlation between last quarter and judicial behavior. In Figure 8A, each year on the x-axis represents the center point for four elections. Electoral cycles in dissents were quite small during the 1940s, and increase around 1960. After 1975, four-election moving averages of the electoral cycle become statistically significant. Accordingly, I divide the cases into two groups, those decided on or prior to December 31, 1975, and those

decided afterwards.

$$(11) \quad Y_{cit} = \beta_1 \mathbf{Proximity}_t * Post1975_t + \beta_2 \mathbf{Proximity}_t + \beta_4' \mathbf{Z}_{cit} + \eta_{cit}$$

My outcome of interest Y_{cit} is dissent on case c in Circuit i and time t . $\mathbf{Proximity}_t$ is a dummy indicator for the last quarter before an election. $Post1975_t$ is a dummy indicator for the decision being after 1975. The electoral cycle before 1975 is quite strong and statistically significant, but it is roughly 100% larger in the recent time period, a difference that is statistically significant (Table 11). This finding is robust to controls for a judge's birth cohort. For example, if I control for whether the vote was cast by a judge born after the 1940s (roughly 15% of the sample) and its interaction with $\mathbf{Proximity}_t$, the result suggests that judges' susceptibility to political priming is not due to cohort-specific experience. Rather, all judges, regardless of the year of their, become more primeable in the recent time period (Column 2).

Figure 8B presents visualizations of the regression analysis to support the polarization interpretation of these electoral cycles. Changes in dissent cycles over time coincide with changes in partisan voting cycles. Each year on the x-axis represents the mid-point in a 10-year moving average correlation. To validate that the more recent time period is, in fact, more polarized politically in the judiciary, I investigate the correlation between liberal vote and the judge's party of appointment. Regression analyses including controls indicate that the influence of party of appointment on voting valence is 90% larger since 1975 (Column 3) and robust to controls for birth cohort (Column 4). Younger judges are also more polarized, as indicated by the larger coefficient on the interaction with birth cohort than on the interaction with the post-1975 dummy. Figure 8C replicates the increase in dissent cycles over time in the full sample. These results indicate that the judiciary is more polarized now than even at the very beginning of the dataset, as early as 1934, when President Roosevelt attempted to fill the judiciary with judges who would vote for his New Deal programs.

6.4 Experience In 6.4, the discussion turns to assessing whether and how the tenure and background of judges modulate their susceptibility to political priming effects.

- H9: Experienced individuals would be less affected if conscious processing overrides the usual or habitual response to priming (the weight does not increase as much).

I now turn to the role of past experience to further investigate whether the characteristics that make individuals more susceptible to priming in the lab are found in the field. Experimental research has found that inexperience magnifies priming effects (Krosnick and Kinder 1990). Table 12 re-estimates my basic specification for sub-samples of judges grouped by the number of years they have served as Circuit judges. Overall, judges are 1.7 percentage points more likely to cast a dissenting vote before a Presidential election (Row 1). For judges with 1 or 2 years of experience, the magnitude of this effect is a considerably larger 3.4 percentage points. The point estimates are positive and sometimes statistically significant for other experience groups, e.g., 7-8 years of experience. The fact that inexperienced judges are more likely to dissent before a Presidential election is consistent with judges taking awhile to develop the strong professional, conscious commitments that would otherwise control the influence of unconscious bias (Rachlinski et al. 2009).

6.5 Former Federal Prosecutors Subsection 6.5 focuses on 'Former Federal Prosecutors', examining whether judges with prosecutorial backgrounds exhibit distinct patterns in response to political priming, given their unique professional experiences.

- H10: Individuals with previous associative links could be more affected by priming if activated concepts spread faster (the weight increases more).

I run the following regression:

(12)

$$Y_{cijt} = \beta_1 \mathbf{Proximity}_t * BiographicalFeature_j + \beta_2 \mathbf{Proximity}_t + \beta_3 BiographicalFeature_j + \beta_4' \mathbf{Z}_{cit} + \eta_{cijt}$$

My outcome of interest Y_{cijt} is dissent vote by judge j on case c in Circuit i and time t . **Proximity** $_t$ is the set of quarter-to-election fixed effects or simply the last quarter before the election. *BiographicalFeature* $_j$ is a biographical feature of the judge.

Certain types of experience can strengthen the priming mechanism. Lab research suggests that activation will only spread if an associative link has been formed, and the stronger the association the wider and faster the activation will spread (Bargh and Chartrand 2000; Kimball 2005). A natural candidate to use to examine the associative link is former federal prosecutors, since this role involves advocating on behalf of the government in Federal Courts. Prosecutors have tremendous amounts of power in the courtroom and beyond: they can choose whether to press charges, and how harshly or how leniently to pursue cases; when federal laws issue guidelines, there is no power of enforcement except through prosecutors, and they act under very little regulation. The fact that they are politically appointed makes their roles more political, as they may be under pressure from elected officials to prioritize certain types of criminal enforcement (Lantigua-Williams 2016). U.S Attorneys are the top-ranked tier of prosecutors; they are appointed by the President and confirmed by the Senate, and they play a large role in setting the law enforcement priorities for their jurisdiction. Significant political motivation has been documented in the behavior of federal prosecutors (Nyhan and Rehavi 2015). They can choose to enforce different aspects of federal law (or not); they can also choose to pursue litigation in specific types of criminal categories—health care fraud, obscenity, immigration cases—the choice to enforce and litigate is a political choice (Perry Jr. 1998). Federal prosecutors have displayed behavior reflecting party politics in federal public corruption prosecutions (Gordon 2009), and they often run for higher office (Engstrom 1971).³⁵ The role of Assistant U.S. Attorneys has also become increasingly political. During the study period, judges came of age at a time when even Assistant U.S. Attorneys would leave with a change in Presidential administration, and 23% of U.S. Attorneys eventually became Federal judges (Lochner 2002). In sum, the Department of Justice has no power of enforcement after

³⁵For a well-known contemporary example, Rudy Giuliani was a U.S. Attorney for the Southern District of New York before becoming Mayor of New York City and ran for U.S. President in 2008.

it issues guidelines—prosecutors can choose what charges to file and wield enormous power in the courtroom.

Table 13 shows that judges who were previous U.S. Attorneys or Assistant U.S. Attorneys are more likely to display electoral cycles. This effect is statistically significant at the 5% level with the inclusion of judge fixed effects (Column 10). Parsimonious specifications that exclude all controls and keep only previous federal prosecution experience, last quarter, and their interaction reveal the same relationship in the probit specification. Notably, this is the only experience that remains statistically significant when other controls are included. It is stronger, for example, than the influence of divided panels and being a minority judge on a divided panel. It is possible that individuals with other political experience are also primed more than other individuals, but either they are few in number or their behavior does not vary significantly from other judges before the election.

6.6 Wartime Finally, 6.6 revisits the theme of war but from a different perspective, exploring how national crises influence judicial behavior, particularly in contrast to the effects observed during election cycles. If elections prime partisan identities, what about wartime, which can prime national identity? Figure 9 shows that dissents decrease during wars, the official dates of which are indicated by the vertical lines. In regressions, I break out the wartime results by war to match the visualization, and confirm that the results are not driven by an outlier war.³⁶ This result is robust to regression controls and sample (Table 14).

$$(13) \quad Y_{cijt} = \beta_1 \mathbf{War}_t + \beta_2' \mathbf{Z}_{cit} + \eta_{cijt}$$

My outcome of interest Y_{cijt} is dissent by judge j on case c in Circuit i and time t . \mathbf{War}_t is the set of dummies for each war.

The decrease is somewhat stronger during the first half of a war, which is what one might

³⁶The effects do seem to differ across different wars and why that occurs is an open question.

expect if wars eventually become more politically divisive. Notably, the decrease in dissent rates during wartime is almost entirely due to attributed to divided panels (Column 2) and inexperience (Column 4).³⁷ The coefficient on the non-interacted term, war, is insignificant, while the coefficients on the interaction terms are large and negative. Since 70% of panels are divided, the average effect of wartime is also negative.³⁸ Moreover, divided panels, which are usually 2 percentage points more likely to dissent, are 0.6 percentage points *less* likely to dissent during war. In sum, judges who are less experienced and sitting on divided panels are both more likely to dissent before Presidential elections and more likely to *not* dissent during wartime.

During wartime, judges are also more likely to affirm (and less likely to reverse) lower court decisions (Columns 5-6); these effects are statistically significant at the 1% level. Notably, the influence of war is 2 to 3 times the influence of a divided panel on affirmation and reversals. The effect of wartime is about half the size of the effect of electoral proximity in absolute magnitude. My results are robust to randomization inference, where I randomly assign the dates of the case to another date (Figure 9).

7 Conclusion

In conclusion, my findings indicate that judges, like other professionals, can be influenced by external priming such as elections. This susceptibility has far-reaching implications for the perceived fairness and legitimacy of the judicial system. In an era where trust in various institutions is in decline, the potential for ideologically biased decisions by judges poses a threat to the foundational principles of democratic societies. A compromised judiciary can lead to decreased compliance with the law, increased law enforcement costs, potential civil unrest, and hampered economic development. My study interrogates the integrity and impartiality of the judiciary. While this paper does not quantify the effects on public trust and effective functioning of democratic institutions, it highlights the need for ongoing scrutiny and reinforcement

³⁷I display results using 10 years of experience as the cut-off.

³⁸I can see this by observing: $0.7 * (-0.026 + 0.01) * 0.3(0.01) < 0$.

of the judicial system as a cornerstone of democratic governance.

In the United States, the Courts of Appeals play a pivotal role in shaping the law under the common law system, handling the majority of influential cases. This study reveals how Presidential elections significantly influence the behavior of these courts, specifically in terms of judges' dissent rates, decisions to affirm or reverse lower court rulings, and the tendency to align with partisan lines in setting legal precedents. The findings elucidate that the rate of dissents is particularly pronounced among judges in electorally critical states, where exposure to campaign advertisements is higher. This trend is predominantly observed in the behavior of the dissenting judge and not as much in the other panel members. The data shows a clear correlation between dissent rates and both the intensity of campaign ads and the closeness of popular votes in states with a high number of electoral votes.

Moreover, the study finds that U.S. Senate elections, which occur at different times across states, further amplify the rate of dissents. On an individual level, existing associative links among judges exacerbate this electoral cycle effect. Notably, polarization around elections has been increasing over time, with larger behavioral shifts observed in close elections, a diminished effect in landslide victories, and an inverse trend during wartime.

The analysis highlights that dissent rates peak in the ten months leading up to Presidential elections, aligning with the heightened partisanship characteristic of the primary season. Administrative data on case progression indicates that these dissents typically materialize shortly before the publication of decisions. In swing states critical for the general election, dissents remain high, whereas they sharply decrease in non-swing states, more influential during the primaries. Economic cases, which form the bulk of campaign ad topics, witness the most significant increase in dissents. Additionally, the study observes electoral cycles in concurrences, usually decided after circulating the first opinion draft.

The research introduces a priming model that explains the increase in dissents, particularly in marginal cases, with a tendency towards procedural rather than substantive arguments, often focusing on discretionary issues. This priming effect establishes a causal relationship

between group identity and ideological leanings in a high-stakes, real-world setting.

Despite Courts of Appeals judges being appointed for life and held to a standard of non-partisanship and ethical conduct, the observed election-related behavioral shifts are substantial and mirror patterns seen in elected judges. These findings suggest that partisanship in judicial decisions extends beyond philosophical differences and raises questions about the susceptibility of highly trained professionals to bias in other contexts. The study also delves into the complex interplay between group identity and ideological bias, proposing that while group affiliation may stem from shared beliefs, it can also significantly shape these beliefs. The priming framework isolates and highlights this latter aspect in a real-life setting, underscoring the profound impact of group identity on decision-making.

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Web Appendix

A Model

I present a model that yields the following predictions:

1. Priming increases the probability of dissent, as agents put greater weight on the group identity norm (Akerlof and Kranton 2000).³⁹
2. The more ideologically polarized the environment (during close elections or in the recent time period), the greater the priming effect, holding judges' ideological baseline constant. The opposite is true during reduced ideological polarization, such as during landslide elections or wartime.⁴⁰
3. Politically divided panels should experience greater changes as priming moves judges further apart.
4. The greater the number of primes, the stronger the overall priming effect (the weight on group identity increases).
5. Experienced individuals would be less affected if conscious processing overrides the usual or habitual response to priming (the weight does not increase as much).
6. Individuals with previous associative links could be more affected by priming if activated concepts spread faster (the weight increases more).
7. Minority judges on divided panels will be particularly likely to increase their dissents.
8. Cases on topics associated with the prime should experience greater changes (e.g., economic policy constitutes 70% of campaign ads during elections).
9. Dissents generally occur in cases with weak legal precedent, but priming increases dissents more for those with strong legal precedent (i.e., less likely to be cited by subsequent dissents, less likely to contribute to the development of legal innovations, and less likely to be reversed by the Supreme Court).
10. Dissents based on procedural quibbles should increase more when primed than the increase in substantive dissents.

³⁹It may seem odd to offer a formal model of priming, but since this article uses the revealed preference approach, I follow the usual modeling of decision-makers' behavior as if they maximized an objective function and refrain from interpreting the function literally (Friedman and Savage 1948). More recently, and particularly in behavioral economics, models are understood in terms of an as-is component. For example, Fehr and Schmidt (1999) say that their "theory is motivated by the psychological evidence on social comparison and loss aversion," i.e., by evidence beyond behavior, in particular, the inner state of mind of the decision-maker. The greater weight can be due to Type I or Type II thinking. The increase in weight can be thought of as an increase in group cohesion (Chen 2010).

⁴⁰Polarization can be modeled as extreme value differences (Esteban and Ray 1994; Duclos et al. 2004).

A.1 Ideology Consider a panel of three judges and denote each judge by a number. Let $Q_{0,i}$, $i \in \{1, 2, 3\}$, be each judge's ideology baseline. Let each judge belong to social group G , such as Republican or Democrat, and let Q_G denote the ideology of social group G . Let $Q_{0,i}$ and $Q_{G,i} \in \mathbb{R}$, where \mathbb{R}^- denotes political left and \mathbb{R}^+ denotes political right.⁴¹

I assume that $|Q_{G,i}| > |Q_{0,i}|$; in other words, I assume that the ideology of the party is always more extreme than the baseline ideology of the judges. In the United States, judges are far more moderate than politicians who run for office, which is reflected in the fact that 2-1 decisions constitute only 8% of cases even though judges from both parties sit together 70% of the time. I assume that the ideologies of the two parties Q_G are equidistant from 0, and that the judge chooses the party that is closer to her baseline ideology $Q_{0,i}$. This implies that $Q_{0,i} \cdot Q_{G,i} \geq 0$; in other words, it implies that $Q_{0,i}$ and $Q_{G,i}$ always have the same sign.

Let s_i be strength of each judge's affiliation with her social group; $s_i \in [0, 1]$, where 0 represents non-affiliation and 1 represents complete affiliation. Finally, let each judge's actual ideology Q_i be a weighted average of $Q_{0,i}$ and Q_G :

$$Q_i = (1 - s_i) Q_{0,i} + s_i Q_G$$

Assume Q_i is common knowledge; in other words, assume that each judge knows the ideological positioning of the other judges sitting on the panel. Furthermore, assume that a necessary condition for dissenting is being the judge whose ideology is the most distant from the ideologies of the other two judges. Mathematically, judge i is the judge whose ideology is the most distant from the other two judges if:

$$|Q_i - Q_j| + |Q_i - Q_k| \geq \max[|Q_j - Q_i| + |Q_j - Q_k|, |Q_k - Q_i| + |Q_k - Q_j|]$$

The two judges who are ideologically closer to each other are more likely to agree and form a coalition. Therefore, the ideological center of the panel is located closer to the two judges with similar ideology and farther from the judge whose ideology is the most distant. Judges dissent from particular agreements; therefore, the judge most likely to dissent is the one who is furthest from the ideological center of the panel. From this point forward, I analyze the judge who is most likely to dissent and refer to her as the decision-maker (DM) and her ideology as Q .

A.2 Dissent Consider the DM's decision about whether to dissent when sitting on a three-judge panel and hearing a case. Suppose that if the DM dissents, then she pays a cost $c \in \mathbb{R}^+$, and if she does not dissent, she pays a cost $(Q - \bar{Q})^2$, where Q is the DM's ideology as defined above and \bar{Q} is the average ideology of the other two judges on the panel ($\bar{Q} = \frac{Q_j + Q_k}{2}$). I assume that there is no bargaining between judges and

⁴¹Assume also that $Q_{G,i} \neq 0$.

that costs are quadratic for tractability. I assume that the DM sits with a random distribution of panel judges whose ideologies are drawn from a normal distribution. In particular, let $\bar{Q} = \frac{Q_j + Q_k}{2} \sim N(0, 1)$.

I assume that the DM wants to minimize costs, so pays $\min [c, (Q - \bar{Q})^2]$. Therefore, the DM acts as follows:

$$\begin{cases} \text{Dissents} & \text{if } (Q - \bar{Q})^2 \geq c \\ \text{Does not dissent} & \text{if } (Q - \bar{Q})^2 < c \end{cases}$$

Letting Φ denote the standard normal cumulative distribution function, I can calculate the probability that $(Q - \bar{Q})^2 \geq c$.

$$\begin{aligned} P[(Q - \bar{Q})^2 \geq c] &= P(Q - \bar{Q} \leq -\sqrt{c} \vee Q - \bar{Q} \geq \sqrt{c}) = P(Q - \bar{Q} \leq -\sqrt{c}) + P(Q - \bar{Q} \geq \sqrt{c}) = \\ &= P(\bar{Q} \geq Q + \sqrt{c}) + P(\bar{Q} \leq Q - \sqrt{c}) = 1 - P(\bar{Q} < Q + \sqrt{c}) + P(\bar{Q} \leq Q - \sqrt{c}) = 1 - \Phi(Q + \sqrt{c}) + \Phi(Q - \sqrt{c}) \end{aligned}$$

Therefore, the DM dissents with probability:

$$P(\text{Dissent}) = 1 - \Phi(Q + \sqrt{c}) + \Phi(Q - \sqrt{c})$$

Substituting in $Q = (1 - s)Q_0 + sQ_G$, the DM dissents with probability:

$$P(\text{Dissent}) = 1 - \Phi((1 - s)Q_0 + sQ_G + \sqrt{c}) + \Phi((1 - s)Q_0 + sQ_G - \sqrt{c})$$

A.3 Comparative Statistics

A.3.1 Effect of c on the probability of dissent

First, I analyze the effect of a change in c on the probability of dissenting.

$$\begin{aligned} \frac{\partial P(\text{Dissent})}{\partial c} &= -\phi((1 - s)Q_0 + sQ_G + \sqrt{c}) \frac{1}{2}c^{-\frac{1}{2}} - \phi((1 - s)Q_0 + sQ_G - \sqrt{c}) \frac{1}{2}c^{-\frac{1}{2}} = \\ &= -\frac{1}{2}c^{-\frac{1}{2}} \frac{1}{\sqrt{2\pi}} e^{-\frac{1}{2}((1-s)Q_0 + sQ_G + \sqrt{c})^2} - \frac{1}{2}c^{-\frac{1}{2}} \frac{1}{\sqrt{2\pi}} e^{-\frac{1}{2}((1-s)Q_0 + sQ_G - \sqrt{c})^2} \\ &\propto -\frac{1}{\sqrt{c}} \left[e^{-\frac{1}{2}((1-s)Q_0 + sQ_G + \sqrt{c})^2} + e^{-\frac{1}{2}((1-s)Q_0 + sQ_G - \sqrt{c})^2} \right] \end{aligned}$$

From the expression above, note that $\frac{\partial P(\text{Dissent})}{\partial c}$ is always negative; therefore, the probability of dissent decreases with c . The higher the cost of dissent, the less likely it is that the DM will dissent.

A.3.2 Effect of group identity salience on the probability of dissent

Next, I examine whether the probability of dissent increases in s .

$$\begin{aligned} \frac{\partial P(\text{Dissent})}{\partial s} &= -\phi((1 - s)Q_0 + sQ_G + \sqrt{c})(Q_G - Q_0) + \phi((1 - s)Q_0 + sQ_G - \sqrt{c})(Q_G - Q_0) = \\ &= -(Q_G - Q_0) \frac{1}{\sqrt{2\pi}} e^{-\frac{1}{2}((1-s)Q_0 + sQ_G + \sqrt{c})^2} + (Q_G - Q_0) \frac{1}{\sqrt{2\pi}} e^{-\frac{1}{2}((1-s)Q_0 + sQ_G - \sqrt{c})^2} = \end{aligned}$$

$$= (Q_G - Q_0) \frac{1}{\sqrt{2\pi}} \left[e^{-\frac{1}{2}((1-s)Q_0 + sQ_G - \sqrt{c})^2} - e^{-\frac{1}{2}((1-s)Q_0 + sQ_G + \sqrt{c})^2} \right]$$

Rearranging the expression and substituting Q for $(1-s)Q_0 + sQ_G$ yields:

$$\frac{\partial P(Dissent)}{\partial s} \propto (Q_G - Q_0) \left(e^{\frac{1}{2}(Q + \sqrt{c})^2} - e^{\frac{1}{2}(Q - \sqrt{c})^2} \right)$$

First, consider the case in which $Q_G > 0$. I know from the assumptions that if $Q_G > 0$, then $Q_0 > 0$ as well and that $Q_G > Q_0$. If $Q_G > 0$ and $Q_0 > 0$, then $Q = (1-s)Q_0 + sQ_G > 0$. Furthermore, if $Q > 0$, then $(Q + \sqrt{c})^2 > (Q - \sqrt{c})^2$. Finally, since the exponential function is a monotonic transformation, $e^{\frac{1}{2}(Q + \sqrt{c})^2} - e^{\frac{1}{2}(Q - \sqrt{c})^2} > 0$. Therefore, if $Q_G > 0$, then $\frac{\partial P(Dissent)}{\partial s} > 0$.

Now consider the case in which $Q_G < 0$. I know from the assumptions that if $Q_G < 0$, then $Q_0 < 0$ as well and that $Q_G < Q_0$. If $Q_G < 0$ and $Q_0 < 0$, then $Q < 0$. Furthermore, if $Q < 0$, then $(Q + \sqrt{c})^2 < (Q - \sqrt{c})^2$. Finally, again, since the exponential function is a monotonic transformation, $e^{\frac{1}{2}(Q + \sqrt{c})^2} - e^{\frac{1}{2}(Q - \sqrt{c})^2} < 0$. Therefore, if $Q_G < 0$, then $\frac{\partial P(Dissent)}{\partial s} > 0$.

Thus, no matter the sign of Q , given my assumptions, $\frac{\partial P(Dissent)}{\partial s} > 0$. In other words, priming always increases the probability of dissent.

A.3.3 Effect of priming on the effect of c on the probability of dissent Now, I examine the kind of dissent that increases with priming. I investigate the dynamics of $\frac{\partial P(Dissent)}{\partial s}$ with respect to c . $\partial\left(\frac{\partial P(Dissent)}{\partial s}\right) =$

$$\frac{(Q_G - Q_0) \left(\frac{e^{-\frac{1}{2}(-\sqrt{c} + Q_0(1-s) + Q_G s)^2} (-\sqrt{c} + Q_0(1-s) + Q_G s)}{2\sqrt{c}} + \frac{e^{-\frac{1}{2}(\sqrt{c} + Q_0(1-s) + Q_G s)^2} (\sqrt{c} + Q_0(1-s) + Q_G s)}{2\sqrt{c}} \right)}{\sqrt{2\pi}}$$

Simplifying the expression and substituting Q for $(1-s)Q_0 + sQ_G$, I obtain:

$$\frac{\partial \left(\frac{\partial P(Dissent)}{\partial s} \right)}{\partial c} > 0 \iff (Q_G - Q_0) \left[e^{-\frac{1}{2}(Q - \sqrt{c})^2} (Q - \sqrt{c}) + e^{-\frac{1}{2}(Q + \sqrt{c})^2} (Q + \sqrt{c}) \right] > 0$$

First, consider the case in which $Q_G > 0$. If $Q_G > 0$, then I know by the assumptions that $Q_0 > 0$, $Q_G - Q_0 > 0$, and $Q > 0$. Thus, $Q > \sqrt{c}$ is a sufficient condition for the effect of priming on the probability that dissent will increase costs. That is, if the prime is large enough relative to the cost of dissent, then high-cost dissents increase more than low-cost dissents.

Now consider the case in which $Q_G < 0$. If $Q_G < 0$, then I know by the assumptions that $Q_0 < 0$, $Q_G - Q_0 < 0$, and $Q < 0$. But then, $-Q > \sqrt{c}$ is a sufficient condition for the effect of priming on the probability that dissent will increase costs.

In conclusion, regardless of the sign of Q_G , $|Q| > \sqrt{c}$ is a sufficient condition for priming to increase high-cost dissents more than low-cost dissents.

A.3.4 Effect of legal precedent on the effect of priming on the probability of dissent I now model which kinds of cases have costly dissents. I model the strength of legal precedent through the cost of dissent—the cost of dissent not only depends on c , but also on the strength of legal precedent ε . I now assume that the DM choice to dissent depends on $\min \left\{ \frac{c}{\varepsilon}, (Q - \bar{Q})^2 \right\}$, where $\varepsilon \sim Unif(0, 1)$. If the legal precedent is strong, then $\varepsilon \rightarrow 0$ and hence the net cost of dissent is high; if the legal precedent is weak, then $\varepsilon \rightarrow 1$ and hence the net cost of dissent is low. The parameters c and ε can also be thought of as capturing two different dimensions of the cost of dissent, with c capturing the time and effort cost of writing a dissent, collegiality costs, and (negatively) the benefit of expressing a policy opinion and potentially influencing the law, while ε captures legal precedent. Therefore, the DM acts as follows:

$$\begin{cases} \text{Dissents} & \text{if } (Q - \bar{Q})^2 \geq \frac{c}{\varepsilon} \\ \text{Does not dissent} & \text{if } (Q - \bar{Q})^2 < \frac{c}{\varepsilon} \end{cases}$$

I can calculate the probability of dissenting, which is the probability that $(Q - \bar{Q})^2 \geq \frac{c}{\varepsilon}$. This can be rewritten as:

$$\begin{aligned} P(\text{Dissent}) &= P \left[(Q - \bar{Q})^2 \geq \frac{c}{\varepsilon} \right] = P \left[\varepsilon \geq \frac{c}{(Q - \bar{Q})^2} \right] = 1 - P \left[\varepsilon < \frac{c}{(Q - \bar{Q})^2} \right] = \\ &= 1 - \frac{c}{(Q - \bar{Q})^2} \end{aligned}$$

It can be seen that: $\frac{\partial P(\text{Dissent})}{\partial c} = -\frac{1}{(Q - \bar{Q})^2} < 0$, $\frac{\partial P(\text{Dissent})}{\partial s} = 2c \frac{(Q_G - Q_0)}{[Q - \bar{Q}]^3} > 0$, and $\frac{\partial \left(\frac{\partial P(\text{Dissent})}{\partial s} \right)}{\partial c} = 2 \frac{(Q_G - Q_0)}{[Q - \bar{Q}]^3} > 0$. In words, dissents generally occur more for cases with weak legal precedent.

The dynamics of $\frac{\partial P(\text{Dissent})}{\partial s}$ with respect to ε are similar to what was solved earlier. The effect of priming on the probability of dissent increases the lower ε is, and priming increases dissents more for cases with strong legal precedent. If I consider citation by subsequent dissents as a sign of weak legal precedent, then judges will generally dissent on cases cited more often by subsequent dissents. But before elections, judges will increase their dissent on cases that are less likely to be cited by subsequent dissents (i.e., cases that are less likely to contribute to the development of legal innovations). Another measure of strength of legal precedent is whether the Supreme Court reverses the Courts of Appeals decision. Judges before elections will dissent on cases less likely to be reversed by the Supreme Court.

A.3.5 Effect of divided panels on the effect of priming on the probability of dissent The model also provides a framework to understand which panels will be more likely to increase dissents during priming. Suppose a judge is Republican. When she is dissenting, the three possible types of panels are DDR, DRR, and RRR. Since \bar{Q} is closer to the judge on a politically unified panel (RRR), I should generally expect fewer dissents on a unified panel. With priming, the judge on a unified panel will move with the other two judges.⁴² This indicates that dissents should increase more for divided panels than for unified panels when there is priming. As for who dissents on a politically divided panel, when the judge is in the majority of a divided panel (DRR), she will be less likely to dissent than when she is in the minority of a divided panel (DDR). This is because she is further away from \bar{Q} as a minority on a divided panel. With priming, she moves further away from \bar{Q} when the other two judges are from the opposing party than when the other two judges are from both parties. Thus, before elections, divided panels will increase their dissents more and minority judges on divided panels will be particularly likely to increase their dissents.

A.3.6 Type of dissent Suppose that there are two types of reasonings: substantive dissents and procedural quibbles. Reflections by sitting judges indicate that they resent criticism by dissenters, and that dissents make it more difficult for the dissenter to persuade panelists to join his or her majority opinions in subsequent cases (Epstein et al. 2011). The main benefits of dissenting are the influence of the dissenting opinion, the self-expressive character of the judicial opinion, and the enhanced reputation of the judge who writes the dissent. Justice Scalia observed that “[w]hen history demonstrates that one of the Court’s decisions has been a truly horrendous mistake, it is comforting . . . to look back and realize that at least some of the justices saw the danger clearly and gave voice, often eloquent voices, to their concern.” In my data, dissents based purely on the merits occur 40% of the time, while dissents based solely on procedure occur 9% of the time, which suggests that substantive dissents do have some value. If I assume that substantive dissents are less costly because of the higher benefit a DM receives from a potentially citable reasoning (e.g., by future dissents seeking to change legal precedent), and if I assume that procedural quibbles are more costly because they only corrode judicial collegiality, then I expect, in general, to see more dissents based on substantive issues than on procedural quibbles. But I would also expect dissents based on procedural quibbles to increase more than substantive dissents before elections.

A.4 Remarks To apply the model to the data, the model should be interpreted as evaluating the proportion of dissents taking into account all possible panel compositions. Theoretically, the comparative statics apply prior to the resolution of uncertainty.⁴³ Second, I have assumed that $\bar{Q} \sim N(0, 1)$, but ignored

⁴²Derivation is omitted.

⁴³The model does not evaluate an individual case of priming of three judges at the extreme Q_G , but incorporates this instance as one of the possible panel compositions.

the possibility that the realization of \bar{Q} is near Q , which would be inconsistent with the assumption that the judge considering dissenting is furthest away from the ideological center of the panel. Simulating three random draws of judges and calculating the probability of dissent as it varies by cost of dissent and priming yields the same comparative statics as found above (plotted in Appendix Figure 1). The x-axis represents the cost of dissent, while the y-axis represents the probability of dissent. The color scale represents the degree of priming. The figure shows that the greatest proportion of high-cost dissents occurs with significant priming. The darkest shade of red indicates the greatest proportion of colors along the vertical space when the dissent cost is high; when the dissent cost is low, shades of blue represent a relatively larger share of the dissents. Among low-cost dissents, only a small proportion of these occur with significant priming (i.e., the darkest red constitutes only a small fraction of the vertical distance under the curve when the cost is close to 0).

A.5 Baseline Specification I begin with the basic specification. Consider the following specification for latent ideology Q , where electoral **Proximity** $_t$ perturbs s :⁴⁴

$$(14) \quad |Q_{cit}| = \alpha_1 \mathbf{Proximity}_t + \alpha_2 \mathbf{Z}_{cit} + \omega_{cit}$$

$|Q_{cit}|$ represents ideology for judge i in time t on case c ; **Proximity** $_t$ is the set of quarter-to-election fixed effects;⁴⁵ \mathbf{Z}_{cit} contains dummy indicators for case characteristics, such as Circuit and year of the decision, season,⁴⁶ the panel composition (whether it was politically divided),⁴⁷ and legal issue (criminal, civil rights, constitutional, labor relations, and economic activity); and ω_{cit} is the error term.

Ideology Q is latent, and as it becomes more extreme, the more likely I observe dissent. This motivates the following probit (reported in Appendix Table B) or linear probability (reported in all other tables) specification:

$$(15) \quad Y_{cit} = \beta_1 \mathbf{Proximity}_t + \beta_2' \mathbf{Z}_{cit} + \eta_{cit}$$

My outcome of interest Y_{cit} is an indicator variable equal to 1 if a dissent was filed on case c . I cluster standard

⁴⁴For notational ease, I suppress the transpose on coefficients, which are actually vectors of coefficients.

⁴⁵I compare to quarter 16, i.e., the quarter immediately following an election, which is the omitted quarter, so the interpretation is akin to a regression discontinuity design. I also compare the quarter-before-an-election to all other quarters, compare the three-quarters-before-an-election to all other quarters, and report models that employ a linear proximity to election. The disadvantage of the more parsimonious regressions are that the non-linearities are not as clearly delineated.

⁴⁶Seasons are defined as winter (December-February), spring (March-May), summer (June-August), and fall (September-November). Appendix Table B shows that results are robust to alternative definitions of seasons, e.g., winter (January-March), spring (April-June), summer (July-September), and fall (October-December).

⁴⁷Appendix Table B shows that results are robust to a full set of dummies for DDD, DDR, DRR, and RRR.

errors at the quarter-year level.⁴⁸ Appendix Table B shows that the results are robust to different levels of clustering, for example at the Circuit level. Appendix Figure 3 uses randomization inference, where I rerun the basic specification with each quarter randomly assigned to a different quarter-to-election. Appendix Figure 3A shows that the true t-statistic of 4.01 lies far to the right of all the other simulated t-statistics.

To compare with the existing literature on electoral cycles, I estimate a specification that replaces **Proximity**_{*t*} with a linear measure of time to election (Appendix Table C). I examine the presence of dissents at the case level and judges' dissent votes at the judge level. The latter allows me to exploit variation across states where the judges reside.⁴⁹ In the vote-level analysis, I also include judge fixed effects,⁵⁰ even though they are not necessary for identification because cases are randomly assigned. For the same reason, fixed effects for each unique combination of three judges are not necessary in the case-level analysis. The robustness to judge fixed effects and the fact that the results are more salient among judges with 1-2 years of experience mitigates the concern that the tiny number of judges that retire around the election are driving the results. In some specifications, I replace **Proximity**_{*t*} with the monthly increases in campaign advertisements in different states, since different states are important at different points in the Presidential election cycle. I use changes in campaign advertisements rather than levels to address the high degree of persistence in a serial measurement.⁵¹ This specification exploits additional variation across states and over time within the electoral season. In other specifications, I augment **Proximity**_{*t*} with proximity to Senate and gubernatorial (State Governor) elections, which also exploits variation across states and over time.

A.6 Additional Specifications I assess heterogeneous treatment effects in various sub-samples (by Circuit, by appointing President, by legal issue, by state's electoral importance, by birth cohort, and by experience). Analyses are presented at the case level when examining the influence of environmental factors common to all judges on the panel, and at the vote level when examining the influence of judge-specific factors. If separate sub-samples are presented for ease of interpretation, the critical tests are also presented in interaction models. Identification comes from comparing judicial behavior just before elections (September and October) with just after elections (November), within legal case categories, within the set of divided or non-divided panels, within a Circuit, and within a year.

I use alternative dates *t* for the case representing every available significant event in a case's history to assess when the mental decision to dissent may have occurred. I also conduct randomization inference (randomizing cases to other quarters) and present plots of whether case, litigant, or judge characteristics vary during the election, and compare all the t-statistics from the other regressions with the true t-statistic of

⁴⁸Analyses of data collapsed to the quarter-year level do not cluster standard errors.

⁴⁹Results are robust to state fixed effects.

⁵⁰Analyses that have very few years of data exclude judge fixed effects.

⁵¹Taking first-differences is standard in panel data analysis since the insights of Arellano–Bond.

dissent regression.⁵²

Additional outcomes characterize the extent and nature of these electoral cycles. I replace Y_{cit} with counts of news articles mentioning Republican and Democrat in the same article and counts of newsarticles that mention Courts of Appeals decisions and their dissents. I also replace Y_{cit} with reason for dissent (procedure or merit based) and how the case treats the lower court decisions (reversals and remands).⁵³ A remand indicates that the lower court has to re-evaluate the facts of the case (perhaps with a new trial) to be sure that the outcome conforms to the law set out by the Circuit Court. Sometimes Courts of Appeals will reverse a lower court decision but not remand; this requires the Circuit Court panel to be more specific about the outcome of the case, as it has not only decided on the law but also evaluated the facts and deemed it unnecessary for the lower court to do so, in effect determining the final outcome for the original plaintiff and defendant in the case. Reversals without remand might be interpreted as a measure of effort.

I further characterize the cases by examining how they are subsequently handled by the Supreme Court (whether an appeal was made, whether the Supreme Court decided to accept the appeal and hear the case, and whether the Supreme Court reversed), and how future judges treat the case (citation counts and citations by subsequent dissents):

$$(16) \quad Y_{ct} = \zeta_1 LastQuarter_t + \zeta_2 LastQuarter_t * Dissent_{ct} + \zeta_3 Dissent_{ct} + \zeta'_4 \mathbf{Z}_{ct} + \kappa_{ct}$$

B Alternative Explanations

Omitted Variables I examine the extent to which observable case and judge characteristics, caseload, and publication tendency vary over the election cycle. Figure 4B displays the t-statistics for significant changes in the quarter before Presidential elections for over 106 case and litigant characteristics coded in the database. I find no increase or decrease before Presidential elections on substantive legal issues.⁵⁴ I also find no difference before elections in litigant type or strategy, including how many appellants or respondents were persons, businesses, public interest groups, or government actors, and so on. Along four procedural issues—issues in

⁵²I also rerun Berdejo and Chen (2017), which introduced a prime for consensus—wartime—rather than dissensus. Dates come from the International Crisis Behavior Project. Michael Brecher & Jonathan Wilkenfeld, International Crisis Behavior Project, 1918–2001 (ICPSR Study No. 9286, 2004), at <http://www.icpsr.umich.edu>. I consider the following wars: World War II: 12/7/41–8/14/45; Korea: 6/27/50–7/27/53; Vietnam: 2/7/65–1/27/73; Gulf: 1/16/91–4/11/91; Afghanistan: 10/7/01–3/14/02.

⁵³Berdejo and Chen (2017) examined affirmations and reversals, but not reversal with remands, nor the reason for reversal.

⁵⁴Legal issues include whether there was an issue of constitutionality; whether the court engaged in statutory interpretation; whether the issue involved state or local law, an executive order or administrative regulation, summary judgment, alternative dispute resolution, conflict of laws, international law, or agency discretion.

the “other” category—I find some evidence of an increase before a Presidential election. Accordingly, I include these issues as controls and find that the results are robust.

Figures 4C and 4D conduct the same randomization check for over 50 characteristics coded for the opinion writer and for the two other panelists. In all of these tests, the t-statistic of the dissent is far to the right of the other t-statistics. These results are consistent with related work finding that judges are randomly assigned to cases in each Circuit Court and suggests that the authors of opinions do not systematically change before an election.⁵⁵

Appendix Table D shows that the type, caseload, and composition of the three-judge panels do not vary over the electoral cycle. The proportion of panels with judges from both parties is evenly distributed across the political cycle (Column 1). The number of cases in each of five broad legal categories does not systematically change in the quarter before Presidential elections (Columns 2-6). When I count up the monthly number of cases in each Circuit in the AOC, I also observe no electoral cycle in caseload (Column 7).⁵⁶

Appendix Table E, Column 5 shows that the proportion of cases published (all cases are decided but only some of them are published) does not significantly increase in the quarter before a Presidential election. This table comes from Berdejó (2012), who constructs and conducts extensive analysis of a database linking the universe of Ninth Circuit cases and the AOC beginning in 1990. The table also shows that there is no systematic difference in time spent between docket and judgment (Columns 6-8) or between hearing and judgment before an election (Columns 9-11). The monthly number of cases filed is also not systematically different before elections (Column 4).

In summary, my results suggest that the electoral cycles observed are unlikely to be due to judges having more or less time on their hands or differences in unobservable case types. The large variation in the length of time required to resolve a case seen in Appendix Table E also suggests that it would be very difficult for lower court appellants to time their filing (or for District Court judges to time their decision) so that Circuit decisions occur in a particular month.

Career Concerns Electoral cycles are typically explained by re-election concerns, but Courts of Appeals judges are appointed for life. I next consider career concerns, reputational capital (including legacy concerns and collegiality norms), and get-out-the-vote campaigns. Table 13 shows that judges who are elevated to the Supreme Court, on the shortlist as a potential Supreme Court candidate, or about to retire after the election are not more likely to dissent before elections. Moreover, there is no correlation between dissenting before an election and the candidate from one’s party winning the Presidential election.

⁵⁵The decision of who authors an opinion is typically made several months before publication around the time of oral argument if there is an oral argument.

⁵⁶The large standard errors in this Column is attributable to the tremendous variation in the monthly number of cases recorded in the AOC.

The higher office that Courts of Appeals judges may primarily aspire to is the U.S. Supreme Court. In my 5% sample, not a single judge elevated to the Supreme Court chose to dissent before an election. Using a shortlist of 71 Courts of Appeals judges considered for the Supreme Court (Nemacheck 2007), there is also no partial correlation between dissenting before an election and being a potential nominee. It is also not theoretically clear whether dissenting is a good strategy to get promoted to the Supreme Court: it could also signal an inability to persuade colleagues and forge a majority coalition on the Supreme Court.

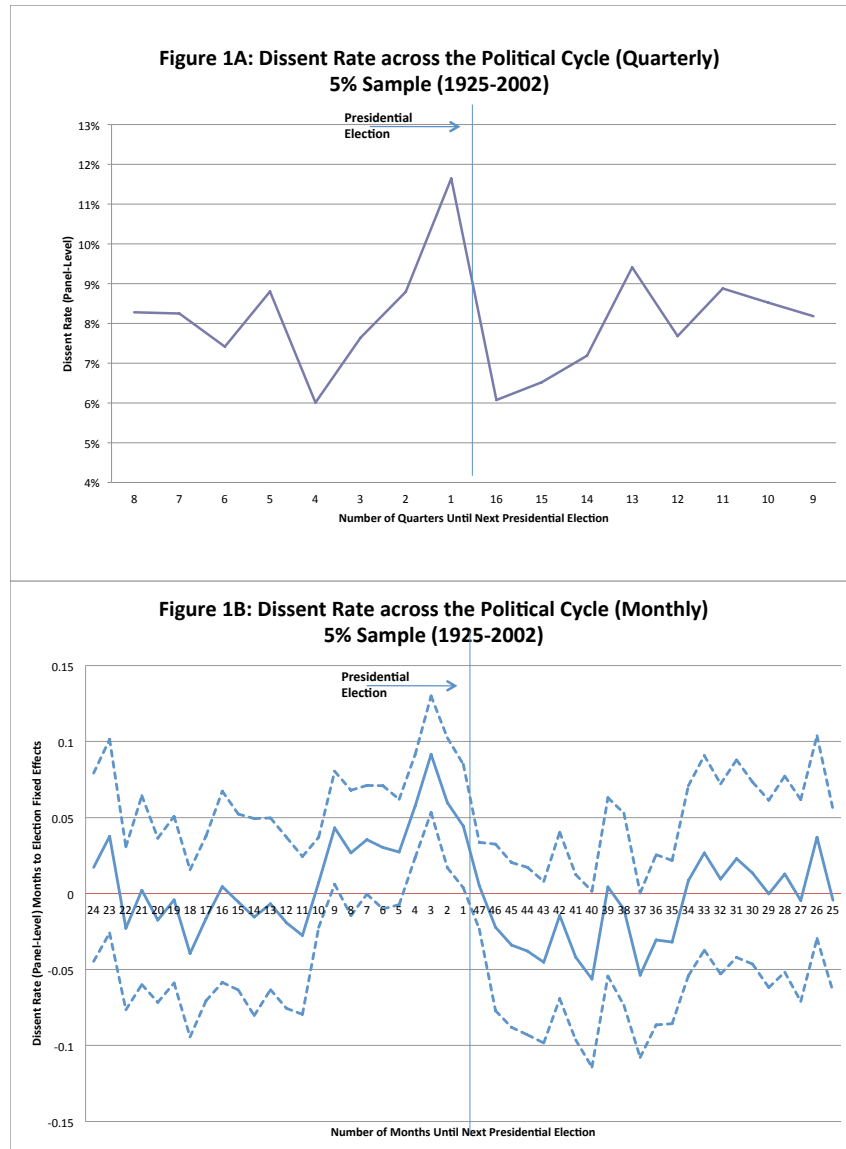
Getting Out the Vote Perhaps judges have electoral incentives to get out the vote despite professional rules that forbid any type of political involvement. Getting out the vote for the President is, however, unlikely to explain these electoral cycles. Political candidates from the dissenting judges' party in the Presidential and Senate elections are no more likely to win. Also, if judges are trying to get out the vote, dissents would not peak in the third month before the Presidential election. Moreover, as Presidential primaries involve competition within the same party to be the nominee for the general election, dissents during the Presidential primary season do not obviously encourage voters to vote for a specific candidate. Theoretically, it is also unclear that casting a partisan vote will be relevant, since undecided voters may backlash to partisan behavior and may not notice the dissents. Even if partisan votes are relevant, since case decisions are promulgated at the Circuit—not state—level, judges in all states would have an interest in getting out the vote.

Retirement and Reputational Capital Perhaps judges seek to influence precedent when they or their colleagues retire. But judges who are about to retire or resign after an election are not significantly more likely to dissent. Perhaps collegiality norms breakdown during the election, but a shift in collegiality norms and the retirement of colleagues should uniformly affect all judges. Perhaps judges gain reputational capital for dissenting before an election. However, elections of the most physically proximate politician—the state governor—do not affect the dissent rate. Also, newspapers are no more likely to report on Courts of Appeals decisions or their dissents before Presidential elections (Appendix Table H).⁵⁷ Notably, judges appear to dissent for highly discretionary, procedural reasons; and various citation measures for an opinion's impact or quality suggest that dissents attributable to electoral cycles do not strongly contribute to the development of law, which is inconsistent with judges seeking to build a reputation. Furthermore, even if judges are changing legal precedent in order to make signals when their state's electorate or politicians are paying attention, this would make their activities all the more surprising, as they gain no benefit in likelihood of elevation to the Supreme Court.

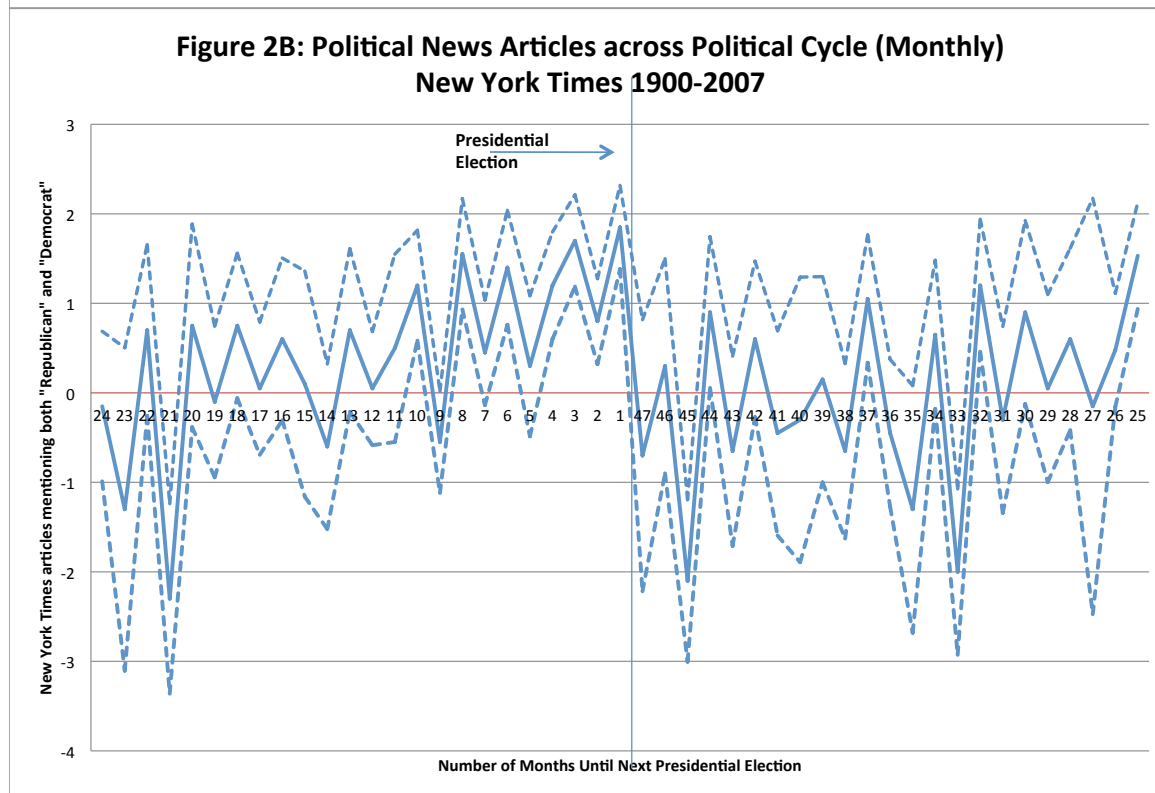
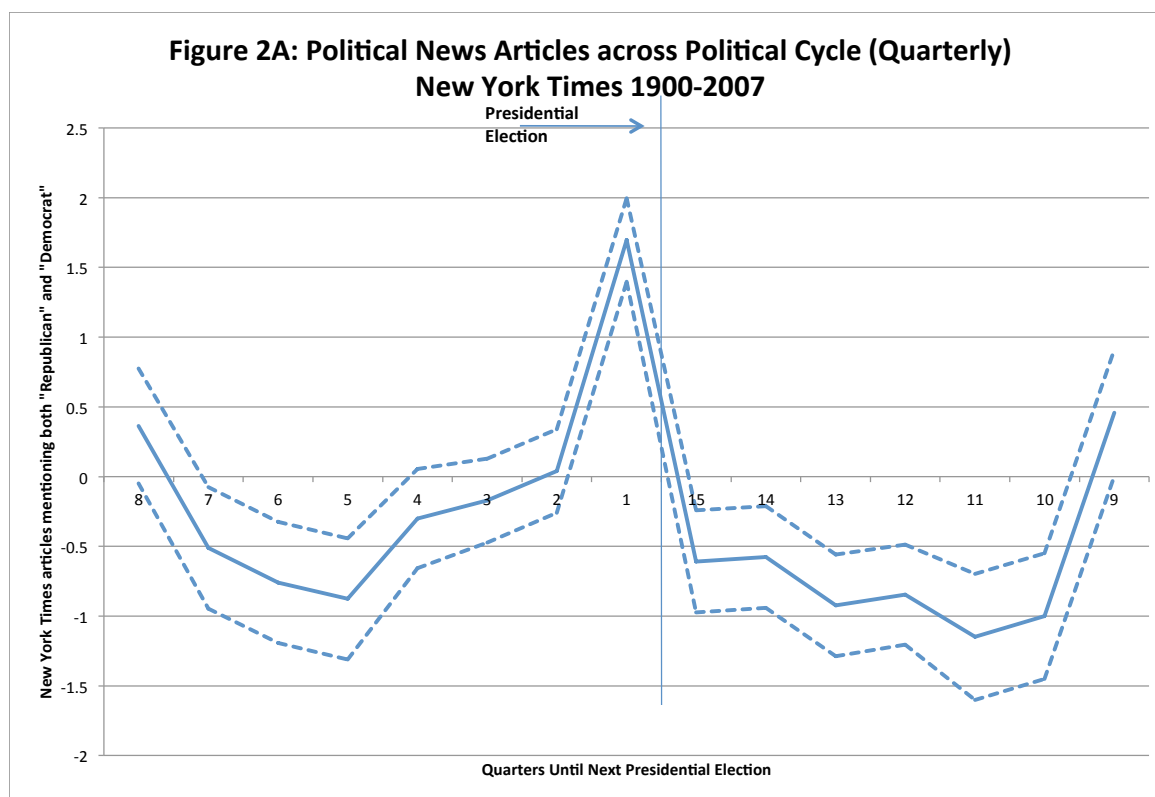
⁵⁷Appendix Table H Columns 1-3 use a database of newspapers covering each Circuit and is simply the count of newspaper articles satisfying a word search. When I collapse the 5% sample by quarter-to-election and Circuit for 192 observations and remove controls in order to run the analogous specification, the dissent is still significantly elevated for each of the three quarters before the Presidential election.

Attention A final explanation is not an alternative behavioral explanation, but instead an important behavioral mechanism that would have different policy implications. Do judges shift their attention to cases that require dissent, and away from other cases, before an election? Such a shift could still be due to priming. I can determine whether judges temporally relocate their dissents by first examining the dissent rate after landslide elections, which decreases even though it did not increase before the election. Appendix Table G presents a formal test of displacement using all of the data. I analyze aggregate dissent rates and their relationship to the competitiveness of the Presidential election. I estimate the dissent spike—the difference in the dissent rate in the three quarters before the election with the dissent rate in the three quarters after the election—for each Circuit and each election, and I examine its correlation with the percent of the Electoral College votes that went to the winner.⁵⁸ If dissents are displaced, I should see a positive correlation between the increase in the dissent rate before the election and the size of the decrease in the dissent rate after the election. Instead, I see a negative correlation. Appendix Table G reports that the dissent increase in the three months before an election is negatively correlated with the dissent decrease in the three months after. A negative correlation suggests that polarizing elections elevate dissents even after an election is over. Appendix Table G shows that the results are robust to using different definitions of the election cycle that form the baseline for the dissent increase/decrease around the election. Second, displacing controversial cases to a later time does not apply to the wartime results; wars can last for several years, and court guidelines limit the ability to delay cases for that long. Finally, delaying a case is largely a joint decision. It is conceivable that a judge could unilaterally delay the decision on a case – for instance, by being slower to respond to drafts – but it is much harder for a judge to speed up the decision and harder still for him or her to speed up a decision with dissents, as the other two judges would need to review the dissent and decide how to incorporate a response into the majority opinion (and the dissenting judge needs time to write the dissent). Note that there were no significant differences before an election in numbers of decisions, proportion of published cases, or time between stages of the case, as reported earlier. Finally, I note that I cannot determine if the political environment is affecting people around the judge, such as family members or clerks, who can have indirect effects on the judge.

⁵⁸In construction of all aggregate dissent rates, I winsorize at the 1% level. The results are similar when I do not winsorize.



Notes: Figure 1A presents the dissent rate for each quarter relative to the Presidential election. The dissent rate is calculated as the number of dissents divided by the total number of cases. Figure 1B displays the regression coefficients for the monthly dissent rate. The omitted category is 48 months before an election (i.e., the November of the election).



Notes: Figure 2A displays the regression coefficients of a quarter-to-election regression, where the omitted category is 16 quarters before the election. Figure 2B displays the coefficients of a month-to-election regression, where the omitted category is 48 months before the election. They use the same data, the number of New York Times articles mentioning both Republican and Democrat in the same article.

Figure 3A: Influence of Party of Appointment on Voting Valence across Political Cycle (Quarterly)

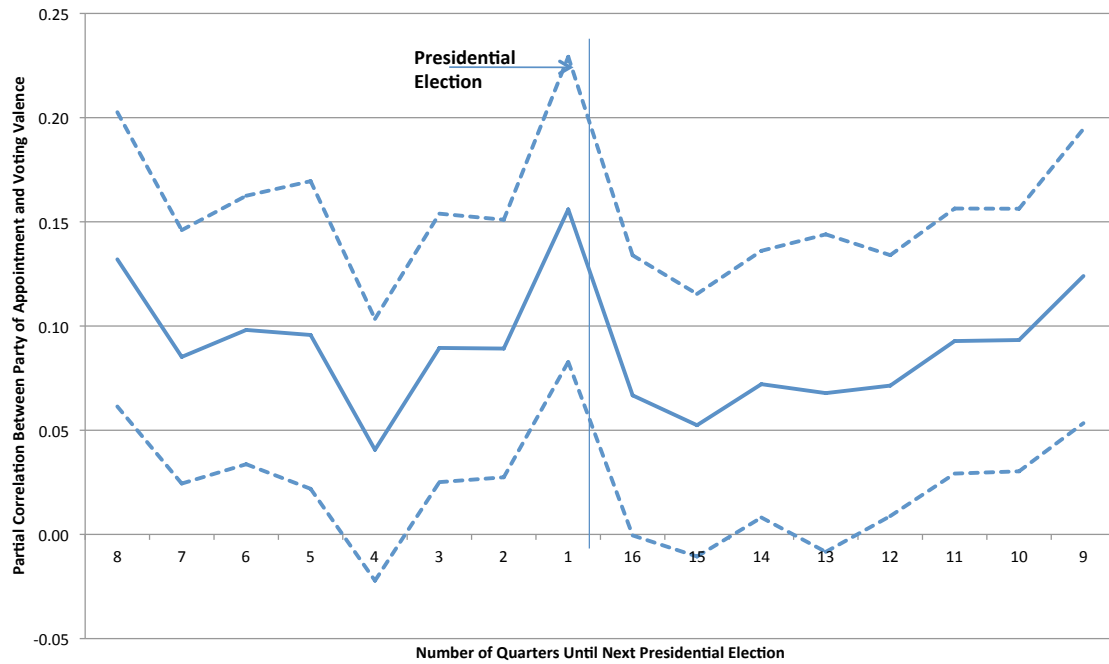
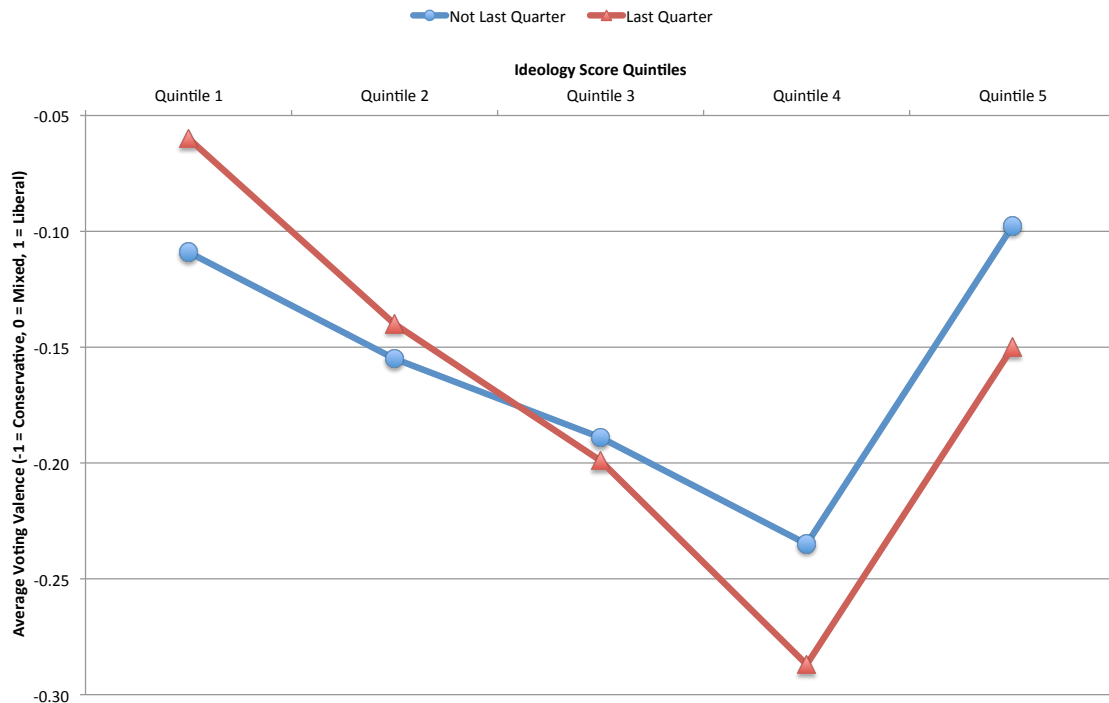


Figure 3B: Electoral Cycles in Voting Valence by Ideology Score



Notes: Figure 3A displays the interaction coefficients from a regression that fully interacts quarter-to-election set of dummies with whether the judge is a Democratic appointee. The outcome variable is whether the judge votes liberally. Figure 3B displays the average vote ideology for five categories of judges. The judges are sorted by their ideology score. The blue line is the average vote ideology outside of the last quarter before an election. The red line is the average vote ideology during the last quarter before an election.

Figure 4: Randomization Inference and Randomization Checks

Notes: Figure 4A displays the t-statistics from the true treatment regression and 200 natural bootstraps where each quarter to an election is randomly re-assigned a different quarter-to-election. Figure 4B displays the t-statistics from the treatment regression and 106 regressions where the dissent is replaced with all other case and litigant characteristics coded in the database. Figure 4C displays the t-statistics from the treatment regression and over 50 regressions where the dissent is replaced with all biographical characteristics of the authoring judge and Figure 4D does the same for the other two judges on the panel.

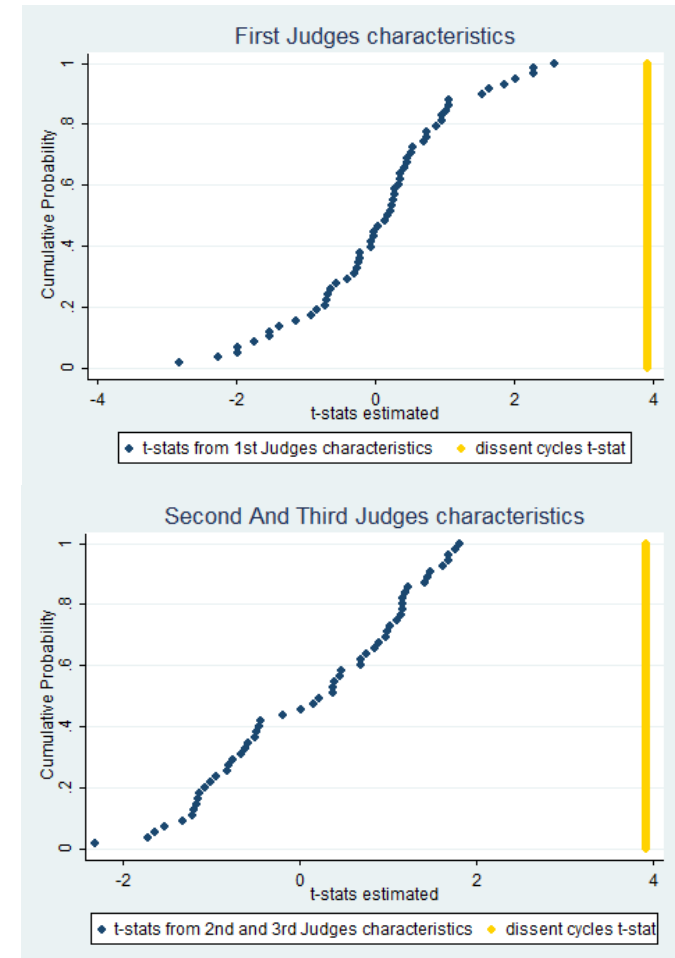
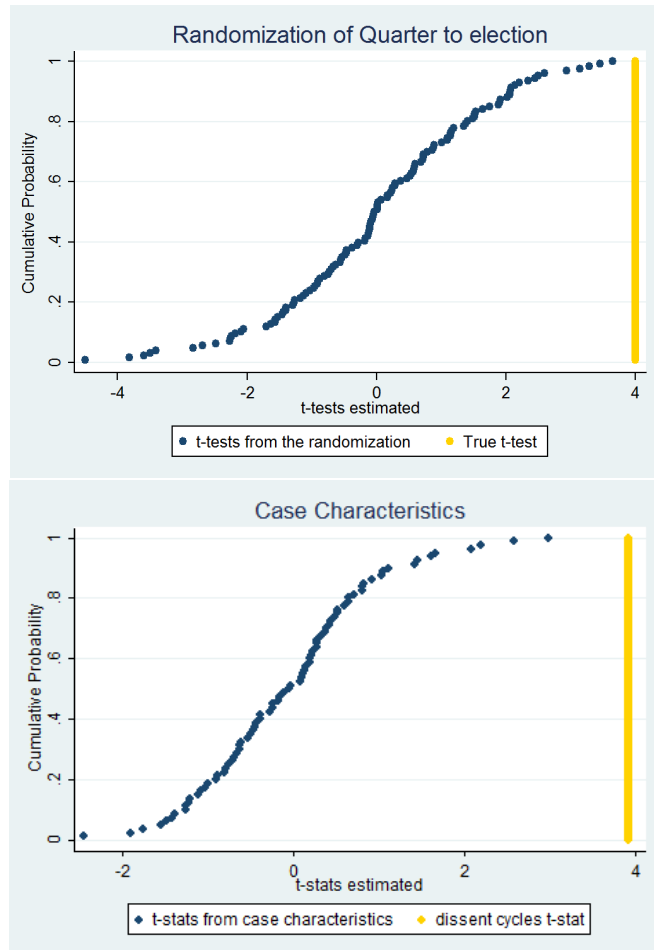


Figure 5: Campaign Advertisements across Political Cycle (Weekly)

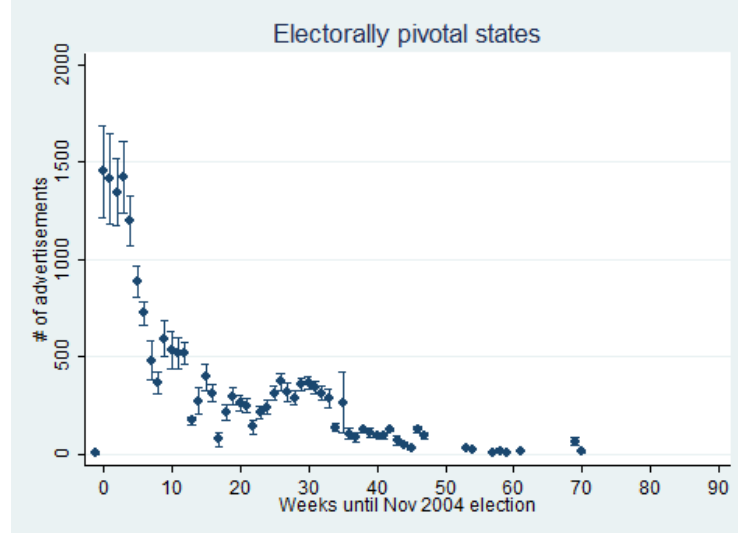


Figure 5A

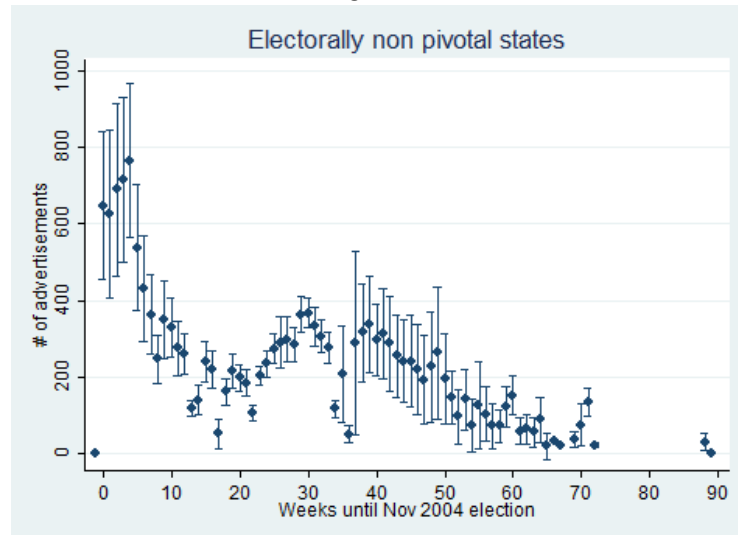


Figure 5B

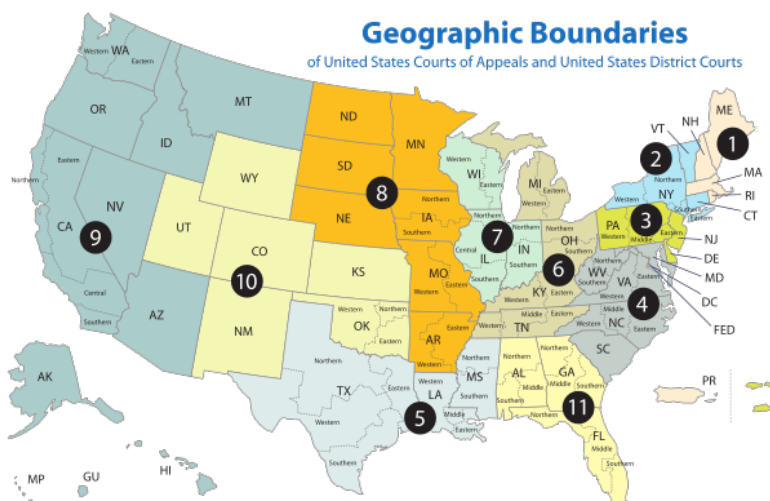
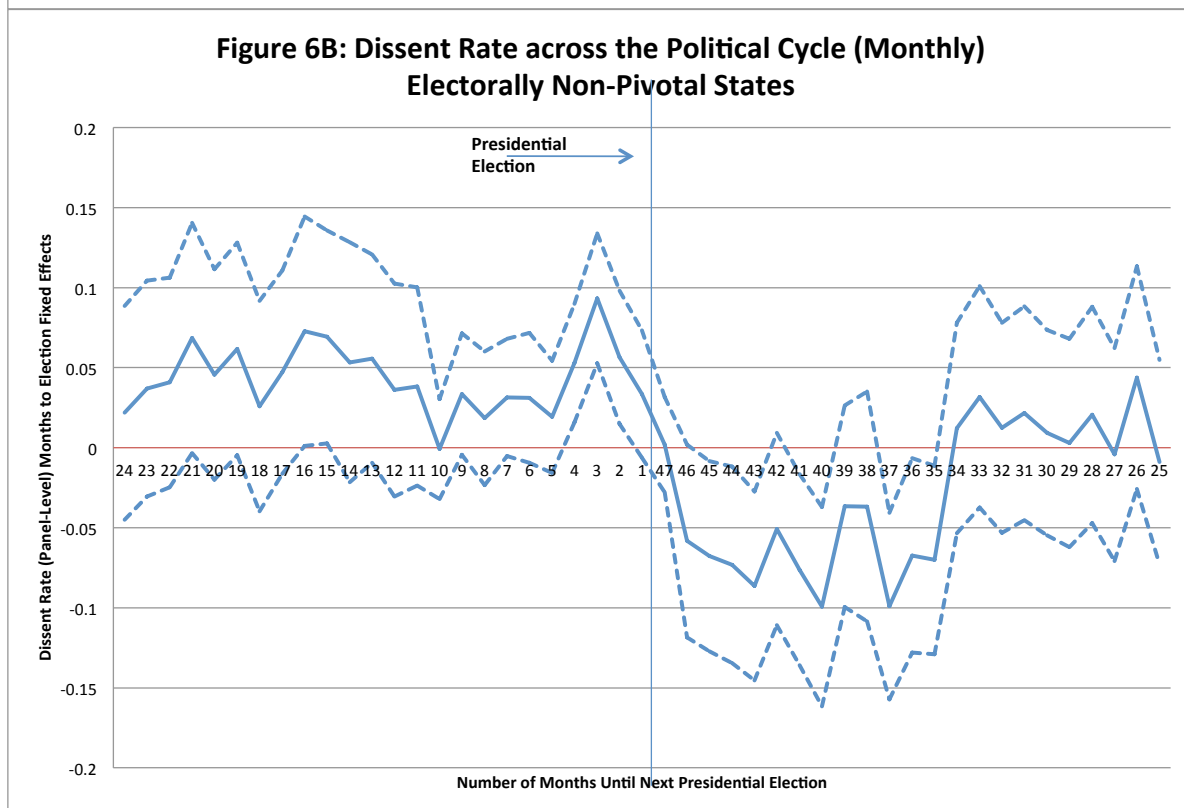
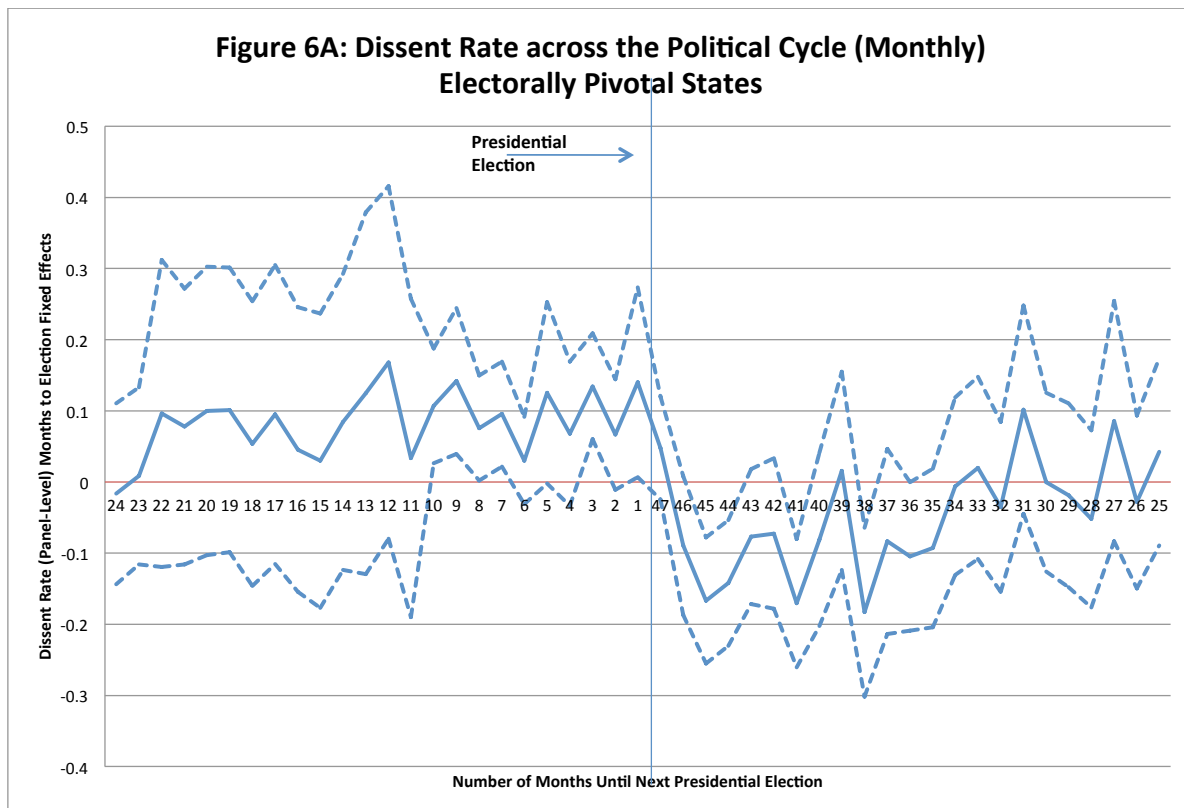


Figure 5C

Notes: Figure 5A displays the coefficients from a regression of the number of campaign advertisements on a set of weekly dummies before the election, for the set of electorally pivotal states (California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, and Michigan) and the District of Columbia. Figure 5B does the same for the rest of the states. Figure 5C displays a map of the U.S. Circuits and the states that fall within the circuit boundaries.



Notes: Figure 6A presents the regression coefficients for the monthly dissent rate for the set of electorally pivotal states (California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, and Michigan) and the District of Columbia. The omitted category is 48 months before an election (i.e., the November of the election). Figure 6B does the same for the rest of the states.

Figure 7A: The Role of Judicial Panel Characteristics in Electoral Cycles in Dissents

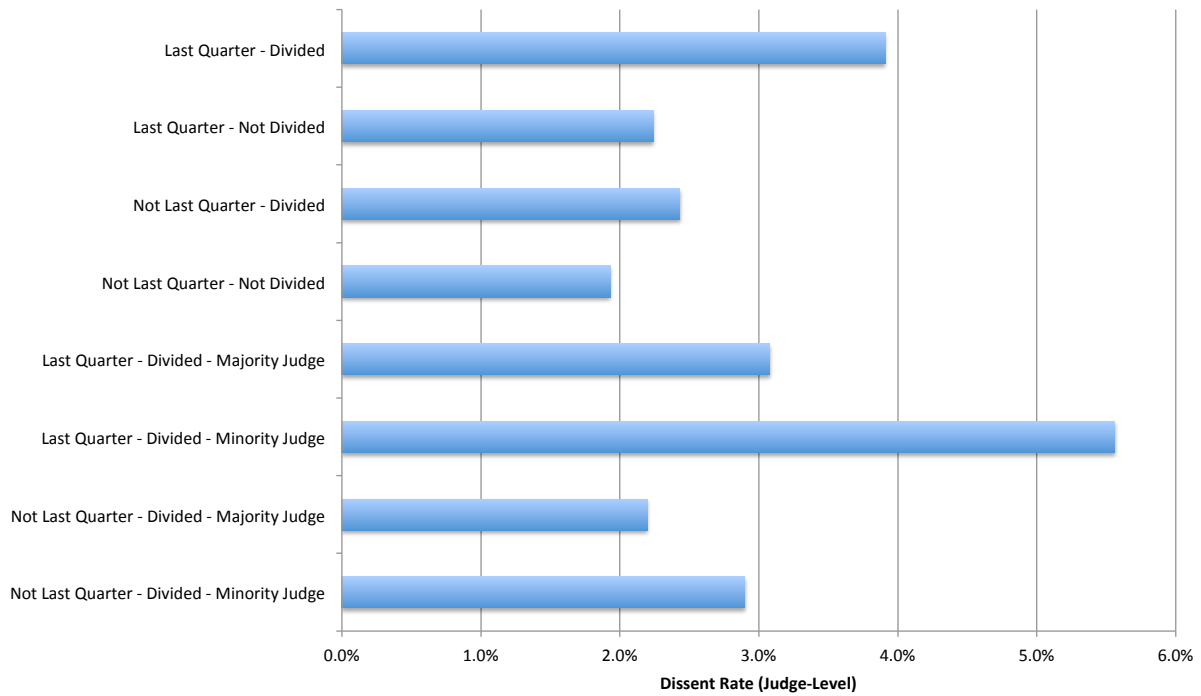
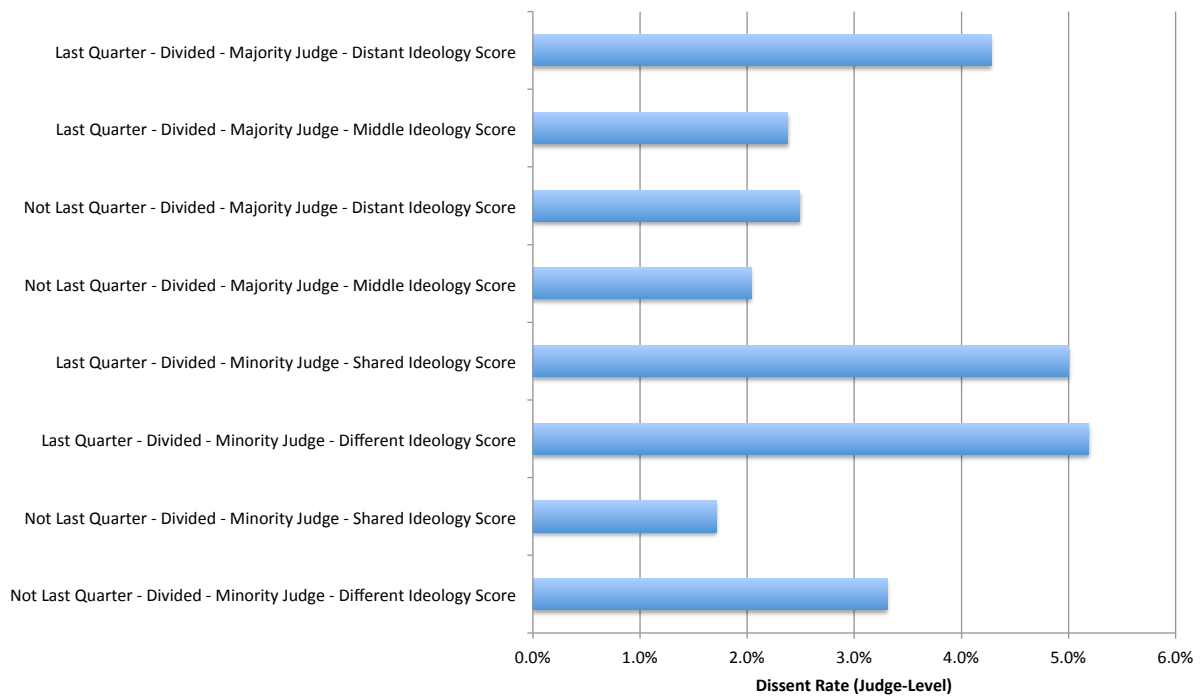
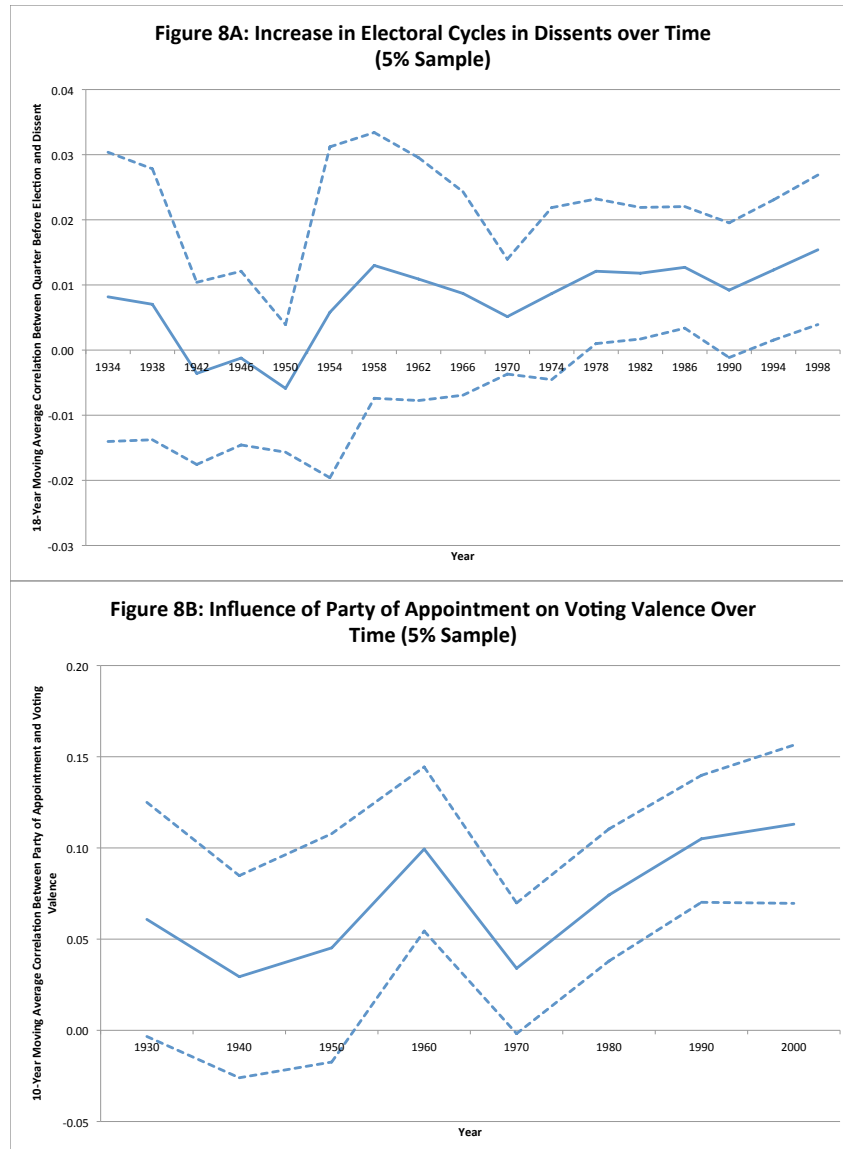


Figure 7B: The Role of Judicial Ideology Score in Electoral Cycles in Dissents



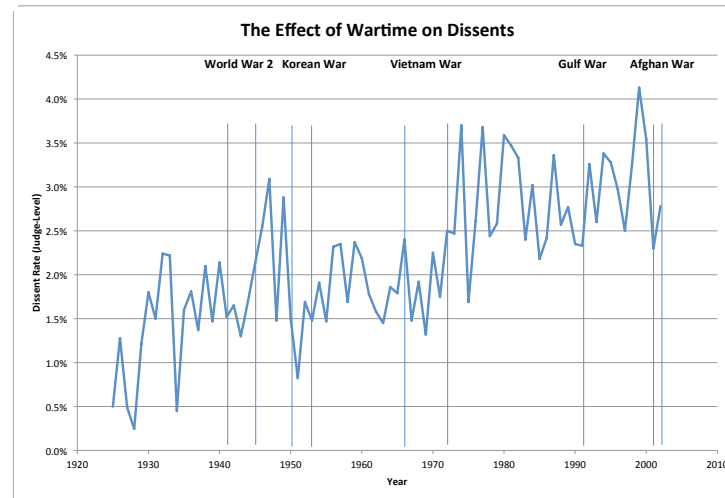
Notes: Politically Divided Panels are RRD or DDR; Non-Divided Panels are DDD or RRR.
 Majority Judge is R in RRD panels and D in DDR panels; Minority Judge is D in RRD and R in DDR panels.
 Dissent rates are shown, calculated as the number of dissent votes divided by the total number of votes.



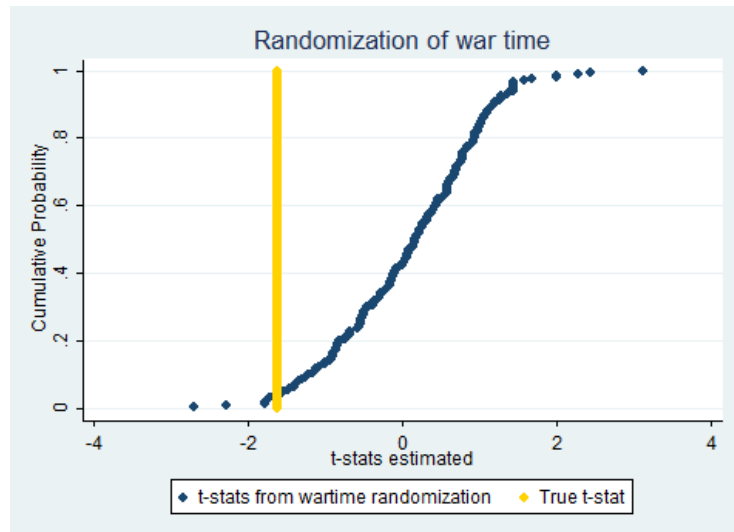
Notes: Figure 8A displays the regression coefficient between dissent and the last quarter before the election for a sequence of windows. Each window comprises of four elections. Each year on the x-axis represents the center of four elections. Figure 8B displays the regression coefficient between a liberal vote and the interaction of whether the judge is a Democratic appointee and the last quarter before the election, also for a sequence of windows. Each window comprises of ten years. Each year on the x-axis represents the center of the ten years.

Figure 9: Dissents During Wartime

Notes: Figure 9A displays the dissent rate for each year in the data. The vertical lines represent the official dates when the U.S. is at war. Figure 9B displays the t-statistics from the true treatment regression and 200 natural bootstraps where the date is re-assigned to a different date for the data organized at the case level. Figure 9C does the same but for the data organized at the vote level.



Case-Level



Vote-Level

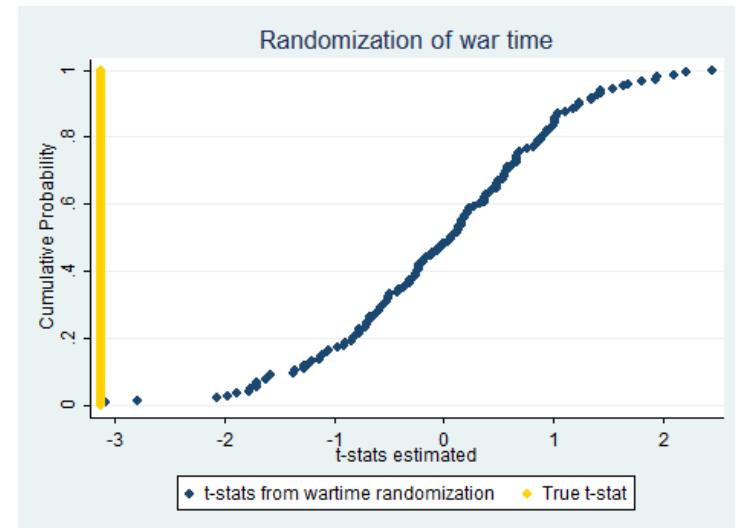


Table 1: Electoral Cycles in Dissents (2-1 Decision)

	(1)	(2)	(3)	(4)
Mean of dep. var.	5% Sample (1925-2002)			
	0.079			
Divided (DRR or RDD)	0.0157*** (0.00452)	0.0154*** (0.00450)	0.0180*** (0.00499)	0.0179*** (0.00498)
Quartermoelect = 1	0.0637*** (0.0123)	0.0680*** (0.0135)	0.0697*** (0.0120)	0.0736*** (0.0129)
Quartermoelect = 2	0.0347*** (0.0121)	0.0341** (0.0145)	0.0367*** (0.0122)	0.0356** (0.0144)
Quartermoelect = 3	0.0325*** (0.0123)	0.0343** (0.0133)	0.0340*** (0.0129)	0.0357** (0.0139)
Quartermoelect = 4	0.00581 (0.0111)	0.00582 (0.0111)	0.00627 (0.0109)	0.00598 (0.0109)
Quartermoelect = 5	0.0209 (0.0152)	0.0251 (0.0159)	0.0170 (0.0153)	0.0204 (0.0158)
Quartermoelect = 6	0.0120 (0.0141)	0.0115 (0.0153)	0.00681 (0.0145)	0.00543 (0.0155)
Quartermoelect = 7	0.0226 (0.0141)	0.0238 (0.0153)	0.0179 (0.0143)	0.0188 (0.0156)
Quartermoelect = 8	0.00772 (0.0141)	0.00870 (0.0142)	0.00411 (0.0148)	0.00494 (0.0148)
Quartermoelect = 9	-0.0115 (0.0155)	-0.00718 (0.0157)	-0.0170 (0.0165)	-0.0134 (0.0165)
Quartermoelect = 10	-0.0114 (0.0160)	-0.0110 (0.0168)	-0.0160 (0.0168)	-0.0162 (0.0172)
Quartermoelect = 11	0.000311 (0.0162)	0.00269 (0.0167)	-0.00657 (0.0169)	-0.00445 (0.0172)
Quartermoelect = 12	-0.0102 (0.0128)	-0.00929 (0.0129)	-0.0166 (0.0140)	-0.0158 (0.0140)
Quartermoelect = 13	0.00115 (0.0148)	0.00451 (0.0151)	-0.00107 (0.0160)	0.00164 (0.0160)
Quartermoelect = 14	-0.0157 (0.0134)	-0.0159 (0.0147)	-0.0195 (0.0143)	-0.0203 (0.0155)
Quartermoelect = 15	-0.0176 (0.0117)	-0.0154 (0.0121)	-0.0209 (0.0133)	-0.0188 (0.0136)
Year FE	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes
Season FE	No	Yes	No	Yes
Legal Issue FE	No	Yes	No	Yes
Year-by-Circuit FE	No	No	Yes	Yes
Observations	18686	18686	18686	18686
R-squared	0.019	0.021	0.068	0.070

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). The omitted dummy variable indicating the number of quarters remaining before the presidential election is 16 quarters. Data is organized at the case level.

Table 2: Electoral Cycles in the Correlation between Party of Appointment and Judges' Votes

<i>Panel A</i>	(1)	(2)	(3)	(4)
	Liberal Vote (5% Sample, 1925-2002)			
Code	+1/0/-1		+1 vs. 0/-1	+1/0 vs. -1
Mean of dep. var.	-0.157		0.340	0.503
Judge appointed by Democrat	0.0849*** (0.00910)	0.0708*** (0.00821)	0.0348*** (0.00416)	0.0359*** (0.00462)
Judge appointed by Democrat * Last Quarter	0.0684** (0.0335)	0.0712* (0.0365)	0.0394* (0.0211)	0.0319* (0.0177)
Year FE	No	Yes	Yes	Yes
Circuit FE	No	Yes	Yes	Yes
Season FE	No	Yes	Yes	Yes
Legal Issue FE	No	Yes	Yes	Yes
Divided (RDD or DRR) FE	No	Yes	Yes	Yes
Quarter-to-Election FE	No	Yes	Yes	Yes
Observations	56058	56058	56058	56058
R-squared	0.002	0.087		
<i>Panel B</i>	Liberal Precedent (5% Sample, 1925-2002)			
	Politically unified panels (DDD or RRR)			
Mean of dep. var.	-0.139		0.344	0.517
Panel appointed by Democrat	0.168*** (0.0257)	0.164*** (0.0302)	0.0753*** (0.0165)	0.0883*** (0.0160)
Panel appointed by Democrat * Last Quarter	0.217* (0.124)	0.207* (0.125)	0.0828 (0.0683)	0.124* (0.0633)
Year FE	No	Yes	Yes	Yes
Circuit FE	No	Yes	Yes	Yes
Season FE	No	Yes	Yes	Yes
Legal Issue FE	No	Yes	Yes	Yes
Divided (RDD or DRR) FE	No	Yes	Yes	Yes
Quarter-to-Election FE	No	Yes	Yes	Yes
Observations	5659	5659	5659	5659
R-squared	0.011	0.101		

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Panel A: Vote-level regression. The outcome variable is Liberal Vote, which is coded as 1 for liberal, 0 for mixed or not applicable, and -1 for conservative. Data organized at the vote level. Panel B: Case-level regression. The outcome variable is Liberal Precedent. Data organized at the case level.

Table 3: Electoral Cycles in Treatment of Lower Courts

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	5% Sample (1925-2002)							
Mean of dep. var.	Affirm 0.568		Reverse 0.269		Reverse and Remand 0.204		Reverse without Remand 0.065	
Last Quarter	-0.0433** (0.0184)	-0.0588** (0.0251)	0.0268* (0.0145)	0.0519*** (0.0166)	0.0265* (0.0136)	0.0505*** (0.0187)	0.000325 (0.00977)	0.00135 (0.0132)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	No	Yes	No	Yes	No	Yes	No	Yes
Legal Issue FE	No	Yes	No	Yes	No	Yes	No	Yes
Divided (RDD or DRR) FE	No	Yes	No	Yes	No	Yes	No	Yes
Quarter-to-Election FE	No	Yes	No	Yes	No	Yes	No	Yes
Observations	18686	18686	18686	18686	18686	18686	18686	18686
R-squared	0.027	0.054	0.015	0.025	0.013	0.021	0.013	0.016

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Outcome is how the circuit court treated the lower court in the appeal decision. Remand means the court requested the lower court to re-evaluate (perhaps with a new trial); No Remand means the court determined the final outcome of the litigants in the original case. Data is organized at the case level.

Table 4: Electoral Cycles in Dissents by Case Type

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	1-Digit Case Category						2-Digit Case Category			
	Criminal	Civil Rights	First Amendment	Due Process	Labor Relations	Economic Activity	Misc.	Criminal Federal	Economic Commercial	Economic Property
Mean of dep. var.	0.077	0.100	0.185	0.100	0.093	0.071	0.073	0.071	0.071	0.061
Divided (DRR or RDD)	0.0253*** (0.00868)	0.0378** (0.0157)	-0.00112 (0.0614)	0.0980* (0.0574)	0.00702 (0.0183)	0.00676 (0.00560)	0.0201 (0.0297)	0.0281*** (0.00950)	0.00650 (0.0103)	0.0235 (0.0227)
Quartertoelect = 1	0.0799*** (0.0222)	0.0466 (0.0483)	0.308 (0.257)	-0.0985 (0.177)	0.0687 (0.0658)	0.0649*** (0.0169)	-0.0786 (0.132)	0.0699*** (0.0246)	0.0959*** (0.0339)	0.181*** (0.0694)
Quartertoelect = 2	0.0547** (0.0247)	0.0113 (0.0399)	0.157 (0.180)	-0.255* (0.150)	-0.0434 (0.0591)	0.0455** (0.0177)	-0.171 (0.119)	0.0551** (0.0261)	0.0238 (0.0291)	0.0947 (0.0665)
Quartertoelect = 3	0.0445* (0.0239)	0.125** (0.0495)	-0.0678 (0.165)	-0.141 (0.165)	-0.0221 (0.0528)	0.0334** (0.0142)	-0.214* (0.113)	0.0398 (0.0264)	0.0241 (0.0249)	0.111* (0.0638)
Quartertoelect = 4	0.0327 (0.0245)	0.0252 (0.0544)	-0.00685 (0.130)	0.149 (0.141)	-0.0114 (0.0525)	-0.00504 (0.0140)	-0.173* (0.0980)	0.0360 (0.0275)	0.00952 (0.0243)	0.0302 (0.0459)
Quartertoelect = 5	0.0447 (0.0343)	-0.00442 (0.0665)	0.125 (0.185)	0.0127 (0.255)	0.00285 (0.0738)	0.0170 (0.0205)	-0.0308 (0.116)	0.0727** (0.0365)	0.0320 (0.0373)	0.000696 (0.0537)
Quartertoelect = 6	0.00287 (0.0323)	0.0165 (0.0689)	-0.224 (0.189)	-0.186 (0.208)	-0.0617 (0.0695)	0.0410* (0.0211)	-0.158 (0.115)	0.0228 (0.0336)	0.0732* (0.0388)	0.0566 (0.0700)
Quartertoelect = 7	0.0382 (0.0324)	0.0783 (0.0675)	-0.0322 (0.216)	-0.0685 (0.221)	-0.0647 (0.0677)	0.0253 (0.0184)	-0.202* (0.119)	0.0650* (0.0339)	0.0583* (0.0334)	0.133* (0.0784)
Quartertoelect = 8	0.0178 (0.0259)	-0.0180 (0.0715)	-0.288 (0.191)	0.270 (0.196)	-0.0295 (0.0645)	0.0174 (0.0163)	-0.144 (0.111)	0.0248 (0.0264)	0.0772** (0.0340)	0.0691 (0.0619)
Quartertoelect = 9	0.0227 (0.0289)	-0.101 (0.0792)	-0.395* (0.231)	-0.124 (0.253)	0.0187 (0.0787)	0.00197 (0.0214)	-0.210* (0.121)	0.0446 (0.0295)	0.0413 (0.0422)	-0.0309 (0.0728)
Quartertoelect = 10	0.0214 (0.0314)	-0.0507 (0.0861)	-0.480** (0.228)	-0.0498 (0.221)	0.00653 (0.0813)	-0.00110 (0.0203)	-0.286** (0.117)	0.0329 (0.0317)	-0.0145 (0.0426)	0.0942 (0.0767)
Quartertoelect = 11	0.0344 (0.0319)	-0.0654 (0.0823)	-0.564*** (0.214)	-0.171 (0.238)	-0.0108 (0.0824)	0.0106 (0.0215)	-0.173 (0.124)	0.0506 (0.0352)	0.0341 (0.0381)	0.0133 (0.0701)
Quartertoelect = 12	-0.0104 (0.0216)	-0.0739 (0.0779)	-0.438*** (0.156)	0.0372 (0.129)	0.0445 (0.0543)	0.00352 (0.0157)	-0.188 (0.117)	-0.0198 (0.0212)	0.00169 (0.0323)	0.0453 (0.0525)
Quartertoelect = 13	0.0443* (0.0265)	-0.145* (0.0794)	-0.230 (0.200)	0.117 (0.188)	0.0434 (0.0554)	0.00396 (0.0191)	-0.170 (0.121)	0.0365 (0.0261)	0.0354 (0.0386)	-0.0327 (0.0690)
Quartertoelect = 14	-0.000254 (0.0264)	-0.216*** (0.0792)	-0.538*** (0.182)	-0.0769 (0.179)	-0.0159 (0.0522)	0.0292 (0.0205)	-0.164 (0.129)	0.00874 (0.0265)	0.0432 (0.0450)	0.130 (0.0826)
Quartertoelect = 15	0.000225 (0.0226)	-0.138 (0.0889)	-0.216 (0.244)	-0.116 (0.135)	-0.0404 (0.0576)	0.0129 (0.0192)	-0.176 (0.138)	0.00467 (0.0235)	0.0313 (0.0412)	0.120* (0.0663)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	5023	1605	275	209	1351	9509	518	4224	2543	610
R-squared	0.036	0.068	0.310	0.399	0.086	0.024	0.187	0.037	0.059	0.210

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Data comes from 5% Sample (1925-2002). Data is organized at the case level. See Table 1 for additional notes.

Table 5: Characteristics of Opinions before Presidential Elections

<i>Panel A: Quality</i>	(1)	(2)	(3)	(4)
	5% Sample (1925-2002)			
	Citations by Subsequent Opinions	Citations by Subsequent Dissents	Dissent for Non-Merit, Procedural Grounds	
Mean of dep. var.	6.142	0.549	0.093	
Last Quarter	0.575 (0.519)	-0.0201 (0.0435)	0.0785** (0.0289)	0.100** (0.0469)
Dissent	2.090*** (0.254)	0.415*** (0.0362)		
Last Quarter * Dissent	-0.211 (1.210)	-0.281** (0.113)		
Year FE	Yes	Yes	No	Yes
Circuit FE	Yes	Yes	No	Yes
Season FE	Yes	Yes	No	Yes
Legal Issue FE	Yes	Yes	No	Yes
Divided (RDD or DRR) FE	Yes	Yes	No	Yes
Quarter-to-Election FE	Yes	Yes	No	Yes
Observations	18684	18684	227	227
R-squared	0.164	0.076	0.038	0.204
<i>Panel B: Treatment by Supreme Court</i>	5% Sample (1925-2002)			
	Appeal Made to Supreme Court	Supreme Court Takes Case	Supreme Court Reverses	Supreme Court Reverses
Mean of dep. var.	0.252	0.029	0.712	0.705
Last Quarter	0.0176 (0.0217)	0.00655 (0.00905)	-0.206 (0.146)	-0.151 (0.336)
Dissent	0.139*** (0.0131)	0.0446*** (0.00729)	0.0102 (0.0642)	
Last Quarter * Dissent	0.0131 (0.0434)	0.00961 (0.0324)	-0.340* (0.194)	
Partisan Precedent				-0.0157 (0.0838)
Last Quarter * Partisan Precedent				0.0345 (0.316)
Year FE	Yes	Yes	Yes	No
Circuit FE	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes
Quarter-to-Election FE	Yes	Yes	Yes	Yes
Observations	18686	18686	549	183
R-squared	0.040	0.019	0.217	0.129

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Panel A: The outcome variables are the total number of times the case has been cited in subsequent opinions winsorized at the 1% level (Column 1), the total number of time the case has been cited in subsequent dissents winsorized at the 1% level (Column 2), and a dummy variable equal to 1 if the dissenting opinion focused on procedural rather than merit issues (Columns 3-4). Panel B: The outcome variables are whether the appellate case was subsequently appealed to the Supreme Court (Column 1), whether the Supreme Court actually took the case (Column 2), and whether the Supreme Court reversed any part of the case (Columns 3-4). The sample in Column 4 is restricted to politically unified panels (DDD or RRR). Partisan Precedent is 1 if the panel was appointed by Democrats and made a liberal decision or if the panel was appointed by Republicans and made a conservative decision. Data is organized at the case level.

Table 6: Electoral Cycles in Dissents by State of Judge's Duty Location

	(1)	(2)	(3)	(4)	(5)	(6)
	Dissent Vote (5% Sample, 1925-2002)					
	Top 8 States in Electoral Votes Count and DC	States with Fewer Electoral Votes	States Likely to be Electurally Pivotal and DC	States Not Likely to be Electurally Pivotal	States in Top Quintile of Campaign Ads	States below Top Quintile of Campaign Ads
Mean of dep. var.	0.027	0.021	0.030	0.021	0.026	0.023
Divided (RDD or DRR)	0.0114*** (0.00253)	0.00463** (0.00190)	0.0137*** (0.00335)	0.00508*** (0.00168)	0.0100*** (0.00317)	0.00615*** (0.00166)
Last Quarter	0.0286*** (0.00712)	0.00845 (0.00544)	0.0355*** (0.0103)	0.0101** (0.00496)	0.0272*** (0.00824)	0.0114** (0.00525)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes	Yes	Yes
Quarter-to-Election FE	Yes	Yes	Yes	Yes	Yes	Yes
Observations	20145	31315	12642	38818	13116	38344
R-squared	0.028	0.027	0.032	0.025	0.033	0.025

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). The top 8 states in electoral vote count are California, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas. States likely to be electorally pivotal are: Michigan, Ohio, Pennsylvania, Florida, and California. States in the top quintile of campaign ads for 1996 were California, Ohio, Florida, Michigan, Tennessee, Pennsylvania, Kentucky, Colorado, Missouri, and New Mexico. Data is organized at the vote level.

Table 7: Electoral Cycles in Dissents by Electoral Vote Count and Competitiveness of Judge's Duty Location

	(1)	(2)	(3)
	Dissent Rate in the Three Quarters Before Election		
	5% Sample (1925-2002)		
Mean of dep. var.	0.023	0.027	0.033
State of Dissenting Judge			
Electoral Vote Count	-0.00193*		
	(0.00100)		
Popular Vote Tightness	-0.0335		
	(0.0305)		
Electoral Vote Count	0.00239**		
* Popular Vote Tightness	(0.00115)		
State of Majority Author			
Electoral Vote Count		-0.00194*	
		(0.00114)	
Popular Vote Tightness		-0.00950	
		(0.0261)	
Electoral Vote Count		0.00200	
* Popular Vote Tightness		(0.00134)	
State of Third Panel Member			
Electoral Vote Count			-0.000994
			(0.00223)
Popular Vote Tightness			-0.0202
			(0.0270)
Electoral Vote Count			0.000859
* Popular Vote Tightness			(0.00237)
Election FE	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes
Observations	804	804	804
R-squared	0.075	0.087	0.083

Notes: Robust OLS standard errors double-clustered at the election and state level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Each election-state is a separate observation. Dissent rate in the three quarters before the election is winsorized at the 1% level. Dissent rate is the proportion of cases where the judge dissents (Column 1), authors the majority opinion and someone else dissents (Column 2), and sits on a case with a dissent, but was neither the author nor dissenter (Column 3). Regressions are weighted by the number of judgments used to compute the average dissent rate. Electoral vote count is the number of electoral college votes for a given state where a judge resides in a given election, which ranges from 3 to 55. Popular vote tightness is 1 minus the absolute value of the difference in the popular vote fraction won by Republicans vs. won by Democrats. Values that are more positive indicate a tighter

Table 8: Dissents and Monthly Campaign Advertisements by State of Judge's Duty Location

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Dissent Vote (5% Sample, 1925-2002, Quartertoelect = 0 to 8)							
Mean of dep. var.	0.023							
ΔCampaign Ads (t0)	0.00531** (0.00214)	0.00660** (0.00262)	0.00770*** (0.00289)	0.00709** (0.00300)	0.00678** (0.00310)	0.00416 (0.00323)	0.00555 (0.00391)	0.00874** (0.00407)
ΔCampaign Ads (t1)		0.00412 (0.00356)	0.00538 (0.00378)	0.00432 (0.00369)	0.00345 (0.00427)	0.00210 (0.00430)		
ΔCampaign Ads (t2)			0.00508 (0.00472)	0.00416 (0.00469)	0.00277 (0.00461)	0.000433 (0.00457)		
ΔCampaign Ads (f1)							0.000651 (0.00369)	0.00125 (0.00492)
ΔCampaign Ads (f2)								0.00190 (0.00352)
Year FE	No	No	No	Yes	Yes	Yes	No	No
Circuit FE	No	No	No	Yes	Yes	Yes	No	No
Season FE	No	No	No	Yes	Yes	Yes	No	No
Legal Issue FE	No	No	No	Yes	Yes	Yes	No	No
Divided (RDD or DRR) FE	No	No	No	Yes	Yes	Yes	No	No
Judge FE	No	No	No	No	Yes	Yes	No	No
Quarter-to-Election FE	No	No	No	No	No	Yes	No	No
N	22906	21954	20750	20750	20750	20750	21967	21106
R-sq	0.000	0.000	0.000	0.007	0.067	0.068	0.000	0.000

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Campaign ads come from the Wisconsin Ads project for the 2008 election. Cases are limited to judgments in the year of presidential elections and the year previous to presidential elections. Wisconsin Ads data are only available for quarters to election from 0 to 8. The explanatory variable of interest is the change in number of campaign advertisements (10,000s) in the state of the judge's duty station in the month the decision was published. Data is organized at the vote level.

Table 9: Electoral Cycles in Dissents with Placebo Dates (Other Key Milestones of Cases)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Placebo Date	Docket Date	Date Filed in District Court	Notice of Appeal Filed	Date Brief Notice Issued	Date of Last Brief Filing	Submitted on Merits	Date of Oral Argument	Final Judgment Date	Publication Date
Quartertoelect = 1	-0.00239 (0.00357)	0.00467 (0.00335)	0.00436 (0.00342)	-0.00503 (0.00688)	0.00695 (0.00429)	0.0102 (0.00911)	0.00323 (0.0101)	0.00721** (0.00330)	0.00908*** (0.00328)
Quartertoelect = 2	-0.00469 (0.00446)	0.00387 (0.00345)	-0.00208 (0.00442)	-0.00664 (0.00716)	0.00557 (0.00571)	0.00662 (0.00888)	0.00474 (0.0138)	0.00390 (0.00341)	0.00504 (0.00351)
Quartertoelect = 3	-0.00131 (0.00557)	0.00292 (0.00359)	0.00166 (0.00556)	-0.00295 (0.00914)	0.00736 (0.00773)	0.00485 (0.00780)	-0.00134 (0.0129)	0.00418 (0.00356)	0.00282 (0.00386)
Quartertoelect = 4	-0.00238 (0.00583)	0.000658 (0.00363)	0.00182 (0.00612)	0.00412 (0.0104)	0.0108 (0.00727)	0.0104 (0.00799)	0.0105 (0.0126)	0.00116 (0.00411)	0.000715 (0.00428)
Quartertoelect = 5	-0.000143 (0.00585)	0.00170 (0.00368)	-0.000972 (0.00579)	0.000219 (0.00979)	0.0124 (0.00763)	0.0146 (0.00918)	0.0106 (0.0130)	0.00314 (0.00482)	0.00340 (0.00483)
Quartertoelect = 6	-0.0000619 (0.00600)	0.00402 (0.00376)	0.00383 (0.00610)	0.00431 (0.0111)	0.00877 (0.00769)	0.00580 (0.00986)	0.00368 (0.0153)	0.000993 (0.00494)	-0.000504 (0.00502)
Quartertoelect = 7	0.000717 (0.00617)	0.000956 (0.00349)	0.00129 (0.00602)	0.00366 (0.0107)	0.00979 (0.00817)	0.0155 (0.0101)	0.0104 (0.0147)	-0.000730 (0.00554)	-0.00470 (0.00523)
Quartertoelect = 8	-0.000674 (0.00625)	-0.00253 (0.00346)	0.00239 (0.00615)	0.00613 (0.0119)	0.0152* (0.00896)	0.00950 (0.00979)	0.0134 (0.0144)	0.00181 (0.00465)	0.00409 (0.00481)
Quartertoelect = 9	0.00591 (0.00642)	-0.00000849 (0.00363)	0.00630 (0.00630)	0.0150 (0.0128)	0.0167** (0.00840)	0.0125 (0.00936)	0.0113 (0.0139)	0.00730 (0.00540)	0.00970* (0.00574)
Quartertoelect = 10	0.00416 (0.00632)	0.00439 (0.00400)	0.00931 (0.00633)	0.00871 (0.0122)	0.0125 (0.00811)	0.0169* (0.00986)	0.00350 (0.0145)	0.00284 (0.00567)	0.00313 (0.00564)
Quartertoelect = 11	0.00571 (0.00610)	-0.00111 (0.00353)	0.00935 (0.00588)	0.00754 (0.0129)	0.0115 (0.00820)	0.00604 (0.0101)	0.00836 (0.0147)	0.00587 (0.00509)	0.00332 (0.00529)
Quartertoelect = 12	0.00160 (0.00631)	0.000268 (0.00346)	0.00460 (0.00585)	-0.000817 (0.0114)	0.0140 (0.00881)	0.00692 (0.00826)	0.00992 (0.0145)	-0.00753* (0.00411)	-0.00750* (0.00406)
Quartertoelect = 13	0.00417 (0.00599)	-0.00498 (0.00305)	0.00425 (0.00543)	-0.000679 (0.00948)	0.00650 (0.00752)	0.00857 (0.00633)	0.00764 (0.0111)	-0.00392 (0.00442)	-0.00222 (0.00466)
Quartertoelect = 14	0.00455 (0.00513)	0.00616* (0.00320)	0.00996* (0.00515)	-0.00595 (0.0105)	0.00914 (0.00625)	-0.000736 (0.00732)	-0.00389 (0.00904)	-0.0112** (0.00462)	-0.0124** (0.00511)
Quartertoelect = 15	-0.00271 (0.00333)	0.00139 (0.00347)	0.00289 (0.00422)	-0.00577 (0.00558)	0.00681 (0.00487)	0.00153 (0.00548)	-0.00901 (0.00608)	-0.00748* (0.00446)	-0.0101** (0.00452)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	164545	150293	151246	58773	155695	27231	134116	164545	164545
R-squared	0.019	0.019	0.019	0.026	0.019	0.018	0.019	0.019	0.019

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Data come from a merge with the Administrative Office of the U.S. Courts (1971-2006). Data is organized at the case level.

Table 10: Electoral Cycles in Dissents by Type of Presidential Election

	(1)	(2)	(3)	(4)
	Dissent (2-1 Decision)			
Mean of dep. var.	0.079			
Last Three Quarters	0.0389*** (0.00835)	0.0505*** (0.00979)	0.0548*** (0.00911)	0.0521*** (0.00907)
Close Election (Electoral Count < 55%)	0.0830*** (0.0170)			0.0798*** (0.0157)
Close Election (Electoral Count < 55%) * Last Three Quarters	0.0851** (0.0395)			0.0718* (0.0396)
Landslide Election (Electoral Count > 95%)		0.0218 (0.0173)		0.00615 (0.0166)
Landslide Election (Electoral Count > 95%) * Last Three Quarters		-0.0399*** (0.0145)		-0.0201* (0.0102)
War			0.0192 (0.0130)	0.0192 (0.0130)
War * Last Three Quarters			-0.0605*** (0.0113)	-0.0500*** (0.0110)
Year FE	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes
Observations	18686	18686	18686	18686
R-squared	0.020	0.020	0.021	0.021

Notes: Robust OLS standard errors in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Electoral Count is the percentage of the electoral college achieved by the winning political party, which ranges from 50 to 100. Standard errors clustered at the quarter-year level. The explanatory variables of interest are a dummy variable indicating whether a case was decided in the three quarters immediately preceding a presidential election and the interaction with a dummy variable indicating whether the margin of victory in the electoral count was less than 10% (Column 1), a dummy variable indicating whether the margin of victory in the electoral count was more than 90% (Column 2), and a dummy variable indicating whether the decision was made during wartime (Column 3). Standard errors are clustered at the Election level. Data is organized at the case level.

Table 11: Electoral Cycles in Dissents and Influence of Party of Appointment on Voting Valence Across Time

	(1)	(2)	(3)	(4)
	Dissent (2-1 Decision) 5% Sample (1925-2002)		Liberal Vote 5% Sample (1925-2002)	
Mean of dep. var.	0.079		-0.157	
Last Quarter	0.0429** (0.0178)	0.0429** (0.0178)		
Year > 1975 * Last Quarter	0.0439** (0.0201)	0.0480** (0.0222)		
Democrat Appointee			0.0523*** (0.0106)	0.0513*** (0.0110)
Democrat Appointee * Year > 1975			0.0462*** (0.0159)	0.0398** (0.0171)
Born on or after 1940		0.00560 (0.0163)		-0.0334* (0.0200)
Born on or after 1940 * Last Quarter		-0.0254 (0.0689)		
Born on or after 1940 * Democrat Appointee				0.0714** (0.0320)
Year FE	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes
Quarter-to-Election FE	Yes	Yes	Yes	Yes
Observations	18686	18686	56058	51460
R-squared	0.022	0.022	0.087	0.088

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). In Column 2, Born on or after 1940 refers to the percent of panel members born on or after 1940, whereas in Column 4, it refers to the judge's birth year. Columns 1 and 2 have data organized at the case level. Columns 3 and 4 have data organized at the vote level. See Tables 1 and 2 for additional notes.

Table 12: Judicial Experience and Electoral Cycles in Dissents

	(1)	(2)
	Dissent Vote	
	5% Sample (1925-2002)	N
	Each coefficient represents a separate regression	
Last Quarter	0.0174***	56058
(All Experience)	(0.00415)	
Last Quarter	0.0343***	6314
(Experience = 1-2)	(0.0116)	
Last Quarter	0.00976	6526
(Experience = 3-4)	(0.0147)	
Last Quarter	0.0261	6075
(Experience = 5-6)	(0.0185)	
Last Quarter	0.0283***	5644
(Experience = 7-8)	(0.0106)	
Last Quarter	0.0173	5041
(Experience = 9-10)	(0.0166)	
Last Quarter	-0.0256	4390
(Experience = 11-12)	(0.0159)	
Last Quarter	0.0341*	3605
(Experience = 13-14)	(0.0192)	
Last Quarter	0.00159	3002
(Experience = 15-16)	(0.0166)	
Last Quarter	0.0212	2288
(Experience = 17-18)	(0.0256)	
Last Quarter	0.00878	2737
(Experience = 19-21)	(0.0134)	
Last Quarter	0.0188	3033
(Experience = 22-27)	(0.0135)	
Last Quarter	-0.00982	1292
(Experience = 28-35)	(0.0226)	
Last Quarter	0.0209**	2984
(Experience = 1)	(0.0106)	
Last Quarter	0.0505**	3330
(Experience = 2)	(0.0222)	
Year FE	Yes	
Circuit FE	Yes	
Season FE	Yes	
Legal Issue FE	Yes	
Divided (RDD or DRR) FE	Yes	
Quarter-to-Election FE	Yes	

Notes: Robust OLS standard errors clustered at the quarter-year in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). The explanatory variable of interest is a dummy variable indicating whether the case was decided in the quarter immediately preceding a presidential election. Numbers in Column 2 do not sum up to the sample size in the first row as some cases have judges with years of experience outside the displayed range. Data is organized at the vote level.

Table 13: Judicial Characteristics and Electoral Cycles in Dissents

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Dissent Vote (5% Sample, 1925-2002)									
Mean of dep. var.	0.024									
	OLS							Probit		
Divided * Last Quarter	0.0126*							0.00699	0.135	0.129
	(0.00680)							(0.00950)	(0.159)	(0.166)
Minority (D of DRR or R of RDD)		0.0191*						0.0191	0.197	0.189
* Last Quarter		(0.0103)						(0.0124)	(0.144)	(0.154)
Federal Prosecution Experience			0.0202					0.0206	0.214*	0.280**
* Last Quarter			(0.0134)					(0.0130)	(0.125)	(0.140)
Elevated * Last Quarter				-0.0318***				-0.0333***		
				(0.00750)				(0.0107)		
Potential Nominee					-0.00550			0.00190	-0.0510	-0.0147
* Last Quarter					(0.00890)			(0.00925)	(0.126)	(0.136)
Retire or Resign Next Year						0.00625		0.00685	0.136	0.0814
* Last Quarter						(0.0223)		(0.0215)	(0.251)	(0.249)
Presidential Party Candidate Wins							-0.00332	-0.0000104	0.00293	0.000750
* Last Quarter							(0.00625)	(0.00552)	(0.0784)	(0.0829)
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Quarter-to-Election FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Observations	56058	56058	51086	51460	56058	56058	56058	51086	51052	42719
R-squared	0.039	0.040	0.025	0.025	0.039	0.039	0.039	0.026		

Notes: Robust standard errors clustered at the quarter-year in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Federal prosecution experience is an indicator variable equal to 1 if the judge was previously a U.S. Attorney or Assistant U.S. Attorney. Elevated is an indicator variable equal to 1 if the judge was eventually elevated to higher office. Potential nominee is an indicator variable equal to 1 if the judge was on the a shortlist for the Supreme Court. Data is organized at the vote level.

Table 14: Judicial Decisions During Wartime

	(1)	(2)	(3)	(4)	(5)	(6)
	5% Sample (1925-2002)					
Mean of dep. var.	Dissent (2-1 Decision) 0.079		Dissent Vote 0.023		Affirm 0.568	Reverse 0.269
World War 2	0.0240*					
	(0.0132)					
Korean War	-0.0187*					
	(0.0101)					
Vietnam War	-0.0126**					
	(0.00565)					
Gulf War	0.0257					
	(0.0197)					
Afghan War	-0.0157					
	(0.0229)					
Divided	0.0150***	0.0198***	0.00720***	0.00844***	-0.0139*	0.0138*
	(0.00442)	(0.00499)	(0.00150)	(0.00167)	(0.00775)	(0.00731)
War		0.00992	0.00172	0.00632*	0.0459***	-0.0304***
		(0.00869)	(0.00317)	(0.00364)	(0.0113)	(0.0102)
Divided * War		-0.0263***		-0.00644*		
		(0.00972)		(0.00331)		
Inexperience (≤ 10 Years)			0.00469*	0.00470*		
			(0.00264)	(0.00264)		
Inexperience * War			-0.00835**	-0.00863**		
			(0.00395)	(0.00392)		
Year (linear time trend)	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes
Legal Issues FE	Yes	Yes	Yes	Yes	Yes	Yes
Judge FE	No	No	Yes	Yes	No	No
Observations	18686	18686	49374	49374	18686	18686
R-squared	0.014	0.014	0.024	0.024	0.019	0.006

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Columns 1, 2, 5, and 6 have data organized at the case level. Columns 3 and 4 have data organized at the vote level.

Appendix Table A: Summary Statistics

<i>Panel A: Case Level</i>		<i>Panel B: Judge-Vote Level</i>	
	5% Sample (1925-2002)		5% Sample (1925-2002)
Dissent	0.0786 (0.00197)	Dissent	0.0234 (0.000638)
Divided (DRR or RDD)	0.697 (0.00336)	Majority	0.768 (0.00178)
Criminal	0.269 (0.00324)	Previous US Attorney or Assistant US Attorney	0.154 (0.00160)
Civil Rights	0.0859 (0.00205)	Democrat	0.510 (0.00211)
First Amendment, Due Process, Privacy	0.0281 (0.00121)	Appointed by Democrat	0.491 (0.00211)
Labor Relations	0.0723 (0.00189)	Presidential Party Candidate Wins Election	0.496 (0.00211)
Economic Activity	0.509 (0.00366)	Close Election (Electoral Count < 55%)	0.048 (0.00090)
Dissent for Procedural, not Merit Reasons	0.0925 (0.0193)	Age	62.19 (0.0393)
Citations by Subsequent Opinions	6.143 (0.0693)	Experience	10.33 (0.0335)
Citations by Subsequent Dissents	0.549 (0.00787)	Inexperience (Experience ≤ 10 years)	0.600 (0.00221)
Affirm	0.568 (0.00362)	Elevated	0.0161 (0.000555)
Reverse	0.269 (0.00303)	Retire Next Year	0.0309 (0.000731)
N	18686	N	56147
<i>Panel C: Judge Level</i>		Voting Valence if Democratic Appointee	
Resignation	0.0230 (0.00310)	Judge	
Retirement	0.124 (0.00870)	Conservative	47%
Retirement, when Same Party in Power	0.0506 (0.00521)	Liberal	36%
Retirement, when Different Party in Power	0.0732 (0.00611)	Mixed	6%
Resignation, when Same Party in Power	0.0152 (0.00248)	Could not be determined	11%
Resignation, when Different Party in Power	0.00781 (0.00178)	N	27550
N	2433	Voting Valence if Republican Appointee	
		Judge	
		Conservative	52%
		Liberal	32%
		Mixed	7%
		Could not be determined	9%
		N	28597

Note: Coefficients shown are from an OLS regression on a constant.

Appendix Table B: Electoral Cycles - Robustness Checks

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	5% Sample (1925-2002)							
	Dissent (2-1 Decision)							Concurrence
Mean of dep. var.	0.079							0.036
Quartertoelect = 1	0.0680*** (0.0135)	0.0653*** (0.0146)	0.0527*** (0.0132)	0.0668*** (0.0135)	0.0868*** (0.0221)	0.0680*** (0.0124)	0.0667*** (0.0134)	0.0195** (0.00767)
Quartertoelect = 2	0.0341** (0.0145)	0.0256 (0.0163)	0.0255* (0.0138)	0.0331** (0.0145)	0.0457** (0.0205)	0.0341*** (0.0106)	0.0329** (0.0144)	0.0182** (0.00725)
Quartertoelect = 3	0.0343** (0.0133)	0.0291* (0.0149)	0.0302** (0.0134)	0.0335** (0.0133)	0.0451** (0.0192)	0.0343*** (0.00956)	0.0337** (0.0133)	0.00923 (0.00598)
Quartertoelect = 4	0.00582 (0.0111)	0.0135 (0.0135)	0.00578 (0.0111)	0.00580 (0.0111)	0.00669 (0.0133)	0.00582 (0.0116)	0.00549 (0.0110)	0.00495 (0.00733)
Quartertoelect = 5	0.0251 (0.0159)	0.0260 (0.0176)	0.0102 (0.0156)	0.0245 (0.0159)	0.0317 (0.0215)	0.0251 (0.0215)	0.0250 (0.0158)	0.00172 (0.0103)
Quartertoelect = 6	0.0115 (0.0153)	0.0167 (0.0183)	0.00302 (0.0155)	0.0106 (0.0153)	0.0154 (0.0182)	0.0115 (0.0119)	0.0113 (0.0151)	0.00265 (0.0104)
Quartertoelect = 7	0.0238 (0.0153)	0.0290 (0.0186)	0.0194 (0.0150)	0.0233 (0.0153)	0.0286 (0.0195)	0.0238 (0.0156)	0.0233 (0.0152)	0.00626 (0.0100)
Quartertoelect = 8	0.00870 (0.0142)	0.00722 (0.0171)	0.00859 (0.0141)	0.00903 (0.0141)	0.00910 (0.0151)	0.00870 (0.0157)	0.00850 (0.0141)	0.00301 (0.00917)
Quartertoelect = 9	-0.00718 (0.0157)	-0.0151 (0.0191)	-0.0218 (0.0157)	-0.00707 (0.0157)	-0.00378 (0.0145)	-0.00718 (0.0199)	-0.00704 (0.0156)	-0.00208 (0.0111)
Quartertoelect = 10	-0.0110 (0.0168)	-0.0191 (0.0199)	-0.0193 (0.0174)	-0.0115 (0.0168)	-0.00754 (0.0144)	-0.0110 (0.0170)	-0.0107 (0.0168)	-0.00521 (0.0119)
Quartertoelect = 11	0.00269 (0.0167)	-0.0108 (0.0197)	-0.00142 (0.0171)	0.00259 (0.0167)	0.00399 (0.0159)	0.00269 (0.0162)	0.00332 (0.0165)	-0.00946 (0.0114)
Quartertoelect = 12	-0.00929 (0.0129)	-0.0116 (0.0148)	-0.00912 (0.0129)	-0.00948 (0.0129)	-0.00658 (0.0110)	-0.00929 (0.0155)	-0.00943 (0.0129)	0.00209 (0.00745)
Quartertoelect = 13	0.00451 (0.0151)	0.00913 (0.0171)	-0.0101 (0.0148)	0.00444 (0.0150)	0.00477 (0.0138)	0.00451 (0.0198)	0.00427 (0.0151)	0.00360 (0.00795)
Quartertoelect = 14	-0.0159 (0.0147)	-0.0228 (0.0166)	-0.0243 (0.0151)	-0.0166 (0.0146)	-0.0110 (0.0118)	-0.0159 (0.0149)	-0.0156 (0.0147)	-0.00425 (0.00795)
Quartertoelect = 15	-0.0154 (0.0121)	-0.0195 (0.0145)	-0.0194 (0.0127)	-0.0155 (0.0120)	-0.0121 (0.00929)	-0.0154 (0.0141)	-0.0152 (0.0122)	-0.00397 (0.00828)
Concurrence							0.0665*** (0.0154)	
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Probability Weights	No	Yes	No	No	No	No	No	No
Season (Months 3-5/6-8/9-11/12-2) FE	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Season (Months 1-3/4-6/7-9/10-12) FE	No	No	Yes	No	No	No	No	No
Divided (RDD or DRR) FE	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Panel (DDD, DDR, DRR, or RRR) FE	No	No	No	Yes	No	No	No	No
Probit	No	No	No	No	Yes	No	No	No
Cluster Quarter-Year	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Cluster Circuit	No	No	No	No	No	Yes	No	No
Observations	18686	18686	18686	18686	18686	18686	18686	18686
R-squared	0.021	0.021	0.022	0.022		0.021	0.023	0.016

Notes: Robust standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Probability weights use statistics on the number of cases in each circuit year according to the 5% sample codebook. The omitted dummy variable indicating the number of quarters remaining before the presidential election is 16 quarters. Data is organized at the case level.

Appendix Table C: Electoral Cycles in Dissents - Additional Robustness Checks

	(1)	(2)	(3)	(4)
	5% Sample (1925-2002)			
Mean of dep. var.	0.079			
	OLS	Probit	Drop 1 Circuit	Keep 1 Circuit
Quarters to Election	-0.00284*** (0.000709)	-0.00293*** (0.000765)	Each coefficient represents a separate OLS regression.	
Last Quarter All Circuits				0.0680*** (0.0135)
Last Quarter Circuit 1			0.0686*** (0.0142)	0.0747* (0.0429)
Last Quarter Circuit 2			0.0679*** (0.0142)	0.0778 (0.0600)
Last Quarter Circuit 3			0.0639*** (0.0136)	0.118* (0.0661)
Last Quarter Circuit 4			0.0715*** (0.0138)	0.0301 (0.0581)
Last Quarter Circuit 5			0.0729*** (0.0138)	0.0355 (0.0296)
Last Quarter Circuit 6			0.0627*** (0.0130)	0.127*** (0.0436)
Last Quarter Circuit 7			0.0706*** (0.0142)	0.0509 (0.0372)
Last Quarter Circuit 8			0.0714*** (0.0143)	0.0252 (0.0438)
Last Quarter Circuit 9			0.0674*** (0.0135)	0.0876** (0.0345)
Last Quarter Circuit 10			0.0713*** (0.0149)	0.0459 (0.0350)
Last Quarter Circuit 11			0.0685*** (0.0139)	0.0706 (0.0537)
Last Quarter Circuit 12			0.0603*** (0.0145)	0.177*** (0.0653)
Year FE	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	No
Season FE	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes
Quarter-to-Election FE	No	No	Yes	Yes

Notes: Robust standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). The explanatory variables of interest is a dummy variable indicating whether it is the last quarter before an election (Columns 3-5) or a continuous variable for quarters to election (Columns 1-2). Marginal effect from a probit specification of dissent on continuous variable for quarters to election in Column 2. Data is organized at the case level.

Appendix Table D: Panel Composition, Case Type, and Case Load Over Political Cycle

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Divided Panel	Criminal	Civil Rights	First Amendment, Due Process, Privacy	Labor Relations	Economic Activity	Monthly # of Publications (AOC 1971-1999)
Mean of dep. var.	0.697	0.269	0.086	0.028	0.072	0.509	260
Quartertoelect = 1	-0.0100 (0.0196)	-0.0168 (0.0221)	-0.0111 (0.0156)	-0.0140 (0.00996)	-0.000990 (0.0114)	0.0143 (0.0304)	0.501 (8.242)
Quartertoelect = 2	0.0161 (0.0212)	0.00356 (0.0215)	-0.0131 (0.0144)	-0.00190 (0.00952)	-0.0174 (0.0126)	0.0234 (0.0269)	-7.276 (9.106)
Quartertoelect = 3	0.00598 (0.0212)	-0.0109 (0.0195)	-0.0164 (0.0135)	-0.0122 (0.00842)	0.00858 (0.0124)	0.0248 (0.0247)	2.358 (8.693)
Quartertoelect = 4	0.00489 (0.0220)	0.00925 (0.0213)	-0.0159 (0.0147)	0.00653 (0.00867)	0.00697 (0.0114)	-0.0217 (0.0261)	-11.83 (8.653)
Quartertoelect = 5	-0.0305 (0.0311)	-0.0242 (0.0293)	-0.00742 (0.0174)	-0.00931 (0.0107)	-0.0195 (0.0147)	0.0326 (0.0344)	-8.162 (11.05)
Quartertoelect = 6	-0.00880 (0.0302)	-0.0109 (0.0267)	-0.00751 (0.0184)	-0.00821 (0.0106)	-0.00586 (0.0159)	0.0256 (0.0313)	-16.91 (11.78)
Quartertoelect = 7	0.00431 (0.0298)	-0.0161 (0.0255)	0.00225 (0.0175)	-0.00722 (0.00969)	0.00697 (0.0165)	0.0190 (0.0305)	-10.39 (11.58)
Quartertoelect = 8	0.0288 (0.0270)	-0.0216 (0.0242)	0.000676 (0.0162)	-0.00713 (0.00850)	-0.00418 (0.0130)	0.0216 (0.0262)	-10.21 (10.26)
Quartertoelect = 9	0.00651 (0.0308)	-0.00947 (0.0292)	-0.0205 (0.0202)	-0.0131 (0.0109)	-0.0209 (0.0155)	0.0575* (0.0300)	-6.158 (11.85)
Quartertoelect = 10	0.00915 (0.0311)	-0.00102 (0.0290)	0.00251 (0.0185)	-0.0186* (0.0100)	-0.0362** (0.0148)	0.0484 (0.0322)	-19.02 (12.21)
Quartertoelect = 11	-0.00562 (0.0287)	-0.0372 (0.0293)	-0.00187 (0.0164)	-0.0210** (0.00940)	-0.0134 (0.0142)	0.0703** (0.0319)	-10.85 (11.58)
Quartertoelect = 12	-0.00609 (0.0264)	0.0127 (0.0220)	-0.0123 (0.0145)	-0.0108 (0.00700)	-0.0160 (0.0110)	0.0305 (0.0217)	-11.29 (8.398)
Quartertoelect = 13	-0.0270 (0.0302)	0.00922 (0.0239)	-0.0152 (0.0168)	-0.00570 (0.00855)	-0.0248** (0.0117)	0.0396 (0.0248)	-6.209 (9.896)
Quartertoelect = 14	-0.00711 (0.0300)	0.0176 (0.0234)	-0.00223 (0.0158)	-0.0126 (0.00893)	-0.0189 (0.0124)	0.00518 (0.0241)	-11.01 (9.421)
Quartertoelect = 15	-0.00282 (0.0307)	-0.00209 (0.0226)	-0.00727 (0.0164)	-0.0209*** (0.00778)	-0.0174 (0.0123)	0.0518** (0.0251)	-6.834 (9.101)
Divided (DRR or RDD)		-0.0108 (0.00750)	0.00151 (0.00472)	0.00271 (0.00266)	0.00396 (0.00443)	0.00396 (0.00770)	
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	18686	18686	18686	18686	18686	18686	4344
R-squared	0.048	0.050	0.053	0.022	0.021	0.099	0.773

Notes: Robust OLS standard errors in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). In Columns 1-6, data comes from 5% Sample (1925-2002) and standard errors are clustered at the quarter-year level. The outcome variable in Column 1 is a dummy variable equal to 1 if the case was heard by an ideologically divided panel. The outcome variables in Columns 2-6 are dummy variables indicating the type of legal issue addressed in the case. Data is organized at the case level. The outcome variable in Column 7 is the number of opinions; observations are at the month-year-circuit level. The explanatory variables of interest are dummy variables indicating the number of quarters remaining before the upcoming presidential election (16 quarters to the election is the omitted dummy variable). The sample comes from the Administrative Office of the U.S. Courts.

Appendix Table E: Workload, Fraction of Opinions Published, and Time Spent per Case Overall Over Political Cycle

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Quarters to Election from Judgement	Correspondin g Quarter-to- Election	Total Frequency	Frequency per Month	Fraction of Opinions Published	Docket and Judgment Dates	Docket and Judgment Dates	Average Number of Months Between Docket and Judgment Dates (Winsorized at 1%)		Average Number of Months Between Hearing and Judgment Dates (Winsorized at 1%)	
							Average	Median	Average	Median
1	12	52746	4396	0.2495074	8.5920	7	8.4868	3.7137	3	3.6145
2	12	53391	4449	0.2813046	8.9610	7	8.8485	3.3079	2	3.2679
3	12	54443	4537	0.2516766	8.6393	7	8.5670	3.1136	2	3.0737
4	12	47668	3972	0.2465562	8.7825	7	8.5154	3.0224	2	2.9523
5	12	50326	4194	0.270668	8.5823	7	8.4547	3.5885	3	3.5145
6	10	44171	4417	0.2720845	8.6311	7	8.5164	3.1347	2	3.0906
7	9	41154	4573	0.2342064	8.6963	7	8.5808	2.9408	2	2.9010
8	9	38264	4252	0.2344589	8.6380	7	8.5039	2.9515	2	2.8933
9	9	40306	4478	0.2743085	9.2000	7	8.8493	5.0413	3	4.1418
10	11	51733	4703	0.2524602	8.8967	7	8.7849	3.1818	2	3.1350
11	12	58064	4839	0.2241771	9.0300	7	8.8910	3.0743	2	3.0056
12	12	53912	4493	0.2186259	8.7906	7	8.6921	3.0238	2	2.9656
13	12	55714	4643	0.2533894	8.9531	7	8.8551	3.6881	3	3.6047
14	12	57527	4794	0.2568451	8.7720	7	8.5901	3.2822	2	3.2325
15	12	55131	4594	0.2342661	8.6848	7	8.5649	2.9590	2	2.9247
16	12	51019	4252	0.2325924	8.6368	7	8.5363	2.9959	2	2.9382
Obs				494686		805569	805569		178613	178613
Mean			4474	0.2565648		8.7818	8.6446		3.3074	3.2053
Std. Dev.			228.6077			8.0387	7.1462		4.0422	3.3524

Notes: Data come from Administrative Office of the U.S. Courts.

Appendix Table F: Electoral Cycles in Dissents by Presidential Appointment

	(1)	(2)
	Dissent Vote	
Keep 1 set of presidential appointees at a time	5% Sample (1925-2002)	N
	Each coefficient represents a separate regression	
T. Roosevelt	-0.00465 (0.00390)	315
Taft	-0.0220 (0.0352)	154
Wilson	0.00285 (0.0137)	1567
Harding	-0.00260 (0.00840)	353
Coolidge	-0.00925 (0.00953)	2366
Hoover	0.00488 (0.0107)	2585
F. Roosevelt	-0.00221 (0.00603)	6055
Truman	0.0110 (0.00908)	3006
Eisenhower	-0.00115 (0.00638)	6109
Kennedy	0.0156 (0.0136)	2585
Johnson	0.00336 (0.00915)	5563
Nixon	0.0127 (0.00903)	4836
Ford	-0.0154 (0.0293)	1239
Carter	0.00389 (0.0116)	5320
Reagan	0.0225*** (0.00699)	6185
Bush	0.0463*** (0.0109)	2011
Clinton	0.0463* (0.0260)	1091
Year FE	Yes	
Circuit FE	Yes	
Season FE	Yes	
Legal Issue FE	Yes	
Divided (RDD or DRR) FE	Yes	

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). The explanatory variable of interest is a dummy indicator for last 3 quarters before an election. Data is organized at the vote level.

Appendix Table G: Test for Displacement

	(1)	(2)	(3)
<i>Panel A: Election cycle begins with a year divisible by four</i>	Dissent Increase: Dissent Rate in Three Quarters Before Election - Mean Dissent Rate (5% Sample, 1925-2002)		
Mean of dep. var.	0.006		
Dissent Decrease: Mean Dissent Rate - Dissent Rate in Three Quarters After Election	-0.246*** (0.0839)	-0.266*** (0.0910)	-0.246** (0.0993)
Circuit FE	No	Yes	Yes
Election FE	No	No	Yes
Observations	211	211	211
R-squared	0.049	0.108	0.191
<i>Panel B: Election cycle begins with a year where year-2 is divisible by four</i>	Dissent Increase: Dissent Rate in Three Quarters Before Election - Mean Dissent Rate (5% Sample, 1925-2002)		
Mean of dep. var.	0.008		
Dissent Decrease: Mean Dissent Rate - Dissent Rate in Three Quarters After Election	-0.230*** (0.0641)	-0.241*** (0.0692)	-0.244*** (0.0755)
Circuit FE	No	Yes	Yes
Election FE	No	No	Yes
Observations	211	211	211
R-squared	0.053	0.131	0.184

Notes: Robust OLS standard errors in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Each election-circuit is a separate observation. Standard errors are clustered at the election level. Dissent rate in three quarters before election is winsorized at the 1% level. The number of cases in these three quarters are used as regression weights. Mean Dissent Rate is the mean dissent rate in the electoral cycle not including the three quarters before and after the election. For example, dissents from February to October of 2000 comprise the mean dissent rate in the three quarters before the 2000 election, dissents from November of 2000 to July of 2001 comprise the mean dissent rate in the three quarters after the 2000 election, dissents from other months between 2000 and 2003 comprise the mean dissent rate for that election cycle. Election fixed effects represent every group of four consecutive years beginning with a year divisible by four in Panel A. Results are robust to shifting the cycle by two years so that the mean dissent rate comprise months between 1998 to 2001 not including the six month window around the election in Panel B.

Appendix Table H: Electoral Cycles in Newspaper Articles

	(1)	(2)	(3)	(4)	(5)	(6)
Mean of dep. var.	Mentioning Federal Appellate Court Dissents 3.09			Mentioning "Republican" and "Democrat" 148		
Last Quarter	-0.343 (0.711)	0.214 (0.966)	-0.662 (1.505)	81.54*** (9.646)	65.74*** (13.95)	24.65*** (9.501)
Quarter-to-election FE	No	Yes	Yes	No	Yes	Yes
Year FE	No	No	Yes	No	No	Yes
Observations	183	183	183	1294	1294	1294
R-squared	0.000	0.075	0.273	0.065	0.121	0.810

Notes: Robust OLS standard errors in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Data is collapsed to quarter-year level. Data in Columns 1-3 come from Newsbank searches using (judgment or 'court ruling') and ([enumerated circuit names]) and (not 'supreme court') and dissent from 1981 to 2013. Data in Columns 4-6 come from ProQuest search of New York Times articles from 1900-2007 mentioning 'Republican' and 'Democrat' in the same article.

Appendix Table I: Electoral Cycles in Dissents by Type of Election

	(1)	(2)	(3)	(4)
	Dissent Vote			
	5% Sample (1925-2002)			
Mean of dep. var.	0.024			
Quarter before Presidential Election	0.0152*** (0.00417)			0.0101** (0.00476)
Quarter before Senator Election		0.00801** (0.00402)		0.00901** (0.00434)
Quarter before Governor Election			-0.00146 (0.00393)	-0.00176 (0.00428)
Year FE	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	Yes
Season FE	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes
Quarter-to-Election FE	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes
Observations	56058	56058	56058	56058
R-squared	0.039	0.039	0.039	0.039

Notes: Robust OLS standard errors clustered at quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Senator Elections occur every six years with roughly one-third of states having elections at the same time. Governor Elections are every four years (only nine states hold them at the same time as Presidential elections). Senator and Governor Elections are almost always held in November.

Appendix Table J: Electoral Cycles in the Correlation between Party of Appointment and Judges' Votes

<i>Panel A</i>	(1)	(2)	(3)	(4)
	Liberal Vote (5% Sample, 1925-2002)			
Code	+1/0/-1		+1 vs. 0/-1	+1/0 vs. -1
Mean of dep. var.	-0.157		0.340	0.503
Judge appointed by Democrat	0.0451*** (0.00402)	0.0453*** (0.00398)	0.0226*** (0.00200)	0.0227*** (0.00207)
Judge appointed by Democrat * Last Quarter	0.0432** (0.0214)	0.0414** (0.0206)	0.0269** (0.0104)	0.0144 (0.0105)
Case FE	Yes	Yes	Yes	Yes
Year FE	No	Yes	Yes	Yes
Circuit FE	No	Yes	Yes	Yes
Season FE	No	Yes	Yes	Yes
Legal Issue FE	No	Yes	Yes	Yes
Divided (RDD or DRR) FE	No	Yes	Yes	Yes
Quarter-to-Election FE	No	Yes	Yes	Yes
Observations	56058	56058	56058	56058
R-squared	0.928	0.929	0.934	0.938
<i>Panel B</i>	Liberal Vote (5% Sample, 1925-2002)			
Mean of dep. var.	-0.157		0.340	0.503
Judge appointed by Democrat	0.0450*** (0.00396)	0.0449*** (0.00396)	0.0223*** (0.00198)	0.0226*** (0.00206)
Judge appointed by Democrat * Last Quarter	0.0376* (0.0207)	0.0372* (0.0205)	0.0246** (0.0103)	0.0126 (0.0105)
Case FE	Yes	Yes	Yes	Yes
Circuit x Year x Quarter FE	Yes	Yes	Yes	Yes
Season FE	No	Yes	Yes	Yes
Legal Issue FE	No	Yes	Yes	Yes
Divided (RDD or DRR) FE	No	Yes	Yes	Yes
Quarter-to-Election FE	No	Yes	Yes	Yes
Observations	5659	5659	5659	5659
R-squared	0.930	0.930	0.935	0.940

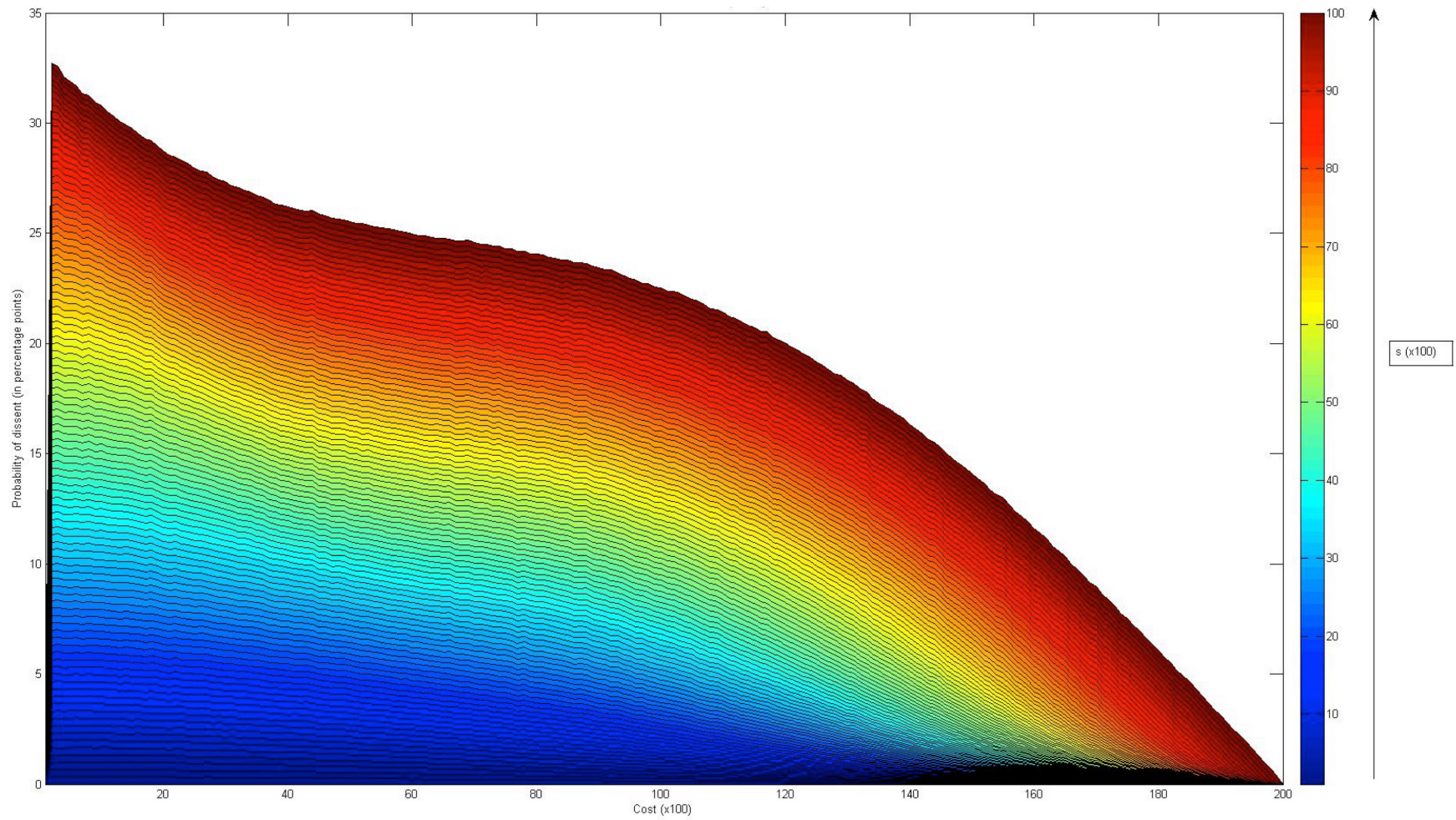
Notes: Robust OLS standard errors double clustered at the quarter-year and case level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). Vote-level regression. The outcome variable is Liberal Vote, which is coded as 1 for liberal, 0 for mixed or not applicable, and -1 for conservative.

Appendix Table K: Electoral Cycles in Dissents by Case Type

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	1-Digit Case Category						2-Digit Case Category			
	Criminal	Civil Rights	First Amendment	Due Process	Labor Relations	Economic Activity	Misc.	Criminal Federal	Economic Commercial	Economic Property
Mean of dep. var.	0.077	0.100	0.185	0.100	0.093	0.071	0.073	0.071	0.071	0.061
Quartertoelect = 1	0.0737*** (0.0192)	0.0339 (0.0494)	0.114 (0.152)	0.0486 (0.127)	0.0449 (0.0573)	0.0586*** (0.0162)	-0.00848 (0.0950)	0.0569*** (0.0202)	0.0942** (0.0375)	0.185*** (0.0690)
Quartertoelect = 2	0.0453** (0.0178)	-0.00204 (0.0432)	0.0300 (0.141)	-0.0625 (0.0639)	-0.0351 (0.0388)	0.0306** (0.0154)	-0.0679 (0.0840)	0.0362* (0.0184)	0.0311 (0.0300)	0.0513 (0.0357)
Quartertoelect = 3	0.0300 (0.0220)	0.0518 (0.0554)	-0.117 (0.133)	0.0486 (0.105)	0.0134 (0.0457)	0.0223 (0.0143)	-0.102 (0.0805)	0.0234 (0.0217)	0.0186 (0.0220)	0.0638* (0.0349)
Quartertoelect = 4	0.0406** (0.0179)	-0.0395 (0.0460)	-0.176 (0.124)	0.152 (0.143)	0.00417 (0.0374)	-0.00981 (0.0123)	-0.130* (0.0750)	0.0310 (0.0203)	-0.00592 (0.0200)	0.0217 (0.0212)
Quartertoelect = 5	0.0590*** (0.0204)	-0.0251 (0.0436)	0.0441 (0.153)	0.0804 (0.155)	0.00345 (0.0456)	0.0159 (0.0152)	0.0258 (0.0922)	0.0592** (0.0234)	0.0234 (0.0262)	9.08e-17 (1.93e-09)
Quartertoelect = 6	0.0155 (0.0166)	-0.0163 (0.0454)	-0.250** (0.105)	-0.00694 (0.0837)	-0.0519 (0.0356)	0.0341* (0.0174)	-0.0615 (0.0877)	0.00613 (0.0170)	0.0670** (0.0274)	0.0357 (0.0256)
Quartertoelect = 7	0.0467*** (0.0171)	0.0101 (0.0475)	-1.58e-16 (0.156)	0.00417 (0.0901)	-0.0238 (0.0396)	0.0234 (0.0146)	-0.0749 (0.0932)	0.0504** (0.0208)	0.0481* (0.0255)	0.0870** (0.0430)
Quartertoelect = 8	0.0301* (0.0177)	0.00907 (0.0510)	0.0167 (0.158)	0.104 (0.113)	-0.0158 (0.0381)	0.0347** (0.0148)	-0.0554 (0.0859)	0.0269 (0.0179)	0.0857*** (0.0304)	0.100** (0.0464)
Quartertoelect = 9	0.0324* (0.0167)	-0.0167 (0.0458)	-0.0735 (0.130)	0.0208 (0.100)	0.00145 (0.0498)	0.0285* (0.0155)	-0.0679 (0.0851)	0.0415** (0.0193)	0.0512* (0.0294)	0.0435 (0.0418)
Quartertoelect = 10	0.0362** (0.0165)	0.0219 (0.0517)	-0.107 (0.132)	0.0913 (0.127)	0.0169 (0.0451)	0.0218* (0.0131)	-0.130* (0.0750)	0.0297 (0.0185)	0.0235 (0.0226)	0.154*** (0.0567)
Quartertoelect = 11	0.0415** (0.0208)	-0.0212 (0.0461)	-0.0833 (0.151)	0.0144 (0.0962)	0.0196 (0.0439)	0.0345** (0.0153)	-0.00223 (0.0919)	0.0480* (0.0257)	0.0557** (0.0224)	0.0417 (0.0404)
Quartertoelect = 12	0.00841 (0.0162)	0.0270 (0.0502)	-0.0921 (0.132)	-0.0625 (0.0639)	0.0294 (0.0501)	0.0285** (0.0143)	-0.0638 (0.0871)	0.000290 (0.0172)	0.0268 (0.0228)	0.0278 (0.0266)
Quartertoelect = 13	0.0558** (0.0225)	0.0256 (0.0455)	-0.0395 (0.131)	0.204 (0.156)	-0.00769 (0.0463)	0.0223 (0.0158)	-0.0749 (0.0918)	0.0460** (0.0212)	0.0578* (0.0297)	1.58e-16 (2.92e-09)
Quartertoelect = 14	0.0134 (0.0151)	-0.0555 (0.0399)	-0.200* (0.115)	0.00417 (0.0896)	-0.0394 (0.0363)	0.0394** (0.0170)	-0.0374 (0.0852)	0.0166 (0.0174)	0.0648** (0.0301)	0.100* (0.0511)
Quartertoelect = 15	0.00777 (0.0152)	-0.0341 (0.0405)	-1.70e-16 (0.167)	-0.0625 (0.0639)	-0.0518 (0.0398)	0.0270* (0.0139)	-0.0698 (0.0887)	0.0143 (0.0177)	0.0465* (0.0279)	0.0769* (0.0406)
Observations	5023	1605	275	209	1351	9509	518	4224	2543	610
R-squared	0.005	0.009	0.056	0.063	0.009	0.003	0.029	0.005	0.011	0.043

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Data comes from 5% Sample (1925-2002).

Appendix Figure A: Priming Model Simulation



Notes: Cost of dissent is on the x-axis, probability of dissent is on the y-axis. The color scale on the right represents the degree of priming of group identity.