

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

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Abstract The key mechanism for priming is that an activated concept becomes more likely than before to influence conscious judgments. To detect priming (of group identity) in the field, this article builds novel administrative linkages of US Circuit Court cases between judges' states and case development from District, Circuit, to (potentially) the Supreme Court. Three sets of results emerge. First, judges polarize in situations when identity is more likely to be salient, both within-judge and across space. Second, behavioral anomalies peak *three* months before the election—and appears due to the Presidential primaries, as dissents track monthly campaign ads in judges' states of residence. Third, auxiliary behavioral data is consistent with Type I thinking driving the effects. The effects replicate with concurrences (disagreement about reasoning) and the effect sizes suggest that up to one quarter of judicial dissents might be attributed to priming.

Keywords: Decision analysis, judgment, legal processes, priming, causal analysis

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1 Introduction

The key mechanism for priming is that an activated concept becomes more likely than before to influence conscious judgments (Bargh et al. 1995). Election campaigns can activate chronic identities (Ansolabehere and Iyengar 1997), so the partisan environment can cause judges to view cases in a different light. Such influence on judges may be implicit and subconscious. In electroencephalogram studies of political priming, subjects do not recall the stimulus (Morris et al. 2003); neurocorrelates of behavioral change in individuals are activated by advertisements that affect population behavior, even when individuals do not believe these advertisements would change people’s behavior (Falk et al. 2012). Priming research has received renewed attention.¹ Several aspects of the US Circuit Courts overcome challenges that make the field detection of priming effects difficult: 1) Rich data on the contexts and characteristics of judicial decision-making allows examining whether the characteristics that make individuals more susceptible to priming in the lab are also found in the field—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); the greater the concentration or number of primes, the stronger the overall priming effect (Srull and Wyer 1979). 2) High-frequency data allows studying 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). 3) Priming is arguably isolated from incentives or learning mechanisms as judges have life tenure.

The article presents novel data collection and the creation of administrative linkages between (1) biographies of judges, including their state of residence, their predicted ideology, and their elevation to or consideration for appointment to the Supreme Court; (2) a timeline of all milestones, including oral arguments, in administrative data on U.S. courts; (3)

¹“The Sin of Bad Science,” *Financial Times*, December 21, 2012. “Nobel Laureate Challenges Psychologists to Clean Up Their Act,” *Nature*, October 3, 2012.

potential subsequent appeal to and treatment by the U.S. Supreme Court; (4) subsequent citations, including those made by future dissents; (5) the types of reasoning used in dissents; (6) state-level monthly campaign ads, including the topic of the ads; (7) political environment; (8) newspaper reports of U.S. Courts of Appeals Court cases; and (9) the universe of cases from 1950 to 2007 machine-coded from OpenJurist (openjurist.org). The analysis of mechanisms uses a merge between Songer-Auburn’s 5% random sample and attributes of judges, Administrative Office of the U.S. Courts database, Wisconsin Advertising Project, CQ Voting and Elections Collection, NewsBank, and a handful of other sources, described in the supplemental materials (Appendix A - p. 50). Part of the 5% merge was first used in Berdejo and Chen (2017), which reported that just before U.S. Presidential elections, judges on the U.S. Courts of Appeals double the rate at which they dissent and vote along partisan lines, and that effects are accentuated for judges with less experience and on politically mixed panels. During wartime, judges suppress dissents, again, especially by judges with less experience and in politically mixed panels. The present article investigates why Presidential elections affect U.S. judges. It begins with replicating the basic election cycle in dissents for the universe of 293,868 cases machine-coded for dissents from 1950 to 2007.

Priming is the favored explanation for electoral cycles, and career concerns and caseload composition are among the alternatives. If priming is the explanation, judges should polarize in situations when identity is more likely to be salient, both within-judge and across space: 1) Effects should be larger for judges residing in states that receive more political attention before Presidential elections. 2) Across elections, effects should be correlated with the electoral conditions of the dissenter’s state. 3) A different set of elections whose timing varies by state—U.S. Senate elections—should further elevate dissents and only via the state of the dissenting judge. On the other hand, if career concerns is the explanation, the effects should be larger for judges elevated to the Supreme Court. And if caseload composition is the explanation, there should be an electoral cycle in the type or amount of cases. The supplemental materials use the lens of implicit priming to theoretically organize the empirical tests exam-

ined in this article (Appendix B - p. 57). These tests are grouped into two additional sets of results.

The first set of additional results begins with documenting a puzzle—significant elevation of monthly dissents peaks *three* months before the election in both the 5% and 100% sample—and then explains the peak as being due to the Presidential primaries. 1) Within elections, effects track the spatial and temporal variation in electoral intensity, proxied by the monthly campaign ads in the dissenting judge’s state of residence, since the primary season varies by state. Primaries end in the third month before the election, when parties generally hold their conventions to officially nominate the candidate who will represent them in the general election. Because the median voter within a party primary is more extreme than the median voter in the general election, priming may be more extreme during the primaries, after which some candidates move towards the middle (Brady et al. 2007). 2) Dissents begin declining precipitously in electorally unimportant states but remain elevated in electorally important states. 3) Electoral cycles in judicial behavior do not appear when the date of publication is exchanged with “placebo” dates—any of seven earlier stages of a case, including the date of oral argument. This final result suggests that the exact time at which a judge decides to dissent (during elections) occurs shortly before the publication of an opinion, rather than on the date of oral argument, which is usually the time when panels decide who will dissent (Hart et al. 2006; Epstein et al. 2013). 4) This interpretation of a late decision is further supported by a similar electoral cycle in concurrences, which increase by 50% before Presidential elections. Concurrences are a different kind of dissent—they are disagreements about the reasoning, rather than the verdict, of the majority opinion. Like dissents, they usually involve writing a separate opinion, and the decision to write a concurrence occurs after the first draft of the majority opinion has been circulated—significantly after the oral arguments.

The second set of additional results presents evidence consistent with Type I thinking driving the effects. 1) Dissents increase most significantly on topics of campaign ads—economic activity. These cases typically do not have judges dividing along political lines, but economic

issues are salient in election campaigns: 70% of campaign ads mention economic policy. Cases on topics like civil rights and due process, which are generally politically divisive, do not increase in dissents before elections—and only 0.26% of campaign ads mention civil rights and civil liberties. 2) Previous associative links between legal enforcement and political decision-making—specifically, experience as a federal prosecutor (U.S. Attorneys or Assistant U.S. Attorneys)—magnify electoral cycles. It might be worth noting that judges are told by society to consider their vote. This priming of a decision making structure for voting in one arena may affect the other, as judges are constantly voting. 3) Dissents before elections are twice as likely to be reasoned on procedural rather than substantive grounds than those made at other times. Dissents without a separate opinion also tend to increase. Relatedly, the majority opinions being dissented on are more likely to mention highly discretionary, miscellaneous legal issues, and are less likely to be cited in future dissents, thus potentially of lower quality. 4) Finally, when judges who are close in ideology sit together but are from different parties, the rate at which they disagree triples before a Presidential election; and when judges from the same party sit together, if one dissents, the one with the ideology score more distant from the other party dissents more. These final results along with the wartime results support an interpretation of priming of group identity.

To address alternative mechanisms, such as changes in case type, the supplemental materials (Appendix C - p. 60) report that electoral cycles do not appear in any of over 100 case and litigant characteristics nor in any of over 50 characteristics of judges either authoring or sitting on the case. Caseload is also unaffected. The results also appear not driven by career concerns: judges who are elevated to the Supreme Court are not more likely to dissent before Presidential elections. Potential Supreme Court candidates are also not differentially affected. Finally, to isolate priming effects from learning effects (Lenz 2009), note that if judges learn from elections, then elevated dissents should persist after the election, but they do not. Nor are the effects only about mood, since mood shifts would affect all judges.

Together, the results suggest that the dissents appear to be more last minute and less

reflective than dissents made in other time periods. These dissents also crowd the docket, since cases with dissents are 2–3 times more likely to be heard in the Supreme Court, which interestingly appears to partly recognize and remedy as dissents before elections are only half as likely to yield a reversal. However, partisanship doubling on politically unified panels before elections would go uncorrected by the Supreme Court.

2 Results

2.1 Electoral Cycles in Judicial Behavior

Dissents

In the basic results, dissents increase and are most frequent in the quarters preceding a Presidential election. Berdejo and Chen (2017) presents raw data–group means–indicating a low of 6% to a high of 11% in the quarter before the election. Table 1 presents the regression results, which are robust 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). A noticeable increase also appears in the 9th quarter before a Presidential election; this time period is during the midterm elections, when U.S. House and some U.S. Senate seats are up for election. When judges are distinguished by state of residence, U.S. Senate elections significantly increase dissents, as shown below. Moreover, midterm elections increase the correlation between the party of appointment and voting valence (i.e., whether the vote has a conservative or liberal ideology) even for panels with all three judges appointed by the same party. Effects on vote ideology may be stronger than effects on dissent, since judges may more strongly correlate their vote ideology with their party of appointment even when they do not dissent.

The result is robust to higher-frequency analysis. Dissents are elevated for ten months leading up to a Presidential election. Figures 1A and 1B show that the electoral cycle remains statistically significant when broken down to the monthly level throughout the primary season. Consistent with this elevation, before elections, the news cycle is amplified along partisan

lines.² 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 results are 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. Appendix Figure 1A 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.³

²Appendix Figure 2A shows that the number of *New York Times* articles mentioning both “Republican” and “Democrat” increases in the quarter before Presidential and—to a lesser extent—midterm elections and Appendix Figure 2B shows the number of articles is elevated up to ten months leading up to a Presidential election.

³Appendix Table B shows that the increase in dissent is roughly six times larger in the 5% sample, possibly due to the fact that the Appeals Court Database records dissents even if there are no opinions explaining the

To the extent it is fair to compare across domains, 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). Using the same specification, among my sample of 18,686 cases, the ratio of coefficients to standard errors is twice as large as in the Washington state sample. A sizable share of dissents also appears attributable 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). In a linear model, an estimated 23%⁴ of all dissents is attributed to electoral proximity.

Voting Valence

Voting valence 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. Berdejo and Chen (2017) observed that the ideological difference between Democratic and Republican appointees doubles in magnitude in the quarter before an election. Moreover, judges switch their vote valence from conservative to liberal (and vice versa) rather than to or from a neutral or hard-to-code valence. The magnitudes are substantial: Only 5–15% of cases are legally indeterminate according to

reasoning behind the dissent.

⁴Each 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%.

judges' estimates (Edwards and Livermore 2008), but 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 (more than double the rate at which they generally issue partisan opinions).

Figure 1C 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.⁵ 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.

Legal Outcomes and Impact on 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. Courts of Appeals judges are 10% less likely to affirm⁶ and 20% more likely to reverse lower court decisions in the quarter before an election (Berdejo and Chen 2017). Table 2 shows that 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

⁵To obtain the horizontal shift, I compare the vertical shift against the slope represented in quintiles 1-4.

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

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 would be a referee report that writes the final article for the author (6.5% of cases) as opposed to one that advises changes, but the author still needs to revise the opinion to follow the guidelines (20% of cases); the former requires more work than the latter.

2.2 Priming If priming is the explanation, judges should polarize in situations when identity is more likely to be salient, both within-judge and across space: 1) Effects should be larger for judges residing in states that receive more political attention before Presidential elections. 2) Across elections, effects should be correlated with the electoral conditions of the dissenter’s state. 3) A different set of elections whose timing varies by state—U.S. Senate elections—should further elevate dissents and only via the state of the dissenting judge.

In addition, the puzzle hinted at in Figure 1—significant elevation of monthly dissents peaks *three* months before the election—should be interpretable through the lens of priming: 1) Within elections, effects track the spatial and temporal variation in electoral intensity, proxied by the monthly campaign ads in the dissenting judge’s state of residence, since the primary season varies by state. 2) Dissents begin declining precipitously in electorally unimportant states but remain elevated in electorally important states. 3) Electoral cycles in judicial behavior do not appear when the date of publication is exchanged with “placebo” dates—any of seven earlier stages of a case, including the date of oral argument. 4) The interpretation of a late decision is further supported by a similar electoral cycle in concurrences.

Political Debate Across States

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. Stromberg (2008) calculates the probability a state swings the Presidential election. 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. Figure 2 shows that campaign ads increase roughly five-fold up to the November election in large states that count heavily in winner-takes-all general elections, whereas campaign ads display a significantly earlier peak in the campaign cycle for small states that count more in the proportional system during the primary season. I begin this analysis by presenting simple splits of the data and then use more granular variation across states, across elections, and within elections.

Investigating the possibility that a judge’s local environment drives electoral cycles is motivated by the observation that electoral cycles are larger in certain Circuits. 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)⁷ and the District of Columbia (Table 5). 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 pivotal⁸ 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. States in the top quartile of campaign ads display electoral cycles twice as large as other states.⁹

⁷States are ranked according to electoral vote counts during the recent time period when polarization has been greatest.

⁸These states are Michigan, Ohio, Pennsylvania, Florida, and California, which since the 1970s have voted for different parties and been more political before elections.

⁹The results hold with or without judge fixed effects.

Rather than splitting the sample according to states that on average experience more political debate than others, I would like to know in which elections these states experience political debate. To do this, I interact the closeness of a state’s popular vote count with its electoral vote count. 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.¹⁰ 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 6 presents an analysis of 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.¹¹

To interpret the magnitude of 0.0024 in Table 6, 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

¹⁰I 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.

¹¹Results are robust to alternative specifications.

Column 1 with Columns 2 and 3). Each column presents the reduced form relationship between a judge’s dissent rate and local political environment of each of the three judges on the panel. The absence of significant correlations in Columns 2 and 3 largely suggests that the dissenting judges’ local environment is driving the electoral cycles.

Political Debate Across Types of Elections and Across States

To further investigate the importance of the local environment, I analyze U.S. Senate and gubernatorial elections. 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 I. The effect of Senate elections is equivalent to half the effect of Presidential elections.¹² 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. 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.¹³ 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.¹⁴

¹²Comparing with the midterm effects estimated in Table 1 further supports view that the local political environment of the dissenter is driving the dissent.

¹³<https://www.opensecrets.org/overview/topraces.php>

¹⁴<http://time.com/3558262/governors-elections-spending/>

Political Debate Within Elections Over Time

Elevated dissents appear for many months prior to an election in Figures 1A and 1B 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). 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. 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. 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 2A and 2B). 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 3A and 3B).¹⁵ Another interesting feature of Figure 3 is that the dissent elevation is higher in the electorally pivotal states. Next, I test for significant differences using exact timing of campaign ads.

Political Debate Within States and Within Elections Over Time

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. Table 7 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. 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 is associated with an increase in the dissent rate by 0.5 percentage points by the judge in that state (Column 1). The association 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

¹⁵Since there are more judges in non-pivotal states than in pivotal states, there is an overall decline.

Circuit, year, and judge (Columns 4-5).¹⁶

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 Appeals Court database with 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 8). Column 1 repeats the main specification but using the full sample, while Column 10 repeats the analysis but

¹⁶The inclusion of quarter-to-election fixed effects renders similar point estimates in Column 6 to the point estimates in the other columns.

restricts to the data that successfully merges into the AOC database to ensure that the main inferences are stable after the merge. Columns 2 through 9 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. I do not have data on drafts of circulated opinions prior to the judgment. However, the replication in electoral cycles of concurrences (agreeing with the verdict, but disagreeing over reasoning) is consistent with a late decision to come up with a reason for disagreement, since concurrences occur after the majority opinion has circulated.

2.3 Identity The final set of results presents evidence consistent with Type I thinking driving the effects. 1) Dissents increase most significantly on topics of campaign ads—economic activity. 2) Previous associative links between legal enforcement and political decision-making—specifically, experience as a federal prosecutor (U.S. Attorneys or Assistant U.S. Attorneys)—magnify electoral cycles. 3) Dissents before elections are twice as likely to be reasoned on procedural rather than substantive grounds than those made at other times. Relatedly, the majority opinions being dissented on are more likely to mention highly discretionary, miscellaneous legal issues, and are less likely to be cited in future dissents, thus potentially of lower quality. 4) Finally, when judges who are close in ideology sit together but are from different parties, the rate at which they disagree triples before a Presidential election; and when judges from the same

party sit together, if one dissents, the one with the ideology score more distant from the other party dissents more. These final results, including the results on the effect of wartime, support an interpretation of priming of group identity.

Type of Case

Table 3 shows that dissents increase in a variety of legal categories.¹⁷ 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).¹⁸ 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.¹⁹ Seventy percent of campaign ads mention economic policy, while only 0.26% of ads mention civil rights or civil liberties. In addition, only economic activity cases display statistically significant changes in the quarter before the election regarding affirming, reversing, and remanding to the lower court. Thus, the consistency across behavioral measures aligns for the case category sharing the topics of campaign ads.

Former Federal Prosecutors

Certain types of experience can strengthen the priming mechanism. Berdejo and Chen (2017) show that judges with less experience are more likely to dissent before elections, 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). Lab re-

¹⁷The listed groupings are the 1-digit case category provided in the 5% sample.

¹⁸The 5% sample provides 2-digit legal case categories. I consider each 2-digit sub-category within the 1-digit category of criminal cases and economic activity.

¹⁹Criminal cases are 2.5 percentage points more likely to dissent with divided panels and also increase in dissents before elections.

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

Table 11 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).²⁰ 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.

Latent Partisan Identities

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 4A report group means. 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). 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 and 8), while majority judges increase their dissent rate by 50% (Rows 5 and 7).

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 4B). 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

²⁰Column 9 indicates that the results are weaker without judge fixed effects.

the increase in dissents does not only reflect a shift in mood, which would affect all judges.

Landslide and Wartime Elections

Partisan identities are more likely to be activated in close Presidential elections. Table 9 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 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 6).

2.4 Wartime If elections prime partisan identities, what about wartime, which can prime national identity? Table 12 shows that wartime reduces dissents and that the results are not driven by an outlier war.²¹ I also present randomization inference, where I randomly assign the dates of the case to another date and conduct randomization checks of case (Appendix Figures 1E) and judicial characteristics (Appendix Figures 1F). Some characteristics

²¹Using the 5% sample, Berdejo and Chen (2017) also show that wartime reduces dissents. The decrease is somewhat stronger during the first half of a war, which is what one might 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 and inexperience. During wartime, judges are also more likely to affirm (and less likely to reverse) lower court decisions.

are statistically significant. Accordingly, I check and confirm the wartime results are robust to controlling for these characteristics.

Political Environment

Many studies document that politics in the United States have become more polarized (McCarty et al. 2006). 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 5 displays the moving average correlation between last quarter and judicial behavior. In Figure 5A, 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. 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 10). 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), 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 5B 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.²² Regression analyses including controls indicate that the

²²Each year on the x-axis represents the mid-point in a 10-year moving average correlation.

influence of party of appointment on voting valence is 90% larger since 1975 (Column 3)²³ and robust to controls for birth cohort (Column 4). Figure 5C 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.

3 Decision Quality

3.1 Summary Justice If decisions are made very late, do the reasonings reflect more hasty decisions? Table 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.

Table 4 examines how dissents before Presidential elections are subsequently treated by the courts. Note that the correlations I report can reflect either selection effects (judges choose to

²³The results hold with or without judge fixed effects.

dissent on different types of cases) or treatment effects (the election itself affects the subsequent treatment by courts). I first examine citations by subsequent dissents, which suggest legal ambiguity or legal innovation when dissenting opinions seek to follow a new precedent.²⁴ 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.²⁵ 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.²⁶

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

Table 4 Panel B reports how cases with dissents are subsequently treated by the U.S. Supreme Court. 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). I also find no significant differences in the rate at which cases with dissents are reheard en banc (i.e., by the entire Circuit Court), so electoral cycles in dissents may crowd the Circuit docket as well.

²⁴Similar results are found with log citation counts.

²⁵Year fixed effects ensure that the results are not simply due to censoring, for example, when newer dissents have had less time to accumulate citations.

²⁶The citation data does not distinguish between citation to the majority opinion or the citation to the dissent.

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 normative consideration raised by priming. 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. The 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. In sum, the Supreme Court does not appear to notice the potentially spurious dissents when deciding to hear the case, but does appear to notice and fully correct for them after hearing the case; it does not address the consequences of other behavioral anomalies, such as the Circuit Court decisions to reverse or issue partisan precedent before elections.

4 Concluding Remarks

The key results in this article are three. First, effects are larger for judges residing in states that receive more political attention before Presidential elections. Second, across elections, effects are correlated with the electoral conditions of the dissenter's state. Third, within elections, effects track the spatial and temporal variation in electoral intensity. This is proxied by the monthly campaign ads in the dissenting judge's state of residence, since the primary season varies by state.

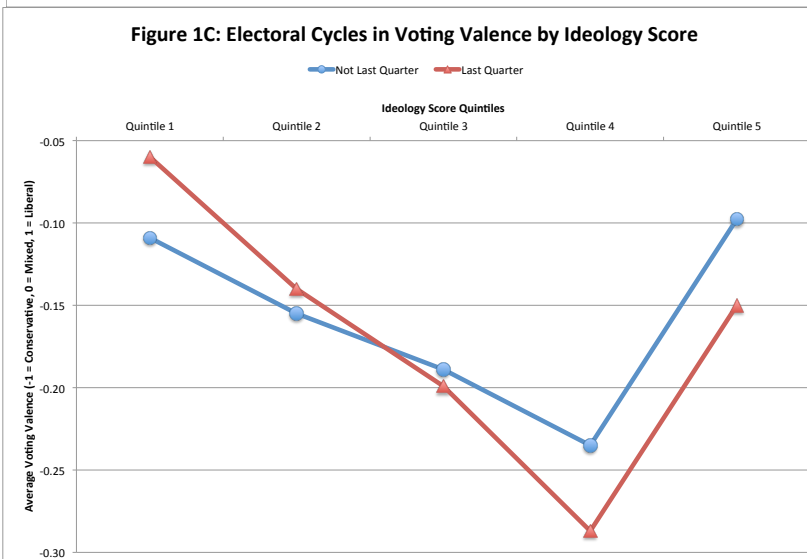
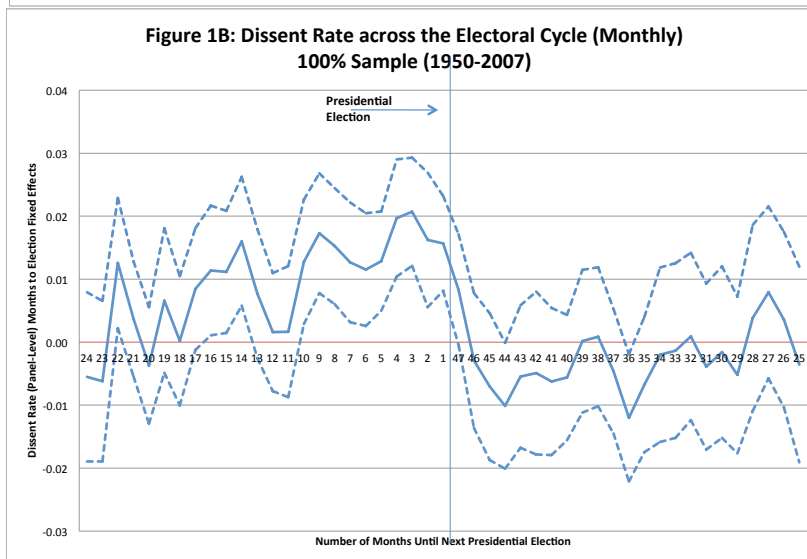
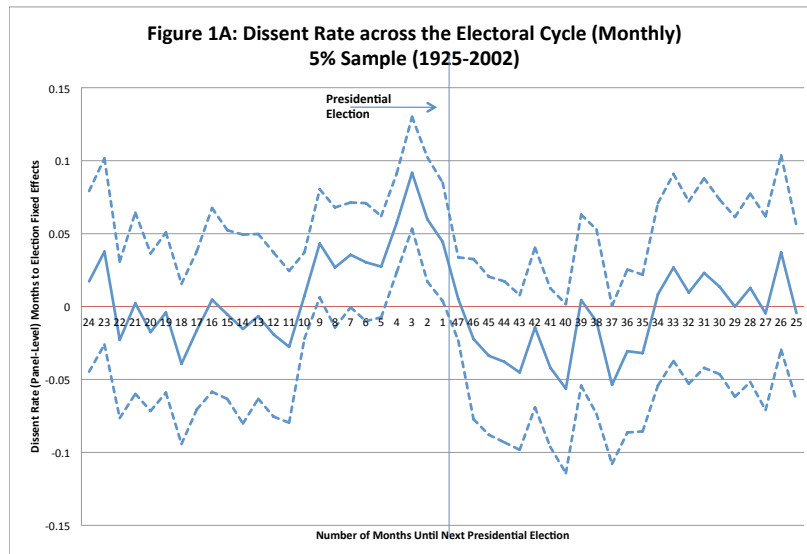
For safeguarding the judiciary against bias, many institutional designs may be insufficient to eliminate bias. These institutions include judges' life tenure, random assignment of cases, three-judge panels, appointment to spatially disparate locations where judges do most of their writing, and political churn in an appointing President that naturally creates politically unified and divided panels so that panels comprise different points of view. The U.S. Courts of Appeals decide the vast majority of cases that create precedent in the U.S. common law system. The behavioral changes around elections are large and comparable to previously documented electoral cycles of elected judges running for re-election. Economists often observe that market settings can drive psychological biases in economic behavior towards the rational model (List 2003), but behavioral anomalies in common law courts, with less oversight, can have permanent consequences through the establishment of precedent and possibly affect its legitimacy.

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Notes: Figure 1A displays dissents with or without dissenting opinions
 Figure 1B displays dissents with dissenting opinions
 Figure 1C displays vote valence by ideology score

Figure 2: Campaign Advertisements across Political Cycle (Weekly)

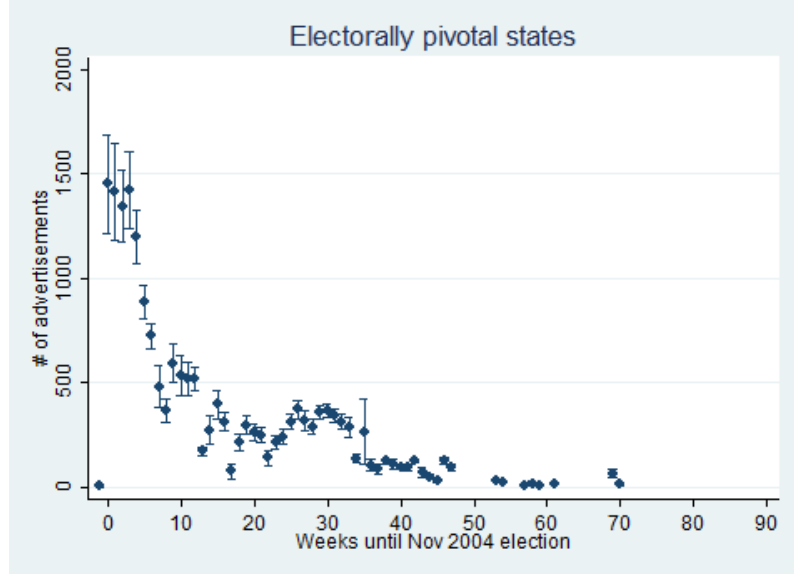


Figure 2A

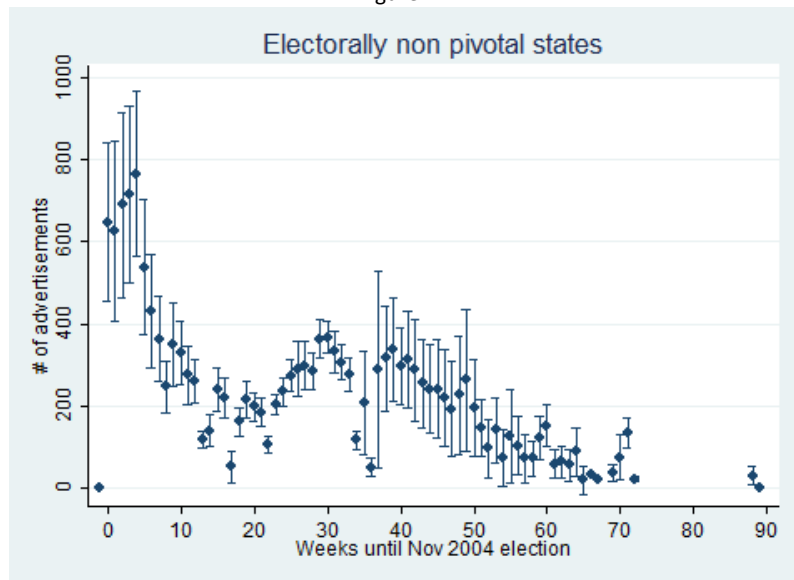


Figure 2B

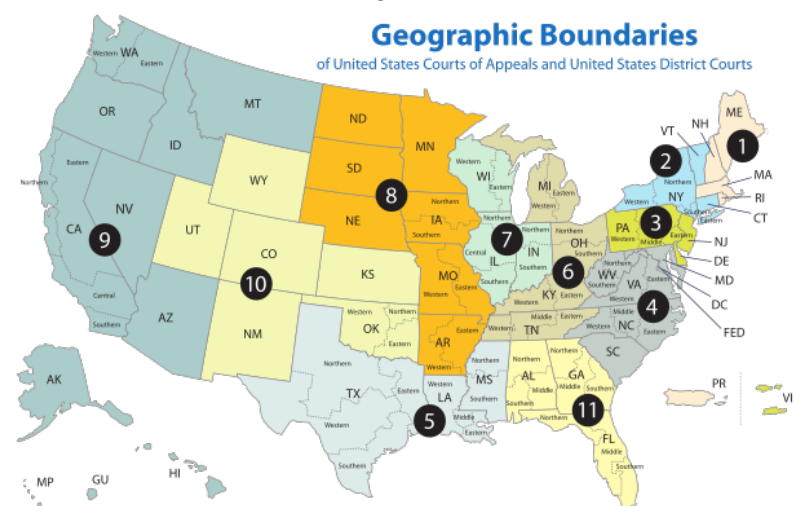


Figure 2C

Figure 3B: Dissent Rate across the Electoral Cycle (Monthly)
Electoral Non-Pivotal States

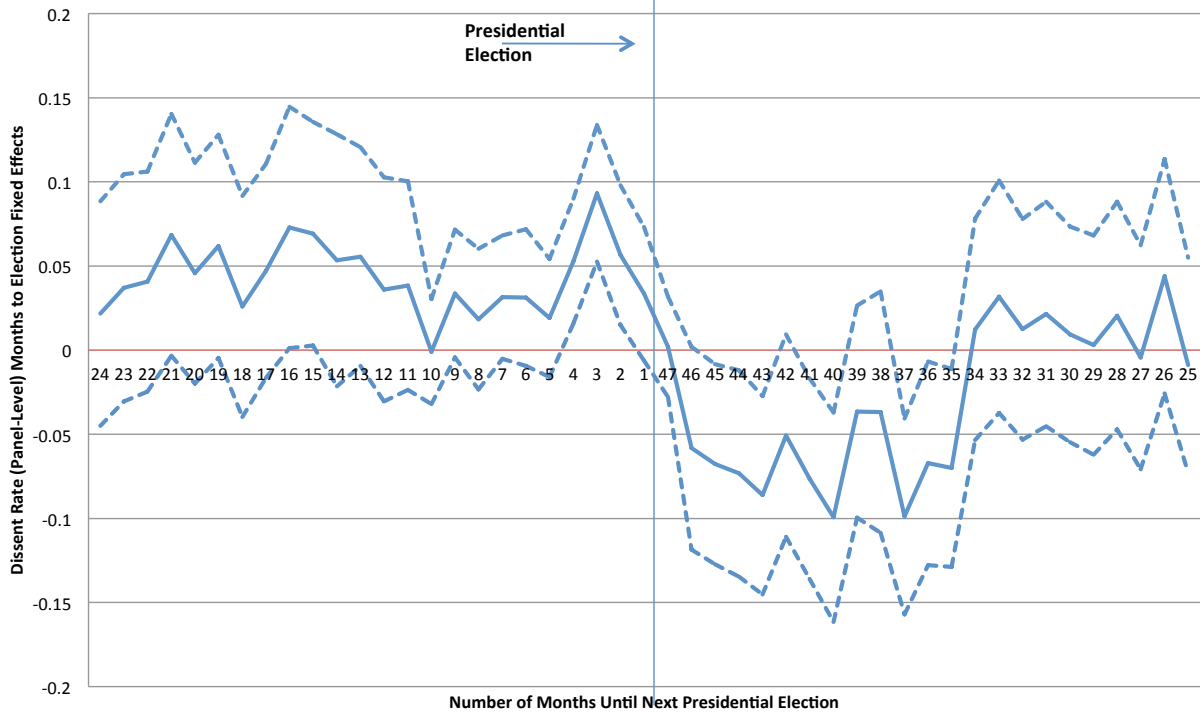


Figure 3A: Dissent Rate across the Electoral Cycle (Monthly)
Electoral Pivotal States

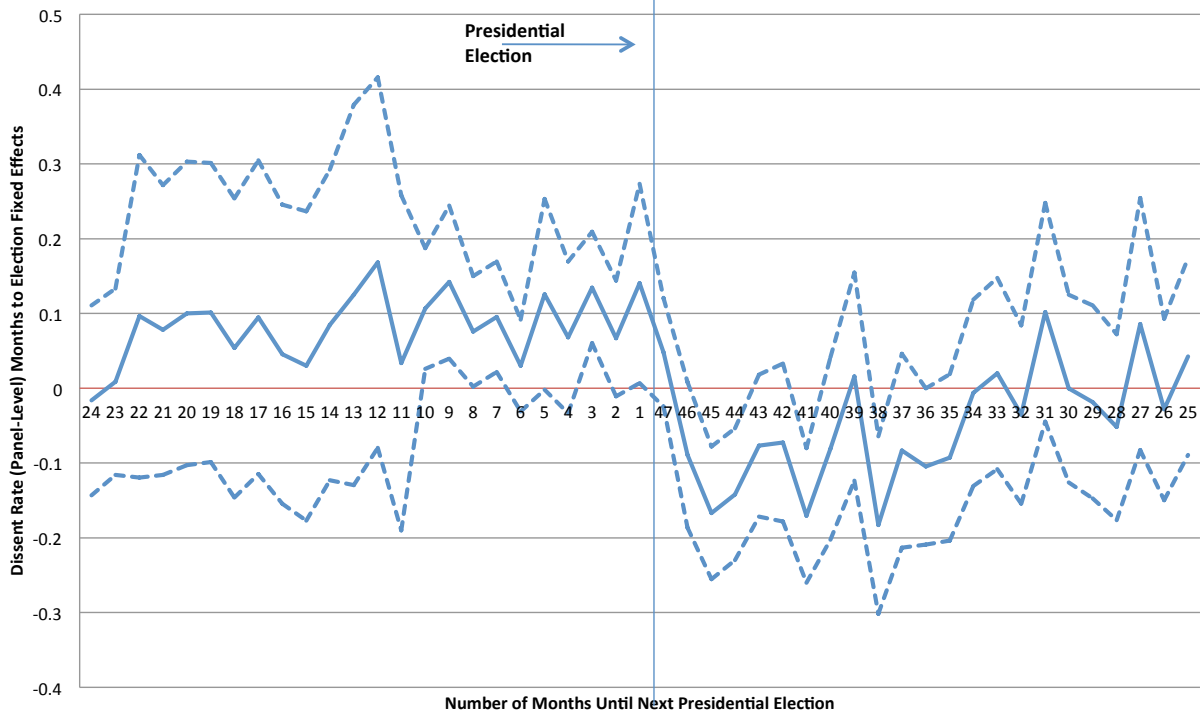


Figure 4A: Judicial Panel Characteristics and Electoral Cycles in Dissents

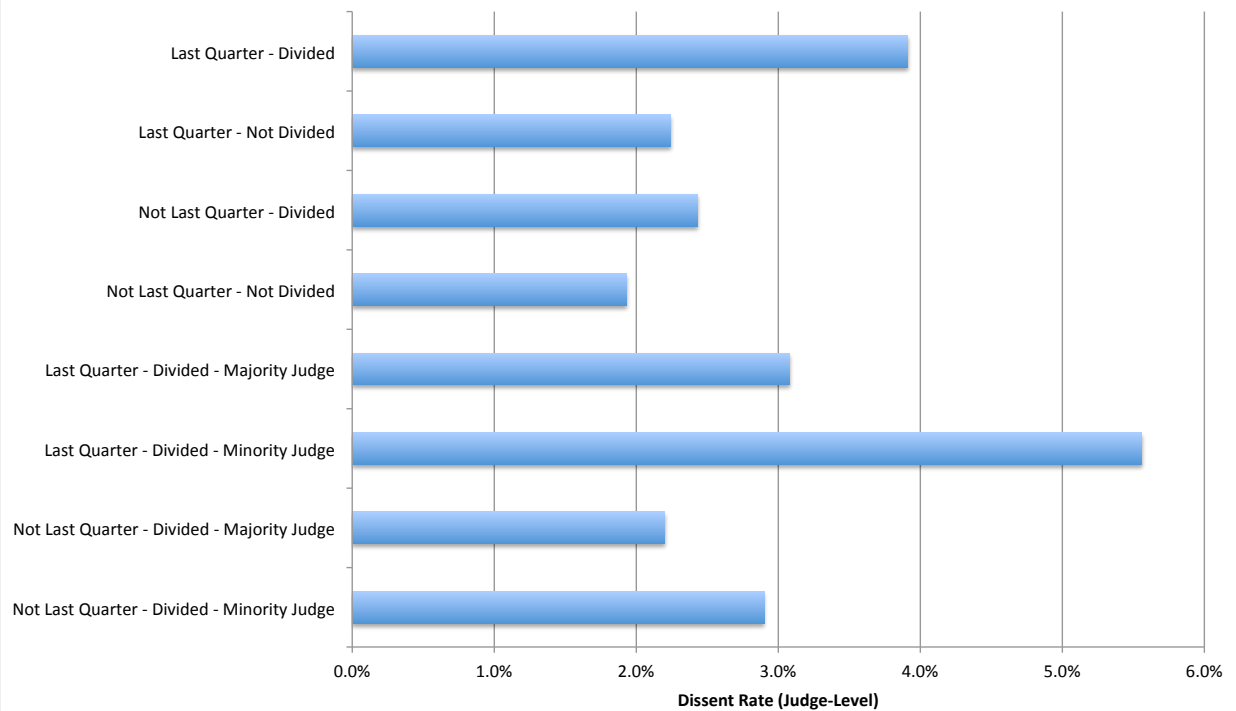
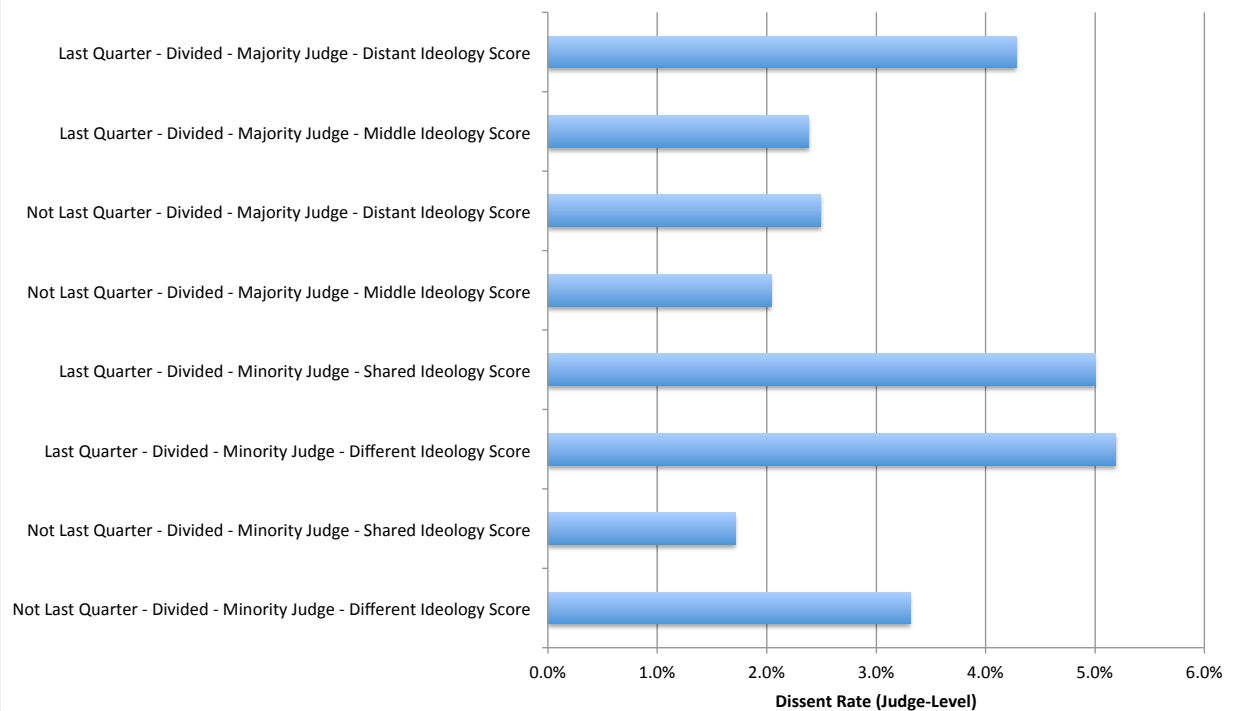
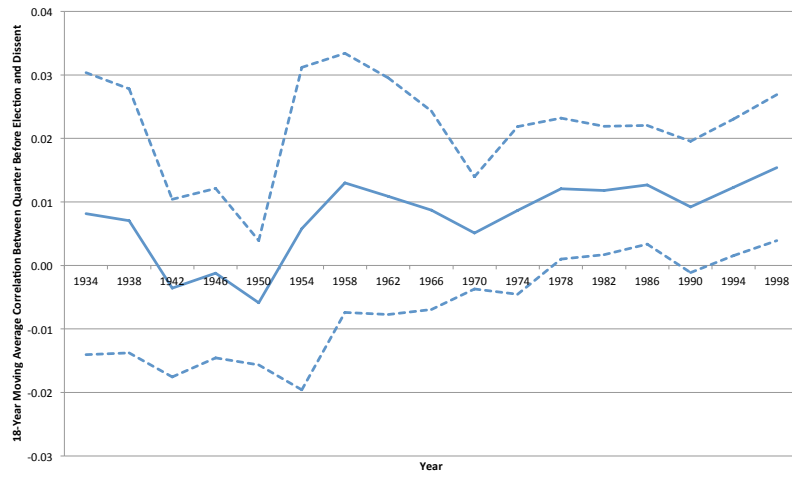


Figure 4B: Judicial Ideology Score and Electoral Cycles in Dissents

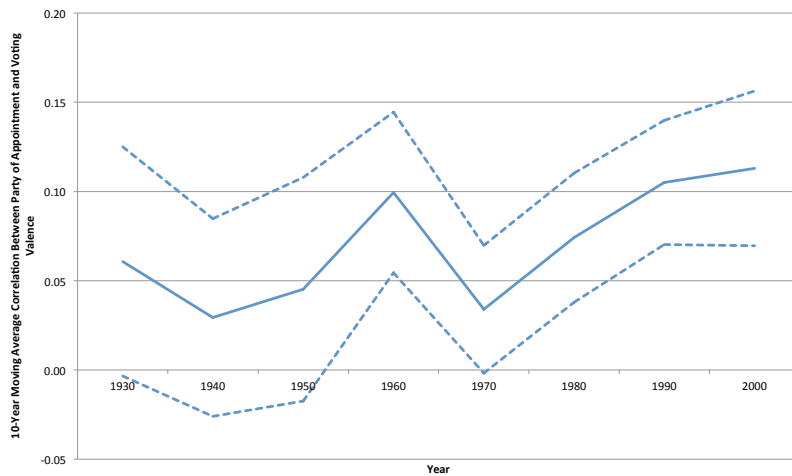


Notes: Politically Divided Panels are RRD or DDR; Non-Divided Panels are DDD or RRR.
 Majority Judge is R in RRD panels and D in DDR panels; Minority Judge is D in RRD and R in DDR panels.

**Figure 5A: Increase in Electoral Cycles in Dissents over Time
(5% Sample)**



**Figure 5B: Correlation between Party of Appointment and Voting
Valence Over Time (5% Sample)**



**Figure 5C: Increase in Electoral Cycles in Dissents over Time
(100% Sample)**

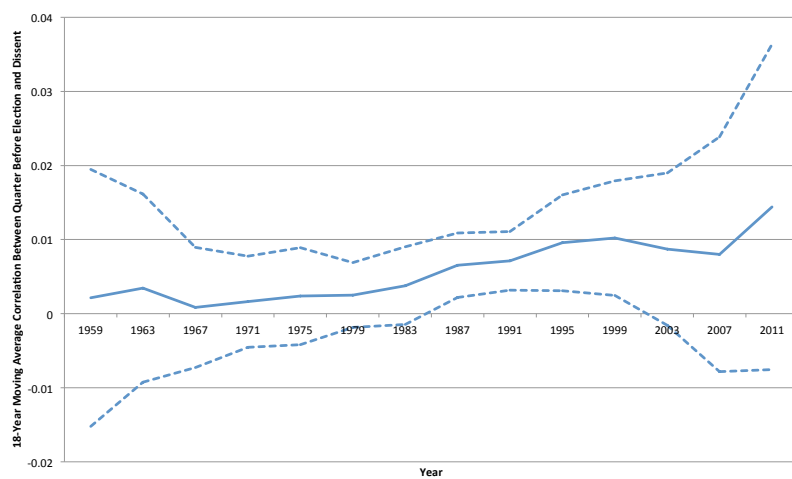


Table 1: Electoral Cycles in Dissents (2-1 Decision)

Mean of dep. var.	(1)	(2)
	100% Sample (1950-2007)	
	0.060	
Quarternoelect = 1	0.0113*** (0.00323)	0.00847** (0.00337)
Quarternoelect = 2	0.00785*** (0.00292)	0.00474 (0.00318)
Quarternoelect = 3	0.00782** (0.00318)	0.00445 (0.00331)
Quarternoelect = 4	0.00153 (0.00399)	0.00158 (0.00368)
Quarternoelect = 5	0.00747 (0.00465)	0.00454 (0.00450)
Quarternoelect = 6	0.00496 (0.00460)	0.00185 (0.00455)
Quarternoelect = 7	0.0000166 (0.00470)	-0.00330 (0.00448)
Quarternoelect = 8	0.00519 (0.00446)	0.00528 (0.00415)
Quarternoelect = 9	0.0120** (0.00500)	0.00891* (0.00490)
Quarternoelect = 10	0.00647 (0.00482)	0.00326 (0.00490)
Quarternoelect = 11	0.00706 (0.00499)	0.00364 (0.00497)
Quarternoelect = 12	-0.00102 (0.00382)	-0.00117 (0.00351)
Quarternoelect = 13	0.00450 (0.00385)	0.00141 (0.00374)
Quarternoelect = 14	0.000920 (0.00382)	-0.00234 (0.00391)
Quarternoelect = 15	-0.000372 (0.00391)	-0.00386 (0.00377)
Year FE	Yes	Yes
Circuit FE	Yes	Yes
Season FE	No	Yes
Observations	263388	263388
R-squared	0.012	0.013

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.

Table 2: Electoral Cycles in Treatment of Lower Courts

	(1)	(2)
	5% Sample (1925-2002)	
	Reverse and Remand	Reverse without Remand
Mean of dep. var.	0.204	0.065
Last Quarter	0.0505*** (0.0187)	0.00135 (0.0132)
Year FE	Yes	Yes
Circuit FE	Yes	Yes
Season FE	Yes	Yes
Legal Issue FE	Yes	Yes
Divided (RDD or DRR) FE	Yes	Yes
Quarter-to-Election FE	Yes	Yes
Observations	18686	18686
R-squared	0.021	0.016

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$). 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.

Table 12: Judicial Decisions During Wartime

	(1)
	100% Sample (1950-2007)
	Dissent (2-1)
Mean of dep. var.	0.060
Korean War	0.00272 (0.00486)
Vietnam War	-0.0208*** (0.00185)
Gulf War	-0.0109*** (0.00255)
Afghan War	0.00294 (0.00623)
Year (linear time trend)	Yes
Circuit FE	Yes
Observations	265868
R-squared	0.012

Notes: Robust OLS standard errors clustered at the quarter-year level in parentheses (* $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$).

Table 3: Electoral Cycles in Dissents by Case Type

	(1)	(2)	(3)	1-Digit Case Category			(6)	(7)	(8)	2-Digit Case Category		(10)
	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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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)		
Quartertolect = 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).

Table 4: 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

Table 5: Electoral Cycles in Dissents by State of Judge's Duty Location

	(1)	(2)	(3)	(4)	(5)	(6)
	Top 8 States in Electoral Votes Count and DC	States with Fewer Electoral Votes	Dissent Vote (5% Sample, 1925-2002) 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.

Table 6: 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 election. The mean popular vote tightness is 0.82.

Table 7: 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)							
	0.023							
Mean of dep. var.								
Δ Campaign 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)
Δ Campaign Ads (t1)		0.00412 (0.00356)	0.00538 (0.00378)	0.00432 (0.00369)	0.00345 (0.00427)	0.00210 (0.00430)		
Δ Campaign Ads (t2)			0.00508 (0.00472)	0.00416 (0.00469)	0.00277 (0.00461)	0.000433 (0.00457)		
Δ Campaign Ads (f1)							0.000651 (0.00369)	0.00125 (0.00492)
Δ Campaign 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.

Table 8: Electoral Cycles in Dissents with Placebo Dates (Other Key Milestones of Cases)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)*
	Publication	Docket Date	Date Filed in District Court	Notice of Appeal Filed	Date Brief Issued	Date of Last Brief Filing	Submitted on	Date of Oral Argument	Final Judgment	Publication
Placebo Date	Date								Date	Date
Quartertoellect = 1	0.00847** (0.00337)	-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)
Quartertoellect = 2	0.00474 (0.00318)	-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)
Quartertoellect = 3	0.00445 (0.00331)	-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)
Quartertoellect = 4	0.00158 (0.00368)	-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)
Quartertoellect = 5	0.00454 (0.00450)	-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)
Quartertoellect = 6	0.00185 (0.00455)	-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)
Quartertoellect = 7	-0.00330 (0.00448)	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)
Quartertoellect = 8	0.00528 (0.00415)	-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)
Quartertoellect = 9	0.00891* (0.00490)	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)
Quartertoellect = 10	0.00326 (0.00490)	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)
Quartertoellect = 11	0.00364 (0.00497)	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)
Quartertoellect = 12	-0.00117 (0.00351)	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)
Quartertoellect = 13	0.00141 (0.00374)	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)
Quartertoellect = 14	-0.00234 (0.00391)	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)
Quartertoellect = 15	-0.00386 (0.00377)	-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	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	263388	164545	150293	151246	58773	155695	27231	134116	164545	164545
R-squared	0.013	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 our 100% data collection from 1950-2007 merged with the Administrative Office of the U.S. Courts (1971-2006). Column 10 restricts to data also containing final judgment dates.

Table 9: Electoral Cycles in Dissents by Type of Presidential Election

<i>Panel A: 5% Sample (1925-2002)</i>				
	(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
<i>Panel B: 100% Sample (1950-2007)</i>				
	Dissent Spike: Dissent Rate in Three Quarters Before Election - Dissent Rate in Three Quarters After Election			
Mean of dep. var.	0.0068			
	(1)	(2)		
Electoral Count (%)	-0.000192** (0.0000853)	-0.000191** (0.0000857)		
Circuit FE	N	Y		
Observations	160	160		
R-squared	0.018	0.078		

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. Panel A: 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). Panel B: Each election-circuit is a separate observation. Dissent spike is the difference in the dissent rate in the three quarters before and after the election and is winsorized at the 1% level. Regressions are weighted by the number of judgments used to compute the dissent spike. Standard errors are clustered at the Election level.

Table 10: Electoral Cycles in Dissents and Influence of Party of Appointment on Voting Valence Across Time

	(1)	(2)	(3)	(4)
	Dissent (2-1 Decision)		Liberal Vote	
	5% Sample		5% Sample	
	(1925-2002)		(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.

Table 11: 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.										
	OLS					Probit				
Divided * Last Quarter	0.0126* (0.00680)							0.00699 (0.00950)	0.135 (0.159)	0.129 (0.166)
Minority (D of DRR or R of RDD)		0.0191* (0.0103)						0.0191 (0.0124)	0.197 (0.144)	0.189 (0.154)
* Last Quarter			0.0202 (0.0134)					0.0206 (0.0130)	0.214* (0.125)	0.280** (0.140)
Federal Prosecution Experience										
* Last Quarter										
Elevated * Last Quarter				-0.0318*** (0.00750)				-0.0333*** (0.0107)		
Potential Nominee					-0.00550 (0.00890)			0.00190 (0.00925)	-0.0510 (0.126)	-0.0147 (0.136)
* Last Quarter						0.00625 (0.0223)		0.00685 (0.0215)	0.136 (0.251)	0.0814 (0.249)
Retire or Resign Next Year										
* Last Quarter										
Presidential Party Candidate Wins										
* Last Quarter							-0.00332 (0.00625)	-0.0000104 (0.00552)	0.00293 (0.0784)	0.000750 (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.

For Online Publication (not counting towards word limit)

Online Appendices for

“Priming Ideology? Why Do Presidential Elections Affect U.S. Judges”

Daniel L. Chen

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A Background, Data, and Variable Construction

A.1 U.S. Circuit 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 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. 2013). 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.²⁷ 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.²⁸ They are further prohibited from personally

²⁷ *Guide to Judiciary Policy* Canon 4H. <http://www.uscourts.gov/uscourts/rulesandpolicies/conduct/vol02a-ch02.pdf>

²⁸ *Guide to Judiciary Policy* Canon 5.

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.²⁹ 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 judges³⁰, many of whom are themselves elected and, if appointed, rarely have life tenure—have exhibited electoral cycles 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) examine 19 coded 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, Berdejo and Chen (2017) report omnibus tests of whether case and litigant characteristics vary over the electoral cycle: the p-values from regressions of case characteristic on the quarter-to-election is compared against the p-value of the dissent cycle. The current article does the same for court caseloads and characteristics of judges authoring or sitting on the panel.

A.2 Data and Variable Construction The analysis draws from several datasets:

1. Data on cases for 1925-2002 come from the U.S. Courts of Appeals Database Project.³¹ This database includes information on opinion-specific variables including the identity of judges sitting on each panel

²⁹*Guide to Judiciary Policy* Canon 4C.

³⁰State judges handle issues of state rather than federal law.

³¹Documentation and data available at <http://www.cas.sc.edu/poli/juri/appctdata.htm>. The Appeals Courts Database Project was designed to create an extensive dataset to facilitate the empirical analysis of the votes of judges and the decisions of the U.S. Courts of Appeals. In order to increase its utility for a wide variety of potential users, data on a broad range of variables of theoretical significance to public law scholars

for a random sample of roughly 5% of cases.³²

2. Biographical information for the judges in the database was obtained from the Multi-User Data Base on the Attributes of U.S. Appeals Court Judges.³³
3. Data on subsequent outcomes in the Supreme Court, if any, come from the Shepardized Courts of Appeals database, which provides a link from the U.S. Courts of Appeals Database to the U.S. Supreme Court.³⁴

were coded. The database was designed to code a random sample of cases since 1925. This year marks the beginning of an increased policy role for the courts of appeals brought about by the increase in discretionary power of the Supreme Court over its docket and also marks the beginning of the second series of the Federal Reporter.

³²The database was constructed in a stratified manner and a set number of cases collected per Circuit-year, yielding approximately 5% of the total sample.

³³Documentation and data available at <http://www.cas.sc.edu/poli/juri/auburndata.htm>. This project, originally compiled by Gary Zuk, Deborah J. Barrow, and Gerard S. Gryski, was undertaken to compile a definitive database on the personal, social, economic, career and political attributes of judges who served on the United States Courts of Appeals from 1801 to 1994. Recent additions by Gerard Gryski and Gary Zuk have expanded the data: The Appeals Court Attribute dataset contains information on judges who served from 1801-2000 (and partial information on judges through 2004); and, the District Court Attribute dataset contains information on judges who served from 1789-2000 (and partial information on judges through 2004). The databases include conventional social background variables such as appointing president, religion, political party affiliation, education and prior experience. In addition, unique items are provided such as the temporal sequence of prior career experiences, the timing of and reason for leaving the bench, gender, race and ethnicity, position numbering analogous to the scheme used for the Supreme Court, American Bar Association rating, and net worth.

³⁴Compiled by Rorie Spill Solberg at Oregon State University. The purpose of this dataset is to provide a bridge between the Songer-Auburn data and the Supreme Court database. The Courts of Appeals database has some information on the decision by the lower court or agency. The Supreme Court database contains information on the ideological direction of the lower court decision. The database includes hard data on the rate of appeal. The Shepardized Courts of Appeals database includes subsequent appellate information on all cases included in the original Courts of Appeals database, including petitions for rehearing en banc and

4. All significant dates for all cases filed in Federal Courts come from the Administrative Office of the U.S. Courts (AOC).³⁵
5. Election information comes from the CQ Voting and Elections Collection.³⁶

petitions for certiorari, regardless of outcome. If a case received a grant of certiorari, the citation variables used by Spaeth et al in the United States Supreme Court database is included for easy merging of the three databases (COA, Shepardized, SCOTUS).

³⁵In 1982 The Research Division of the Federal Judicial Center initiated the Integrated Data Base (IDB) project. The goals of the project were (1) to document the information recorded on data tapes compiled by the Administrative Office of the United States Courts (AO) on cases filed in the Federal Court System, (2) to gather several years of data together into a single data base to facilitate multiyear analyses, (3) to provide a common format for the data so that those analyses could be done without having to contend with record formats that changed from year to year, and (4) to provide a vehicle for linking cases from the district to the appellate level. The time period covered by the initial project was statistical year 1970 onwards. The data base includes all federal appellate and district court cases active during this time period.

³⁶Table 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. Voting and Elections Collection integrates data on the American voter, major and minor political parties, campaigns and elections, and historical and modern races for Congress, the presidency, and governorships. The data is organized into six categories:

Presidential Elections includes explanations of the Presidential electoral process, analyses and data for historical and modern Presidential elections, modern voting behavior, key events and issues, and biographies.

Congressional Elections provides explanations of the congressional electoral process, including reapportionment and redistricting; data for historical and modern congressional elections; analyses of modern congressional elections; modern voting behavior; modern district profiles; key events and issues; and biographies.

Gubernatorial Elections presents explanations of the gubernatorial electoral process and data for historical and modern gubernatorial elections.

Campaigns and Elections explores the American system of voting and elections, electoral process and reform, media, interest groups, and the impact of money.

Political Parties covers the party system in America, including party strength and control, and profiles

6. The aggregate number of Presidential campaign advertisements in the 75 largest media markets for the 1996 election and daily Presidential campaign advertisements in all 210 media markets for the 2008 election³⁷ come from the Wisconsin Ads project.³⁸
7. Judicial ideology scores, a summary measure based on the voting patterns of the appointing President and home state Senators, come from the Judicial Common Space database (Epstein et al. 2007).
8. A shortlist of the 71 Courts of Appeals judges considered for the Supreme Court come from historical sources (Nemacheck 2007).
9. All 230,709 *New York Times* articles for 1900-2007 mentioning both “Republican” and “Democrat” in the same article come from ProQuest.
10. All newspaper articles mentioning Courts of Appeals decisions or their dissents for 1981-2013 come from NewsBank.³⁹
11. Data on all cases for 1950-2007 come from OpenJurist⁴⁰ and contains dissents, Circuit, and date.

Democratic, Republican, and third parties.

Voters and Demographics covers expansion of voting rights, voter turnout, voting behavior, modern county census data, and modern district profiles.

³⁷The results are robust to using the 2004 election data, which is only available for the 100 largest media markets.

³⁸The Elections Research Center at the University of Wisconsin-Madison has made data from the Wisconsin Advertising Project (WiscAds) available electronically for academic use for a nominal fee. Beginning in 1998, WiscAds conducted research investigating how candidates, political parties, and special interest groups communicate with voters. Initially, WiscAds studied campaign television advertisements in the nation’s 75 largest media markets by collecting and analyzing all political advertisements aired on broadcast and cable stations. The scope of the project increased over time, eventually gathering data on all 210 media markets in the United States. This unique database has been made possible through a technology developed by the Campaign Media Analysis Group (CMAG).

³⁹NewsBank is a news database resource which provides archives of media publications.

⁴⁰<http://openjurist.org>. OpenJurist’s mission is to provide access to published United States legal opinions, Code and legal resources without charge.

Using these datasets, I construct the variables for dissent, reason for dissent (i.e., procedural or merit),⁴¹ electoral proximity (linear or nonlinear—a full set of indicator variables for each quarter to the upcoming Presidential election), divided (panels having at least one Democrat and one Republican),⁴² legal issue,⁴³ opinion quality (overall citations and citations by subsequent dissents),⁴⁴ judicial background (age, previous work experience, judicial experience), political environment (incumbent President, electoral vote count), decision valence (liberal = 1, conservative = -1, and mixed or unable to code⁴⁵ = 0),⁴⁶ and treatment of lower court (reverse vs. affirm, reverse with remand vs. any other decision, reverse without remand vs. any other decision).

I restrict my analysis to cases decided by panels composed of three judges. My sample contains 18,686 decisions (56,058 votes) for the period 1925 to 2002 and 293,868 decisions for 1950 to 2007. Appendix Table A displays summary statistics. Results from 1925 to 2002 refer to the 5% sample, while results for 1950 to

⁴¹The Courts of Appeals Database codes whether the dissent addresses a procedural issue or addresses a merits issue.

⁴²The database assigns each judge to 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.

⁴³I use the following 1-digit classification: criminal, civil rights, constitutional (i.e., First Amendment, due process and privacy cases), labor relations, economic activity and regulation, and miscellaneous. I also use finer 2-digit categories of legal issues for robustness checks.

⁴⁴I 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.

⁴⁵My results are robust to dropping the votes that are unable to be coded.

⁴⁶The Courts of Appeals Database Project 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. 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."

2007 refer to the full sample. Overall, 8% of opinions from 1925 to 2002 have dissents. Some analyses requiring biographical information on judges use a reduced sample.⁴⁷ I also present an analysis of dissents by time (elections, wartime, and winning margin in the Electoral College).

From 1950 to 2007, I obtain information on dates (97.5%), circuits (94%), and whether there was a dissenting opinion from OpenJurist. 6.2% of opinions from 1950 to 2007 have dissents with dissenting opinions. My analyses of the OpenJurist data are limited, so my estimation specification varies slightly across outcome variables. Control variables that are missing from the OpenJurist data do not appear in the tables and I verify that the results in the 5% sample are similar when the controls unavailable in the OpenJurist data are removed from the 5% specification. The campaign ad data is missing in non-election years. Some analyses are grouped into three quarters before the election rather than one because the treatment effect is observed for all three quarters.

I link OpenJurist to the administrative data on case calendaring for 1971-2006. I achieve a high match of 75% (164,591 out of 218,683 cases) 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.⁴⁸

I am unable to obtain data on unpublished decisions, thus the decision to publish and to dissent is modeled jointly, but I do verify the electoral cycles are present prior to the 1970s when publication of all decisions was required.

⁴⁷Missing 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.

⁴⁸This matching method does not appear to result in bias, since the electoral cycle estimates are similar when analyzing only the matched sample. Table 9 Column 1 presents the analysis for the entire OpenJurist data and Table 9 Column 10 presents the analysis for the matched OpenJurist data. I also attempted to merge with the Appeals Court database, but I am only able to match 38%. A large fraction of opinions did not record the two-digit portion of the docket number (the docket number is a two-digit year followed by a five-digit number), and the Appeals Court database assigned the two-digit year of publication. This match disproportionately reflects cases docketed in the same year as the publication date, which renders a sample bias towards cases that resolve quickly.

B Theory and Specifications

Theoretically, there are two main arguments against the possibility that U.S. judges are politically biased. First, according to one federal appellate judge, only 5–15% of cases are legally indeterminate and, even in these difficult cases, the courts understand which legal reasonings have greater plausibility (Edwards and Livermore 2008). Indeed, seventy percent of panels have both Republicans and Democrats⁴⁹—yet only 8% of panels—not 70%—have dissents, i.e., 2-1 decisions, suggesting that judges usually agree. Second, even if Democrats and Republicans vote differently, they could simply be following different philosophies, i.e., rules or reasonings, rather than being biased towards particular outcomes. For instance, a judge can derive from first principles an adherence to a strict interpretation of the Constitution, while not necessarily hewing to the preferences of a political party for a certain policy outcome. Indeed, an active literature in experimental economics tries to distinguish preferences over outcomes from preferences over intentions. Thus, if there is bias towards particular outcomes, an open question is whether this bias is conscious—also referred to as Type II, reflective, or motivational thinking—or unconscious—also referred to as Type I, automatic, or cognitive thinking. Using rich administrative data, and showing that effects weaken with experience, this article explores the presence of Type I thinking as one channel for judicial partisanship.

B.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.⁵⁰

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 :

⁴⁹For brevity, judges appointed by Democratic or Republican Presidents are called “Democrats” or “Republicans”.

⁵⁰Assume also that $Q_{G,i} \neq 0$.

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

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 .

B.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 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 $Q = (1 - s) Q_0 + s Q_G$, the DM dissents with probability:

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

B.3 Comparative Statistics

B.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.

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

From the expression above, note that $\frac{\partial P(Dissent)}{\partial c}$ 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.

B.3.2 Effect of group identity salience on the probability of dissent Next, I examine whether the probability of dissent increases in s .

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

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.

B.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 .

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

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.

B.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:

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

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

The dynamics of $\frac{\partial P(Dissent)}{\partial s}$ 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.

B.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.⁵¹ 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.

⁵¹Derivation is omitted.

B.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. 2013). 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.

B.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.⁵² Second, I have assumed that $\bar{Q} \sim N(0, 1)$, but ignored 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).

B.5 Summary The priming of group identity model yields the following predictions:

⁵²The 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.

1. Priming increases the probability of dissent, as agents put greater weight on the group identity norm.
2. The more ideologically polarized the environment (e.g., 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.
3. Politically divided panels should experience greater changes as priming moves judges further apart.⁵³
4. The greater the number of primes, the stronger the overall priming effect because the weight on group identity increases.
5. Experienced individuals would be less affected if conscious processing overrides the usual or habitual response to priming because the weight on group identity does not increase as much.
6. Individuals with previous associative links could be more affected by priming if activated concepts spread faster because the weight on group identity 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.

Social scientists have long speculated whether different ideas cause individuals to select into different groups or whether group identity causally imparts a set of ideas. Some economists and political scientists use priming to look at the causal effects of group identity. With this interpretation, priming would suggest a causal link from group identity to ideas.

⁵³Panels with three Democrats or three Republicans are called “unified” and those with at least one judge from each party are “divided”.

Consider the following specification for latent ideology Q , where electoral **Proximity** $_t$ perturbs s :⁵⁴

$$(1) \quad |Q_{cit}| = \alpha_1 \mathbf{Proximity}_t + \alpha_2 \mathbf{Z}_{cit} + \omega_{cit}$$

$|Q_{cit}|$ represents ideology for judge i in time t on case c ; **Proximity** $_t$ is the set of quarter-to-election fixed effects;⁵⁵ \mathbf{Z}_{cit} contains dummy indicators for case characteristics, such as Circuit and year of the decision, season,⁵⁶ the panel composition (whether it was politically divided),⁵⁷ 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 dissent should be observed. This motivates the following probit (reported in Appendix Table B) or linear probability (reported in all other tables) specification:

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

The usual outcome of interest Y_{cit} is an indicator variable equal to 1 if a dissent was filed on case c . Standard errors are clustered at the quarter-year level.⁵⁸ I check whether the results are robust to different levels of clustering (for example at the Circuit level) and randomization inference (where the basic specification is rerun with each quarter randomly assigned to a different quarter-to-election).

⁵⁴For notational ease, transpose on coefficients are suppressed.

⁵⁵This specification compares each quarter-to-election against quarter 16, i.e., the quarter immediately following an election, which is the omitted quarter. Robustness checks 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.

⁵⁶Seasons 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).

⁵⁷Appendix Table B shows that results are robust to a full set of dummies for DDD, DDR, DRR, and RRR.

⁵⁸Analyses of data collapsed to the quarter-year level do not cluster standard errors.

To benchmark with the existing literature on electoral cycles, I also estimate a specification that replaces **Proximity**_{*t*} with a linear measure of time to election. Next, both the presence of dissents at the case level and judges' dissent votes at the judge level are examined. The latter can exploit variation across states where the judges reside. Results are robust to state fixed effects. The vote-level analysis also includes judge fixed effects.⁵⁹ Some specifications 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. Changes in campaign advertisements rather than levels are used to address the high degree of persistence in a serial measurement.⁶⁰ This specification exploits additional variation across states and over time within the electoral season. In other specifications, **Proximity**_{*t*} is augmented with proximity to Senate and gubernatorial (State Governor) elections, both of which also exploits variation across states and over time.

Heterogeneous treatment effects are examined 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.

Alternative dates *t* for the case representing every available significant event in a case's history are used to assess when the mental decision to dissent may have occurred. Plots are presented of whether case, litigant, or judge characteristics vary during the election as is randomization inference (randomizing cases to other quarters). The graphic visualizes the comparison of all the t-statistics from the other regressions with the true t-statistic of dissent regression.⁶¹

Cases are further characterized 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,

⁵⁹Analyses that have very few years of data exclude judge fixed effects. Note that 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.

⁶⁰Taking first-differences is standard in panel data analysis since Arellano–Bond.

⁶¹Berdejo and Chen (2017) 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>. 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.

and whether the Supreme Court reversed), and how future judges treat the case (citation counts and citations by subsequent dissents):

$$(3) \quad Y_{ct} = \zeta_1 LastQuarter_t + \zeta_2 LastQuarter_t * Dissent_{ct} + \zeta_3 Dissent_{ct} + \zeta_4' \mathbf{Z}_{ct} + \kappa_{ct}$$

C Alternative Explanations

To address alternative mechanisms, such as changes in case type, the article reports that electoral cycles do not appear in any of over 100 case and litigant characteristics nor in any of over 50 characteristics of judges either authoring or sitting on the case. Caseload is also unaffected. The results also appear not driven by career concerns: judges who are elevated to the Supreme Court are not more likely to dissent before Presidential elections. Potential Supreme Court candidates are also not differentially affected. Further ruling out career signalling motives, newspapers are also no more likely to report on Courts of Appeals decisions or their dissents before Presidential elections. Finally, the fact that effects vary by the state of residence of the dissenter⁶² rules out motives common in the economic literature like “getting out the vote” since decisions are promulgated at the Circuit—not state—level.⁶³ Finally, to isolate priming effects from learning effects (Lenz 2009), note that if judges learn from elections, then elevated dissents should persist after the election, but they do not.⁶⁴ Nor are the effects only about mood (Danziger et al. 2011), since mood shifts would affect all judges.

Omitted Variables

I examine the extent to which observable case and judge characteristics, caseload, and publication tendency vary over the election cycle. Appendix Figure 1B displays the t-statistics for significant changes in the quarter

⁶²For example, consider the Sixth Circuit, which includes Michigan, Ohio, and Tennessee. Through random assignment, judges from all three states may be assigned to the same case, and the judge from Michigan or Ohio is more likely to dissent than the Tennessee judge.

⁶³There is also no correlation between dissenting before the election and the candidate from one’s party winning the election.

⁶⁴In 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 has been interpreted as being due individuals learning about parties’ positions (Lenz 2009). The current article’s research design is completely different in scope and context.

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.⁶⁵ 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 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.

Appendix Figures 1C and 1D 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.⁶⁶

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).⁶⁷

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. Berdejó (2012) 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

⁶⁵Legal 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.

⁶⁶The 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.

⁶⁷The large standard errors in this Column is attributable to the tremendous variation in the monthly number of cases recorded in the AOC.

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.⁶⁸ Moreover, there is no correlation between dissenting before an election and the candidate from one's party winning the Presidential election.

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,

⁶⁸Black and Owens (2016) find that judges who are on the presidents' personal "short list" are more likely to dissent in court and express opinions that are consistent with that of the presidents. The research design uses vacancies. I found an opposite result with a much larger sample of judges and years: contender judges actually tend to write fewer dissents during the vacancy. They also tend to write fewer concurring opinions during the vacancy.

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).⁶⁹ 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.

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

⁶⁹Appendix 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.

went to the winner.⁷⁰ 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, who can have indirect effects on the judge. However, the electoral cycles in concurrences, which is a decision by the judge after reading the draft of the final opinion, would point be suggestive of a channel through the judge.

⁷⁰In construction of all aggregate dissent rates, I winsorize at the 1% level. The results are similar when I do not winsorize.

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 \leq 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	2433	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
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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)
Quarternoelect = 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.

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

	(1)	(2)	(3)	(4)	(5)
	5% Sample (1925-2002)				100% Sample (1950-2007)
Mean of dep. var.	0.079				0.060
	OLS	Probit	Drop 1 Circuit	Keep 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				0.0680***	0.0113***
All Circuits				(0.0135)	(0.00323)
Last Quarter			0.0686***	0.0747*	-0.00368
Circuit 1			(0.0142)	(0.0429)	(0.0108)
Last Quarter			0.0679***	0.0778	0.00156
Circuit 2			(0.0142)	(0.0600)	(0.0107)
Last Quarter			0.0639***	0.118*	0.0119
Circuit 3			(0.0136)	(0.0661)	(0.0137)
Last Quarter			0.0715***	0.0301	0.0127
Circuit 4			(0.0138)	(0.0581)	(0.0153)
Last Quarter			0.0729***	0.0355	0.00888
Circuit 5			(0.0138)	(0.0296)	(0.00812)
Last Quarter			0.0627***	0.127***	0.0348***
Circuit 6			(0.0130)	(0.0436)	(0.0115)
Last Quarter			0.0706***	0.0509	0.0208**
Circuit 7			(0.0142)	(0.0372)	(0.00871)
Last Quarter			0.0714***	0.0252	0.0122
Circuit 8			(0.0143)	(0.0438)	(0.0110)
Last Quarter			0.0674***	0.0876**	-0.0121*
Circuit 9			(0.0135)	(0.0345)	(0.00689)
Last Quarter			0.0713***	0.0459	0.00254
Circuit 10			(0.0149)	(0.0350)	(0.0100)
Last Quarter			0.0685***	0.0706	0.0211**
Circuit 11			(0.0139)	(0.0537)	(0.00822)
Last Quarter			0.0603***	0.177***	0.0124
Circuit 12			(0.0145)	(0.0653)	(0.0135)
Year FE	Yes	Yes	Yes	Yes	Yes
Circuit FE	Yes	Yes	Yes	No	No
Season FE	Yes	Yes	Yes	Yes	Yes
Legal Issue FE	Yes	Yes	Yes	Yes	No
Divided (RDD or DRR) FE	Yes	Yes	Yes	Yes	No
Quarter-to-Election FE	No	No	Yes	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.

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
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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)
Quartermoelect = 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. 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	g	Total Frequency	Frequency per Month	Fraction of Opinions Published	Average			Average		
					Number of Months		Median	Number of Months		Median
					Average	Between		Average	Between	
Judgement	Election	Quarter-to-	sample for	Correspondin	Average	Number of Months	Docket and Judgment	Average	Number of Months	Between
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.

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 are 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)
	Mentioning Federal Appellate Court Dissents			Mentioning "Republican" and "Democrat"		
Mean of dep. var.		3.09			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

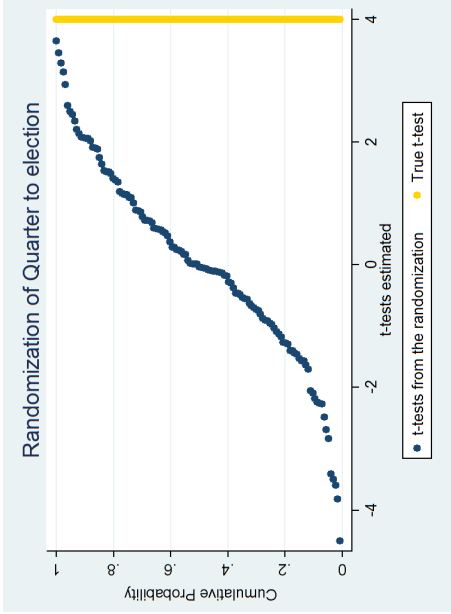
Notes: Robust OLS standard errors in parentheses (* p < 0.10; ** p < 0.05; *** p < 0.01). Data is collapsed to quarter-year level. Data in Columns 1-3 come from Newsbank searches using (judgment or 'court ruling') and ((enumerated circuit names)) and (not 'supreme court') and dissent from 1981 to 2013. 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

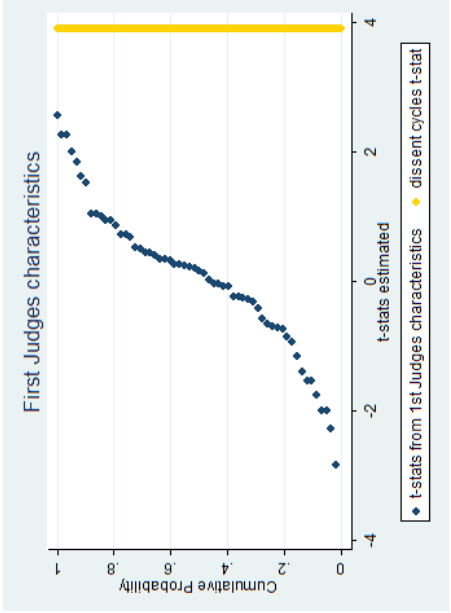
	(1)	(2)	(3)	(4)
	Dissent Vote			
	5% Sample (1925-2002)			
Mean of dep. var.	0.024			
Quarter before Presidential Election	0.0152*** (0.00417)			0.0101** (0.00476)
Quarter before Senator Election		0.00801** (0.00402)		0.00901** (0.00434)
Quarter before Governor Election			-0.00146 (0.00393)	-0.00176 (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.

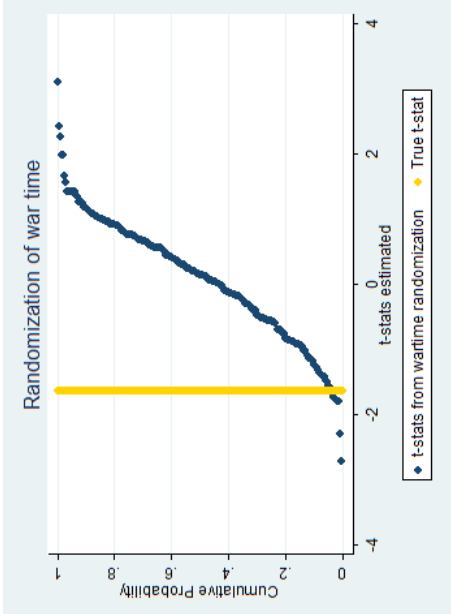
Appendix Figure 1: Randomization Inference and Randomization Checks



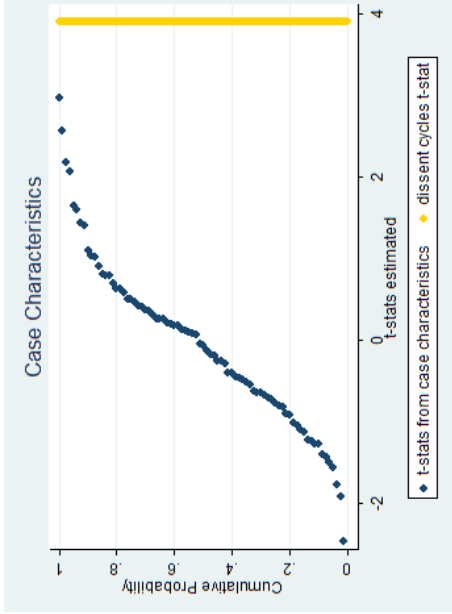
Appendix Figure 1A: Case-Level



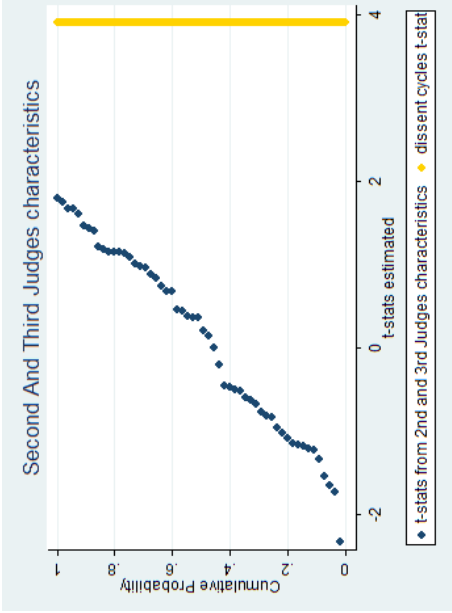
Appendix Figure 1C: Vote-Level



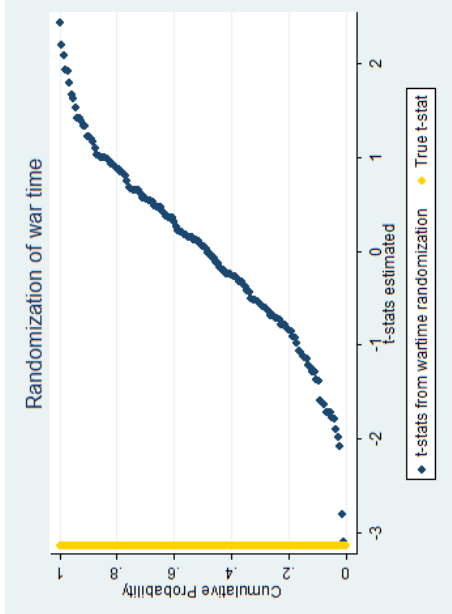
Appendix Figure 1E: Case-Level



Appendix Figure 1B: Case-Level

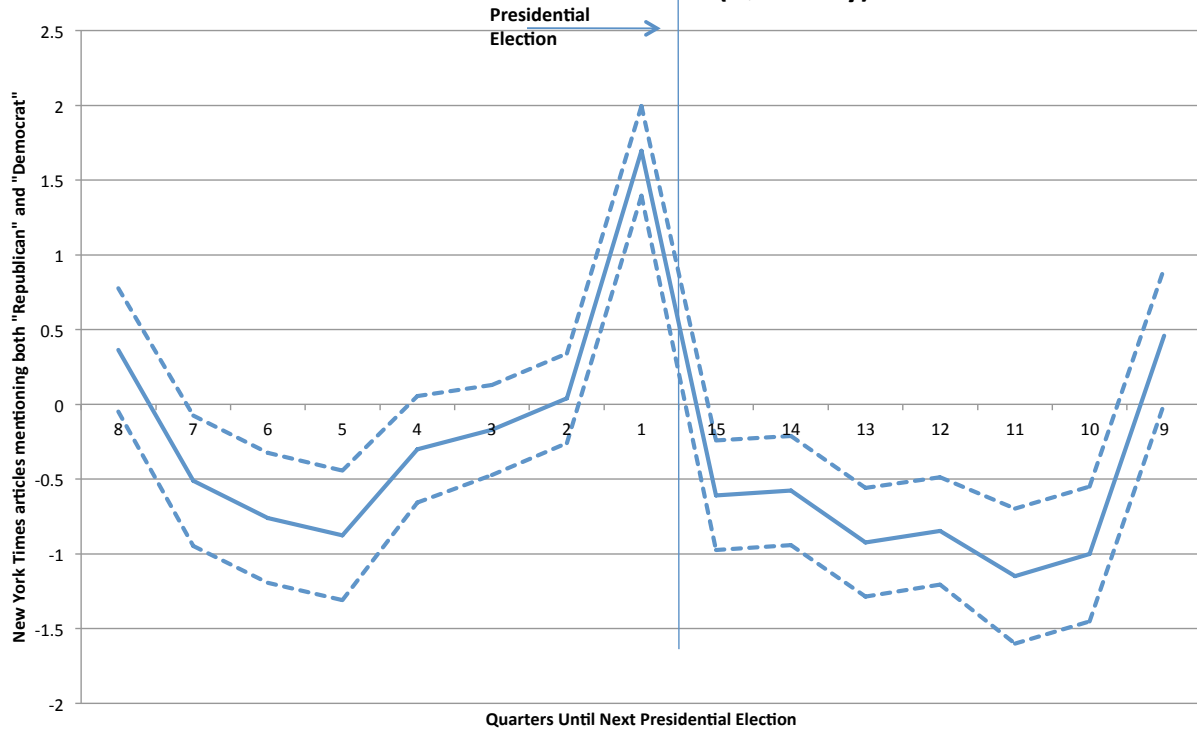


Appendix Figure 1D: Vote-Level



Appendix Figure 1F: Vote-Level

**Appendix Figure 2A: Political News Articles across Electoral Cycle
New York Times 1900-2007 (Quarterly)**



**Appendix Figure 2B: Political News Articles across Electoral Cycle
New York Times 1900-2007 (Monthly)**

