Impacts of Legal Protections for Religious Activity: Evidence from Randomly Assigned Judges

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Motivating Question

- Countries with state religion have lower levels of religiosity (Chaves and Cann 1992; Finke and Stark 1992; Iannaccone 1998; North and Gwin 2004).
  - 96% of Americans believe in God (Marshall 2002)
  - 51% of EU citizens believe in God (79% in Poland, 18% in Sweden) (Eurobarometer polls)
- Why are Americans more religious than Europeans?
  - An influential idea from economics is that a state-established church can be understood as a state-sanctioned monopoly that impedes a market for religious ideas (Barro and McCleary 2005).
  - On the other hand, state endorsement of a religion might be a subsidy, which would increase consumption of religious services (McConnell and Posner, 1989).
- While there are many studies on these questions (see Cosgel, Hwang, Kao, and Miceli, 2017), there are no studies using random variation in church-state laws.

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This Paper's Approach

- Basic setup:
  - Outcomes: "religiosity": supply and demand for religious services.
  - Treatment: proportion of religious freedom cases decided for claimant (against government).
- Regressing religiosity outcomes on the proportion of decisions for claimants, even with fixed effects and controls, may be biased by other unobserved factors affecting both the outcome and the treatment.
- We obtain exogenous variation in religion jurisprudence using the random assignment of judges to U.S. Circuit Court decisions:
  - Judges affiliated with the Democratic party and minority religions (e.g. Judaism) tend to favor stronger protections of religious freedoms.
  - In circuits where a relatively high proportion of these types of judges were assigned to religion cases, the courts issued rulings ensuring relatively stronger protections for religious freeedoms.
  - Due to random assignment, the stronger legal protections for religion are orthogonal to other factors that may be associated with religious activity.

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Outline

U.S. Circuit Courts of Appeal

- Three layers in the U.S. Federal Court system:
  - Local level (District Court)
  - **Intermediate level (Circuit Court)**
  - National level (Supreme Court).
- Circuit Courts:
  - 11 regional Circuits, 3-9 states each – rulings binding only on those states.
  - Adjudicate disputes at common law, constitutional law, and interpretation of federal statutes.
  - Mandatory review. Vast majority (98%) of decisions are final.
  - U.S. Circuit Judges are appointed by President, confirmed by Senate, and have life tenure
  - Each case is **randomly assigned** to a panel of three judges, drawn from a pool of 8-40 judges.

Religion Caselaw Data

- Our data on religion caselaw is from Heise and Sisk (2004, 2012):
  - All circuit cases making substantive decisions about freedom of religion, 1986-2005.
  - Includes whether claimant prevailed against the government, and religion of the claimant.
- Our treatment variable for "protection of religious freedom" is the proportion of cases finding in favor of the claimant against the government.
- **Establishment Clause** cases deal with whether government is favoring a particular religion (an "established" religion), such as whether public school teachers can lead a Christian prayer in the classroom.
- **Free Exercise Clause** cases deal with freedom of religious expression and protection of fringe religions – for example, the freedom for Native American religions to use peyote even though peyote is otherwise banned as an illegal drug.

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Judge Biographical Characteristics

- Data on judge biographical characteristics comes from Appeals Court Attribute Data, Federal Judicial Center, and own data collection (Chen and Yeh 2013):

Variable	Mean Prob.
Female	0.1485
Black	0.0655
Non-white	0.1057
Protestant	0.387
Catholic	0.28070
Evangelical	0.088
Jewish	0.13681
Secular	0.0303

- Also: political party of appointing president, education, previous government experience, birth cohort, etc.

Religious Activity Outcomes

- Supply for religious services:
  - County Business Patterns Census: Religious organizations (SIC code 8660 and NAICS code 81311) by state for 1962-2014.
    - number of buildings
    - number of employees
    - total payroll
  - Normalize by dividing by the total for all private-sector businesses.
- Demand for religious services:
  - General Social Survey microdata with state identifiers, 1972-2004:
    - e.g. Any Religion, Very Religious, Attend Weekly
  - Also include demographic covariates as controls.

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Second-stage estimating equation

$$Y_{ict} = \alpha_{ict} + \rho Law_{ct} + \beta_1 X_{ict} + \beta_2 W_{ct} + \varepsilon_{ict}$$

- Y_{ict}, outcome measure for individual/state i in circuit c at year t (e.g. church attendance).
- Law_{ct}, measure of pro-religious-protection decisions:
  - Average of pro-religion decisions ($+1$), anti-religion decisions (-1), and no decision (0) in circuit c at time t.
  - ρ, main coefficient of interest.
  - Assumes that effects of pro-liberty and anti-liberty decisions are opposite in sign but equal in absolute value relative to the baseline of no case.
- α_{ict} state/time fixed effects and state trends.
- X_{ict} state characteristics (e.g. GDP) or individual characteristics (e.g. gender).
- W_{ct}, characteristics of the pool of judges available to be assigned.

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First-stage estimating equation

$$Law_{ct} = \alpha_{ict} + \phi Z_{ct} + \gamma_1 X_{ict} + \gamma_2 W_{ct} + \eta_{ict}$$

- Law_{ct}, measure of pro-religious-protection decisions.
- Z_{ct}, optimal instruments:
  - Realized characteristics of judges assigned to religion cases.
  - Selected for post-Lasso 2SLS using the method in Belloni et al. (2012)
  - Computed separately for Establishment cases and Free Exercise cases.
- Standard errors clustered by circuit (Barrios et al 2012); similar estimates for clustering by state or circuit-year.

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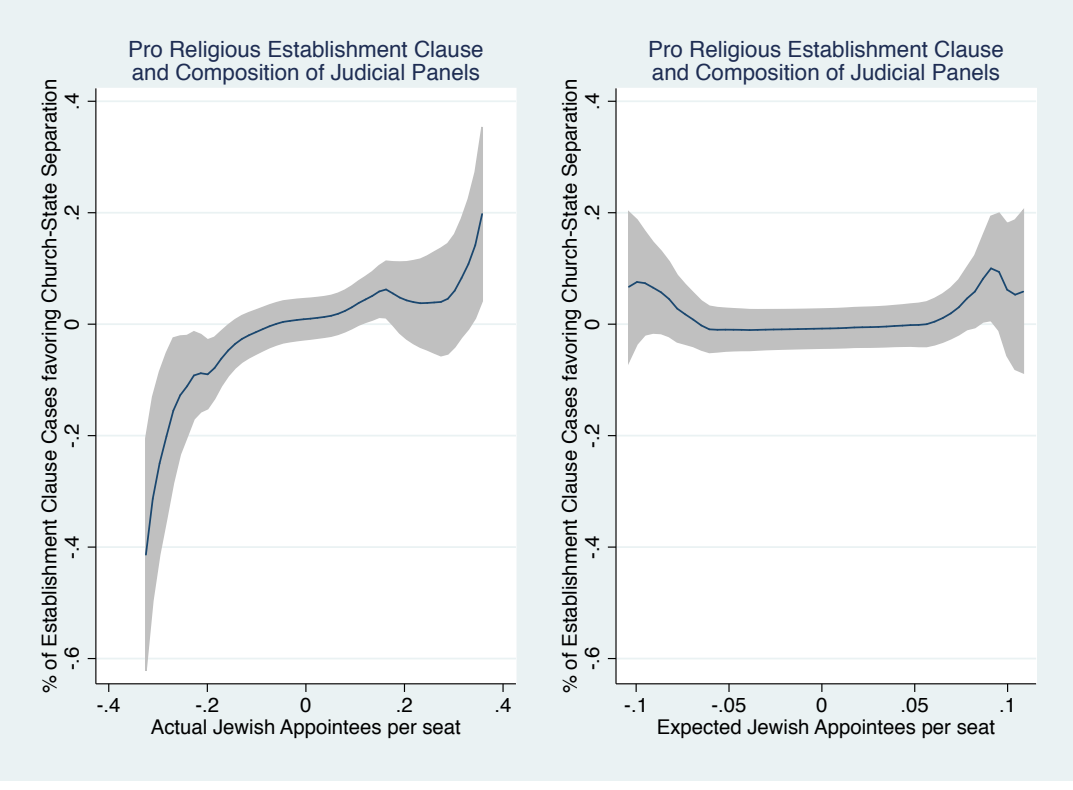
First Stage Results: Establishment Clause

- Effect of More Jewish Appointees in Establishment Decisions:



- Other variables selected: Democrat, Catholic, Evangelical, ABA nomination rating, government experience.

Effect on Religious Supply: Establishment-Clause Jurisprudence

- An exogenous increase in anti-establishment precedent causes a reduction in supply-side measures of religious services, including the number of buildings and total payroll.

	(1)	(2)	(3)	(4)	(5)	(6)
	Effect of Decisions Strengthening Church-State Separation					
Outcome	*OLS*	*2SLS*	*OLS*	*2SLS*	*OLS*	*2SLS*
Relig. Buildings	0.00487	**-0.0246****				
	(0.00838)	**(0.00784)**				
Relig. Employment			-0.0108	-0.0307		
			(0.0175)	(0.0354)		
Relig. Payroll					-0.033	**-0.0386+**
					(0.0259)	**(0.0222)**

Effect of *Law* (proportion pro-claimant Establishment-Clause cases) on supply-side religious variables. $N = 950$ state-years, First-stage $F = 359$. Outcome variables standardized to variance 1. Includes state FEs, year FEs, state trends, and judge pool characteristics. 50 states, 19 years (1986-2005). Standard errors clustered by circuit. + $p < .1$, * $p < .05$, ** $p < .01$.

Effect on Religious Demand: Establishment-Clause Jurisprudence

- Stronger anti-establishment law does not have an effect on self-reported religiosity.

	(1)	(2)	(3)	(4)	(5)	(6)
	Effect of Decisions Strengthening Church-State Separation					
Outcome	*OLS*	*2SLS*	*OLS*	*2SLS*	*OLS*	*2SLS*
Any Religion	-0.00439	0.00291				
	(0.00428)	(0.00888)				
Strong Religion			-0.00486	0.00327		
			(0.00358)	(0.00939)		
Attend Weekly					-0.0122*	-0.00742
					(0.00421)	(0.0104)

Effect of *Law* (proportion pro-claimant Establishment-Clause cases) on demand-side religious variables. $N = 27{,}852$ GSS respondents, First-stage $F = 56$. Includes state FEs, year FEs, state trends, individual demographic covariates, and judge pool characteristics. Years: 1986-2004. Standard errors clustered by circuit.+ $p < .1$, * $p < .05$, ** $p < .01$.

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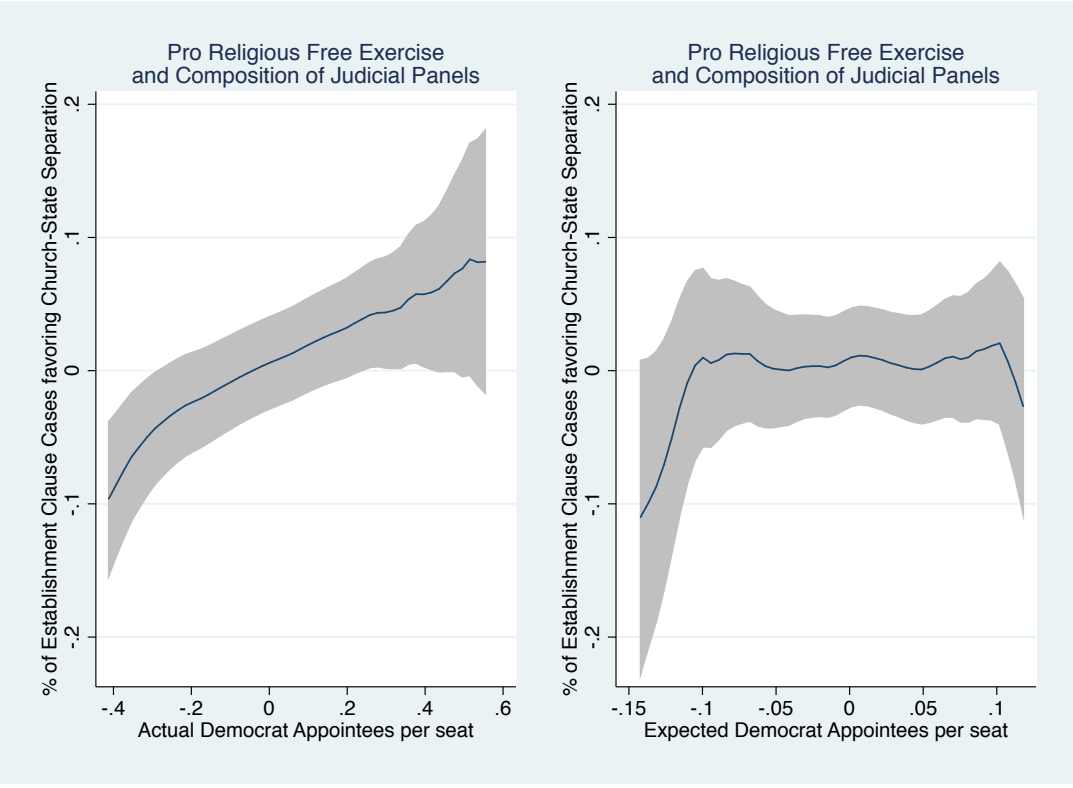
First Stage Results: Free Exercise

- Effect of More Democratic Appointees in Free Exercise Decisions



- Other variables selected: Jewish, female, non-white, prosecutor experience, private practice experience.

Effect on Religious Supply: Free-Exercise-Clause Jurisprudence

- Stronger free-exercise protections have no effect on formal-market religious firms.

	(1)	(2)	(3)	(4)	(5)	(6)
	Effect of Decisions Strengthening Free Exercise					
Outcome	*OLS*	*2SLS*	*OLS*	*2SLS*	*OLS*	*2SLS*
Relig. Buildings	-0.00166	-0.00691				
	(0.00902)	(0.00776)				
Relig. Employment			0.00945	-0.0144		
			(0.0174)	(0.0393)		
Relig. Payroll					0.00928	0.0173
					(0.0299)	(0.0293)

Effect of *Law* (proportion pro-claimant Free-Exercise cases) on supply-side religious variables. Outcome variables standardized to variance 1. $N = 950$ state-years, First-stage $F = 25$. Includes state FEs, year FEs, state trends, and judge pool characteristics. 50 states, 19 years (1986-2005). Standard errors clustered by circuit. + $p < .1$, * $p < .05$, ** $p < .01$.

Effect on Religious Demand: Free-Exercise-Clause Jurisprudence

- An exogenous increase in free-exercise protections causes an increase in religiosity among individuals, especially "strong religiosity" like attending church more than once a week.

	(1)	(2)	(3)	(4)	(5)	(6)
		Effect of Decisions Strengthening Free Exercise				
Outcome	*OLS*	*2SLS*	*OLS*	*2SLS*	*OLS*	*2SLS*
Any Religion	-0.00126	0.00459				
	(0.00426)	(0.00998)				
Strongly Religious			0.00793	**0.0264***		
			(0.00632)	**(0.0130)**		
Attend Weekly					-0.00247	0.0120
					(0.00690)	(0.0131)

Effect of *Law* (proportion pro-claimant Free-Exercise-Clause cases) on demand-side religious variables. $N = 27{,}852$ GSS respondents, First-stage $F = 15$. I Includes state FEs, year FEs, state trends, individual demographic covariates, and judge pool characteristics. Years: 1986-2004. Standard errors clustered by circuit.+ $p < .1$, * $p < .05$, ** $p < .01$.

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Summary and Discussion

- A random increase in pro-separation precedent on Establishment Clause cases is associated with a reduction in supply-side measures of religious services, including the number of buildings, and payroll.
  - Consistent with Establishment Clause protections reducing subsidies to favored mainstream religions, causing reduction in supply.
  - No effect on religiosity, however, suggesting that these establishments had weak attendance, or that the formal-market reductions are compensated by informal-market (fringe) increases.
- Increasing free-exercise protection results in an increase in religiosity among individuals.
  - Consistent with Free Exercise protections reducing restrictions on fringe religions, increasing devout religiosity.
  - No effect on supply side, again consistent with the idea that fringe religions operate informally, without designated buildings and large formal payroll.

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Next Steps

- These are preliminary results with a partial data set:
  - But we feel they are promising enough to warrant coding up all the cases going back to the 1880s.
- Heterogeneous and dynamic effects on mainstream versus fringe religions.
  - In the short term, one might see fringe religiosity increase more. Due to greater religious competition, there may be a broader long-term effect as mainstream churches improve quality of services.
- Substitution effects between religious and non-religious firms due to our treatments.
  - e.g., growth in religious versus non-religious charitable organizations.