

Tenor of Our Times

Volume 9

Article 15

Spring 2020

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Recommended Citation

Barker, Benjamin L. (Spring 2020) "All Rise: Factors Affecting Decision Making of United States Supreme Court Justices," *Tenor of Our Times*: Vol. 9, Article 15.

Available at: <https://scholarworks.harding.edu/tenor/vol9/iss1/15>

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ALL RISE: FACTORS AFFECTING DECISION MAKING OF UNITED STATES SUPREME COURT JUSTICES

By Benjamin L. Barker

Chapter 1: Introduction

American society perceives judges as the paragon of fairness and insulation from petty politics.¹ Even Chief Justice John G. Roberts, Jr. holds this view.² Despite this perception, this supposed fairness and apolitical nature rarely seem to actually happen with the Supreme Court. Bitter debate over highly publicized cases combined with contentious confirmation hearings suggests that the Supreme Court makes decisions based on more than just the law in question and the Constitution. What factors make Supreme Court Justices rule in a partisan manner?

In this project, I examine the ideological direction of each Justice's vote in every case brought before the Supreme Court from 1946 to 2019. I focus on several characteristics of the Justices themselves as my independent variables: the party affiliation of the Justice themselves, the party of the President who appointed them, where they were born, the party of the Chief Justice at the time, how long the Justice has been on the bench, where they went to law school, and whether the Justice has ever held elected office.

I posit that Republican Justices appointed by Republican presidents will make conservative decisions, and that the opposite is true for Democratic Justices appointed by Democratic presidents. I also claim

¹ Norman L. Greene, "How Great is America's Tolerance for Judicial Bias -An Inquiry into the Supreme Court's Decisions in *Caperton* and *Citizens United*, their Implications for Judicial Elections, and their Effect on the Rule of Law in the United States," *West Virginia Law Review* 112, no. 3 (2010): 883, <https://researchrepository.wvu.edu/wvlr/vol112/iss3/8>.

² Adam Liptak, "John Roberts Criticized Supreme Court Confirmation Process, Before There Was a Vacancy," *New York Times*, March 21, 2016, <https://www.nytimes.com/2016/03/22/us/politics/john-roberts-criticized-supreme-court-confirmation-process-before-there-was-a-vacancy.html?module=inline>.

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that geography is a significant factor in determining how a Justice will vote in any given case. If a Justice was born in the First, Second, or Ninth Appellate Circuits, then that Justice will tend to vote in a liberal fashion because the Northeast and West Coast are liberal regions of the country. Because the Chief Justice is such an influential figure, and Justices interact with one another as they deliberate on decisions, I assert that Justices who serve under a Republican Chief Justice will make conservative decisions, and that Justices who serve under a Democratic Chief Justice will make more liberal decisions. An overwhelming majority of recent Supreme Court Justices have come from either Harvard or Yale law schools, both of which have reputations as liberal institutions. Because of this, I claim that Justices who attended either of these institutions will make more liberal decisions than Justices who attended any other institution.

It is important to study Justice behavior because the decisions that the Supreme Court makes affect just under 330 million people. Further, their decisions can carry significant international effects. For example, *National Federation of Independent Business v. Sebelius* (2012) upheld major provisions of the Affordable Care Act, which drastically changed health insurance policy in the United States. Ultimately, Supreme Court decisions affect the average person more than most realize.

In chapter two, I assess current literature concerning these variables. Chapter three provides my theoretical reasoning behind my hypotheses. In chapter four, I outline the data and methods I use to examine them. Chapter five presents my findings from the tests I run, and in chapter six I offer my final conclusions.

Chapter 2: Literature Review

Judicial decision-making is a complicated process. It is important to review the pertinent literature that sheds some light on how judges make decisions. In this review, I begin by discussing public opinion and how it affects judges' decisions. I also examine partisanship and geography of appellate circuits. I also draw several major themes from the works that I discuss and critique.

American conventional wisdom holds that a judge should not be swayed by public opinion and that their rulings are simply based on the law in question. This thinking has made its way to the federal judiciary, as well: Canon 3A(4) of the Code of Conduct for United States Judges says that “a judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.”¹ Due to the Constitutional framework that provides for appointment of federal judges rather than election, it is clear that the Founders valued having the judiciary insulated from the public's direct influence.² Calvin et al., in exploring whether federal appellate courts respond directly to public opinion, found that the effects of public opinion on appellate decision-making are only indirect in nature. These indirect forces are the fact that the people elect the president, who appoints the judges, and they elect senators, who confirm the judges.³ Because people elect presidents and senators who share their ideological preferences and these actors appoint and confirm

¹ United States Courts, *Code of Conduct for United States Judges*, Judicial Conference (2019): https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

² U.S. Const. art. II, § 2, cl. 2.

³ Bryan Calvin, Paul M. Collins, Jr., and Matthew Eshbaugh-Soha, “On the Relationship between Public Opinion and Decision Making in the U.S. Courts of Appeals,” *Political Research Quarterly* 64, no. 4 (2011): 741, <https://nexus.harding.edu/login?url=https://search-proquest-com.nexus.harding.edu/docview/912384308?accountid=27698>.

judges who share their ideological preferences,⁴ it holds that the mechanism of judicial selection gives public opinion an indirect effect on appellate decision-making.⁵ Cook finds in 1977 that sentence severity in regard to draft crimes and public sentiment regarding the Vietnam War are positively correlated. Based on this finding, she posits that the federal judiciary is just as responsive to public opinion as the executive and legislative branches of government.⁶ Kritzer, in 1979, reexamines Cook's model, making several adjustments. While he still finds that sentence severity and public sentiment regarding US involvement in Vietnam are positively correlated, he finds that none of the variables which Cook tests are statistically significant.⁷ In short, Kritzer's findings are similar to Calvin et al.'s: circuit judges are insulated from the whims of public mood, and thus public mood does not directly affect their decisions.

As American politics has become more polarized, the federal judiciary, including the U.S. Courts of Appeals, has followed. Kritzer finds that judges of each political stripe are more ideologically consistent today in their decisions than those of old, and that the gap in decision patterns in judges appointed by Democratic and Republican presidents

⁴ Richard Funston, "The Supreme Court and Critical Elections," *American Political Science Review* 69, no. 3 (1975): 796, <https://doi.org/10.2307/1958390>.

⁵ Bryan Calvin, Paul M. Collins, Jr., and Matthew Eshbaugh-Soha, "On the Relationship between Public Opinion and Decision Making in the U.S. Courts of Appeals," *Political Research Quarterly* 64, no. 4 (2011): 743, <https://nexus.harding.edu/login?url=https://search-proquest-com.nexus.harding.edu/docview/912384308?accountid=27698>.

⁶ Beverly B. Cook, "Public Opinion and Federal Judiciary Policy," *American Journal of Political Science* 21, no. 3 (1977): 592, <https://doi.org/10.2307/2110582>.

⁷ Herbert M. Kritzer, "Federal Judges and Their Political Environments: The Influence of Public Opinion," *American Journal of Political Science* 23, no.1 (February 1979): 204, <https://doi.org/10.2307/2110780>.

has only widened.⁸ While judges are more polarized and consistent in their rulings today, this does not mean that they are directly responsive to public opinion or mood. The political theory of judicial decision-making holds that judges make decisions purely based on their desire to further their ideological preferences.⁹ When testing whether United States Circuit Court judges actually made their decisions in this manner, Cross finds that this is actually not the predominant force driving judges' decisions.¹⁰ Ashenfelter et al. finds that political party identification is not a statistically significant predictor of a certain outcome, contrary to popular belief and the researchers' own hypothesis.¹¹ Sunstein et al. finds that the political party of the appointing President is a fairly reliable predictor for a given appellate judge's vote.¹² Nagel, in studying both trial and appellate judges at all levels, finds that there will always be some evidence of partisan consideration "so long as political parties are

⁸ Herbert M. Kritzer, "Polarized Justice? Changing Patterns of Decision-making in the Federal Courts," *Kansas Journal of Law and Public Policy* 28, no.2 (Spring 2019): 355, <https://search-ebscohost-com.nexus.harding.edu/login.aspx?direct=true&AuthType=ip&db=lgh&AN=136144841&scope=site>.

⁹ Tracey E. George, "Developing a Positive Theory of Decisionmaking on U.S. Courts of Appeals," *Ohio State Law Journal* 58, no. 5 (1998): 1646, <http://hdl.handle.net/1811/64938>.

¹⁰ Frank B. Cross, "Decisionmaking in the U.S. Courts of Appeals," *California Law Review* 91, no. 6 (December 2003): 1514, <https://doi.org/10.2307/3481397>.

¹¹ Orley Ashenfelter, Theodore Eisenberg, and Stewart J. Schwab, "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes," *Journal of Legal Studies* 24, no. 2 (1995): 281, <http://www.jstor.org/stable/724612>.

¹² Cass R. Sunstein, David Schkade, Lisa M. Ellman, and Andres Sawicki, *Are Judges Political?: An Empirical Analysis of the Federal Judiciary* (Washington, D.C., Brookings Institution Press, 2006): 111.

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at least partly value-oriented and so long as court cases involve value-oriented controversies.”¹³

Cross and Tiller, in their study of partisan considerations in administrative law decisions by the D.C. Circuit, found that Republican judge panels were more likely to uphold agency decisions deemed as conservative, while Democratic judges were less likely to uphold these decisions. Conversely, Democratic judge panels were much more likely to uphold liberal agency decisions, and Republicans were less likely to do so.¹⁴ While it is clear that ideological and partisan considerations are valuable criteria for presidential selection of judges,¹⁵ some scholarship does concede that it is not the chief factor at play in judicial decision-making. However, this is hardly settled science.

The legal theory of judicial decision-making holds that judges use “external, objective sources of authority that classically comprise the law.”¹⁶ This includes sources such as statutes and precedents from other courts. This theory is reflected in the Code of Conduct for United States Judges as discussed earlier. Essentially, judges should only rule based on the law in question and without consideration of any other personal feelings or sentiments.¹⁷ Both Cross’s and the Ashenfelter et al.’s studies

¹³ Stuart S. Nagel, “Political Party Affiliation and Judges’ Decisions,” *The American Political Science Review* 55, no. 4 (December 1961): 850, <https://doi.org/10.2307/1952531>.

¹⁴ Frank B. Cross and Emerson H. Tiller, “Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals,” *The Yale Law Journal* 107, no. 7 (May 1998): 2175, <https://doi.org/10.2307/797418>.

¹⁵ Richard Funston, “The Supreme Court and Critical Elections,” *American Political Science Review* 69, no. 3 (1975): 796, <https://doi.org/10.2307/1958390>.

¹⁶ Frank B. Cross, “Decisionmaking in US Courts of Appeals,” *California Law Review* 91, no. 6 (December 2003): 1462, <https://doi.org/10.2307/3481397>.

¹⁷ United States Courts, *Code of Conduct for United States Judges*, Judicial Conference (2019).

find that the legal theory of judicial decision-making is the predominant method that judges use to reach their conclusions.¹⁸ Cross and Tiller find that the presence of an ideological minority member on any appellate panel acts as a “whistleblower,” reining in the “partisan ambitions of a court majority whose policy preferences would best be accomplished by neglecting the dictates of doctrine.”¹⁹ This means that decisions made by panels with two conservative judges and one liberal judge would not be as conservative as the majority judges may prefer. Since scholarship is conflicted on the extent to which partisan considerations affect judicial decision-making, my research is able contribute to the debate.

The circuit in which a given judge is located is another important consideration for judicial behavior. Certain appellate circuits build up a reputation as being especially conservative or liberal.²⁰ Current scholarship is not entirely certain whether this perception is due to their geographical location or if the circuit has actually earned that reputation due to the content of its decisions.²¹ Since some regions of the country, such as the Northeast and the West Coast, are stereotypically liberal, it may be that people simply project this perception onto the First, Second,

¹⁸ Frank B. Cross, “Decisionmaking in US Courts of Appeals,” *California Law Review* 91, no. 6 (December 2003): 1514, <https://doi.org/10.2307/3481397>; Orley Ashenfelter, Theodore Eisenberg, and Stewart J. Schwab, “Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes,” *Journal of Legal Studies* 24, no. 2 (1995): 281, <http://www.jstor.org/stable/724612>.

¹⁹ Frank B. Cross and Emerson H. Tiller, “Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals,” *The Yale Law Journal* 107, no. 7 (May 1998): 2175, <https://doi.org/10.2307/797418>.

²⁰ Cass R. Sunstein, David Schkade, Lisa M. Ellman, and Andres Sawicki, *Are Judges Political?: An Empirical Analysis of the Federal Judiciary* (Washington, D.C., Brookings Institution Press, 2006): 108.

²¹ Andreas Broscheid, “Comparing Circuits: Are Some U.S. Courts of Appeals More Liberal or Conservative Than Others?,” *Law and Society Review* 45, no. 1 (2011): 172.

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and Ninth Circuits. In studying the behavior of three-judge panels across all of the US Appellate Circuits, Broscheid finds that there are indeed significant differences between circuits. He affirms the conventional wisdom that the Second and Ninth Circuits are the most liberal and that the Fourth, Fifth, and Seventh Circuits are the most conservative.²² However, he admits that some of his findings go against common wisdom, since he finds that the First and Second Circuits are more conservative than their reputations.²³ Thus, he concludes that the Circuits' reputations are exaggerated, and that the Circuits are not as polarized as conventional wisdom would have one think.²⁴

Current scholarship on judicial behavior is incomplete in that most studies focus on only one characteristic, whether it be political party of the judge, the president that appointed them, the Circuit in which they are located, or whether public sentiment affects their decisions. While it is valuable to isolate specific factors from time to time, any decision-making process, much less judicial decision-making, is complex and involves a number of considerations when reaching a decision. Thus, it is highly unlikely that one factor prevails over all others in how a judge decides a case. My research aims to blend several factors in one model in order to closer approximate which factors are more significant than others in judicial decision-making.

Several important observations are drawn from the examined literature. First, as the Founders intended, federal appellate judges are not directly responsive to public mood. Second, judges rule based largely on partisan considerations and policy preferences. Third, Presidents pick judges who will rule in a manner consistent with that president's desires. Lastly, appellate circuits' ideological reputations are largely exaggerated.

²² Andreas Broscheid, "Comparing Circuits: Are Some U.S. Courts of Appeals More Liberal or Conservative Than Others?," *Law and Society Review* 45, no. 1 (2011): 188.

²³ *Ibid.*, 187

²⁴ *Ibid.*, 189

Chapter 3: Theory

In this section, I discuss the variables I examine and why they are important to include in my study. I also discuss the relationship I expect between the independent variables in question and my dependent variable. Below is a table which contains my alternative and null hypotheses for each variable.

Alternative Hypothesis	Null Hypothesis
H1 _a : Republican judges make more conservative decisions than Democratic judges.	H1 _o : There is no relationship between a judge's party affiliation and whether their decisions are conservative or liberal.
H2 _a : Judges appointed by Republican presidents make more conservative decisions.	H2 _o : There is no relationship between the party of the president that appointed a judge and whether that judge's decisions are conservative or liberal.
H3 _a : Judges who are under a Republican Chief Justice make more conservative decisions.	H3 _o : There is no relationship between the Chief Justice's partisan affiliation and how a given Justice will vote.
H4 _a : Judges born in the First, Second, and Ninth Circuits make more liberal decisions.	H4 _o : There is no relationship between where a judge was born and how they will rule.
H5 _a : Judges who have served on the bench for a longer time make more conservative decisions.	H5 _o : There is no relationship between how long a judge has been on the bench and whether their decisions are conservative or liberal.

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H6 _a : Judges who have previously held elected office make more liberal decisions.	H6 _o : There is no relationship between whether a judge has previously held elected office and whether their decisions are conservative or liberal.
H7 _a : Judges who attended Harvard or Yale law schools make more liberal decisions.	H7 _o : There is no relationship between where a judge attended law school and whether their decisions are conservative or liberal.

I argue that the party affiliation of the Justice in question is the most important factor when trying to determine judicial partisanship. Every individual has their own political leanings. Since judges are not exempt from being individuals, they have their own political leanings, as well. These biases show themselves in how judges rule in cases before them. Political party affiliation is a reflection of personal values. Those who identify as Republicans tend to be politically conservative, and those who identify as Democrats tend to be politically liberal. For example, William O. Douglas, appointed by Franklin D. Roosevelt in 1939, was a known Democrat whom Democrats vetted for the Vice Presidency on several occasions, though he was never chosen.²⁵ Douglas ended up being one of the most reliable liberal votes ever on the Court. I argue that judges who identify as Republican will tend to rule in a more conservative fashion. Likewise, judges who identify as Democrats will tend to rule in a more liberal fashion.

Also important is the party affiliation of the President that appointed the judge in question. Presidents are clearly partisan figures. It is no secret that Presidents appoint judges with whom they agree ideologically. Presidents wish to further their policy preferences, and one

²⁵ James L. Moses, "William O. Douglas's "Political Ambitions" and the 1944 Vice-Presidential Nomination: A Reinterpretation," *The Historian* 62, no. 2 (Winter 2000): 325, https://www.jstor.org/stable/24452092?seq=1#page_scan_tab_contents.

way they can accomplish this is by appointing judges who will rule in favor of the President's preferred policies. This is why Supreme Court confirmation hearings are so heated today. Senators ask the appointees questions that are essentially litmus tests to determine where the judge falls ideologically. The same applies to district and circuit judges, as well. This creates a sense of partisanship surrounding the Supreme Court. I posit that judges appointed by Republican Presidents make conservative decisions, while judges appointed by Democrats make liberal decisions, Presidents would not appoint them if they did not reflect their own ideology.

The Chief Justice of the Supreme Court is an incredibly influential figure due simply to his status. Judges interact with one another while reaching their decisions. As discussed earlier, party affiliation is a reflection of an individual's values; the Chief Justice is not exempt from this. With his status and influence, it is entirely possible that the Chief Justice sways other members of the Court to his point of view. Thus, judges serving under a Republican Chief Justice will tend to rule in a conservative manner. Judges serving under a Democratic Chief Justice will tend to rule in a liberal manner.

Another important consideration is where the judge is from. Different regions of the country have earned certain ideological reputations. For example, the South is commonly associated with conservatism, and the Northeast and West Coast are commonly thought to be liberal areas. This sentiment is reflected in the appellate circuits in those regions. The First and Second Circuits are located in the Northeast, and the Ninth Circuit is located along the West Coast. All three of these circuits have liberal reputations. As individuals grow up, they learn from their surroundings and those around them. These are considerable influences that can shape how a person thinks for the rest of their lives. Since people's surroundings influence how they think, I claim that Justices who were born in the First, Second, or Ninth Circuits make liberal decisions. Judges who were born anywhere else show no specific partisan stripe.

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Conventional wisdom holds that as people grow older, they grow more conservative. This assumption is reflected in a 2014 Pew Research study that found that conservatives make up a significantly larger portion of those 50 and older than those below 50.²⁶ I do not expect that judges are exempt from this pattern. Individuals' thinking and personal philosophies on life often change with age simply because they have more life experience or sometimes undergo some kind of significant trauma. Humans carry memories and experiences with them the rest of their lives, using old information as a lens through which they perceive new information and make decisions. Since judges are human, this is an important factor to include in my model. Thus, judges who have been on the bench for a longer amount of time will make more conservative decisions.

In the past, Presidents typically appointed judges who held some previous nonjudicial office, such as Congressmen. I argue that since these and most elected offices are partisan positions, those who held these offices before being appointed to the Supreme Court bring this mindset into the judiciary. In their public persona, they are used to engaging their partisanship. This pattern is not easily broken just because they are appointed to a judicial position. I argue that judges who held some elected office before their appointment to the Supreme Court are more liberal, and judges who have not previously held elected office will tend to vote conservatively since they are likely career jurists.

An interesting phenomenon observed in the Supreme Court currently is that the vast number of Justices come from either Harvard or Yale law school. Justice Ruth Bader Ginsburg is currently the only Justice on the Court who graduated from neither Harvard nor Yale. However, she did attend Harvard law school for a time. Justice Sandra

²⁶ Drew Desilver, "The politics of American generations: How age affects attitudes and voting behavior," *Pew Research Center*, July 9, 2014, <https://www.pewresearch.org/fact-tank/2014/07/09/the-politics-of-american-generations-how-age-affects-attitudes-and-voting-behavior/>.

Day O'Connor, appointed by President Reagan in 1981, is the last Justice who attended neither of these institutions. Both of these schools are members of the Ivy League, and are located in the Northeast. These schools, along with the Northeast as a whole, have reputations as liberal institutions. There are certainly conservative judges who attended Harvard and Yale law schools; however, each school teaches law from its own individual philosophy, and this does shape the thinking of its students, at least to some degree. Thus, I argue that Justices who attended either Harvard or Yale will make more liberal decisions than Justices who attended any other institution.

Essentially, Republican Justices and those who were appointed by Republican Presidents will make conservative decisions. Justices who are under a Republican Chief Justice will make conservative decisions, and Justices who were born in the First, Second, or Ninth Circuits will make liberal decisions. The longer a Justice serves, the more conservative they will vote. Justices who attended either Harvard or Yale make liberal decisions. I test these theories in the next section.

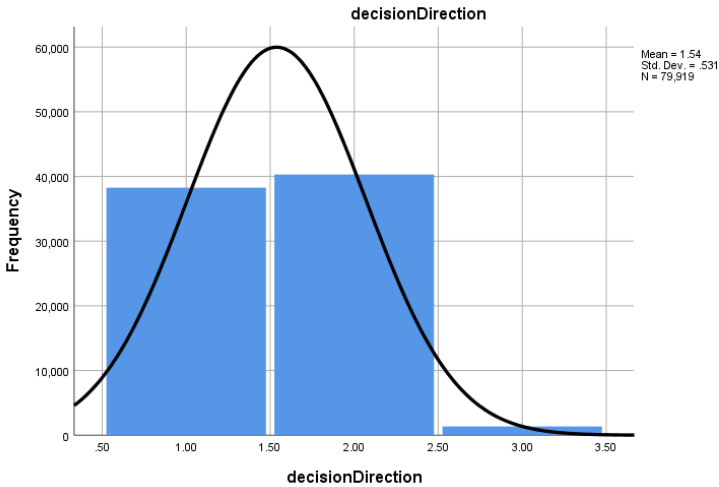
Chapter 4: Data and Methods

Supreme Court Justices' decisions carry a great amount of influence throughout the political and legal world. Americans tend to believe that judges should be fair, impartial, and make their decisions based on the law, but it seems that these interests are merely supplemental in light of partisan considerations. What factors make this so?

The unit of analysis in my study is the Justices themselves. My spatial parameter is the vote that the Justice has cast in the specific case in question. I chose this spatial parameter because the most effective way to study how Justices make decisions is to examine their specific decisions. My temporal parameters are 1946-2019, because this covers the entirety of the modern Supreme Court's history. This range allows for over 80,000 votes from thirty-eight different Supreme Court Justices. This study is a cross-sectional panel time series.

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My dependent variable in this study is the direction of the Justice’s decision. I operationalize this variable dichotomously. This variable, labeled “Decision Direction,” comes from Harold Spaeth et al.’s Supreme Court Database, and the database codes the variable with 1 as conservative, 2 as liberal, and 3 as unspecifiable.²⁷ For the purposes of this statistical model, I recoded the 3s as missing since a logit regression is only compatible with a dichotomous variable. There is not much missing data in this database for this variable. This is the best way to measure how a Justice leans in a given case because it shows precisely the ideological direction of the Justice’s vote. The following is a histogram describing the distribution of the decision direction data with a normal curve overlaid. Following the histogram is a descriptive statistics table with relevant statistics regarding each variable in my model.



²⁷ Harold J. Spaeth, Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh, *2019 Supreme Court Database*, Version 2019 Release 1 (2019), distributed by Washington University Law, <http://scdb.wustl.edu/data.php>.

Figure 1: Descriptive Statistics

	Decision Direction	Party Judge	Party President	Born129Circuit	Party Chief Justice	Time On Bench	Elected Office	Harvard Yale
N	79919	58963	80269	80269	80269	80269	80269	80269
Minimum	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	3.00	1.00	1.00	1.00	1.00	36.00	1.00	1.00
Mean	1.5381	.5212	.5910	.1871	.9090	12.6007	.1716	.5346
Median	2	1.00	1.00	.0000	1.00	11.00	.0000	1.00
Standard Deviation	.53145	.49956	.49165	.38996	.28766	8.57149	.37704	.49881

My first independent variable, the party of the judge, is paramount to studying Justices' decision making. My study would suffer significantly if the judge's political party were not included. Political party affiliation is an expression of an individual's values, and the Justices of the Supreme Court are not exempt from this. I operationalize this variable by coding Republican judges as a 1 and Democratic judges as a 0. This data comes from a variety of sources because some Justices are hesitant to publicly declare their partisan leanings, and some hunting was necessary in order to find the information. I found the information on Oyez for Justices Kennedy, Whittaker, Warren, Vinson, Burton, Roberts, Stewart, O'Connor, Minton, Burger, and Rehnquist.¹ I found information for Justices Goldberg, Gorsuch, and Brennan from the Encyclopedia Britannica, and information for Justices White, Souter, Kagan, Powell, and Clark in various online newspaper and magazine articles.² I found Justice Douglas' affiliation in an article in the Winter

¹ "Anthony M. Kennedy," Oyez, https://www.oyez.org/justices/anthony_m_kennedy; "Charles E. Whittaker," Oyez, https://www.oyez.org/justices/charles_e_whittaker; "Earl Warren," Oyez, https://www.oyez.org/justices/earl_warren; "Fred M. Vinson," Oyez, https://www.oyez.org/justices/fred_m_vinson; "Harold Burton," Oyez, https://www.oyez.org/justices/harold_burton; "John G. Roberts, Jr.," Oyez, https://www.oyez.org/justices/john_g_roberts_jr; "Potter Stewart," Oyez, https://www.oyez.org/justices/potter_stewart; "Sandra Day O'Connor," Oyez, https://www.oyez.org/justices/sandra_day_oconnor; "Sherman Minton," Oyez, https://www.oyez.org/justices/sherman_minton; "Warren E. Burger," Oyez, https://www.oyez.org/justices/warren_e_burger; "William H. Rehnquist," Oyez, https://www.oyez.org/justices/william_h_rehnquist.

² *Encyclopaedia Britannica*, s.v. "Arthur J. Goldberg," August 14, 2019, <https://www.britannica.com/biography/Arthur-J-Goldberg>; *Encyclopadeia Britannica*, s.v. "Neil Gorsuch," August 25, 2019, <https://www.britannica.com/biography/Neil-Gorsuch>; *Encyclopaedia Britannica*, s.v. "William Brennan," July 20, 2019, <https://www.britannica.com/biography/William-Joseph-Brennan-Jr>; Inda P. Campbell, "Justice White: the Democrat Who Often Votes with Conservatives," *Chicago Tribune*, March 21, 1993, [170](https://www.chicagotribune.com/news/ct-</p></div><div data-bbox=)

2000 edition of *The Historian* journal, and information on Justice Thomas on biography.com.³ Justice Murphy's information came from Ballotpedia, an election reference website.⁴ Justice Black's information came from the Constitution Center website.⁵ Data for Justice Reed came from the University of Kentucky Oral History Project.⁶ I was unable to find reliable sources that stated the party affiliation of Justices Scalia, Kavanaugh, Frankfurter, Blackmun, Harlan II, Stevens, Ginsburg, Alito, Breyer, Sotomayor, Thurgood Marshall, and Rutledge. This missing data is problematic, because these Justices represent a significant portion of the total votes cast in the cases contained in the database. As such, it is

[xpm-1993-03-21-9303310169-story.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/02/11/AR2008021102753.html); Robert Barnes and Lucy Shackelford, "As on Bench, Voting Styles are Personal," *Washington Post*, February 12, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/11/AR2008021102753.html>; Ariane de Vogue and Devin Dwyer, "Hearings Give Glimpse of Kagan's Views on Hot Issues," *ABC News*, June 30, 2010, https://abcnews.go.com/Politics/Supreme_Court/elena-kagan-issues-supreme-court-hearings-give-glimpse/story?id=11052847; Joan Biskupic and Fred Barbash, "Retired Justice Powell Dies at 90," *Washington Post*, August 26, 1998, <https://www.washingtonpost.com/wp-srv/national/longterm/supcourt/stories/powell082698.htm>; "Tom C. Clark, Former Justice, Dies; On the Supreme Court for 18 Years," *New York Times*, June 14, 1977, <https://www.nytimes.com/1977/06/14/archives/tom-c-clark-former-justice-dies-on-the-supreme-court-for-18-years.html>.

³ James L. Moses, "William O. Douglas's "Political Ambitions" and the 1944 Vice-Presidential Nomination: A Reinterpretation," *The Historian* 62, no. 2 (Winter 2000): 325,

https://www.jstor.org/stable/24452092?seq=1#page_scan_tab_contents; "Clarence Thomas Biography," biography.com, April 2, 2014, <https://www.biography.com/law-figure/clarence-thomas>.

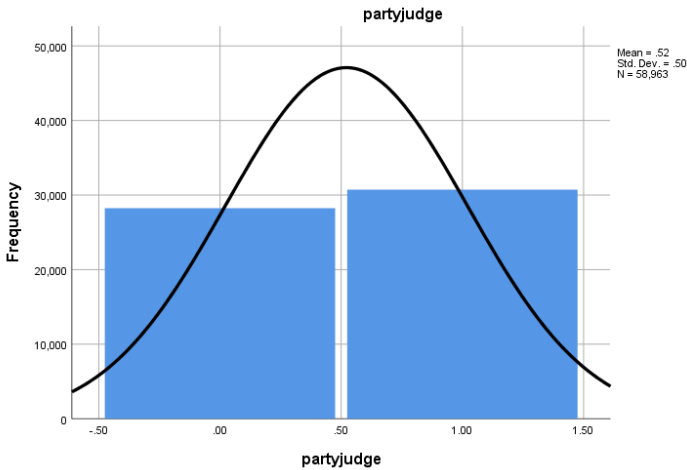
⁴ "Governor of Michigan," Ballotpedia, https://ballotpedia.org/Governor_of_Michigan.

⁵ Nicandro Iannacci, "Hugo Black, unabashed partisan for the Constitution," Constitution Center, August 12, 2019, <https://constitutioncenter.org/blog/hugo-black-unabashed-partisan-for-the-constitution>.

⁶ "Collection Overview," Stanley Forman Reed Papers, 1926-1977, Special Collections and Digital Programs, University of Kentucky Libraries, <https://exploreuk.uky.edu/fa/findingaid/?id=xt700000032b#fa-heading-ref1>.

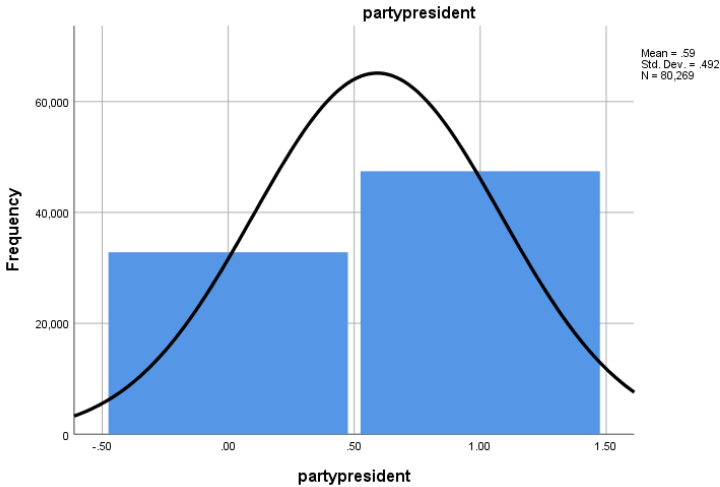
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possible that the results may be skewed in one party's favor. While I did not include results from Wikipedia in my study, it is entirely possible that the Justices' party affiliation reported on Wikipedia is accurate. While some Justices do not like to disclose their party affiliation, it is still considered public knowledge for these Justices and their parties. Since anyone can edit Wikipedia, it is entirely possible for the Justice themselves to edit their own article and change their party affiliation to the correct one. Following is a histogram describing the distribution of political affiliation among the Justices for whom data was available, with a normal curve overlaid.



My next variable, the party of the President that appointed the Justice to the Supreme Court, is also important to consider when studying Supreme Court Justices. I call this variable "Party President" in my data set, and I operationalize it with 1 representing Republicans and 0 representing Democrats. There is not a better way to operationalize this variable, since every Supreme Court Justice since 1946 has been appointed by a President who was either a Republican or a Democrat. There is no missing data for this variable. This data comes from the Supreme Court website and a list of Presidents with their party

affiliation.⁷ The following chart is a histogram showing Justice votes from Justices who were appointed by Republican presidents versus Democratic presidents.



My next independent variable is the appellate circuit where the Justice in question was born. I operationalize this variable with a value of 1 if that the Justice was born in a state contained in the First, Second, or Ninth Circuits; a value of 0 indicates a state within any other jurisdiction. This data is available for every Supreme Court Justice in my study. This data is available from Oyez⁸ and the Federal Judicial Center biographies for each Justice.⁹ Below is a histogram showing the

⁷ “Justices 1789 to Present,” Supreme Court of the United States. Accessed October 14, 2019.

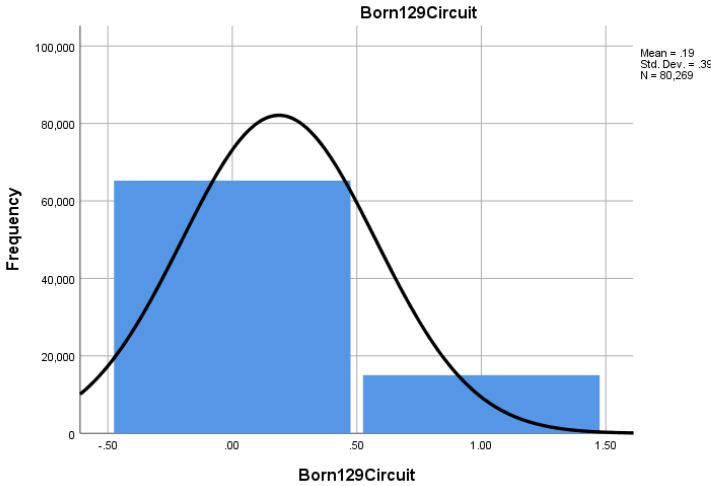
https://www.supremecourt.gov/about/members_text.aspx; “US Presidents and US Political Parties,” presidential-power.org, 2016, <http://www.presidential-power.org/us-presidents-in-order-dates-parties.htm>.

⁸ Harold J. Spaeth, Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh, *2019 Supreme Court Database*, Version 2019 Release 1 (2019), distributed by Washington University Law, <http://scdb.wustl.edu/data.php>.

⁹ “Biographical Directory of Article III Federal Judges, 1789-present,” Federal Judicial Center, <https://www.fjc.gov/history/judges>.

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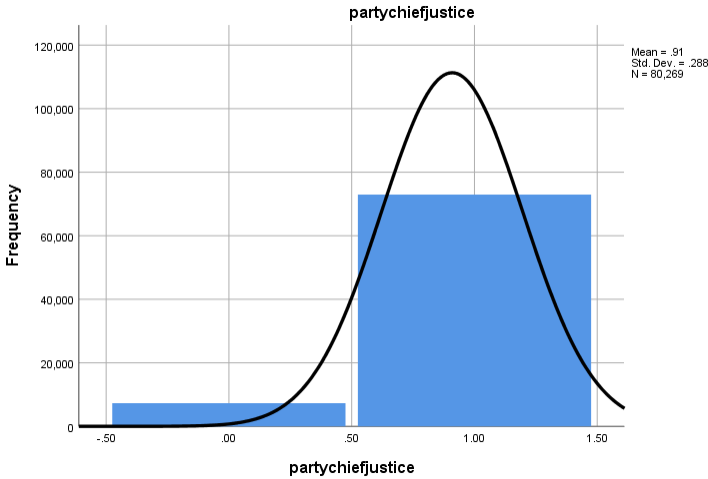
distribution of Justice votes since 1946 that came from a Justice who was born in either the First, Second, or Ninth Circuit; or any other jurisdiction.



My next variable, the Chief Justice at the time of the case, is also important, because the Chief Justice is an influential figure in Supreme Court decision-making. Because the political party affiliation of any judge is important, and the Chief Justice carries a lot of weight in his decision making, it is important that I include this as a variable (called “Party Chief Justice”) in my study. I operationalize the party of the Chief Justice with 0 meaning that the Chief Justice at the time was a Democrat and a 1 signifying that the Chief Justice at the time was a Republican. The data for the identity of the Chief Justice is contained in the Supreme Court database, and their party affiliation is found in their biographies on Oyez.¹⁰ Below is a histogram showing the distribution of the party affiliation of the Chief Justice since 1946. It is abundantly clear that there

¹⁰ Harold J. Spaeth, Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh, *2019 Supreme Court Database*, Version 2019 Release 1 (2019), distributed by Washington University Law, <http://scdb.wustl.edu/data.php>; “Justices,” Oyez, <https://www.oyez.org/justices>.

are more instances in which a Republican was the Chief Justice than if a Democrat was the Chief Justice.

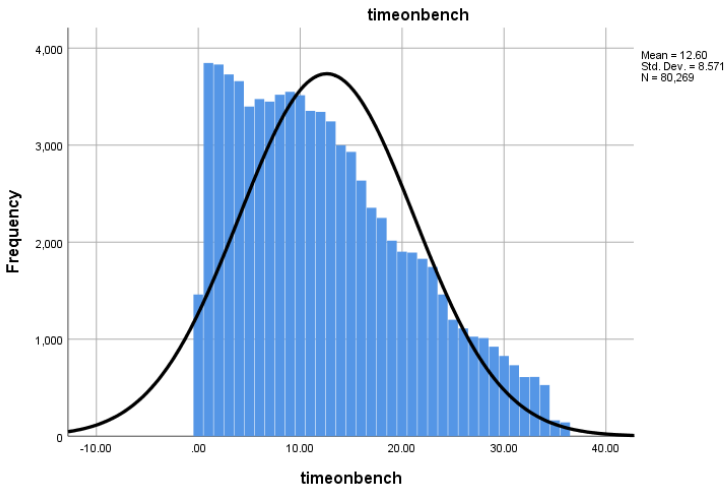


The amount of time that the Justice in question has spent on the Supreme Court is an important factor to consider. Ideologies may drift as Justices grow older, and for this reason I include it as a variable in my study. This is a continuous variable called “Time On Bench” in my model. I calculate it by figuring how many years have passed between the date the Justice was confirmed to the Supreme Court and the date that the case was decided. The date that the case was decided is found in the Supreme Court Database,¹¹ and confirmation dates are found on the Supreme Court website.¹² Below is a histogram showing a distribution of how long a Justice had been on the Court when they heard the case in question.

¹¹ Harold J. Spaeth, Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh, *2019 Supreme Court Database*, Version 2019 Release 1 (2019), distributed by Washington University Law, <http://scdb.wustl.edu/data.php>.

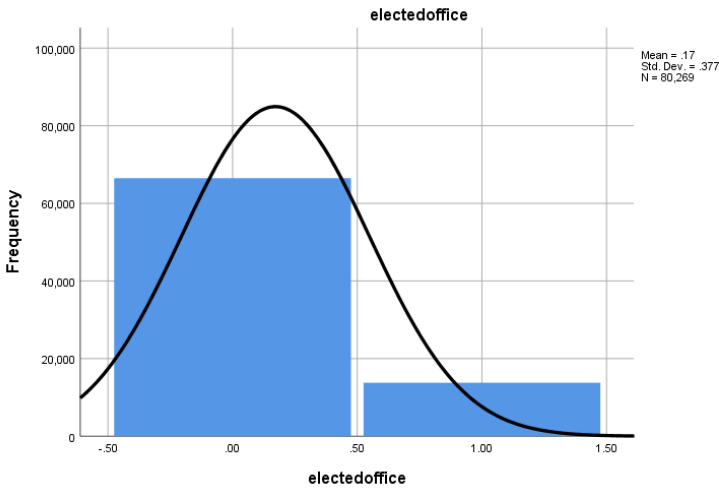
¹² “Justices 1789 to Present,” Supreme Court of the United States. Accessed October 14, 2019. https://www.supremecourt.gov/about/members_text.aspx.

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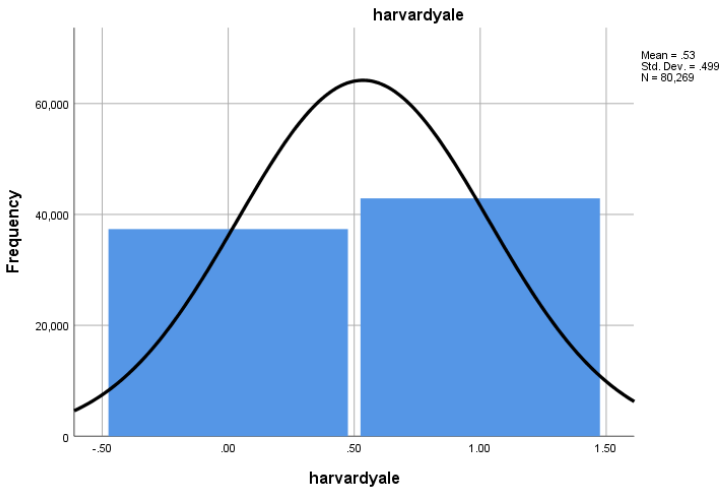
In chapter three, I discussed how whether a Justice had formerly held elected office may affect their decisions. This variable is called “Elected Office” in my model. I operationalize this variable with a value of 1 signifying that the Justice has held elected office in the past, and a 0 meaning that the Justice has not held elected office. This information is available on the Federal Judicial Center’s website in judge biographies and the biographies found on Oyez.¹³ Below is a histogram showing a distribution of instances in which a Justice who had formerly held elected office heard a case.

¹³ “Biographical Directory of Article III Federal Judges, 1789-present,” Federal Judicial Center, <https://www.fjc.gov/history/judges>; “Justices,” Oyez, <https://www.oyez.org/justices>.



Finally, where the Justice in question attended law school is important, considering the current monopoly that Harvard and Yale law schools have on the Supreme Court. I operationalize this variable, called “Harvard Yale” in my model, with 1 signifying that the Justice attended Harvard or Yale, and 0 signifying that the Justice attended any other law school. This data comes from the judge biographies found on the Federal Judicial Center website.¹⁴ Below is a histogram which shows a distribution of how many times Justices who attended law school at either Harvard or Yale heard a case versus Justices who attended law school anywhere else.

¹⁴ “Biographical Directory of Article III Federal Judges, 1789-present,” Federal Judicial Center, <https://www.fjc.gov/history/judges>.



I test these hypotheses using a logit analysis because the dependent variable in this study is dichotomous. An OLS regression is inappropriate for this study because those regression models require continuous dependent variables.

Chapter 5: Findings

In chapter three, I discussed in detail my argument behind each factor that I include in my model. My hypotheses are reproduced below. Among other factors, I argue that judges who are Republicans and appointed by Republican presidents tend to make more conservative decisions on the bench. In this chapter, I test this theory in order to evaluate how these chosen factors affect judicial decision making. For this study, I use a logit regression analysis.

Hypotheses	Expected Relationship
H1: Republican judges make more conservative decisions than Democratic judges.	+

H2: Judges appointed by Republican presidents make more conservative decisions.	+
H3: Judges who are under a Republican Chief Justice make more conservative decisions.	+
H4: Judges born in the First, Second, and Ninth Circuits make more liberal decisions.	-
H5: Judges who have served on the bench for a longer time make more conservative decisions.	+
H6: Judges who have previously held elected office make more liberal decisions.	-
H7: Judges who went to law school at Harvard or Yale make more liberal decisions.	-

The following charts contain the logit analysis done in SPSS.

Figure 2: Regression Results

DECISION DIRECTION	
Party of the Justice	0.236*** (0.028)
Party of the President that Appointed the Justice	0.313*** (0.028)
Party of the Chief Justice	-0.642*** (0.035)

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Where the Justice was Born	-0.140*** (0.028)
Time on the Bench	0.011*** (0.001)
Elected Office	-0.202*** (0.025)
Where the Justice went to Law School	0.124*** (0.021)
Constant	0.043 (0.035)

N 80269

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	79090.601 ^a	.014	.019

a. Estimation terminated at iteration number 3 because parameter estimates changed by less than .001.

For this project, I use the Cox and Snell R-square as the regular R-square. This shows the variance in the dependent variable that is

explained by the independent variables. Unfortunately, the Cox and Snell R-square is rather small. This could possibly be explained by the theory that Supreme Court Justices are individuals, and individuals' behavior cannot always be predicted by certain characteristics. Adjusted R-square is unavailable for this type of analysis.

The value which is not in parentheses in Figure 2 is the unstandardized Beta, which shows how large an effect that variable has on the model. The sign in front of the value signifies the direction of the relationship between that variable and the dependent variable, the ideological direction of the vote cast by the judge in the case in question. The party of the judge and the party of the President that appointed them are both in the positive direction, which lines up with my hypotheses. The party of the Chief Justice, though, tells a different story. The sign accompanying the value is negative, which indicates a negative relationship between the party of the Chief Justice and the vote direction. I suspect that this is due in part to the large number of liberal decisions that were handed down when Earl Warren, a Republican, was Chief Justice. Though he was appointed by Republican President Dwight D. Eisenhower, he handed down a large number of liberal decisions. Warren was simply a theoretical outlier among the Republican party. The circuit where the Justice was born has a positive relationship with the decision direction, the Justice's time on the bench has a positive relationship, and whether the Justice formerly held elected office has a negative relationship. These are all in line with my hypotheses. However, where the Justice attended law school has a positive relationship, which is contrary to my hypothesis. I suspect that this is due to the fact that Justices of every ideological stripe come out of Harvard and Yale, from Clarence Thomas and Antonin Scalia to Ruth Bader Ginsburg and William J. Brennan. Ultimately, it is neither strictly conservatives nor strictly liberals coming out of these institutions, but simply smart people.

All of my independent variables are statistically significant. This is reflected in Figure 2 by the asterisk following each unstandardized beta value. Because these values are statistically significant, I reject the

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null for all of the variables except for party of the Chief Justice and where the Justice attended law school, for which I fail to reject the null. Unfortunately, I cannot comment on the substantive significance of these variables because such analysis is beyond the scope of this project. The standard errors for each variable, which are the values in parentheses in Figure 2, is below .05, which means that the estimated mean values for these variables are close to the true population mean.

All of the variables that I tested are statistically significant, but I lack the tools required to determine any substantive significance. All of my hypotheses were correct except for those about the party of the Chief Justice and where the Justice attended law school. My independent variables also do not reflect perfectly the variance in the dependent variable, the direction of the decision.

Chapter 6: Conclusion

Judges are supposed to be perfectly fair and impartial, but we see that this is rarely the case on the Supreme Court. What factors make Supreme Court Justices rule in a partisan manner? This is an important question to study because decisions made by the Supreme Court have the potential to significantly affect the average person's life.

My model found that all of the factors that I tested are statistically significant to predict a Justice's voting patterns in any given case. However, two of my variables, the party of the Chief Justice and where the Justice went to law school, were statistically significant in the opposite direction from what I originally hypothesized.

The analysis for party of the Chief Justice was likely skewed by the presence of Earl Warren in this model, who was Chief Justice in the 1950s. During his time as Chief Justice, the Court handed down a number of liberal decisions, especially in the arena of civil rights. It is possible that a better measure of analysis would be to operationalize the variable differently or to choose a different variable, perhaps one that has to do with the ideological composition of the entire Court at the time the case was decided.

Where the Justice went to law school was also different than I expected, demonstrating that a judge who attended Harvard or Yale law school tended to rule more conservatively. I expected judges who attended either of these institutions to rule in a liberal fashion because these institutions have liberal reputations and education affects the way individuals make decisions. This observation likely is due to the fact that conservative and liberal Justices alike have gone to Harvard and Yale law school. Either these institutions are not as liberal as I expected, or the judges who attended retained their conservative philosophies while they were there.

If I were to expand upon this project, the first place I would begin is by expanding the temporal parameters. Harold Spaeth's Supreme Court Database comes in two forms, a modern form that spans from 1946-2019 and a legacy database that spans from 1791-1945. It would be useful to include a larger timespan even if for no other reason than to increase the number of observations in the model. Increasing the amount of observations would also increase my model's accuracy. Since my model accounts for individual characteristics of the Justices, and not contextual factors surrounding the case in question, I would like to include religion as a variable, as well. While some may suggest that race is important to study as an individual characteristic, I do not believe that there have been enough nonwhite Justices on the Supreme Court to produce reliable data. Ultimately, it appears that Supreme Court Justices use more than the law or the Constitution to guide their decisions.