

## AGGRESSIVE GRANTS BY AFFIRM-MINDED JUSTICES

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Given that the Supreme Court usually reverses the decision of the court below, why would justices who agree with that decision vote to hear the case? In other words, why would affirm-minded justices vote to grant cert? Scholars refer to such behavior as the outcome prediction strategy. We examine its putative presence on the Vinson and Warren courts because valid and reliable data for these two courts exist. Our study has two purposes: (a) to identify and test the strategic and nonstrategic variables associated with granting cert by affirm-minded justices and (b) to offer evidence regarding whether the justices use outcome prediction. We find that although the well-known nonstrategic determinants of cert matter (e.g., salience and lower court conflict), so also do strategic considerations. We identify these variables and the strength of their impact on what fairly appears to be outcome-prediction voting by affirm-minded justices.

**The agenda setting** of political institutions has been the subject of a wide array of studies in all areas of political science. Indeed, scholars interested in a variety of institutions have considered the agenda-setting behavior of institutions and its effect on political outputs (see, e.g., Carmines & Stimson, 1989; Cobb & Elder 1983; Kingdon, 1984; Riker, 1993). Agenda setting on the United States Supreme Court is no exception; a plethora of articles<sup>1</sup> during many years have tried to ascertain the determinants of the Court's decision to decide (usually via a grant of a petition for a writ of certiorari) and have found various factors that influence Supreme Court behavior. Understanding the Court's decision making at this stage is essential, for the Court has nearly full control over what it hears, and the cases it chooses to hear have widespread ramifications for who gets what in society. Scholars

concerned with this decision-making stage that determines the Court's agenda have either focused on one of two strategies: (a) the error correction strategy or the outcome prediction strategy (Baum, 1997) or (b) nonstrategic determinants of the vote to grant.

The error correction strategy posits that the justices take cases to reverse them, hence correcting a perceived error in the lower court's disposition. To find evidence of error correction, we need only note the propensity of the Supreme Court to reverse the lower court. Indeed, the High Court is more likely to reverse than to affirm; a propensity much different from that of the other appellate courts (both the state supreme courts and the United States Court of Appeals), which overwhelmingly affirm trial court decisions. The outcome prediction strategy, on the other hand, posits that a justice first consults his or her preferred resolution of the case, then the probability of achieving it, and then decides whether to vote to grant or to deny, voting to grant only when he or she is reasonably confident of a win on the merits. Measuring the existence and pervasiveness of this strategy is more difficult. To determine the extent to which outcome prediction motivates Supreme Court cert behavior,<sup>2</sup> we need to look at the existence of several indicators, which is our goal here.

Other Supreme Court scholars have examined nonstrategic variables associated with granting of cert (as pioneered by Tanenhaus, Schick, Muraskin, & Rosen 1963).<sup>3</sup> The most comprehensive study was conducted by Caldeira and Wright (1988). These two scholars inspected the cases granted and denied cert during the 1982 term of the Burger Court. They discovered that the following variables were associated with the granting of cert by the Court: (a) whether the United States was a petitioner, (b) whether one or more amicus curiae briefs were filed either supporting or opposing a grant of cert, (c) whether there was an actual or alleged conflict between one or more courts below or between the lower court and the Supreme Court, and (d) whether the lower court decided the case contrary to the ideology of the Supreme Court.

No scholar, however, has investigated the extent to which strategic and nonstrategic variables *together* influence cert behavior. Although important, strategic considerations cannot explain all of the variance in Supreme Court cert decisions, particularly where lower court conflicts and highly salient issues are concerned (Caldeira & Wright,

1988; Epstein & Knight, 1998; Murphy, 1964; Perry, 1991; Tanenhaus et al., 1963). And surely some strategic considerations are relevant. Certainly, strategic behavior is more likely to occur under certain conditions. We employ a multivariate model that includes both strategic and nonstrategic variables to discern the relative strength of each in order to close this gap in our knowledge on cert behavior. In this way, we are able to determine if, while controlling for nonstrategic cert explanations, strategy remains relevant or whether the well-known nonstrategic determinants of cert prevail. This is important knowledge to those who study agenda setting on the United States Supreme Court, for to predict the cases the Court will hear and, in so doing, ascertain the responsiveness of the Court to certain types of cases or litigants, we need a fully specified model of cert behavior. We believe that the inclusion of strategic and nonstrategic determinants gets closer to such a model.

Our goal here, then, is to identify variables—strategic and nonstrategic—that impinge on outcome prediction (hereafter o-p) and if they are significant, conclude that affirm-minded justices give some attention to forward thinking in their voting on cert.

### AFFIRM-MINDED JUSTICES

Five empirical studies (Boucher & Segal, 1995; Brenner, 1979; Brenner & Krol, 1989; Krol & Brenner, 1990; Segal, Boucher, & Cameron, 1995) present evidence that suggests that the justices who wish to affirm the lower court's decision follow the o-p strategy, but the justices who desire to reverse that decision do not do so. Brenner and Krol (1989, Table I.2), for example, discovered that the certiorari grant rate of the affirm-minded justices who won at the final vote was significantly higher than that of those who lost at the final vote (67.5% v. 39.1%), but no such pattern occurred when the grant rates of reverse-minded justices who won were compared with those who lost. Indeed, the losers did somewhat better than the winners (82.1% v. 77.3%).

Because of these findings, we focus on affirm-minded justices exclusively. Indeed, if affirm-minded justices vote to grant the petition to review a case, they risk the possibility that the decision they like will

be reversed at the authoritative Supreme Court level. Because such justices have so much to lose—given the Court’s propensity to reverse the decisions it reviews—it is rational for them to take the time and effort necessary to calculate whether the outcome they favor is likely to win or lose at the Court’s final vote before they decide whether to vote to review the case.

As mentioned, Baum described this strategy by affirm-minded justices as the “outcome prediction” strategy. The preference ordering of such justices, from most to least desirable, is for the Supreme Court (a) to affirm the lower court’s decision, (b) to refuse to review the case, and (c) to reverse the lower court’s decision. If affirm-minded justices are confronting a lower court decision they like, therefore, why would they risk a Supreme Court decision unless the outcome they favor is likely to win? Thus, to explore the o-p strategy on the Court, we ought to focus on the behavior of the affirm-minded justices.

We do not assume, though, that every time an affirm-minded justice votes to grant cert he or she is voting o-p. The nonstrategic variables referred to above might have influenced his or her vote. In addition, even if we can show that affirm-minded justices who are better able to predict the final vote are more likely to vote to grant cert, we will not be able to prove that they voted to grant cert because they were playing the o-p game. Such a demonstration, however, would suggest such a conclusion. And such a conclusion accords with the scholarly consensus (e.g., Baum, 1997; Epstein & Knight, 1998; Segal & Spaeth, 1993) that the justices seek to attain their policy goals whenever possible and that they will vote strategically if such voting facilitates achieving these goals. In other words, when individual justices vote compatibly with the pattern that o-p decrees, we assume that these justices *may* have used the o-p strategy.

### EXERCISING OUTCOME PREDICTION

A justice may employ the o-p strategy in at least one of two ways. First, he or she could vote to review the case and subsequently vote to affirm the decision of the lower court at the conference vote on the merits and at the final vote (grant, affirm, affirm [GAA]). This is known in the literature as an aggressive grant. Second, a justice could

vote to deny the petition requesting review and, losing at this vote, vote to affirm the decision of the lower court at the conference and final votes (deny, affirm, affirm [DAA]); a defensive denial. Due to the volume of cert denials, the vast majority of which no justice deemed worthy of a cert vote, we deal here only with the GAA o-p strategy.

### EXCLUDED AND INCLUDED DATA

Our data set covers the 23 terms of the Vinson and Warren Courts (1946-1968 terms). We limit our analysis to these terms because only regarding these terms are there valid and reliable data available (Spaeth, 1997, 1998). We use Spaeth's (1997) Expanded United States Supreme Court Database with individual justices' votes on formally decided (i.e., orally argued) dockets as the unit of analysis.

We exclude from our analysis the votes of those justices who voted to grant cert but voted to affirm at only one of the two votes on the case (the initial vote on the merits and the final vote on the merits). We do so not only to achieve a strong definition of affirm-mindedness but also to exclude from analysis another strategy that might be operative.

We include the votes of the justices to grant and then vote to affirm at both the merits and the final votes even if their vote did not determine that cert would be granted. A given justice does not know whether his or her vote will be decisive or not, and, therefore, the safe way for them to proceed is to assume that it might be. In any event, the justices almost always record their cert votes on material they bring with them to conference (Abraham, 1980; Stewart, 1979), and most of the votes are automatically cast (Baum, 1995). To use O'Brien's (2000) language, they "come to conference prepared to vote" (p. 208).

We do not distinguish between petitions for writs of certiorari and appeal, notwithstanding the technical differences between them.<sup>4</sup> A nontrivial 8.5% of our cases are appeals. A justice may as readily employ the outcome prediction strategy in either situation because both decisions (the decision to grant an appeal or grant a petition for cert) are largely discretionary today.

We do not include denials of certiorari. Our data set contains 23 terms. During this period, there were 41,579 requests for cert, of which 3,317 (less than 8%) were granted by the Court (Epstein, Segal,

Spaeth, & Walker, 1996, Table 2-5). In other words, there were 38,262 cert denials. Use of these cases would require predicting the justices' votes (both their initial vote on the merits and their final vote on the merits). Even when cert is granted, it is difficult to predict the final vote mainly because of extensive issue fluidity on the Court (McGuire & Palmer, 1995). This is true even though the Court, at times, tells us what issue they intend to decide when they grant cert. Often the justices deny cert because the lower court record is inadequate, because a better case is in the pipeline more suitable for Supreme Court decision, or because there is no issue worthy of Supreme Court review because the suggested issue or issues are frivolous. Under these circumstances, it becomes futile to try to figure out the probable final vote if cert were granted. Note also that, overwhelmingly, cert denials are unanimous.

The only scholars who include cert denials are Caldeira, Wright, and Zorn (1999). But they focus on only one term of the Court and include only those on the discuss list, a nonrandom selection itself. But in the absence of this information, we affirm that our findings are not generalizable to those cases in which cert was denied. Hence, we analyze only one realization of the o-p strategy.

### THEORY AND HYPOTHESES

We posit that the justices are forward-thinking, that is, that an affirm-minded justice, wishing to obtain his or her most preferred outcome, will vote to grant only when he or she is reasonably sure that he or she will win. Our hypotheses include the nonstrategic determinants of voting on cert and variables aimed at increasing ease in prediction. We believe that, even when controlling for the traditional determinants of cert, those variables leading to an easy prediction of a "win" will increase the probability that a given affirm-minded justice will vote to hear a case.

Thus, we advance the following hypotheses noting that if they are supported, we can only *infer* that each justice consciously intended to use the o-p strategy.<sup>5</sup> The following justices will be *more likely to vote to grant certiorari* when they wish to affirm:

**NONSTRATEGIC CONSIDERATIONS (DETERMINANTS OF CERT SET)**

*Hypothesis 1:* Justices in salient cases because they warrant more careful attention and because the Court is more likely to hear such cases anyway.

*Hypothesis 2:* Justices reviewing cases in which there is conflict in the lower courts, a well-known determinant of the cert vote.

*Hypothesis 3:* Justices reviewing cases in which the solicitor general of the United States petitions the Court for certiorari, another well-known determinant of the cert vote.

**ATTITUDINAL CONSIDERATIONS**

*Hypothesis 4:* The liberal justices, because liberal justices (at least in the Vinson and Warren Court era) were more grant prone in general (see, e.g., Brenner & Krol, 1989; Palmer, 1990; Provine, 1980).

**STRATEGIC CONSIDERATIONS (EASE IN PREDICTION SET)**

*Hypothesis 5:* Justices who win by a vote larger than 4-2, 4-3, 5-3, 5-4, or 6-3 at the merits vote, because we assume they will be better able to predict that they will win at the final vote.<sup>6</sup>

*Hypothesis 6:* Justices who win by a vote larger than 4-2, 4-3, 5-3, 5-4, or 6-3 at the final vote, because we assume they were better able to predict that win.

*Hypothesis 7:* Justices who have served longer on the Court as they will be more experienced in the calculations necessary to pursue this strategy and will have more information available to them about their colleagues.

*Hypothesis 8:* Justices in noncomplex cases because it is easier to predict the final outcome in these cases.

*Hypothesis 9:* Justices in the majority more often (measured as a 2-year moving average) because they are more likely to win overall (and so can more readily predict another win).

**A MODEL OF OUTCOME-  
PREDICTIVE BEHAVIOR**

We estimate the following probit model using pooled data at the individual justice vote level:

$$\begin{aligned}
 P(Y = 1) = & f(B_0 + B_1 (\text{saliency}) + B_2 (\text{conflict in lower courts}) \\
 & + B_3 (\text{solicitor general}) + B_4 (\text{ideology}) \\
 & + B_5 (\text{coalition size at merits vote}) + B_6 (\text{coalition size at final vote}) \\
 & + B_7 (\text{experience}) + B_8 (\text{complexity}) \\
 & + B_9 (\text{percentage time in majority}) + u_i,
 \end{aligned}$$

where  $P(Y = 1)$  is the probability of a vote to grant cert; saliency is the measure taken from *Congressional Quarterly's* list of major decisions (see Epstein et al., 1996); conflict is equal to 1 if the reason given for granting cert was conflict in a lower federal court or in a state court, 0 otherwise (Spaeth, 1997); complexity is the number of legal provisions in the case (Spaeth, 1997); solicitor general is equal to 1 if the office of the solicitor petitioned the Court (on behalf of the United States or an administrative agency) to grant cert, 0 otherwise; ideology is derived from Segal and Cover (1989); coalition size takes on a value of 1 for final votes or merits votes larger than 4-2, 4-3, 5-3, 5-4, or 6-3, 0 otherwise (Spaeth, 1997); experience is a running total of years served by each justice (Epstein et al., 1996); percentage time in majority is the percentage of time the justice was in the majority for the 2 years prior<sup>7</sup> to any given decision (creating a moving average) (Spaeth, 1997).

## FINDINGS AND DISCUSSION

The results of the multivariate analysis can be found in Table 1 and the predicted probabilities (to demonstrate the strength of the various relationships) in Table 2.<sup>8</sup> Looking at the actual probit results (Table 1), we see immediately that most of our hypotheses were upheld and that the model as a whole is significant and reduces error in prediction over the null model. The nonstrategic set performs as expected with saliency, conflict in the lower courts, and solicitor general petitions all contributing to a vote to grant cert among affirm-minded justices. Ideology, the sole member of the attitudinal set, is marginally significant at conventional levels and in the expected positive direction; liberal justices are marginally more likely to vote to grant cert than are conservative or moderate justices. Finally, the strategic set performs quite well, although two of the members of that set behave rather oddly. As



**TABLE 1**  
**A Multivariate Model of Cert Strategy:**  
**Voting to Grant by Affirm-Minded Justices**

<i>Variable</i>	<i>Coefficient</i>	<i>SE</i>
<b>Nonstrategic set</b>		
Saliency	.28	.08**
Conflict in lower courts	.52	.04**
Solicitor general petition	.29	.05**
<b>Attitudinal set</b>		
Ideology	.07	.04*
<b>Strategic set</b>		
Court affirms big at merits	.13	.04**
Court affirms big at final	.35	.04**
Experience	-.01	.00**
Complexity	.17	.04**
Percentage time in majority	.47	.12**
Constant	-.52	.11**

$N = 7,882$

Wald  $\chi^2 = 505.60$

Significance level = .0000

Pseudo  $R^2 = .0509$

Log likelihood = -5046.1798

% correctly predicted = 62.7%

% correctly predicted null = 59.6%

Reduction of error over null = 7.7%

\* $p < .05$ . \*\* $p < .01$ .

expected, big wins both at the merits vote and the final vote induce a vote to grant as does frequent membership in the majority in the 2 years previous to the decision year. Experience, however, is negatively related to a vote to grant, implying that the more years served on the Court, the less likely a justice to vote to grant cert when he or she is affirm-minded. And complexity is positive; more complex cases are more likely to be granted cert than are noncomplex cases. These last two results are unexpected and, because we posited one-tailed relationships, are technically not significant. However, that they are in the opposite direction does demand some explanation.

Complexity is easier to explain than experience. It is possible that complexity is a nonstrategic determinant of cert such that more complex cases are more likely to be heard. Indeed, they do afford a greater opportunity for the justices to make policy as they are multifaceted. It

**TABLE 2**  
**Predicted Probabilities of Voting to Grant Cert**

<i>Variable</i>	<i>Predicted Probability</i>	<i>Change</i>
All at mean	63.4%	
Saliency		
Salient case	69.4	+6.0%
Nonsalient case	59.0	-4.4
Conflict in lower courts		
Exists	78.1	+14.7
Does not exist	60.1	-3.3
Solicitor general		
Petitions	72.8	+9.4
Does not petition	62.5	-0.9
Ideology		
At minimum (0.56) (c)	61.1	-2.3
At maximum (2.00) <sup>a</sup> (1)	64.9	+1.5
Court affirms big at merits		
Does affirm big	65.8	+2.4
Does not affirm big	60.9	-2.5
Court affirms big at final		
Does affirm big	69.9	+6.5
Does not affirm big	56.8	-6.6
Experience		
At minimum (0)	66.8	+3.4
At maximum (31)	55.0	-8.4
Complexity		
Complex case	68.2	+4.8
Noncomplex case	61.9	-1.5
Percentage in majority		
At minimum (37)	56.8	-6.6
At maximum (100)	68.0	+4.6
Ease in prediction set:		
Win big at merits, win big at final, percentage time in majority maximum, noncomplex case, experience at maximum	67.3	+3.9
	(42.4 when absent) <sup>b</sup>	(-21.0)
Determinants of cert set:		
Saliency, conflict, solicitor general petition	88.6	+25.2
	(54.6% when absent)	(-8.8)
Ease in prediction and determinants of cert present:	90.5	+27.1
	(96.3 minimum experience and complex)	(+32.9)

a. Segal/Cover scores were added to one to make all scores positive for easier interpretation.

b. Including complex cases and inexperienced justices, the percentage is 82.4, up 19% from when all are at means.

might also be that complex cases are more easily predicted because they are more carefully examined. However, the finding that the more senior justices are less likely to grant cert is harder to understand. Perhaps these justices are more jaded about their chances of winning at the final vote. Perhaps they are more involved in writing opinions and conducting other activities and, therefore, do not have the time to engage in the strategy. Perhaps age has a negative effect on the use of this strategy, at least insofar as more senior judges have lower energy levels and are therefore less likely to grant cert to avoid further work. It is uncertain, of course, which of these possible explanations, if any, is most credible.

Let us consider which variables seem most important to the calculation made by the affirm-minded justice at the certiorari vote. The largest substantive impact (see Table 2) is made by the conflict variable, and this should not surprise us. Rule 10, the Supreme Court's rule governing agenda, specifically states that the Court should take cases in which there is conflict among the circuit courts or between a state and federal court. Because this is one of the few formal guidelines on the decision to decide, it should certainly heavily influence whether the Court grants cert. Here we see that when conflict exists in the courts below, the probability that any given justice will vote to hear the case is 78.1%—up some 14.7% from the case in which all of the variables are held at their respective means. The absence of such conflict results in a decrease of 3.3% in the likelihood of a vote to grant. Surely this variable accounts for much of the variation in cert voting.

The solicitor general is especially successful when petitioning the Court for cert, so the strength of this variable is not surprising either. In cases endorsed by the solicitor general, the probability of a given justice's vote to grant cert is 72.8%, up 9.4 percentage points from the grant rate when all variables are at their means. When the solicitor general is not involved, only 62.5% of all affirm-minded justice votes are for cert, holding all other variables at their means. This is not much different than the case in which all variables are held at their means. This variable, then, another well-known determinant of cert, is the second strongest in the model.

Experience on the Court also substantially influences the vote to grant cert, but as stated earlier, it is in the opposite direction than expected. Here we find that the most senior justice, on the Court for 31

years, will vote to grant only 55% of the time (down 8.4% from when all variables are held at their means), whereas the most junior justice, in his or her first term, will vote to grant 66.8% of the time (up 3.4% from when all variables are held at their means).

Even with the inclusion of these highly significant (both statistically and substantively) variables, we still find that variables affecting the prediction of outcome matter, and not insubstantially. A large affirmation at the final vote, for example, increases the likelihood of a vote to grant by 6.5%; a close margin (e.g., a difficult prediction situation) decreases the likelihood by almost 6.6%. A large affirmation at the merits vote increases the likelihood of a vote for cert by 2.4%, whereas a closer margin at that preliminary vote decreases the likelihood by 2.5%. Indeed, as expected, the justices look with more import to the final vote than they do the merits vote. What is really at stake is the vote that will determine case outcome, and a big win there is more influential than a preliminary big win at the conference vote on the merits.

The likelihood of a win might also be calculated by a justices' record of winning. In other words, those justices who voted more often with the majority in the 2 years prior to the point of the current decision may consider themselves more likely to win and, having this easier prediction task, may vote to grant cert at a higher rate. We find this to be the fourth most influential variable in the model, lending additional credence to the strategic model we propose. The most successful justice, spending 100% of his or her time in the majority in the 2 previous years, will vote for cert when affirm-minded 68% of the time. His unsuccessful colleague, on the other hand, only in the majority in 37% of the cases in which he or she participated up to that point, will only vote for cert in 56.8% of the cases he or she wishes to see affirmed.

When we look at what we call the "ease in prediction set" (i.e., win big at the merits vote, win big at the final vote, enjoy a frequent membership in the majority, have much experience, and be faced with a noncomplex case) and the "determinants of cert set" (i.e., conflict, salience, and presence of the solicitor general) together, we see that each has a strong influence on the decision to decide, although the traditional determinants of cert are more important. When the Court con-

fronts an easily predicted case, the likelihood of a vote to grant is 67.3%; in the absence of all of these variables, the likelihood is 42.4%. This accounts for a 3.9% increase and a 21.0% decrease in the likelihood of a vote to grant cert, respectively. When the justice is faced with a case in which there is lower court conflict, a salient issue, and solicitor general support, the likelihood of a vote to grant is 88.6% (up 25.2% over the mean situation), and when all of these things are absent, the likelihood is 54.6% (down 8.8%). As we can see then, both are influential in determining whether affirm-minded justices will vote to grant cert, although the absence of the prediction set affects matters more than does the absence of the determinants of cert set. In short, there is substantial evidence here for the existence of an outcome-predictive strategy.

#### DIFFERENCES IN CASE TYPES

One may wonder whether these results hold across issue areas and whether the decision to grant cert in constitutional and statutory cases is similarly driven. Indeed, analyses of each issue area separately (making use of the Spaeth value variable) and constitutional and statutory cases separately (defined by the decision type variable) produce the same conclusions, although there are differences in the significance of some variables across the several models. In all of those analyses, however, both strategic and nonstrategic variables produce effects, and oftentimes ideology matters as well.<sup>9</sup>

#### CONCLUDING REMARKS

Overall, we have shown that both nonstrategic and strategic variables impinge on the vote for cert. We again emphasize, however, that we are attributing a certain strategy to a set of observable behaviors. We cannot prove that the justices are, in fact, consciously playing the o-p game. But the evidence we present clearly so suggests. Even after controlling for ideological differences among the justices and even after controlling for three powerful nonstrategic determinants of cert

(salience, conflict, and the presence of the solicitor general), it seems that ease in prediction matters, at least as it is manifest in vote margin and frequency of membership in the majority coalition. Although the vote to grant cert does not rest solely on the determination of whether an affirm-minded justice will win or lose, ease in prediction does matter. At least some of the time, the justices look ahead to the final vote before they cast their very first vote. In short, we have presented additional evidence in support of the outcome prediction strategy by affirm-minded justices even when nonstrategic considerations are taken into consideration.

### NOTES

1. A small sample of this literature includes Armstrong and Johnson (1982); Baum (1979); Boucher and Segal (1995); Brenner (1979); Brenner and Krol (1989); Caldeira and Wright (1988, 1990); Caldeira, Wright, and Zorn (1999); Krol and Brenner (1990); McGuire and Caldeira (1993); Palmer (1982); Perry (1991); Provine (1980); Schubert (1959); Songer (1979); Tanenhaus (1963); Teger and Kosinski (1980); and Ulmer (1972, 1983, 1984).

2. We use *cert behavior* to describe the process whereby the Court decides to decide cases petitioned to it, although we also include in this study cases that arise on appeal.

3. See Brenner (2000) for a summary of these studies.

4. We do, however, exclude cases arising under the Court's original jurisdiction as there is no lower court decision to affirm or reverse, along with several dozen miscellaneous and extraordinary writs.

5. We recognize an association between a justice's voting (a dependent variable) and the Court's decision (an independent variable). Given that the justices are each independent actors, however, free to play any given strategic game of their choice or none at all, any theoretically sustainable hypotheses that produce a statistically significant pattern of their behavior may be viewed as explanatory of that behavior.

6. We call this "winning big," although some might argue over our characterization of a 6-3 win, for example, as small. However, we have run the analysis both including 6-3 as big and excluding it, and there are few differences in outcome. We settle on 6-3 as not large to code this variable as conservatively as possible.

7. We use the 2 years prior because natural courts change, on average, every 2 years. This allows us to include the differences in coalitions that changes in membership beget. For the value-specific models and the separate models for constitutional and statutory decisions mentioned, we use 2-year moving averages of percentage of time in the majority for each value or type of decision separately.

8. The model was estimated using robust standard errors to control for the interdependence of a given justice's several votes.

9. These results are available on request.

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