AN ECONOMETRIC INVESTIGATION OF THE DETERMINANTS OF U.S. SUPREME COURT DECISIONS

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I. INTRODUCTION

Observers of the United States Supreme Court attempting to predict whether the Court will reverse or affirm the decision of a circuit court of appeals are quick to focus on merits-based considerations, such as the issues presented in the appeal, the Court's precedent, and the reasoning of the opinion reviewed, as well as perhaps the parties involved (e.g., business, individual, or government body). Political scientists and some empirical legal scholars add to the mix the politics of the issues under review and the ideology of the Supreme Court Justices and circuit court judges.[1]

1. *See, e.g.*, Gregory A. Caldeira & John R. Wright, *Organized Interests and Agenda Setting in the U.S. Supreme Court*, 82 AM. POL. SCI. REV. 1109, 1111 (1988) (arguing that politically motivated amicus briefs significantly increase the chance

Relatively little empirical research has addressed the potential impact of considerations concerning the characteristics of judges and Justices on the courts of appeals and the Supreme Court, as well as those of the oral advocates before the Supreme Court. While these characteristics have no place in traditional, civics-class notions of what should influence Justices' votes and Court decisions, there is good reason to think that they might.[2]

This article substantially extends the existing literature that attempts to explain and predict Supreme Court Justices' votes and the Court's decisions. Our multivariate logistic regression model attempts to explain Justices' votes and the Supreme Court's decisions affirming or reversing the decisions of the courts of appeals during the first eight Terms (October Term 2005 through 2012) of the Roberts Court. The model accurately predicts 70% of the Court's decisions and from 70 to 78% of the Justices' individual votes.

This article explores five sets of variables that may be correlated with Justices' votes and Supreme Court decisions: characteristics of (a) the court of appeals judge who authored the decision reviewed, (b) the advocates before the Supreme Court, and (c) the Justices themselves, in addition to (d) the characteristics of the case and (e) a set of control variables.

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that the Court will grant certiorari); Frank B. Cross & Emerson H. Tiller, Essay, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals*, 107 YALE L.J. 2155, 2175 (1998) (presenting empirical evidence that political "[p]artisanship clearly affects how appellate courts review agency discretion"); *see generally* CASS R. SUNSTEIN ET AL., ARE JUDGES POLITICAL? AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY (2006) (analyzing the role of political ideology in circuit court decisions).

2. While there is research on the personal and professional characteristics of *state* supreme court justices, these authors do not empirically examine how those characteristics influence the justices' judicial decision-making. *See, e.g.*, Gregory L. Acquaviva & John D. Castiglione, *Judicial Diversity on State Supreme Courts*, 39 SETON HALL L. REV. 1203, 1208–09 (2009). The focus on non-merit considerations is related to the significant insights from the behavioral economics literature that have been applied to judges' decisions. *See* Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT'L ACAD. SCI. 6889, 6890–92 (2011) (concluding that Israeli judges' parole decisions were more lenient after a break to eat a meal than before the break); Birte Englich et al., *Playing Dice with Criminal Sentences: The Influence of Irrelevant Anchors on Experts' Judicial Decision Making*, 32 PERSONALITY & SOC. PSYCHOL. BULL. 188, 194–97 (2006) (concluding, based on an experiment, that experienced German judges' sentences were influenced by the number that appeared on a die rolled just before the judge decided what sentence to impose).

AN ECONOMETRIC INVESTIGATION

We examine every case appealed from one of the thirteen United States Circuit Courts of Appeals for which the Supreme Court issued a signed merits opinion following oral argument over the eight-year period.[3] The model's first set of independent variables concerns characteristics of the court of appeals judge who authored the opinion reviewed by the Supreme Court. It seems reasonable to believe that opinions written by higher quality judges—broadly construed—are reversed less often. As discussed in greater detail below, we anticipate that higher quality judges are more likely to predict how the Supreme Court would decide the case and write a more persuasive opinion. While we recognize the difficulty of finding good proxies for "quality," the model tests several potential measures, including whether the authoring court of appeals judge had previously served as a law clerk on the Supreme Court (or other federal court), as well as the judge's length of service on the court of appeals, the judge's American Bar Association ("ABA") nomination rating, and the rating of the law school the judge attended. Our model also permits us to test whether the gender of the judge who authored the opinion reviewed is associated with the Justices' votes and the Supreme Court's decisions.

A second set of explanatory variables centers on advocacy before the Supreme Court. Increasingly, a group of lawyers market themselves as experienced Supreme Court advocates who concentrate their practices in appellate law and appear regularly before the Court. Does an advocate who appears regularly before the Supreme Court have a greater likelihood of success than one who appears less regularly? And do other characteristics that one might associate with the quality of an advocate (e.g., graduation from an elite law school or a former Supreme Court or other federal court clerkship) predict success before the Supreme Court? The model permits us to test which, if any, of these characteristics are associated with a party's chances of winning before the Supreme Court. We also examine whether the gender of an advocate is correlated with outcomes. Related to these advocacy issues, we examine the role of amici before the Court; specifically, the model identifies and quantifies the supposed advantage a party obtains if the Office of the United States Solicitor General ("SG's Office") submits a supporting amicus brief or if the party has relatively more supporting amicus briefs than its adversary.

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3. The following have been excluded: appeals from state courts and specialized military courts, original jurisdiction cases, and cases decided without oral argument. A small number of other cases lacked the necessary data.

A third set of explanatory variables relates to the Justices themselves. Drawing upon the existing empirical literature studying the role of ideology in the Justices' voting, we examine whether Justices' votes are associated with the political party that appointed the court of appeals judge. The model also tests whether a Justice is more (or less) likely to reverse the decision written by a court of appeals judge who is the same gender, who sits on a circuit that the Justice supervises or once sat on, or who went to the same law school as the Justice.

A fourth set of variables captures several important characteristics of the case, including which side the United States is on if it is a party and whether there is a circuit split. The final set of variables is a host of control variables, including the type of case and issue presented in the appeal, as well as the circuit that decided the underlying case.

In interpreting the model's results, caution should be exercised in concluding whether a given variable "causes" a Justice to vote or, alternatively, is merely associated or correlated with a Justice's vote. Take, for example, the conventional wisdom that a party is greatly aided in its appeal to the Supreme Court if it obtains the support of the SG's Office. Our results confirm this conventional wisdom: all else equal, if the SG's Office files a supporting amicus brief, the party's likelihood of success is 10.6% greater than it would be otherwise. A causal explanation for this fact is that the SG's Office is so persuasive—say, because its lawyers are such talented brief writers and oral advocates—that the Justices are convinced to vote for that party. An alternative explanation, however, is that the SG's Office lawyers are skilled in selecting the cases and parties they believe will obtain the Justices' votes. Teasing out these different explanations recurs in our discussion of the variables used in the model. Importantly, however, the extent to which the variables accurately predict the Justices' votes and the Court's decisions does not turn on whether the explanation is causal or merely correlative.

This article proceeds in five parts. Part II presents the econometric model, describes the variables included, and presents initial hypotheses as to their impact. Part III discusses our detailed data set and presents an overview of the court of appeals judges whose decisions were reviewed, as well as the advocates who appeared before the Court during the eight Terms under consideration. Part IV presents the results of the logit regressions, and Part V briefly discusses the implications of our results.

II. MODEL

The empirical literature studying Supreme Court decision-making has substantially expanded in the decade following the landmark Washington University Supreme Court Forecasting Project.[4] That project employed a data-driven methodology to compare a computer model's predictions of decisions for the Supreme Court's 2002 Term with the predictions of a panel of Supreme Court academics and practitioners. Reminiscent of Big Blue's defeat of Gary Kasparov in 1997,[5] the Washington University model accurately predicted 75% of the Court's decisions, while the human Supreme Court experts collectively predicted 59.1%.[6] Although the computer model focused on accurately predicting future Supreme Court decisions, it did not, as this study does, focus on testing which among many variables systematically explain Supreme Court decisions.[7]

Our work also departs from other empirical research attempting to understand judicial behavior—including the recent path-breaking book, *The Behavior of Federal Judges: A Theoretical and Empirical*

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4. *See generally* Theodore W. Ruger et al., Essay, *The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150 (2004) (discussing the results of a statistical model used to predict the outcome of Supreme Court decisions).

5. *See* Garry Kasparov, *The Chess Master and the Computer,* 57 N.Y. REV. BOOKS 2 (2010).

6. Ruger et al., *supra* note 4, at 1152.

7. The Washington University model employed only six variables: circuit of origin, issue area of the case, type of petitioner, type of respondent, ideological direction of the lower court ruling, and whether the petitioner argued that a law or practice is unconstitutional. *Id.* at 1163. The model did not employ logit econometric analysis, but instead used a classification tree method focused on forecasting the Court's decisions rather than testing hypotheses about the determinants of those decisions. *Id.* at 1164; *see also* Roger Guimera & Marta Sales-Pardo, *Justice Blocks and Predictability of U.S. Supreme Court Votes*, PLOS ONE, Nov. 9, 2011, at 1, 1–8, http://journals.plos.org/plosone/article/asset?id=10.1371/journal.pone.0027188.PDF (using a schocastic block model to predict Supreme Court Justices' votes); Daniel Martin Katz et al., Predicting the Behavior of the Supreme Court of the United States: A General Approach 3 (July 21, 2014) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2463244 (using a classification tree method to predict the outcome of more than sixty years of Supreme Court decisions).

Study of Rational Choice[8]—as we attempt to assess the impact on Supreme Court Justices' votes of many different types of variables concerning the characteristics of the court of appeals judge or panel, the advocates, and the Justices. While that treatise's empirical work addresses many interesting and important issues (e.g., Justice ideology, appointment to the Supreme Court, impact of public opinion and interest groups, opinion assignment, and case selection), it and the current body of existing empirical work do not attempt to evaluate, as this study does, a comprehensive compilation of factors that may correlate with Supreme Court decision-making.[9]

We specifically model Supreme Court decision-making as follows. The Justices' (or the Court's) decisions are binary, either reversing or affirming the decision of a court of appeals. The decision $D_{i,j}$ of Justice j in case i is 1 if the Justice sides with the majority and the Court reverses or if the Justice sides with the minority and the Court affirms; otherwise, $D_{i,j}$ is 0. The decision is expected to be a function of the following groups of independent variables:

- CAJ variables capture characteristics of the court of appeals judge—or, for one variable, the panel—who authored the decision reviewed by the Supreme Court;
- ADVOCATE variables pick up salient characteristics of the petitioner and respondent advocates who argued the case before the Supreme Court, as well as information about amicus briefs submitted to the Court and whether the SG's Office filed a petition on behalf of the petitioner or respondent;
- JUSTICE variables include several variables concerning a Justice's ideology and the match between the Justice

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8. *See* LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE 5–15 (2013).

9. *See id.* We are not aware of other econometric analyses of Supreme Court decision-making that include the broad variables studied here. *Compare* Gregory C. Sisk, Michael Heise & Andrew P. Morriss, *Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 N.Y.U. L. REV. 1377, 1380–84 (1998) (analyzing factors that may have influenced federal district judges' opinions regarding the constitutionality of the Federal Sentencing Guidelines), *with* Michael Heise & Gregory C. Sisk, *Free Exercise of Religion Before the Bench: Empirical Evidence from the Federal Courts*, 88 NOTRE DAME L. REV. 1371, 1372–75 (2013) (examining empirically whether extrajudicial factors influenced federal district court and court of appeals decisions concerning religious issues).

and the court of appeals judge who authored the decision reviewed;
- CASE variables measure the degree to which the court of appeals was divided, as well as the extent of any split among the various courts of appeals on the issue presented in the case; and
- CONTROL variables categorize the type of case and the circuit.

Appendix A contains details on the construction of these variables, which are discussed briefly below.

More formally, we model   as a function of a variety of variables and error term $e_{i,j}$:

$$D_{i,j} = f(\alpha_0 + \alpha_1 CAJ_i + \alpha_2 ADVOCATE_i + \alpha_3 JUSTICE_{i,j} + \alpha_4 CONTROL_i) + e_{i,j}$$

where the function $f(\cdot) = \dfrac{\exp(\cdot)}{1+\exp(\cdot)}$ and the α s are vectors of coefficients.

The court of appeals judge independent variables (CAJ) are:

- *Judge Years*: the number of years the author of the panel decision has been a judge on the court of appeals prior to the case at issue;
- *Judge 1-5 JD*: a dummy variable equal to 1 if the author of the opinion graduated from a law school rated in the top five schools by the *U.S. News & World Report Best Law School Rankings*;[10]
- *Judge ABA Rating*: a dummy variable equal to 1 if the author received an American Bar Association rating of

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10. *See Law School Rankings, 1987–1999*, PRELAW HANDBOOK, http://www.prelawhandbook.com/law_school_rankings__1987_1999 (last visited Oct. 5, 2016); *Law School Rankings, 2000–Present*, PRELAW HANDBOOK, http://www.prelawhandbook.com/law_school_rankings__2000_present (last visited Oct. 5, 2016). Rankings are available for 1987, 1990, 1995, 2000, and 2005. The ranking assigned to a judge for purposes of our study is the most recently available ranking before the judge's graduation year. For judges graduating before 1987, the 1987 ranking is used. One could also plausibly use rankings as of each case to reflect current perceptions of quality. This alternative method, however, likely would not affect our results because of the general stability of the rankings over time. *See Law School Rankings, 1987–1999, supra.*

"Well Qualified" or "Exceptionally Well Qualified" at the time of the judge's appointment;[11]

- *Panel ABA Rating*: equal to the percentage of the total number of court of appeal judges who both voted in the majority and are rated "Well Qualified" or "Exceptionally Well Qualified," minus the percentage of total judges who both voted in dissent and are rated "Well Qualified" or "Exceptionally Well Qualified";[12]
- *Former Supreme Court Clerk*: a dummy variable equal to 1 if the author had clerked on the Supreme Court; and
- *Former CTA or DC Clerk*:[13] a dummy variable equal to 1 if the author had clerked on a federal court of appeals or district court.

These variables attempt to capture characteristics associated with the quality of the court of appeals judge who authored the decision under review. We presume that, all else equal and at the margin, an opinion authored by a higher quality judge is less likely to be reversed by the Supreme Court because a higher quality judge will: (a) write a more thorough or persuasive opinion, thereby persuading the Supreme Court of the correctness of the decision; and/or (b) better understand and apply Supreme Court precedent. We hypothesize, therefore, that the sign of the coefficients on each of

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11.   The ratings for judges appointed between 1989 and 2016 can be found on the ABA's website. *See, e.g.*, STANDING COMM. FED. JUDICIARY, AM. BAR ASS'N, RATINGS OF ARTICLE III JUDICIAL NOMINEES: 101ST CONGRESS (1990), http://www.americanbar.org/content/dam/aba/migrated/2011_build/federal_judiciary/ ratings101.authcheckdam.pdf [hereinafter 101ST CONGRESS RATINGS]; STANDING COMM. FED. JUDICIARY, AM. BAR ASS'N, RATINGS OF ARTICLE III JUDICIAL NOMINEES: 113TH CONGRESS (2014), http://www.americanbar.org/content/dam/ aba/uncategorized/GAO/WebRatingChart.authcheckdam.pdf; STANDING COMM. FED. JUDICIARY, AM. BAR ASS'N, RATINGS OF ARTICLE III AND ARTICLE IV JUDICIAL NOMINEES: 114TH CONGRESS (2016), http://www.americanbar.org/content/dam/aba /uncategorized/GAO/WebRatingChart114.authcheckdam.pdf. The ratings for judges appointed before 1989 can be found in the *Annual Reports of the American Bar Association. See, e.g.*, Standing Comm. Fed. Judiciary, *Report of the Standing Committee on Federal Judiciary*, 110 ANN. REP. A.B.A. 770, 770–71 (1985); Standing Comm. Fed. Judiciary, *Judicial Nominations Confirmed 12/16/85 to 6/13/86*, 111 ANN. REP. A.B.A. 114, 114–16 (1986); Standing Comm. Fed. Judiciary, *Judicial Nominations Confirmed (12/15/86 to 6/12/87)*, 112 ANN. REP. A.B.A. 84, 84 (1987).

12.   *See* 101ST CONGRESS RATINGS, *supra* note 11, at 1.

13.   "CTA," in the context of the variables, means "Court of Appeals."

these variables will be negative (i.e., that higher quality reduces the likelihood of reversal).

Additionally, we expect that, a priori and all else equal, the longer a judge has sat on the court of appeals, the less likely the judge is to be reversed.[14] The longer a judge sits on the court of appeals, the more the judge learns about different areas of law and the ways the Supreme Court has reviewed the judge's prior opinions. The expected sign is not unambiguous, however, as the *Behavior of Federal Judges* suggests that judges earlier in their tenure may be "auditioning" for future elevation and thus exhibit "promotion-seeking behavior" by writing opinions that are less likely to be reversed. Whether the *U.S. News & World Report* rankings mean anything is open to debate;[15] we simply test whether judges who graduated from higher ranked law schools, all else equal, are less likely to be reversed.

The ABA's Standing Committee on the Federal Judiciary vets judicial nominees for the courts of appeals and rates them as "Not Qualified," "Qualified," "Well Qualified," and, for a time, "Exceptionally Well Qualified."[16] The Standing Committee considers three criteria in formulating its ratings: "integrity," "professional competence," and "judicial temperament."[17] Because the second criterion—professional competence—should correlate positively with quality, one should expect that, all else equal, higher ratings correlate with lower reversal rates.[18]

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14. *See* EPSTEIN, LANDES & POSNER, *supra* note 8, at 348–49, 351.

15. *Cf.* Malcolm Gladwell, *The Order of Things: What College Rankings Really Tell Us*, NEW YORKER, Feb. 14 & 21, 2011, at 68–75 (explaining the "implicit ideological choices" that underlie the *U.S. News & World Report* rankings metholodogy).

16. *See* 101ST CONGRESS RATINGS, *supra* note 11, at 1.

17. AM. BAR ASS'N, STANDING COMMITTEE ON THE FEDERAL JUDICIARY: WHAT IT IS AND HOW IT WORKS 1 (2009), http://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal_judiciary09.authcheckdam.pdf.

18. The ABA ratings have been criticized for alleged liberal bias. *See* James Lindgren, *Examining the American Bar Association's Ratings of Nominees to the U.S. Courts of Appeals for Political Bias, 1989–2000*, 17 J.L. & POL. 1, 1–6, 28 (2001); John R. Lott, Jr., *The American Bar Association, Judicial Ratings, and Political Bias*, 17 J.L. & POL. 41, 53 (2001); Susan Navarro Smelcer et al., *Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees*, 65 POL. RES. Q. 827, 836–47 (2012). A recent study, however, concludes that black and female federal district court judicial nominees are more likely to receive lower ABA ratings, which doom their nominations, and of those that are nominated, the "poorly rated" district judges "are no more likely to have their opinions overturned than are their higher rated peers." *See* Maya Sen, *How Judicial Qualification Ratings May Disadvantage*

The expected sign on the *Former Supreme Court Clerk* variable is perhaps most intuitive. A former Supreme Court Clerk, all else equal, is expected to be reversed less because: (a) clerking on the Supreme Court is highly competitive, signaling a formidable intellect; and (b) a clerk on that Court may learn about the inner workings of what influences the Justices and the Court's decisions.[19] The first of these considerations also suggests that a court of appeals judge who formerly clerked on a court of appeals or district court would be reversed less often.[20]

Notably, a Supreme Court Justice need not be consciously aware of any of these measures of a court of appeals judge's quality for an association between quality and the Justice's voting to exist. For example, if the proxies of quality are in fact proxies, then a longer tenured court of appeals judge or one with a higher ABA rating or who graduated from a higher ranked law school will write the more persuasive opinion or better predict the Supreme Court's ultimate decision, regardless of whether the Justice knows[21] that the court of appeals judge has "quality" characteristics.[22]

Minority and Female Candidates, 2 J.L. & CTS. 33, 33–35 (2014). This result is contrary to a study of district court judges that has concluded that "the effect of ABA ratings on the likelihood of reversal is conditioned by the experience of the district court judge at the time of review." Susan Brodie Haire, *Rating the Ratings of the American Bar Association Standing Committee on Federal Judiciary*, 22 JUST. SYS. J. 1, 13 (2001). The Haire study found that more highly rated district court judges with less than three years of experience are less likely to be reversed than lower rated district court judges with less than three years of experience, whereas ABA ratings did not affect the probability of reversal for district court judges with more than three years of experience. *Id.* at 13–14.

19. While the influence of a Justice's current law clerks on the Justice's decision-making has been the subject of some study, *see* Todd C. Peppers & Christopher Zorn, *Law Clerk Influence on Supreme Court Decision Making: An Empirical Assessment*, 58 DEPAUL L. REV. 51, 51–58 (2008) (explaining the influence of a Justice's law clerk on the Justice's decision-making), we are not aware of any study analyzing whether a judge's prior background as a former clerk influences the judge's likelihood of reversal.

20. *See id.* at 55.

21. An exception, however, may be the impact of whether a court of appeals judge was a former Supreme Court clerk. It is plausible that a Justice, knowing that the judge was a former clerk (even if not the Justice's own former clerk), may be more deferential to that judge.

22. One reader of a draft of this article suggested that we test whether "feeder" court of appeals judges, i.e., those judges whose clerks most often go on to clerk for the United States Supreme Court, are positively associated with Justices' votes. We

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Previous studies suggest that oral advocates' characteristics can influence the Court's decisions, although there is considerable controversy over the importance of oral argument in influencing the Justices' votes.[23] Some conclude that oral argument is unimportant in influencing the Court's decisions, while others conclude that, at the very least, oral argument influences the Court by providing a source of information to the Justices.[24] This study attempts to systematically evaluate the impact of advocate attributes on the Justices' votes.

The advocate independent variables (ADVOCATE) consist of:

- *Years Since Law School*: the number of years since the advocate graduated from law school;
- *Advocate 1-5 JD*: a dummy variable equal to 1 if the advocate graduated from a law school ranked in the top five schools;
- *Former Supreme Court Clerk*: a dummy variable equal to 1 if the advocate clerked on the United States Supreme Court;
- *Former CTA or DC Clerk*: a dummy variable equal to 1 if the advocate clerked on a United States court of appeals or district court;
- *Top 20% Most Active Advocate*: a dummy variable equal to 1 if the number of times an advocate has argued before the Court as of the start of that year is in the top 20% of advocates who argued before the Court that year;[25]

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included a "feeder judge" variable to capture this possible effect, but it was not statistically significant, so we excluded it from our main specification.

    23.   *See* Timothy R. Johnson et al., *The Influence of Oral Arguments on the U.S. Supreme Court*, 100 AM. POL. SCI. REV. 99, 101–11 (2006) (offering empirical evidence that "[J]ustices find oral arguments to be an important part of the Court's decision-making process, and that the quality of arguments . . . affects the [J]ustices' votes").

    24.   *Compare* JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED 280 (2002) ("The [J]ustices aver that [oral argument] is a valuable source of information about the cases they have agreed to decide, but that does not mean that oral argument regularly, or even infrequently, determines who wins and who loses." (footnote omitted)), *with* Johnson et al., *supra* note 22, at 107–11 (arguing that oral argument is an important part of Supreme Court decision-making).

    25.   The 20% criterion results in approximately twenty-five active advocates in a typical year and an average cutoff of nine prior cases. Only approximately 40% of

- *Win Percentage*: the advocate's success rate record in cases in which the advocate has argued before the Court prior to the case at issue (and 0 for an advocate's first appearance);
- *Gender*: a dummy variable equal to 1 if the advocate is male and 0 if female;
- *Solicitor General Support*: a dummy variable equal to 1 if the SG's Office has filed an amicus brief in support of a party, and otherwise; and
- *Amicus Briefs*: the number of amicus briefs submitted to the Supreme Court in support of the advocate.

The first seven of these variables attempt to pick up characteristics that relate to the quality of an oral advocate to test whether, all else equal, better advocates succeed more often before the Court.[26] Importantly, every case before the Supreme Court involves two (or more) opposing advocates, one representing the petitioner (i.e., the party that lost in the court of appeals), and the other representing the respondent (i.e., the party that prevailed in the court of appeals). The model, therefore, is specified so that for each case, the independent variable is the difference between the characteristics of the petitioner's and the respondent's counsel.

Suppose, as is hypothesized, that an oral advocate's experience is associated with the chance of winning. In the model, if in a given case the petitioner's counsel has been practicing for thirty years and respondent's counsel for twenty years, then the difference is plus-ten years. If the counsel were reversed so that the petitioner was represented by the less experienced counsel, then the difference would be minus-ten years. All else equal, we would expect positive coefficients on these variables because, if counsel for the petitioner were more persuasive than counsel for the respondent, then the difference between the variables measuring persuasiveness would be positive and the likelihood of the petitioner winning (i.e., reversal) is

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advocates have more than one prior appearance and only 15% have more than fifteen appearances.

    26.   Although we focus on the quality of the characteristics of the oral advocate before the Supreme Court, we recognize that the quality of a party's briefs is more important than the quality of its oral argument. It is appropriate to focus on the characteristics of the oral advocate, however, because (a) the oral advocate is likely responsible, overall, for the quality of the briefing, and (b) as a practical matter, while each party's oral advocate is identified in the Supreme Court record, the identities of the brief's true authors are not.

greater. Conversely, if counsel for the respondent were more persuasive, then the first difference would be negative and the likelihood of reversal lower.

The intuition of constructing ADVOCATE variables as the difference between the petitioner's and the respondent's counsel applies to each measure of quality. If, as could be hypothesized, an advocate who graduated from a higher ranked law school is more persuasive than one who graduated from a lower ranked law school, then the model tests whether the difference in rankings relates to any of the variation in a party's success before the Supreme Court. Phrased another way, if better advocates attend more highly ranked law schools,[27] then the coefficient on the *Advocate 1-5 JD* variable would be positive. Similarly, one might hypothesize that former Supreme Court clerks (or possibly former court of appeals or district court clerks)[28] have an edge—either because of their intellect or knowledge about the Court—over those who did not clerk for a federal judge.

While the influence of gender on judicial proceedings and decisions has been the subject of extensive study and opinion,[29] we are only aware of one empirical study that attempts to assess the

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27. This supposition could be plausible for multiple reasons, including that more highly ranked law schools (a) teach their law students to be more effective advocates, and (b) have admissions offices that admit students who will be more effective advocates. It is also conceivable—though we do not purport to know or suggest—that a Justice may be influenced by the rank of the advocate's law school.

28. *See* Kevin T. McGuire, *Lobbyists, Revolving Doors and the U.S. Supreme Court*, 16 J.L. & POL. 113, 130–34 (2000) (concluding that former Supreme Court law clerks are more likely to win, as compared to other practitioners, on the basis of simple correlations rather than a multiple regression that controls for multiple variables).

29. These previous studies have analyzed, among other things, the perceived credibility of female advocates and the implications of increased numbers of female judges. *See* David W. Allen & Diane E. Wall, *Role Orientations and Women State Supreme Court Justices*, 77 JUDICATURE 156, 158–65 (1993) (discussing the implications of gender diversity for the federal bench); Shari V.N. Hodgson & Burt Pryor, *Sex Discrimination in the Courtroom: Attorney Gender and Credibility*, WOMEN LAW. J., Winter 1985, at 7, 7–8 (analyzing the perceived credibility of female advocates); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 J. POL. 425, 436–37 (1994); Thomas G. Walker & Deborah J. Barrow, *The Diversification of the Federal Bench: Policy and Process Ramifications*, 47 J. POL. 596, 604–11 (1985). With regard to the Supreme Court during the Roberts Court, a recent study analyzed whether Justices question women during oral arguments more than they question men. *See* James C. Phillips & Edward L. Carter, *Gender and U.S. Supreme Court Oral Argument on the Roberts Court: An Empirical Examination*, 41 RUTGERS L.J. 613, 637–43 (2010).

impact of the gender of an oral advocate on the Justices and Supreme Court decisions.[30] The study analyzed oral arguments at the Supreme Court between 1993 and 2001 using logistic regression analysis.[31] The study concluded that, controlling for several characteristics relating to the oral advocate (i.e., experience, clerkship, and litigation-team size), Justice ideology, party type and SG's Office amicus support, Justices were less likely to support parties when their oral advocates were female.[32] Our dataset permits us to address this question over the more recent time period of the Roberts Court and in a model that controls for far more variables.

Our data set also permits us to include measures of an advocate's actual experience in oral arguments before the Supreme Court and the advocate's "batting average" before the Court.[33] We anticipate that an oral advocate with more experience arguing before the Supreme Court and a better win/loss record would be more likely to win than an opponent with less experience and a weaker record.[34]

As with the characteristics of the court of appeals judges, many of these advocate characteristics could be associated with a Justice's voting even if the Justice does not know the characteristics of the advocate. For example, the law school of the advocate is a characteristic that the Justices are unlikely to know. If an advocate's law school is a proxy for quality, then it is the advocate's quality (or lack thereof) compared to her adversary, not the Justice's knowledge of the advocates' education, that may affect the Justice's vote. Justices would clearly know the oral advocates' gender and might also know some additional characteristics (e.g., past

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30.   *See generally* John J. Szmer et al., *Have We Come a Long Way, Baby? The Influence of Attorney Gender on Supreme Court Decision Making*, 6 POL. & GENDER 1 (2010) (using empirical data to argue that some appellate court judges apply gender schemas to discredit arguments made by women litigators).

31.   *Id.* at 11.

32.   *Id.* at 28–29.

33.   Win percentage data are derived from a review of each case the advocate argued before the Supreme Court, including cases preceding the Roberts Court. For attorneys from the SG's Office, cases in which the United States only participated as an amicus were not counted toward the attorneys' win percentage.

34.   *See generally* Kevin T. McGuire, *Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success*, 57 J. POL. 187 (1995) (examining the positive impact "repeat players" have on the Court but acknowledging the impossibility of disentangling these effects from other factors that play a role in the Court's analysis and resolution of cases).

experience as an oral advocate before the Supreme Court or a former Supreme Court clerkship), and these could be associated with the Justice's voting more directly.

The final two variables in this group focus not on the specific oral advocate for a party, but rather on the support the party enjoys from either the SG's Office or supporting amicus curiae briefs. We anticipate that the *Solicitor General Support* dummy variable will be positive. As noted in Part I, there are two very different explanations for this: First, if the SG's Office selectively participates only in cases it thinks it can win, then we would expect to see a strongly positive association. Second, if the SG's Office is particularly persuasive, then we would also expect a positive association.[35]

The prevalence of amicus briefs before the Supreme Court is at least some market support for the notion that they make a difference. While the empirical evidence supports this conclusion,[36] none of the evidence is based on a model that controls for multiple influences on Supreme Court decisions. To assess the impact of amicus briefs, we consider whether a party having more supporting amicus briefs than its adversary improves the party's likelihood of success. We anticipate that more supporting amicus briefs will be associated with a positive likelihood of success—meaning the sign on the coefficient will be positive—because the relative number of amicus briefs reflects the relative support in the community for the party's position, and arguments are more persuasive or forceful if made by more supporters.

JUSTICE independent variables are:

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35. The view that the SG's Office influences Supreme Court decision-making is widely held among observers of the Court. *See* Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 PA. L. REV. 743, 749–50 (2000) (confirming "the finding of other researchers that the Solicitor General . . . enjoys great success as an amicus filer"). Even the more systematic analyses, however, do not use statistically powerful tools to isolate the impact of the SG's Office's support on the outcome of a case. *See, e.g.*, *id.* at 760; Kelly J. Lynch, *Best Friends? Supreme Court Law Clerks on Effective Amicus Curiae Briefs*, 20 J.L & POL. 33, 46–47 (2004); Sri Srinivasan & Bradley W. Joondeph, *Business, the Roberts Court, and the Solicitor General: Why the Supreme Court's Recent Business Decisions May Not Reveal Very Much*, 49 SANTA CLARA L. REV. 1103, 1104–05 (2009).

36. *See, e.g.*, PAUL M. COLLINS, JR., FRIENDS OF THE SUPREME COURT: INTEREST GROUPS AND JUDICIAL DECISION-MAKING 106–07 (2008); Kearney & Merrill, *supra* note 34, at 773; Linda Sandstrom Simard, *An Empirical Study of Amici Curiae in Federal Court: A Fine Balance of Access, Efficiency, and Adversarialism*, 27 REV. LITIG. 669, 672 (2008).

- *Ideology Matching CTA Decision*: a dummy variable equal to 1 if the court of appeals decision's direction (liberal or conservative) matches the party affiliation of the President who appointed the Justice;
- *Appointing Party Matching CTA Judg*e: a dummy variable equal to 1 if the President who appointed the Justice belongs to the same political party as the President who appointed the judge authoring the court of appeals opinion;
- *Gender Match*: a dummy variable equal to 1 if the genders of the Justice and court of appeals judge match;
- *Justice JD Match*: a dummy variable equal to 1 if the Justice went to the same law school as the court of appeals judge;
- *Justice from Circuit*: a dummy variable equal to 1 if the Justice was elevated from the court of appeals from which the appeal is heard; and
- *Justice Oversees Circuit*: a dummy variable equal to 1 if the Justice supervises the court of appeals from which the appeal is heard.

These variables focus on common characteristics of the Supreme Court Justices and the court of appeals judges whose decisions are the subject of review. The first two variables follow the extensive literature that examines the role of a Justice's ideology.[37] This model extends the existing literature by making the more refined inquiry of matching the ideology of the court of appeals judge whose decision is being reviewed with the ideology of the Justice reviewing the decision. For example, the model tests the hypothesis that a Justice would be less likely to reverse a decision written by a court of appeals judge who was appointed by a President from the same party.

The *Gender Match* and *Justice JD Match* variables test whether a Supreme Court Justice's vote, all else equal, is more or less likely to reverse the decision of a court of appeals judge who is of the same gender or who attended the same law school as the Justice. If Justices exhibit a gender bias, the coefficient on the *Gender Match*

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37.   For an exhaustive review of this literature, see generally EPSTEIN, LANDES & POSNER, *supra* note 8.

variable should be negative and significant.[38] A negative coefficient on the *Justice JD Match* variable could be due to a bias toward the Justice's alma mater caused by a network effect or a Justice's adoption of the philosophy or approach of the Justice's law school.[39]

The last variables in this series, *Justice from Circuit* and *Justice Oversees Circuit*, permit us to test whether a Justice who is from or assigned to supervise a given circuit is, all else equal, less likely to reverse the decisions of that circuit. It is at least plausible that this might be so because a Justice may be more inclined to give the benefit of the doubt to those with whom the Justice previously worked or currently supervises and, therefore, to reverse judges in that circuit less often.

The CASE independent variables are:

- *Circuit Split*: a dummy variable equal to 1 if the split among cases in the circuit split is between one-third and two-thirds, which is a measure of the degree to which the court of appeals is divided;
- *Large Majority in CTA*: a dummy variable equal to 1 if 80% or more of the CTA judges voted with the majority, which measures the degree to which the judges on the

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38. The literature on gender bias is large and spans a range of professions, including law (*see* Phyllis D. Coontz, *Gender Bias in the Legal Profession: Women "See" It, Men Don't*, 15 WOMEN & POL. 1 (1995)), management (*see* Belle Rose Ragins et al., *Gender Gap in the Executive Suite: CEOs and Female Executives Report on Breaking the Glass Ceiling*, ACAD. MGMT. EXECUTIVE, Feb. 1998, at 28), and academia (*see* Martha S. West, *Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67 (1994)). Studies examining gender and Supreme Court decision-making focus on whether a Justice's gender influences the Justice's decision-making, *not* whether a Justice is influenced by the gender of the court of appeals judge whose opinion is being reviewed by the Supreme Court. *See* Phillips & Carter, *supra* note 28, at 613 (studying how the genders of Justices and the genders of arguing attorneys influence judicial behavior during Supreme Court oral arguments). A recent empirical study also found that court of appeals judges who have daughters vote in a more feminist fashion on gender issues than judges who have only sons. Adam N. Glynn & Maya Sen, *Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?*, AM. J. POL. SCI., Jan. 2015, at 37.

39. There is evidence of network effects in the investment world. For instance, Lauren Cohen, Andrea Frazzini & Christopher Malloy, *The Small World of Investing: Board Connections and Mutual Fund Returns*, J. POL. ECON., Oct. 2008, at 951, 953, find that portfolio managers invest more heavily in firms whose board includes members who attended their alma mater and that those investments perform particularly well. The findings are strongest for tighter connections (i.e., common majors or attending the school at the same time). *Id*. at 961.

court of appeals panel or en banc court were divided in the decision reviewed by the Supreme Court;[40]

- *U.S. Petitioner – U.S. Respondent*: a dummy variable equal to 1 if the petitioner is the United States, -1 if the respondent is the United States, and 0 if either the petitioner or respondent are not the United States; and
- *En Banc*: a dummy variable equal to 1 if the lower court sat en banc.

The *Circuit Split* and *Large Majority in CTA* variables measure the lack of consensus on the decision under review. The *Circuit Split* variable considers the extent to which there is a split among circuits on a key issue presented in the decision being reviewed. All else equal, we believe that the more divided the circuits are, the more likely that the Supreme Court will reverse the court of appeals decision that it has taken on certiorari to review. This hypothesis is consistent with the generally accepted view that, on issues where there is a circuit split, the Supreme Court is more likely to grant certiorari in a case where it thinks that the court of appeals was incorrect than on a case where it thinks that the court of appeals was correct. The *Large Majority in CTA* variable captures the intuitive notion that the Supreme Court is more likely to reverse a court of appeals decision that comes from a divided court of appeals than one that is unanimous, again based on the notion that the Court grants certiorari in cases that it intends to reverse.

The *U.S. Petitioner – U.S. Respondent* variable tests whether, all else equal, the United States as a party enjoys a greater or lesser likelihood of success before the Supreme Court. There are two reasons we think that the expected sign on the coefficient is negative: (a) the conventional wisdom is that, with regard to criminal cases, a more pro-government Supreme Court, such as the Roberts Court, would be more likely to defer to the United States as a party; and (b) the SG's Office screens the cases that the government brings to the Supreme Court, so there is a selection bias favoring the United States.

Finally, the model tests whether the Supreme Court systematically reverses or affirms court of appeals decisions made by an en banc court of sitting judges as compared to those

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40. We select 80% as the threshold so that two-to-one panel decisions are not counted as a consensus, but an eleven-to-two en banc decision, for example, is counted as a consensus.

customarily decided by a three-judge panel. It seems plausible that the Supreme Court would, all else equal, affirm en banc decisions for two reasons. First, there may be a "wisdom of crowds"[41] effect: namely, because an en banc panel of judges may include more than ten or even fifteen judges, and a normal panel consists of only three judges, the en banc panel may be better at finding the more accurate result, i.e., the decision affirmed by the Supreme Court, or at drafting a more persuasive opinion.[42] Second, the Supreme Court may be more likely to defer to, and less likely to reverse, a larger number of judges than a smaller number.

The final set of variables is CONTROL variables:

- *Case Type*: dummy variables identifying whether the case is civil, criminal, or a habeas corpus petition;
- *Issue Area*: dummy variables categorizing whether the predominant issue presented in the case concerns civil liberties, economic activity, federalism, or judicial power;
- *Circuit*: dummy variables for each of the circuit courts of appeals; and
- *Justice*: dummy variables for each of the Supreme Court Justices (excluded from the Justice-level models).

These variables control for the type of case reviewed, e.g., case type and issue area, the circuit from which the case emerged, and the Justice's vote in affirming or reversing the court of appeals decision.

III. DATA AND SUMMARY STATISTICS

The data set includes information about each case that can be found on *The Supreme Court Database*[43] and *SCOTUSblog*,[44] among other places, as well as biographical information about court of

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41. CASS R. SUNSTEIN, INFOTOPIA: HOW MANY MINDS PRODUCE KNOWLEDGE 21–22 (2006) (including an extensive discussion of the "wisdom of crowds" effect).

42. *Id*. at 25–26. In addition to assembling an extensive set of empirical studies, Sunstein highlights the Condorcet Jury Theorem that provides, assuming some relatively modest assumptions, that a group of ten or more members of a group would be far more accurate than a handful of individuals. *See id.*

43. *The Supreme Court Database*, WASH. U. SCH. L., http://scdb.wustl.edu (last visited Oct. 5, 2016).

44. SCOTUSBLOG, http://www.scotusblog.com (last visited Oct. 5, 2016).

appeals judges published in the *Almanac of the Federal Judiciary*.[45] The detailed information about the oral advocates was more difficult to locate and is drawn from background information obtained from advocates' personal or law firm webpages, or by reaching out to advocates directly.[46]

The summary statistics for the independent variables outlined in the preceding section are presented in Table 1 and provide an interesting portrait of the work of the first eight Terms of the Roberts Court. Of the total of 651 cases decided during these terms, we removed 97 that originated from state court and 67 that were decided per curiam and without oral argument. We included 19 additional decisions for consolidated cases. Thirty other cases are excluded for various reasons, including being unreported opinions, not being appealed from the courts of appeals, or missing data, leaving a total of 476 cases in our sample.[47] These were weighted more towards civil cases (74%) than criminal (16%) or habeas corpus cases (11%). The Supreme Court also heard substantially more cases from the Ninth Circuit (26%) than any other circuit; the Second Circuit was the next most frequent (10%), and the remaining circuits each represented no more than 8%.

The statistics also provide insight into the judges who wrote the opinions reviewed. Fourteen percent of the opinions reviewed by the Supreme Court were written by court of appeals judges who were former Supreme Court clerks and 34% were written by judges who had clerked on either a court of appeals or a district court. Twenty-nine percent of the cases involved judges who had graduated from a top-five-ranked law school. The opinions were also written by judges who were relatively experienced—the average tenure was sixteen years.

The characteristics of the advocates appearing before the Supreme Court are also interesting. Strikingly, 38% of the arguments involved petitioners' advocates who had clerked on the Supreme Court (37% for respondent), and 60% had clerked on a court of appeals or district court (58% for respondents). Approximately 41% of the arguments for the petitioner were by lawyers who had graduated from a top-five-ranked law school (41%

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45.   BARNABAS D. JOHNSON, ALMANAC OF THE FEDERAL JUDICIARY (1984).

46.   A detailed description of the data sources is included in Appendix A.

47.   In total, there are 4,189 observations: 476 cases times 9 Justices, less 85 for the 85 cases with only 8 Justices, and less 10 for the 5 cases with 7 Justices.

respondent). The oral arguments were also overwhelmingly made by men (88% for petitioner; 84% for respondent).

Table 1

Logit Descriptive Statistics

Variable	Mean	Min	Max	Std. Dev.	Percentile 5th	25th	50th	75th	95th
Dependent Variable									
Justice Reversal	0.63	0	1	0.48	0.0	0.0	1.0	1.0	1.0
Court of Appeals Judge (CAJ)									
Judge Years	15.54	1	43	8.91	3.0	8.0	15.0	22.0	31.0
Judge 1 - 5 JD	0.29	0	1	0.46	0.0	0.0	0.0	1.0	1.0
Judge ABA Rating	0.51	0	1	0.50	0.0	0.0	1.0	1.0	1.0
Panel ABA Rating	0.44	0	1	0.31	0.0	0.3	0.3	0.7	1.0
Former Supreme Court Clerk	0.14	0	1	0.35	0.0	0.0	0.0	0.0	1.0
Former CTA or DC Clerk	0.34	0	1	0.48	0.0	0.0	0.0	1.0	1.0
Advocate									
Years Since Law School	0.70	-43	35	13.79	-23.0	-8.0	1.0	10.0	24.0
Advocate 1 - 5 JD	0.00	-1	1	0.70	-1.0	0.0	0.0	0.0	1.0
Former Supreme Court Clerk	0.01	-1	1	0.66	-1.0	0.0	0.0	0.0	1.0
Former CTA or DC Clerk	0.02	-1	1	0.67	-1.0	0.0	0.0	0.0	1.0
Gender	0.04	-1	1	0.50	-1.0	0.0	0.0	0.0	1.0
Top 20% Most Active Advocate	0.00	-1	1	0.68	-1.0	0.0	0.0	0.0	1.0
Win Percentage	0.01	-1	1	0.52	-1.0	-0.5	0.0	0.5	1.0
Solicitor General Support	0.06	-1	1	0.60	-1.0	0.0	0.0	0.0	1.0
Amicus Briefs	0.22	-52	37	6.29	-8.0	-2.0	0.0	2.0	8.0
Petitioner									
Years Since Law School	22.73	3	51	9.95	8.0	15.0	21.0	30.0	41.0
Advocate 1 - 5 JD	0.41	0	1	0.49	0.0	0.0	0.0	1.0	1.0
Former Supreme Court Clerk	0.38	0	1	0.49	0.0	0.0	0.0	1.0	1.0
Former CTA or DC Clerk	0.60	0	1	0.49	0.0	0.0	1.0	1.0	1.0
Male	0.88	0	1	0.33	0.0	1.0	1.0	1.0	1.0
Top 20% Most Active Advocate	0.35	0	1	0.48	0.0	0.0	0.0	1.0	1.0
Win Percentage	0.37	0	1	0.37	0.0	0.0	0.4	0.6	1.0
Solicitor General Support	0.21	0	1	0.41	0.0	0.0	0.0	0.0	1.0
Amicus Briefs	4.74	0	53	6.34	0.0	1.0	3.0	6.0	18.0
Respondent									
Years Since Law School	22.03	5	53	10.05	8.0	14.0	21.0	30.0	38.0
Advocate 1 - 5 JD	0.41	0	1	0.49	0.0	0.0	0.0	1.0	1.0
Former Supreme Court Clerk	0.37	0	1	0.48	0.0	0.0	0.0	1.0	1.0
Former CTA or DC Clerk	0.58	0	1	0.49	0.0	0.0	1.0	1.0	1.0
Male	0.84	0	1	0.37	0.0	1.0	1.0	1.0	1.0
Top 20% Most Active Advocate	0.35	0	1	0.48	0.0	0.0	0.0	1.0	1.0
Win Percentage	0.36	0	1	0.36	0.0	0.0	0.4	0.6	1.0

Variable	Mean	Min	Max	Std. Dev.	5th	25th	50th	75th	95th
Solicitor General Support	0.15	0	1	0.36	0.0	0.0	0.0	0.0	1.0
Amicus Briefs	4.52	0	75	7.62	0.0	0.0	2.0	5.0	16.0
Justice									
Ideology Matching CTA Decision	0.48	0	1	0.50	0.0	0.0	0.0	1.0	1.0
Appointing Party Match CTA Judge	0.51	0	1	0.50	0.0	0.0	1.0	1.0	1.0
Justice From Circuit	0.07	0	1	0.25	0.0	0.0	0.0	0.0	1.0
Justice Oversees Circuit	0.15	0	1	0.35	0.0	0.0	0.0	0.0	1.0
Justice JD Match	0.09	0	1	0.28	0.0	0.0	0.0	0.0	1.0
Gender Match	0.35	0	1	0.48	0.0	0.0	0.0	1.0	1.0
Case									
Circuit Split	0.18	0	1	0.39	0.0	0.0	0.0	0.0	1.0
Large Majority in CTA	0.77	0	1	0.42	0.0	1.0	1.0	1.0	1.0
US Petitioner - US Respondent	-0.13	-1	1	0.59	-1.0	0.0	0.0	0.0	1.0
Petitioner from US	0.12	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Respondent from US	0.25	0	1	0.43	0.0	0.0	0.0	0.0	1.0
En Banc									
Case was En Banc	0.07	0	1	0.25	0.0	0.0	0.0	0.0	1.0
Case Type									
Civil Case	0.74	0	1	0.44	0.0	0.0	1.0	1.0	1.0
Criminal Case	0.16	0	1	0.36	0.0	0.0	0.0	0.0	1.0
Habeas Case	0.11	0	1	0.31	0.0	0.0	0.0	0.0	1.0
Issue Area									
Civil Liberties	0.54	0	1	0.50	0.00	0.0	1.0	1.0	1.0
Economic Activity	0.28	0	1	0.45	0.00	0.0	0.0	1.0	1.0
Federalism	0.06	0	1	0.24	0.00	0.0	0.0	0.0	1.0
Judicial Power & Misc	0.12	0	1	0.33	0.00	0.0	0.0	0.0	1.0
Circuit									
Circuit 1	0.03	0	1	0.18	0.0	0.0	0.0	0.0	0.0
Circuit 2	0.10	0	1	0.31	0.0	0.0	0.0	0.0	1.0
Circuit 3	0.05	0	1	0.22	0.0	0.0	0.0	0.0	1.0
Circuit 4	0.06	0	1	0.24	0.0	0.0	0.0	0.0	1.0
Circuit 5	0.07	0	1	0.26	0.0	0.0	0.0	0.0	1.0
Circuit 6	0.08	0	1	0.28	0.0	0.0	0.0	0.0	1.0
Circuit 7	0.06	0	1	0.24	0.0	0.0	0.0	0.0	1.0
Circuit 8	0.05	0	1	0.21	0.0	0.0	0.0	0.0	0.0
Circuit 9	0.26	0	1	0.44	0.0	0.0	0.0	1.0	1.0
Circuit 10	0.03	0	1	0.18	0.0	0.0	0.0	0.0	0.0
Circuit 11	0.07	0	1	0.26	0.0	0.0	0.0	0.0	1.0
DC Circuit	0.05	0	1	0.21	0.0	0.0	0.0	0.0	0.0
Fed Circuit	0.07	0	1	0.25	0.0	0.0	0.0	0.0	1.0
Justice									
Kennedy	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Scalia	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Thomas	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Souter	0.05	0	1	0.23	0.0	0.0	0.0	0.0	1.0
Kagan	0.04	0	1	0.19	0.0	0.0	0.0	0.0	0.0
Roberts	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Stevens	0.07	0	1	0.25	0.0	0.0	0.0	0.0	1.0
Ginsburg	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Alito	0.11	0	1	0.31	0.0	0.0	0.0	0.0	1.0
Breyer	0.11	0	1	0.32	0.0	0.0	0.0	0.0	1.0
Sotomayor	0.06	0	1	0.23	0.0	0.0	0.0	0.0	1.0

Table 2 provides additional insight into the characteristics of the 506 advocates. This table contains one observation per advocate, whereas Table 1 counted each appearance of an advocate. Based on each advocate's last case in our sample, the average advocate had appeared before the Court 3.9 times, 23.9 years after graduating from law school. About 21% had clerked on the Supreme Court and about 41% had clerked on a court of appeals or district court. Approximately one-third graduated from a top-five-ranked law school. More than five times more men argued than women (85.2% versus 14.8%). Interestingly, of the 506 advocates, 438 have represented only petitioners or respondents, while 68 represented both a petitioner and respondent at some point and appear frequently—almost 19 times each.

Table 2

Advocate Characteristics

	All Advocates	Advocates Representing		
		Petitioners Only	Respondents Only	Both
Number	506	217	221	68
Number of Appearances	3.9	1.5	1.5	19.2
Years Since Law School	23.9	24.0	24.5	21.3
Advocate 1 - 5 JD	34.0%	28.6%	31.7%	58.8%
Former Supreme Court Clerk	21.1%	16.1%	15.8%	54.4%

Former CTA or DC Clerk	40.9%	36.9%	32.1%	82.4%
Female	14.8%	13.4%	17.2%	11.8%
Win Percentage	24.6%	21.4%	17.5%	58.3%

<u>Notes & Sources</u>:

Includes advocates in regression.

If an advocate made more than one appearance, the variables that change over time (i.e. Number of Appearances, Years Since Law School, Win Percentage) represent the advocate's last appearance.

IV. RESULTS

Multivariate logit regressions were performed to estimate the model.[48] The unit of observation is each Justice's vote on each decision appealed from the circuit courts of appeals decided by the Supreme Court during the first eight Terms of the Roberts Court.[49] The dependent variable is equal to 1 if the Justice voted to reverse the court of appeals decision, i.e., to rule for the petitioner, and 0 if the Justice voted to affirm, i.e., to rule for the respondent.

Table 3 summarizes the results of the pooled regression results for decisions of the Supreme Court as a whole. Table 3 displays the coefficient estimates of the CAJ, ADVOCATE, JUSTICE, CASE, and CONTROL independent variables, as well as the corresponding standard errors. Statistically significant coefficients at the 99%, 95%, and 90% confidence levels are identified with ***, **, and *, respectively. Because the impact of the coefficients is not readily ascertainable from the logit equations, Table 3 also includes a column that calculates the impact of each independent variable.[50]

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48. *See, e.g.*, WILLIAM H. GREENE, ECONOMETRIC ANALYSIS 872–74 (3d ed. 1997). The logit model is a standard tool for estimating regressions in which the dependent variable is binary. Unlike a standard ordinary least squares regression, the logit model results in predicted values that fall between 0 and 1, and can therefore be interpreted as the predicted probability of the event occurring. *See id.*

49. Thirteen cases within our data set featured consolidations of two or more cases from the circuit courts of appeals. Consolidated cases were counted multiple times, corresponding with the number of consolidated cases; for example, a Supreme Court opinion that consolidated two cases from below was counted twice. If a single advocate represented petitioners (or respondents) in both cases, she was given credit for two cases in our data.

50. The impact of an independent variable is the change in the probability of reversal for a change in that independent variable, holding other independent variables fixed. For dummy variables, the impact reflects the change in reversal likelihood in going from 0 to 1. Throughout the article, we measure the impact of

Further, Appendix B includes Tables B-1 through B-11, which provide results of similar regressions run separately for each Justice, i.e., not the pool of all Justices, permitting us to tease out whether the independent variables influence different Justices differently. Unlike the pooled model, the Justice-specific models in Appendix B do not constrain the regression coefficients to be the same for all Justices.

Table 3

Logit Model of Reversals – Pooled Model

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.020	***	0.004	0.038
Judge 1 - 5 JD	-0.161	*	0.095	-0.034
Judge ABA Rating	0.011		0.084	0.002
Panel ABA Rating	-0.136		0.155	-0.009
Former Supreme Court Clerk	-0.110		0.109	-0.023
Former CTA or DC Clerk	0.005		0.081	0.001
Advocate				
Years Since Law School	-0.003		0.003	-0.008
Advocate 1 - 5 JD	0.103	*	0.053	0.022
Former Supreme Court Clerk	-0.026		0.062	-0.006
Former CTA or DC Clerk	-0.013		0.064	-0.003
Gender	-0.058		0.071	-0.012
Top 20% Most Active Advocate	0.206	***	0.061	0.043
Win Percentage	0.170	**	0.076	0.019
Solicitor General Support	0.504	***	0.060	0.106
Amicus Briefs	0.016	***	0.006	0.021
Justice				
Ideology Matching CTA Decision	-0.738	***	0.071	-0.155
Appointing Party Match CTA Judge	-0.237	***	0.071	-0.050
Justice From Circuit	-0.116		0.167	-0.024
Justice Oversees Circuit	-0.062		0.111	-0.013
Justice JD Match	-0.156		0.140	-0.033
Gender Match	0.094		0.084	0.020
Case				
Circuit Split	0.030		0.093	0.006

continuous variables as the change in probability when moving from the mean to the mean plus one standard deviation.

Variable	Coefficient		Std. Error	Impact
Large Majority in CTA	-0.087		0.104	-0.018
US Petitioner - US Respondent	-0.177	**	0.070	-0.037
En Banc	-0.404	***	0.148	-0.085
Case Type				
Civil	-0.003		0.129	-0.001
Criminal	-0.161		0.147	-0.034
Issue Area				
Civil Liberties	0.235	**	0.114	0.049
Economic Activity	-0.229	*	0.120	-0.050
Federalism	-0.086		0.172	-0.018
Circuit				
Circuit 1	-0.849	***	0.242	-0.177
Circuit 2	-0.463	**	0.183	-0.092
Circuit 3	-0.756	***	0.207	-0.156
Circuit 4	-0.559	***	0.202	-0.113
Circuit 5	-0.822	***	0.195	-0.171
Circuit 6	-0.076		0.197	-0.014
Circuit 7	-0.873	***	0.202	-0.183
Circuit 8	-0.021		0.224	-0.004
Circuit 9	-0.320	**	0.161	-0.063
Circuit 10	-0.909	***	0.235	-0.191
Circuit 11	-0.394	**	0.196	-0.078
DC Circuit	-0.842	***	0.230	-0.176
Justice				
Kennedy	0.631	***	0.154	0.131
Scalia	0.451	***	0.150	0.095
Thomas	0.302	**	0.149	0.065
Souter	0.091		0.180	0.020
Kagan	0.035		0.199	0.008
Roberts	0.497	***	0.151	0.105
Stevens	-0.059		0.166	-0.013
Alito	0.312	**	0.151	0.067
Breyer	0.165		0.148	0.036
Sotomayor	-0.064		0.170	-0.014
Constant	1.049	***	0.270	
Observations	4,189			

Variable	Coefficient	Std. Error	Impact
Pseduo R^2	0.081		
Correct Predictions	2,774		
Percent Correct	66.2%		

Notes & Sources:
    See Appendix A for definitions.

A. Overall Predictive Accuracy of the Model

Our sample included 4,189 votes of eleven Justices that sat on the first eight Terms of the Roberts Court.[51] The overall, pooled model accurately predicted 66% of the Justice-level votes. In other words, of the 4,189 votes, the model accurately predicted 2,774 votes and did not accurately predict 1,415 votes. To test the model at the case level, we predict the outcome of each case based on each Justice's predicted vote (the case is predicted to be affirmed if half or more of the justices vote to affirm and to be reversed otherwise) and consider the model correct if the prediction is in agreement with the Court's actual decision. By this measure, our model correctly predicts 70% of the cases (332 out of 475).[52]

The individual Justice regressions even more accurately predicted each Justice's votes, although there was some variability across the Justices. Table 4 displays the percentage of accurate votes by Justice. It shows that the voting patterns of Justices Kagan (78.0%), Souter (75.9%), and Stevens (75.5%) were best explained by the model, while the voting patterns of Justice Breyer (70.5%), Chief Justice Roberts (69.7%), and Justice Ginsburg (70.4%) were least well-explained. As Justices Kagan and Sotomayor are the two most recent appointments to the Court, and Justices Souter and Stevens did not serve during the entire period studied, the model may have been relatively more accurate because it had relatively fewer votes to explain.

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51. Six Justices were present for the entire duration (Justices Breyer, Ginsburg, Kennedy, Roberts, Scalia, and Thomas) and six other Justices left or joined the Court during the eight terms (Justice Alito replaced Justice O'Connor, Justice Kagan replaced Justice Stevens, and Justice Sotomayor replaced Justice Souter). Justice O'Connor is not included because she retired four months after the start of the Roberts Court.

52. There are 475 cases instead of 476 for this calculation because we excluded Justice O'Connor, and as a result, one case has a predicted vote of 4–4.

Table 4

Comparison of Percent Correct in Justice-Specific Models

	Correct	Total	%	Rank
Roberts	326	468	69.7%	11
Alito	317	443	71.6%	5
Breyer	330	468	70.5%	9
Ginsburg	333	473	70.4%	10
Kagan	117	150	78.0%	1
Kennedy	338	474	71.3%	6
Scalia	336	476	70.6%	8
Sotomayor	177	242	73.1%	4
Souter	170	224	75.9%	2
Stevens	216	286	75.5%	3
Thomas	337	474	71.1%	7
Pooled	2,774	4,189	66.2%	
Court-Level[1]	332	475	69.9%	

Notes & Sources:

Excludes one case which our model predicts 4-4 and is missing a prediction for Justice O'Connor. 476 cases are included in the logit.

Reported values from justice-specific models.

Pooled from Table 3.

Court-Level calculated by counting the number of reversals predicted on the individual justice level for each case by the pooled model. If the number of reversals predicted was greater than half the justices who voted, the case was considered a reversal.

B. CAJ Variables

The pooled regression results reveal that the *Judge Years* variable was statistically significant.[53] Contrary to what we expected, the coefficient on *Judge Years* was positive, indicating that, all else equal, the longer a court of appeals judge sat on that court—measured from the year the judge was sworn in to the year the judge wrote the opinion reviewed—the *more* likely the opinion

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53.   Our discussion of each variable will start with a discussion of the pooled Justice results and then turn to the individual Justice results. The individual Justice results show fewer statistically significant coefficients than the pooled results in part because the substantially larger number of observations per independent variable in the pooled regressions increases the power of the estimates.

was to be reversed. The calculated impact of the coefficient (0.038) means that, all else equal, one standard deviation increase (8.9 years) in the tenure of a court of appeals judge results in a 3.8 percentage point *higher* likelihood of reversal. We think a plausible explanation for this result is the "auditioning" hypothesis discussed *infra*, as well as that longer tenured judges may be more independent, weighing less how the Supreme Court may rule and more what the judge (and the judge's colleagues on the panel) believes is the "right" outcome.

The results also indicate that whether a judge was a former Supreme Court clerk, a clerk in the court of appeals, or the United States District Court for the District of Columbia did not influence the likelihood of reversal. We also found no statistically significant relationship between judges' ABA ratings at the time of nomination (either the rating of the panel author or the members of the panel as a whole) and the likelihood of reversal. On the other hand, the negative coefficient on the *Judge 1-5 JD* variable indicates that judges from top schools are less likely to be reversed, as expected, and is weakly statistically significant.

Table 5

Impacts Comparison

| | Court of Appeals Judge (CAJ) | | | Advocate | | | |
	Judge Years	Judge 1 - 5 JD	Advocate 1 - 5 JD	Top 20% Most Active Advocate	Win Percentage	Solicitor General Support	Amicus Briefs
Roberts	0.041 *	-0.042	-0.007	0.093 **	-0.008	0.090 **	0.014
Alito	0.040 *	-0.056	0.009	0.058	-0.013	0.090 **	0.017
Breyer	0.071 ***	-0.070	0.039	0.022	0.068 ***	0.156 ***	0.006
Ginsburg	0.043 *	-0.045	0.065 **	0.068 *	-0.008	0.138 ***	0.039 *
Kagan	0.096 **	-0.004	0.037	-0.045	-0.051	0.118 **	0.030
Kennedy	0.031	-0.029	0.015	0.057	-0.032	0.099 ***	0.027
Scalia	0.009	-0.021	-0.014	0.087 **	-0.012	0.044	0.000
Sotomayor	0.054 *	-0.005	-0.005	0.044	-0.024	0.181 ***	0.000
Souter	0.036	-0.145 *	-0.004	0.061	0.073 **	0.108 *	0.072 **
Stevens	0.018	-0.089	0.095 **	0.063	0.059 *	0.160 ***	0.028
Thomas	0.009	-0.040	-0.056 *	0.040	-0.018	0.027	0.021
Pooled	0.038 ***	-0.034 *	0.022 *	0.043 ***	0.019 **	0.106 ***	0.021 ***

| | Justice | | Case | |
	Ideology Matching CTA Decision	Appointing Party Match CTA Judge	US Petitioner - US Respondent	Case was En Banc
Roberts	-0.157 ***	-0.113 **	-0.022	0.002
Alito	-0.148 ***	-0.104 **	0.057	0.073
Breyer	-0.179 ***	0.049	-0.052	-0.116
Ginsburg	-0.227 ***	0.007	-0.044	-0.259 ***
Kagan	-0.155 *	-0.009	0.005	-0.220
Kennedy	-0.134 ***	-0.105 **	-0.014	0.010
Scalia	-0.232 ***	-0.078 *	-0.054	-0.070
Sotomayor	-0.226 ***	-0.035	-0.040	-0.206
Souter	0.306 ***	-0.013	-0.053	0.109
Stevens	0.270 ***	-0.014	-0.092	0.038
Thomas	-0.190 ***	-0.140 ***	0.049	-0.106
Pooled	-0.155 ***	-0.050 ***	-0.037 **	-0.085 ***

<u>Notes & Sources:</u>

Reported values are variable impacts from justice-specific models. P-values represent significance of coefficient.

See Appendix A for definitions.

C. ADVOCATE Variables

The results demonstrate strong correlations between the characteristics of advocates before the Supreme Court and Justices'

votes. While there was no statistically significant correlation between having a former clerk (Supreme Court, court of appeals, or district court) argue a case and Justices' votes, the results reveal a strong correlation for an experienced oral advocate arguing before the Supreme Court with a successful track record who graduated from a top-five law school opposing a lawyer not similarly qualified and without such success before the Supreme Court. In addition, the support of the SG's Office and more amicus briefs filed are significantly correlated with a substantial boost in the likelihood of success before the Court.

First, all else equal, relatively more experienced oral advocates before the Supreme Court are correlated with an increase in the likelihood of success. We arrayed the frequency of oral advocates who appeared before the Supreme Court and grouped them into two categories—the 20% most active advocates in a year and the rest.[54] An advocate who was among the 20% most active had a 4.3 percentage point greater likelihood of success as compared to an advocate who was not among the 20% most active. This finding is relatively robust across the various Justices.[55] In contrast, general experience as a lawyer—measured by years since law school—was not significantly correlated with success.

Second, an advocate's prior success before the Supreme Court matters. The results show that an advocate who has a greater historic win percentage than the advocate's opponent will be more likely to succeed. Specifically, a one-standard-deviation increase in an advocate's win percentage relative to the opponent's win percentage (52%) results in a 1.9 percentage point increase in the likelihood of success. This result is significant.[56]

Third, the advocate's law school was also correlated with a greater likelihood of winning. A party represented by an oral advocate who graduated from a top-five-ranked law school enjoyed a 2.2 percentage point greater likelihood of success over an opponent

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54. We contemplated, but rejected, including as the variable the number of times the lawyer had previously appeared as an oral advocate before the Supreme Court. That specification was rejected because, a priori, it did not make sense that the relationship was linear; in other words, that a lawyer who had appeared two more times than her adversary was twice as likely to win, while one who appeared ten times more often was ten times more likely to win. One advocate, Edwin Kneedler, appeared 115 times in his career, but over half of lawyers appear just once.

55. *See* Table 5 (Justices Alito, Ginsburg, Kennedy, Roberts, and Scalia).

56. The coefficient is significant at the 95% confidence level and its effect is concentrated primarily among Justices Breyer, Souter, and Stevens. *See* Table 5.

who did not. This result was significant at the 90% confidence level, though driven only by Justices Ginsberg and Stevens.[57]

Fourth, amici support, particularly the support of the SG's Office, is substantially and significantly correlated with winning before the Court.[58] Our results confirm the conventional wisdom and quantify that advantage—the regressions demonstrate that, all else equal, a party has a 10.6 percentage point advantage if the SG's Office submits a supporting brief. This finding is particularly strong, as all of the Justices except Justices Thomas and Scalia were influenced by this variable.[59] Moreover, setting aside what could lead parties and their counsel to start an amicus brief arms race, the results reveal that the party with relatively more supporting amicus briefs enjoys a statistically significant boost. Specifically, a one standard deviation (6.3 briefs) increase in the number of supporting amicus briefs more than an opponent provides a statistically significant (at the 99% confidence level) 2.1 percentage point greater likelihood of success.

Of course, these results demonstrate only a correlation, so as discussed previously, it may well be that the SG's Office was only prescient as to which party would win, not influential in causing the party to win.[60] The amicus brief result likewise is also only a correlation, though statistically significant at the 99% level. So, in addition to the straightforward explanation that more briefs from more supporting organizations have a direct influence on the Justices, there is the alternative explanation that amici choose to weigh in for a party when they believe that the party will win before the Court, perhaps to gain credibility outside of the Court and not necessarily to be influential with the Court.

D. JUSTICE Variables

Consistent with the literature on the topic, our results show that ideology matters in explaining Supreme Court voting patterns.[61]

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57.   *See* Table 5.

58.   Kearney & Merrill, *supra* note 34, at 773.

59.   *See* Table 5.

60.   Importantly, however, to the extent that one of the purposes of the model is to predict Justices' votes, the distinction between whether the SG's Office is influential in persuading the Court or prescient in predicting Justices' votes is irrelevant.

61.   *See, e.g.*, Jeffrey A. Segal et al., *Ideological Values and the Votes of U.S. Supreme Court Justices Revisited*, 57 J. POL. 812, 822 (1995); Reginald S. Sheehan et

Specifically, if the ideological direction of the court of appeals decision, i.e., liberal or conservative, matches the party affiliation of the President who appointed the Justice, the likelihood of reversal is 15.2 percentage point lower. This result is large in magnitude, strongly statistically significant (99%), and robust across the Justices, as it is statistically significant (at 99%) for all Justices except Justice Kagan (90%).[62] In addition, if the President who appointed the Justice belongs to the same political party as the President who appointed the judge authoring the court of appeals decision, the likelihood of reversal is 5 percentage points lower.

Interestingly, the other independent variables in this group showed no statistically significant relationship. Specifically, the likelihood that a Justice would reverse a court of appeals decision is uninfluenced by whether the Justice is the same gender or went to the same law school as the author of the court of appeals decision. Similarly, the Justices do not appear to give the circuits from which they came or currently supervise any greater deference or scrutiny than any other circuit.[63]

E. CASE Variables

The United States, appearing as a party, all else equal, enjoys a statistically significant and substantial advantage over other parties. Specifically, the pooled results reveal that if the United States is a party, it enjoys a 3.7 percentage points greater likelihood of success than a private party. This could be explained by Justices' general deference to the federal government or, where the United States is a petitioner, the SG's Office acting as a careful gatekeeper to select for appeal to the Supreme Court only those cases with a strong likelihood of success. This relative advantage is quite substantial and statistically significant in the pooled model (95% confidence), though it is not statistically significant in any of the Justice-level models.[64] Further, it appears (at the 99% confidence level) that court of appeals cases decided en banc are 8.5 percentage

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al., *Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court*, 86 AM. POL. SCI. REV. 464, 466 (1992).

62.   *See* Table 5.

63.   This result contrasts with that found by Lee Epstein et al., *Circuit Effects: How the Norm of Federal Judicial Experience Biases the Supreme Court*, 157 U. PA. L. REV. 833 (2009), in which the authors concluded that Justices have a "strong predilection" to rule in favor of the circuit from which they were elevated, *id.* at 834, 873–77.

64.   *See* Table 5.

points less likely to be reversed than those decided by a three-judge panel. There are several plausible explanations for this correlation. First, the Justices could be giving greater deference to a court of appeals decision that was determined by an entire circuit court, not just a three-judge panel. Second, there could be some "wisdom of crowds" phenomenon at work,[65] whereby a larger group of court of appeals judges is more accurate in predicting the Supreme Court's outcome in the case simply by virtue of there being more judges involved in the decision.

Interestingly, it appears that the likelihood that the Supreme Court will reverse a court of appeals decision is not influenced by whether the decision was divided, i.e., whether the panel or en banc court had dissenting votes, or whether there was a circuit split on the issue driving the appeal to the Supreme Court.

F.   *CONTROL Variables*

The control variables fall into three categories: case type (civil, criminal, and habeas corpus), issue area (civil liberties, economic activity, federalism, and judicial power and miscellaneous) and the thirteen circuit courts of appeal (the eleven enumerated circuits plus the District of Columbia Circuit and the Federal Circuit).

Generally, the results shed some light on the question of which courts of appeals enjoy the lowest reversal rate and which suffer from the highest. Simple univariate results do not control for variables affecting the reversal rate such as those outlined above, while this multiple regression analysis permits us to separate out those other impacts and see if there is any residual impact.

Table 6

Circuit	Circuit												
	2	3	4	5	6	7	8	9	10	11	DC	Fed	Average
1	-0.085	-0.021	-0.064	-0.006	**-0.163**	0.005	**-0.173**	-0.115	0.014	-0.099	0.002	**-0.177**	-0.074
2		0.064	0.021	0.079	-0.078	0.090	-0.088	-0.030	0.098	-0.015	0.083	-0.092	0.018

65.   *See* SUNSTEIN, *supra* note 41, at 21–22.

											Average
3	-0.043	0.015	**-0.142**	0.026	**-0.153**	-0.094	0.034	-0.079	0.019	**-0.156**	-0.051
4		0.058	-0.099	0.070	-0.109	-0.050	0.078	-0.035	0.063	**-0.113**	-0.004
5			**-0.157**	0.012	**-0.167**	-0.108	0.020	-0.093	0.005	**-0.171**	-0.067
6				**0.168**	-0.010	0.048	**0.177**	0.064	**0.161**	-0.014	0.103
7					**-0.179**	-0.120	0.008	**-0.105**	-0.007	**-0.183**	-0.080
8						0.059	**0.187**	0.074	**0.172**	-0.004	0.114
9							**0.128**	0.015	**0.113**	-0.063	0.050
10								-0.113	-0.015	**-0.191**	-0.089
11									0.098	-0.078	0.034
DC										**-0.176**	-0.072
Fed											0.118

Differences of Variable Impacts Across Circuits

Notes & Sources:

Reported values are differences of variable impacts from Exhibit 3, calculated as the row variable minus the column variable.

Cell formatting indicates statistical significance: 1% (bold), 5% (grey shading), and 10% (boxed).

Average reflects average impact difference compared to all other circuits. It includes values in the row corresponding to the circuit as well as the column. The sign of the values in the corresponding column are reversed in calculating the average to adjust for the way the difference was calculated.

The results in Table 6 show the difference in reversal rates for all pairs of circuits, controlling for other case characteristics. The rightmost column summarizes the average reversal rate of each circuit relative to all other circuits. Of note, the Sixth, Eigth, Ninth, and Federal Circuits are all at least 5% more likely to be reversed, while the First, Fifth, Seventh, and Tenth Circuits are all at least 5% less likely to be reversed. This result is inconsistent with the conventional view that the Ninth Circuit is the most often reversed circuit court.[66]

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66. Our analysis of reversal rates by circuit is different from the work that we have previously done, as our earlier work uses a more complete measure that accounts not just for the Supreme Court's reversals and affirmances of the case on appeal, but also other "shadow" cases from other circuits that are a part of a circuit split. *See* John S. Summers & Michael J. Newman, *Towards a Better Measure and Understanding of U.S. Supreme Court Review of Courts of Appeals Decisions*, 80 U.S.L.W. 393, 393–94 (2011) (detailing our earlier methodology).

IV.   CONCLUSION

The statistical model presented in this article represents a first effort to systematically predict Supreme Court and individual Justice voting behavior using a host of explanatory variables going beyond or behind the "merits" of the cases decided to also consider the impact of the judges who wrote the opinions reviewed and the advocates before the Supreme Court. Several preliminary conclusions may be drawn from the results.

First, rigorous multiple regression analysis is a relatively accurate way of predicting Supreme Court outcomes and the Justices' voting behavior. Among the cases in our sample, the reversal rate was 63%. The pooled model accurately predicted 66% of all of the Justices' votes; the individual Justice models correctly predicted as high as 78% of the individual Justices' votes. When applying the Justice-level predictions to the Court as a whole, the model accurately predicted 70% of the cases. Predictive accuracy rates in that range are quite compelling. Consider the advantage that a trader could enjoy if the trader could accurately pick the direction of a stock 70% (or 78%) of the time. A party appearing before the Supreme Court, or an investor trading on the stock of a party that has a significant amount at stake in the outcome of a case, should value having such a good indicator of the likelihood of success.

Second, the model says something about the performance—as measured by reversal—of court of appeals judges. Those judges who have served on the bench more often are reversed more often, approximately 0.4% per year on the bench. The model also suggests that the ABA rating of a court of appeals nominee or their clerkship experience does not predict the likelihood that the judge will be reversed.

Third, it is as interesting what is *not* statistically significant as what is statistically significant. Most notably, according to our results, advocates who are former Supreme Court clerks do not enjoy greater likelihoods of success than their colleagues, and Justices appear uninfluenced by the gender and law school affiliation of the author of the court of appeals decision they are reviewing.

Fourth, the model provides a rationale for the increased concentration of Supreme Court specialists. In particular, an

advocate's success before the Supreme Court is correlated with whether the advocate graduated from a top-ranked law school and is among the most experienced advocates. Relatedly, the model confirms the conventional wisdom that, all else equal, the SG's Office enjoys a greater likelihood of success before the Supreme Court.

Finally, all of this analysis underscores that Justices' votes and the outcome of Supreme Court decisions are substantially influenced by far more than the "merits" of the case before them. The characteristics of the court of appeals judge who wrote the decision being reviewed matter, as do various characteristics of the oral advocates before the Court. Moreover, the model demonstrates that these influences, at least across the first eight Terms of the Roberts Court, are systematic and knowable.

APPENDIX A: VARIABLE DEFINITIONS

Correct Predictions are based on a comparison of the model's predicted reversals to the actual reversals in the sample. The model predicts reversal when the predicted likelihood of reversal is greater than .5.

Blanks in justice-specific regressions indicate that the variable was omitted due to multicollinearity, except for the *Justice From Circuit* and *Justice Oversees Circuit* variables, which are not included in the logit specifications.

The impact of an independent variable is the change in the probability of reversal for a change in that independent variable,

holding other independent variables fixed. For dummy variables, the impact reflects the change in reversal likelihood in going from 0 to 1. The impacts of continuous variables are measured as the change in probability when moving from the mean to the mean plus one standard deviation, where the standard deviation is based on the sample of observations included in the regression. *See Table 1*.

***, **, and * represent significance at the .01, .05, and .1 levels, respectively.

Court of Appeals ("CTA") Judge Independent Variables ("CAJ"):

Judge Years is the number of years the CAJ held the position prior to the lower court case.

Judge 1-5 JD is a dummy variable equal to 1 if the CAJ went to a top-five law school. Rankings are calculated using the U.S. News & World Report Best Law School rankings from the first year before the judge's graduation year (either the 1987, 1990, 1995, 2000, or 2005 rankings), unless the graduation year is before 1987, in which case the 1987 rankings are used. Rankings are available at http://www.prelawhandbook.com/home (last visited Oct. 6, 2016).

Judge ABA Rating is equal to 1 if the CAJ is rated as Exceptionally Well Qualified or Well Qualified. Ratings are available at http://www.americanbar.org/groups/committees/federal_judiciary/ratings.html (last visited Oct. 6, 2016).

Panel ABA Rating is calculated as the number of CTA judges who voted in the majority and are ranked as Exceptionally Well Qualified or Well Qualified, minus the number of CTA judges who voted in dissent and are ranked as Exceptionally Well Qualified or Well Qualified, all divided by the total number of CTA judges.

Former Supreme Court Clerk is equal to 1 if the CAJ ever clerked for the Supreme Court.

Former CTA or DC Clerk is equal to 1 if the CAJ ever clerked for a Circuit Court or District Court.

ADVOCATE Independent Variables:

Each advocate variable, except for Gender, is of the form (Petitioner–Respondent). Variables based on binary advocate variables can take on values of 1, 0, or -1.

AN ECONOMETRIC INVESTIGATION

Years Since Law School is based on variables equal to the year of the case subtracted by the year that the advocate graduated law school.

Advocate 1-5 JD is based on dummy variables equal to 1 if the advocate went to a top-five law school. Rankings are calculated using the U.S. News & World Report Best Law School rankings from the first year before the advocate's graduation year (either the 1987, 1990, 1995, 2000, or 2005 rankings), unless the graduation year is before 1987, in which case the 1987 rankings are used. Rankings are available at http://www.prelawhandbook.com/home (last visited Oct. 6, 2016).

Former Supreme Court Clerk is based on dummy variables equal to 1 if the advocate ever clerked for the Supreme Court.

Former CTA or DC Clerk is based on dummy variables equal to 1 if the advocate ever clerked for a federal circuit court of appeals or district court.

Gender is equal to 1 if the petitioner is male and the respondent is female, -1 if the petitioner is female and the respondent male, and 0 if the advocates are the same gender.

Top 20% Most Active Advocate is based on dummy variables equal to 1 if the advocate's number of prior arguments as of the first sample case in a year is in the top 20% of advocates who argued that year.

Win Percentage is based on variables equal to Wins / (Wins + Losses) for the advocate at the Supreme Court. Wins and losses are based on results prior to the current case.

Solicitor General Support equals 1 if the Solicitor General weighed in on the petitioner's side, -1 if the Solicitor General weighed in on the respondent's side, and 0 if the Solicitor General did not weigh in at all.

Amicus Briefs equals the number of amicus briefs written for the petitioner minus the number written for the respondent.

JUSTICE Independent Variables:

Ideology Matching CTA Decision is a dummy variable equal to 1 if the lower court decision direction (liberal or conservative) matches the party affiliation of the President who appointed the Justice. Lower court decision direction is derived from the Washington University Supreme Court Database, available at http://scdb.wustl.edu (last visited Oct. 6, 2016).

Appointing Party Match CTA Judge is a dummy variable equal to 1 if the President who appointed the Justice belongs to the same political party as the President who appointed the CAJ.

Justice From Circuit is a dummy variable equal to 1 if the Justice is from the circuit. This variable is not included in Justice-specific regressions.

Justice Oversees Circuit is a dummy variable equal to 1 if the Justice ever oversaw the circuit for more than one year. This variable is not included in Justice-specific regressions.

Justice JD Match is a dummy variable equal to 1 if the Justice went to the same law school as the CAJ.

Gender Match equals 1 if the Justice and CAJ have opposite genders.

CASE Independent Variables:

Circuit Split is a dummy equal to 1 if the number of reversals of shadow cases divided by the number of shadow cases for a given case is strictly between 1/3 and 2/3.

Large Majority in CTA is a dummy variable equal to 1 if 80% or more of the judges on the CTA voted in the majority.

US Petitioner – US Respondent is a dummy variable equal to 1 if the petitioner is the United States, -1 if the respondent is the United States, and 0 if neither are the United States, based on the petitioner (12) and respondent (14) variables in the Supreme Court Database.

En Banc is a dummy variable equal to 1 if the lower court sat en banc.

CONTROL Variables:

Case Type variables are dummy variables for each case type, with Habeas intentionally dropped as the base.

Issue Area variables are dummy variables for each issue area, with Judicial Power & Misc. intentionally dropped as the base.[67]

Circuit variables are dummy variables for each circuit, with the Federal Circuit intentionally dropped as the base.

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67.   These categories are derived from Lee Epstein et al., Inferring the Winning Party in the Supreme Court from the Pattern of Questioning at Oral Argument, 39. J. LEGAL STUD. 433, 445 n.12 (2010).

Justice variables are dummy variables for each justice, with Justice Ginsburg intentionally dropped as the base.

APPENDIX B: LOGIT MODEL OF REVERSALS

Appendix B-1

Logit Model of Reversals – Roberts

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.024	*	0.014	0.041
Judge 1 - 5 JD	-0.223		0.338	-0.042

Variable	Coefficient		Std. Error	Impact
Judge ABA Rating	-0.161		0.271	-0.030
Panel ABA Rating	0.052		0.490	0.003
Former Supreme Court Clerk	0.227		0.351	0.043
Former CTA or DC Clerk	0.129		0.258	0.024
Advocate				
Years Since Law School	-0.007		0.009	-0.018
Advocate 1 - 5 JD	-0.036		0.166	-0.007
Former Supreme Court Clerk	-0.097		0.197	-0.018
Former CTA or DC Clerk	-0.077		0.205	-0.015
Gender	0.090		0.225	0.017
Top 20% Most Active Advocate	0.492	**	0.197	0.093
Win Percentage	-0.081		0.244	-0.008
Solicitor General Support	0.474	**	0.192	0.090
Amicus Briefs	0.012		0.019	0.014
Justice				
Ideology Matching CTA Decision	-0.828	***	0.256	-0.157
Appointing Party Match CTA Judge	-0.599	**	0.255	-0.113
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.144		0.483	-0.027
Gender Match	0.053		0.282	0.010
Case				
Circuit Split	-0.280		0.284	-0.053
Large Majority in CTA	0.044		0.329	0.008
US Petitioner - US Respondent	-0.117		0.231	-0.022
Case was En Banc	0.012		0.478	0.002
Case Type				
Civil	0.662		0.403	0.131
Criminal	0.219		0.453	0.045
Issue Area				
Civil Liberties	0.064		0.372	0.012
Economic Activity	-0.550		0.392	-0.107
Federalism	-0.326		0.550	-0.062
Circuit				
Circuit 1	-0.292		0.757	-0.058
Circuit 2	0.028		0.590	0.005
Circuit 3	-0.722		0.641	-0.149

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient	Std. Error	Impact
Circuit 4	-0.457	0.628	-0.092
Circuit 5	-0.334	0.607	-0.066
Circuit 6	0.227	0.618	0.041
Circuit 7	-0.675	0.624	-0.139
Circuit 8	1.130	0.772	0.170
Circuit 9	0.127	0.517	0.024
Circuit 10	-0.243	0.745	-0.048
Circuit 11	-0.127	0.613	-0.025
DC Circuit	-0.534	0.693	-0.108
Constant	0.897	0.777	
Observations	468		
Pseduo R^2	0.116		
Correct Predictions	326		
Percent Correct	69.7%		

Notes & Sources:
See Appendix A for definitions.

Appendix B-2

Logit Model of Reversals – Alito

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.025	*	0.015	0.040
Judge 1 - 5 JD	-0.307		0.355	-0.056
Judge ABA Rating	-0.006		0.283	-0.001
Panel ABA Rating	0.206		0.514	0.012
Former Supreme Court Clerk	0.156		0.366	0.028
Former CTA or DC Clerk	0.061		0.272	0.011
Advocate				
Years Since Law School	-0.001		0.009	-0.003
Advocate 1 - 5 JD	0.047		0.176	0.009
Former Supreme Court Clerk	-0.145		0.206	-0.026
Former CTA or DC Clerk	0.135		0.218	0.025
Gender	0.492	**	0.245	0.090
Top 20% Most Active Advocate	0.316		0.209	0.058
Win Percentage	0.139		0.254	0.013
Solicitor General Support	0.492	**	0.198	0.090
Amicus Briefs	0.014		0.019	0.017
Justice				
Ideology Matching CTA Decision	-0.814	***	0.262	-0.148
Appointing Party Match CTA Judge	-0.573	**	0.271	-0.104
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.758	*	0.459	-0.138
Gender Match	-0.018		0.298	-0.003
Case				
Circuit Split	-0.382		0.310	-0.070
Large Majority in CTA	-0.224		0.346	-0.041
US Petitioner - US Respondent	0.314		0.237	0.057
Case was En Banc	0.400		0.526	0.073
Case Type				
Civil	0.732	*	0.422	0.141
Criminal	-0.337		0.476	-0.068
Issue Area				

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Civil Liberties	0.156		0.392	0.027
Economic Activity	-0.460		0.410	-0.085
Federalism	-0.968	*	0.589	-0.183
Circuit				
Circuit 1	0.347		0.797	0.064
Circuit 2	0.386		0.596	0.071
Circuit 3	-0.314		0.679	-0.061
Circuit 4	-0.287		0.658	-0.056
Circuit 5	-0.221		0.617	-0.043
Circuit 6	0.186		0.614	0.035
Circuit 7	-0.366		0.640	-0.072
Circuit 8	0.623		0.735	0.112
Circuit 9	0.475		0.520	0.087
Circuit 10	-0.043		0.779	-0.008
Circuit 11	-0.011		0.619	-0.002
DC Circuit	-0.407		0.687	-0.080
Constant	0.753		0.810	
Observations	443			
Pseduo R^2	0.176			
Correct Predictions	317			
Percent Correct	71.6%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-3

Logit Model of Reversals – Breyer

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.042	***	0.014	0.071
Judge 1 - 5 JD	-0.366		0.323	-0.070
Judge ABA Rating	-0.113		0.273	-0.022
Panel ABA Rating	-0.317		0.490	-0.019
Former Supreme Court Clerk	-0.267		0.348	-0.051
Former CTA or DC Clerk	0.100		0.257	0.019
Advocate				
Years Since Law School	-0.004		0.009	-0.012
Advocate 1 - 5 JD	0.203		0.170	0.039
Former Supreme Court Clerk	-0.028		0.198	-0.005
Former CTA or DC Clerk	-0.054		0.202	-0.010
Gender	-0.276		0.226	-0.053
Top 20% Most Active Advocate	0.114		0.192	0.022
Win Percentage	0.680	***	0.244	0.068
Solicitor General Support	0.816	***	0.197	0.156
Amicus Briefs	0.005		0.017	0.006
Justice				
Ideology Matching CTA Decision	-0.932	***	0.263	-0.179
Appointing Party Match CTA Judge	0.254		0.248	0.049
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.173		0.477	-0.033
Gender Match	0.078		0.274	0.015
Case				
Circuit Split	0.407		0.302	0.078
Large Majority in CTA	-0.244		0.326	-0.047
US Petitioner - US Respondent	-0.270		0.226	-0.052
Case was En Banc	-0.603		0.466	-0.116
Case Type				
Civil	-0.492		0.415	-0.092
Criminal	-0.362		0.467	-0.067
Issue Area				
Civil Liberties	0.625	*	0.346	0.123
Economic Activity	0.245		0.371	0.049

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Federalism	-0.058		0.532	-0.012
Circuit				
Circuit 1	-1.559	**	0.783	-0.277
Circuit 2	-1.113	*	0.583	-0.188
Circuit 3	-1.312	**	0.648	-0.227
Circuit 4	-1.305	**	0.646	-0.226
Circuit 5	-1.545	**	0.634	-0.274
Circuit 6	-0.789		0.622	-0.127
Circuit 7	-1.496	**	0.647	-0.264
Circuit 8	-1.223	*	0.687	-0.210
Circuit 9	-1.192	**	0.514	-0.204
Circuit 10	-1.255	*	0.750	-0.216
Circuit 11	-0.462		0.667	-0.070
DC Circuit	-1.909	***	0.701	-0.348
Constant	1.751	**	0.770	
Observations	468			
Pseduo R^2	0.160			
Correct Predictions	330			
Percent Correct	70.5%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-4

Logit Model of Reversals – Ginsberg

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.025	*	0.014	0.043
Judge 1 - 5 JD	-0.232		0.268	-0.045
Judge ABA Rating	-0.151		0.267	-0.029
Panel ABA Rating	0.125		0.482	0.008
Former Supreme Court Clerk	-0.774	**	0.348	-0.149
Former CTA or DC Clerk	0.251		0.255	0.048
Advocate				
Years Since Law School	-0.010		0.009	-0.028
Advocate 1 - 5 JD	0.338	**	0.168	0.065
Former Supreme Court Clerk	0.080		0.195	0.015
Former CTA or DC Clerk	-0.244		0.201	-0.047
Gender	-0.355		0.221	-0.068
Top 20% Most Active Advocate	0.351	*	0.193	0.068
Win Percentage	0.081		0.237	0.008
Solicitor General Support	0.714	***	0.194	0.138
Amicus Briefs	0.032	*	0.019	0.039
Justice				
Ideology Matching CTA Decision	-1.177	***	0.256	-0.227
Appointing Party Match CTA Judge	0.035		0.243	0.007
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match				
Gender Match	0.167		0.268	0.032
Case				
Circuit Split	0.204		0.292	0.039
Large Majority in CTA	-0.632	*	0.330	-0.122
US Petitioner - US Respondent	-0.228		0.223	-0.044
Case was En Banc	-1.343	***	0.491	-0.259
Case Type				
Civil	-0.486		0.412	-0.092
Criminal	-0.285		0.463	-0.053
Issue Area				
Civil Liberties	0.205		0.349	0.040

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Economic Activity	-0.043		0.372	-0.008
Federalism	0.423		0.536	0.081
Circuit				
Circuit 1	-1.235		0.754	-0.215
Circuit 2	-1.378	**	0.575	-0.243
Circuit 3	-1.617	**	0.646	-0.291
Circuit 4	-1.084	*	0.648	-0.185
Circuit 5	-1.670	***	0.631	-0.301
Circuit 6	-0.513		0.618	-0.081
Circuit 7	-1.218	*	0.647	-0.211
Circuit 8	-0.588		0.681	-0.094
Circuit 9	-1.024	**	0.503	-0.174
Circuit 10	-2.000	***	0.721	-0.367
Circuit 11	-1.297	**	0.621	-0.227
DC Circuit	-1.656	**	0.701	-0.299
Constant	2.457	***	0.818	
Observations	473			
Pseduo R^2	0.164			
Correct Predictions	333			
Percent Correct	70.4%			

<u>Notes & Sources</u>:
See Appendix A for definitions.

Appendix B-5

Logit Model of Reversals – Kagan

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.064	**	0.031	0.096
Judge 1 - 5 JD	-0.027		0.709	-0.004
Judge ABA Rating	0.624		0.614	0.099
Panel ABA Rating	-1.325		1.190	-0.064
Former Supreme Court Clerk	-0.504		0.856	-0.080
Former CTA or DC Clerk	0.299		0.579	0.047
Advocate				
Years Since Law School	0.035	*	0.018	0.084
Advocate 1 - 5 JD	0.231		0.356	0.037
Former Supreme Court Clerk	0.166		0.482	0.026
Former CTA or DC Clerk	0.209		0.488	0.033
Gender	-0.514		0.556	-0.082
Top 20% Most Active Advocate	-0.284		0.445	-0.045
Win Percentage	-0.699		0.608	-0.051
Solicitor General Support	0.744	**	0.338	0.118
Amicus Briefs	0.030		0.037	0.030
Justice				
Ideology Matching CTA Decision	-0.977	*	0.549	-0.155
Appointing Party Match CTA Judge	-0.058		0.516	-0.009
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.184		1.164	-0.029
Gender Match	-0.126		0.633	-0.020
Case				
Circuit Split	0.886		0.689	0.141
Large Majority in CTA	0.629		0.910	0.100
US Petitioner - US Respondent	0.031		0.544	0.005
Case was En Banc	-1.386		1.311	-0.220
Case Type				
Civil	0.162		0.944	0.026
Criminal	1.011		1.082	0.157

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Issue Area				
Civil Liberties	0.665		0.788	0.106
Economic Activity	0.089		0.815	0.015
Federalism	0.555		1.067	0.089
Circuit				
Circuit 1	-2.016		1.693	-0.331
Circuit 2	0.191		1.128	0.029
Circuit 3	0.153		1.093	0.024
Circuit 4	-1.380		1.300	-0.230
Circuit 5	-1.446		1.251	-0.240
Circuit 6				
Circuit 7	-2.074		1.411	-0.340
Circuit 8	0.745		1.891	0.107
Circuit 9	0.367		0.982	0.055
Circuit 10	-1.742		1.602	-0.289
Circuit 11	0.573		1.300	0.084
DC Circuit	-3.056	**	1.490	-0.470
Constant	-0.803		1.938	
Observations	150			
Pseduo R^2	0.292			
Correct Predictions	117			
Percent Correct	78.0%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-6

Logit Model of Reversals – Kennedy

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.019		0.015	0.031
Judge 1 - 5 JD	0.162		0.351	0.029
Judge ABA Rating	-0.250		0.277	-0.045
Panel ABA Rating	0.134		0.504	0.008
Former Supreme Court Clerk	-0.019		0.342	-0.003
Former CTA or DC Clerk	-0.370		0.260	-0.067
Advocate				
Years Since Law School	0.006		0.009	0.016
Advocate 1 - 5 JD	0.083		0.171	0.015
Former Supreme Court Clerk	-0.487	**	0.199	-0.089
Former CTA or DC Clerk	0.029		0.205	0.005
Gender	-0.201		0.231	-0.036
Top 20% Most Active Advocate	0.314		0.196	0.057
Win Percentage	0.344		0.249	0.032
Solicitor General Support	0.545	***	0.193	0.099
Amicus Briefs	0.023		0.018	0.027
Justice				
Ideology Matching CTA Decision	-0.737	***	0.259	-0.134
Appointing Party Match CTA Judge	-0.576	**	0.257	-0.105
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.426		0.494	-0.077
Gender Match	-0.052		0.280	-0.009
Case				
Circuit Split	-0.248		0.287	-0.045
Large Majority in CTA	0.210		0.333	0.038
US Petitioner - US Respondent	-0.077		0.234	-0.014
Case was En Banc	0.056		0.479	0.010
Case Type				
Civil	-0.521		0.462	-0.088
Criminal	-0.594		0.505	-0.102

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Issue Area				
Civil Liberties	0.381		0.364	0.069
Economic Activity	-0.065		0.380	-0.013
Federalism	-0.299		0.534	-0.059
Circuit				
Circuit 1	-0.840		0.742	-0.168
Circuit 2	-0.261		0.573	-0.049
Circuit 3	-0.302		0.637	-0.057
Circuit 4	-0.141		0.613	-0.026
Circuit 5	0.121		0.630	0.021
Circuit 6	0.531		0.636	0.086
Circuit 7	-0.173		0.625	-0.032
Circuit 8	0.983		0.768	0.144
Circuit 9	-0.156		0.499	-0.029
Circuit 10	-0.767		0.713	-0.153
Circuit 11	-0.026		0.612	-0.005
DC Circuit	-0.295		0.674	-0.056
Constant	1.742	**	0.805	
Observations	474			
Pseduo R^2	0.120			
Correct Predictions	338			
Percent Correct	71.3%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-7

Logit Model of Reversals – Scalia

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.006		0.014	0.009
Judge 1 - 5 JD	-0.112		0.341	-0.021
Judge ABA Rating	0.042		0.273	0.008
Panel ABA Rating	-0.644		0.497	-0.037
Former Supreme Court Clerk	0.152		0.348	0.028
Former CTA or DC Clerk	-0.196		0.257	-0.036
Advocate				
Years Since Law School	-0.003		0.009	-0.007
Advocate 1 - 5 JD	-0.074		0.169	-0.014
Former Supreme Court Clerk	0.072		0.195	0.013
Former CTA or DC Clerk	-0.122		0.205	-0.023
Gender	0.054		0.225	0.010
Top 20% Most Active Advocate	0.474	**	0.197	0.087
Win Percentage	-0.125		0.245	-0.012
Solicitor General Support	0.240		0.192	0.044
Amicus Briefs	0.000		0.019	0.000
Justice				
Ideology Matching CTA Decision	-1.260	***	0.256	-0.232
Appointing Party Match CTA Judge	-0.420	*	0.254	-0.078
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.206		0.479	-0.038
Gender Match	0.503	*	0.292	0.093
Case				
Circuit Split	-0.188		0.286	-0.035
Large Majority in CTA	0.376		0.329	0.069
US Petitioner - US Respondent	-0.292		0.235	-0.054
Case was En Banc	-0.377		0.471	-0.070
Case Type				
Civil	0.688	*	0.398	0.133
Criminal	0.018		0.448	0.004

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Issue Area				
Civil Liberties	-0.244		0.382	-0.042
Economic Activity	-0.838	**	0.406	-0.154
Federalism	-0.520		0.565	-0.092
Circuit				
Circuit 1	-0.311		0.754	-0.062
Circuit 2	0.187		0.590	0.035
Circuit 3	-0.702		0.637	-0.143
Circuit 4	-0.130		0.621	-0.025
Circuit 5	-0.649		0.603	-0.132
Circuit 6	0.231		0.615	0.043
Circuit 7	-0.377		0.624	-0.075
Circuit 8	0.968		0.742	0.158
Circuit 9	0.333		0.512	0.061
Circuit 10	-0.092		0.736	-0.018
Circuit 11	0.191		0.610	0.036
DC Circuit	-0.472		0.680	-0.095
Constant	1.382	*	0.779	
Observations	476			
Pseduo R^2	0.142			
Correct Predictions	336			
Percent Correct	70.6%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-8

Logit Model of Reversals – Sotomayor

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.034	*	0.020	0.054
Judge 1 - 5 JD	0.026		0.505	0.005
Judge ABA Rating	0.542		0.413	0.095
Panel ABA Rating	-1.300		0.835	-0.068
Former Supreme Court Clerk	-1.062	*	0.557	-0.187
Former CTA or DC Clerk	0.119		0.394	0.021
Advocate				
Years Since Law School	0.002		0.012	0.005
Advocate 1 - 5 JD	-0.028		0.256	-0.005
Former Supreme Court Clerk	0.880	***	0.329	0.155
Former CTA or DC Clerk	-0.343		0.313	-0.060
Gender	-0.565		0.369	-0.099
Top 20% Most Active Advocate	0.248		0.307	0.044
Win Percentage	-0.264		0.376	-0.024
Solicitor General Support	1.027	***	0.278	0.181
Amicus Briefs	0.000		0.025	0.000
Justice				
Ideology Matching CTA Decision	-1.282	***	0.413	-0.226
Appointing Party Match CTA Judge	-0.199		0.379	-0.035
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	0.890		0.751	0.157
Gender Match	-0.441		0.452	-0.078
Case				
Circuit Split	0.716		0.504	0.126
Large Majority in CTA	0.269		0.563	0.047
US Petitioner - US Respondent	-0.228		0.321	-0.040
Case was En Banc	-1.173		0.846	-0.206
Case Type				
Civil	-0.077		0.606	-0.013

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient	Std. Error	Impact
Criminal	-0.081	0.689	-0.014
Issue Area			
Civil Liberties	0.576	0.560	0.104
Economic Activity	0.475	0.606	0.086
Federalism	0.462	0.780	0.083
Circuit			
Circuit 1	-1.288	1.320	-0.229
Circuit 2	-1.568	0.982	-0.279
Circuit 3	-0.244	0.872	-0.041
Circuit 4	-0.930	0.979	-0.164
Circuit 5	-1.039	0.936	-0.184
Circuit 6	0.281	1.057	0.045
Circuit 7	-0.967	0.942	-0.171
Circuit 8	1.042	1.125	0.148
Circuit 9	-0.343	0.733	-0.058
Circuit 10	-1.694	1.141	-0.301
Circuit 11	-0.558	0.924	-0.096
DC Circuit	-1.059	1.046	-0.187
Constant	1.022	1.337	
Observations	242		
Pseduo R^2	0.228		
Correct Predictions	177		
Percent Correct	73.1%		

Notes & Sources:
See Appendix A for definitions.

Appendix B-9

Logit Model of Reversals – Souter

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.024		0.024	0.036
Judge 1 - 5 JD	-0.864	*	0.521	-0.145
Judge ABA Rating	-0.735		0.488	-0.123
Panel ABA Rating	0.989		0.788	0.053
Former Supreme Court Clerk	0.127		0.585	0.021
Former CTA or DC Clerk	-0.186		0.439	-0.031
Advocate				
Years Since Law School	-0.030	*	0.016	-0.063
Advocate 1 - 5 JD	-0.021		0.300	-0.004
Former Supreme Court Clerk	-0.058		0.334	-0.010
Former CTA or DC Clerk	0.438		0.314	0.074
Gender	-0.470		0.362	-0.079
Top 20% Most Active Advocate	0.365		0.321	0.061
Win Percentage	0.806	**	0.397	0.073
Solicitor General Support	0.643	*	0.368	0.108
Amicus Briefs	0.070	**	0.035	0.072
Justice				
Ideology Matching CTA Decision	1.823	***	0.485	0.306
Appointing Party Match CTA Judge	-0.079		0.421	-0.013
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	0.333		0.777	0.056
Gender Match	0.596		0.445	0.100
Case				
Circuit Split	-0.109		0.463	-0.018
Large Majority in CTA	-1.383	**	0.533	-0.232
US Petitioner - US Respondent	-0.313		0.410	-0.053
Case was En Banc	0.650		0.795	0.109
Case Type				
Civil	-0.956		0.751	-0.154
Criminal	-0.505		0.810	-0.078

Issue Area

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Civil Liberties	0.567		0.559	0.095
Economic Activity	0.849		0.601	0.141
Federalism	1.476		1.008	0.234
Circuit				
Circuit 1	-1.321		1.147	-0.172
Circuit 2	-1.957	**	0.962	-0.278
Circuit 3	-0.474		1.507	-0.052
Circuit 4	-1.928	*	1.042	-0.273
Circuit 5	-1.646		1.153	-0.225
Circuit 6	-2.156	**	1.012	-0.312
Circuit 7	-2.879	**	1.147	-0.440
Circuit 8	-2.079	**	1.059	-0.299
Circuit 9	-2.129	**	0.883	-0.308
Circuit 10	-2.394	**	1.194	-0.355
Circuit 11	-1.675		1.037	-0.229
DC Circuit	-0.156		1.233	-0.016
Constant	2.406	*	1.256	
Observations	224			
Pseduo R^2	0.249			
Correct Predictions	170			
Percent Correct	75.9%			

Notes & Sources:
See Appendix A for definitions.

Appendix B-10

Logit Model of Reversal – Stevens

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.011		0.019	0.018
Judge 1 - 5 JD	-0.479		0.354	-0.089
Judge ABA Rating	-0.173		0.394	-0.032
Panel ABA Rating	0.941		0.649	0.056
Former Supreme Court Clerk	-0.409		0.447	-0.076
Former CTA or DC Clerk	-0.034		0.347	-0.006
Advocate				
Years Since Law School	0.005		0.012	0.012
Advocate 1 - 5 JD	0.514	**	0.242	0.095
Former Supreme Court Clerk	-0.135		0.253	-0.025
Former CTA or DC Clerk	-0.112		0.264	-0.021
Gender	-0.452		0.292	-0.084
Top 20% Most Active Advocate	0.340		0.254	0.063
Win Percentage	0.592	*	0.317	0.059
Solicitor General Support	0.863	***	0.291	0.160
Amicus Briefs	0.026		0.026	0.028
Justice				
Ideology Matching CTA Decision	1.458	***	0.361	0.270
Appointing Party Match CTA Judge	-0.077		0.341	-0.014
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.517		1.543	-0.096
Gender Match	-0.329		0.355	-0.061
Case				
Circuit Split	0.098		0.389	0.018
Large Majority in CTA	-0.400		0.428	-0.074
US Petitioner - US Respondent	-0.499		0.328	-0.092
Case was En Banc	0.208		0.654	0.038
Case Type				
Civil	-0.828		0.584	-0.153
Criminal	-0.160		0.642	-0.028
Issue Area				
Civil Liberties	0.268		0.469	0.050
Economic Activity	-0.029		0.495	-0.005

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient		Std. Error	Impact
Federalism	0.683		0.800	0.125
Circuit				
Circuit 1	-0.529		0.973	-0.089
Circuit 2	-1.021		0.774	-0.178
Circuit 3	-0.780		1.014	-0.134
Circuit 4	-0.858		0.877	-0.148
Circuit 5	-1.205		0.914	-0.213
Circuit 6	-0.257		0.811	-0.042
Circuit 7	-1.373		0.875	-0.245
Circuit 8	-1.489	*	0.905	-0.267
Circuit 9	-1.113		0.711	-0.196
Circuit 10	-0.998		1.013	-0.174
Circuit 11	-0.757		0.855	-0.130
DC Circuit	-0.634		0.976	-0.107
Constant	1.123		1.043	
Observations	286			
Pseduo R^2	0.199			
Correct Predictions	216			
Percent Correct	75.5%			

<u>Notes & Sources</u>:
See Appendix A for definitions.

Appendix B-11

Logit Model of Reversals – Thomas

Variable	Coefficient		Std. Error	Impact
Court of Appeals Judge (CAJ)				
Judge Years	0.005		0.014	0.009
Judge 1 - 5 JD	-0.220		0.330	-0.040
Judge ABA Rating	0.127		0.276	0.023
Panel ABA Rating	-0.640		0.506	-0.036
Former Supreme Court Clerk	0.671	*	0.367	0.121
Former CTA or DC Clerk	-0.090		0.265	-0.016
Advocate				
Years Since Law School	0.001		0.009	0.004
Advocate 1 - 5 JD	-0.308	*	0.171	-0.056
Former Supreme Court Clerk	0.118		0.198	0.021
Former CTA or DC Clerk	0.108		0.208	0.020
Gender	0.057		0.229	0.010
Top 20% Most Active Advocate	0.223		0.195	0.040
Win Percentage	-0.195		0.254	-0.018
Solicitor General Support	0.152		0.193	0.027
Amicus Briefs	0.018		0.019	0.021
Justice				
Ideology Matching CTA Decision	-1.051	***	0.254	-0.190
Appointing Party Match CTA Judge	-0.772	***	0.260	-0.140
Justice From Circuit				
Justice Oversees Circuit				
Justice JD Match	-0.818	*	0.455	-0.148
Gender Match	0.204		0.295	0.037
Case				
Circuit Split	-0.268		0.286	-0.048
Large Majority in CTA	0.252		0.339	0.046
US Petitioner - US Respondent	0.271		0.235	0.049
Case was En Banc	-0.584		0.492	-0.106
Case Type				
Civil	0.797	*	0.415	0.150
Criminal	0.243		0.469	0.047

AN ECONOMETRIC INVESTIGATION

Variable	Coefficient	Std. Error	Impact
Issue Area			
Civil Liberties	0.264	0.378	0.046
Economic Activity	-0.555	0.397	-0.102
Federalism	-0.089	0.580	-0.016
Circuit			
Circuit 1	-0.172	0.746	-0.034
Circuit 2	0.314	0.575	0.060
Circuit 3	-0.436	0.629	-0.088
Circuit 4	-0.074	0.629	-0.015
Circuit 5	-0.647	0.601	-0.131
Circuit 6	0.783	0.624	0.140
Circuit 7	-0.696	0.621	-0.141
Circuit 8	0.481	0.699	0.090
Circuit 9	0.706	0.512	0.128
Circuit 10	-0.946	0.733	-0.192
Circuit 11	-0.110	0.606	-0.022
DC Circuit	-0.478	0.669	-0.097
Constant	0.983	0.779	
Observations	474		
Pseduo R^2	0.183		
Correct Predictions	337		
Percent Correct	71.1%		

Notes & Sources:
See Appendix A for definitions.