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# ‘For the Times they Are A-Changin’’: Explaining Voting Patterns of U.S. Supreme Court Justices through Identification of Micro-Publics

*Jeff Yates, Justin Moeller & Brian Levey\**

## ABSTRACT

*In assessing how social forces may shape U.S. Supreme Court Justices’ decision-making it has been presumed that there is a singular public opinion and that this opinion affects each individual Justice in largely the same fashion. We suggest that it is more likely the case that Justices’ world views are informed and shaped by a myriad of social concerns and group identities upon which the Justices structure and process their experiences and develop and refine their personal schemas. While some have already begun to question the proposition of a monolithic public opinion influence on judicial behavior and have begun to think carefully about what we term the “micro-publics” that may inform Supreme Court Justices’ decision-making, the more tangible questions of whether Justices respond to publics that are distinguishable from broad-based national public opinion and what those micro-publics might be remain largely unanswered. Our study focuses on the potential influence of localized and personal micro-publics and the possibility of partisan-based elite influence on judicial behavior. We test our hypotheses by analyzing the voting record of Supreme Court Justices on civil liberties cases from 1977 to 2003 and find encouraging initial support for our theory.*

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Come senators, congressmen  
Please heed the call  
Don't stand in the doorway  
Don't block up the hall  
For he that gets hurt  
Will be he who has stalled  
There's a battle outside  
And it is ragin'.  
It'll soon shake your windows  
And rattle your walls  
For the times they are a-changin'.  
– Bob Dylan<sup>1</sup>

## I. INTRODUCTION

During the hearings following his nomination to the Supreme Court by President Richard Nixon, Harry Blackmun reflected that “judges, even Supreme Court Justices, are human, and I suppose attitudes change as we go along.”<sup>2</sup> His comment certainly seems prescient as both critics and supporters of his jurisprudential decision-making largely agree that the ideological tenor of his voting drifted in a liberal direction during his tenure on the Court. But ideological drift on the Court actually involves a fairly broad array of Justices and, as Epstein and her associates demonstrate, such ideological drift reveals itself in Justice voting patterns that, over time, shift to the right as well as to

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1. BOB DYLAN, *The Times They Are A-Changin'*, on 'THE TIMES THEY ARE A-CHANGIN'' (Sony BMG Music Entertainment 1964).

2. Theodore W. Ruger, *Justice Harry Blackmun and the Phenomenon of Judicial Preference Change*, 70 Mo. L. Rev. 1209, 1209–10 (2005) (citing *Hearing Before the S. Comm. on the Judiciary, on the nomination of Harry A. Blackmun of Minn., to be Associate Justice of the Supreme Court of the United States*, 91st Cong. 43 (1970) (statement of Harry Blackmun)).

the left.<sup>3</sup> Epstein et al.'s documentation of such trends in Justices' voting run counter to traditional accounts of judicial behavior which have long held that Justices' ideological preferences and voting behavior are largely stable over time.<sup>4</sup>

The prospect that Justices' ideological preferences (at least as revealed in their patterns of case voting) are not that stable but are rather, consistent with Blackmun's candid statement, apt to change over time, prompts us to begin thinking about what forces might precipitate such fluidity in judicial behavior. Research by Baum<sup>5</sup> suggests that Justices, as human decision makers, are influenced by their relevant "audiences." He explains that Supreme Court Justices, like anyone else, live in a world of personal interactions and social engagements and, accordingly, their attitudes and actions on the Court are likely to reflect that set of relevant social references, at least to some degree.

The proposition that Justices take into account and draw upon concerns that are external to their existing ideology or relevant legal considerations in deciding cases is not new. Indeed, one of the more prominent threads of study in judicial politics concerns the question of whether Justices decide cases in a manner that is generally responsive to majoritarian preferences.<sup>6</sup> While, on balance, this literature indicates that Justices of the Supreme Court are in fact responsive to national public opinion in their decision-making, the exact causal mechanism for this influence has not been clearly established or agreed upon. The dominant view appears to be that Justices react to public opinion strategically and, therefore, tend not to veer too far from majoritarian preferences in their decision-making in order to amass and

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3. See, e.g., Lee Epstein et al., *Ideological Drift Among Supreme Court Justices: Who, When, and How Important?*, 101 NW. U. L. REV. 1483 (2007) (tracking the ideological voting of U.S. Supreme Court Justices over time).

4. See generally Lee Epstein et al., *Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices*, 60 J. POL. 801 (1998) (assessing whether Justices' voting is static over the course of their careers on the High Court).

5. See generally LAWRENCE BAUM, *JUDGES AND THEIR AUDIENCES: A PERSPECTIVE ON JUDICIAL BEHAVIOR* (2006) (suggesting that judges are concerned with personal peer groups when making legal policy).

6. See, e.g., William Mishler & Reginald S. Sheehan, *The Supreme Court as a Counter-majoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions*, 87 AM. POL. SCI. REV. 87 (1993) (providing empirical evidence that Justices vote in a majoritarian manner).

maintain a reservoir of good will with the public—so as to protect the legitimacy, independence, and vitality of the Court as a political institution.<sup>7</sup> Baum argues that for a number of reasons this explanation for Supreme Court responsiveness is rather untenable and posits a largely ignored alternative possibility: that Justices typically decide cases in a manner generally congruent with the tenor of public opinion because they, like most people, simply seek approval and want to be well thought of, both in their daily lives and in how history judges them.<sup>8</sup> This proposition is well supported by the lessons learned from social psychology and established theories concerning individual self-esteem, how individuals organize and process information, and the structuring of individuals' belief systems.<sup>9</sup> Of course, these two ostensibly competing pathways of influence are actually by no means mutually exclusive; both could be casting an important influence on Justices' thought and decision processes in case voting. Justices could act as strategic players who wish to preserve institutional legitimacy capital while simultaneously, and perhaps unwittingly, they are being conditioned by the social interactions, events, and stimuli that inform their daily lives.

Bob Dylan's famous song lyrics, set forth at the beginning of this paper, admonished government actors to heed the rapidly changing tide of "the times." However, assessing "the times" for a particular individual, or set of individuals, can be a deceptively complex endeavor. For example, consider the differences, in both degree and kind, of the social forces and opinions that might influence a person living in Berkeley, California in the 1960s versus those impacting a citizen residing in Jackson, Mississippi during the same time period. Are "the times" the same for these individuals? Do nationally based public opinion estimates of "the times" accurately reflect either person's set of relevant experiences or social influences? In assessing how the social forces of public opinion shape Supreme Court Justices' decision-making, scholars have traditionally considered public opinion as somewhat

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7. See LEE EPSTEIN & JACK KNIGHT, *THE CHOICES JUSTICES MAKE* (1998); Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. PUB. L. 279 (1957).

8. See BAUM, *supra* note 5, at 66.

9. See, e.g., Pamela Johnston Conover & Stanley Feldman, *How People Organize the Political World: A Schematic Model*, 28 AM. J. POL. SCI. 95 (1984).

of a monolith. In other words, it has been presumed that there is one, singular public opinion and that it affects the individual Justices in largely the same fashion. On this point, we disagree with the vast majority of existing judicial politics literature written on this matter. We believe that it is more likely the case that Justices' world views are informed and shaped by a myriad of social concerns and group identities upon which these individuals structure and process their experiences and develop and refine their personal schemas.<sup>10</sup>

While some have already begun to question the proposition of a monolithic public opinion influence on judicial behavior<sup>11</sup> and have begun to think carefully about what we term the "micro-publics" that may inform Supreme Court Justices' decision-making, the more tangible questions of whether Justices respond to publics that are distinguishable from broad-based national public opinion and what those micro-publics might be, remains largely unanswered. In this paper we offer useful insights toward addressing this important puzzle in judicial decision-making by providing a direct empirical test of the proposition that Justices are influenced by social groups or micro-publics with which they identify in their case voting decisions.

Our study unfolds in the following manner: in the next section of this paper we briefly examine the existing literature on how Justices respond to external cues or influences and develop our theory of micro-publics' influence on judicial decision-making. In the section that follows, we set forth our approach and outline our hypotheses and relevant controls. Specifically, our study focuses on the potential influence of localized and personal micro-publics and the possibility of partisan-based elite influence. We test our hypotheses by analyzing Supreme Court Justice voting on civil liberties cases<sup>12</sup> from 1977 to

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10. See generally Pamela Johnston Conover, *The Influence of Group Identifications on Political Perception and Evaluation*, 46 J. POL. 760 (1984).

11. See, e.g., BAUM, *supra* note 5.

12. Here, civil liberties cases include five Issue Areas in the U.S. Supreme Court Database, <http://scdb.wustl.edu/analysis.php> (last visited Nov. 23, 2013). These include criminal procedure, civil rights, First Amendment, due process, and privacy cases. Civil liberties cases constituted a significant portion of the Court's docket during the time period examined and tend to be the most salient and newsworthy matters that the Court handles. Thus, we feel that they are especially appropriate in assessing how the Justices may analyze such legal issues in light of the milieu of social signals that inform their daily lives. We reserve discussion of other matters that

2003 and find encouraging initial support for our theory. Finally, we discuss the implications of our findings and suggest useful avenues for future research.

## II. DECIDING CASES IN THE SHADOW OF PUBLIC OPINION: WHO ARE THE JUSTICES' RELEVANT MICRO-PUBLICS?

Traditional studies concerning public opinion and Supreme Court decision-making focused on the proposition posed in Mr. Dooley's well-known axiom that "No matter whether th' constitution follows th' flag or not, th' supreme court follows th' iliction returns."<sup>13</sup> In essence, the question was whether the Supreme Court works as a majoritarian or counter-majoritarian institution. The classic view that the Court acts as a counter-majoritarian institution was perhaps most notably challenged by Robert Dahl, who concurred with Mr. Dooley's sentiments and argued that, except for periods of political transition or realignment, the High Court was inclined to side with the dominant national political alliance and seldom ruled against it to protect minority interests.<sup>14</sup> While some challenged this notion,<sup>15</sup> a river of studies subsequently emerged that supported Dahl and found a congruence between majoritarian public opinion and Supreme Court decision-making. However, Dahl and his progeny carefully qualified their arguments by noting that any such link between majority opinion and Court policy making is likely due to the fact that Presidents and the Senate (both of whom have an electoral connection) have historically replaced Justices on a fairly regular basis, thus keeping the Court tied to majoritarian views.<sup>16</sup> While most would not discount the influence of judicial selection on Court policy making, there remains the possibility that the Court is also *directly responsive* to majoritarian opinion,

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inhabit the Court's docket (e.g. antitrust cases) to future research endeavors.

13. Mishler & Sheehan, *supra* note 6, at 87 (quoting Finley Peter Dunne).

14. See generally Dahl, *supra* note 7.

15. See, e.g., Jonathan D. Casper, *The Supreme Court and National Policymaking*, 70 AM. POL. SCI. REV. 5066 (1976) (arguing that the Court's propensity to act independently of dominant political coalition was underestimated).

16. See Mishler & Sheehan, *supra* note 6, at 88–89.

well beyond any congruence already fostered by an electoral connection via Justice replacement. Mishler and Sheehan<sup>17</sup> and Norpoth and Segal<sup>18</sup> famously debated this issue with neither side emerging as the clear winner. However, the majority of subsequent work on this issue has come to embrace and support the proposition that national public opinion exerts a direct and independent influence on Supreme Court Justices' voting.<sup>19</sup> Indeed, in discussing the results of their 1997 study, Flemming and Wood acknowledged the well-documented correlation between public opinion and Court outcomes and then boldly added "[f]ar less obvious and much more controversial has been the possibility of a *direct* connection tying the Court and Justices to changes in public opinion after appointment. Our analysis settles this controversy."<sup>20</sup> While a few dissenting voices remain on this issue,<sup>21</sup> there does appear to be near consensus favoring a direct link between majority national opinion and Court policy making.

Perhaps less clear or settled in the relevant literature is the actual causal mechanism for such an effect. Two primary explanations exist for the direct link between public opinion and Court policy making. The most dominant rationale is that Justices respond to majority opinion as rational and strategic political actors who seek to maintain public legitimacy as a means to facilitate their viability as a policy-making entity (e.g. get their decisions effectively enforced) and to protect their autonomy from incursion by other primary political institutions.<sup>22</sup>

17. *Id.*

18. See generally Helmut Norpoth & Jeffrey A. Segal, *Comment: Popular Influence on Supreme Court Decisions*, 88 AM. POL. SCI. REV. 711 (1994) (providing an invited response to Mishler and Sheehan's article).

19. See, e.g., Kevin T. McGuire & James A. Stimson, *The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences*, 66 J. POL. 1018 (2004) (reviewing the literature and providing additional evidence of direct effect).

20. Roy B. Flemming & Dan B. Wood, *The Public and the Supreme Court: Individual Justice Responsiveness to American Policy Moods*, 41 AM. J. POL. SCI. 468, 492 (1997).

21. See, e.g., JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* (2002).

22. See EPSTEIN & KNIGHT, *supra* note 7; FORREST MALTZMAN ET AL., *CRAFTING LAW ON THE SUPREME COURT: A COLLEGIAL GAME* (2000); McGuire & Stimson, *supra* note 19; James A. Stimson et al., *Dynamic Representation*, 89 AM. POL. SCI. REV. 543 (1995).



This “rational anticipation” explanation is well-articulated by Stimson, MacKuen, and Erikson:

[J]ustices who wish to exert authority over the direction of American life will anticipate actions of the other branches of government. Further, institutionally minded justices will want to avoid public defeat and the accompanying weakening of the Court’s implicit authority: they will compromise in order to save the institution. *All this implies paying some attention to what the public wants from government.*<sup>23</sup>

This rationale also finds some support in the rhetoric of Supreme Court Justices. Consider Chief Justice Rehnquist’s closing remarks in his 2000 speech on historical threats to the Court’s independence:

I suspect the Court will continue to encounter challenges to its independence and authority by the other branches of government because of the design of our Constitutional system. *The degree to which that independence will be preserved will depend again in some measure on the public’s respect for the judiciary.*<sup>24</sup>

Implicit in Rehnquist’s statement is the idea that Court members pay careful attention to the winds of public opinion so as to gauge what actions might be considered within the realm of those acceptable to the populace and therefore not apt to diminish the public’s support for the Court and expose it to external threat.<sup>25</sup>

The other primary perspective holds that Justices are human decision makers and, as such, perform their duties much like any other

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23. See Stimson et al., *supra* note 22, at 555 (citation omitted) (emphasis added).

24. Chief Justice William H. Rehnquist, Reflections on the History and Future of the Supreme Court of the United States, Speech at the D.C. Circuit Judicial Conference (Jun. 16, 2000), available at [http://www.supremecourt.gov/publicinfo/speeches/view speeches.aspx?File-name=sp\\_06-16-00.html](http://www.supremecourt.gov/publicinfo/speeches/view speeches.aspx?File-name=sp_06-16-00.html) (emphasis added).

25. McGuire and Stimson seem to agree, stating:

[A] Court that cares about its perceived legitimacy must rationally anticipate whether its preferred outcomes will be respected and faithfully followed by relevant publics. Consequently, a Court that strays too far from the broad boundaries imposed by public mood risks having its decisions rejected. Naturally, in individual cases, the Justices can and do buck the trends of public sentiment. In the aggregate, however, popular opinion should still shape the broad contours of judicial policymaking.

McGuire & Stimson, *supra* note 19, at 1019.

person who is invariably influenced by the social pressures, interactions, and circumstances that they encounter in their daily lives.<sup>26</sup> Perhaps curiously, Chief Justice Rehnquist lends a view to this perspective as well, commenting:

The judges of any court of last resort, such as the Supreme Court of the United States, work in an insulated atmosphere in their courthouse where they sit on the bench hearing oral arguments or sit in their chambers writing opinions. But these same judges go home at night and read the newspapers or watch the evening news on television; they talk to their family and friends about current events. . . . Judges, so long as they are relatively normal human beings, can no more escape being influenced by public opinion in the long run than people working at other jobs. In addition, if a judge on coming to the bench were to decide to seal himself off hermetically from all manifestations of public opinion, he would accomplish very little; he would not be influenced by current public opinion, but instead would be influenced by the state of public opinion at the time he came to the bench.<sup>27</sup>

Thus, this perspective is not necessarily at odds with the attitudinal model, except to the extent that some of its proponents argue that Justices' attitudes and world views are static rather than evolving and not responsive to external factors. This perspective draws upon well-established social psychology research to suggest that Justices' world views may change over time in reaction to their personal experiences, relative social circumstances, and stimuli.<sup>28</sup> Baum believes that this perspective is much more plausible than the "rational anticipation" view, arguing that members of the Court are unlikely to adjust their voting to protect Court legitimacy and viability because the tangible benefits of such actions are merely speculative and it is unlikely that other actors would

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26. See BAUM, *supra* note 5; Flemming & Wood, *supra* note 20; Michael Giles et al., *The Supreme Court in American Democracy: Unraveling the Linkages Between Public Opinion and Judicial Decision-making*, 70 J. POL. 293 (2008); William Mishler & Reginald S. Sheehan, *Public Opinion, the Attitudinal Model, and Supreme Court Decision-making: A Micro-Analytic Perspective*, 58 J. POL. 169 (1996).

27. See William H. Rehnquist, *Constitutional Law and Public Opinion*, 20 SUFFOLK U. L. REV. 751, 768–69 (1986).

28. See BAUM, *supra* note 5; Giles et al., *supra* note 26; Mishler & Sheehan, *supra* note 26.

actually threaten the Court due to its strong baseline of diffuse public support.<sup>29</sup>

Of course, there is no reason to believe that these two explanations for direct responsiveness to public opinion are necessarily mutually exclusive. Each mechanism could operate in a way that simultaneously has its own impact on Justice behavior. Further, these mechanisms may not be as clearly separated from each other as they initially appear. For instance, a Justice's deep caring about how history judges his actions on the Court may well overlap, conceptually, with his concern over whether the Court is perceived by the public as legitimate. Certainly, attempts to parse out the effects of these two causal mechanisms are welcomed and some useful insights have already been offered.<sup>30</sup>

However, law and courts scholars' inordinate focus on the effect of national-level public opinion, or any singular indicator, on Justices' policy making may obfuscate what is in fact a more complex and nuanced dynamic. If Justices act as human decision makers and draw upon external concerns in carrying out their duties on the Court, then it stands to reason that they may take into account a myriad of social cues, beyond national-level public opinion. Further, it is plausible that such cues or social references would be of a more proximate or personal nature than previously considered by the literature. If we assume that a Justice's personal outlook and sense of identity provide a lens through which case stimuli (e.g. case facts, case precedent, statutes, Constitutional provisions, etc.) are understood, interpreted, and decided, then it is quite reasonable to suggest that social psychology and related literatures which seek to explain the development and refinement of personal belief systems and schemas<sup>31</sup> would be instructive on

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29. See BAUM, *supra* note 5, at 65–67. However, he perhaps too readily focuses on the potential *actual threat* to the Court rather than the *Justices' perception of threat* to the Court and *their perception* that their actions can protect it from incursion. In short, perceptions of threat may in fact have a stronger influence on behavior than actual threat.

30. See Giles et al., *supra* note 26.

31. While certainly not an exhaustive explanation, Conover describes schemas in the following manner:

In general, a 'schema' may be defined as a cognitive structure of organized prior knowledge, abstracted from experience with specific instances which guides the processing of new information and the retrieval of stored information. . . . A *self*-schema may be thought of as the merging or intersection

this matter. While outstanding applications of social psychology and related approaches to judicial decision-making are to be found,<sup>32</sup> they are relatively sparse in comparison to legal, attitudinal, or strategic approaches and are extremely rare in the context of studies on the U.S. Supreme Court.<sup>33</sup> In the next section we investigate the possibility that group identity dynamics may provide leverage on understanding how Justices make sense of the cases that come before them and arrive at their legal decisions. More specifically, we posit that we can gain insight on Justices' case voting behavior by identifying and exploring the social groups (micro-publics) they may identify with in constructing their belief systems or schemas. This, in turn, should provide us with a more nuanced understanding of the lens through which Justices assemble, interpret, and process case stimuli in making their legal choices.

### III. APPROACH AND RESEARCH DESIGN

In thinking about the micro-publics that might help shape a Justice's world view and perhaps his or her case voting, we might consider what types of group identity information we would examine in a situation in which we had complete access to the Justices' lives. In this unrealistic scenario, we might survey a Justice's significant other, extended family, friends, groups in which he or she is a member (e.g. alumni associations, civic or professional clubs, etc.), and other people

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of two bodies of knowledge: information about the stimuli in some domain and knowledge of one's self. . . .

Conover, *supra* note 10, at 762 (citations omitted).

32. See Jilda Aliotta, *Social Backgrounds, Social Motives and Participation on the U.S. Supreme Court*, 10 POL. BEHAV. 267 (1988); Burton Atkins et al., *Personality Theory and Judging: A Proposed Theory of Self Esteem and Judicial Policy-Making*, 2 L. & POL'Y Q. 189 (1980); James Gibson, *Environmental Constraints on the Behavior of Judges: A Representational Model of Judicial Decision-making*, 14 L. & SOC'Y REV. 343 (1980); Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777 (2001).

33. The lack of psychology-based studies on the U.S. Supreme Court Justices is no doubt due, at least in part, to the fact that such studies typically rely upon interviews or surveys which are difficult to obtain with regard to the High Court's members. One psychology-based study that did analyze U.S. Supreme Court Justice behavior used content analysis of Supreme Court nominees' confirmation statements to help provide a psychologically oriented explanation of Justices' voting behavior and opinion writing after ascending the Court. See Aliotta, *supra* note 32.

with whom the Justice interacts with or turns to for information on a regular basis. The basic idea would be that by gaining such insight on a Justice's social environment and group identities, we could more closely scrutinize the Justice's "times" or set of relevant social reference points. Unfortunately, this scenario is not realistic. Accordingly, we endeavor to find and examine more feasible proxies for a Justice's social environment and relevant micro-publics. We focus on three core pathways of micro-public influence: personal-social influences, local work environment influences, and elite-partisan cues. We outline each of these core concerns and their related hypotheses in the paragraphs that follow and then discuss relevant controls.

As indicated in the first section of this paper, our dependent variable is simply a Justice's vote in civil liberties cases (1 = liberal outcome; 0 = conservative). We examine the Court's terms from 1977 to 2003<sup>34</sup> and focus on fully argued cases.

### *A. Personal-Social Influences*

All Justices come from somewhere. They leave established jobs and social circles to begin work and life anew on the High Court in the nation's capital. It is difficult to conceive that the Justices' split with their former residences is complete and total. Indeed, many Justices retain firm ties with their home state and spend significant time there when the Court is not in session. Could these social environment ties cast an influence on Justice voting? Tate's seminal work on Justices' voting and social backgrounds found the region of Justices' birth to be an important consideration in explaining Justices' lifetime voting propensities in civil liberties cases.<sup>35</sup> He later found regional background to be a significant determinant of judicial voting on the Canadian High Court.<sup>36</sup> On a more general level, political behavior scholars have long

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34. The temporal limits of our study are largely constrained by the availability of certain measures we use in constructing some of our independent variables (e.g. Wright's measure of state citizen ideology. Gerald C. Wright et al., *Aggregated CBS News/New York Times National Polls*, [http://php.indiana.edu/~wright1/cbs7603\\_pct.zip](http://php.indiana.edu/~wright1/cbs7603_pct.zip) (last visited Nov. 23, 2013)).

35. See generally C. Neal Tate, *Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978*, 75 AM. POL. SCI. REV. 355 (1981).

36. See generally C. Neal Tate & Panu Sittiwong, *Decision-making in the Canadian Supreme*

held that social and political environments, groups, and networks help to shape citizens' attitudes and views.<sup>37</sup> There is also some evidence to suggest that political elites take attitudinal cues from home state environments in framing their own positions on policy issues. For instance, Layman and Carsey<sup>38</sup> found that shifts in the home state ideological environment of national political party activists influenced the development and evolution of their positions on abortion policy.<sup>39</sup>

We believe that Justices' world views may be influenced by the social mores of their home state on a continual basis and that this influence could reveal itself in their case voting. We measure home state ideology using Gerald Wright's annual data on state citizens' self-identification of their ideological orientation (liberal, conservative, or moderate).<sup>40</sup> In constructing this measure we subtract the percentage of state residents identifying themselves as conservative from the percentage identifying themselves as liberal to produce a "net liberal percentage" score for a given year. Justices' designated home state is that identified as their residence at the time of their confirmation.<sup>41</sup>

Of course it is also possible that Justices take cues from elite home state political actors. Indeed, Baum and Devins argue that Justices are more likely to consider political elites as their relevant 'audience' in

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*Court: Extending the Personal Attributes Model Across Nations*, 51 J. POL. 900 (1989).

37. See, e.g., Robert D. Putnam, *Political Attitudes and the Local Community*, 60 AM. POL. SCI. REV. 640 (1966); Robert Huckfeldt & John Sprague, *Networks in Context: The Social Flow of Political Information*, 81 AM. POL. SCI. REV. 1197 (1987).

38. See generally Geoffrey C. Layman & Thomas M. Carsey, *Why Do Party Activists Convert? An Analysis of Individual-Level Change on the Abortion Issue*, 51 POL. RES. Q. 723 (1998).

39. In another study, Jackson and Carsey demonstrate that citizens' voting in presidential elections is also influenced by group identity concerns, specifically the voter's state political environment. This finding suggests that theories of citizen voting in national elections are well advised to consider the geopolitical context of citizen voting behavior in such situations. See generally Robert Jackson & Thomas Carsey, *Group Components of U.S. Presidential Voting Across the States*, 21 POL. BEHAV. 123 (1999).

40. See generally Robert S. Erikson, Gerald C. Wright & John P. McIver, *Public Opinion in the States: A Quarter Century of Change and Stability* in JEFFREY COHEN, ED., PUBLIC OPINION IN STATE POLITICS (2006), 229–53.

41. Justices' home state information was drawn from Lee Epstein's data set on U.S. Supreme Court Justices' background information. See <http://epstein.usc.edu/research/justicesdata.html>.

constructing their sense of identity and world views.<sup>42</sup> Accordingly, we consider this possibility by incorporating the well-known and oft-used measure of ideology for state political elite institutional actors produced by Berry and his associates.<sup>43</sup> Certainly, Justices will vary in the degree of their identification with their home state, but, on balance, it is likely that most Justices draw important information from these home state environments. Thus, we hypothesize:

*H1: A Justice's probability of casting a liberal vote is positively associated with the liberalism of his or her home state's citizens.*

*H2: A Justice's probability of casting a liberal vote is positively associated with the liberalism of his or her home state's elite political actors.*

### *B. Local Work Environment Influences*

While Justices may turn to different areas of the country in constructing and maintaining their personal lives, extended social networks, and family ties, they all work in Washington, D.C. In a city in which the elite makers of national policy roam the sidewalks and 21% of the population possesses a graduate or professional degree,<sup>44</sup> it is plausible to propose that the Justices' daily working environment is distinguishable from the rest of the country. As Baum explains, some conservative critics of the Court's policy making have claimed that Justices are swayed by the liberal east coast environment in which they work and that they tend left in their decision-making over time to gain favor with the political, media, and social elites who shape the direction of Washington, D.C. thinking. Indeed, even Justice Scalia has voiced

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42. See generally Lawrence Baum & Neal Devins, *Why the Supreme Court Cares About Elites, Not the American People*, 98 GEO. L.J. 1515 (2010).

43. See generally William Berry et al., *Measuring Citizen and Government Ideology in the American States, 1960–1993*, 42 AM. J. POL. SCI. 327 (1998) (using interest groups' ratings of states' members of Congress to infer state citizenry and elite ideology); William Berry et al., *Measuring Citizen and Government Ideology in the U.S. States: A Re-appraisal*, 10 ST. POL. & POL'Y Q. 117 (2010) (updating authors' original measure).

44. See *Washington, District of Columbia*, CITY-DATA.COM, <http://www.city-data.com/city/Washington-District-of-Columbia.html> (last visited Nov. 23, 2013). This level of advanced education is double that of comparable large cities such as Chicago, Illinois (10%) or Los Angeles, California (9%).

such concerns. This phenomenon is sometimes termed “the Greenhouse Effect” after one of the nation’s most well-known journalistic commentators on the Court, Linda Greenhouse.<sup>45</sup> Certainly, it is a decidedly liberal environment—Wright’s ideology scores indicate that no state has a more liberal citizenry than the nation’s capital. On the other hand, like many states, its citizens do exhibit interesting variation in their degree of liberalness over time.<sup>46</sup> We measure this variable similar to our variable for personal social influences (“home state”) and provide a “net liberal” score from Wright’s data. We hypothesize:

*H3: A Justice’s probability of casting a liberal vote is positively associated with the relative liberalism of their working environment (Washington, D.C.).*

Of course, it is important to consider not just the political environment of Washington, but also the degree to which Justices may have come to acclimate to the milieu of its distinct social environs (relative to where they came from). Thus, in an ideal situation we would want to know how strong Justices’ ties are to their home state and the degree to which they work to maintain those ties (relative to the potential influence of their new surroundings). Justices may have solidified social networks (in their home state) within a short period of time while living there, but others may require a longer time (or may have never developed very strong social ties and identities). In similar fashion, some Justices may make frequent trips back to their former state of residence and some may keep communications with former friends and colleagues more up to date—certainly, advances in communication technology and the advent of social media opportunities makes this an even more complex situation. Of course, operationalizing such a varied and difficult-to-measure set of related phenomena is problematic to say the least.

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45. See BAUM, *supra* note 5, at 149–51. In some exploratory analysis Baum finds that Republican D.C. newcomers do, in fact, tend to drift left more than Republican Justices who were already based in D.C. or Democrats (generally), although he cautions that these findings do not rule out alternative explanations for such drift.

46. For instance, the percentage of self-identified liberals in the District of Columbia ranges from a low of 16.7 (in 1978) to a high of 54.5 (in 2000). Similar fluctuations can be found in our constructed “net liberal” score although they are less intuitive. See Erikson, et al. *supra* note 40.



However, we do wish to address this concern over competing influences between Washington and Justices' home states' environs and accordingly have constructed a measure that indicates the number of years that a Justice has been on the Court, presumably attenuating their ties to their home state through the passage of time in a distant location (Washington, D.C.). However, recall that Washington, D.C. is a distinctly liberal environment (relative to all U.S. states). Thus, incorporating this measure allows us to shed additional light on the fabled "Greenhouse Effect," which suggests that Justices grow increasingly liberal over their tenure in D.C. Accordingly, we hypothesize:

*H4: A Justice's probability of casting a liberal vote is positively associated with the number of years the Justice has spent working in Washington, D.C.*

### *C. Elite Partisan Cues*

If we consider Justices of the Supreme Court to be, in essence, human decision makers who see case facts and law through a lens of their personal belief systems, then we can draw important information from general political behavior based theories of how citizens' world views or policy attitudes are developed and adjusted. Two dominant theories seek to explain the relationship between partisanship and policy preferences: the party conversion thesis and issue conversion. The party conversion thesis put forward by Fiorina<sup>47</sup> among others, and more recently revised by Achen<sup>48</sup> through a Bayesian updating model is not readily applicable to a model of Supreme Court Justices since they do not exhibit changes in partisanship (at least in the span of time that we examine). Issue conversion, however, may provide at least one alternative account of dynamic policy preferences linked to membership in a political party. Green and Palmquist<sup>49</sup> and Green, Palmquist, and

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47. See generally Morris P. Fiorina, *Retrospective Voting in American National Elections* (1981); Morris P. Fiorina, *Parties and Partisanship: A 40-Year Retrospective*, 24 POL. BEHAV. 93 (2002).

48. See generally Christopher H. Achen, *Social Psychology, Demographic Variables, and Linear Regression: Breaking the Iron Triangle in Voting Research*, 14 POL. BEHAV. 195 (1992).

49. See generally Donald P. Green & Bradley Palmquist, *Of Artifacts and Partisan Instability*, 34 AM. J. POL. SCI. 872 (1990); Donald P. Green & Bradley Palmquist, *How Stable is Party Identification?*, 16 POL. BEHAV. 437 (1994).

Schickler<sup>50</sup> offer some of the most compelling evidence for issue conversion—the theory that individuals respond to ideological shifts within their party by updating their own policy preferences.<sup>51</sup> This theory suggests that Justices, like other citizens, update their views in response to ideological shifts within their chosen party. This is because, like most individuals, their identity with the party constitutes an important component of who they are and how they perceive themselves and the world. Accordingly, we believe that Justices' views on policy may be affected by cues or signals of party ideological shifts as determined by partisan elites. Such adjustments in their policy attitudes should be reflected in their case voting. We measure partisan cues or changes in party ideology by examining how they are documented in party platforms. Budge et al. provide political party policy ideology estimates for twenty-five countries, including the United States.<sup>52</sup> They use content analysis of major parties' executive election platforms (manifestos) to determine parties' overall ideological standing across a wide range of policy issues. For the United States, these estimates are based on Democratic and Republican party platforms set forth in presidential election year platforms, with higher scores denoting more conservative stances and lower scores more liberal views. It is plausible that intraparty change in ideology does not occur rapidly at only the time immediately preceding the drafting of the party platform. Rather, it is likely that such changes occur continually and are merely documented during presidential election years. Accordingly, we interpolate these scores to provide yearly estimates. Further, we are primarily interested in intraparty variance over time (as opposed to differences between the parties) and therefore assess these estimates as changes, or

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50. See generally DONALD P. GREEN ET AL., *PARTISAN HEARTS AND MINDS: POLITICAL PARTIES AND THE SOCIAL IDENTITIES OF VOTERS* (2002).

51. See also Thomas M. Carsey & Geoffrey C. Layman, *Changing Sides or Changing Minds? Party Identification and Policy Preferences in the American Electorate*, 50 AM. J. POL. SCI. 464 (2006) (finding that party influence on individuals' preferences turns on awareness of partisan differences and issue salience).

52. See generally IAN BUDGE ET AL., *MAPPING POLICY PREFERENCES: ESTIMATES FOR PARTIES, ELECTORS, AND GOVERNMENTS 1945–1998* (2001) (providing original measure); HANS-DIETER KLINGEMANN ET AL., *MAPPING POLICY PREFERENCES II: ESTIMATES FOR PARTIES, ELECTORS, AND GOVERNMENTS IN EASTERN EUROPE, EUROPEAN UNION AND OECD 1990–2003* (2006) (updating the measure).

first differences, rather than levels. We argue that changes in a Justice's party's ideology have an influence on their world view and policy attitudes and, therefore, are reflected in their case decision-making. We hypothesize:

*H5: A Justice's probability of casting a liberal vote is negatively associated with conservative shifts in his or her party's ideology as reflected in executive partisan political platforms (manifestos).*

However, a Justice's partisan identity may be informed and affected by varied and distinct elite signals and presidential party platform manifestos provide just one avenue of potential policy signaling. Justices may also come to form their partisan identity and outlook through information emanating from party actors who serve in Congress. In order to provide a measure of the respective party preferences in Congress we consider those of the median member of the House of Representatives of the Justices' chosen party.<sup>53</sup> To determine these measurement values we utilize the well-known Poole and Rosenthal's DW-NOMINATE first dimension scores.<sup>54</sup> These scores are based on past roll call votes with spatial dimensions estimated by differences between lawmakers. Any individual score represents the ideological placement of a member of Congress in relation to all other members of Congress.<sup>55</sup> As with our party platform manifestos measure, our focus here is on intraparty variance in the House of Representatives over time (as opposed to party differences) and therefore we assess these

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53. See Lee Epstein & Andrew Martin, *Does Public Opinion Influence the Supreme Court? Possibly Yes, (But We're Not Sure Why)*, 13 U. PA. J. CONST. L. 263 (2010) (utilizing this approach in assessing congressional influence on U.S. Supreme Court Justice voting).

54. See Keith Poole & Jeffrey B. Lewis, *Measuring Bias and Uncertainty in Ideal Point Estimates via the Parametric Bootstrap*, 12 POL. ANALYSIS 105 (2004); Keith Poole et al., *Measuring Bias and Uncertainty in DW-Nominate*, 17 POL. ANALYSIS 261 (2009). See <http://voteview.com/dwnomin.htm> for further details on common space and procedural issues.

55. Again, this calculation was done for the first dimension of the DW-NOMINATE score. Generally, the first dimension is considered to be more reflective of legislator preferences with occasional historical periods when multiple issue spaces dictate multi-dimensionality (see also Epstein & Martin, *supra* note 53, for judicial politics application). Traditionally, multiple dimension analysis is appropriate only in studies involving the years 1829–1851 and 1937–1970. Keith Poole, *The Decline and Rise of Party Polarization in Congress During the Twentieth Century*, EXTENSIONS, Fall 2005, at 1. Because this paper falls outside these periods, we use only the first dimension in our analysis.

estimates as changes, or first differences, rather than levels.<sup>56</sup>

*H6: A Justice's probability of casting a liberal vote is negatively associated with conservative shifts in his or her party's ideology as reflected in the ideological positions of members of the Justice's party in Congress.*

#### *D. Relevant controls*

Of course, a number of other concerns must be taken into account in an explanation of Justice voting. Of primary concern are the ideological inclinations that the Justices hold when they begin their tenure on the Court. If, as some argue, Justices' policy attitudes are largely static or stable, then we might expect that the contemporary external influences on Justice's world views would have no effect on Justices' voting. In order to control for this possibility, we include as an important control, the well-known measures of Justices' ideology (at the time they ascend the High Bench) initially developed by Segal and Cover.<sup>57</sup> These scores are based on newspaper op-ed writers' assessment of nominees' ideological orientations during the time between the nominees' nomination and confirmation.

Another important consideration that must be accounted for is the possibility that Justices are simply reacting to national public opinion in their voting. As previously discussed, the vast majority of studies assessing the relationship between public opinion and Justice decision-making have considered this influence on the Justices as essentially a singular entity—there is one national opinion and it affects all Justices in the same manner. Specifically, these studies have used Stimson's

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56. The model findings remain robust when using a similar measure for the Senate. Using the House provides us the ability to finely measure changes in legislative policy mood due to the shorter electoral cycle. Given that the time period we study represents a period of partisan realignment, the general partisan responsiveness of the House is useful in our analysis. This usage and procedure falls in line with the suggested use established by Poole and Rosenthal in KEITH POOLE & HOWARD ROSENTHAL, *CONGRESS: A POLITICAL-ECONOMIC HISTORY OF ROLL CALL VOTING* (1997) and KEITH POOLE, *SPATIAL MODELS OF PARLIAMENTARY VOTING* (2005).

57. See generally Jeffrey A. Segal & Albert D. Cover, *Ideological Values and the Votes of the U.S. Supreme Court Justices*, 83 AM. POL. SCI. REV. 557 (1989) (finding that the scores explain the vast majority of the variance in Justices' lifetime voting records).

composite index of national liberalism.<sup>58</sup> This measure aggregates national level surveys on a wide range of issues to provide a single indicator of national policy mood. We include this measure as an important control and do not make the case that it is not a relevant source of policy information that Justices may consider—just that it is not the only one.<sup>59</sup>

We also wish to account for the possibility that a Justice's case voting might be influenced by the Court's certiorari agenda and/or the effects of the general policy-making climate of the Court's cumulative personnel (e.g. case content). Since our dependent variable is dichotomous we cannot adjust the dependent variable to account for this concern as some have suggested.<sup>60</sup> Accordingly, we adopt the method used by Mishler and Sheehan<sup>61</sup> and others and include in our model specification the mean ideology score for the Court for the term using the aforementioned Segal/Cover scores.

Finally, we consider the generally accepted precept that the Court tends to take on cases for review that it wishes to reverse. We include a dichotomous variable to indicate those cases in which the party appealing the case to the Supreme Court (the petitioner) is advocating a liberal position.<sup>62</sup> We also note here that our primary hypotheses variables are measured on calendar years and therefore involve a nine

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58. See JAMES A. STIMSON, UPDATED FROM PUBLIC OPINION IN AMERICA: MOODS, CYCLES, AND SWINGS, (2d ed. 1999). Updated scores retrieved from James A. Stimson, UNC.EDU, <http://www.unc.edu/~jstimson/> (last visited Sept. 7, 2013).

59. While the Stimson composite index is the measure most frequently used in such studies, we recognize that some may be concerned that a similar, yet discrete, measure of national ideology might also warrant consideration and also another variable to assess this proposition. Stimson's national ideology measure provides an index of our nation's citizens' ideological self-identification (see *Data Files*, UNC.EDU, <http://www.unc.edu/~jstimson/Data.html> (last visited Sept. 23, 2013)). Auxiliary analysis suggests that these measures (national policy mood and national ideological self-identification) represent distinct depictions of national opinion and the variance inflation factor diagnostics do not indicate problematic collinearity when both are used together in the model.

60. See Lawrence Baum, *Measuring Policy Change in the U.S. Supreme Court*, 82 AM. POL. SCI. REV. 905 (1988).

61. See Mishler & Sheehan, *supra* note 6.

62. Descriptive statistics for all variables used can be found in Table A1 of the Appendix.

month (or more) lag to the beginning of the Court’s term in October when it begins hearing and deciding cases.<sup>63</sup>

#### IV. RESULTS

Table 1 displays the findings for our logistic regression model of Justice voting behavior in civil liberties cases. We employ robust standard errors clustered on the individual court case. The model performs admirably on prediction (compared to the modal category), yielding a 40.4% reduction of error.<sup>64</sup> More importantly, the individual variable coefficients provide intriguing results.<sup>65</sup> First, the coefficients for Justices’ personal social influences—home state (institutions-elite) and home state (citizens)—are statistically significant and in the predicted direction, providing support for our hypothesis. The coefficients for elite partisan cues (party platforms and Congress) are also significant and in the predicted direction. While the local working environment variable (relative D.C. liberalism) does not yield a statistically significant finding, the Justice’s time on the Court in the D.C. beltway is significantly associated with liberal voting. Thus, the latter finding suggests that the fabled “Greenhouse Effect,” as assessed in this study, may cast some influence on Justices’ voting. Table 2 demonstrates the impact of the statistically significant micro-public variables on Justices’ voting. We see that the relative impact for a Justice’s time working in Washington, D.C. is more pronounced than the more modest but still substantively meaningful effects of home state influences or elite partisan influences. Taken in tandem (e.g. simultaneous movements in

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63. We also incorporate state indicator (dummy) variables to control for all state-level cross-sectional variation, thus restricting the model to explaining within-state home environment effects on distal judicial actors. Thus, our state citizen ideology effect (discussed *infra* notes 42–43 and accompanying text) can be interpreted as the effect of a one unit increase in citizen liberalism within a (home) state on the probability of a Justice voting in a liberal direction on a case. The same holds true for the effect that we find for our measure of state elite actor liberalism on Justice voting (discussed *infra* notes 45–46 and accompanying text).

64. Auxiliary analysis of variance inflation factors indicates that multicollinearity is not problematic for this model.

65. The indicator (dummy) variables for Justices’ home states are not displayed. These results are available from the authors upon request.

multiple micro-publics), we could envision a scenario in which the cumulative potential impact of home state social cues and elite partisan signals on Justice voting could in fact be rather substantial.

In sum, our results indicate that there is good reason to believe that Justice voting, and Supreme Court policy making, are tied to Justices' relevant micro-publics in important and interesting ways. Our results may also provide some insight on the question of the relationship between external (i.e. non-legal or attitudinal) concerns such as public opinion and Justice voting. We find that Justices' personal social (home state) and partisan ties are associated with their voting behavior, but find little support for a national level public opinion effect. Of course, we do not suggest that such an effect is not viable, just that we do not find it here. Similarly, while we do not endeavor a full assessment of the institutional threat versus personal social mechanism question, we do suggest that it is unlikely that Justices feel that their institution's viability or independence is hurt or helped by case voting that is congruent with the micro-publics that we find to be associated with voting outcomes (e.g. Justices' home state citizens). It is more likely that their votes are tied to these forces in the same way that we might witness such a relationship in ordinary citizens' life decisions—these information sets may inform their world view and perhaps help define their social identity.

## V. CONCLUSION

Indeed, many of the questions that we seek to answer regarding judicial behavior and our approaches to those questions may be informed by thinking about how Justices make decisions in light of how all citizens make important choices in their professional and personal lives.<sup>66</sup> As Justice Scalia once commented, “it’s a little unrealistic to talk about the Court as though it’s a continuous, unchanging institution

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66. To be sure, scholars of political behavior have found important and interesting differences in the behavior of elites and non-elites as well as those who possess high levels and low levels of relevant information (See, e.g., J. R. HIBBING & E. THEISS-MORSE, *STEALTH DEMOCRACY: AMERICANS' BELIEFS ABOUT HOW GOVERNMENTS SHOULD WORK* (2002)). We only argue that Supreme Court Justices are, at bottom line, human decision makers and as such are susceptible, at some level, to many of things that may influence all people in making important decisions.

rather than to some extent necessarily a reflection of the society in which it functions.”<sup>67</sup> Certainly, the tendency of Supreme Court Justices to drift from early decision-making patterns to unanticipated jurisprudence has vexed both the Presidents who appoint them and the scholars who study them. While academics have done an excellent job of documenting and tracking Justice drift,<sup>68</sup> they have perhaps been less successful at explaining or predicting it. Why does Justice drift elude us? Hanson and Benforado suggest that an underlying problem may be with the way we conceptualize and approach explaining human behavior more generally.<sup>69</sup> They argue that in attempting to explain human behavior (and more specifically Justices’ voting behavior and drift) we tend to overstate the degree to which dispositional factors (e.g. attitudes, choice, strategy, and will) drive behavior and underestimate the influences of situational and contextual concerns, such as environment and subconscious processes.

Thus, attempts to explain and predict Justice behavior by focusing on their innate and unswerving sincere ideological preferences or their strategic attempts to consciously promote those preferences may be missing an important consideration: that Justices, at some level, may not completely willfully dictate their behaviors or their views toward certain objects, laws, or other phenomena.<sup>70</sup> Rather, they may be influenced in important ways by situation and circumstance—the milieu of events, stimuli, and social interactions that define their daily lives, indeed, “the times” in which they live. Further, it may turn on the micro-publics from which they glean personal meaning and social identity. To be sure, we must be careful in considering possible causal mechanisms suggested by the relationship between micro-publics and Justices’ voting. At this juncture it is difficult to parse whether Justices are reacting directly to micro-publics or if micro-publics merely reflect

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67. McGuire & Stimson, *supra* note 19, at 1020.

68. See, e.g., Jeffrey A. Segal et al., *Buyer Beware? Presidential Success Through Supreme Court Appointments*, 53 POL. RES. Q. 557 (2000) (assessing Justices’ drift from the ideology of their appointing President).

69. See generally Jon Hanson & Adam Benforado, *The Drifters: Why the Supreme Court Makes Justices More Liberal*, 31 BOSTON REV. 23 (2006).

70. See generally John Irwin & Daniel Real, *Unconscious Influence in Judicial Decision-Making: The Illusion of Objectivity*, 42 MCGEORGE L. REV. 1 (2010).



the underlying common stimuli of shared events and conditions that influence them as well as Justices who are similarly processing such information and the emotional nuances of the human experience. Still, our empirical findings provide intriguing insight on how these currents run and reveal themselves. Thus, the findings of our study may have important implications for studies of Supreme Court Justice voting that focus solely or primarily on Justices' conscious goal-directed or strategic behavior, to the exclusion of situational or personal environmental considerations.<sup>71</sup>

In coming to grips with the potential value of micro-publics and Justices' "times" in helping to understand Justices' voting, there are a good number of remaining questions for future research. These include alternate micro-publics such as media, competing elite cues, and professional organizations, among others. Further, Justices may process such micro-publics differentially, depending on their background or other personal characteristics. We have investigated here only a handful of such explanations and future research will undoubtedly find more that are worthy of examination.

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71. See, e.g., DOES CONSCIOUSNESS CAUSE BEHAVIOR? (Susan Pockett et al. eds., 2006).

TABLE I – LOGISTIC REGRESSION RESULTS FOR JUSTICE VOTES  
IN CIVIL LIBERTIES CASES – LIKELIHOOD OF A LIBERAL VOTE

Variable	Coefficient	Odds Ratio	Robust S.E.	t-score
Home State Liberalism (institutions - elite)	.00304*	1.00304	0.00162	1.87
Justice Party Conservatism Change (Congress)	-4.76731**	0.00850	2.33717	-2.04
Justice Time in DC	.014626**	1.01473	0.00426	3.43
DC Liberalism	-0.00092	0.99908	0.00183	-0.50
Home State Liberalism (citizen)	.00528*	1.00529	0.00301	1.75
Justice Party Conservatism Change (party platform)	-.03968**	0.96110	0.01284	-3.09
National Public Liberalism (policy mood)	-0.00015	0.99985	0.01369	-0.01
National Public Liberalism (self identification)	0.02054	1.02076	0.02256	0.91
Justice Liberalism (Segal Cover score)	2.44214**	11.49760	0.12720	19.20
Court Liberalism (mean Segal Cover score)	-2.35341**	0.09504	0.93224	-2.52
Petitioner brings liberal Case to Court	.95157**	2.58977	0.07868	12.09
Constant	-1.24685		0.97729	-1.28

N = 1437

\* $P < .05$ , \*\* $P < .01$

Robust standard errors are clustered on case citation.

TABLE 2 – PROBABILITY IMPACT OF MICRO-PUBLICS ON  
JUSTICES' LIBERAL VOTING\*

Variable	Probability At Mini- mum Value	Probability At Mean Value	Probability At Maximum Value
Home state liberalism (institutions – elite)(+)	0.408	0.440	0.476
Home state liberalism (citizens)(+)	0.413	0.443	0.480
Justice Party conservatism change (congress)(-)	0.483	0.437	0.391
Justice party conservatism change (party platform)(-)	0.481	0.443	0.403
Justice time in DC (+)	0.395	0.442	0.512

\* Marginal effects for a specific variable are computed while holding other binary variables at their modal values and other continuous variables at their mean values.

## APPENDIX

**Table A1 – Variable Descriptive Statistics**

<b>Variable</b>	<b>Mean</b>	<b>Std. Dev.</b>	<b>Min</b>	<b>Max</b>
Liberal vote	0.47877	0.49956	0	1
Home state liberalism (institutions – elite)	49.47224	22.23969	1.25	92.51428
Justice party conservatism (congress)	0.00552	0.01239	-0.033	0.046
Justice time in DC	14.47264	7.72507	1	33
DC liberalism	-0.49403	23.5224	-47	41
Home state liberalism (citizen)	-11.67462	8.24225	-34.8	16
Justice party conservatism (party platform)	0.85729	2.07970	-3.09412	4.8275
National public liberalism (policy mood)	56.54668	3.42873	50.854	62.47
National public liberalism (self-identification)	35.48501	1.91292	31.838	38.95
Justice liberalism (Segal Cover score)	0.36824	0.31642	0	1
Court liberalism (mean Segal Cover score)	0.36712	0.06237	0.24167	0.43778
Petitioner brings liberal case to Court	0.44343	0.49680	0	1

