

Chief Justice Selection Rules and Judicial Ideology

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Abstract

We examine how institutional selection procedures affect the ideology of state supreme court chief justices. We argue that institutional selection methods empower those charged with choosing chief justices to select court leaders who reflect their own preferences, and we test this theory using data from all 50 American states from 1970 to 2016. Our results show that states that use popular elections to select chief justices tend to produce court leaders whose preferences reflect the electorate, and states that use elite appointment tend to produce chief justices whose preferences mirror those of political elites. While we find that peer election systems produce leaders with preferences similar to median court preferences, court preferences are also associated with other methods of chief justice selection.

Shirley Abrahamson was the first woman on the Wisconsin Supreme Court and later its first female chief justice. She was known for her judicial activism, her “tart dissents,” and for making several presidential short lists to replace retiring United States Supreme Court justices.¹ Abrahamson became chief justice of the Wisconsin Supreme Court in 1996 when she became the most senior justice on the court. She served in that capacity through 2015 when a constitutional amendment eliminated selection of the chief justice by seniority, replacing it with selection by peer vote. This reform was favored by some of Abrahamson’s colleagues, including those who gave the press sensational soundbites about her “difficult” personality and stated that her “age does not necessarily mean brilliance or kindness.”² Complaints about her personality notwithstanding, the rule change was overtly political. Abrahamson’s liberalism was out of step with both the court’s majority and the state legislature. Within hours after the amendment was certified by the state elections board, the court voted via e-mail to choose its leader. The conservative majority on the Wisconsin Supreme Court replaced Abrahamson with Patience Roggensack, a decidedly more conservative colleague, by a 4-3 margin (Bauer 2015).

As this anecdote suggests, chief justice selection in the American states is influenced by the political environment in which it occurs. In the state court systems, political elites establish the rules used to pick court leaders. These rules provide a structure that influences which individuals become judicial leaders, how long they will lead the court, and what impact they can have as head of the judicial branch. The political stakes of selecting a chief justice are exemplified in Shirley Abrahamson’s story and prompt several research questions. The first question centers on the rules of chief justice selection and the political ideology of the individual

¹ See Sandomir (2021).

² See Ferral (2016).

selected. In Wisconsin, selection by seniority ensured the continued leadership of a liberal chief justice while the change to peer selection facilitated the selection of a conservative chief justice. Can patterns in chief justice ideology be observed across selection system types across the state high courts? Preliminary research by Langer and Wilhelm (2005) suggests that ideological differences in chief justices can be observed across selection system types, but a deeper investigation is warranted.

Beyond observing patterns, a second and perhaps more important question centers on how the rules governing selection of court leaders *interact with the state political environment* to influence the ideology of the person chosen as the state's chief justice. More specifically, do chief justice selection rules encourage ideological parity between a selection authority (judges, voters, or elected elites) and a selected chief justice? This question is important given the significance of the position for leadership of the court and the judicial branch (Raftery 2017). The chief justice selection rule change in Wisconsin specifically empowered those in charge of selection—the justices of the supreme court—to reject Chief Justice Abrahamson in favor of a leader who was more ideologically proximate to those in charge of selection. Whether this extends to other chief justice selection system types, and the degree to which appointing authorities exert such influence, are unknown.

In this research, we consider these questions. We analyze broader trends that emerge when examining the impact of chief justice selection rules. While earlier research by Langer and Wilhelm (2005) serves as our starting point, we address the possibility that court leaders reflect not only the selection system used to seat them but also the ideological preferences of the state's selection authority.

Chief Justices in the American States

Chief justices are important figures in the legal and political systems of the various states as they fill multiple roles.³ First, they lead state high courts. This responsibility tends to come with additional leadership duties related to agenda-setting, opinion assignment, coalition-building, and/or leadership of discussion, with substantial variation among the states (Hall 1990; Hughes et al. 2015). Second, modern chief justices also serve as the public face and primary advocate for state judiciaries. The responsibilities associated with this aspect of the job are substantial and time-consuming. They include the development and implementation of judicial reform efforts, interbranch communications, public education, and oversight of the state court system (Raftery 2017; Wilhelm et al. 2019, 2020). While court administrators and staff typically assist court leaders to accomplish these activities (Linhares 2012), chief justices still report spending most of their time on administrative tasks (Smith and Feldman 2000).

State supreme court chief justices have a meaningful impact on the outputs and structure of state court systems via their leadership responsibilities. They can set the tone for not only the state high court but also the state's broader judicial system. Chief justices can decide to steer the court in a certain ideological direction, work toward major structural or administrative reforms, or maintain a satisfactory status quo. Their various roles and powers give them substantial influence within the state court system and make chief justices central figures in interbranch relations.

³ In Maryland and New York, the leader of the state's high court is the "chief judge" rather than chief justice. The leaders of the Texas and Oklahoma Courts of Criminal Appeals are known by the title of "presiding judge."

Chief Justice Selection

At least nine distinct methods are used to pick the leaders of state high courts. The most common selection method is a peer vote system (23 states), followed next by governor selection with or without a judicial nomination commission (13 states). Popular elections, either nonpartisan or partisan, are also used in some states (7 states). In a handful of states, the chief justice is dictated by seniority of tenure (4 states). The other four methods used to pick court leaders are each utilized in only one state. These include selection by the state high court and district court judges, selection by the state legislature, selection by a judicial nominating commission (without the governor's involvement), and rotation. All current methods of chief justice selection are summarized in Table 1. A brief description of each method and the states that use each method follows.

[Table 1 about Here]

Peer vote

Members of the state high court elect a chief justice from the court's roster in a peer vote system. Most chief justices elected by their courts serve for a single term of predetermined length, though chief justices are reelected routinely by their colleagues in some states (e.g., South Dakota). In many states this process is subject to longstanding norms that influence which justice is chosen, often related to seniority (e.g., Florida) or equitable geographic distribution of stints as chief justice (e.g., Illinois).

Gubernatorial appointment

In states where governors appoint chief justices, most are constrained by an executive council or judicial nominating commission that participates in the process. Only three states have gubernatorial appointment without a council or commission. Chief justices selected this way tend

to have relatively long terms (from 6 years to “life” tenure). In these states, the mechanism for choosing court leaders seemingly permits governors to pick chief justices whom they find ideologically acceptable. This is likely to be the case in merit selection states as well given the high likelihood that commissioners tend to select a slate of finalists who the governor will not find objectionable (Goelzhauser 2018; Watson and Downing 1969).

Popular elections (partisan or nonpartisan)

Popular elections are the most visible selection mechanisms for chief justice seats. Chief justice candidates—whether a current justice or not—declare themselves and run in (potentially) competitive elections. The term lengths for these chief justices range from 6 to 8 years. These court leaders can be reelected if they have not reached the state’s mandatory retirement age.

Seniority

Currently, the chief justice is determined by seniority in Kansas, Louisiana, Mississippi, and Pennsylvania.⁴ In these states, the judge with the longest tenure on the high court serves as chief justice for their entire remaining period of service. Notably, this method of selection facilitated the elevation of both the longest-serving chief justice in American history (Sydney M. Smith of Mississippi) and the first Black chief justice (Robert N.C. Nix, Jr., of Pennsylvania).

Judicial nominating commission

While some states use a judicial nominating commission to assist governors with the selection of chief justices, Indiana delegates the responsibility for picking the supreme court’s leader entirely to a commission. Indiana’s judicial nominating commission was established in the early 1970s and consists of three attorneys, three non-lawyers, and the state’s chief justice or a justice

⁴ Wisconsin abandoned this method of chief justice selection in 2015, as described in the vignette above.

designated by the chief justice to serve. The members other than the chief justice (or her designee) are appointed by the governor.

Rotation

Nevada is the only state that formally uses regular rotation in the chief justice position. The Nevada Supreme Court's rules dictate that "[t]he Chief Justice is the Justice whose current commission is senior in the date of its issuance" and when ties exist the chief justice will be determined "by lot."⁵ As a result, the chief justice is typically the justice with the least time remaining in a six-year term on the bench. When an incumbent justice is reelected, that justice reverts to being the least senior justice for the purposes of choosing the court's leader. Justices who serve prolonged tenures tend to become chief justice multiple times, moving in and out of the leadership role with the passage of election cycles.

Legislative selection

A single state, South Carolina, requires that the chief justice be selected by a joint assembly of the state legislature. Once selected, they serve ten-year terms. By tradition, the legislature elevates the longest-serving member of the court to lead the judiciary (Bryant 1988).

Election by the supreme court and district judges

North Dakota has used a unique method to select a chief justice since 1967 (Holewa 2009), with members of the state supreme court and the state's district courts all voting for the position. Members of the state supreme court announce themselves as candidates and ballots are distributed to the judges eligible to vote. The judges return these ballots which are then tallied by the state court administrator. If no justice receives a majority vote in the initial balloting, the

⁵ See Nevada Supreme Court rules at <https://tinyurl.com/2p8dur7v>.

top two candidates proceed to a runoff election (Dura 2019). The chief justice elected serves a five-year term and is eligible for reelection, which frequently occurs.

Prior Research on Chief Justice Selection Rules

Little research exists on chief justice selection in the American states. What does exist has typically focused on a single type of selection system. Predominantly, most scholars have focused on peer vote systems. Examining what happens when court leaders are chosen by their colleagues permits analysis of the intracourt politics that influence who becomes chief justice. The results of these studies are mixed. Langer, et al. (2003) found that ideologically extreme judges are less likely to be elected as chief justice by their peers. More recent scholarship by Fife, Goelzhauser, and Loertscher (2021) concludes that ideological tendencies are less influential than the rate at which a justice dissents from the court's decisions.

Some research also examines the dynamics of popular elections for chief justices. Vining, Wilhelm, and Wanless (2019) found that associate justices who challenge chief justices in popular elections tend to be ideologically distant from the chief.⁶ These individuals, they argue, become candidates because they want to flip control of the court's leadership from one political party to another. These "divergent" associate justices often win their elections. In fact, 4 of 7 challengers observed from 1990 to 2020 defeated a sitting chief justice. Given this, ideology seems to be a factor in popular elections for chief justice, at least as motivation for individuals seeking the leadership position. We have few insights, however, into whether chief justices reflect the ideology of the state's electorate where they are chosen by popular vote.

⁶ The lone exception was Justice Tom Parker of Alabama, who twice challenged chief justices from his own Republican Party in bids to unseat them. He was successful in 2018.

Rather than focusing on a single selection system, Langer and Wilhelm (2005) analyzed all selection system types. Using data from 1970 to 2004, they found that chief justices chosen by government or the court itself were more liberal than chief justices chosen by other means. Perhaps surprisingly, they also found that the ideology of elected chief justices was not statistically different than those chosen by rotation or judicial commission. Their analysis provided a limited overview of the correlations between chief justice ideology and the systems by which chief justices are chosen. They did not, however, examine the state political environment and its possible impact on chief justice ideology.

The Impact of Selection System Rules and Selection Authority Preferences

Are there reasons to expect that chief justice selection rules should directly impact the liberalism of a chief justice chosen via those institutional arrangements? In other words, should any selection mechanism by itself result in the selection of a more liberal or conservative judicial leader? We believe that this is highly unlikely. *Without other contextual or mitigating factors considered*, there is no theoretical justification for a causal relationship between selection rules and political ideology. Consider the example from Wisconsin. Without the context of the court majority's preference for a more conservative chief justice, there is no reason to expect any specific ideological outcome from that court's change to a peer vote system. For this reason, it is important to understand that general trends in chief justice ideology across selection system types, such as those found in the research by Langer and Wilhelm (2005), have more to do with pattern observation than causal inference. Consequently, rather than examining the impact of selection systems *per se* on chief justice ideology, we argue that the impact is conditioned by the ideological tenor of the authority that selects the high court leader.

The selection of a chief justice is a political process carried out using institutional rules that determine which decision-makers are responsible for selecting the leader of a state's high court (and, typically, its judicial branch). Choosing a high court leader provides these designated decision-makers a political opportunity to influence the direction and leadership of the state judiciary. The key consideration likely to influence this choice is the ideological proximity between a potential chief justice and decision-makers with selection authority. If a chief justice is ideologically similar to those in charge of selecting the chief justice, the odds are greater that their political priorities will align. In this way, we argue that *the rules for chief justice selection likely influence the kind of individual chosen to become chief justice, but they are conditioned by the preferences of the selectors/electors.*

The actors involved in the selection of a chief justice are political elites or voters except where court leaders are elevated due to seniority of tenure or a fixed rotation. Political actors routinely participate in strategic behavior to achieve their policy goals (e.g., Carson and Roberts 2005; Jacobson 1989). Voters also seek to advance their preferred policies via democratic participation, casting their ballots for candidates they perceive to be most aligned with their own political perspectives (e.g., Downs 1957; Ordeshook and Zeng 1997). These elites or voters have political and/or legal goals that influence their decision-making process when picking a judicial leader. These conditions motivate our primary hypothesis:

The ideology of an individual chosen as chief justice is directly related to the ideology of the authority that selects the court leader.

We expect a direct relationship between selection authority ideology and the political predisposition of the chief justice that is chosen, but we also acknowledge that the strength of this relationship is likely conditioned by the type of selection system. The degree of ideological

concordance is likely influenced by the political sophistication and knowledge of the selection authority, as well as institutional constraints.

Where governors or legislators pick the chief justice, they are likely to be influenced by their political leanings just as they are in countless aspects of their jobs. Individuals tend to seek elected office because they desire to influence policy, and they are unlikely to view judicial selection in an apolitical fashion—especially when considering the state’s top judge. Instead, governors are likely to view their appointee as a legacy choice and potential ally in policymaking. Where legislators pick the chief justice, they can expect that the court’s new leader will participate in judicial review of their output and serve as a primary contact in legislative-judicial relations. In short, politicians are likely to be strategic and well informed when choosing a chief justice.

The current supreme court justices also ought to be informed and sophisticated when picking a chief justice (Fife, et al. 2021; Langer, et al. 2003). They have already worked alongside the relevant candidates in a small group setting and likely formed opinions about their strengths and weaknesses. However, judges face several unique constraints where peer votes are used to pick chief justices. The voting judges are likely to consider intracourt norms regarding seniority, geographic distribution, and previous professional experience. Violations of these standard operating procedures can result in damage to intracourt collegiality. In addition, these decisions are sometimes influenced by a judge’s age, retirement plans, health status, personality, or leadership ability (and, rarely, scandals). High court judges are also limited in their selection process by the small pool of members of their court, which can range from five to nine justices. Whereas politicians hypothetically choose a judicial leader from a broad group of potential chief justices, judges have no such luxury.

Where citizens choose a chief justice at the ballot box, which occurs in seven states, their success in electing an ideological ally is dependent on information dissemination and the set of choices (candidates). Although only a small proportion of citizens are likely to be trained in law or familiar with the professional acumen of potential chief justices, chief justice elections in most of these states feature either partisan labels (Alabama, North Carolina pre-2002 and post-2017, Texas) or frequent competitive nonpartisan races with right-leaning or left-leaning alternatives (Arkansas, Montana, North Carolina 2002 to 2017, Ohio) that generate data points for voters (Vining, Wilhelm, and Wanless 2019). These ideological cues assist voters to select the jurist-candidate most compatible with their own views (Bonneau and Cann 2015). Only Minnesota's nonpartisan chief justice elections seldom generate meaningful competition (Sater 2012).⁷ Partisan and/or competitive judicial elections attract more media coverage, campaign spending, and public notice than other means of picking judges (Bonneau 2007; Bonneau and Hall 2009; Hughes 2020). The conditions of chief justice elections in most relevant states are suited to prompt voters to either choose a chief justice from their preferred party or respond to elite messaging about the candidates' predispositions.

Finally, the theoretical link we identify between the ideologies of selectors and chiefs is mitigated in states where court leaders are chosen by seniority or rotation. These individuals are not chosen by selectors to be chief justice, but instead move into the role as a result of extended tenure or equitable division of labor. However, it is feasible that justices who serve longer than

⁷ The failure of Minnesota elections to become broadly competitive is notable given the state's central role in litigation to expand the First Amendment rights of judicial candidates (see Bonneau, Hall, and Streb 2011).

their colleagues will reflect their states' elites or voters relatively well.⁸ It is also reasonable that state supreme court judges who rotate the leadership role among themselves are aligned with public opinion or elite preferences, though no particular member of the court was elected or appointed to be its leader. Nonetheless, these relationships are not as straightforward as the selector-chief connection in states where individuals are chosen explicitly for the court's center seat.

Regardless of the method a state uses to pick its chief justice, we expect to find a positive relationship between those who choose justices and the judge who is placed in that role. In the following section we develop a model to test this relationship and explore the extent to which the ideological proximity between selectors and chiefs is influenced by institutional rules.

A Model of Selection Authority and Chief Justice Ideology

To understand whether chief justice selection rules and the ideological preferences of a state's selection authority have an impact on the ideology of a selected chief justice, we construct a multivariate linear regression model. Our data include a complete list of chief justice selection events that occurred in the states between 1970 and 2016. Because a chief justice could serve multiple terms in this model (i.e., win re-election, be reelected by peers for a subsequent term, etc.), a chief justice may appear in the data multiple times. The data include 496 chief justice selection events (with 455 unique chief justices).⁹

⁸ One complication here is Louisiana's use of both partisan, district-level state supreme court elections and chief justice designation by seniority. It is unlikely that each district reflects a representative sample of statewide public opinion.

⁹ We identified a total of 551 selection events from 1970 and 2020 (with 458 unique chief justices). However, chief justices who assumed office prior to 1970 and after 2016 do not have ideological scores in our data. Therefore, our statistical tests analyze the subset of 496 observations for which ideological scores were available.

Our dependent variable measures each chief justice's political ideology at the time of selection. For this, we use an updated version of Brace, Langer, and Hall's (2000) party-adjusted judge ideology (PAJID) scores. These scores span from 0 to 100 and measure ideology on a scale from conservative-to-liberal. The original Brace, Langer, and Hall (2000) data do not afford us with observations beyond the 2000s. Therefore, we utilize data from Hughes and Wilhelm (n.d.) that replicates the original PAJID methodology for state supreme court justices between 1970 and 2016.¹⁰

We classify chief justice selection into five system types: peer vote (23 states), popular election (7 states), government appointment without commission (4 states), commission-assisted appointment (11 states), and rotation/seniority (5 states).¹¹ We provide a list of states in each classification in Table 2. We account for changes over time and within states, which occur in Idaho, New York, Utah, Virginia, West Virginia, and Wisconsin.¹² For our statistical regression, we dichotomize each of these selection types such that popular elections are chosen as the reference category.

¹⁰ In recent years, other works have provided new measures of state supreme court justice ideology. For example, Windett, Harden, and Hall (2015) use voting data to produce temporally dynamic ideology measures for justices serving between 1995 and 2010. Nevertheless, this 15-year period is too constricted for the problem at hand. Additionally, Bonica and Woodruff (2015) use campaign finance data to produce similar measures of state supreme court ideology. While these data cover a longer period, they are not sufficiently comprehensive to address the research question at hand.

¹¹ Some coding clarifications are in order. First, we include North Dakota in "peer vote" states, since the high court takes a lead role in choosing the chief justice there. Our "elite appointment" category includes both governor and legislative selection states that are unconstrained by judicial commission/council. Our "judicial commission/council" category includes those states that may use governor appointment but require selection or approval of commission/council vote.

¹² Importantly, some differences exist in our selection system classifications with Langer and Wilhelm (2005). One minor difference is that they refer to "Rotation/Seniority" systems as "Random." A more substantive difference is that we classify 19 states differently than the original research.

[Table 2 about Here]

We display the average chief justice ideology across each selection system type over time in Figure 1. While there is considerable variation evident here, a few trends emerge. First, except for government appointed chief justices, high court leaders have become more conservative over time. This trend keeps with other American courts that liberalized after the New Deal Era but became more conservative after the emergence of Reagan-era politics and the realignment of white (mostly southern) voters (Bailey 2007; Howard and Hughes 2022; Martin and Quinn 2002).

[Figure 1 about Here]

Some institutional selection systems seem to produce chief justices who are more liberal/conservative compared to others, as shown in Figure 1. Given this, we calculate the mean chief justice ideology, over time, for each selection system type. These are summarized in Table 2. Popularly elected chief justices are most conservative, on average, while chief justices chosen by commission or rotation/seniority systems are most liberal.

In terms of causality, our primary variables of interest help gauge the conditional impact of selection authority preferences on chief justice ideology. To operationalize selection authority preferences, we use several variables. Peer vote selection preferences are operationalized as the median ideology of the state supreme court at the time of selection. Popular election selection preference is operationalized as the average political ideology of the state citizenry at the time of selection. Finally, elite appointment preference is operationalized as the political ideology of the state political elite at the time of selection. We use updated PAJID data to measure median state supreme court ideology, and data from Berry et al. (1998; 2012) to represent elite and citizen ideology. These measures are all scaled similarly to PAJID (conservative to liberal, on a scale

from 0 to 100). Importantly, we have no measure of selection authority preference for commission/council appointment systems or rotation/ seniority systems.

To test the idea that the preferences of selection authorities influence chief justice ideology, we estimate interaction effects between each of our ideological variables (court ideology, citizen ideology, and elite ideology) with each of our institutional controls (commission appointment, government appointment, peer election, and rotation/seniority such that popular election systems are the reference category). Given that our ideological variables are all measured on a conservative-to-liberal scale, we expect positive relationships between median court ideology and chief justice ideology in peer election states, between elite ideology and chief justice ideology in states using commission or government appointment, and between citizen ideology and chief justice ideology in states using popular elections. We posit no relationship between any of our ideological controls and chief justice ideology among states using rotation or seniority.

Our model includes three additional control variables linked to chief justice ideology. We include a dichotomous variable indicating whether an individual is female (“1” if yes, “0” otherwise) and an additional dichotomous variable measuring whether a chief justice is nonwhite (“1” if yes, “0” otherwise). Our data include 15.6 percent female chief justice selection events and 7.4 percent nonwhite chief justice selection events. We also control for whether members of a given state high court are chosen via appointment (“1” if yes, “0” otherwise) versus electoral methods. Approximately 47 percent of all chief justices in our data served on courts in which members are chosen via elite appointment compared to popular election. In Table 4, we provide descriptions for each of our variables of interest.

[Table 4 about Here]

Because our dependent variable is measured continuously, linear regression methods are an appropriate means to test our hypotheses. Thus, we estimate ordinary least squares estimates. Because we find evidence of heteroskedasticity, we estimate robust standard errors clustered at the level of each state. Additional statistical testing finds no evidence of autocorrelation or omitted variable bias.¹³ We present the results from the statistical regression in the following section.

[Table 5 about Here]

[Figure 2 about Here]

Results

The results from our statistical regression model appear in Table 5. The model is statistically significant, and our independent variables jointly account for 48 percent of the variance in the dependent variable. Importantly, our interactions between chief justice selection method and selection authority ideology are significant predictors of chief justice ideology. Because these interactive effects can be difficult to interpret in tabular form, we present these results graphically in Figure 2.

First, we examine the impact of state citizen ideology upon chief justice ideology. We expect citizen ideology to have the greatest influence upon chief justice ideology in states that use popular elections to choose these individuals and less in states using appointive systems to select chief justices. Our results show that compared to the reference category of popular elections, two chief justice selection systems are significantly different—commission and

¹³ While it is true that we have censoring in our dependent variable, we estimated tobit models as a robustness check and found nearly identical results with those obtained via ordinary least squares. Because our data abide by the Gauss-Markov Theorem, however, we opt to present results from ordinary least squares.

government appointed systems—while two selection systems are not significantly different—peer selection and rotation/seniority.

We display the interaction effects between citizen ideology and method of chief justice selection in the left-hand pane of Figure 2. The graph demonstrates, as anticipated, that the impact of citizen ideology in systems that select chief justices via popular election is strongly positive. The figure also shows, interestingly, that citizen ideology is inversely related to chief justice ideology in states that use government or commission selection. Thus, we find strong evidence that citizen ideology does not influence chief justice ideology in those states. We also find an association between citizen ideology and chief justice ideology in states that select chiefs via rotation or seniority. As noted, we have no *a priori* reason to believe chief justice ideology is significantly associated with any authority's ideology in these states.

[Table 6 about Here]

To help us better understand how selection authorities influence chief justice ideology, we standardize the size of the effect of each selector's ideology across institutional selection systems in Table 6. Table entries show the predicted percentage change in a chief justice's PAJID score given a change from one standard deviation below to one standard deviation above the mean ideology for each selector, holding all else equal in our linear regression. These results show that, outside rotation/seniority systems of selection, citizen ideology is most strongly and positively associated with chief justice ideology in states utilizing popular elections.

Our expectation for the impact of elite ideology is that it should play an outsized role in states that select chief justices using commission or government appointment. Our model shows some support for this, as elite ideology among commission appointment systems is strongly and positively associated with chief justice ideology. We demonstrated this result further in both

Figure 2 and Table 6. While elite ideology is positively associated with chief justice ideology across all five selection systems, this effect is strongest among chiefs chosen using commissions. The effect is least evident in states that use popular election and government appointment. This latter finding is somewhat perplexing until we consider that only four states are included in our government appointment category. Most states that involve governmental elites in the selection of chief justices (usually the governor) are categorized in our commission category.

Finally, we consider the influence of median state supreme court ideology on the ideology of the selected chief justice. Our expectation is that that median state supreme court ideology should most impact institutions that utilize peer election. While we show in Figure 2 that chief justice ideology is positively associated with median court ideology across all five selection systems, our results do not show an outsized impact of median court ideology on peer selected chief justices. Interestingly, our results show that court ideology has the strongest impact on chief justice ideology in states that choose the chief justice via popular election and government appointment. That popularly elected chief justices are most associated with median court preferences is unsurprising given the ideological homogeneity of many state courts that choose their personnel via election. Indeed, the effect of every institution save government appointment produces results significantly lower than those of popular elections.

In terms of our other control variables, we see that chief justice demographics are significantly associated with ideology. All else equal, our model indicates that female chief justices are 4.4 points more liberal than males, and nonwhite chief justices are approximately 7.9 points more liberal compared to white chiefs. Finally, chief justices working in state courts where members are chosen via appointment are approximately 7.9 points more liberal compared to their colleagues working in institutions chosen via election.

Conclusion

In this research, we have considered how the ideologies of chief justices in American high courts are influenced by the intersection of institutional systems for selecting these individuals and the values of those charged with selecting them. We argued that chief justice selection methods are unlikely directly to influence chief justice ideology (cf. Langer and Wilhelm 2005). Instead, selection rules empower those charged with choosing chief justices to produce court leaders who reflect their own preferences—though not always with the same degree of success.

Overall, we found support for our theoretical argument. Our results indicate that states which use popular elections to select chief justices tend to choose individuals that reflect popular preferences, compared to chief justices selected by elite appointment. Furthermore, our results demonstrate that state elite ideology was most associated with chief justice ideology when commission appointment is used, but less so when government appointment is used. Finally, we found that median supreme court preferences were associated with chief justices from all types of selection systems, but had the greatest influence among states utilizing popular elections, government appointment, and peer elections systems.

These results are instructive as state legislators and courts consider whether to maintain or reform their methods for choosing a chief justice. For example, the debate about popular control of judges is quite relevant here. Where the public is given the opportunity to pick a court leader, our results show that the chief justice tends to reflect popular views. However, elite control of chief justice selection can stifle the voice of the people. These may be important considerations when, for example, voters are asked to consider constitutional amendments that alter the way chief justices are chosen.

Instead of reflecting the electorate, elites pick chief justices who are their own ideological ilk. Even commission-based systems, which are often heralded as a way to dampen partisan impulses, facilitate the selection of chief justices ideologically similar to the state's most powerful politicians. This should not be surprising as policy-minded leaders have strong incentives to put their allies in positions of power. Similar trends are present where peer votes are used to pick court leaders. This is exactly what Wisconsin Republicans expected, for example, when they worked for several years to oust Chief Justice Abrahamson and replace her with a member of the court's conservative majority. If the peer vote following the amendment of Wisconsin's constitution had elevated one of the court's liberal minority to the center seat, our results confirm it would indeed have been unusual—particularly given the court's lack of an established norm preferring the election of chief justices with certain experience (e.g., seniority) or characteristics (e.g., geographic claims).

What to take from these results likely depends on one's notion of the proper role of the judiciary in state governments. Proponents of democratic control might celebrate our evidence of popular influence on chief justices in certain circumstances but decry the weaker link between the chiefs and the public where elites run the process. On the other hand, those who favor a process dominated by skilled evaluators may prefer elite leadership. Merit notwithstanding, government officials and judges are clearly capable of picking chief justices who are fellow travelers. Individuals who become chief justice are unlikely to deviate wildly from the preferences of the appointing authority no matter the selection system. Knowing how chief justices are chosen is not sufficient to predict their political leanings, but the partisan tendencies of the selection authority provide a rather strong signal of what is to expect from a court's leader.

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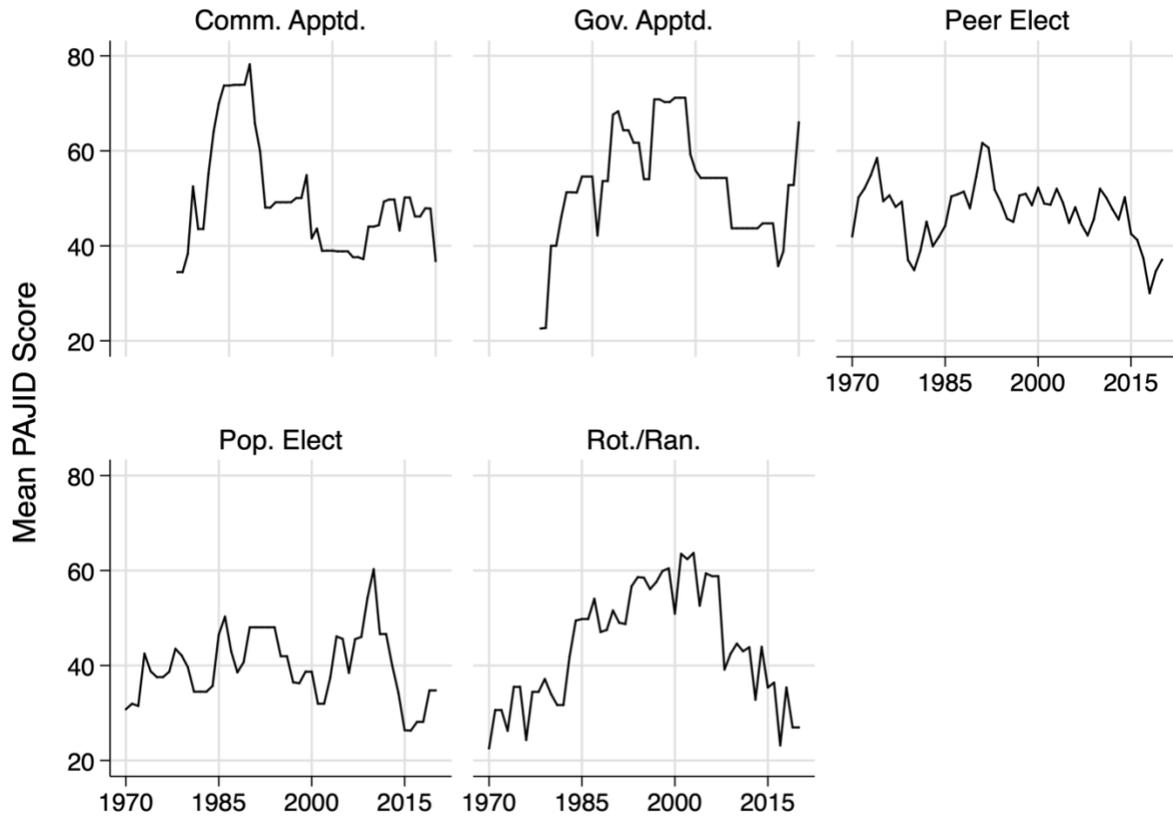


Figure 1: Mean liberalism of state supreme court chief justices by selection system (1970 to 2020)

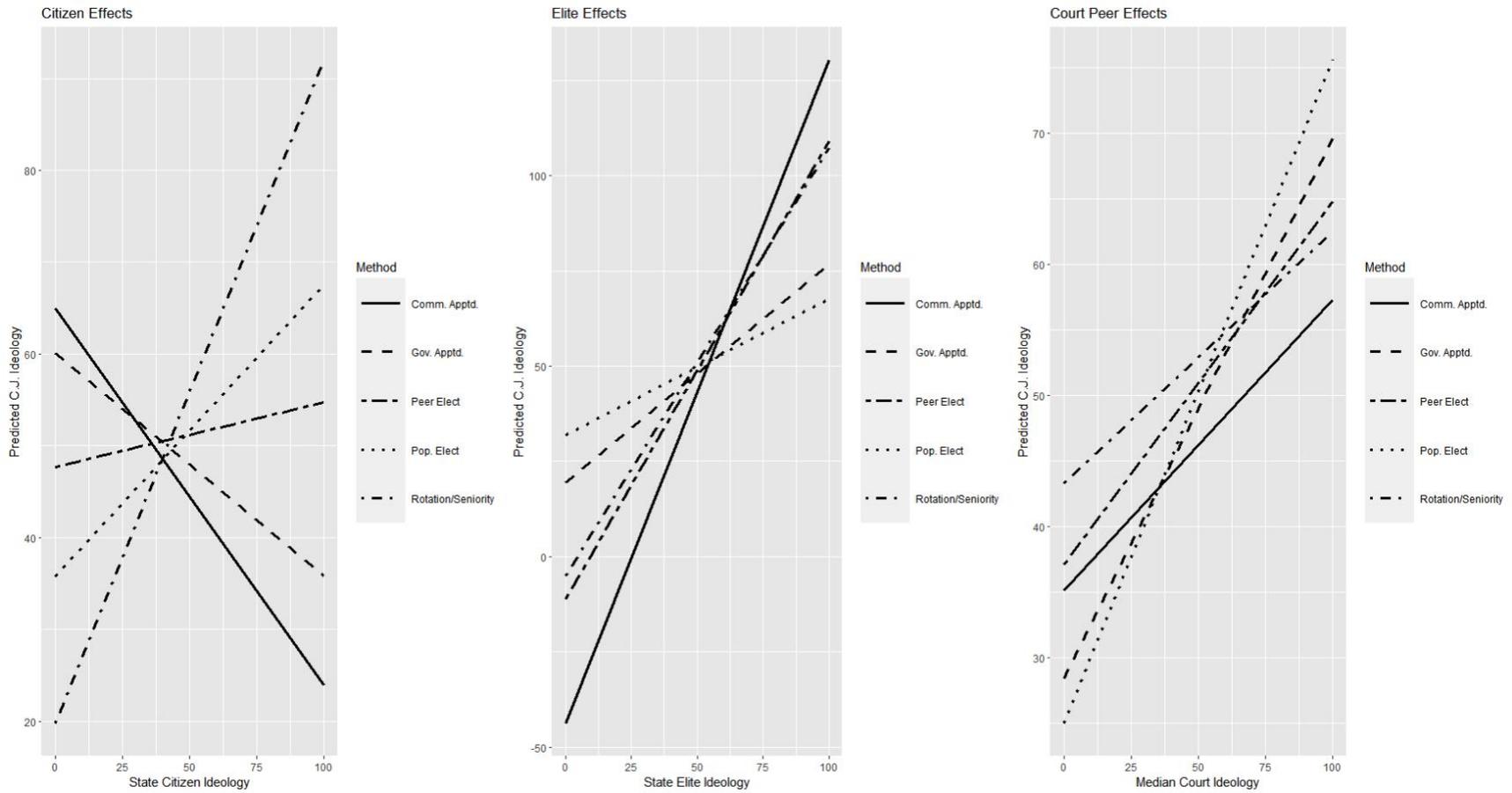


Figure 2: Effects of institutional selection mechanisms across different actors' ideological preferences

Table 1. Chief Justice Selection Methods, 2020

State	Selection method	State	Selection method
Alabama	PE	Montana	NPE
Alaska	PV	Nebraska	GOV ⁶
Arizona	PV	Nevada	ROT ⁷
Arkansas	NPE	New Hampshire	GOV ⁵
California	GOV ¹	New Jersey	GOV ⁴
Colorado	PV	New Mexico	PV
Connecticut	GOV ²	New York	GOV ⁴
Delaware	GOV ³	North Carolina	PE
Florida	PV	North Dakota	JUD
Georgia	PV	Ohio	NPE ⁸
Hawaii	GOV ⁴	Oklahoma	PV ⁹
Idaho	PV	Oregon	PV
Illinois	PV	Pennsylvania	SEN
Indiana	JNC	Rhode Island	GOV ³
Iowa	PV	South Carolina	LEG
Kansas	SEN	South Dakota	PV
Kentucky	PV	Tennessee	PV
Louisiana	SEN	Texas	PE ⁹
Maine	GOV ²	Utah	PV
Maryland	GOV	Vermont	GOV ³
Massachusetts	GOV ⁵	Virginia	PV
Michigan	PV	Washington	PV
Minnesota	NPE	West Virginia	PV
Mississippi	SEN	Wisconsin	PV
Missouri	PV	Wyoming	PV

Information from the Council of State Governments, 2019. PV = Peer Vote, GOV = Gubernatorial appointment, JNC = Judicial nominating commission, JUD = Election by supreme and district judges, LEG = Legislative appointment, NPE = Nonpartisan election, PE = Partisan election, ROT = Rotation by seniority, SEN = Seniority

¹with consent of Commission on Judicial Appointments

²with consent of the legislature

³from JNC with consent of legislature

⁴from JNC with consent of senate

⁵with consent of executive council

⁶from JNC

⁷most senior justice by commission is chief justice; if tie chief justice chosen by lot

⁸Candidates chosen in partisan primaries but general election is nonpartisan

⁹same method used for both courts of last resort (state supreme court and court of criminal appeals)

Table 2: Chief Justice Selection System Classifications

<i>Commission</i>	
California	New Hampshire
Delaware	New Jersey
Hawaii	New York
Indiana	Rhode Island
Massachusetts	Vermont
Nebraska	
<i>Government</i>	
Connecticut	South Carolina
Maine	
Maryland	
<i>Peer Election</i>	
Alaska	North Dakota
Arizona	Oklahoma
Colorado	Oregon
Florida	South Dakota
Georgia	Tennessee
Idaho	Utah
Illinois	Virginia
Iowa	Washington
Kentucky	West Virginia
Michigan	Wisconsin
Missouri	Wyoming
New Mexico	
<i>Popular Election</i>	
Alabama	North Carolina
Arkansas	Ohio
Minnesota	Texas
Montana	
<i>Rotation/Seniority Assignment</i>	
Kansas	Nevada
Louisiana	Pennsylvania
Mississippi	

Table 3: Mean Chief Justice PAJID Scores across Selection Systems, 1970-2020

Chief Justice Selection System	Mean PAJID Score
Commission	49.8
Government (without commission)	55.7
Peer election	48.6
Popular election	39.0
Rotation/ seniority	55.8

Table 4: Descriptive Statistics

Variable	Description	Mean (Std. Dev.)
<i>Dependent Variable</i>		
CJ Ideology	Chief justice's PAJID ideology, measured from conservative-to-liberal	49.24 (28.50)
<i>Independent Variables</i>		
Commission	Dichotomous variable indicating whether chief justice is chosen by commission appointment	0.12 (0.33)
Government	Dichotomous variable indicating whether chief justice is chosen by a governor	0.07 (0.25)
Peer Elect	Dichotomous variable indicating whether a chief justice is elected by their peers	0.54 (0.50)
Popular Election	Dichotomous variable indicating whether a chief justice is elected by the public (reference category)	0.11 (0.32)
Rotation/Seniority	Dichotomous variable indicating whether a chief justice is determined by rotation or seniority	0.15 (0.36)
Citizen Ideology	Ideology of a state's electorate, measured from conservative-to-liberal	45.94 (15.87)
Elite Ideology	Ideology of a state's elites, measured from conservative-to-liberal	51.67 (11.97)
Median Court Ideology	The median PAJID ideology of a state supreme court, measured from conservative-to-liberal	48.95 (25.64)
Female	Dichotomous variable indicating whether a chief justice is female	0.16 (0.36)
Nonwhite	Dichotomous variable indicating whether a chief justice is nonwhite	0.07 (0.26)
Appointed	Dichotomous variable indicating whether a chief justice served on a court in which members were chosen via elite appointment compared to popular election	0.47 (0.50)

Table 5: Predicting Chief Justice Ideology (1970-2020)

Variable	$\hat{\beta}_k$	$\hat{\sigma}_{\hat{\beta}_k}$	p
<i>Main Institutional Effects</i>			
Commission	-27.88*	13.58	0.04
Government	17.95	12.94	0.17
Peer Elect	-20.11	11.41	0.08
Rotation/Seniority	-39.69*	16.12	0.02
<i>Main Ideological Effects</i>			
Citizen Ideology	0.32*	0.14	0.02
Elite Ideology	0.36*	0.17	0.04
Median Court Ideology	0.51*	0.07	0.00
<i>Interaction Effects</i>			
Citizen Ideology \times Selection Method			
Commission	-0.73*	0.31	0.02
Government	-0.56*	0.23	0.02
Peer Elect	-0.25	0.20	0.21
Rotation/Seniority	0.40	0.22	0.07
Elite Ideology \times Selection Method			
Commission	1.38*	0.42	0.00
Government	0.22	0.58	0.71
Peer Elect	0.84*	0.23	0.00
Rotation/Seniority	0.76*	0.29	0.01
Median Court Ideology \times Selection Method			
Commission	-0.28*	0.12	0.03
Government	-0.09	0.32	0.77
Peer Elect	-0.23*	0.09	0.02
Rotation/Seniority	-0.31*	0.10	0.00
<i>Other Controls</i>			
Female	4.44*	1.93	0.03
Nonwhite	7.91*	2.98	0.01
Appointed	7.89*	3.14	0.02
<i>OLS Estimate</i>			
Intercept	-13.23	7.23	0.07
$F = 51.91$			
$R^2 = 0.48$			
$N = 496$			

Notes: The dependent variable is a chief justice's ideology at the time of selection. Coefficient estimates are derived via ordinary least squares, and robust standard errors are clustered by state. Column symbols represent the following: $\hat{\beta}_k$ are partial slope coefficients; $\hat{\sigma}_{\hat{\beta}_k}$ are standard errors; and p represents p -values. Asterisks denote statistical significance at the α -threshold of 0.05 (two-tailed).

Table 6: Standardized Effects of Selection Methods and Selection Authority Ideology

Selection Method	Citizen Ideology	Elite Ideology	Med. Court Ideology
Commission	-24.8%	164.4%	28.2%
Government	-14.6%	32.7%	55.5%
Peer Elect	4.5%	78.8%	32.6%
Popular Election	22.4%	18.7%	70.2%
Rotation/Seniority	55.4%	68.3%	20.5%

Notes: Table entries represent the predicted percentage change in chief justice liberalism given a change from one standard deviation below, to one standard deviation above the mean liberalism of citizens, elites, and median court members.