

# **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 2017. 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 commission-assisted 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.<sup>1</sup> 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.”<sup>2</sup> 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

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<sup>1</sup> See Sandomir (2021).

<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>3</sup> 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.<sup>4</sup> 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

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

a justice 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."<sup>5</sup> 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

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<sup>5</sup> 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.<sup>6</sup> 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.

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<sup>6</sup> 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 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 (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 (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. We anticipate that the

degree of ideological concordance is 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 5 to 9 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).<sup>7</sup> 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

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<sup>7</sup> The failure of Minnesota judicial 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.<sup>8</sup> 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 linear multiple regression model. Our data include a complete list of chief justice selection events that occurred in the states between 1970 and 2017. 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. These data include 483 chief justice selection events (with 444 unique chief justices).

Our dependent variable measures each chief justice's political ideology at the time of their selection. For this, we use the most complete measure of ideology for the period under

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<sup>8</sup> 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.

analysis—PAJID scores (Brace, Langer, and Hall 2000), which Hughes, Wilhelm, and Wang (Nd) update for the years 1970 to 2019. For the 444 unique chief justices in our sample, we identify PAJID scores for 94.4 percent of all individuals.<sup>9</sup>

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).<sup>10</sup> 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.<sup>11</sup>

[Table 2 about Here]

Some institutional selection systems appear to produce chief justices who are more liberal/conservative compared to others. We calculate the mean chief justice ideology across each of the five selection system types and summarize these in Table 3. Note that popularly elected chief justices are the most conservative, on average. This finding primarily reflects the fact that more conservative, southern states like Alabama, Arkansas, and Texas are more likely to use popular elections to select their chief justices compared to more liberal ones. As such, we also observe that chief justices who are government appointed tend to be more liberal than most

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<sup>9</sup> Our supplementary appendix includes a comparison of models using PAJID data to models that use more recent ideology measures (Bonica and Woodruff 2015 and Windett, Harden, and Hall 2015). These recent data are more sophisticated than PAJID but significantly less available for the years under analysis.

<sup>10</sup> 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 “government appointment” category includes both governor and legislative selection states that are unconstrained by commission. Our “commission-assisted” category includes those states that may use governor appointment but require selection or approval of commission in some way.

<sup>11</sup> 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.

of their counterparts (with the exception of chiefs chosen at random or by rotation, for which we have no a priori ideological expectations). Chief justices chosen by commission or peer election, however, are more moderate on average compared to others.

[Table 3 about Here]

Our primary variables of interest help gauge the effect 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.<sup>12</sup> 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 data from Berry et al. (1998; 2012) to represent elite and citizen ideology. These measures are all scaled conservative-to-liberal (0 to 100).<sup>13</sup> 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 separate regressions for each of the five methods of chief justice selection.

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<sup>12</sup> For the regression models below, a court's median ideology is measured as the median PAJID score on a given court at the time of the chief's selection.

<sup>13</sup> We consider the potential for a non-trivial endogeneity problem. Specifically, PAJID scores on the left-hand side of the regression equation are included with Berry scores on the right-hand side. Endogeneity should be considered because PAJID data calculations include Berry data estimates. To address this criticism, we re-estimated every statistical model using the other two dominant measures for state supreme court ideology—Bonica and Woodruff's (2015) campaign finance measure and Windett, Harden, and Hall's (2015) dynamic ideal point measure derived from voting behavior on the state courts of last resort. We present the results from these robustness checks in the supplementary appendix. Results for the models with sufficient samples are broadly supportive of the results from our models including PAJID scores.

Our ideological variables for voter and elite ideology are measured on a conservative-to-liberal scale, as is chief justice ideology and the ideology of median supreme court justices. For this reason, we expect the relationship between selector ideologies and chief justice ideology to be positive, provided a relationship exists. Of course, we posit no relationship between any of our ideological controls and chief justice ideology among states using rotation or seniority.

Our models include two additional control variables. 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 15.9 percent female chief justice selection events and 7.0 percent nonwhite chief justice selection events. In Table 4, we provide descriptions and summary statistics for each of our variables of interest.

[Table 4 about Here]

Given that our dependent variable is measured continuously, we estimate ordinary least squares regression models. We find no evidence of heteroskedasticity in any of the models, and therefore do not estimate robust standard errors. We also find no evidence of model misspecification using a Ramsey RESET test for each of our regression models. We account for heterogeneity within each state court using fixed effects for each state.

## **Results**

The results from our regression models appear in Table 5. Each column represents a unique linear regression model focusing upon a different method of chief justice selection.

[Table 5 about Here]

The first column of Table 5 presents results for commission-assisted selection systems. Consistent with expectations, chief justice ideology in these states is positively and significantly

associated with the preferences of government elites. This means that as government elites become more liberal, so too do chief justices in these states. What does not conform to expectations are states with government appointment systems, shown in the next column. Results of this analysis demonstrate no significant evidence that chief justice ideology is influenced by the ideology of those charged with selecting the chief justice. Instead, our results suggest that chief justice ideology on these courts moves in the opposite direction of *voter* ideology. In other words, as voters become more liberal chief justices become more conservative. This is an interesting finding but not directly relevant to our key hypothesis.

Evidence from peer selection states is presented in the third column, and supports our expectations as median court ideology is significant and positively associated with chief justice ideology in these states. Of course, our overall results indicate an important consideration for the role that state supreme court preferences have upon chief justice ideology. While we expected a relationship between court ideology and chief justice ideology in systems in states that utilize peer selection, median court ideology is significantly and positively associated with chief justice ideology in every system *not* using rotation or random chief justice assignment. Thus, it appears that most selection systems have a tendency to select chief justices who are relatively similar to the court's median justice.

Analysis of states that use popular elections is presented in the fourth column. Our findings show that the ideology of state supreme court chief justices moves in tandem with both voters and elites, but that the effect from voters is stronger all things being equal. An increase in elite liberalness from one standard deviation less than the mean to one standard deviation greater with the mean is associated with a 49 percent increase in chief justice liberalness. A similar shift in state voter liberalness is associated with a 79 percent increase in chief justice liberalness. This

evidence also supports our hypothesis that the selectors of state supreme court chief justices influence the kind of chief justice selected.

We finally consider the effects of chief justice ideology in states using rotation or random selection. We hypothesized no relationship between citizen ideology, elite ideology, or court ideology on chief justice preferences in these states, and the fifth column of results in Table 5 confirms these expectations. Similarly, our control variables for race and gender have no significant relationship to chief justice ideology except as it relates to popular election states. There, we find that female chief justices are predicted to be approximately 33 percent more liberal compared to their male counterparts, all things being equal.

## **Conclusion**

In this research, we considered how the ideologies of chief justices in American high courts are influenced by the intersection of institutional selection mechanisms and the values of those charged with selecting them. We argued that chief justice selection methods are unlikely to influence chief justice ideology directly (cf. Langer and Wilhelm 2005). Instead, selection rules empower those charged with choosing chief justices to produce court leaders who reflect their own preferences.

Overall, we found general support for our argument. Our results indicate that states where chief justices are selected directly by voters produce chiefs with preferences akin to those voters. States using elite appointments tend to produce chief justices who reflect elite attitudes. States using peer selection tend to produce chiefs who reflect the preferences of their colleagues on the court. And states choosing chief justices at random produce chiefs with no discernable connection to the preferences of voters, elites, or judicial colleagues.

These results are instructive as state legislators and courts consider whether to maintain or reform their methods for choosing a chief justice. Of relevance is the debate about popular control of judges. 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, our results suggest that elites choose chief justices who are ideologically similar. Specifically, we found that 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. We found similar trends 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 suggest this 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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**Table 1. Chief Justice Selection Methods, 2020**

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

<sup>1</sup>with consent of Commission on Judicial Appointments

<sup>2</sup>with consent of the legislature

<sup>3</sup>from JNC with consent of legislature

<sup>4</sup>from JNC with consent of senate

<sup>5</sup>with consent of executive council

<sup>6</sup>from JNC

<sup>7</sup>most senior justice by commission is chief justice; if tie chief justice chosen by lot

<sup>8</sup>Candidates chosen in partisan primaries but general election is nonpartisan

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

**Table 2: Chief Justice Selection System Classifications**


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<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	

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**Table 3: Mean Chief Justice PAJID Scores across Selection Systems, 1970-2017**

<b>Chief Justice Selection System</b>	<b>PAJID Scores</b>
Commission	49.51 (N=53)
Government (without commission)	54.86 (N=31)
Peer election	48.58 (N=254)
Popular election	40.30 (N=50)
Rotation/ seniority	57.68 (N=68)

Notes: Table entries represent means with sample sizes in parentheses.

**Table 4: Descriptive Statistics**

<b>Variable</b>	<b>Description</b>	<b>Mean (Std. Dev.)</b>
<i>Dependent Variable</i>		
CJ PAJID-Score	Chief justice's adjusted PAJID ideology, measured from conservative-to-liberal	49.56 (27.98)
<i>Independent Variables</i>		
Commission	Dichotomous, whether chief justice is chosen by commission appointment	0.12 (0.32)
Government	Dichotomous, whether a chief justice is chosen by the government	0.07 (0.25)
Peer Elect	Dichotomous, whether a chief justice is elected by their peers	0.56 (0.50)
Popular Election	Dichotomous, whether a chief justice is elected by the public (reference category)	0.11 (0.31)
Rotation/Seniority	Dichotomous, whether a chief justice is determined by rotation or seniority	0.16 (0.36)
Citizen Ideology	Ideology of a state's electorate, measured from conservative-to-liberal	46.70 (14.98)
Elite Ideology	Ideology of a state's elites, measured from conservative-to-liberal	49.78 (13.53)
Median PAJID-Score	The median PAJID ideology of a state supreme court, measured from conservative-to-liberal	49.72 (25.34)
Female	Dichotomous, whether a chief justice is female	0.16 (0.37)
Nonwhite	Dichotomous, whether a chief justice is nonwhite	0.07 (0.26)

**Table 5: Predicting Chief Justice Ideology in State Supreme Courts (1970-2017)**

Variable	Commission		Government		Peer Elect		Popular Elect		Rotation/Random	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$								
Citizen Ideology	-0.30 (0.66)	<i>n.s.</i>	-1.56* (0.83)	-50.41	0.07 (0.19)	<i>n.s.</i>	0.81* (0.40)	79.47	-0.14 (0.43)	<i>n.s.</i>
Elite Ideology	1.84* (0.50)	334.41	-0.83 (0.69)	<i>n.s.</i>	-0.36* (0.14)	-18.36	0.59* (0.23)	48.65	0.29 (0.36)	<i>n.s.</i>
Med. Court Ideology	0.27* (0.16)	34.25	0.57* (0.26)	77.34	0.58* (0.08)	84.19	0.67* (0.18)	112.74	0.14 (0.24)	<i>n.s.</i>
Female	-1.79 (12.15)	<i>n.s.</i>	18.65 (15.54)	<i>n.s.</i>	-0.90 (4.23)	<i>n.s.</i>	12.42* (6.95)	32.85	8.48 (9.70)	<i>n.s.</i>
Nonwhite	-9.39 (20.28)	<i>n.s.</i>	15.61 (20.88)	<i>n.s.</i>	7.44 (6.01)	<i>n.s.</i>	-1.35 (14.53)	<i>n.s.</i>	16.37 (18.27)	<i>n.s.</i>
Intercept	-61.75 (40.33)	--	173.08* (75.56)	--	58.28* (12.48)	--	-37.75* (18.91)	--	21.28 (24.61)	--
<i>F</i>	2.48		2.26		4.05		3.47		2.91	
<i>R</i> <sup>2</sup>	0.50		0.50		0.32		0.53		0.41	
<i>N</i>	53		30		246		50		68	

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different method by which chief justices are selected. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed). The symbol,  $\hat{\beta}_k$ , represents the partial slope coefficient for a given variable;  $\hat{\sigma}$  represents its standard error;  $\% \Delta \hat{Y}_i$  represents the percentage change in the predicted chief justice's ideology given a shift from one standard deviation below an independent variable's mean to one standard deviation above it (continuous variables) or a shift from an independent variable's minimum to maximum (dichotomous variables); and *n.s.* indicates a variable is not statistically significant.

## Appendix

Here we provide additional robustness checks for our empirical models by considering other measures of state supreme court justice ideology. To address potential endogeneity concerns, we re-estimate each of the models presented in Table 5 with two additional measures of state supreme court justice ideology that are unrelated to either the PAJID or Berry et al. scores. The first derives from Bonica and Woodruff's (2015) examination of campaign donations and receipts. The second derives from Windett, Harden, and Hall's (2015) examination of voting patterns on state supreme courts. Both of these scores exist on a liberal-to-conservative scale.

While these more recent measures of state supreme court ideology are methodologically superior compared to the PAJID scores (see Bonica and Woodruff 2015 and Windett, Harden, and Hall 2015), they have limited availability for the period under analysis (1970 to 2017). For example, while we have PAJID data for approximately 94 percent of all chief justice selection events in our original sample, Bonica and Woodruff (2015) scores exist for only 65 percent of all observations. while Windett, Harden, and Hall (2015) data exist for 32 percent of all chief justice selection events. Given the limited observations, most of our empirical models that use these data have degrees of freedom issues. For this reason, we use these models as robustness checks only.

An important note: the original PAJID scores were measured on a 0 to 100, conservative-to-liberal scale. We readjust this scale to be liberal-to-conservative to make these measures more comparable to others under consideration. To reorient the PAJID scores, we multiply each estimate by -1 then measure each revised PAJID score as the number of standard deviations it falls from the sample mean. We then center the distribution of rescaled PAJID scores to 0 by adding to each mean of the rescaled sample's value. The result is a revised measure of PAJID

that spans from -1.93 (most liberal individual) to 1.64 (most conservative) with an average ideology of 0.00.<sup>14</sup>

We present results from statistical regression models in Tables A1 through A5. Each table contains regression results for a given method of chief justice selection—commission, government, peers, the public, and rotation/random selection methods. The first set of regression results appear in Table A1 and include estimates related to commission appointed chief justices. The first column of results contains estimates using PAJID data for chief justice ideology and the ideology of the median member of the court at the time of their selection. The second column contains results derived from Bonica and Woodruff (2015) ideological estimates, and the last column contains results derived from Windett, Harden, and Hall’s (2015) ideological estimates.

[Table A1 about Here]

The results for states with commission-assisted chief justices are presented in Table A1. Across the three columns of results, we only find evidence in the first that chief justice ideology is consistent with that of state elites per our hypothesis. In two of the three models, we find that chief justice ideology tracks with that of the median member of the court at the time of selection. The final column of results finds no statistically significant link between any of the variables presented and the ideology of the chief justice. It should be noted that, due to the limited number of observations in the second and third result columns, caution is warranted about firm generalizations.

[Table A2 about Here]

Table A2 contains regression results from models in which chief justices are chosen via government selection. Here, the degrees of freedom issues identified in Table A1 are even more

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<sup>14</sup> Because each transformation of the original PAJID score is linear, our transformed PAJID scores are perfectly collinear with the original ones ( $r = 1.00$ ).

pronounced. Our model using BW data contains only 13 observations, while our model using WHH data includes only 8 observations. That said, we find no evidence across the three models that elite ideology plays an outsized role in determining the ideology of the chief justice as we anticipated. Instead, our results show that chief justices have preferences that move in the *opposite* direction as those of voters in two of the three models. Further, in two of the three models, we find evidence that a chief justice's ideology is significantly associated with median court ideology at the time of selection. This is further evidence that selection systems tend to produce like-minded justices over time.

[Table A3 about Here]

In Table A3, we present results from states in which chief justices are chosen via peer selection. These results allow us to draw firmer generalizations as there is no apparent sample size issue. Across all three sets of results, we find that a chief justice's ideology at the time of their selection is associated with the ideology of the median member of a given court, all things being equal. This evidence supports our primary hypothesis.

[Table A4 about Here]

Table A4 contains statistical regression results amongst states using popular elections to select chief justices. While we argued that chief justices chosen by the electorate should reflect the latter's preferences, we only find evidence of this relationship in the first column of results. Once again, however, limited sample sizes in the models using BW and WHH data prevent us from drawing strong conclusions about the nature of these relationships. The second column of results shows no statistically significant relationship between any of the variables presented and

chief justice ideology, and none of the selection authority variables are significant in the final column of results.

[Table A5 about Here]

Finally, regression results from states utilizing rotation or random selection methods for chief justice selection appear in Table A5. We posited no directional relationships between any of our selection authorities measures and the ideology of the chief justice and find no significant relationship between any of these variables and chief justice ideology in the first or third column of results. The second column of results indicates that chief justice ideology tracks with the ideology of the median justice at the time of chief justice selection, all things being equal.

**Table A1: Predicting Chief Justice Ideology in Commission Selection Systems (1970-2017)**

Variable	PAJID Scores		BW ('15) Scores		WHH ('15) Scores	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$
Citizen Ideology	0.01 (0.02)		-0.02 (0.02)		0.01 (0.02)	
Elite Ideology	-0.07* (0.02)	-144.35	-0.01 (0.02)		-0.00 (0.01)	
Median Court Ideology	0.27* (0.16)	277.78	0.97* (0.37)	239.22	4.79 (5.30)	
Female	0.06 (0.43)		0.01 (0.38)		-0.12 (0.22)	
Nonwhite	0.34 (0.72)		-0.01 (0.53)		0.40 (0.36)	
Intercept	3.49* (1.47)		1.18 (1.27)		1.11 (1.80)	
<i>F</i>	2.48		1.85		0.63	
<i>R</i> <sup>2</sup>	0.50		0.57		0.80	
<i>N</i>	53		37		16	

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different source of coding for the dependent variable and median court ideology. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed).

**Table A2: Predicting Chief Justice Ideology in Government Selection Systems (1970-2017)**

Variable	PAJID Scores		BW ('15) Scores		WHH ('15) Scores	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$
Citizen Ideology	0.06* (0.03)	108.44	0.08* (0.03)	107.58	0.01 (0.01)	
Elite Ideology	0.03 (0.02)		-0.01 (0.05)		0.02 (0.03)	
Median Court Ideology	0.57* (0.26)	173.33	0.03 (0.80)		1.46* (0.54)	172.60
Female	-0.67 (0.56)		-0.74 (0.54)		-0.19 (0.30)	
Nonwhite	-0.56 (0.75)		-0.49 (0.33)		-1.31* (0.58)	-1310.00
Intercept	-5.43* (2.96)		-5.10* (2.60)		-1.16 (1.60)	
<i>F</i>		2.26		6.46		10.80
<i>R</i> <sup>2</sup>		0.50		0.95		0.96
<i>N</i>		30		13		8

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different source of coding for the dependent variable and median court ideology. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model except the third, where limited degrees of freedom prevent their inclusion. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed).

**Table A3: Predicting Chief Justice Ideology in Peer Selection Systems (1970-2017)**

Variable	PAJID Scores		BW ('15) Scores		WHH ('15) Scores	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$
Citizen Ideology	-0.00 (0.01)		0.00 (0.01)		0.01 (0.01)	
Elite Ideology	0.01* (0.01)	250.00	0.01 (0.00)		-0.00 (0.00)	
Median Court Ideology	0.58* (0.08)	198.11	0.73* (0.10)	167.27	1.60* (0.27)	170.37
Female	0.03 (0.15)		-0.11 (0.11)		-0.11 (0.08)	
Nonwhite	-0.27 (0.21)		-0.09 (0.16)		-0.21 (0.13)	
Intercept	-1.34* (0.45)		-0.48 (0.37)		-0.02 (0.34)	
<i>F</i>		4.05		6.29		9.34
<i>R</i> <sup>2</sup>		0.32		0.53		0.79
<i>N</i>		246		175		85

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different source of coding for the dependent variable and median court ideology. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed).

**Table A4: Predicting Chief Justice Ideology in Popular Selection Systems (1970-2017)**

Variable	PAJID Scores		BW ('15) Scores		WHH ('15) Scores	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$
Citizen Ideology	-0.03* (0.01)	-128.36	0.01 (0.02)		-0.01 (0.01)	
Elite Ideology	-0.02* (0.01)	-93.44	-0.01 (0.01)		-0.01 (0.01)	
Median Court Ideology	0.67* (0.18)	227.78	0.41 (0.36)		0.54 (0.72)	
Female	-0.44* (0.25)	-107.14	0.03 (0.27)		-0.21 (0.12)	
Nonwhite	0.05 (0.52)		-0.25 (0.50)		-0.96* (0.26)	-32233.33
Intercept	1.93* (0.74)		0.33 (0.84)		1.22* (0.54)	
<i>F</i>		3.47		2.27		7.97
<i>R</i> <sup>2</sup>		0.53		0.54		0.92
<i>N</i>		50		33		20

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different source of coding for the dependent variable and median court ideology. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed).

**Table A5: Predicting Chief Justice Ideology in Rotation/Random Selection Systems (1970-2017)**

Variable	PAJID Scores		BW ('15) Scores		WHH ('15) Scores	
	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$	$\hat{\beta}_k (\hat{\sigma})$	$\% \Delta \hat{Y}_i$
Citizen Ideology	0.00 (0.02)		-0.01 (0.01)		-0.00 (0.02)	
Elite Ideology	-0.01 (0.01)		0.00 (0.01)		-0.01 (0.02)	
Median Court Ideology	0.14 (0.24)		1.12* (0.38)	180.77	1.02 (0.76)	
Female	-0.30 (0.35)		-0.32 (0.22)		-0.28 (0.30)	
Nonwhite	-0.59 (0.65)		0.44 (0.42)		--	
Intercept	0.77 (0.81)		0.77 (0.64)		0.81 (0.85)	
<i>F</i>	2.91		5.97		1.59	
<i>R</i> <sup>2</sup>	0.41		0.65		0.50	
<i>N</i>	68		51		27	

Notes: The dependent variable is a chief justice's ideology at the time of selection. Each column reflects a different source of coding for the dependent variable and median court ideology. Coefficient estimates are derived via ordinary least squares. State-level fixed effects are included in each model. Asterisks denote statistical significance at the  $\alpha$ -threshold of 0.05 (one-tailed).