State Supreme Court Majority Opinion Assignment

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Abstract
The factors that affect the assignment of the majority opinion in the U.S. Supreme Court have been examined many times. The extent of the focus on this topic reflects both the importance of the assignment decision (which can affect the nature of the Court’s policy pronouncements) and the scope of the theories that can be tested in that context. However, there are many theories that cannot be tested in this context due to the limited institutional and demographic variation on the Court. Given these limits, we examined the opinion assignment in a previously unexplored context: state courts of last resort. Among other things, we find that expertise, equity, race, gender, strategy, and judicial selection method have either direct or mediating effects on discretionary opinion assignment decisions.
Introduction

For decades, scholars have sounded the need to look beyond the US Supreme Court to more fully understand the American judiciary (e.g., Murphy 1959; Romans 1974, 38). The development of federal appellate and district court studies (e.g., Carp and Rowland 1983; Songer 1982; 1988; Songer et al. 1994; Goldman 1975; Howard 1981) and work at the state court level (e.g., Brace and Hall 1995; Jaros and Canon 1971; Tarr and Porter 1988) responds to those calls.

Nevertheless, there is still much we do not know in the field of judicial politics as it pertains to the lower federal and all state courts. In this piece, we focus on the dearth of majority opinion assignment research at the state supreme court level. Much of what we currently know about majority opinion assignment is based on studies of the US Supreme Court (e.g., Brenner and Hagle 1996; Slotnick 1997a; 1979b; Maltzman and Wahlbeck 1996; 2004; Maltzman et al. 2000), but these findings are not necessarily generalizable to state courts of last resort, which are marked by more diverse benches, institutional operations, and methods of judicial selection. For example, while one might certainly draw parallels between the influence of ideology and expertise on majority opinion assignment across both contexts, the US Supreme Court, despite becoming more diverse, has afforded scholars few opportunities to test how race and gender might shape opinion assignment over time. Moreover, unlike US Supreme Court justices, many state high court judges are subject to electoral pressures, which might influence the nature of the opinion assignment process at this level.

To further analyze the role of these and other variables on majority opinion assignment, we turn to state supreme courts. Not only are state supreme courts better suited to extend an analysis of factors influencing majority opinion assignment, these courts are significant policy makers themselves (Bonneau, Hammond, Maltzman, & Wahlbeck 2007; Brace & Hall 2009;
Devins 2010; Emmert 2009; Gibson 2008; Hall 2005, 2009a, 2009b; Hall & Bonneau 2006; D. Songer & Tabrizi 2009; Woodruff 2010) and are responsible for disposing of a great number of legal questions.1

Our paper proceeds as follows. In the literature review, we briefly discuss the importance of majority opinion assignment and underscore those dynamics known to shape the assignment decision in the federal courts. From this review, we develop a series of hypotheses to guide our analysis of majority opinion assignment in state supreme courts. We then describe our data and measures and present our analyses. We conclude with a discussion of findings and implications for the field.

Literature Review

The task of writing a court’s majority opinion is more than “a matter of protocol” (Maltzman & Wahlbeck 1996, 422, citing Douglas 1972), and judicial scholars have long recognized majority opinion assignment as a tool that can shape jurisprudence and, more broadly, public policy (Bonneau et al. 2007; Brenner 1982; Maltzman and Wahlbeck, 1996; Murphy 1964; Ulmer 1970). Because majority opinions articulate constitutional principles and policy considerations that govern a particular conflict and establish precedent, Slotnick (1979a, 60), in his study of majority opinion assignment in the US Supreme Court, observed that “designation of the majority opinion writer has critical significance for the kinds of public policy that ultimately emerge.”

Recognizing the significance of majority opinion assignment, scholars have articulated many factors that influence the assignment decision. Unfortunately, beyond Hall's (1990) description of the variations in the assignment procedures across states, we are not aware of any

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1 In 2008, just 35 of the state courts of last resort decided approximately 8,400 cases, and 19 of those states decided at least 2,100 cases by full opinion (NCSC 2010). By comparison, during the 2008 Term, the U.S. Supreme Court disposed of 83 cases with 74 signed opinions (Roberts 2010).
systematic analysis of majority opinion assignment in state supreme courts. We, therefore, draw heavily from other analyses to guide our present inquiry. We organize applicable findings around the themes of self-assignment and ideology; expertise; race and gender considerations; and administrative equity.²

We preface our discussion by noting that, while not exhaustive, these categories broadly capture the types of considerations that the formal majority opinion assigner may contemplate when making the writing assignment: the desire to use the assignment to further personal preferences and as an agenda setting tool (Bonneau et al. 2007; Brenner 1993; Maltzman, Spriggs, & Wahlbeck 2000); the confluence of personal stereotypes and decision heuristics (Sniderman, Brody, & Tetlock 1993); and administrative equity (Spaeth 1983).

**Self-assignment and Ideology.** Self-assignment along with assignment to a fellow judge who shares similar policy views are both intuitive methods by which a judge could express his or her personal policy preferences in a particular case. Scholars have confirmed the presence of such behavior in the US Supreme Court, where the chief justices have disproportionately assigned majority opinions to themselves and those most similar to themselves ideologically (Maltzman and Wahlbeck 2004; Rohde and Spaeth 1976; Segal and Spaeth 1993). With respect to state courts of last resort, it is not surprising that the chief justices with discretionary power generally did not admit to this practice in interviews with Hall (1989)—given the obvious social desirability bias. As such, we hypothesize that majority opinion assigners (MOAs) in state supreme courts will behave similarly. Specifically:

\[ H_1: \text{State supreme court majority opinion assigners are more likely to self assign than to task their colleagues.} \]

\[ H_2: \text{When state supreme court majority opinion assigners do not self assign, they are more likely to assign to those ideologically closest to themselves.} \]

² Similar categories are used by others (e.g., Slotnick 1979a).
However, the decision to self-assign should also be influenced by whether the judge is elected or appointed and whether the case is complex. From a rational choice perspective, the decision to self-assign depends upon a cost/benefit analysis. Benefits for all judges include the chance to craft policy in accordance with ideological preferences. Additionally, for elected judges, opinion writing is an opportunity to engage in “credit claiming,” to use Mayhew’s phrasing (see Mayhew 1974, 52-53), an activity that should be less prevalent among those appointed to state high courts. Costs include the time spent drafting the opinions, as well as opportunity costs. The temporal costs are at least a partial function of case complexity.

For an elected judge, therefore, the utility that one derives from self-assigning an opinion will likely be quite higher than the utility derived by appointed justices from the same activity. As such, we would expect that the costs from increasing complexity would quickly outweigh the benefits for appointed judges, such that they are only more likely to self-assign in the least complex cases. Moreover, costs resulting from complexity will at some point outweigh the benefits for appointed judges, resulting in a tendency toward assignment to other justices. Conversely, given the added benefits from self-assignment by elected justices, we expect them to exhibit a greater tendency for self assignment as complexity increases, when compared to appointed justices. However, even for elected justices, at some point, the increasing costs associated with complexity will outweigh the benefits, such that they will also eventually exhibit a tendency to assign cases to other justices as complexity increases.

\[ \text{H}_3: \text{Elected and appointed judges will tend to self-assign in easy cases and will avoid self-assignment in more complex cases.} \]

\[ \text{H}_4: \text{While appointed justices will only tend to self-assign in the easiest cases, elected justices will tend to self-assign in both easy and moderately complex cases.} \]
Prior studies also suggest that strategy may play a role in the majority opinion assignment process. In particular, US Supreme Court chief justices are more likely to assign the majority opinion to either the median or marginal justice in hopes of maintaining the majority coalition (e.g., Brenner 1982). Given the fragility of minimum winning coalitions (MWC), these studies generally assume that the coalition-maintenance assignment is most likely to occur in that context. Given the evidence that state supreme court justices are strategic actors (e.g., Hall 1992), we expect to find evidence of strategic assignment. As such, we posit the following:

\(H_5\): Overall, state supreme court justices are more likely to assign to judges who are ideologically proximate to the median justice.

\(H_6\): Justices are more likely to assign the majority opinion to judges who are ideologically proximate to the median justice in MWCs.

The desire to maintain majority coalitions in such situations may be especially strong among elected state supreme court judges. If that is the case, we would expect the following:

\(H_7\): Elected judges are more likely to assign the opinion to judges who are ideologically proximate to the median judge.

\(H_8\): The tendency to assign the majority opinion to judges who are ideologically proximate to the median in MWCs is greater for elected judges when compared to appointed judges.

**Expertise.** Researchers studying federal appellate courts and the United States Supreme Court have long observed that judge expertise/experience also plays a role in majority opinion assignment (Brenner and Hagle 1996; Cheng 2008; Cohen 2002; Howard 1981; Maltzman and Wahlbeck 2004; Maltzman et al. 2000; Slotnick 1979b). Potential judge-assignees with greater experience—a term that contemplates higher perceived intelligence, issue expertise, or length of

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3 Interestingly, Brenner and Spaeth (1988) find that the strategy is not effective; assigning the opinion to the marginal justice does not enhance the likelihood that the conference majority will survive.
judicial service—may be seen by assigners as more effective (Howard 1981) or more efficient (Brenner and Palmer 1988; Maltzman and Wahlbeck 1996).

While no one has directly measured justice expertise, some have used proxies like judicial experience. For example, several observers of the US Supreme Court note that “freshman” judges (relative newcomers to the bench) are less likely to receive writing assignments (Brenner and Hagle 1996; Maltzman et al. 2000), assuming that justices with more experience will write higher quality opinions with greater efficiency. Legal education via a “prestigious” law school could be an additional proxy for expertise (see Slotnick 1983, 573). Given that these laws schools are more selective, we might also expect that their graduates are, on average, more likely to absorb and comprehend legal information at a higher level than graduates of less prestigious schools. Moreover, even if graduation from a prestigious school does not reflect additional substantive expertise, if the majority opinion assigner believes that it does, then he or she might tend toward assigning majority opinions to graduates of elite schools. At least two different studies do indeed suggest that federal appellate judges use law school pedigree as a cue that reflects expertise. First, Landes et al. (1998) finds some evidence that U.S. Courts of Appeals judges from certain elite law schools are cited more often than judges from other schools. Second, Johnson et al. (2006) contend that Supreme Court justices are both aware of the pedigree of the litigators that orally argue before the Court, and they use the pedigree as a heuristic for determining expertise.

Additionally, the tendency to assign the opinion to expert judges should be more pronounced in complex cases, where expertise may be more necessary to craft a quality opinion. As such, we posit the following:
As a justice’s experience on the court of last resort increases, she is more likely to receive the assignment to craft the opinion of the court. This tendency should be more pronounced in complex cases.

Justices that graduate from prestigious law schools are more likely to receive the majority opinion assignment. This tendency should be more pronounced in complex cases.

**Race and Gender.** Race and gender stereotypes are potential cues we often use to develop assessments about other individuals. Political scientists have found evidence that women (Falk and Kenski 2006; Huddy and Terkildsen 1993) and racial minorities (Haynie 2002) are perceived as less competent than male counterparts. Presumably, this results from negative stereotypes that devalue their expertise. However, others suggest the impact of these stereotypes is context-dependent. For example, some research suggests men are perceived as more competent in “men’s” issues and women in “women’s” issues (Rosenwasser et al. 1987). Additionally, the impact of these stereotypes could be mitigated by institutional diversity. Building on Kanter (1977), Ely (1995) suggests that the increasing presence of women in an institution can reduce the influence of pernicious gender stereotypes. These theories suggest the following hypotheses:

- **H11:** State supreme court majority opinion assigners are more likely to assign writing to male than to female judges.
- **H12:** State supreme court majority opinion assigners are more likely to assign writing to women when the cases deal with women’s issues.
- **H13:** The higher the bench’s proportion of women, the less likely gender will influence the assignment decision.
- **H14:** State supreme court majority opinion assigners are more likely to assign writing to white than to non-white judges.

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4 It is also possible that racial diversity in an institution can have the same effect. We did not examine this possibility since few court of last resort panels were racially diverse during the time period we examined.
Equity. While opinion assignment can be used to externally influence the policy goals of the assigner, it is also used internally to ensure organizational efficiency and equity (Benesh et al. 1999; Howard 1981; Maltzman and Wahlbeck 1996; 2004). For example, Spaeth’s (1983) study of the Burger Court reveals a fairly equal distribution of opinion assignments across the justices, and a subsequent review also suggests that equity was an important factor in opinion assignment in the Burger (Maltzman et al. 2000) and Rehnquist Court (Maltzman and Wahlbeck 2004). Moreover, responding to Hall’s (1989) survey, state chief justices with discretionary assignment power generally emphasized the importance of workload equity. This suggests our final hypothesis:

\[ H_{15}: \text{State supreme court majority opinion assigners are more likely to assign the opinion of the court to judges that have fewer pending assignments.} \]

Research Design

Data, Dependent Variable, and Estimation Technique

We analyzed the population of U.S. state supreme court cases decided by signed opinion from 1995-1998 in the fourteen states\(^5\) that utilize some form of discretionary opinion assignment (either following the U.S. Supreme Court model or assignment by the chief justice in all instances), using the Brace-Hall State Supreme Court Data Project judge-level dataset.\(^6\) The dependent variable is whether the judge received the opinion assignment in the case. Therefore, the unit of analysis is the justice in the majority in the case.\(^7\) As such, we have multiple

\(^5\) The following states have some form of discretionary opinion assignment: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, New Jersey, Oregon, Pennsylvania, and Wyoming.

\(^6\) The co-principal investigators, Paul Brace and Melinda Gann Hall, constructed the dataset using funding from the National Science Foundation for four separate grants: "An Individual-Level State Supreme Court Database" (051660); 2) "Fifty State Supreme Court Data Project" (9911082); 3) "Fifty State Supreme Court Data Project" (9616891); and 4) "State Supreme Court Data Project" (9514975).

\(^7\) We were forced to exclude observations of judges who are neither white nor African-American since we could not include dummy variables for Asian-American and Latino/a judges. Those variables were perfectly correlated with other covariates, likely due to their concentration on a small number of courts combined with the relative paucity of
observations per case. Given that errors in explaining the assignment or non-assignment to one justice in the majority are likely to be correlated with the other observations within the case, spatial autocorrelation is a serious concern. Additionally, error dependence could also result from clustering at the state level and the failure to include some state-level covariates. As Arceneaux and Nickerson (2009) find, there is no one clear-cut solution to this problem, and many alternatives exist, including random effects, fixed effects and White-Huber clustered robust standard errors. We chose to present a logistic regression model with standard errors clustered by case along with state-level fixed effects. However, when we estimated the model using random effects logistic regression with uneven case-level panels and state-level fixed effects, none of the substantive results changed.

Main Independent Variables

**Majority Opinion Assigner (MOA):** MOA is a dummy variable coded 1 if the judge was the majority opinion assigner, 0 if the judge was not.

**Ideological Distance from the Majority Opinion Assigner (MOA):** As two variables in the analysis involve ideological distances, we must employ appropriate measures of state court judge ideology. For the purposes of the study, we measure the ideology of the judges using the party-adjusted surrogate judge ideology (PAJID) measures constructed by Brace et al. (2000) and subjected to rigorous tests of validity by their creators. This measure of justice ideology reflects the party affiliation of the justice as well as Berry et al.’s (1998) state-level ideology measures of the justice’s state during the year of appointment (elite ideology for appointed judges and citizen ideology for elected judges). Justices with higher values are more liberal than justices with lower values. The **Ideological Distance from the MOA** variable utilizes PAJID scores. This variable is

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Asian-American and Latino/a justices (they constitute less than 1.5 percent of the observations in the population for the 14 states we examined).
the absolute value of the distance between the judge’s and the MOA’s ideology scores. If justices
are more likely to assign to ideologically proximate colleagues, we expect to find a negative
relationship between this variable and the dependent variable.

**Ideological Distance from the Median:** Like the *Ideological Distance from the Majority
Opinion Assigner* measure, the *Ideological Distance from the Median* variable utilizes PAJID
scores. This variable reflects the absolute value of the difference between the justice’s PAJID
score and that of the median justice sitting on the panel. Larger values indicate that the judge is
more ideologically distant from the panel median. Given our hypotheses, we generally expect
negative effects.

**Justice Tenure:** *Justice Tenure* is simply the number of prior years the judge served on the
court. We expect to find that more experienced justices are more likely to author the opinion of
the court.

**Justice Law School Prestige:** *Justice Law School Prestige* is a surrogate measure for the
expertise of the judge. The variable is coded 1 if the judge graduated from a prestigious law
school; 0 if the judge graduated from a non-prestigious school. To determine elite status, we
borrow the measure developed by Slotnick (1983) and employed by Szmer et al. (2007) and
Szmer et al. (2010), which is based on a scale derived from a variety of rankings.8 Based on our

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8 Slotnick (1983) identified 15 prestigious law schools: Harvard, Yale, Chicago, Stanford, Columbia, Michigan,
Berkeley, Pennsylvania, New York University, Duke, Virginia, Texas, Cornell, Northwestern, and UCLA. It should
be noted that this measure is highly correlated with several independent measures, indicating substantial criterion
and construct validity (see Adcock and Collier 2001, 537). For example, with respect to criterion validity, 14 of the
15 elite schools are ranked in the top 15 of the 2008 *U.S. News and World Report* rankings. With respect to
construct validity, the Slotnick measure is highly correlated with several concepts which should be interrelated with
law school quality. For example, from 1950-2001, 13 of Slotnick’s schools were among the 15 largest producers of
U.S. Supreme Court clerks; 14 were in the top 16; and all 15 were in the top 21 (Szmer 2005). Similarly, using data
from the *Multi-User Database on the Attributes of United States Appeals Court Judges, 1801-2004* (Zuk et al.
2004), of the top producers of U.S. Courts of Appeals judges, the first nine schools are elites according to Slotnick
(1983), as are 11 of the top 16. Finally, the variable significantly explains changes in multiple concepts in different
contexts. For example, the probability of the success of attorneys arguing before the U.S. Supreme Court (Szmer et
al. 2010), as well as plaintiff’s attorneys and male attorneys facing women in U.S. Courts of Appeals cases (Szmer
et al. 2013) increases for graduates of law schools that are elite according to this measure. Additionally, U.S. Courts
expectations developed above, we posit that the coefficient will be positive.

**Woman Justice**: *Woman Justice* is a dummy variable coded 1 if the justice was a woman, 0 if the justice was a man. We expect to find negative effects of the *Woman Justice* variable on the likelihood of authoring the opinion of the court.

**African-American Justice**: *African-American Justice* is a dummy variable coded 1 if the justice was African-American, 0 if the justice was white.\(^9\) We expect to find a negative effect of the *African-American Justice* variable on the likelihood of authoring the opinion of the court.

**Equity**: The variable, *Equity*, is based on a measure developed by Maltzman et al. (2000), which seeks to capture the number of assignments received by the justice between conferences. Unfortunately, we do not have enough information available, either in the data set or the published opinions, to determine the timing of the conferences. Therefore, we constructed a proxy measure based on the number of opinions assigned to the justice in cases decided in the month prior to the decision date. To take into account relative variation in docket size across the courts, the measure is actually the difference between the number of opinions written by the judge and the median number of opinions written by all justices on that court during that time period. Since we assume MOAs will avoid assigning opinions to those who have written relatively more opinions in the recent past, we expect to find a negative coefficient.

**Moderator Variables**

As noted above, we posited many different interaction effects. Below is a description of the operationalizations of the moderator variables, followed by a list of the multiplicative terms and the expected directions of the coefficients based on our hypotheses.

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\(^9\) For the reasons noted above (see footnote 4), we excluded non-white, non-African-American justices.
**Majority Opinion Assigner (MOA) Elected Judge:** MOA Elected Judge is a dummy variable coded 1 if the MOA was selected by either a partisan or non-partisan election, 0 if the MOA was appointed.

**Complexity:** Prior studies have developed several proxy measures for case complexity. The number of legal provisions relevant to the case (Benesh and Reddick 2002; Maltzman et al. 2000, 46) and the presence of a cross appeal (Hettinger et al. 2004; 2006; Lindquist et al. 2007) are two prominent measures that have been included in prior studies of collegial court decision making that can be identified in the state supreme court dataset. Thus, we generated a scale measure for the variable, Complexity, from the factor scores of a principal components analysis of both constructs. The factor analysis generated one factor with an eigenvalue above one. Higher values of the scale indicate more complexity.

**Minimum Winning Coalition (MWC):** The MWC variable is dichotomous and equals 1 if the case was decided by a minimum winning coalition given the number of panelists and 0 if it was not.

**Percentage of Women Panelists:** This variable reflects the Percentage of Women Panelists other than the judge.

**Women’s Issue:** Women’s Issue is a dichotomous variable coded 1 if the case involved a so-called “women’s issue,” 0 if it did not. The definition of a women’s issue case was borrowed from Segal (2000), Walker and Barrow (1985) and Szmer et al. (2010). The construct is coded 1 if the case involved abortion, family issues (e.g., maternity, custody), or gender discrimination.
(e.g., equal pay, sexual harassment, and gender discrimination by a state actor). Descriptive statistics associated with this and all other independent variables are reported in Table 1.

[Table 1 Here]

**Multiplicative Terms**

Based on the hypotheses, we included the multiplicative terms listed in Table 2, along with the expected direction of the coefficients.

[Table 2 Here]

**Results**

The results of the logistic regression model are reported in Table 3 with discrete changes in the predicted probabilities for select independent variables reported in Table 4. As discussed above, we hypothesized that ideological, individual, and institutional variables might influence majority opinion assignments in state supreme courts, but their influence, in many instances, may be conditional upon certain case- and court-level variables (i.e., case complexity, the presence of a women’s issue, the presence of a minimum winning coalition, elected v. appointed MOA, the percentage of female judges on the panel). Because of this likelihood, it is important to interpret many of the results of the model in conditional terms. Further, due to inclusion of multiple three-way interaction terms, we also compute discrete changes in predicted probabilities for select independent variables at varying levels of the moderators. These figures are reported in Table 5.

[Tables 3, 4, & 5 here]

First, we hypothesized that state supreme court majority opinion assigners, in order to advance their own policy prerogatives, will be more inclined to assign an opinion to themselves rather than task a colleague. However, as we also hypothesized, the decision to self-assign

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10 In some instances, the coding of the issue variables in the state supreme court dataset did not delineate between gender and non-gender-based discrimination. In those instances, the case was assumed to be gender discrimination if the plaintiff was a woman.
should be influenced by whether the judge is elected and whether the case is complex. Specifically, we expected elected judges to be more likely than appointed judges to self-assign and for their incentive to take credit via majority opinion writing to be less diminished by case complexity. Though appointed judges might also desire to self-assign opinions to advance their own policy goals, we did expect appointed judges to be more likely to avoid self-assignment in more complex cases. The results with respect to these points are quite interesting. As indicated in Table 3, the stand alone Majority Opinion Assigner variable (MOA), which indicates whether an appointed justice is more likely to self-assign the majority opinion in a noncomplex case, is not positively related to the dependent variable at conventional levels of statistical significance. Thus, in this situation, there is not a particularly strong tendency for a justice to self-assign. In complex cases, however, there is a notable tendency for appointed judges to avoid self-assignment. The multiplicative term, \( MOA*Complexity \), is negatively signed as expected and is statistically significant.

Meanwhile, the data clearly support the hypothesis that elected state high court justices will self-assign either to advance their own policy preferences or for political gain. The variable interacting whether the judge is the MOA in a case (MOA) and whether the MOA is elected (MOA Elected Judge) is positive and statistically significant. Holding case complexity and the other variables in the model constant, the probability of a judge receiving an assignment increases from about 1 percent to nearly 12 percent if the judge is the MOA and the MOA is elected rather than appointed (see Table 5). Further, since the coefficient and significance of the three-way multiplicative term is of limited value, one must examine the nature of this relationship across multiple values of the complexity variable for both MOAs that are elected and for those that are appointed. As seen in Figure 1, though both elected and appointed MOAs
become less inclined to self-assign as case complexity increases, elected MOAs clearly have a higher complexity threshold. It is likely that, for these jurists, the benefits one accrues from writing an opinion oneself outweigh the costs over a broader range of case types than is the situation for those that are appointed.

[Figure 1 here]

We had also hypothesized that, when MOAs choose not to self-assign, a given judge’s chance of receiving a majority opinion assignment should increase if the judge is ideologically close to the MOA. Here as well, though, it is important to keep in mind the moderating influence of the MOA’s elected or appointed status. As seen in the table, the Ideological Distance from MOA variable is not statistically significant, with the constitutive variable indicating its influence in situations in which the majority opinion assigner is appointed (MOA Elected =0). Interestingly, as an individual judge’s ideological distance from an elected MOA increases, one’s chances of receiving a majority opinion assignment increases. The table indicates a positively signed and statistically significant multiplicative term including Ideological Distance from the MOA and MOA Elected Judge. On the flipside, the more proximate a given judge is to the majority opinion assigner in these circumstances, the less likely one is to receive the assignment. One possible explanation for this situation is that, rather than assign a majority opinion to a like-minded colleague, elected MOAs are self-assigning desirable cases and assigning a sizeable number of less desirable opinions to colleagues who are among the more distant members of the majority coalition.

Of course, with respect to opinions of policy import, prudence in building or maintaining a majority coalition would direct MOAs to avoid tapping ideologically extreme members of their courts and, rather, to consider a potential writer’s distance from the court’s median, opting to
select a member who is more proximate to that median member under most circumstances. Moreover, previous research undertaken on Supreme Court majority opinion assignment suggests the moderating influence of whether there is a minimum winning coalition (MWC), since that scenario may increase the tendency to assign to the median judges, since the coalition is more fragile (e.g., Brenner 1982). On this point, our findings are mixed. First, as seen in Table 3, the constitutive term, Ideological Distance from Median, indicates the influence of this distance variable when the MOA is appointed (MOA Elected=0) and there is not a minimum winning coalition (MWC=0). In this context, increases in a judge’s distance from his or her court’s median do not appear to be related to the likelihood of the judge receiving a majority opinion assignment. Moreover, based on the discrete changes presented in Table 5, appointed judges are actually more likely to assign the majority opinion to colleagues who are ideologically distant from the median panelist in MWCs. However, results from an analysis of conditional discrete changes in the probability of a given judge being assigned a majority opinion by an elected MOA (see Table 5) suggest that elected judges are indeed more likely to assign the opinion to justices who are ideologically proximate to the median, regardless of the size of the majority coalition. These findings seem to support our hypothesis that elected judges are more strategic than their appointed counterparts. However, we find no evidence that these judges consider coalition size. Of course, our failure to find evidence to support the MWC hypotheses could be due to the relative paucity of minimum winning coalitions in our data--just over 2.5 percent of the cases were decided by a MWC (see Table 1).

In addition to the influence of ideological and strategic behavior in the opinion assignment process, we also hypothesized that one’s chances of receiving an opinion assignment would be a function of judicial experience or perceived judicial expertise. Judges with greater
experience/expertise, we suggested, might be even more likely to be assigned a majority opinion in a complex case. However, while judicial tenure alone does not increase one’s likelihood of being given a majority opinion assignment in noncomplex matters (in fact, the sign on Justice Tenure is negative), the multiplicative term including Justice Tenure and Complexity is positive and statistically significant. Moreover, both the Justice Law School Prestige variable and the multiplicative term including this variable with Complexity are positive and statistically significant, suggesting that complexity can magnify an already robust positive relationship between one’s elite law school background and the likelihood of being assigned a majority opinion. Viewed graphically in Figure 2, one can see that, while having a longer tenure will lead to a greater chance of being assigned an opinion in a complex legal matter, justices who are graduates of prestigious law schools are more likely to receive an opinion in cases raising relatively few issues and are even more likely to be asked to write in cases raising many legal issues.

[Figure 2 here]

The data also suggest the possible operation of racial and gender stereotypes in the assignment process. Consistent with Songer et al.’s (2010) findings on majority opinion assignment in the U.S. Courts of Appeals, we find African-American state supreme court judges have a lower likelihood of receiving a majority opinion assignment. In fact, the relative impact of a judge’s race is quite important. When holding the other variables in the model constant at appropriate measures of central tendency, an African-American judge’s probability of being assigned the majority opinion is 4.2 percent lower than that of a white judge (see Table 4). And whereas Songer et al. (2010) found no relationship between judge gender and opinion assignment in the U.S. Courts of Appeals, our findings are highly suggestive of the operation of
gender stereotypes among state high court judges, which are seemingly contingent upon a panel’s gender diversity and whether the case presents a “women’s issue.” First, though the results indicate that a woman justice is less likely to receive an assignment when she is the only woman on a panel deciding a case not involving a women’s issue, women are more likely to be tapped to author a majority opinion as the percentage of women on the panel increases in non-women’s issue cases. Thus, it is likely that the increased presence of women on the bench serves to suppress the operation of negative gender stereotypes. Women judges, the results indicate, are also more likely to be asked to write a majority opinion in a case raising a women’s issue. Though the relevant multiplicative term indicates this effect when there are no other women on the panel, we investigate the difference in the probability of the assignment in Table 5 across women’s issue and non-women’s issue cases, holding the percentage of women panelists constant at its mean value in the data (and all other variables constant). As seen in the table, there is a sizeable increase in the probability that a woman justice will receive the assignment if the case raises a woman’s issue under these circumstances. Here, it is quite likely that these women jurists are perceived as better able to tackle certain legal issues relative to their male peers on the bench. However, as state courts become more gender diverse, we expect that women judges would not necessarily be selected over male judges to author opinions in women’s issue cases. The same increases in gender diversity that should offset women justices’ disadvantage in receiving assignments in non-women’s issue cases should serve to minimize their advantage relative to men in receiving majority opinion assignments in women’s issue cases. These effects, in fact, are graphically evident in Figure 3.

[Figure 3 here]
Finally, the institutional goal of achieving equity in majority opinion assignments appears to be operable among state supreme courts. The \textit{Equity} variable, measured here as the difference between the number of assignments a judge received in the previous month and the median number received by his or her peers on the court in the previous month, is negative and significant as expected. A given judge, one can conclude, is less likely to receive a majority opinion assignment if the judge has received relatively more assignments in the recent past. Holding other variables constant, a judge’s probability of receiving a majority opinion decreases by nearly two percentage points when comparing a previous month’s workload in which the judge wrote one standard deviation above the median number on his court to that in which the judge authored one standard deviation below the court’s median number of opinions (see Table 4).

\textbf{Discussion/Conclusion}

The power to write for a court majority is a notable one, as indicated by a number of studies that have analyzed the decision making surrounding majority opinion assignments (e.g., Brenner 1982; Maltzman et al. 2000; Slotnick 1979a). Even if concessions to peers on the bench (or those beyond) are ultimately made, an opinion writer would seemingly play a critical role in shaping the policy and doctrinal outputs of his or her court. Nevertheless, most research to date on the majority opinion assignment process has been undertaken with respect to the U.S. Supreme Court. Very few scholars have systematically assessed decisions pertaining to majority opinion assignment in the U.S. Courts of Appeals (but see Atkins 1974; Songer et al. 2010) or among state supreme courts.

In this paper, we turned to the latter courts as their diversity provided particularly interesting venues in which to assess the interplay of ideological, institutional, and case-level
factors in majority assignment processes. At the state supreme court level, the results suggest that these factors do condition one another in some very interesting ways. For example, while one would likely expect state supreme court judges to self-assign majority opinions in order to advance their own policy preferences, we found that elected state supreme court judges were more likely to self-assign than appointed judges. Further, elected judges’ desire to claim opinion authorship is unaffected by case complexity to a greater extent than is the case for appointed judges. This suggests that a judge’s elected status can shape his or her subsequent behavior on the bench and may encourage the judge to engage in actions that would bring positive attention (i.e., self-assigning the majority opinion).

Moreover, a judge’s chance of receiving a majority opinion assignment may be a function of his or her distance from the majority opinion assigner, but in a way unanticipated and, like the decision to self-assign, the impact of this distance is also affected by whether the judge is part of an elected or an appointed court. Appointed judges are no more or less likely to receive a majority opinion assignment as their ideological distance increases from that of the MOA. However, rather than tap an ideologically proximate colleague, elected MOAs are more likely, holding other variables constant, to tap someone who is ideologically distant from themselves. This finding is fascinating in light of our other result showing that elected MOAs are more likely to self-assign. Future analyses may be undertaken to further explore whether judges are purposely assigning select cases to ideologically extreme members in majority coalitions and are either self-assigning or assigning to those more proximate to the court’s median in other case types.

Of course, MOAs must be especially mindful of maintaining vulnerable coalitions, and we do see some evidence of strategic behavior among appointed judges in the most vulnerable -
minimum winning coalitions. Here, they are more likely to ask a member who is more ideologically distant to the court’s median to write for the majority, presumably to have a better chance of keeping the more extreme member on board. However, among elected judges, as a judge’s ideological distance increases from the court’s median, that judge is less likely to receive the assignment. This decreased likelihood remains regardless of whether the decision produced a minimum winning coalition. As noted above, our findings with respect to this issue should be interpreted with caution as relatively few cases in the dataset produced minimum winning coalitions, and even fewer did so among elected regimes.

In addition, the study provides possible support for the operation of both racial and gender stereotypes in this process as well. African-American judges are, on average, less likely to receive majority opinion assignments. The effect of justice gender, however, is conditional. Holding the number of other women judges on the panel constant, women are less likely than men to be given majority opinion assignments in non-women’s issue cases, but their chances of receiving such an assignment will increase if the case does raise a women’s issue. As others have argued before us (e.g., Szmer et al. 2010), it is likely that women are presumed to be more knowledgeable in these legal matters and, thus, are assumed to be more effective opinion authors. This perceived positive stereotype is seemingly a function of the court’s diversity. As the percentage of women panelists increases, this relationship dissipates. This finding has notable implications, as it could very well suggest that a natural consequence of greater gender diversity on state benches is the alleviation of gender stereotypes.

Finally, majority opinion assignments in state supreme courts cannot be understood without reference to judicial experience and expertise and to the goal of assignment equity. With respect to the former, state court judges with longer tenures are more likely to receive an
assignment, especially as the case grows more complex. Graduates of elite law schools are more likely to be given majority opinion assignments, even in a case raising few legal issues, but that probability also climbs with case complexity. In addition, holding all other variables constant, there does appear to be a significant norm operating among state high court judges in terms of assignment equity. Judges, we found, are less likely to get a majority assignment if they had recently authored more assignments in the previous month relative to the median number assigned to fellow members of their court. Thus, even in the midst of judicial selection effects and the operation of possible stereotypes in the making of majority opinion assignments, there are notable organizational concerns that are also likely driving these decisions: fairness in workload and concerns about efficiency in court operations.
References


Table 1 Descriptive Statistics for Estimation Sample, U.S. State Supreme Court Model of Majority Opinion Assignment, 1995-1998

<table>
<thead>
<tr>
<th>Variables</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice Assigned Opinion</td>
<td>0.158</td>
<td>---</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
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<td>-0.252</td>
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<td>5</td>
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<td>Justice Tenure</td>
<td>10.205</td>
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<td>Complexity</td>
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<td>Justice Law School Prestige</td>
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<td>1</td>
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<tr>
<td>Ideological Distance from Median</td>
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<td>17.907</td>
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<td>70.08</td>
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<tr>
<td>MWC</td>
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<td>---</td>
<td>0</td>
<td>1</td>
</tr>
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<tr>
<td>African-American Justice</td>
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<td>Woman Justice</td>
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<td>0</td>
<td>1</td>
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<tr>
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<td>Women’s Issue</td>
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<td>1</td>
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<tr>
<td>Majority Opinion Assigner (MOA)</td>
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Standard deviations only presented for continuous variables
### Table 2: Multiplicative Terms Included in the Model and the Expected Signs of the Coefficients
(N.E. indicates no expectations regarding the coefficient sign)

<table>
<thead>
<tr>
<th>Multiplicative Term</th>
<th>Expected Direction of the Coefficient</th>
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</thead>
<tbody>
<tr>
<td>Justice Tenure*Complexity</td>
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</tr>
<tr>
<td>Justice Law School Prestige*Complexity</td>
<td>+</td>
</tr>
<tr>
<td>Ideological Distance from Median*MOA Elected Judge</td>
<td>-</td>
</tr>
<tr>
<td>Ideological Distance from Median*MWC</td>
<td>-</td>
</tr>
<tr>
<td>MOA Elected Judge*MWC</td>
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</tr>
<tr>
<td>Ideological Distance from Median<em>MOA Elected Judge</em>MWC</td>
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<tr>
<td>Ideological Distance from MOA*MOA Elected Judge</td>
<td>-</td>
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<tr>
<td>Woman Justice*Percentage of Women Panelists</td>
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<tr>
<td>Woman Justice*Women’s Issue</td>
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<tr>
<td>Percentage of Women Panelists*Women’s Issue</td>
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<td>Woman Justice<em>Percentage of Women Panelists</em>Women’s Issue</td>
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<tr>
<td>MOA*Complexity</td>
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<tr>
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<tr>
<td>MOA Elected Judge*Complexity</td>
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<td>Independent Variables</td>
<td>Coefficient</td>
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<tr>
<td>------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Equity</td>
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<tr>
<td>Justice Tenure</td>
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<tr>
<td>Complexity</td>
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<td>Justice Tenure*Complexity</td>
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<tr>
<td>Justice Law School Prestige</td>
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<tr>
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<tr>
<td>MOA Elected Judge</td>
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<tr>
<td>MWC</td>
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<tr>
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<tr>
<td>Ideological Distance from Median*MWC</td>
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<tr>
<td>Ideological Distance from MOA</td>
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<td>African-American Justice</td>
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<tr>
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<tr>
<td>Women’s Issue</td>
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<td>Interaction</td>
<td>Coefficient</td>
</tr>
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<td>----------------------------------------------------------------------------</td>
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<tr>
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<tr>
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<tr>
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<td>MOA*MOA Elected Judge</td>
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<td>Constant</td>
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<td>N</td>
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<tr>
<td>Nagelkerke R^2</td>
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</tr>
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</table>

p<0.05 =*; p<0.01=**; p<0.001=*** (one-tailed for all but moderator variables: Complexity, Elected Judge, Percentage of Women Panelists, and Women's Issue).
Table 4: Discrete Changes in Predicted Probabilities for Independent Variables of Interest

| Independent Variables               | Pr(y=1|x=1)-Pr(y=1|x=0) | Pr(y=1|x=\bar{x}+s) - Pr(y=1|x=\bar{x}-s) |
|------------------------------------|--------------------------|---------------------------------------------|
| Equity                             | ---                      | -0.018                                      |
| Justice Tenure                     | ---                      | -0.011                                      |
| Justice Law School Prestige        | 0.018                    | ---                                         |
| Ideological Distance from Median   | ---                      | 0.001                                       |
| Ideological Distance from MOA      | ---                      | 0.004                                       |
| African-American Justice           | -0.042                   | ---                                         |
| Woman Justice                      | -0.032                   | ---                                         |
| Majority Opinion Assigner (MOA)    | 0.011                    | ---                                         |

The second and third columns reflect the differences in the probability that the judge received the assignment when the independent variable in the first column is set to two different values, while holding all of the covariates constant at the appropriate measure of central tendency (mean for the continuous variables, mode for the binary measures). The second column is the discrete change for binary variables, where the independent variable in the first column is set to 1 and 0. The third column includes the discrete changes for continuous variables, where the variable in column one is set to one standard deviation above and below the mean.
Table 5: Conditional Discrete Changes in Predicted Probabilities for Independent Variables of Interest Varying by Values of Binary Moderators

| Independent Variables | \( \text{Pr}(y=1|x=1) - \text{Pr}(y=1|x=0) \) | \( \text{Pr}(y=1|x=x\bar{+}s) - \text{Pr}(y=1|x=x\bar{-}s) \) |
|-----------------------|--------------------------------|----------------------------------|
| **Ideological Distance from Median** | | |
| Non-MWC, Appointed MOA | --- | 0.001 |
| MWC, Appointed MOA | --- | 0.094 |
| Non-MWC, Elected MOA | --- | -0.089 |
| MWC, Elected MOA | --- | -0.085 |
| **Ideological Distance from MOA** | | |
| Appointed MOA | --- | 0.004 |
| Elected MOA | --- | 0.070 |
| **Woman Justice** | | |
| Non-Women's Issue, Mean Percentage of Women Panelists | -0.032 | --- |
| Women's Issue, Mean Percentage of Women Panelists | 0.089 | --- |
| **Majority Opinion Assigner (MOA)** | | |
| Appointed MOA, Mean Complexity | 0.011 | --- |
| Elected MOA, Mean Complexity | 0.119 | --- |

The values in columns two and three reflect appropriate discrete changes in the predicted probability of a judge authoring the opinion of the court for the italicized main independent variables in column one for each of the values of the moderator variables listed underneath the main independent variable. The second column is the discrete change for binary variables, where the main independent variable is set to 1 and 0. The third column includes the discrete changes for continuous variables, where the main independent variable is set to one standard deviation above and below the mean.
Figure 1: Conditional Effects of Self Assignment by the MOA by Values of Complexity, for Elected & Appointed MOAs (dashes indicate 95% confidence intervals)
Figure 2: Conditional Effects of Justice Expertise Measures by Values of Complexity (dashes indicate 95% confidence intervals)
Figure 3: Conditional Effects of Justice Gender by the Percentage of Women Panelists, for Women's and Non-Women's Issues (dashes indicate 95% confidence intervals)