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The “Odd Party Out” Theory of *Certiorari**

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Abstract

Why the Supreme Court agrees to hear cases is among the most important topics in judicial politics. However, existing theories have overlooked a key factor: the relative ideologies of the litigating parties. We develop and test a new theory that explicitly incorporates the ideology of the litigating parties in explaining which cert petitions the Court is likely to grant. Specifically, we theorize that cert petitions are more successful when (1) there is great ideological distance between the two opposing parties and (2) the lower-court appeals panel is closest ideologically to the party who won at the appellate level. In these cases, the party petitioning the Court to intervene becomes the “Odd Party Out,” which conveys information about both the importance of the case and the possibility of ideological bias against the petitioner. We test this theory using a new dataset on the identities and ideologies of advocates and judges for federal court cases that generated cert petitions from 2003 to 2015. We find strong support for the theory: petitions are more likely to be granted when the petitioning party is the ideological Odd Party Out.

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1 Introduction

Although U.S. federal courts decide tens of thousands of cases per year, the U.S. Supreme Court’s discretionary review means it reviews significantly fewer—currently approximately one-hundred and fifty cases per term.¹ Understanding how the Court exercises this extraordinary discretion is obviously of great interest to practitioners. For example, elite lawyers decide which cases to prioritize and which arguments to make based largely on the petitions they believe are most likely to be successful. From a scholarly perspective, because the Court is the final arbiter of many of the country’s most important legal and political disputes, the *certiorari* process is also one of the most well-studied topics in judicial politics.

The body of research examining the *certiorari* process can be grouped into several categories. One line of research has identified key factors that are associated with higher probabilities of cert grants, including: the involvement of the Solicitor General (e.g., Bailey, Kamoie, and Maltzman, 2005); the number of amicus briefs (e.g., Caldeira and Wright, 1988); dissents issued by lower-court judges (e.g., Beim, Hirsch, and Kastellec, 2014); the presence of circuit splits (e.g., Perry, 1991; Beim, 2017; Beim and Rader, 2020); and whether the appeals court heard the case *en banc* (e.g., George and Solimine, 2001). Other lines of research have sought to explain the Justices’ motivations. For instance, several papers argue that the Justices grant cert with a eye toward correcting the errors and biases of lower courts (e.g., Cameron, Segal, and Songer, 2000; Black and Owens, 2012), while other papers theorizes that the Justices are more interested in developing legal doctrine and answering important questions (e.g., Clark and Kastellec, 2013; Beim, 2017). However, the scholarship on the cert process has largely overlooked a key factor: the relative ideologies of the litigating parties.

¹ Roughly half of these cases are decided through memorandum opinion and thus are not scheduled for oral argument. For instance, during the October 2017 term, the Supreme Court decided 140 cases from writ of certiorari, but 75 of these cases were decided via memorandum opinion. See *The Supreme Court, 2017 Term – The Statistics*, 132 HARV. L. REV. 477 (2018).

In this paper, we develop a theory of how parties’ relative ideologies influence cert decisions. We build on existing research that argues the Supreme Court strategically selects cases based on cues such as lower-court ideology (e.g., Cameron, Segal, and Songer, 2000; Black and Owens, 2012) by explicitly incorporating the interplay between the litigating parties’ and lower-court judges’ ideologies. This interplay contains important information for two reasons. First, the ideological distance between the parties sends a signal about a case’s importance: large ideological distances suggests that the case may be politically polarizing and, thus, more likely to have legal, political, or policy ramifications. Second, when a lower-court rules in favor of an ideologically aligned party and an ideologically opposed party appeals to the Court, the Justices may be unable to rule out the possibility that the appealing party lost because the lower-court acted out of ideological favoritism. When a lower-court sides against an ideological ally and that party appeals, however, the Justices have less reason to worry—they may infer that the party had a weaker case and thus they can more readily rule out the possibility that the lower-court decision was ideologically motivated. Based on these arguments, we hypothesize that cert is more likely to be granted when the party petitioning the Court for review (the petitioner) is ideologically at odds with both the party responding to the cert petition (the respondent) and the lower-court panel. In other words, the probability of cert should increase when the petitioner is the ideological “Odd Party Out.”

To test this theory, we created a novel dataset of cert petitions to the Supreme Court from from U.S. Court of Appeals cases filed between 2003 and 2015. For each petition, we obtained the identities of the advocates by scrapping cert petitions from the Court’s website. (As we show empirically, advocate ideology is a valid proxy for the ideological positioning of the litigating parties.) We separately obtained the identities of the circuit court judges via the Federal Judicial Center’s Integrated Database, combining these with each opinion’s raw text from CourtListener. We then matched the corresponding lawyers

and lower-court judges with ideology scores from Bonica, Chilton, and Sen (2016) and Bonica and Sen (2017), which are based on political contributions from the Database on Ideology, Money, and Election (Bonica, 2014). The resulting dataset has individual-level estimates of ideology for advocates and judges measured on a common scale for 17,871 cert petitions.

We use this dataset to test our theory and find that the relative ideologies of the advocates—and thus, by proxy, the litigating parties—and judges are important predictors of cert grants. Specifically, in the universe of cases for which we have complete ideology data, the Supreme Court granted roughly 6.6 percent of cert petitions. Our data suggests that this baseline grant rate was roughly 3.7 percentage points higher when the petitioner was an Odd Party Out. Given the low probability of cert petitions being granted, this translates into roughly a 56 percent increase in the probability that a cert petition was successful. Moreover, when estimating a series of regressions that control for a range of factors that may predict both the ideological distance between the litigating parties and the probability of cert, we still find an increase in the probability that cert was granted of 2.2 to 3.1 percentage points when the petitioner was an Odd Party Out. These results are consistently statistically significant, substantively large, and comparable in magnitude to other cues that have been identified as major predictors of cert grant. For comparison, our analyses show that the probability of cert was 3.9 percentage points higher when the petition arose from a case that had a dissent at the circuit court level and 4.2 percentage points higher when the petition arose from a case that had been heard *en banc*.

This finding contributes to our understanding of Supreme Court decision making in several key ways. At a broad level, our results provide evidence for the first time that the Justices take into account the ideology of the parties when deciding which cases to hear. Specifically, the Court will look more kindly on petitioners who appear to have the “deck stacked” against them. Moreover, our results comport with existing research showing that ideology matters greatly in how the Justices understand their role within the judicial

hierarchy; however, expanding from the existing literature on circuits and panels, we show that the Justices consider not just the ideology of the circuits writ large, but, at a very fine-grained level, the ideology of specific panels. Lastly, and equally important, we are among the first papers to introduce the idea that large ideological gaps between the parties, and between the parties and panels, might provide key information to the Justices about which cases stand out as being particularly jurisprudentially or politically important. In other words, as we show here, micro-level political dynamics matter to a case’s ultimate disposition.

This paper proceeds as follows. Part 2 motivates our inquiry by explaining how our theory expands on existing research about the Supreme Court’s cert decisions, in particular the literature suggesting that the Justices look for cues to decide which cases are important or possibly decided in error. Part 3 develops our Odd Party Out theory of certiorari. Part 4 introduce the data we use to test this theory. Part 5 presents our results showing strong evidence that, when petitioners are the ideological Odd Party Out, the probability of cert being granted increases significantly. Part 6 tests the robustness of several key assumptions of the framework, namely the robustness of assuming advocate ideology is a useful proxy for litigating party ideology and the use of campaign contributions data for estimating ideology. Part 7 concludes by discussing the contributions of research.

2 Why Does the Court Grant Cert?

A body of theoretical and empirical research has examined how and why the Court grants cert (see generally Tanenhaus et al., 1963; Ulmer, 1972; Brenner, 1979; Provine, 1980; Palmer, 1982; Caldeira and Wright, 1988, 1990; Perry, 1991; McGuire and Caldeira, 1993; Boucher and Segal, 1995; Caldeira, Wright, and Zorn, 1999; Cameron, Segal, and Songer, 2000; Owens, 2010; Clark and Kastellec, 2013; Beim, 2017). This research can be roughly

grouped into three categories, all of which motivate our Odd Party Out theory.

2.1 Cues Predicting Cert Grants

The first line of research argues that the presence of certain important features signals to the Court that the case is in some way worthy of its attention, thus increasing the probability of cert (see generally Perry, 1991; Feldman and Kappner, 2016). The idea that the Court takes advantage of these sorts of heuristics when deciding which cases to grant cert is known as “cue theory” (Tanenhaus et al., 1963).

A number of cues have been shown to be associated with a higher probability of cert. For example, the presence of disagreements among the appeals courts strongly predicts cert (e.g. Tanenhaus et al., 1963; Ulmer, 1984; Caldeira and Wright, 1988; Perry, 1991; Caldeira, Wright, and Zorn, 1999; Black and Owens, 2009), as does more amicus briefs filed on the petitioners’ behalf (Caldeira and Wright, 1988). Cert is also more likely when an appeals court has heard the case *en banc* (George and Solimine, 2001); when a dissenting opinion was filed (Tanenhaus et al., 1963; Perry, 1991; Caldeira, Wright, and Zorn, 1999; Kastellec, 2007; Beim, Hirsch, and Kastellec, 2014); and when the ideological composition of the lower-court was in opposition to the ideological composition of the Supreme Court (Cameron, Segal, and Songer, 2000; Hammond and Sheehan, 2005; Hall, 2009; Black and Owens, 2012).²

The category of cues that is most relevant to our theory involves the identities of the individuals asking the Court to grant cert. For example, the Supreme Court is more likely to hear a case when the request was filed by the U.S. Solicitor General (Tanenhaus et al., 1963; Ulmer, 1984; Bailey, Kamoie, and Maltzman, 2005); when the litigants have higher “status” (Black and Boyd, 2010); and when the advocates have previously argued before the Supreme Court (Feldman and Kappner, 2016). This category of cues suggests

² Of course, these cues increase the probability that cert will be granted, but they are not by themselves determinative. As Perry (1991, p. 257) notes, none of these cues matter if the facts of the particular case are fundamentally ill-suited for disposition.

that the identity of the advocates may convey relevant information to the Justices about the case’s legal and political importance. To our knowledge, however, no research has evaluated whether the ideologies of the petitioning or responding attorneys—as distinct from their Supreme Court litigation experience—are associated with a higher likelihood of cert success. We investigate this below.

2.2 Error (or Bias) Correction

A second line of research notes that the Justices have strong ideological preferences about case outcomes, and it accordingly theorizes that the Justices approach cert decisions as a way to change the outcomes of cases that at least four members of the Court would have decided differently (e.g., Ulmer, 1972; Krol and Brenner, 1990; Brenner, 1997). These are typically characterized as “error correcting” theories because the models underlying them “generally privilege error correction as a motivation for discretionary jurisdiction” (Clark and Kastellec, 2013, p. 151).³ However, the appeals courts decide tens of thousands of cases each year, so the Court necessarily orients its resources to the most important errors or biases by again relying on signals.⁴

In recognition of these resource constraints, another line of research focuses on how the Supreme Court strategically “audits” the lower-courts (Cameron, Segal, and Songer, 2000; Lindquist, Haire, and Songer, 2007; Black and Owens, 2012; Bryan and Black, 2017). These papers have modeled the Supreme Court’s role in the judicial hierarchy as similar to

³ Different language has been used to describe this phenomena. Cameron, Segal, and Songer (2000), for instance, refer to “error correction” as doctrinal enforcement. Other research has discussed “aggressive grants” and “defensive denials” when theorizing how Justices vote strategically at the cert-granting stage (Brenner, 1979; Boucher and Segal, 1995; Benesh, Brenner, and Spaeth, 2002; Lax, 2003; Sommer, 2010, 2011).

⁴ Resource constraints are a recurrent theme in this literature. Notably, there are 9 Justices on the Supreme Court and around 36 law clerks (typically 4 per Justice) in any term. By contrast, there are around 300 Court of Appeals judges that each may have up to four clerks of their own. Resource constraints are also a major theme in research on compliance with the Supreme Court. For example, given the small number of cases that the Court can hear in a term, Klein and Hume (2003) argue that fear of reversal is unable to fully explain why lower-courts follow Supreme Court decisions.

a principal exercising oversight over its agents, the lower-courts. By this logic, the Court monitors the appeals courts and scans cert petitions for cues that appeals courts have ruled “incorrectly” for doctrinal or ideological reasons. For instance, Lindquist, Haire, and Songer (2007) find that more cert petitions are accepted from circuits with judges who are ideologically distant from the Supreme Court; Black and Owens (2012) find that the Court is more likely to grant cert when the median appeals court judge on a panel is ideologically distant from the Supreme Court; and Bryan and Black (2017) find that the Supreme Court crafts its agenda to audit judges in ideologically distant states.

When taken together, this literature suggests that ideological bias—by way of ideological distance measures—is an important factor for the Justices. Importantly, a clear extension is that the ideological positions of the parties may also send an important ideological signal. Indeed, just as the Court is likely to look especially closely at cases where a lower-court panel is ideologically distant from the median Justice (e.g., Cameron, Segal, and Songer, 2000), the Justices may be more likely to look closely at a case where the lower-court panel has ruled against a party who is ideologically distant from that panel.

2.3 Learning and Jurisprudential Development

A third major line of research has emphasized that the Justices’ objective is not exclusively to correct errors, but instead to make contributions to law and refine or expand doctrine (Provine, 1980; Perry, 1991; Clark and Kastellec, 2013; Beim, 2017). These papers are motivated by the reality that, if the Court were acting purely out of an error-correcting concern, it would take dozens, if not hundreds, more cases where obvious errors have been made. As a result, although error (or bias) correction may be one factor motivating the Justices, it is unlikely to be the only one.

In line with this insight, these papers have argued that the Justices vote to hear cases that stand out as contributing meaningfully to the Court’s status as an interpreter of laws

and of the Constitution. As Clark and Kastellec (2013, p. 150) argue, “[b]ecause their docket is so selective, the justices use most of these cases not to engage in simple error correction of lower-courts; instead, they can focus on taking cases that present novel and interesting questions of law.” Perry (1991, p. 220) similarly argues that “the Court basically sees itself not as a place to right wrongs in individual cases but as a place to clarify the law.” In applying this logic, Clark and Kastellec (2013) theorizes that the judicial hierarchy allows the Court to observe repeated case adjudication at the lower-court level as a way to learn about interesting issues and potential legal doctrines. This theme is echoed by Beim (2017), which models the Supreme Court as leveraging the lower-courts’ role as “laboratories” of law to learn more about possible doctrinal approaches. This literature thus implies that the Supreme Court grants cert when it believes the case is exceptionally important or likely to contribute to jurisprudential development. For example, Perry (1991, p. 253) notes that the Court looks closely at cases that “are important to the polity,” including cases involving “issues that are of huge political and societal importance.”

To test these theories, these papers have mostly focused on the presence of circuit splits in the interpretation or application of law—one of several possible indicators of a case’s importance. Circuit splits are not only predictive of whether the Court will grant cert, but, as Beim (2017, p. 592) notes, “decisions informing the Supreme Court are often in conflict with one another, which the Supreme Court uses to its advantage.” In other words, circuit splits represent a good test case for the kind of wonkish doctrine tinkering that appeals to the Court’s learning sensitivities. Indeed, circuit splits are so important that the Supreme Court’s internal rules require petitioners to address them in their legal briefs.⁵

For our purposes, this literature points to circuit split as being one way to represent

⁵ See Rules of the Supreme Court of the United States, Rule 10. Additionally, Perry (1991, p. 253) notes that, among the law clerks he surveyed, they “almost invariably would say that first they looked to see if there were a circuit conflict, and then they looked to see if the conflict involved an important issue.” In fact, the presence of a circuit split is believed to be such a strong cue that advocates frequently claim a split exists regardless of the state of the law. For practitioner commentary on this, see Russell (2007).

the importance of a case in terms of public salience or jurisprudential development; however, the literature on error correction we discussed above would suggest that the relative ideologies of the relevant actors may be another way. Indeed, if the Court is looking specifically for politically or publicly important cases, then considering the relative ideology of the parties and lower-court judges might be particularly effective means to do so.

3 The Odd-Party Out Theory of Certiorari

Our theory builds on these literatures by explicitly incorporating the ideological leanings of the parties explain why the Supreme Court grants cert. We see two reasons why the ideological leanings of the litigating parties provides key information to the Justices.

Ideological distance between the parties correlates with case importance. The ideological distance between the litigating parties sends a signal about the likely legal, political, or public salience of the case. Ideological polarization has been prevalent in many high profile cases, including those involving challenged election outcomes, civil rights, redistricting, same-sex marriage, redistricting, and health care. In recent Supreme Court terms, many of the highest profile cases involved liberal parties—like the ACLU, gay and lesbian rights organizations, or city and local governments—opposing conservative ones—such as business interests or the federal government (in the case of Republican administrations). Simply put, ideological polarization among the litigants (and their attorneys) is often a symptom of publicly important issues that are likely to have strong media interest and political impact. In addition, party ideology tends to explicitly correspond with the ideological positioning of the underlying issues involved in a case.

Even so, we are unaware of any direct research on whether the ideological distance between the litigating parties predicts the importance of the case. This is likely, in part,

because of the difficulty measuring the ideologies of the parties themselves (which we discuss in Part 4.1). But there is indirect evidence. Bonica and Sen (2017), for example, show that the average ideology of the attorneys that Justices side with is strongly correlated with the Justices’ own ideology. For example, Clarence Thomas—the most conservative Justice in their data—was the most likely Justice to side with attorneys their data indicate are conservative. Similarly, John Paul Stephens—the most liberal Justice in their data—was the most likely Justice to side with attorneys their data indicate are liberal. In fact, Bonica and Sen (2017) find that Justice ideology and the average ideology of the advocates they vote for are nearly perfectly correlated ($\rho = 0.99$).

According to the literature, such fractured rulings can be indicative of important, contentious cases. As Clark (2009, p.153) explains, “[a] primary finding in the judicial politics literature is that judges who have divergent policy preferences are less likely to vote together . . . and ideological disagreement [is] a primary determinant of vote splits among the justices.” Moreover, cases with ideological disagreement are likely to be high-salience cases. Using a variety of measures of case salience, research has consistently found a strong correlation between cases with smaller majorities (e.g., 5–4 or 6–3 decisions) and case salience (Epstein and Segal, 2000; Unah and Hancock, 2006; Bartels, 2011; Collins and Cooper, 2012; Clark, Lax, and Rice, 2015). Of course, it does not necessarily follow that cases with large ideological distances between the litigating parties must always be high-salient cases, but this empirical evidence is consistent with that claim.

Ideological distance conveys information about error (or bias). The ideologies of the parties are not the only ideological cue contained in a cert petition; consistent with other literature on cert granting, the ideology of the median member of the lower-court panel conveys important information about the possibility of error (or bias). A large body of prior research has shown that judicial ideology influences case outcomes (e.g. Hangartner,

Lauderdale, and Spirig, 2019; Sunstein et al., 2006), and research has also shown cert is more likely to be granted in cases where the median member of the lower-court panel is ideologically distant to the Supreme Court’s median (Cameron, Segal, and Songer, 2000; Lindquist, Haire, and Songer, 2007; Black and Owens, 2012), suggesting a desire by members of the Court to bring rulings more in line with their preferences. But the relationship between the ideologies of the parties and the lower-court likely matter as well. The Justices should be more concerned about the possibility of error (or bias) when lower-court panel has ruled against an ideological opponent (and in favor of an ideological ally), and less concerned about the possibility of error (or bias) when the lower-court panel has ruled in favor of an ideological opponent (and against an ideological ally).

Stylized examples can easily illustrate the logic. Suppose that a lower-court panel with a liberal median judge rules against a liberal party in favor of a conservative one, and that the liberal party then appeals to the Supreme Court. In this case, the Court would be skeptical of the liberal petitioner’s claim. After all, this liberal petitioner had a liberal panel and still lost, suggesting that, even with a favorable set of judges, she still has a losing case. Alternatively, suppose that a lower-court panel with a liberal median judge instead rules against a conservative party in favor of a liberal one, and that the conservative party then appeals to the Supreme Court. Here, there would be greater cause for the Justices to be concerned: the ideological configuration suggests that the conservative party (the “Odd Party Out,” to use our terminology) faced an unfavorable panel and was maybe the target of ideological bias or subject to plain error. In this case, it would be difficult for the Court to rule out the possibility that the case may have been decided differently had it been assigned to a more conservative panel.

Taken together, these two arguments imply that the relative ideologies of the parties and the panel jointly play a role in the decision to grant cert. Notably, given that ideologically polarized cases are likely to be salient cases, and given prior evidence that the

Justices consider the potential importance of a case when deciding whether to grant cert (Perry, 1991), we expect that cert is more likely to be granted when the litigating parties are in ideological opposition. Moreover, given prior evidence that error correction can be an important determinant of the Court’s decision to grant cert (Ulmer, 1972; Krol and Brenner, 1990; Brenner, 1997), the importance of the litigating parties’ ideologies should be evaluated within the context of the lower-court panel’s ideology.

The importance of the “Odd Party Out.” To put more structure on this theory, a three-judge panel could be one of two types, $Panel \in Liberal, Conservative$.⁶ The petitioning and responding parties are also one of the two types, so $Petitioner \in Liberal, Conservative$ and $Respondent \in Liberal, Conservative$.⁷ Assuming there are only these types, Figure 1 depicts the possible combinations of panels’ and parties’ ideologies. (For simplification, Figure 1 only shows the combinations when the lower-court panel is the liberal type.)

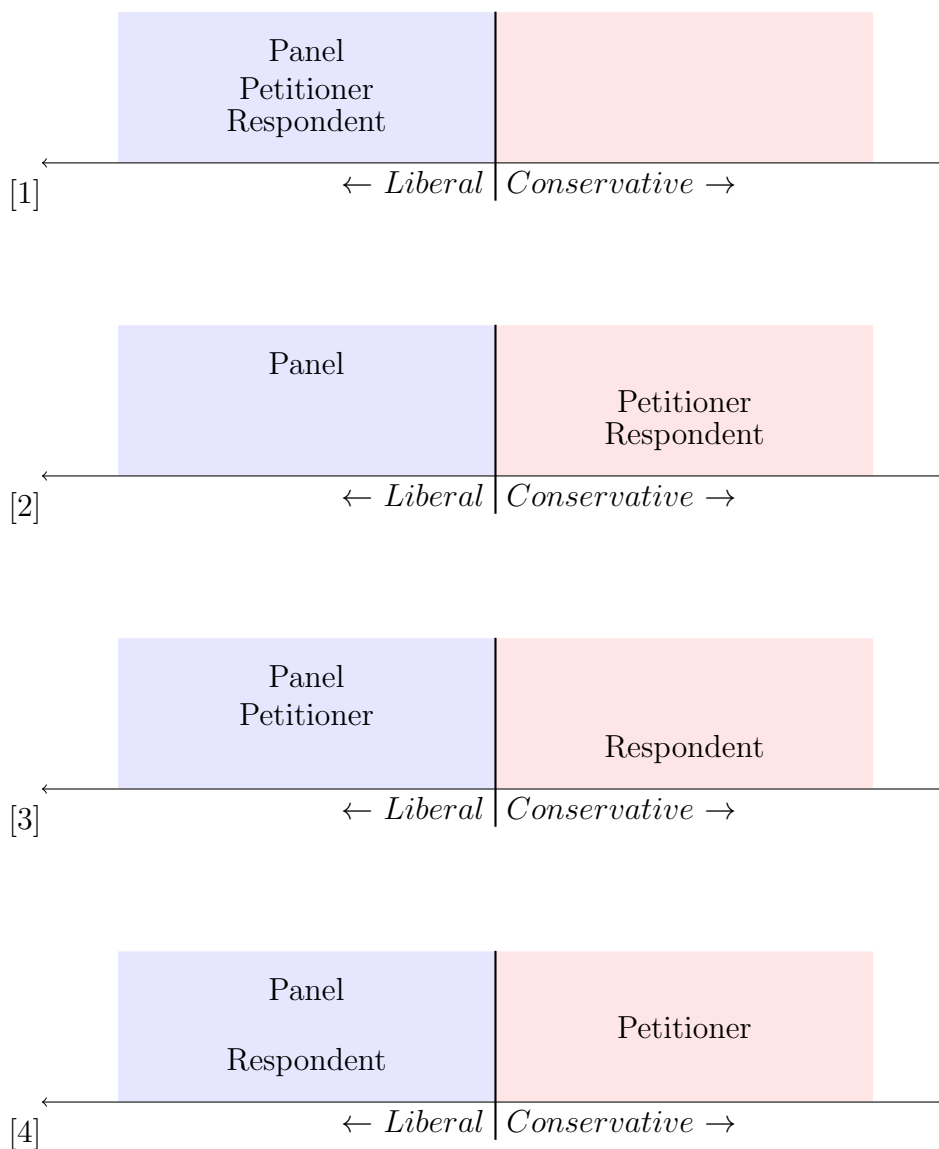
When both the parties and the lower-court panel are of the same type (like in the first row of Figure 1), there is no Odd Party Out. In these cases, our theory offers no prediction about the probability of cert. But when the respondent (the winning party at the lower-court level) is the same type as the panel—and the petitioner is thus an Odd Party Out (like in the fourth row of Figure 1)—the Court may think the petitioner may have won if she had drawn a different panel or the case had proceeded through a different circuit. In these cases, the Court may think that the case is particularly suitable for review. The resulting prediction is that *cert will be more likely to be granted when the petitioner is an Odd Party Out*. That is, when a liberal panel sides with a liberal respondent against a conservative petitioner (or

⁶ Focusing on the panel median makes it more straightforward to operationalize our analysis. However, some scholarship notes the importance of different panel configurations—for example, panels composed of three Republicans tend to issue more conservative rulings than panels composed of two Republicans and one Democrat (Sunstein et al., 2006).

⁷ Consistent with evidence from Bonica and Sen (2017), we assume that the ideology of the advocates correlates closely with the ideologies of the parties, so that the former—which we can estimate from the cert petitions data—is a valid proxy of the latter. We discuss the robustness of this claim at length in Part 6.

vice versa), the Court will be more likely to grant the petition.

Figure 1: Stylized Illustrations of Odd Party Out Possibilities



We also note that in cases where the panel is an Odd Party Out (like in the second row of Figure 1) or in cases where the respondent is an Odd Party Out (like in the third row of Figure 1), the court has little reason to suspect that a panel with different ideological

leanings would have ruled differently. As a result, these cases should be associated with a lower probability that cert would be granted. That said, prior research suggests that factors that reduce the probability of cert have relatively modest effects. In the words of Feldman and Kappner (2016), negative factors only “tamper” the probability that cert will be granted. This is both because the base rate for cert grants is low and because petitioners typically do not file cert petitions when there is reason to believe they have an abnormally low chance of success. As one example of this phenomenon, research has consistently found that cert petitions are dramatically more likely to be successful when the Solicitor General is the petitioner, but only moderately less likely to be denied with the Solicitor General is the respondent (e.g., Owens, 2010; Black and Owens, 2012). (Consistent with this, our own estimates suggest that cert petitions are 41.7 percentage points more likely to be granted when the Solicitor General is the petitioner, but they are only 2.8 percentage points less likely to be successful when the Solicitor General is the respondent.⁸) Given these facts, the resulting prediction is that *cert will be moderately less likely to be granted when the panel or respondent is an Odd Party Out*.

4 Cert Petitions and Ideology Data

Testing our theory requires information on the identities and ideologies of the litigating parties petitioning for review by the Supreme Court and of the lower-court judges. Because administrative data does not include this information, we gathered our own data on cert petitions filed for over a decade. As we first explain, however, a threshold challenge to building this dataset was finding a proxy for the ideologies of the litigating parties.

⁸ These estimates are based on the regression specification reported in Column 5 of Table 2.

4.1 Advocate Ideology as a Proxy for Party Ideology

Estimating the ideology of the litigating parties petitioning the Court for review is not a straightforward task, and we are not aware of any dataset that includes this information. Indeed, the list of litigating parties frequently includes entities such as municipal bodies or administrative agencies that do not possess a single meaningful “ideology.” The task becomes harder for entities that are statutorily prohibited from engaging in political activity—such as nonprofits or advocacy agencies—which makes estimating ideology difficult. Moreover, even though some measures of ideology may be available for individuals or even companies (for example, by linking to campaign-financed based measures, such as those developed in Bonica (2014)), the identifying information necessary to link a litigating party to, say, donation records is not readily available in most cert petitions.

These obstacles do not, however, exist for the *advocates* that file the cert petitions; they are identified in each petition, along with their employer and business location. Prior research has shown that it is possible to match lawyers to the records of their political donations (Bonica, Chilton, and Sen, 2016), and elite lawyers also donate at extremely high rates (Bonica et al., 2017). As a result, even though it may not be possible to estimate the ideology of a party named *Paul Smith*, it is possible to link the frequent Supreme Court litigator *Paul Smith* to his donation records, thereby allowing us to estimate his ideology. Using advocate ideology as a proxy for party ideology thus offers a scalable way to measure the ideological positions of the large number of the parties to cert petitions.

Importantly, existing scholarship also makes clear that *the ideologies of advocates and parties are closely correlated* (Bonica and Sen, 2017), suggesting that advocates’ ideologies are substantively related to the ideologies of the parties that they represent.⁹ Although there

⁹ There is a great deal of research on the role of advocates in Supreme Court litigation (McGuire and Caldeira, 1993; McGuire, 1995; Songer, Cameron, and Segal, 1995; Johnson, Wahlbeck, and Spriggs, 2006; McAtee and McGuire, 2007; Corley, 2008; Lazarus, 2008; Wedeking, 2010; Mak, Sidman, and Sommer, 2013; Feldman and Kappner, 2016; Feldman, 2016). As we explain in Part 6.2, however, we do not believe that the justices rely directly on the ideology of the advocates to infer the ideology of their clients. Instead, our

might not be a strong a relationship at every level of litigation, Supreme Court litigation is sufficiently politicized that parties advancing liberal positions typically hire liberal advocates and parties advancing conservative positions typically hire conservative advocates. Anecdotal, there are also many examples of well-known liberal members of the Supreme Court bar who are repeatedly hired by liberal clients and well-known conservative members of the Supreme Court bar who are hired by conservative clients. For instance, well-known liberal lawyer Paul Smith, discussed above, has represented the liberal side in high profile cases like *Lawrence v. Texas* (2003) and *Gill v. Whitford* (2018), and well-known conservative lawyer Paul Clement represented the conservative position in high profile cases like *McDonald v. Chicago* (2010) and *United States v. Windsor* (2013). Empirically, Bonica and Sen (2017) show that when the Supreme Court issues a conservative (or liberal) decision, the winning advocate is likely to be conservative (or liberal).

Of course, even before the Supreme Court, lawyers may represent causes and clients that they do not agree with—for example, conservative lawyer Ted Olson participated in a successful effort to overturn a California ban on same sex marriage. However, such cases are noteworthy because they are the exceptions that prove the rule: in general, advocates’ ideologies are related to the ideologies of their clients, particularly so in the most important cases. Because this is a key assumption behind our empirical approach, we explicitly test the relationship between the ideologies of advocates and the positions they represent in Part 6.1. The results of those tests suggest a strong relationship between advocate ideology and the positions represented in the cases.

contention is that Supreme Court clerks and Justices infer the ideology of the parties from the information in the written cert petitions, and that the ideology of the advocates is consistent with the ideological signals those petitions provide.

4.2 Data Sources

We combined information from several sources to acquire information on the universe of cert petitions, the identities of the advocates and judges, and their corresponding ideologies.

4.2.1 Cert Petition Data

We gathered cert petitions from the Supreme Court’s website, which included all cert petitions from U.S. Court of Appeals from 2003 to 2015.¹⁰ This represented 42,567 total petitions. For each petition, we also extracted several pieces of information—including the names of the attorneys representing the petitioners and the respondents—and collected data on other features of the case—including the outcomes of the petitions.

4.2.2 Lower-Court Decisions Data

Although the identities of the attorneys is available from the Supreme Court petitions, the names of the judges on the panel that heard the appeal are not in the cert data. We thus collected data from two other sources. First, we collected data on all U.S. Court of Appeals cases decided between 2003 and 2015 from the Federal Judicial Center’s Integrated Database.¹¹ This provides detailed data on case characteristics and outcomes, but it intentionally omits the names of the judges that heard the cases. Second, we obtained the names of all lower-court judges from the lower-court opinions themselves, which we collected from the CourtListener database.¹² For each case, we parsed the names of the appeals judges who heard the case. This ranged from three judges for three-judge panels to sixteen judges for certain cases heard by all judges in a circuit sitting *en banc*. We also parsed whether a case

¹⁰ <http://supremecourt.gov>. We start our data collection in 2003 because we detected some inconsistencies in how cert petitions are reported by the Court prior to 2003.

¹¹ <https://www.fjc.gov/research/idb>.

¹² <http://courtlistener.org>.

generated a dissenting opinion from the lower-court panel.

4.2.3 Ideology Data

Estimating the ideology of private individuals (as opposed to elected officials) can be difficult. To do this, we use data from the Database on Money, Ideology, and Elections (DIME) to estimate the ideology of the attorneys and the lower-court panels. DIME uses information from over 20 million individual donors and 250 million political donations to generate an estimate of each donor’s ideology called the DIME score (or common-space CFscore) (Bonica, 2014).¹³ These scores have several key advantages over other ideological measures. First, DIME scores are available for both judges and attorneys in private practice who have not previously held elected office. Second, DIME scores place advocates and judges on a single, common scale. Third, for judges’ ideology, DIME scores provide a finer estimate of ideology than other standard measures (such as party of the appointing President or Judicial Common Space scores) (Bonica and Sen, 2017).¹⁴ Finally, many prior projects have measured ideology at the circuit level (e.g., using the ideology of the median judge on a circuit as a measure of ideology for all cases decided in that circuit), but because we collected information on the identities of the judges on each panel and their corresponding DIME scores, we the much more fine-grained median panel ideology.

¹³ The DIME scores are based on the weighted average of the ideologies of candidates that the donors have contributed to, and it is scaled so that the mean ideology is 0, a score of -1 is one standard deviation more liberal than the average donor, and a score of +1 is one standard deviation more conservative than the average donor. The scores have been validated using data on policy preferences from the Congressional Campaign Election Study (Bonica, 2019).

¹⁴ Party of the appointing President, while usefully employed in several studies, overlooks ideological differences among those appointed by the same president. JCS scores, which use the identity of the appointing President or, if of the same party, the home-state Senator/s, can assign judges appointed by the same president within the same jurisdiction the same ideological score (Epstein et al., 2007). We thus rely on ideological estimates constructed by Bonica and Sen (2017) based on political donations made by, and to, the judges. For a discussion of the comparative advantages and disadvantages of these measures and illustrations of their robustness, see Bonica and Sen (2017).

4.3 Summary Statistics

Table 1 presents summary statistics.¹⁵ Notably, Table 1 only presents data on the sample for which we have complete ideology data. Out of 42,567 cert petitions in our overall sample, we have complete ideology data for 17,871 cert petitions. (We discuss how this missingness may affect our inferences in Part 5.4.) This subset still represents one of the largest samples used to study the cert process.¹⁶

Importantly, the data are not missing at random.¹⁷ Notably, although 4.5 percent of cert petitions were granted in the full sample of 42,567 cases, 6.6 percent of cert petitions were granted in the sample of 17,871 cases for which we have ideology. This higher grant rate is likely because we are more likely to have ideology data for elite lawyers and repeat players. In other words, our data disproportionately includes exactly the kind of litigants who are more likely to have their cert petitions granted (e.g., McGuire, 1995; Feldman and Kappner, 2016). That said, we show in Part 6.2 that cases with these kind of repeat litigants are not driving our results.

5 Primary Results

We now turn to empirically testing the Odd Party Out theory of certiorari. We first present evidence for our theory based on raw data, and we then turn to testing the implications of the theory more formally.

¹⁵ Part 5.1 explains how we code the Odd Party Out variables.

¹⁶For example, Cameron, Segal, and Songer (2000) use a random sample of 273 search and seizure cases appealed to the Burger court from 1972 to 1986; Black and Owens (2012) use a random sample of 358 paid non-death penalty petitions from 1986 to 1993; and Mak, Sidman, and Sommer (2013) uses a sample of the universe of 578 appellate decisions and 169 cert petitions from free exercise of religion cases decided by the Federal Court of Appeals from 1946 to 2006.

¹⁷ Appendix A1 reports the mean values for our control variables for the sample for which we have complete ideology data—and thus use in our analyses—and for the sample of cases where the ideology data is missing.

5.1 Basic Results

We begin by using a distributional cutoff to capture whether a petitioner or respondent is an Odd Party Out—that is, whether either advocate is ideologically distant to the other advocate or to the panel median. (In Part 5.3, we show that our results are robust to using a continuous measure of ideological distance.) Specifically, we calculate the absolute distance between litigant-panel pairs across all cases. We then categorize advocates with distances below the 25th percentile (0.4 units) as *ideologically aligned*, and we categorize advocates with distances greater than the 75th percentile (1.6 units) as *ideologically opposed*. We then code the panel itself as an Odd Party Out if they are ideologically opposed to both the petitioner and respondent. Likewise, we code respondents as an Odd Party Out if they are ideologically opposed to the panel median and the petitioner is ideologically aligned to the panel median. We also code petitioners as an Odd Party Out if they are ideologically opposed to the panel and the respondent is ideologically aligned with the panel median. All other cases are coded as not having an Odd Party Out. Using these criteria, the sample of 17,871 cases includes: 13,634 cases (76.3%) without an Odd Party Out; 1,749 cases (9.8%) where the panel is an Odd Party Out; 906 cases (5.1%) where the respondent is an Odd Party Out; and 1,582 cases (8.9%) where the petitioner is an Odd Party Out. Our theory predicts that this latter group is the one that should have the greatest likelihood of cert being granted.

To assess this in the raw data, Figure 2 graphs the share of cert petitions that were granted for each of these categories of cases. As Figure 2 shows, overall, cert was granted for 6.6 percent of the cases for which we have complete ideology data. The numbers are similar for cases where there was no Odd Party Out (which had a 6.5 percent grant rate). There is a modest decrease in grant rates for cases where the panel was an Odd Party Out (which had a 4.6 percent grant rate) and for cases where the respondent was an Odd Party Out (which had a 5.6 percent grant rate). However, the grant rate increases to 10.3 percent for cases

where the Petitioner was an Odd Party Out. This constitutes roughly a 56 percent increase over the baseline rate, and thus provides strong support for the Odd Party Out theory.

5.2 Regression Results

To more formally assess the relationship between whether a party is an Odd Party Out and the probability of cert, we estimate the following regression:

$$\begin{aligned}
 Pr(cert) = & \beta_0 + \beta_1 * Panel\ OddPartyOut \\
 & + \beta_2 * Respondent\ OddPartyOut \\
 & + \beta_3 * Petitioner\ OddPartyOut \\
 & + \gamma X + \mu_c + \delta_t + \varepsilon_{cjt}
 \end{aligned} \tag{1}$$

In equation (1), *Panel OddPartyOut*, *Respondent OddPartyOut*, and *Petitioner OddPartyOut* are dummy variables that capture the ideological positions of the litigating parties and lower-court median using the distributional cutoffs from Part 5.1. Our theory predicts that the coefficients associated with β_1 and β_2 should be negative, and it also predicts that the coefficient associated with β_3 should be positive and larger than the coefficients associated with β_1 and β_2 . Here, γX denotes a vector of control variables that capture various case characteristics (which we discuss below). To control for the possibilities that there are differences in grant rates across circuits or terms, in all specifications we include circuit fixed effects (μ_c) and Supreme Court term fixed effects (δ_t). Finally, ε_{cjt} denotes the error term. We use a linear probability model and cluster standard errors at the Supreme Court term level to account for dependencies in the cases that are granted cert in a given term.¹⁸

Table 2 reports the results from estimating Equation 1. Column 1 reports the results

¹⁸ Although our dependent variable is binary, we use a linear probability model for our primary specification so that the coefficients are more familiar and easier to interpret. Appendix A2 reports results showing our primary results substantively similar when using logit models and also when clustering standard errors at the circuit level.

when including only circuit and term fixed effects. The remainder of the columns add additional controls that extant research has shown may influence a cert petition’s outcome; these are also variables that may predict the ideological distance among the parties and lower-court panel (i.e., whether there is an Odd Party Out). Column 2 adds variables to control for whether the case was a criminal case or a civil case. Column 3 adds a series of variables that control for the procedural history of the case (if there was *en banc* review, a court of appeals dissent, a reversal by the court of appeals of the district court, or the case was dismissed by the appeals panel). Column 4 adds a series of variables that control for various party-level indicators (if the parties include the Solicitors General’s office, if the parties are corporations, if the petitioner proceeding *Pro Se*, or if the petitioning attorney is a veteran Supreme Court litigator¹⁹). Finally, Column 5 includes the full battery of control variables simultaneously.

It is worth noting that one variable we are unable to control for is whether a circuit split exists, at least not from the petitions themselves. (Nearly all petitioners claim having a circuit split, therefore making the petitions’ texts unreliable indicators (Russell, 2007).) However, the objective presence of a circuit split has been shown to increase the probability of cert (e.g. Tanenhaus et al., 1963; Ulmer, 1984; Caldeira and Wright, 1988; Perry, 1991; Caldeira, Wright, and Zorn, 1999; Black and Owens, 2009; Beim and Rader, 2020). We thus conducted sensitivity analysis to assess whether omitted variable bias due to our inability to control for circuit splits is driving our results. The results of this analysis, reported in Appendix A4, suggest that a correlation between Odd Party Out status and circuit splits is unlikely to be driving our results.²⁰

¹⁹ We define veteran attorneys based on their number of prior successful cert grants. The variable is specifically defined as: $\ln(\text{previous cert grants} + 1)$.

²⁰ We have no reason to think that Odd Party Out status and circuit splits are correlated: although ideological distance between the parties likely correlates with political importance, and this in turn probably correlates with circuit splits, our theory also hinges on the ideological composition of the panel. We see no reason to think that circuit splits correlate with the ideological distance between the parties and a particular panel, which would make circuit splits at most a weak confounder. As Appendix A4 shows, the Odd Party

In all specifications reported in Table 2, the coefficients for whether the panel or respondent is an Odd Party Out are in the expected negative direction, but they largely fail to reach statistical significance. As explained in Part 3, this is likely because the effect of factors that reduce the probability of cert are *tampered* relative to the size of effects that increase cert. Additionally, the coefficient for whether the petitioner is an Odd Party Out is in the expected positive direction, statically significant, and substantively large. The results suggest substantively that the presence of a petitioner that is an Odd Party Out is associated with between a 2.2 percentage point (Column 4) and a 3.1 percentage point (Columns 2 and 3) higher probability of cert being granted. This translates into their being between a 34 percent and 48 percent higher probability of cert being granted when there is a petitioner that is an Odd Party Out compared to cases with no Odd Party out. To put the size of these effects in context, the results in Column 5 suggest that the probability of cert is estimated to increase by 3.9 percentage points when there was lower-court dissenting opinion and by 4.2 percentage points in when the circuit court heard the case *en banc*. These results are consistent with our theory that the relative positions of the advocates and panels are strong predictors of the probability that cert will be granted.

5.3 Continuous Measures of Ideology

A possible concern might be that our result are dependent on specific cut-offs for assessing which, if any, party is an Odd Party Out. To assuage this concern, we estimate the relationship between whether a petitioner is an *Odd Party Out* and the probability of cert when using continuous measures of ideology. To do so, we use the following regression

Out configuration would have approximately 1.5 times more likely among circuit split cases to explain away our results. This unlikely conditional relationship means that circuit splits are unlikely to be driving our results.

framework:

$$\begin{aligned}
Pr(cert) = & \beta_0 + \beta_1(cf_P - cf_R) + \beta_2(cf_P - cf_C) \\
& + \beta_3((cf_P - cf_R) \times (cf_P - cf_C)) \\
& + \gamma X + \mu_c + \delta_t + \varepsilon_{cjt}
\end{aligned} \tag{2}$$

In equation (2), cf denotes the DIME score of the pertinent actor, while P corresponds to the petitioner, R to the respondent, and C to the lower-court panel median. Thus, $cf_P - cf_R$ is the signed ideological distance between the petitioner and the respondent (“Atty. Distance”), and $cf_P - cf_C$ is the signed ideological distance between the petitioner and the circuit panel’s median (“Panel Distance”). In this specification, β_3 is the main effect of interest. Higher values of β_3 indicate that both the panel and respondent are moving away from the petitioner in the same direction. (For instance, the extreme case would be a very liberal panel ruling for a very liberal respondent against a very conservative petitioner.²¹) Like with equation (1), γX denotes a vector of control variables that capture various case characteristics, μ_c are circuit fixed effects, δ_t are Supreme Court term fixed effects, and ε_{cjt} denotes the error term. We again use a linear probability model to estimate these regressions and cluster standard errors at the Supreme Court term level.²²

²¹ Using the signed ideological distance for *Atty. Distance* and *Panel Distance*, as opposed to the absolute value of the distance, is necessary to ensure that higher values of the interaction term only occur when the respondent and panel move away from the petitioner in the same direction. This can be illustrated with two simple numerical examples. For Example 1, assume that the DIME scores are as follows: Petitioner = -1, Respondent = 2, and Panel = 1. Using signed distances, the *Atty. Distance* would equal “-3”, the *Panel Distance* would equal “-2”, and their interaction would equal “6”. Notably, for Example 1, the interaction would equal “6” regardless of whether we used the absolute values of the distances or the signed distances. However, for Example 2, assume that the Panel ideology was the same distance from the Petitioner, but in the opposite direction as the respondent, with DIME scores as follows: Petitioner = -1, Respondent = 2, and Panel = -3. Using signed distances, the *Atty. Distance* would equal “-3”, the *Panel Distance* would equal “2”, and their interaction would equal “-6”. But if we were to use the absolute values of the distances for Example 2, however, the interaction would equal “6”. In other words, using the absolute value of the distances would produce an interaction term suggesting that the Petitioner was equally an Odd Party Out as Example 1, even though in Example 2 the Petitioner was ideologically closer to the Panel than the Respondent.

²² Appendix A3 reports results showing that these results are robust to using logit models and clustering standard errors at the circuit level.

Table 3 recreates the same regression specifications as Table 2 while using these continuous measures of ideological distance. In Table 3, the key variable of interest—the interaction between Attorney Distance and the Panel Distance—is consistently positive and statistically significant. Substantively, the estimate in Column 5 suggests that moving from 10th percentile to the 90th percentile for this variable is associated with a 2.1 percentage point higher probability of cert being granted. This translates into roughly a 31 percent increase in the probability of cert being granted. These results are consistent with the estimates in Table 2 and are again consistent with the Odd Party Out theory.

5.4 Discussion

Before continuing, it is worth noting several caveats to our results. First, as the results in Table 2 and Table 3 make clear, being an Odd Party Out is only one of the many factors that influence the Court’s decision making. Our analysis should not be read to suggest that whether an Odd Party Out is the only, or even the primary, factor affecting the Justices’ decision to grant cert.

Second, although donation records are a reliable measure of ideology on average (e.g. Bonica, 2019), donation records can be noisy and the alignment between advocates and the sides imperfect. As a result, the ideology of any individual may be measured with error. Here, the measurement error will create attenuation bias, biasing our regression coefficients towards zero. In other words, the measurement error makes it more difficult for us to test our theory—not easier.

Third, we only have data on the universe of cases in which a cert petition was filed. As a result, our analyses necessarily omit those cases in which cert was not filed. However, deducing backwards, we would expect that parties may rationally anticipate the Odd Party Out effect, meaning that petitioners who are not ideological Odd Parties Out may be disinclined to pursue cert unless they otherwise had strong cases. Moreover, we would also expect

that parties who do not file cert have weaker cases than parties who do file cert petitions. In the aggregate, this would make our subset of data, if anything, a “hard test case” to find an Odd Party Out effect. That is, in expectation the effects we find would be bigger if our sample include a large number of cases where there was a proportionately lower share of Odd Party Out cases and where cert was less likely be granted.

Fourth, our sample does not include cases where our measure of ideology is missing for one or more parties. This non-random missingness, however, could be affecting our inferences. But it is worth noting that it is unlikely that the non-donors have more extreme ideologies than the donors. Instead, the non-donors are more likely to be ideologically moderates. To evaluate where our results would hold up if we had a larger sample of cases that included more ideological moderates, we re-estimated the specifications in Table 2 and Table 3 after conducting two simulations: (1) simulating the missing data coming from ideological moderates by replacing missing DIME scores with 0 and (2) simulating the missing data coming from ideologically average lawyers by replacing missing DIME scores with a draw from a bimodal normal distribution. These results are presented in Appendix A5. These simulations introduce classic measurement error into our key independent variable, which should in expectation attenuate our results towards zero. Although some of our coefficients are predictably attenuated in these simulations, the coefficients of interest remain positive, similar in magnitude, and statistically significant in all specifications. These results suggests that missing ideological data is unlikely to be driving our results.

Finally, and most importantly, we caution that these results should not be interpreted as estimating a causal effect of advocate ideology. Indeed, advocates undoubtedly gravitate toward representing certain cases that echo their ideological concerns, suggesting that unobserved case covariates could correlate with attorney ideology. Thus, we do not mean to suggest that litigants could double the probability of successful cert petitions if they simply hired an ideologically extreme attorney. Instead, as we discuss above, advocate ideology op-

erates here as a useful proxy for the ideological positioning of the substantive issues involved and the identities of the parties; we show this is the case in Part 6.1, below.

6 Validating Assumptions

The results in Part 5 suggest that the relative ideologies of the litigating parties and lower-court judges are an important determinant of whether the Supreme Court will grant cert. Those results, however, are dependent on several assumptions about what our ideology variables are actually measuring. We now explore those assumptions more closely.

6.1 Advocate Ideology is Related to Party Ideology

A substantive assumption behind our empirical strategy is that, on average, the political donations of the advocate listed on the cert petition are a good proxy for the ideology of their client’s position. To be clear, our results would still be interesting if advocates’ ideologies were untethered to their clients’ positions and had an effect on the Justices’ cert petition behavior all on their own. While such a relationship would attribute great importance to the identities of the Supreme Court litigators, such a relationship would not speak to the substantive ideological importance of the issues involved in the cases, and thus would not support the arguments that inform the Odd Party Out theory. That said, although parties may retain lawyers with dissimilar ideological views, we believe that they mostly hire people who are likeminded and support the case position. As Part 4.1 explained, anecdotal and empirical evidence supports this assumption.

But to more directly assess this assumption, for cases that were granted cert, we tested the association between advocate ideology (as estimated via the advocates’ DIME scores) and the ideological leaning of Supreme Court and lower-court decisions in their cases. To do so, we rely on Supreme Court Database, which codes Supreme Court decisions and lower-

court decisions as conservative or liberal if the case was granted cert (notably, cert petitions that are not granted are not coded) (Spaeth et al., 2015).²³ If our assumption is correct, on average, the petitioning attorney for a case that is coded as having a conservative decision should herself lean in a conservative direction, while the responding attorney (her opposing counsel) should lean in a liberal direction. This would provide evidence of correspondence between advocate ideology and the ideological valance of a case—and therefore a good test for whether the former is a useful empirical proxy for the latter.

Following this approach, Table 4 reports the results of a series of regressions where the independent variable is the DIME score of the winning and losing attorneys and the dependent variables are whether the substantive outcome of the Supreme Court and lower-court decision was conservative.²⁴ As Table 4 shows, higher DIME scores, which correspond to more conservative ideologies, are strongly and statistically significantly associated with higher probabilities of conservative decisions. For instance, the regression specification in Column 2 suggests that moving from a DIME score of the winning attorney in the bottom 10th percentile (very liberal) to a DIME score in the top 90th percentile (very conservative) is associated with a 25.4 percentage point higher probability that the outcome of the case in the Supreme Court will be coded as conservative. The regression specification in Column 4 suggests that the same shift is associated with a 7.1 percentage point higher probability that the lower-court decision will be coded as conservative. The implications is that when the winning attorney is more conservative (or liberal), the decision eventually returned by the Supreme Court or lower-court is more likely to be conservative (or liberal) as well. This suggests a substantive correspondence between attorney ideologies and the sides they

²³ We are only able to test this relationship for cases where cert was granted. However, it is possible that the relationship between advocate ideology and the positions they represent does not hold, or is substantially weakened, among cases in which cert was not granted.

²⁴ This analysis is similar to Bonica and Sen (2017), which validates DIME scores as a measure of ideology for lawyers and judges by showing the association between attorney positions and the ideological direction of Supreme Court decisions. Our analysis differs in that it uses a larger sample and focuses on the association between attorney ideology and the ideological direction of lower-court decisions.

represent.

6.2 Results are not Dependent on Repeat Players

As a related point, we more closely evaluate our claim that is the Court is not simply more likely to grant cert because the *advocates* are themselves ideologically distant. Instead, our approach is that examining advocate ideology is useful primarily because it is closely related to the ideological positioning of the parties (and thus, of their positions in the case). An empirical implication of our claim is that our findings should not be driven solely by cases where the Justices (or the clerks initially reviewing the petitions) are likely to know the ideology of the attorneys.²⁵ In other words, if the effect was coming from simply the ideology of the advocates, then we should see the greatest effect when the ideology of the advocates is well known—that is, for famous Supreme Court litigators. If we do not, then this supports our assumption that advocate ideology does not operate independently and is instead a good proxy for case positioning (per our analyses in Part refAssumptionProxy).

To test this possibility, Table 7 replicates the specifications from Table 2 while interacting the Petitioner Odd Party Out variable with whether the petitioner was a veteran attorney—that is, someone who has made more than one oral argument before the Supreme

²⁵Substantively, this makes sense: the Justices are likely unaware of who the advocates are for the vast majority of the cert petitions they vote on. This is because the Justices rely on briefs prepared by clerks that typically do not include names of the attorneys. Here, multiple conversations with former Supreme Court clerks from the years in our sample confirmed the well-known fact that most Justices participate in a “cert pool” where the chambers share memos, and those memos typically do not include the names of the advocates. (However, some Justices have opted out of the cert pool.) As a result, the justices are unlikely to be relying on the ideological reputations of the advocates as a direct proxy for the ideology of the litigating parties. That said, prior research has suggested that the clerks are also well familiar with repeat Supreme Court litigators. Lazarus (2008, p. 1526) explains that when the clerks reviewing cert petitions “see the name of an attorney whose work before the Court they know, at least by reputation, that attorney’s involvement in the case, by itself, conveys an important message about the significance of the legal issues being presented and the credibility of the assertions being made.” Moreover, there is evidence that the views of clerks influence Supreme Court decision making (e.g., Bonica et al., 2019). It is thus possible that the clerks rely directly on the advocates reputation to infer the ideology of the parties in some cases. In most cases, however, we believe that the advocates ideology is a proxy for the arguments contained in the briefs, which is instead the signal the clerks and justices are relying on to infer the ideologies of the litigating parties.

Court. This explicitly checks whether the presence of well-known litigators matters more for the probability that cert is granted in Odd Party Out cases. The results in Table 7 suggest that veteran Supreme Court litigators are about 3.5 percentage points more likely to have their cert petitions granted; however, the table also shows that the interaction between Petitioner Odd Party Out and Veteran Supreme Court Litigator is *statistically insignificant and substantively small*. This suggests that our primary results are not driven entirely by the Justices knowing the ideological reputations of the advocates. This lends further support to our argument that advocate ideology serves primarily as a proxy for the ideology positions of the parties they represent (and not that the Justices are relying solely on the ideological reputations of the advocates).

6.3 DIME Scores are a Reliable Measure of Lower-Court Ideology

Another assumption behind our empirical strategy is that DIME scores are reasonably good measures of the ideology of circuit court panel medians. Although these measures have been extensively validated in Bonica and Sen (2017) and used by judicial politics scholars elsewhere, they are likely to be less familiar than the widely used Judicial Common Space (“JCS”) (Epstein et al., 2007) scores. Moreover, evidence has also suggested that unidimensional measures of judicial ideology may not accurately capture variance among judges (Lauderdale and Clark, 2012). For this reason, we conduct two additional tests.

First, we tested whether the judicial DIME scores can predict dissents at the appellate level. Existing research suggests that greater ideological diversity within panels increases the probability of a dissenting opinion (e.g., Hettinger, Lindquist, and Martinek, 2003). If DIME scores are a reliable predictor of the ideology of the panel, then greater spreads between the most liberal and most conservative members of the panel should be associated with more dissents. (In turn, additional dissents would also predict a higher probability of cert (e.g. Beim, Hirsch, and Kastellec, 2014).) Using the data on lower-court opinions that we compiled

from the Federal Judicial Center’s Integrated Database and from CourtListener, we tested this possibility on the entire universe of federal appeals court decisions filed between 2003 to 2015. The results of these regressions are reported in Table 5, where the dependent variable is the existence of a dissenting opinion. The table easily confirms that greater ideological spreads between the members of an appeals panel are positively associated with greater probabilities that a dissenting opinion will be written. For instance, the estimate in Column 2 of Table 5 suggests that moving the from the bottom 10th percentile to the top 90th percentile of the absolute value of the distance in panel DIME scores is associated with the probability of dissent going from 2.5 percent to 5 percent. In other words, the probability of dissent roughly doubles. This provides additional evidence that these measures capture meaningful ideological variation in lower-court panels that judicial politics scholarship would connect to substantive outcomes.

Second, we tested whether the median ideology of the appeals court panel predicts the ideological leaning of case outcomes. For this, we again use the Supreme Court Database’s coding of the ideological direction of lower-court decisions for cases that were granted cert as a dependent variable. In Table 6, Column 1 reports the results of regressions where the main explanatory variable is the panel’s median DIME score, and Column 2 reports the same regression while adding circuit and term fixed effects. The positive relationship implies that more conservative panel medians (as measured by DIME scores) are returning more conservative decisions—a finding that supports the validity of DIME scores. In addition, Columns 3 and 4 provide a simple comparison to JCS scores. These results are consistent: more conservative panels, as measured by median JCS score, are associated with more conservative decisions. The models using the DIME scores, however, have a very modestly higher R^2 and thus explain more of the variance in the case outcome.

6.4 Symmetrical Results for Liberal and Conservative Petitioners

Finally, our theory did not make different predictions based on whether an Odd Party Out was liberal or conservative. Instead, we suggested that the justices are more likely to grant cert when the petitioner is ideologically distant from both the respondent and the median judge on the lower-court panel, regardless of whether that petitioner is liberal or conservative. It is possible, however, that Justices may be interested in reviewing petitions where the party that lost below is ideologically aligned with them. Put differently, the median member of the Supreme Court was conservative in all years of our sample, so the Court thus may have been more receptive to conservative petitioners that were an Odd Party Out than liberal petitioners that were an Odd Party Out.

To test this possibility, Table 8 again replicates the specifications from Table 2, but while interacting the Petitioner Odd Party Out variable with an indicator for whether the petitioner is conservative (DIME score > 0). The results in Table 8 suggest that Conservative Petitioners are about 1.3 percentage points more likely to have their cert petitions granted, but the interaction between Petitioner Odd Party Out and Conservative Petitioner is far from statistically significant. These suggest our primary results are not driven solely by the Justices wishing to grant cert when litigating parties of a particular ideology are an Odd Party Out.

7 Conclusion

Scholars have long theorized that the Supreme Court relies on important cues when deciding which cases to hear; among these are the identities advocate making the case as well as the identities of the relative lower-court judges. One important cue has, however, received little academic attention: *the relative ideologies of the litigating parties*. As we have argued, large gaps between the ideologies of the litigating parties indicates that the case may be

legally, politically, or publicly salient. Additionally, the interaction between the ideologies of the litigating parties and the ideology of the lower-court panel also conveys valuable information. When there is a large ideological distance between the parties themselves, and the lower-court sides with the party who is ideologically opposite to the panel, this suggests the losing party may have a weak case. But when the lower-court sides with its ideological ally and against its ideological opponent, it both suggests that the issue is important and that the outcome may have been influenced by the panel's ideology. Using several novel data sources, we find strong support for this theory.

These results make several contributions to the literature on judicial behavior. Most obviously, they contribute to the large literature on Supreme Court decisionmaking by documenting previously unidentified factors that are associated with cert petitions being granted. In doing so, they also emphasize the need to consider the role of conditional effects in theories of the cert process. For instance, our results suggest that the ideological differences between the parties are likely mediated by the ideology of the judges that heard the case; and, correspondingly, that the Justices' interest in reviewing cases based on the perceived ideological bias of the panel may be mediated by the ideologies of the parties. Finally, our results also suggest the need to expanded the way that ideology in the legal system is studied. Although the role that judges' and Justices' ideologies play in case outcomes has been extensively studied, less attention has been paid to the role that other actors' ideologies play in the legal process. But as our results demonstrates, new data sources are making it possible to incorporate information on the ideologies of a wider range of actors into empirical analysis on judicial behavior. The initial evidence from this new research all suggests that ideology influences judicial politics in far more ways than just how the cases are ultimately decided.

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Tables and Figures

Table 1: Summary Statistics

	Mean	S.D.	Min	Max	N obs.
Outcome					
Cert Granted	0.066	0.248	0	1	17,871
Odd Party Out					
No Odd-Party-Out	0.763	0.425	0	1	17,871
Panel Odd-Party-Out	0.098	0.297	0	1	17,871
Respondent OPO	0.051	0.219	0	1	17,871
Petitioner Odd-Party-Out	0.089	0.284	0	1	17,871
Case Type					
Criminal Case	0.630	0.483	0	1	17,871
Civil Case	0.356	0.479	0	1	17,871
Procedural History					
<i>En Banc</i>	0.015	0.124	0	1	17,871
Dissenting Opinion	0.072	0.259	0	1	17,871
District Court Reversed	0.080	0.271	0	1	17,871
Case Dismissed	0.801	0.399	0	1	17,871
Litigant Characteristics					
Solicitor General (Pet.)	0.005	0.068	0	1	17,871
Solicitor General (Resp.)	0.688	0.463	0	1	17,871
Corporation (Pet.)	0.068	0.252	0	1	17,871
Corporation (Resp.)	0.078	0.268	0	1	17,871
Pro Se (Pet.)	0.045	0.207	0	1	17,871
Veteran Atty. (ln)	0.564	1.136	0	5.549	17,871

Figure 2: Probability of Cert by Odd Party Out Possibilities

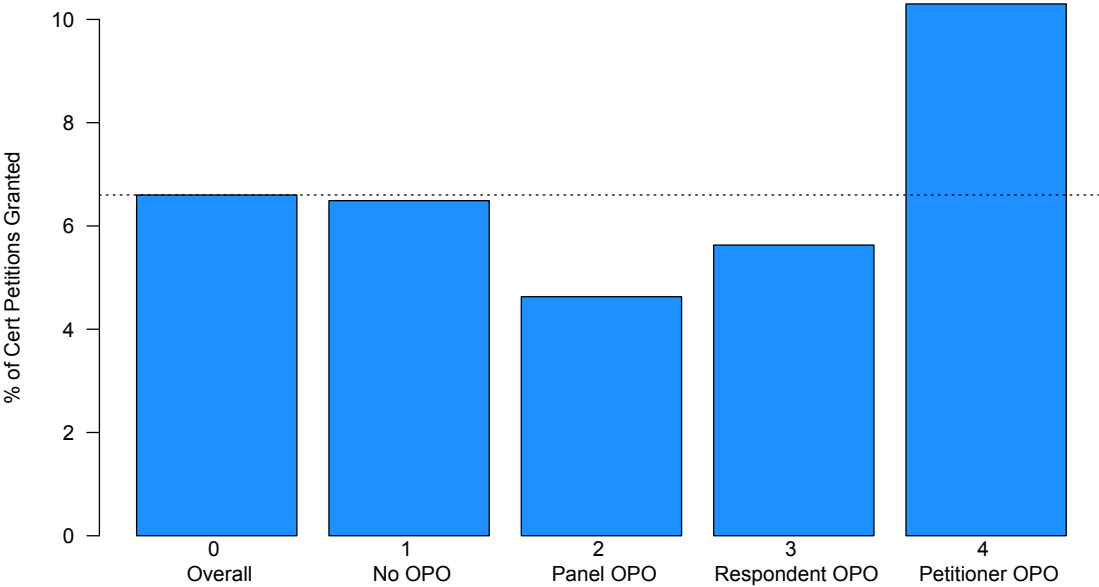


Table 2: Determinants of Cert Grants — Primary Results

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	-0.006 (0.006)	-0.005 (0.006)	-0.005 (0.006)	-0.020** (0.008)	-0.019** (0.008)
Respondent Odd-Party-Out	-0.004 (0.006)	-0.003 (0.006)	-0.003 (0.006)	-0.002 (0.006)	-0.002 (0.006)
Petitioner Odd-Party-Out	0.029** (0.012)	0.031** (0.011)	0.031** (0.012)	0.022* (0.012)	0.023* (0.012)
Criminal Case		-0.045 (0.047)			-0.021 (0.039)
Civil Case		-0.018 (0.030)			-0.020 (0.027)
<i>En Banc</i>			0.055* (0.028)		0.042 (0.025)
Dissenting Opinion			0.055*** (0.014)		0.039*** (0.012)
District Court Reversed			0.054*** (0.013)		0.038** (0.014)
Case Dismissed			-0.015 (0.018)		-0.006 (0.014)
Solicitor General (Pet.)				0.436*** (0.044)	0.417*** (0.042)
Solicitor General (Resp.)				-0.039* (0.022)	-0.028** (0.010)
Corporation (Pet.)				0.027* (0.014)	0.020* (0.011)
Corporation (Resp.)				-0.025** (0.009)	-0.024** (0.008)
Pro Se (Pet.)				0.004 (0.011)	0.007 (0.015)
Veteran Atty. (ln)				0.037*** (0.006)	0.036*** (0.006)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.069	0.072	0.082	0.121	0.126

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table 3: Determinants of Cert Grants — Continuous Ideology Measures

	(1)	(2)	(3)	(4)	(5)
Atty. Distance	-0.003 (0.010)	-0.004 (0.009)	-0.004 (0.010)	-0.007 (0.009)	-0.008 (0.008)
Panel Distance	0.012* (0.006)	0.012** (0.006)	0.012** (0.006)	0.015** (0.006)	0.015** (0.006)
Atty. Distance * Panel Distance	0.007*** (0.002)	0.007*** (0.002)	0.006*** (0.002)	0.005*** (0.001)	0.005*** (0.001)
Criminal Case		-0.044 (0.045)			-0.021 (0.037)
Civil Case		-0.017 (0.029)			-0.019 (0.027)
<i>En Banc</i>			0.054* (0.027)		0.042 (0.024)
Dissenting Opinion			0.054*** (0.013)		0.039*** (0.011)
District Court Reversed			0.054*** (0.013)		0.038** (0.014)
Case Dismissed			-0.014 (0.018)		-0.005 (0.014)
Solicitor General (Pet.)				0.434*** (0.041)	0.416*** (0.040)
Solicitor General (Resp.)				-0.039* (0.020)	-0.027** (0.010)
Corporation (Pet.)				0.025* (0.013)	0.019 (0.011)
Corporation (Resp.)				-0.024** (0.009)	-0.022** (0.008)
Pro Se (Pet.)				0.005 (0.012)	0.007 (0.015)
Veteran Atty. (ln)				0.037*** (0.006)	0.036*** (0.006)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.071	0.074	0.083	0.123	0.128

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table 4: Attorney Ideology and the Directionality of Court Decisions

	Supreme Court Decisions		Lower Court Decisions	
	(1)	(2)	(3)	(4)
Winning Atty. (DIME)	0.092*** (0.014)	0.107*** (0.014)	0.066*** (0.014)	0.030** (0.014)
Losing Atty. (DIME)	-0.081*** (0.014)	-0.054*** (0.015)	-0.148*** (0.013)	-0.151*** (0.013)
Circuit Fixed Effects	No	Yes	No	Yes
Year Fixed Effects	No	Yes	No	Yes
Observations	1,277	1,232	1,275	1,228
R-squared	0.060	0.124	0.105	0.234

Notes: The sample of cases is petitions that were granted cert. The dependent variable for columns (1) and (2) is coded as “1” if the Supreme Court decision on the merits was coded as conservative by the Supreme Court database, and the dependent variable for columns (3) and (4) is coded as “1” if the lower court decision on the merits was coded as conservative by the Supreme Court database. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table 5: Within-Panel Ideological Divisions and Dissent

	(1)	(2)
Panel DIME _{max} – Panel DIME _{min}	0.021*** (0.001)	0.017*** (0.001)
Circuit Fixed Effects	No	Yes
Year Fixed Effects	No	Yes
Observations	260,797	260,797
R-squared	0.004	0.027
<p><i>Notes:</i> The sample of cases is Court of Appeals decisions. The dependent variable is coded as “1” if there was a dissenting opinion at the Court of Appeals level. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1</p>		

Table 6: Judicial Ideology Measures and the Directionality of Lower Court Decisions

	(1)	(2)	(3)	(4)
CoA Panel Median (DIME)	0.188*** (0.021)	0.097*** (0.026)		
CoA Panel Median (JCS)			0.299*** (0.042)	0.115** (0.046)
Circuit Fixed Effects	No	Yes	No	Yes
Year Fixed Effects	No	Yes	No	Yes
Observations	1,236	1,236	1,236	1,236
R-squared	0.059	0.147	0.039	0.141
<i>Notes:</i> The sample of cases is petitions that where granted cert. The dependent variable for all columns is coded as “1” if the lower court decision on the merits was coded as conservative by the Supreme Court database. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1				

Table 7: Determinants of Cert Grants — Interacting Veteran Attorneys

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	-0.024*** (0.007)	-0.023*** (0.007)	-0.022*** (0.007)	-0.019** (0.008)	-0.019** (0.007)
Respondent Odd-Party-Out	-0.005 (0.006)	-0.004 (0.006)	-0.004 (0.006)	-0.002 (0.006)	-0.002 (0.006)
Petitioner Odd-Party-Out	0.015 (0.010)	0.018* (0.009)	0.018* (0.010)	0.019** (0.009)	0.020** (0.009)
Veteran Atty. (ln)	0.041*** (0.006)	0.041*** (0.006)	0.039*** (0.006)	0.036*** (0.006)	0.035*** (0.005)
Petitioner Odd-Party-Out * Veteran Atty. (ln)	0.006 (0.011)	0.006 (0.011)	0.006 (0.011)	0.004 (0.011)	0.004 (0.011)
Criminal Case		-0.046 (0.046)			-0.021 (0.039)
Civil Case		-0.014 (0.028)			-0.020 (0.027)
<i>En Banc</i>			0.046 (0.026)		0.043 (0.025)
Dissenting Opinion			0.048*** (0.014)		0.039*** (0.012)
District Court Reversed			0.050*** (0.013)		0.038** (0.014)
Case Dismissed			-0.014 (0.018)		-0.006 (0.014)
Solicitor General (Pet.)				0.436*** (0.044)	0.416*** (0.043)
Solicitor General (Resp.)				-0.039* (0.022)	-0.028** (0.010)
Corporation (Pet.)				0.027* (0.014)	0.020* (0.011)
Corporation (Resp.)				-0.025** (0.009)	-0.024** (0.008)
Pro Se (Pet.)				0.004 (0.011)	0.007 (0.015)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.101	0.104	0.111	0.121	0.126

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table 8: Determinants of Cert Grants — Interacting Conservative Attorney

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	-0.003 (0.006)	-0.003 (0.006)	-0.003 (0.006)	-0.017* (0.008)	-0.017** (0.008)
Respondent Odd-Party-Out	-0.008 (0.007)	-0.006 (0.006)	-0.006 (0.006)	-0.006 (0.007)	-0.006 (0.007)
Petitioner Odd-Party-Out	0.025* (0.014)	0.028** (0.012)	0.028* (0.014)	0.023 (0.014)	0.025* (0.014)
Conservative Petitioner	0.012* (0.006)	0.009 (0.006)	0.010 (0.006)	0.013** (0.005)	0.013** (0.005)
Petitioner Odd-Party-Out * Conservative Petitioner	0.047 (0.039)	0.041 (0.037)	0.036 (0.037)	0.010 (0.029)	0.006 (0.029)
Criminal Case		-0.043 (0.046)			-0.019 (0.038)
Civil Case		-0.017 (0.030)			-0.019 (0.027)
<i>En Banc</i>			0.055* (0.028)		0.043 (0.024)
Dissenting Opinion			0.055*** (0.014)		0.039*** (0.012)
District Court Reversed			0.054*** (0.013)		0.038** (0.014)
Case Dismissed			-0.014 (0.018)		-0.006 (0.014)
Solicitor General (Pet.)				0.433*** (0.042)	0.414*** (0.041)
Solicitor General (Resp.)				-0.039 (0.022)	-0.028** (0.010)
Corporation (Pet.)				0.024 (0.014)	0.018 (0.011)
Corporation (Resp.)				-0.025** (0.009)	-0.023** (0.008)
Pro Se (Pet.)				0.004 (0.011)	0.006 (0.015)
Veteran Atty. (ln)				0.037*** (0.006)	0.036*** (0.006)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.070	0.073	0.082	0.122	0.127

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

The “Odd Party Out” Theory of *Certiorari*

Supplemental Appendix

This appendix provides three pieces of additional information. Part A1 provides summary statistics for our sample and the sample of cases for which we do not have complete ideology data. Part A2 presents robustness checks that supplement the results reported in Part 5.2 that use a distributional cutoff to define whether a party is an Odd Party Out. Part A3 presents robustness checks that supplement the results reported in Part 5.3 that use a continuous measure to define whether a party is an Odd Party Out. Part A4 examines the sensitivity of our main findings to the presence of circuit splits. Part A5 explores whether missing ideology data may be driving results.

A1 Additional Summary Statistics

Table A1: Summary Statistics for Sample With and Without DIME Scores

	Complete DIME scores	Missing DIME scores
Outcome		
Cert Granted	0.066	0.030
Odd Party Out		
No Odd-Party-Out	0.763	— — —
Panel Odd-Party-Out	0.098	— — —
Respondent OPO	0.051	— — —
Petitioner Odd-Party-Out	0.089	— — —
Case Type		
Criminal Case	0.630	0.373
Civil Case	0.356	0.615
Procedural History		
<i>En Banc</i>	0.015	0.006
Dissenting Opinion	0.072	0.037
District Court Reversed	0.080	0.037
Case Dismissed	0.801	0.731
Litigant Characteristics		
Solicitor General (Pet.)	0.005	0.002
Solicitor General (Resp.)	0.688	0.516
Corporation (Pet.)	0.068	0.020
Corporation (Resp.)	0.078	0.060
Pro Se (Pet.)	0.045	0.445
Veteran Atty. (ln)	0.564	0.172

A2 Alternative Specifications – Primary Results

Table A2: Determinants of Cert Grants — Primary Results — Logit

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	-0.134 (0.117)	-0.133 (0.117)	-0.117 (0.121)	-0.319** (0.160)	-0.310** (0.156)
Respondent Odd-Party-Out	-0.098 (0.110)	-0.060 (0.107)	-0.079 (0.107)	-0.062 (0.138)	-0.071 (0.139)
Petitioner Odd-Party-Out	0.413*** (0.123)	0.476*** (0.147)	0.466*** (0.126)	0.372*** (0.122)	0.388*** (0.123)
Criminal Case		-0.673 (0.735)			-0.357 (0.689)
Civil Case		-0.197 (0.362)			-0.304 (0.346)
<i>En Banc</i>			0.438* (0.251)		0.391 (0.252)
Dissenting Opinion			0.679*** (0.194)		0.506*** (0.143)
District Court Reversed			0.602*** (0.104)		0.456*** (0.149)
Case Dismissed			-0.258 (0.337)		-0.101 (0.228)
Solicitor General (Pet.)				1.929*** (0.284)	1.786*** (0.228)
Solicitor General (Resp.)				-0.611 (0.459)	-0.389** (0.177)
Corporation (Pet.)				0.300** (0.141)	0.235* (0.135)
Corporation (Resp.)				-0.364** (0.145)	-0.335** (0.139)
Pro Se (Pet.)				0.094 (0.224)	0.126 (0.262)
Veteran Atty. (ln)				0.535*** (0.040)	0.524*** (0.041)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a logitmodel with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A3: Determinants of Cert Grants — Primary Results — Cluster by Circuit

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	-0.006 (0.006)	-0.005 (0.006)	-0.005 (0.006)	-0.020*** (0.006)	-0.019*** (0.006)
Respondent Odd-Party-Out	-0.004 (0.008)	-0.003 (0.008)	-0.003 (0.008)	-0.002 (0.008)	-0.002 (0.008)
Petitioner Odd-Party-Out	0.029*** (0.008)	0.031*** (0.008)	0.031*** (0.008)	0.022*** (0.008)	0.023*** (0.008)
Criminal Case		-0.045** (0.022)			-0.021 (0.021)
Civil Case		-0.018 (0.022)			-0.020 (0.021)
<i>En Banc</i>			0.055** (0.025)		0.042* (0.023)
Dissenting Opinion			0.055*** (0.010)		0.039*** (0.010)
District Court Reversed			0.054*** (0.011)		0.038*** (0.011)
Case Dismissed			-0.015** (0.006)		-0.006 (0.006)
Solicitor General (Pet.)				0.436*** (0.053)	0.417*** (0.053)
Solicitor General (Resp.)				-0.039*** (0.005)	-0.028*** (0.006)
Corporation (Pet.)				0.027*** (0.009)	0.020** (0.010)
Corporation (Resp.)				-0.025*** (0.008)	-0.024*** (0.008)
Pro Se (Pet.)				0.004 (0.008)	0.007 (0.008)
Veteran Atty. (ln)				0.037*** (0.002)	0.036*** (0.002)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.069	0.072	0.082	0.121	0.126

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Circuit that that the petition arose from. The constant is omitted. ***p < .01; **p < .05; *p < .1

A3 Alternative Specifications – Continuous Ideology Measure

Table A4: Determinants of Cert Grants — Continuous Ideology — Logit

	(1)	(2)	(3)	(4)	(5)
Atty. Distance	-0.065 (0.151)	-0.111 (0.115)	-0.101 (0.133)	-0.191* (0.114)	-0.195* (0.105)
Panel Distance	0.233*** (0.090)	0.241*** (0.077)	0.240*** (0.082)	0.281*** (0.088)	0.278*** (0.092)
Atty. Distance * Panel Distance	0.104*** (0.021)	0.110*** (0.022)	0.102*** (0.022)	0.082*** (0.016)	0.080*** (0.016)
Criminal Case		-0.711 (0.663)			-0.372 (0.667)
Civil Case		-0.213 (0.335)			-0.313 (0.328)
<i>En Banc</i>			0.419* (0.252)		0.371 (0.248)
Dissenting Opinion			0.678*** (0.172)		0.504*** (0.136)
District Court Reversed			0.612*** (0.106)		0.461*** (0.146)
Case Dismissed			-0.242 (0.328)		-0.085 (0.233)
Solicitor General (Pet.)				1.940*** (0.276)	1.801*** (0.230)
Solicitor General (Resp.)				-0.675* (0.378)	-0.456** (0.179)
Corporation (Pet.)				0.293** (0.134)	0.228* (0.135)
Corporation (Resp.)				-0.345** (0.140)	-0.321** (0.134)
Pro Se (Pet.)				0.115 (0.226)	0.151 (0.267)
Veteran Atty. (ln)				0.534*** (0.040)	0.523*** (0.041)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a logit model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A5: Determinants of Cert Grants — Continuous Ideology — Cluster by Circuit

	(1)	(2)	(3)	(4)	(5)
Atty. Distance	-0.003 (0.003)	-0.004 (0.003)	-0.004 (0.003)	-0.007** (0.003)	-0.008*** (0.003)
Panel Distance	0.012*** (0.003)	0.012*** (0.003)	0.012*** (0.003)	0.015*** (0.003)	0.015*** (0.003)
Atty. Distance * Panel Distance	0.007*** (0.001)	0.007*** (0.001)	0.006*** (0.001)	0.005*** (0.001)	0.005*** (0.001)
Criminal Case		-0.044** (0.021)			-0.021 (0.021)
Civil Case		-0.017 (0.022)			-0.019 (0.021)
<i>En Banc</i>			0.054** (0.025)		0.042* (0.023)
Dissenting Opinion			0.054*** (0.010)		0.039*** (0.010)
District Court Reversed			0.054*** (0.011)		0.038*** (0.011)
Case Dismissed			-0.014** (0.006)		-0.005 (0.006)
Solicitor General (Pet.)				0.434*** (0.053)	0.416*** (0.053)
Solicitor General (Resp.)				-0.039*** (0.005)	-0.027*** (0.006)
Corporation (Pet.)				0.025*** (0.009)	0.019** (0.010)
Corporation (Resp.)				-0.024*** (0.008)	-0.022*** (0.008)
Pro Se (Pet.)				0.005 (0.008)	0.007 (0.008)
Veteran Atty. (ln)				0.037*** (0.002)	0.036*** (0.002)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	17,871	17,871	17,871	17,871	17,871
R-squared	0.071	0.074	0.083	0.123	0.128

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Circuit that that the petition arose from. The constant is omitted. ***p < .01; **p < .05; *p < .1

A4 Sensitivity Analysis on Possible Circuit Split Confounding

As we noted in Part 5.2, a possible concern with our results is that we do not have information on which petitions present genuine splits among the Court of Appeals. Specifically, the presence of such a “circuit split”—or disagreement among the twelve Courts of Appeals on a particular legal issue—is thought to be a strong predictor of whether the Supreme Court is likely to grant a cert petition. However, given the importance ascribed to these intra-court splits, petitioners commonly make the claim—even when it is legally dubious—that a circuit split is present. This makes the text of petitions themselves unreliable markers of the presence of a split.

Although some scholars have made headway identifying which cases present genuine circuit splits by having skilled coders (e.g. law students) independently research whether a circuit split is actually present (e.g., Beim and Rader, 2020), the scope of our data made such in-depth qualitative coding impossible. This means that a possible concern with our findings is that they being driven by omitted variable bias due to our inability to control for the presence of a circuit splits. This would be a concern if Odd Party Out cases are much more likely to feature genuine circuit splits than other cases. As we noted in Part 5.2, this seems like a remote possibility: although it is possible that circuit splits correlate with a large ideological distance between the parties, we no reason why circuit splits would predict a large ideological distance between the panel and the litigants (or vice versa), especially since panel assignment is orthogonal to issue area.

Nonetheless, we address this by conducting a straightforward sensitivity analysis using a method recommended by VanderWeele and Ding (2017). Sensitivity analyses are commonly used when researchers are worried about an unobserved confounder (or set of unobserved confounders) is driving a result. The method of sensitivity analysis developed by VanderWeele and Ding (2017) returns a quantity called the “E-value,” the interpretation of which relies on risk ratios. Specifically, as VanderWeele and Ding (2017, p. 3) explains, the

“E-value is the minimum strength of association, on the risk ratio scale, that an unmeasured confounder would need to have with both the treatment and outcome, conditional on the measured covariates, to explain away a treatment-outcome association.”

Table A6: Evalues from Primary Regression Specifications

	(1)	(2)	(3)	(4)	(5)
Specification from Table 2	1.5	1.5	1.5	1.4	1.4

The results from this analysis are shown in Table A6. This Table is based on calculating the E-value for the “Petitioner Odd-Party-Out” variable for the regression specification from the five columns of Table 2. The results in Table A6 show an E-value of between a 1.4 and 1.5. In our substantive context, this suggests that cert would have to be granted 1.4 or 1.5 times higher in the circuit split group versus non-circuit split group *and* the Odd Party Out configuration would have to be 1.4 or 1.5 times higher in the circuit split group than in the non-circuit split group, *above and beyond those covariates already included in the model specification*. Perhaps the former could be the case, but it seems unlikely that the Odd Party Out configuration would be 1.4 or 1.5 times more prevalent in circuit split cases, especially given the high rate of petitioners claiming the presence of a circuit split.

A5 Assessing the Effect of Missing Ideology Data

Table A7: Primary Results — Replace Missing DIME Score with 0

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	0.013*** (0.005)	0.012** (0.005)	0.011** (0.005)	−0.017*** (0.005)	−0.017*** (0.005)
Respondent Odd-Party-Out	0.009 (0.006)	0.007 (0.006)	0.007 (0.006)	−0.003 (0.006)	−0.003 (0.006)
Petitioner Odd-Party-Out	0.044*** (0.005)	0.042*** (0.005)	0.043*** (0.005)	0.025*** (0.005)	0.025*** (0.005)
Criminal Case		−0.033*** (0.009)			−0.030*** (0.009)
Civil Case		−0.041*** (0.009)			−0.035*** (0.009)
<i>En Banc</i>			0.060*** (0.010)		0.049*** (0.010)
Dissenting Opinion			0.051*** (0.005)		0.036*** (0.005)
District Court Reversed			0.061*** (0.005)		0.034*** (0.005)
Case Dismissed			−0.001 (0.003)		−0.007*** (0.003)
Solicitor General (Pet.)				0.501*** (0.017)	0.480*** (0.018)
Solicitor General (Resp.)				−0.007*** (0.002)	−0.004 (0.003)
Corporation (Pet.)				0.041*** (0.005)	0.032*** (0.005)
Corporation (Resp.)				−0.006 (0.004)	−0.006 (0.004)
Pro Se (Pet.)				−0.020*** (0.002)	−0.014*** (0.003)
Veteran Atty. (ln)				0.036*** (0.001)	0.035*** (0.001)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	42,251	42,251	42,212	42,251	42,212
R-squared	0.070	0.070	0.081	0.122	0.127

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A8: Primary Results — Replace Missing DIME Score with Random

	(1)	(2)	(3)	(4)	(5)
Panel Odd-Party-Out	0.007* (0.004)	0.006 (0.004)	0.006 (0.004)	−0.011*** (0.004)	−0.012*** (0.004)
Respondent Odd-Party-Out	−0.002 (0.004)	−0.002 (0.004)	−0.001 (0.004)	−0.002 (0.004)	−0.002 (0.004)
Petitioner Odd-Party-Out	0.027*** (0.004)	0.026*** (0.004)	0.028*** (0.004)	0.019*** (0.004)	0.019*** (0.004)
Criminal Case		−0.033*** (0.009)			−0.030*** (0.009)
Civil Case		−0.042*** (0.009)			−0.036*** (0.009)
<i>En Banc</i>			0.060*** (0.010)		0.049*** (0.010)
Dissenting Opinion			0.051*** (0.005)		0.036*** (0.005)
District Court Reversed			0.062*** (0.005)		0.034*** (0.005)
Case Dismissed			−0.0002 (0.003)		−0.007*** (0.003)
Solicitor General (Pet.)				0.501*** (0.017)	0.480*** (0.018)
Solicitor General (Resp.)				−0.007*** (0.002)	−0.005 (0.003)
Corporation (Pet.)				0.042*** (0.005)	0.033*** (0.005)
Corporation (Resp.)				−0.006 (0.004)	−0.006 (0.004)
Pro Se (Pet.)				−0.020*** (0.002)	−0.014*** (0.003)
Veteran Atty. (ln)				0.036*** (0.001)	0.034*** (0.001)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	42,251	42,251	42,212	42,251	42,212
R-squared	0.069	0.070	0.080	0.122	0.127

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A9: Continuous Ideology — Replace Missing DIME Score with 0

	(1)	(2)	(3)	(4)	(5)
Atty. Distance	−0.003** (0.001)	−0.003** (0.001)	−0.004*** (0.001)	−0.007*** (0.001)	−0.007*** (0.001)
Panel Distance	0.005*** (0.001)	0.006*** (0.001)	0.006*** (0.001)	0.010*** (0.001)	0.010*** (0.001)
Atty. Distance * Panel Distance	0.009*** (0.001)	0.009*** (0.001)	0.008*** (0.001)	0.005*** (0.001)	0.005*** (0.001)
Criminal Case		−0.032*** (0.009)			−0.030*** (0.009)
Civil Case		−0.041*** (0.009)			−0.035*** (0.009)
<i>En Banc</i>			0.060*** (0.010)		0.050*** (0.010)
Dissenting Opinion			0.050*** (0.005)		0.035*** (0.005)
District Court Reversed			0.061*** (0.005)		0.034*** (0.005)
Case Dismissed			−0.001 (0.003)		−0.007*** (0.003)
Solicitor General (Pet.)				0.501*** (0.017)	0.480*** (0.018)
Solicitor General (Resp.)				−0.006*** (0.002)	−0.003 (0.003)
Corporation (Pet.)				0.042*** (0.005)	0.033*** (0.005)
Corporation (Resp.)				−0.006 (0.004)	−0.005 (0.004)
Pro Se (Pet.)				−0.018*** (0.002)	−0.013*** (0.003)
Veteran Atty. (ln)				0.035*** (0.001)	0.034*** (0.001)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	42,251	42,251	42,212	42,251	42,212
R-squared	0.072	0.072		0.123	0.129

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A10: Continuous Ideology — Replace Missing DIME Score with Random

	(1)	(2)	(3)	(4)	(5)
Atty. Distance	−0.005*** (0.001)	−0.006*** (0.001)	−0.006*** (0.001)	−0.007*** (0.001)	−0.007*** (0.001)
Panel Distance	0.004*** (0.001)	0.005*** (0.001)	0.005*** (0.001)	0.008*** (0.001)	0.008*** (0.001)
Atty. Distance * Panel Distance	0.002*** (0.001)	0.002*** (0.001)	0.002*** (0.001)	0.002*** (0.001)	0.002*** (0.001)
Criminal Case		−0.032*** (0.009)			−0.031*** (0.009)
Civil Case		−0.043*** (0.009)			−0.036*** (0.009)
<i>En Banc</i>			0.060*** (0.010)		0.050*** (0.010)
Dissenting Opinion			0.051*** (0.005)		0.035*** (0.005)
District Court Reversed			0.063*** (0.005)		0.035*** (0.005)
Case Dismissed			0.0003 (0.003)		−0.007*** (0.003)
Solicitor General (Pet.)				0.503*** (0.017)	0.481*** (0.018)
Solicitor General (Resp.)				−0.006*** (0.002)	−0.003 (0.003)
Corporation (Pet.)				0.042*** (0.005)	0.033*** (0.005)
Corporation (Resp.)				−0.006 (0.004)	−0.005 (0.004)
Pro Se (Pet.)				−0.020*** (0.002)	−0.015*** (0.003)
Veteran Atty. (ln)				0.036*** (0.001)	0.035*** (0.001)
Circuit Fixed Effects	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes
Observations	42,251	42,251	42,212	42,251	42,212
R-squared	0.069	0.070		0.123	0.128

Notes: The dependent variable is coded as “1” if a cert petition was granted. All regressions estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1