

# Public Mood, Previous Electoral Experience, and Responsiveness Among Federal Circuit Court Judges

American Politics Research

2017, Vol. 45(6) 1003–1031

© The Author(s) 2017

Reprints and permissions:

sagepub.com/journalsPermissions.nav

DOI: 10.1177/1532673X17692325

journals.sagepub.com/home/apr



Ryan J. Owens<sup>1</sup> and Patrick C. Wohlfarth<sup>2</sup>

## Abstract

Whether public opinion influences federal judges is a question that has long motivated—but often eluded—scholars. In this article, we examine two related questions: First, whether federal circuit court judges respond to circuit-level public opinion and, second, whether judges with extensive past elected political experience are even more responsive. The data show that circuit judges indeed respond to public opinion. The results also suggest that judges with greater past elected political experience may be more responsive. The results have implications for democratic control of the unelected judiciary, and suggest that appointing judges with electoral experience could, for better or worse, lead to a more majoritarian judiciary.

## Keywords

US Courts of Appeals, public opinion, electoral experience, judicial decision making

Do federal circuit court judges respond to public opinion in their circuits? Are judges with extensive past experience as elected politicians even more responsive than their colleagues? In 2001, then-Chief Justice Rehnquist

---

<sup>1</sup>University of Wisconsin–Madison, MD, USA

<sup>2</sup>University of Maryland, College Park, MD, USA

## Corresponding Author:

Patrick C. Wohlfarth, Department of Government & Politics, University of Maryland, College Park, 3140 Tydings Hall, College Park, MD 20742, USA.

Email: patrickw@umd.edu

lamented the growing trend toward appellate judges who had the same “judicial track” experiences: These judges graduated from the same set of law schools, clerked for appellate judges, practiced law for a barely tolerable amount of time, and then quickly became appellate judges themselves. Few had any electoral experience that might link them to the public and public opinion. The normative problem Rehnquist and others (Epstein et al., 2003; Epstein, Martin, Quinn, & Segal, 2009; Peretti, 2007) identified more broadly is the following: If judges drift too far from public opinion they may forfeit the judiciary’s legitimacy.

The situation is perhaps even more pronounced today than when Rehnquist agonized. Of President Obama’s 55 confirmed judges to the U.S. Courts of Appeals, only three (5.4%) had any previous elected political experience—and none of them had any experience winning election to federal office. Remarkably, even when the president enjoyed a 60-vote super majority in the U.S. Senate in the latter half of 2009, he did not nominate a single person with prior elected political experience. Contrast that with law clerk experience: 26 of Obama’s 55 judges (47%) served as a law clerk to a federal circuit court judge, while 13 (24%) served as a law clerk to a U.S. Supreme Court justice. Simply put, today’s federal circuit court judges have much judicial experience but lack electoral experience. What does this mean for the judiciary’s overall link to the public?

In what follows, we address two questions: First, does public opinion influence circuit court judges? Second, are judges with greater electoral experience more responsive to public opinion than their colleagues without such experience? After analyzing roughly 20,000 federal circuit judge votes from 1960 to 2002, we find that the answer to both questions is yes. Public opinion influences circuit court judges. Regardless of whether or how long a judge held elected political office, a change in public mood leads to a change in most judges’ ideological voting behavior. What is more, the data reveal that at least among some judges, prior elected political experience exacerbates the effects of circuit-level public opinion.

These findings have at least three implications. First, they are the first to suggest that circuit court judges’ decisions reflect public opinion. Previous studies found either that judges do not follow public opinion or that they may even rule contrary to it. After employing more recent and sophisticated public opinion data, however (Enns & Koch, 2013), we discover that judges do appear to track circuit-level public opinion. Second, the findings relate to democratic control over unelected courts. If policymakers favor majoritarian judges, they should consider appointing judges with electoral experience. If they value independence, they should eschew such nominees. Third, these findings can spur a broader debate over the effects of elected experience on

judicial behavior. Indeed, with the recent election of Donald Trump—and what appears to be an effort to reshape elite institutions—it would seem that people with elected experience might be, once again, likely picks for federal judgeships. And our findings suggest they might behave differently than judges without such experiences.

## Public Opinion and Federal Judges

Judges require public support to sustain judicial legitimacy. Though federal judges are not supposed to follow public opinion like elected political officials, they may need *generally* to follow public sentiment, or, as Ruth Bader Ginsburg once stated, to follow “the climate of the era” (Ginsburg, 2006). Because federal courts lack an electoral connection to voters, they are bereft of conventional arguments for legitimacy based on popular sovereignty. So, judges are in a comparatively weaker position than the political branches when it comes to justifying their use of power. As Murphy (1964) states, “A series of wrong or imprudent judgments . . . can undermine public faith in the [judiciary] . . . ” (p. 20). And the courts need that faith to sustain themselves.

Along these same lines, even though federal judges do not face elections, they still must anticipate how officials who *are* subject to elections will implement their decisions. If judges go beyond what the public will tolerate, elected officials will be less likely to implement those decisions faithfully. As McGuire and Stimson (2004) put it in regards to the Supreme Court,

The Court requires the cooperation of legislative and executive officials, many of whom are themselves careful auditors of mass opinion. For that reason, the members of the Court must reflect on how well their preferred outcomes will be received and supported by implementers. (p. 1022)

There are, of course, other instrumental reasons for wanting to follow public opinion. Having previously followed public opinion might help the judiciary when judges must oppose elected officials (Gibson, Caldeira, & Spence, 2003). Staying generally consistent with public opinion can help judges build up (and later cash in) that institutional legitimacy (Casillas, Enns, & Wohlfarth, 2011). At a minimum, a deep reservoir of diffuse support can help judges weather short-term political storms.<sup>1</sup>

If Congress’s reaction to the Ninth Circuit’s Decision in *Newdow v. U.S. Congress* (2002)<sup>2</sup> is any indication of things, it is that in some instances elected officials and the public can in fact become deeply upset by, and react negatively to, circuit court decisions. After the Ninth Circuit ruled the words

“under God” in the Pledge of Allegiance were unconstitutional, “public opinion turned strongly against the court’s decision and a swift congressional response ensued” (Hooper, 2005, p. 511). Members of Congress responded by proposing a number of court-curbing bills. If such bills reflect public disapproval (Clark, 2009), the public strongly opposed this decision. And while it was, to be sure, a unique decision, it seems reasonable to believe a court that repeatedly issues countermajoritarian decisions will stir up discord and attract negative attention. So, judges might need to consider the broad contours of public opinion.

Certainly, it is not necessary that the public actually knows about the circuit courts’ opinions; all that matters is judges *believe they might*. Indeed, politicians regularly make decisions based on the threat their actions *might* receive significant attention (see also, Black, Owens, Wedeking, & Wohlfarth, 2016a, 2016b; Enns, 2016). As Key (1961) explains of policymakers,

Even though few questions attract wide attention, those who decide may consciously adhere to the doctrine that they should proceed as if their every act were certain to be emblazoned on the front pages . . . and to command universal attention. (p. 266)

Arnold (1990, p. 68) makes a similar argument. He suggests, “Latent or unfocused opinions can quickly be transformed into intense and very real opinions with enormous political repercussions.” Further, even if the public is not familiar with circuit court decisions, an uninformed public can be alerted to them by politicians and other elites.<sup>3</sup>

Only two studies of which we are aware have examined the effect of public opinion on circuit court judges. M. E.K. Hall, Kirkland, and Windett (2015) find that circuit judges rule counter to national mood because litigants increasingly file lower quality suits. That is, in their view, the relationship is driven by docket composition and the presence of more frivolous appeals. As the public becomes increasingly liberal, for example, parties test the courts with more liberal but frivolous cases, which makes it appear that the courts are ruling against public opinion. The study is not directly similar to our approach, however, because it examines only the role of national public opinion on circuit court judges. Calvin, Collins, and Esbaugh-Soha (2011) examine whether circuit mood influences circuit judges but find no effect. Still, that study was conducted before recent advances in measurement of state public opinion; it was therefore unable to take advantage of these more compelling mood measures. Put simply, the jury is out when it comes to determining whether circuit-level public opinion influences circuit court judges.

At any rate, there are theoretical reasons why circuit court judges, fairly obscure though they may be, should pay attention to public opinion. Doing so can help maintain and increase their courts' legitimacy. It may protect the courts from political attacks. And, it may make implementation by elected officials more likely. In short, we expect that *as the public becomes more liberal (conservative), so too will the voting behavior of circuit court judges.*

## **Public Opinion and Federal Judges With Elected Political Experience**

While public opinion theoretically should matter to all judges, we suspect that it will have a greater influence on some judges rather than others. Some judges are better able to grasp it, or otherwise are more inclined toward it. In particular, we believe judges who once held elected political office will be more sensitive to public opinion and will be better able, and inclined, to follow it than judges who never held such office—or even those who held it for a fleeting moment.

Elected political officials tend to follow public opinion (e.g., Erikson, Mackuen, & Stimson, 2002).<sup>4</sup> They must maintain public support to retain their jobs. They must calculate the future implications of current public views and anticipate the electorate's response to their decisions. If they believe the public will react negatively to an action, they tend to alter their behavior. As a consequence, elected officials behave in terms of broader constituencies. Therefore, "[w]hen the public asks for a more activist or a more conservative government, politicians oblige" (Stimson, Mackuen, & Erikson, 1995, p. 559).

Judges with extensive elected political experience are likely to have stronger ties to public opinion. This is the case for at least two reasons. First, a judge with elected political experience might personally be predisposed toward public opinion. People who run for office tend to be public-minded (Fowler, 1996; Schlesinger, 1966). Indeed, we suspect that elected office holders are more motivated to obtain things like public approbation than others (Baum, 2006; Gerber et al., 2011).<sup>5</sup> The process of running for election acts as a selection effect. Winning office holders tend to be those who best foresee public responses. Those who fail to understand public opinion lose. So, not only are candidates the type of people who are inclined to think about public opinion, winning candidates tend to have their finger on the public's pulse, much more (on average) than those who never successfully held elected office.

Second, it could be that the person is public-opinion-minded (or increasingly public opinion-minded) as a result of having served in elected office. The elected office itself might enhance or create public opinion-mindedness.

Having to respond to the public in an elected political office might teach office holders how to respond more effectively. The practice of following the news, day-to-day events, and political discussions may sharpen office holders' skills. Just as "the presidency changes the man," so too might holding elected office change an individual and make him or her more closely tied to public opinion.

Regardless of precisely why elected office holders are more likely to follow public opinion, they carry that characteristic with them wherever they work. When they later become judges, they continue to think about public opinion. Indeed, scholarship shows that people's experiences and characteristics carry with them throughout their lives. For example, Posner (2008) argues court of appeals judges who once were trial judges will be more likely to affirm trial courts. Having had the experience of being a trial court judge, these judges are more likely to identify with trial judges, give them the benefit of the doubt, and affirm (see also, Epstein et al., 2009).

Anecdotal evidence suggests that judges who once held elected political office have a strong attachment to public mood. The most obvious example is former Supreme Court Justice Sandra Day O'Connor. As Rosen (2001) points out,

[O'Connor] approach[ed] her job less like a typical justice than like the state legislator she once was . . . O'Connor's service as majority leader of the Arizona State Senate was one of the formative experiences of her life, and it is remarkable how much her approach as majority leader anticipate[d] the role that she would come to play on the Supreme Court . . . (pp. 1, 3)

On the federal circuit courts, one could look to James P. Coleman, who previously served as Attorney General, Governor, and state representative in Mississippi; or to Homer Bone, who was a state representative and then U.S. Senator from Washington; or to Charles E. Wiggins, who served as city councilman, mayor, and U.S. Representative for just under 20 years.<sup>6</sup> Are these kinds of judges more likely to follow public opinion? We suspect so.

Few studies analyze the effect of elected experience on federal judges and, those that do, focus mostly on elected experience as control variables. Some studies find judges with past elected experience behave the same as judges without previous electoral experience (Ashenfelter, Eisenberg, & Schwab, 1995; Eisenberg & Johnson, 1990; Giles & Walker, 1975; Goldman, 1966; Gryski, Main, & Dixon, 1986; Sisk, Heise, & Morris, 1998). Yet, others find a connection between previous elected office and judicial behavior. Goldman (1975) finds federal circuit judges with elected experience are less likely to rule for the federal government in fiscal matters, while Tate (1981) finds

Supreme Court Justices with prior elected experience are more liberal in economics cases. Brudney, Schiavoni, and Merritt (1999) find judges with elected experience are more likely to side with unions (see also, Merritt & Brudney, 2001). Aliotta (1988) finds judges with prior political experience are more likely to write majority opinions and less likely to write separate opinions. And, Vines (1964) finds southern district court judges who previously held state elected office (where public opinion was strongly against desegregation) were less likely to use their judicial powers to desegregate. With the exception of the Vines and Aliotta studies, though, it is unclear why having held elected office would lead to these *particular* results. Why would previous elected office lead a judge to vote with unions, or lead them to vote liberally on economic cases? The answer is unclear.

In our context, however, it is clear why previous electoral experience matters. Those who showed a tendency to follow public opinion in the past will be more likely to do so in the future. Judges who previously served as elected political officials are personally inclined toward valuing and heeding public opinion. A person who successfully held elected office over long periods of time has shown that they are tied in to public opinion. And those experiences might even lead them to become more public opinion-minded. Simply put, we expect that *a judge will be increasingly likely to rule in line with public opinion in his or her circuit the longer he or she served in elected political office.*

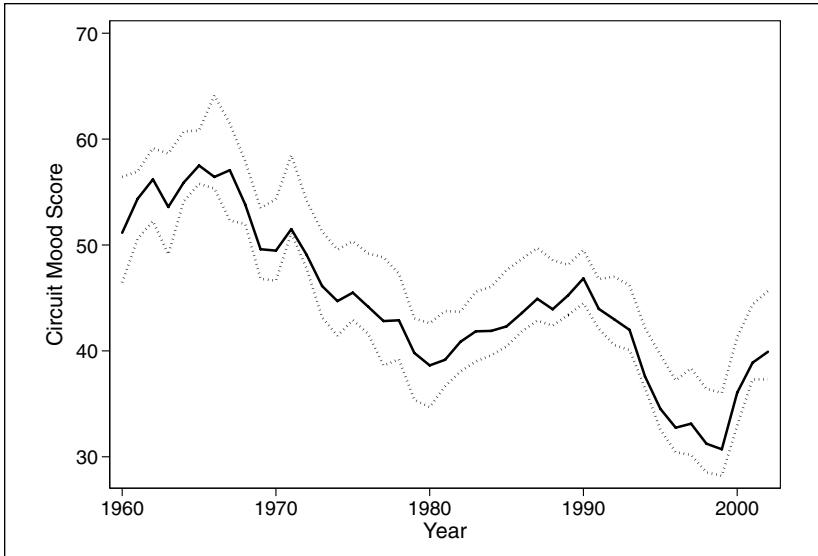
## Data and Measures

To investigate the effects of public opinion on voting—and whether federal judges with previous elected political experience are more likely to vote in line with public opinion—we examined roughly 20,000 circuit judge votes from 1960 to 2002.<sup>7</sup> Our unit of analysis is the judge-vote, per three-judge panel cases.<sup>8</sup>

Our dependent variable—*Liberal Vote*—examines whether each judge cast a liberal vote in each case in our sample. A liberal vote takes on a value of 1 while a conservative vote takes on a value of 0. To determine the disposition of the judge's vote, we relied on the U.S. Appeals Court Database. According to the Database, a liberal vote is one that favors a criminal defendant, a civil rights or civil liberties claimant, or a union or economic underdog. A conservative vote is the opposite.<sup>9</sup>

### *Circuit Public Opinion*

Our main covariate of interest measures public opinion in each of the federal circuits. To measure *circuit public opinion*, we turn to new measures created



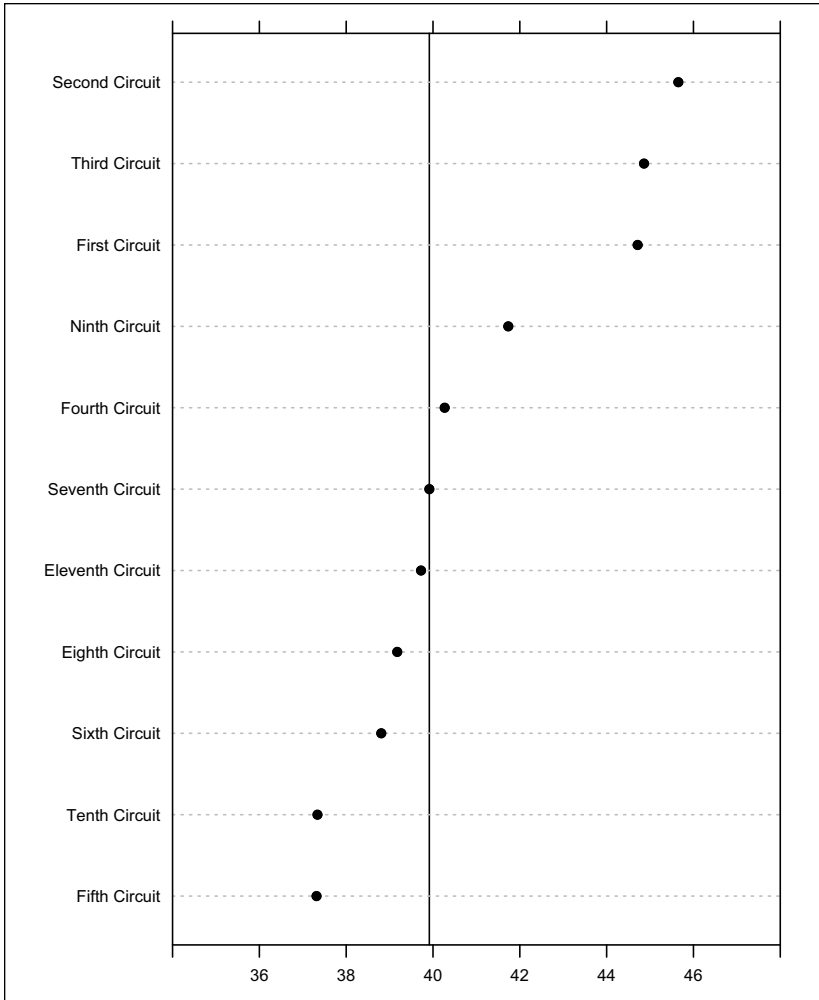
**Figure 1.** Overtime variance in circuit public opinion.

Note. Median circuit mood score from 1960 to 2002. Dotted lines reflect the minimum and maximum scores each year. Larger values reflect greater liberalism.

by Enns and Koch (2013, 2015). Enns and Koch employ multilevel regression and poststratification (MRP) to create dynamic (i.e., overtime) state-level estimates of public mood. They aggregate information from more than 740,000 survey respondents to create state-level public opinion measures on nationally relevant policy issues, reflecting state citizens' demands for more or less government.<sup>10</sup> The Enns and Koch (2013) measures effectively capture changes in regional public opinion over time, which is important, given our data reflect more than 40 years of circuit court decisions (see also Enns & Koch, 2015). We then aggregated the state public mood scores to each judicial circuit region, generating a population-weighted average of the states within each circuit. For each year, we retrieved data on state population estimates, computed each state's share of its circuit region's total population, multiplied each state mood score by its population percentage, and then computed the sum of those (weighted) state mood scores for each circuit.<sup>11</sup> Larger (smaller) values of *circuit public mood* represent a state that is more liberal (conservative).

Figure 1 illustrates the temporal and intercircuit variance in *circuit public opinion*. It reports the overtime change in the median circuit mood score (represented by the solid line) with dotted lines signifying the minimum and





**Figure 2.** Cross-sectional variance in circuit public opinion.  
*Note.* Circuit mood scores in 2002. The vertical line marks the median circuit.

maximum circuit scores each year. The data illustrate a general movement toward conservatism among the mass public at the circuit level. There is also considerable variance across the individual circuits over the sample period. The mean intrayear range of circuit public opinion scores is 7.18 units on the mood scale with a maximum value of 10.22 units in 1977. Figure 2 displays the distribution of individual circuit public opinion scores in 2002. The solid vertical

line indicates the median (Seventh Circuit—IL, IN, WI) mood score that year. Public opinion across the judicial circuits in 2002 ranged from a conservative value of 37.32 (Fifth Circuit—LA, MS, TX) on the *circuit public opinion* scale to a relatively moderate score of 45.65 (Second Circuit—CT, NY, VT).<sup>12</sup>

### *Years of Elected Experience*

To measure a judge's previous elected experience, we looked to the Attributes of U.S. Federal Judges Database and the Federal Judicial Center's Biographical Directory of Federal Judges.<sup>13</sup> These data sources provide background information on all federal judges, including their previous elected experience. We coded the total number of years a judge served as a U.S. Representative or Senator, Governor, state legislator, mayor, state Attorney General, city council member, or county commissioner. Approximately 21% of the judge votes in our sample come from circuit judges with prior elected political experience.

We focus on the years of elected experience rather than a binary value for whether the judge previously held elected political office because the binary measure throws out useful information about the judge. As we stated above, people holding elected office for a longer period of time arguably have displayed a better knack for understanding public opinion. The continuous measure, in other words, is more in line with our view that judges with previous elected experience are the types of judges more willing and able to pick up on public opinion. Nevertheless, to be transparent, we also fit our models using a simple binary variable for whether the judge ever held elected political office.

For theoretical and practical reasons, we do not account for whether the judge ever held elected *judicial* office. On a theoretical level, we are interested in whether judges previously held offices where they were *supposed* to curry favor with public opinion on a very direct level. Even when elected, judges are not supposed to pander to public opinion in the same way as politicians. While elected judges certainly modify their behavior when, for example, up for reelection (M. G. Hall, 1992), we are looking for a stronger and more consistent link to public opinion for office holders. On a practical level, it would be tremendously difficult for us to determine whether each of the many judges in our sample ever held elected judicial office. Some states elect their judiciaries while others do not. Many states changed their selection and retention methods over time, making the determination even more tenuous. What is more, even if we could isolate the particular judicial office and whether it was elected, we still might not be certain the judge initially was elected to the position or was appointed by the Governor to fill a vacancy.

### *Judge Ideology*

We control for each judge's ideological preferences using the Judicial Common Space (JCS; Epstein, Martin, Segal, & Westerland, 2007; Giles, Hettinger, & Peppers, 2001).<sup>14</sup> The JCS uses the coding method suggested by Giles et al. (2001), who argued that when the norm of senatorial courtesy applies to a lower federal court judge's appointment, that judge's ideal point estimate mirrors the home-state senators' preferences. The estimate for such a judge is thus his or her home-state senators' Poole and Rosenthal first-dimension Common Space scores.<sup>15</sup> If there are two home-state senators from the president's party, the point estimate is the average of the two; if only one senator hails from the president's party, the point estimate is that senator's score. When senatorial courtesy does not apply to the judge's appointment, the judge's ideal point estimate is the president's first-dimension Common Space score. Thankfully, JCS scores are not endogenous to our dependent variable, as they turn on the preferences of home-state senators who select the judges. The JCS scores in our data range from  $-0.699$  to  $0.608$ , with negative values reflecting liberal judges and positive values reflecting conservative judges.

### *Circuit Court Ideology*

Judges might also render decisions with an eye toward the ideological composition of their entire circuit, voting strategically so as to avoid *en banc* review (Kim, 2009). Thus, we created the variable *circuit court ideology*, which reflects the median judge on the judge's circuit each year, as identified by the JCS scores.

### *Supreme Court Ideology*

It is also possible circuit judges cast their votes with an eye toward the ideological composition of the U.S. Supreme Court. They might adjust their votes to avoid review and reversal by the Supreme Court. We created *Supreme Court ideology*, which represents the median justice on the High Court each year, as identified by the JCS.

### *Position of the United States*

The United States wins its cases in federal courts regularly and can exert a significant degree of influence over judicial decision making (e.g., Black & Owens, 2012; Wohlfarth, 2009). We control for whether the United States

advocated a liberal position in the case. If so, we code *U.S. position* as 1. If the United States advocated a conservative position in the case, we code *U.S. position* as -1. If the United States was not involved in the case, we code *U.S. position* as 0.

### **Panel Effects**

We next account for the possibility of partisan panel effects. Panel effects occur when the composition of a three-judge panel influences the votes judges cast (Boyd, Epstein, & Martin, 2010; Cross & Tiller, 1998). We created six separate dummy variables that identify (a) whether the judge under analysis was a Democrat or Republican and (b) the number of total Democrats on the panel. Our omitted baseline category is a Republican judge with no Democrats on the panel.<sup>16</sup>

### **National Public Mood**

To isolate the impact of each circuit's regional public opinion, we control for *national public mood* using the indicator created (and updated) by Stimson (1991, 1999).<sup>17</sup> National public mood is a longitudinal indicator of the public's general preference for more or less government over time. It is an aggregate, dynamic reflection of the general tenor of public opinion (and preference over desired public policy) on the standard liberal-conservative dimension (Stimson, 1991). Scholars who examine national public opinion in the courts use this measure frequently (e.g., Black et al., 2016a, 2016b; Casillas et al., 2011; Enns & Wohlfarth, 2013; Epstein & Martin, 2011; Giles, Blackstone, & Vining, 2008). Larger values of *national public mood* reflect a more liberal public while smaller values reflect a more conservative public.<sup>18</sup>

### **Criminal Case**

Federal circuit judges routinely—and mandatorily—decide cases involving appeals to criminal convictions. Existing research shows they typically affirm those decisions, issuing (conservative) decisions to uphold criminal convictions (e.g., Calvin et al., 2011). We account for this factor, coding *criminal case* as 1 if the case involves a criminal justice issue; 0 otherwise.<sup>19</sup>

### **Compliance Concerns**

We also control for the possibility that judges vote liberally or conservatively based on separation-of-powers concerns. Judges may seek to avoid rebuke

and minimize the likelihood of noncompliance by altering their decisions to comport with the preferences of the elected branches. We include *president ideology* to account for the president's general policy preference, as reflected by the president's JCS score. We also included *senate ideology* and *house ideology* to account for the ideal point estimates of the median member of each chamber of Congress, as indicated by each member's JCS score. Again, negative values reflect liberal policymakers while positive values reflect conservatives.

### *Circuit Court Fixed Effects*

Last, because we pool observations across judicial circuits, we use fixed effects dummies to control for differences across circuit courts and idiosyncrasies in judges' decisions that could occur across different circuits. That is, we hold constant all differences across judicial circuits, and thus our results reflect how judges respond to temporal changes in regional public opinion *within* each circuit.<sup>20</sup>

## **Methods and Results**

We estimate weighted logistic regression models (and robust standard errors with the weighted regression). We weight the observations using probability sampling weights to account for the U.S. Appeals Court Database's stratified sampling process, which randomly selected a constant number of circuit cases within each circuit-year. Because the population size of published federal appellate court decisions varies, estimating our models with probability weights ensures the analysis of the sample best reflects a random sample of the total population of circuit cases. We employ the judge-vote at the case level as the unit of analysis because we are interested in controlling for case-level effects.

We report the results of six regression models in Table 1. Model 1 presents a baseline test of our theoretical argument that judges follow circuit-level public opinion. Model 2 does the same while including the controls. Model 3 presents a baseline test of our theoretical argument that judges with greater elected political experience are more responsive to circuit public opinion. Thus, it includes only the interaction between *circuit public opinion* and *years of elected experience* (and the component parts) and fixed effects for circuit. If our theory is correct, the impact of *circuit public opinion* on the probability of a liberal vote should be meaningfully greater among judges with more years of past elected political experience. Model 4 examines this interactive relationship while including the full complement of controls.

**Table 1.** The Impact of Circuit Public Opinion and Previous Elected Experience on Federal Circuit Court Judges.

	(1)	(2)	(3)	(4)	(5)	(6)
Circuit public opinion	0.008** (0.002)	0.022** (0.008)	0.007** (0.003)	0.021** (0.008)	0.007** (0.003)	0.021** (0.008)
Years of elected experience			-0.053* (0.035)	-0.061* (0.038)		
Circuit Opinion x Years Experience			0.0011* (0.0008)	0.0012* (0.0008)		
Past elected office (dichotomous)					-0.352 (0.285)	-0.405* (0.301)
Circuit Opinion x Past Experience					0.008 (0.006)	0.008 (0.006)
Judge ideology		-0.344** (0.089)		-0.338** (0.089)		-0.332** (0.090)
Circuit court ideology		-0.455** (0.109)		-0.462** (0.109)		-0.465** (0.109)
Supreme court ideology		0.418** (0.185)		0.435** (0.185)		0.429** (0.185)
U.S. position		0.623** (0.032)		0.622** (0.032)		0.623** (0.032)
Democratic judge—Three panel Dems		0.248** (0.089)		0.258** (0.090)		0.262** (0.090)
Democratic judge—Two panel Dems		0.133** (0.076)		0.144** (0.077)		0.147** (0.077)
Democratic judge—One panel Dem		0.014 (0.081)		0.025 (0.081)		0.026 (0.081)
Republican judge—Two panel Dems		0.154** (0.074)		0.155** (0.073)		0.156** (0.074)

(continued)

**Table 1. (continued)**

	(1)	(2)	(3)	(4)	(5)	(6)
Republican Judge—One panel Dem		0.063 (0.057)		0.064 (0.057)		0.064 (0.057)
National public mood		-0.022** (0.010)		-0.023** (0.010)		-0.023** (0.010)
Criminal case		-0.913** (0.049)		-0.914** (0.049)		-0.913** (0.049)
President ideology		0.025 (0.046)		0.025 (0.046)		0.026 (0.046)
Senate ideology		-0.386 (0.359)		-0.421 (0.360)		-0.415 (0.360)
House ideology		-0.734** (0.287)		-0.726** (0.287)		-0.735** (0.287)
Constant	-1.027** (0.123)	-0.284 (0.304)	-0.978** (0.128)	-0.223 (0.306)	-0.972** (0.132)	-0.199 (0.311)
Circuit court fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
N	20,043	20,043	20,043	20,043	20,043	20,043
Prob > $\chi^2$	185.88**	1,541.18**	187.11**	1,548.71**	187.32**	1,549.71**

Note. Table entries are logistic regression estimates with robust standard errors in parentheses. The dependent variable represents whether the judge cast a liberal (=1) or conservative (=0) vote. The data reflect a (probability) weighted sample of circuit court cases, 1960-2002, as compiled by the U.S. Appeals Court Database, among three-judge panel decisions (D.C. Circuit excluded). All models include (but do not display) fixed effects for circuit court.

\* $p < .10$ . \*\* $p < .05$  (one-tailed).

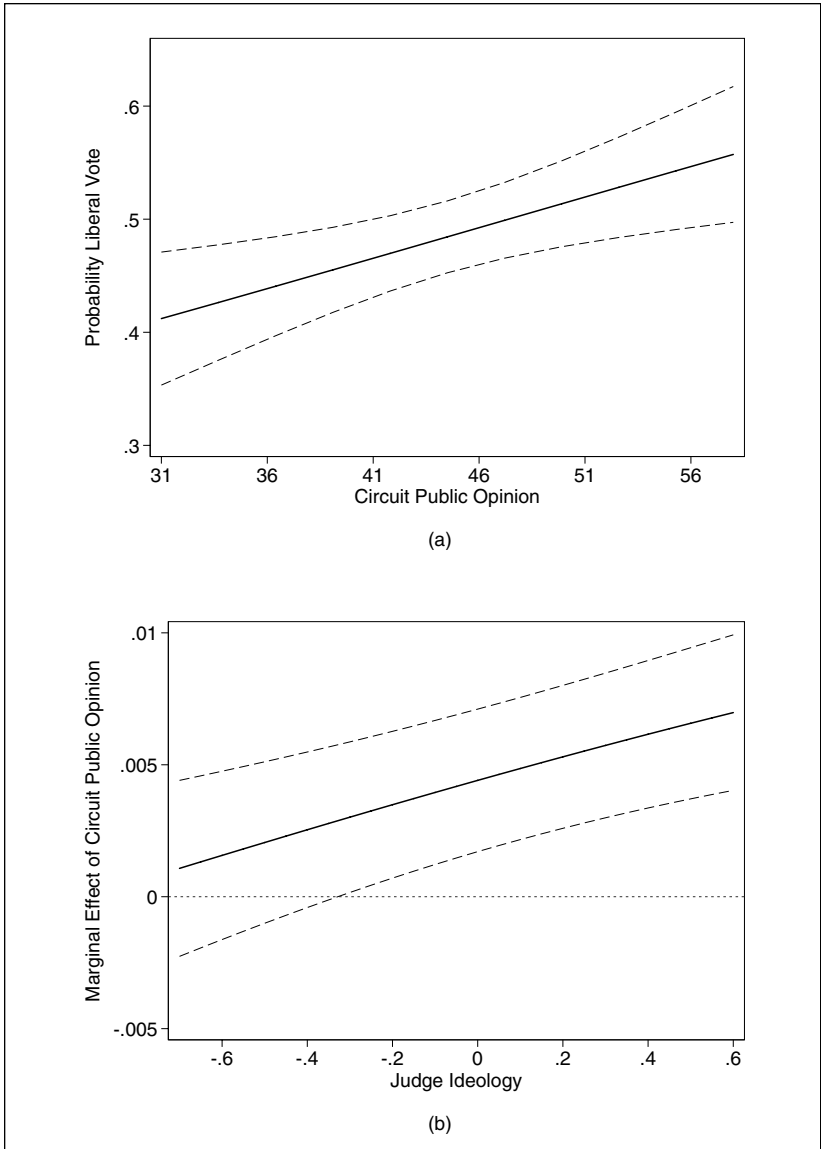
Models 5 and 6 follow suit while using a dichotomous variable for *any past elected office* rather than the continuous variable.

The first thing to note is that circuit court judges follow public opinion within their circuits. Figure 3(a) displays the predicted probability a circuit judge votes liberally across the min-to-max range of the median *circuit public opinion* score over time (while holding control predictors at their mean, or modal, values). (That is, we identified the median circuit in each of our 43 years. We then identified the minimum and maximum scores from among those 43 median values. We employed this method to ensure we did not use unreasonably large minimum and maximum values.) As Figure 3(a) shows, the probability a circuit judge votes liberally is strongly correlated with public opinion in the circuit. For example, at one standard deviation below the mean circuit mood score, the average judge has a 0.45 [0.41, 0.49] probability of voting liberally. At one standard deviation above the mean circuit mood score, however, that probability jumps to 0.53 [0.48, 0.57]. Moving from the minimum to the maximum values of the median circuit mood score shows a nearly 0.15 difference in the probability of voting liberally (from 0.41 [0.35, 0.47] to 0.56 [0.50, 0.62]). These changes in predicted probabilities are all statistically significant. What is more, it should be noted that we retrieve these results even while controlling for the judge's estimated underlying ideology. As far as we are aware, this represents the first finding that circuit court judges follow circuit-level public opinion.<sup>21</sup>

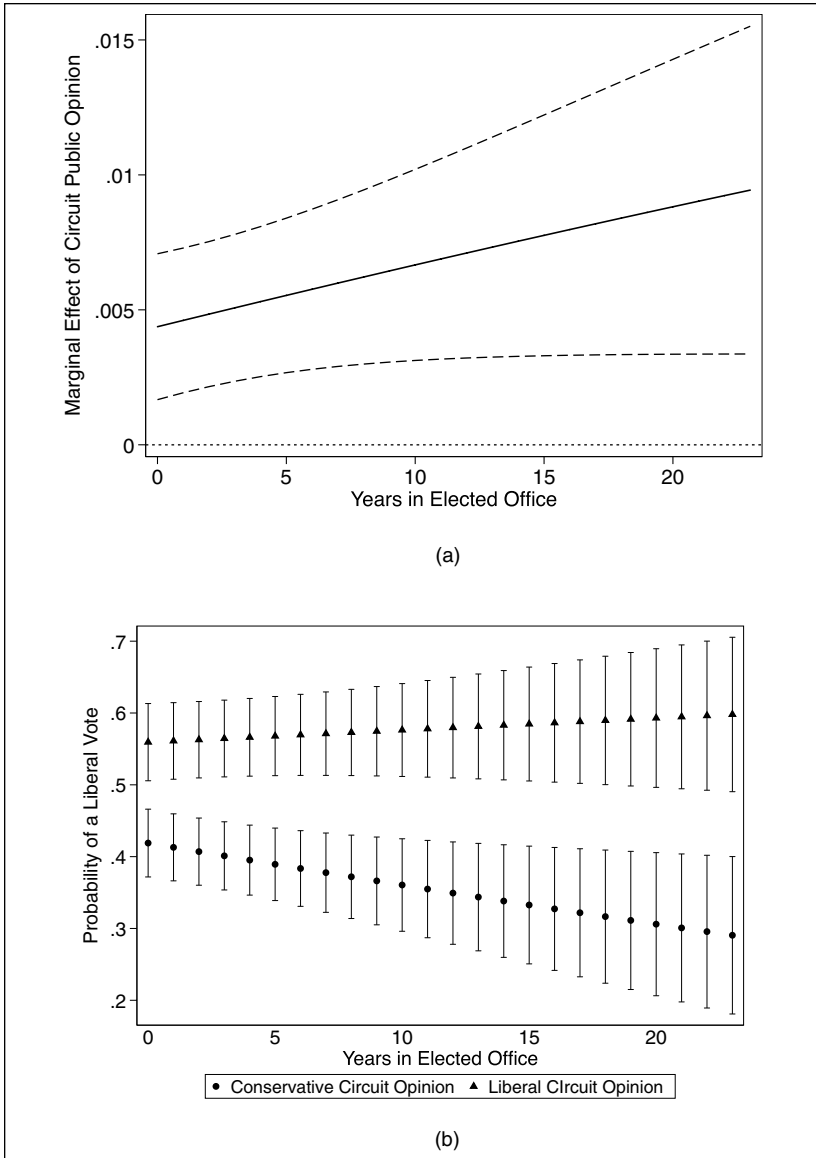
To add further context, consider Figure 3(b). Here, we interacted *circuit public opinion* with *judge ideology* and then plotted the average marginal effect of circuit opinion on the probability judges cast liberal votes across the range of judges' JCS scores. For the vast majority of judges in our data (roughly 75% of the observations), a liberal (conservative) shift in circuit mood translates into a greater (and theoretically reasonable) likelihood of voting liberally (conservatively). The only judges for which this effect does not hold are the most liberal judges in the data. Simply put, the data suggest that the vast majority of circuit court judges do indeed follow public opinion in their circuits.

Turning, next, to the effect of past elected experience, we find that judges with greater past elected political experience are somewhat more responsive to public opinion than judges without such experience. Consider Figure 4(a), which shows the average marginal effect of *circuit public opinion* on the probability of voting liberally. Note that the marginal effect is always positive and statistically distinguishable from zero, regardless of years of elected office, showing, again, that judges overall appear responsive to public opinion. More noteworthy for the moment is that the average marginal effect of *circuit public opinion* increases among judges who had more past elected experience. The slope of the average marginal effect is positive, suggesting





**Figure 3.** The impact of circuit public opinion on federal circuit court judges. Note. Subfigure (a) displays the predicted probability a judge votes liberally across values of *circuit public opinion* (with 90% confidence intervals) using results from Model 2 in Table 1. Subfigure (b) displays the average marginal effect of *circuit public opinion* across the range of *judge ideology* (with 90% confidence intervals). Negative JCS values represent more liberal judges. Roughly 75% of our observations fall in the range of statistical significance. JCS = Judicial Common Space.

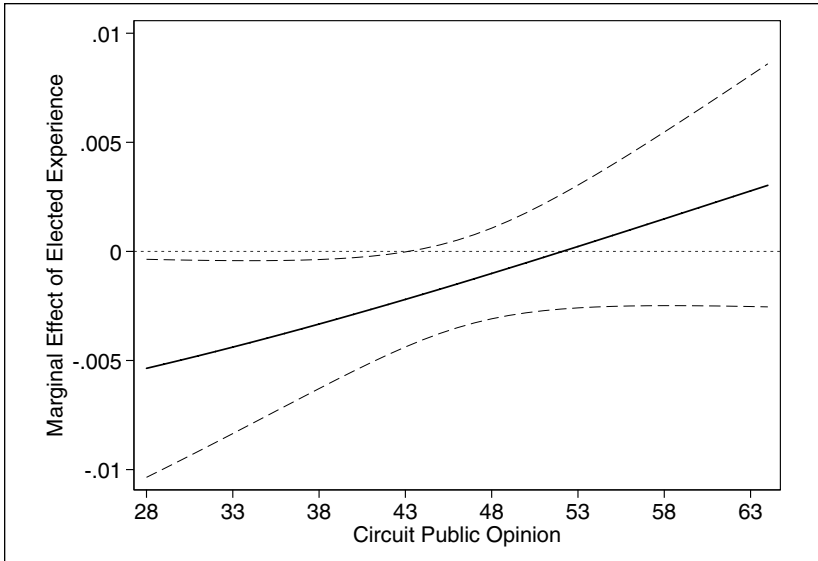


**Figure 4.** The impact of circuit public opinion and previous elected experience. Note. Subfigure (a) displays the average marginal effect of *circuit public opinion* (with 90% confidence intervals) across the range of *years of elected experience* using results from Model 4 in Table 1. Subfigure (b) displays the predicted probability of casting a liberal vote as a function of *circuit public opinion* and *years of elected experience*.

that public mood more strongly influences those circuit judges who held elected political office longer.

Figure 4(b) reports the predicted probability a circuit judge votes liberally across the range of *years of elected experience* while holding the median *circuit public opinion* score over time at its minimum and maximum values in the sample (and other predictors at their mean, or modal, values). A judge with *no elected experience* serving in the median judicial circuit at its most conservative public mood (i.e., the median mood score in 1999, and the solid circles in Figure 4(b)) has a 0.42 [0.36, 0.48] probability of casting a liberal vote. A similar judge serving in the median circuit at its most liberal mood (i.e., the median mood score in 1965, and the triangles in Figure 4(b)) has a 0.56 [0.50, 0.62] probability of casting a liberal vote. Compare this 0.14 difference to the behavior of judges *with previous elected experience*. A judge with 5 years of elected experience exhibits a 0.39 [0.33, 0.45] probability of casting a liberal vote in the most conservative median circuit and 0.57 [0.50, 0.63] in the most liberal median circuit—a 0.18 difference. A judge with 10 years of elected experience exhibits a 0.22 difference, and a judge with 20 years of elected experience exhibits a 0.29 difference.<sup>22</sup> Thus, the estimated impact of *circuit public opinion* is 29% stronger among judges with only 5 years of elected experience (compared to never-elected judges) and more than twice as strong among judges with 20 years of experience. Put simply, the connection between previous elected experience and circuit public mood is not only statistically significant, it is substantively meaningful.

But are these effects felt among all circuits? Figure 5—which depicts the average marginal effect of *years of elected experience* across the range of *circuit public mood*—speaks to that. It examines whether the influence of past elected experience is felt more among conservative or liberal circuits. The results are somewhat surprising. Figure 5 indicates that this interactive effect is evident among the more conservative circuit regions (roughly half of the observations in the sample). Thus, given the over-time movement of regional public mood in the United States toward more relative conservatism during the sample period (Enns & Koch, 2013), the data suggest that circuit judges with elected experience have become increasingly likely to issue decisions that would appeal to a more conservative public. Why we observe these effects primarily among judges in more conservative regions is unclear. It may be that one would expect such an effect given that the majority of (temporal) public opinion movement we observed across all circuits during the sample period was in the conservative direction. It might also be that past elected conservatives simply had an overall view of the judiciary that differed from liberals. We certainly hope that future work looks into this question. For now, however, it appears that circuit-level public opinion influences all



**Figure 5.** Average marginal effect of years of elected experience (with 90% confidence intervals) across the range of *circuit public opinion* using results from Model 4 in Table 1.

judges (a novel finding), and that it may influence past elected judges in conservative circuits the most.

As we stated above, our belief is that following public opinion is more strongly correlated with longevity in elected political office than simply whether or not a judge ever held elected political office. Long tenures in elected office show not just a predisposition toward public opinion but also a capacity to gauge it effectively. And Models 5 and 6 bear this out. The coefficient on the interaction of *circuit public opinion* and a binary *past elected office* indicator is not statistically significant in either the baseline model or the model with controls ( $p = .119$ ). This suggests to us that the simple act of running for office is not the only feature that matters. That is, people who run for and win elected office, to be sure, likely are more public-opinion minded than others. But that alone is not enough to distinguish them. The length of time they held office is a better signal for how public opinion-minded they are. Following public opinion is likely to be a function *both* of the traits toward public opinion (running for office) and experience in responding to public views that they have gained while serving in office (length of time in office). Of course, the substantive differences between the binary and

continuous variables are probably not hard-and-fast enough to distinguish definitively between these two explanations, but they are at least enough to suggest that judges who held elected office for a longer period of time are more likely to follow public opinion than those who simply held office for a brief time.

Turning to our controls (and returning to Model 4), liberal judges are, not surprisingly, more likely to vote liberally while conservative judges are less likely to do so. The most liberal judge in the sample exhibits a 0.55 probability of casting a liberal vote while the most conservative judge is likely to do so with a 0.44 probability. The general ideological composition of the circuit also exhibits the expected effect on judge votes. Circuit judges are significantly less likely to vote liberally (conservatively) when the median judge serving on the circuit is more conservative (liberal). The impact of the U.S. Supreme Court's ideological composition is opposite of expectations, as circuit judges are more likely to vote liberally (conservatively) when the High Court's median justice is more conservative (liberal; Kim, 2009). The position of the U.S. government significantly influences circuit judges' voting. Circuit judges are much more likely to cast a liberal (conservative) vote when the U.S. government advocates a liberal (conservative) policy position.

The data also exhibit some evidence of panel effects. Even though a panel of two Democrat judges is just as able to achieve a liberal outcome as a panel of three Democrat judges (because the vote is by majority rule), the presence of a single Republican judge diminishes the Democrat judge's probability of voting liberally. The converse holds true when comparing a panel of three Republican judges against a panel of two Republican judges. Next, national public mood exhibits a negative, statistically significant relationship with circuit judges' voting.<sup>23</sup> The results also show circuit judges are significantly less likely to cast liberal votes in criminal cases. Lastly, the data suggest compliance concerns have some effect on circuit judges, as a more conservative U.S. House leads circuit judges to vote less liberally.

## Conclusion

A recent study referred to federal judges as "cloistered and detached," in part, because they now lack elected political experience (and other nonjudicial experiences; Barton, 2012, p. 1172). While some judges today have experience as elected politicians, their numbers are dwindling. As confirmation fights trickle down from the Supreme Court to federal circuit courts, nomination stakes get higher, rejections become more common, and policymakers become more eager to pick people who already "look like judges." Individuals with past elected experience have not fared well in this world.

Many scholars decry this state of affairs and advocate for more former elected officials to serve as judges. As they see it, judges with previous electoral experience can diversify the courts, bring relevant experiences to bear on judicial decisions, and protect the judiciary's connection with the public (Epstein et al., 2003). Judges with previous electoral experience, in particular, are beneficial because they are tied in to the public mood and can help ensure the courts do not float too far above public opinion. Or so the argument goes.

We set out to examine first, whether circuit court judges follow circuit opinion and, second, whether circuit judges with greater elected experience are more responsive to circuit-level public opinion. We argued that though all judges have theoretical reasons to follow public opinion, elected experience should be associated with stronger responsiveness to circuit public mood. Using data on circuit judges' votes from 1960 to 2002, we presented results to suggest that while circuit-level public opinion influences most judges, it exhibits a somewhat greater influence on judges with more elected political experience.

These findings have significant implications for the judicial appointment process and subsequent democratic control of the unelected judiciary. Despite the public's lack of a direct electoral control over judges, there is at least some indirect control as seen by the fact that all judges' decisions (on average) tend to track circuit-level public opinion. Moreover, appointing judges who have previously held an elected political office could, for better or worse, lead to a more majoritarian judiciary. Policymakers, as a result, should appoint such judges if they want to maximize the chances they will consider public opinion once afforded the protection of life tenure. Alternatively, if policymakers value independence from prevailing public sentiment, they should eschew such nominees and continue to select judges with the same "judicial track" experiences that have become increasingly common among those serving on the federal bench today.

Our goal was not to determine which type of judge is better or worse. There are legitimate reasons for favoring both judicial accountability and judicial independence. Rather, our goal was more modest: to begin a discussion about public opinion and whether it influences certain types of judges. And the data suggest it does.

### **Declaration of Conflicting Interests**

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The author(s) received no financial support for the research, authorship, and/or publication of this article.

## Supplementary Material

Supplementary material is available for this article online.

## Notes

1. See, Enns and Wohlfarth (2017) for further theory and literature review on public opinion's impact on the U.S. Supreme Court.
2. 292 F.3d 597 (9th Cir. 2002); 328 F.3d 466 (9th Cir. 2003).
3. In fact, some evidence suggests elected officials are just as responsive to nonvoters in the general public as they are to voters (Ellis, Ura, & Ashley-Robinson, 2006), and may even be as responsive to low-income groups as to high-income groups (Ura & Ellis, 2008; but see Bartels, 2008). This is further evidence that even if the public is not attentive to court decisions, judges (like elected officials in these cited studies) behave as if the public is attentive.
4. While scholars can dispute just how representative American democracy is, it seems clear that elected officials have at least an incentive to follow public opinion.
5. We do not analyze precisely why circuit court judges follow public opinion. We are concerned with whether they do so.
6. We reiterate that we examine federal circuit court judges and not state judges. There is a substantial literature that examines state courts and public opinion (see, for example, Bonneau & Cann, 2015; Bonneau & Hall, 2009; Brace & Boyea, 2008; Gibson, 2012).
7. We began our sample in 1960 because that is the first year in which the Enns and Koch (2013) data yield a public mood estimate for every state. We conclude our sample in 2002 because that is the final year of data available in the U.S. Appeals Court Database, from where we draw much of our data. See, <http://artsandsociences.sc.edu/poli/juri/appct.htm>. The reader should note the Database only includes published cases. These cases presumably have greater policy content than unpublished cases.
8. We exclude decisions from the D.C. Circuit Court of Appeals because of its unique jurisdiction. We also ignore panel decisions rendered by only two judges, as well as *en banc* panels, because we want to examine the role of panel effects. We omit cases in which a visiting district court judge sat. In coding the data for this article, we also discovered a number of errors in the Appeals Court Database. Specifically, we discovered that the database wrongly coded the names of judges in roughly 2% of the observations. To make sure these errors in the Database did not influence our results, we removed such cases from the data analysis. We personally checked all of the remaining observations to ensure the judge-identifying information was correct.
9. We drop votes where the Database codes it as a "mixed" or "undetermined" ideological direction due to the inability to determine the ideological content of the judges' decisions.
10. The primary alternative indicator of state mood over time—the Berry, Ringquist, Fording, and Hanson (1998) measures of state citizen ideology—represents an

indirect proxy that uses elite-level behavior. While we believe these data serve well in many contexts, the Enns and Koch data are more appropriate for this study (e.g., Brace, Arceneaux, Johnson, & Ulbig, 2004, 2007; Carsey & Harden, 2010; Erikson, Wright, & McIver, 2007; Norrander, 2001). The Berry et al. (1998) measurement assumptions are problematic when attempting to generate an indicator of citizen preferences. As Enns and Koch (2013) state, “. . . because the [Berry, Ringquist, Fording, and Hanson] measure is based on interest group ratings of legislative votes, it captures changes in citizen preferences *and institutional changes* that influence who is elected” (emphasis supplied, p. 361). This is especially problematic when attempting to capture overtime changes in public opinion.

11. We utilized the Enns and Koch (2013) state population estimates, which they retrieved from the Integrated Public Use Microdata Series (IPUMS) archive at the University of Minnesota (<http://usa.ipums.org>).
12. The first dimension of the Enns and Koch (2013) public policy mood measures offers an effective (and best possible) means to capture mass preferences across a host of issue areas and how those preferences change over our analysis' 43-year time period. In particular, public mood is well-suited to capture relative changes in mass preferences on issues related to government regulation, economic redistribution, social welfare, and the desired scope of government (Ellis & Stimson, 2012; Stimson, 1991). And, scholars have utilized widely this concept of public mood in judicial behavior literature involving mass public opinion (e.g., Epstein & Martin, 2011; Giles, Blackstone, & Vining, 2008; McGuire & Stimson, 2004). Yet, it is also important to note the measure's limitations when applied to the diverse issues appearing on circuit courts' dockets. For instance, the first dimension of public mood captures less effectively preferences on some issues, such as religious liberty, civil rights, and crime (see, for example, Enns, 2014, 2016; Nicholson-Crotty, Peterson, & Ramirez, 2009). Thus, the pursuit of improved issue-specific indicators of mass preferences is an important endeavor for future research.
13. The Attributes Database is located at <http://artsandsciences.sc.edu/poli/juri/attributes.htm>, and the FJC Directory is available at <http://www.fjc.gov/history/home.nsf/page/judges.html>.
14. To obtain the Judicial Common Space scores, see <http://epstein.wustl.edu/research/JCS.zip>.
15. See, <http://voteview.com>.
16. Data on judges' party ID come from Zuk, Barrow, and Gryski (1996), which can be found at: <http://artsandsciences.sc.edu/poli/juri/attributes.htm>. It may be the case that the parties have changed over time, and thus our expectations for Democrats and Republicans should change. We still might expect panel effects as the two parties evolve. Nevertheless, our results remain the same if we exclude this control variable from our analysis.
17. We use estimates of public mood from the 2/13/12 data release. See, <http://stimson.web.unc.edu/data/>.



18. Although the *circuit public opinion* and *national public mood* measures are correlated at 0.81, we include the national mood control predictor to isolate the variance in circuit public mood that is truly regional in nature. The results are substantively similar (albeit muted) when excluding national mood as a control predictor. A model excluding national mood continues to exhibit a meaningful interaction effect between *circuit public opinion* and *years of elected experience* on circuit judges' voting
19. We use the *GENISS* variable in the U.S. Appeals Court Database to identify criminal cases.
20. One might also estimate a logistic regression model with random intercepts for each circuit judge and/or circuit court (without sampling weights). Importantly, all subsequent results are robust to these alternative model specifications. However, the interactive effect of elected experience and circuit public opinion is not robust to the exclusion of fixed (or random) effects for circuit court (although the baseline impact of circuit public opinion is statistically significant in any event).
21. We also examined whether our effects were influenced by the composition of the circuits at issue. Some circuits were more heterogeneous than others. Our results held up under all but the most extreme degrees of circuit heterogeneity.
22. A judge without prior elected political experience is 0.04 more likely to cast a liberal vote when comparing the mean of *circuit public opinion* to one standard deviation above its mean. A shift of one standard deviation in circuit mood among judges with 5 years of experience exhibits a 0.05 difference in the probability of a liberal vote. And, the probability difference is 0.06 among judges with 10 years of elected experience and 0.08 for those judges with 20 years of experience.
23. However, this result might only be a statistical artifact, as *national public mood* no longer exhibits a negative, nor statistically significant, effect in a model that does not include the *circuit public opinion* predictor.

## References

- Aliotta, J. M. (1988). Social backgrounds, social motives and participation on the U.S. Supreme Court. *Political Behavior*, *10*, 267-284.
- Arnold, R. D. (1990). *The logic of congressional action*. New Haven, CT: Yale University Press.
- Ashenfelter, O., Eisenberg, T., & Schwab, S. J. (1995). Politics and the judiciary: The influence of judicial background on case outcomes. *The Journal of Legal Studies*, *24*, 257-281.
- Bartels, L. (2008). *Unequal democracy*. Princeton, NJ: Princeton University Press.
- Barton, B. H. (2012). An empirical study of Supreme Court justice pre-appointment experience. *Florida Law Review*, *64*, 1137-1187.
- Baum, L. (2006). *Judges and their audiences: A perspective on judicial behavior*. Princeton, NJ: Princeton University Press.

- Berry, W. D., Ringquist, E. J., Fording, R. C., & Hanson, R. L. (1998). Measuring citizen and government ideology in the American states, 1960-1993. *American Journal of Political Science*, 42, 327-348.
- Black, R. C., & Owens, R. J. (2012). *The solicitor general and the United States Supreme Court: Executive influence and judicial decisions*. New York, NY: Cambridge University Press.
- Black, R. C., Owens, R. J., Wedeking, J., & Wohlfarth, P. C. (2016a). The influence of public sentiment on Supreme Court opinion clarity. *Law & Society Review*, 50, 703-732.
- Black, R. C., Owens, R. J., Wedeking, J., & Wohlfarth, P. C. (2016b). *U.S. Supreme Court opinions and their audiences*. New York, NY: Cambridge University Press.
- Bonneau, C. W., & Cann, D. M. (2015). *Voters' verdicts: Citizens, campaigns, and institutions in state Supreme Court elections*. Charlottesville: University of Virginia Press.
- Bonneau, C. W., & Hall, M. G. (2009). *In defense of judicial elections*. New York, NY: Routledge.
- Boyd, C. L., Epstein, L., & Martin, A. D. (2010). Untangling the causal effects of sex on judging. *American Journal of Political Science*, 54, 389-411.
- Brace, P., Arceneaux, K., Johnson, M., & Ulbig, S. G. (2004). Does state political ideology change over time? *Political Research Quarterly*, 57, 529-540.
- Brace, P., Arceneaux, K., Johnson, M., & Ulbig, S. G. (2007). Reply to "the measurement and stability of state citizen ideology." *State Politics & Policy Quarterly*, 7, 133-140.
- Brace, P., & Boyea, B. D. (2008). State public opinion, the death penalty, and the practice of electing judges. *American Journal of Political Science*, 62, 360-372.
- Brudney, J. J., Schiavoni, S., & Merritt, D. J. (1999). Judicial hostility toward labor unions—Applying the social background model to a celebrated concern. *Ohio State Law Journal*, 60, 1675-1771.
- Calvin, B., Collins, P. M., Jr., & Esbaugh-Soha, M. (2011). On the relationship between public opinion and decision making in the U.S. courts of appeals. *Political Research Quarterly*, 64, 736-748.
- Carsey, T. M., & Harden, J. J. (2010). New measures of partisanship, ideology, and policy mood in the American states. *State Politics & Policy Quarterly*, 10, 136-156.
- Casillas, C. J., Enns, P. K., & Wohlfarth, P. C. (2011). How public opinion constrains the U.S. Supreme Court. *American Journal of Political Science*, 55, 74-88.
- Clark, T. S. (2009). The separation of powers, court-curbing and judicial legitimacy. *American Journal of Political Science*, 53, 971-989.
- Cross, F. B., & Tiller, E. H. (1998). Judicial partisanship and obedience to legal doctrine: Whistleblowing on the federal courts of appeals. *Yale Law Journal*, 107, 2155-2176.
- Eisenberg, T., & Johnson, S. L. (1990). Effects of intent: Do we know how legal standards work. *Cornell Law Review*, 76, 1151-1197.
- Ellis, C. R., & Stimson, J. A. (2012). *Ideology in America*. New York, NY: Cambridge University Press.

- Ellis, C. R., Ura, J. D., & Ashley-Robinson, J. (2006). The dynamic consequences of nonvoting in American national elections. *Political Research Quarterly*, *59*, 227-233.
- Enns, P. K. (2014). The public's increasing punitiveness and its influence on mass incarceration in the United States. *American Journal of Political Science*, *58*, 857-872.
- Enns, P. K. (2016). *Incarceration nation: How the United States became the most punitive democracy in the world*. New York, NY: Cambridge University Press.
- Enns, P. K., & Koch, J. (2013). Public opinion in the U.S. States: 1956 to 2010. *State Politics & Policy Quarterly*, *13*, 349-372.
- Enns, P. K., & Koch, J. (2015). State policy mood: The importance of over-time dynamics. *State Politics & Policy Quarterly*, *15*, 436-446.
- Enns, P. K., & Wohlfarth, P. C. (2013). The swing justice. *The Journal of Politics*, *75*, 1089-1107.
- Enns, P. K., & Wohlfarth, P. C. (2017). Making sense of the Supreme Court-public opinion relationship. In R. M. Howard & K. Randazzo (Eds.), *Handbook of judicial behavior*. New York, NY: Routledge.
- Epstein, L., Gillman, H., Kritzer, H. M., Spriggs, J. F., II, Lindquist, S. A., Segal, J. A., & Speath, H. J. (2003). Symposium: The Supreme Court and the attitudinal model revisited. *Law and Courts*, *13*(3), 10-38.
- Epstein, L., & Martin, A. D. (2011). Does public opinion influence the Supreme Court? Possibly yes (but we're not sure why). *University of Pennsylvania Journal of Constitutional Law*, *13*, 263-281.
- Epstein, L., Martin, A. D., Quinn, K. M., & Segal, J. A. (2009). Circuit effects: How the norm of federal judicial experience biases the Supreme Court. *University of Pennsylvania Law Review*, *157*, 833-880.
- Epstein, L., Martin, A. D., Segal, J. A., & Westerland, C. (2007). The judicial common space. *Journal of Law, Economics, & Organization*, *23*, 303-325.
- Erikson, R. S., Mackuen, M. B., & Stimson, J. A. (2002). *The macro polity*. New York, NY: Cambridge University Press.
- Erikson, R. S., Wright, G. C., & McIver, J. P. (2007). Measuring the public's ideological preferences in the 50 states: Survey responses versus roll call data. *State Politics & Policy Quarterly*, *7*, 141-151.
- Fowler, L. L. (1996). Who runs for congress? *Political Science & Politics*, *29*, 430-434.
- Gerber, A. S., Huber, G. A., Doherty, D., Dowling, C. M., Raso, C., & Ha, S. E. (2011). Personality traits and participation in political processes. *The Journal of Politics*, *73*, 692-706.
- Gibson, J. L. (2012). *Electing judges: The surprising effects of campaigning on judicial legitimacy*. Chicago, IL: University of Chicago Press.
- Gibson, J. L., Caldeira, G. A., & Spence, L. K. (2003). Measuring attitudes toward the United States Supreme Court. *American Journal of Political Science*, *47*, 354-367.
- Giles, M. W., Blackstone, B., & Vining, R. L. (2008). The Supreme Court in American democracy: Unraveling the linkages between public opinion and judicial decision making. *The Journal of Politics*, *70*, 293-306.

- Giles, M. W., Hettinger, V. A., & Peppers, T. (2001). Picking federal judges: A note on policy and partisan selection agendas. *Political Research Quarterly*, 54, 623-641.
- Giles, M. W., & Walker, T. G. (1975). Judicial policy-making and southern school segregation. *The Journal of Politics*, 37, 917-936.
- Ginsburg, R. B. (2006). *Advocating the elimination of gender-based discrimination: The 1970's new look at the equality principle, address at the University of Cape Town, South Africa*. Retrieved from <http://www.supremecourt.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp\ 02-10-06.html>
- Goldman, S. (1966). Voting behavior on the United States Courts of appeals, 1961-1964. *American Political Science Review*, 60, 374-383.
- Goldman, S. (1975). Voting behavior on the United States Courts of appeals revisited. *American Political Science Review*, 69, 491-506.
- Gryski, G. S., Main, E. C., & Dixon, W. J. (1986). Models of state high court decision making in sex discrimination cases. *The Journal of Politics*, 48, 143-155.
- Hall, M. E. K., Kirkland, J., & Windett, J. H. (2015). Holding steady on shifting sands: Countermajoritarian decision making in the U.S. Courts of appeals. *Public Opinion Quarterly*, 79, 504-523.
- Hall, M. G. (1992). Electoral politics and strategic voting in state supreme courts. *The Journal of Politics*, 54, 427-446.
- Hooper, A. K. (2005). Jurisdiction-stripping: The pledge protection act of 2004. *Harvard Journal on Legislation*, 42, 511-524.
- Key, V. O., Jr. (1961). *Public opinion and American democracy*. New York, NY: Alfred A. Knopf.
- Kim, P. T. (2009). Deliberation and strategy on the United States Courts of appeals: An empirical exploration of panel effects. *University of Pennsylvania Law Review*, 157, 1319-1381.
- McGuire, K. T., & Stimson, J. A. (2004). The least dangerous branch revisited: New evidence on supreme court responsiveness to public preferences. *The Journal of Politics*, 66, 1018-1035.
- Merritt, D. J., & Brudney, J. J. (2001). Stalking secret law: What predicts publication in the United States Courts of appeals. *Vanderbilt Law Review*, 54, 71-122.
- Murphy, W. F. (1964). *Elements of judicial strategy*. Chicago, IL: University of Chicago Press.
- Nicholson-Crotty, S., Peterson, D. A., & Ramirez, M. D. (2009). Dynamic representation(s): Federal criminal justice policy and an alternative dimension of public mood. *Political Behavior*, 31, 629-655.
- Norrander, B. (2001). Measuring state public opinion with the senate national election study. *State Politics & Policy Quarterly*, 1, 111-125.
- Peretti, T. L. (2007). Where have all the politicians gone? Recruiting for the modern Supreme Court. *Judicature*, 91, 112-122.
- Posner, R. A. (2008). *How judges think*. Cambridge, MA: Harvard University Press.
- Rosen, J. (2001, June 3). A majority of one. *The New York Times*, Section 6: Column 1. Retrieved from <http://www.nytimes.com/2001/06/03/magazine/a-majority-of-one.html>

- Schlesinger, J. (1966). *Ambition and politics: Political careers in the United States*. Chicago, IL: Rand McNally.
- Sisk, G. C., Heise, M., & Morris, A. P. (1998). Charting the influences on the judicial mind: An empirical study of judicial reasoning. *New York University Law Review*, 73, 1377-1500.
- Stimson, J. A. (1991). *Public opinion in America: Moods, cycles, and swings*. Boulder, CO: Westview Press.
- Stimson, J. A. (1999). *Public opinion in America: Moods, cycles, and swings* (2nd ed.). Boulder, CO: Westview Press.
- Stimson, J. A., Mackuen, M. B., & Erikson, R. S. (1995). Dynamic representation. *American Political Science Review*, 89, 543-565.
- Tate, C. N. (1981). Personal attribute models of the voting behavior of U.S. Supreme Court justices: Liberalism in civil liberties and economics decisions, 1946-1978. *American Journal of Political Science*, 75, 355-367.
- Ura, J. D., & Ellis, C. R. (2008). Income, preferences, and the dynamics of policy responsiveness. *PS: Political Science & Politics*, 41, 785-794.
- Vines, K. (1964). Federal district judges and race relations cases in the south. *The Journal of Politics*, 26, 337-357.
- Wohlfarth, P. C. (2009). The tenth justice? Consequences of politicization in the solicitor general's office. *The Journal of Politics*, 70, 224-237.
- Zuk, G., Barrow, D., & Gryski, G. (1996). *Attributes of U.S. Federal Judges Database*. Ann Arbor, MI: ICPSR 6796. Retrieved from <http://artsandsciences.sc.edu/poli/juri/attributes.htm>.

### Author Biographies

**Ryan J. Owens** is a professor of Political Science. He also enjoys an affiliate status with the law school and is an honorary fellow in the Institute for Legal Studies. Owens studies judicial politics and American political institutions.

**Patrick C. Wohlfarth** is an assistant professor in the Department of Government and Politics at the University of Maryland, College Park. His research examines judicial decision making and external influences on courts, including, among other things, the impact of public opinion on federal courts and executive branch litigation on the U.S. Supreme Court.