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Gender and Consensus on the Courts

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GENDER AND CONSENSUS ON THE COURTS⁺

Kaleigh A. Ruiz^{*}

During group deliberation, women tend to be the barbingers of compromise, vying for consensus on even the most contentious topics. However, women cannot succeed in this endeavor if gender bias prevents their voices from being heard. In federal courts, collaboration is essential to reaching the simple majority needed to resolve a case. While the courts already function under norms of collegiality during deliberations, the practice of writing a separate opinion to acknowledge disagreement with a majority opinion remains relatively common. In this Article, I test two competing theories as to the effects of women judges on consensus. On one hand, I posit that women's tendency toward democratized decision-making should lead to greater consensus. If women who are judges are more likely to compromise with their peers, it seems likely that case deliberation will be more consensual when women are part of the process. Alternatively, the possibility of gender bias might lead to greater levels of dissensus when a panel includes both men and women. If men are skeptical of positions taken by women and/or women perceive their voices as not being heard by men, dissensus may abound when women join panels. Using both empirical and qualitative evidence, I find support for both theories. Specifically, employing a dataset of more than 11,000 federal appellate opinions and 27,000 judge-case pairings, I find that the presence of women judges generally leads to greater dissensus on the courts. However, the data simultaneously indicate that all-woman panels reach the highest levels of consensus. A systematic analysis of the recorded oral histories of 29 federal appellate judges confirms that, while women may be more likely to pursue consensus building, they will sometimes fail, possibly due to perceptions of bias against them. However, this gendered dissensus may also simply be a byproduct of diverse deliberation that leads to more well-reasoned decision-making, a potentially desirable practice for the court.

⁺ The author thanks Sharece Thrower, Christina Boyd, and John Dearborn for their indispensable feedback and support on this project.

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INTRODUCTION

“I was the second woman on the court. The first one and everyone’s favorite is Amalya Kearse. She was reported in the New York Law Journal as saying, ‘I love my brethren, but I’m waiting for our sister.’ I was the second woman on the court, and now I revel in all the wonderful women that have been sent to us.”

- Judge Rosemary S. Pooler, Second Circuit¹

In recent years, the gender composition of the federal courts has changed drastically. Of the 228 federal judges appointed by former President Biden, 63% are women, far eclipsing the appointment rates of any other President.² This has led to an increase in the total percentage of women on the federal bench by more than 6% in less than four years.³ This recent shift in the gender composition of the court begs questions about its effect on the behavior of women judges. This Article analyzes such behavior, seeking to understand whether and how women on the federal bench impact group deliberation and consensus on the court.

Specifically, I theorize that women judges will have a higher tendency toward collaboration as compared to peer men. I predict that this will lead to differences in panel consensus depending on the gender of the judge authoring a majority opinion and the gender composition of that panel. I test my hypotheses on the federal appellate courts—the bodies through which the majority of legal policy is set—since the Supreme Court hears just 1% of all cases appealed to it each year.⁴ The American appellate courts are, at their most basic, deliberative institutions. Panels of judges must come to some sort of agreement to process a given case. This is a normatively good thing; judges are more likely to attain the “correct” decision when they work together than they would individually.⁵ Further, political theory has generally advocated for more deliberation in democratic

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1. THE PORTIA PROJECT, *Episode 60: Rosemary Pooler* (Oct. 13, 2022), [<https://perma.cc/C35B-5YRA>].
 2. John Gramlich, *How Biden Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RESEARCH CENTER (Jan. 9, 2025), [<https://perma.cc/JXQ8-8D4D>].
 3. *Profile of the Legal Profession: Judges*, AMERICAN BAR ASSOCIATION (Nov. 18, 2024), [<https://perma.cc/3WVK-RWEP>] (reporting that 33% of federal judges were women as of August 1, 2024 compared to 27% at the end of 2020).
 4. *How the Supreme Court Decides Which Cases to Hear*, THE PEW CHARITABLE TRUSTS (Nov. 24, 2020), [<https://perma.cc/EZQ4-6MW8>].
 5. Pauline T. Kim, *Deliberation and Strategy on the United States Courts of Appeals: An Empirical Exploration of Panel Effects*, 157 U. PA. L. REV. 1319, 1321 (2009).

decision-making.⁶ While scholars have dedicated much thought to deliberation on the courts,⁷ few have attempted to discern the effects of gender on judicial deliberation.⁸

Additionally, while women on the court have been studied in their own right, their impact on deliberation is rarely a central inquiry. In fact, the vast majority of research in this area focuses solely on one dimension of judging: case outcomes.⁹ If and when scholars endeavor to analyze gender effects at any earlier stages in the judicial process, they usually focus on interruption behavior at oral argument on the Supreme Court.¹⁰ This leaves a clear gap in the literature. An early survey of women on the bench found that women judges have different experiences, attitudes, and perspectives as compared to men.¹¹ Thus, it is reasonable to assume that gender may also influence individual judicial behavior. By studying the judicial process rather than the raw outcomes, I propose that we can gain a deeper understanding of the reasons behind these outcomes.

In the context of group decision-making more generally, women have been found to enhance the deliberating environment and heighten consensus.¹² However, women may sometimes be hindered from effectively participating in a deliberation due to the behavior of men.¹³ While the courts already function under norms of collegiality, it is unclear whether women judges will enhance or impede consensus, given what we know from the research on other groups. I endeavor to disentangle this relationship. Through my analysis, I make contributions to the bodies of literature on gender and politics, judicial politics, and deliberative democracy more generally.

6. See AMY GUTMANN & DENNIS F. THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* 19-20 (Princeton Univ. Press 2004).

7. See generally Donald B. Hutt, *Deliberation and Courts: The Role of the Judiciary in a Deliberative System*, 64 THEORIA 77 (2017).

8. But see Susan B. Haire, Laura P. Moyer & Shawn Treier, *Diversity, Deliberation, and Judicial Opinion Writing*, 1 J. L. & CTS. 303, 307-08 (2013) (considering the impact of gender and racial diversity on panels of federal appellate courts).

9. See, e.g., Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 389, 406 (2010).

10. Adam Feldman & Rebecca D. Gill, *Power Dynamics in Supreme Court Oral Arguments: The Relationship between Gender and Justice-to-Justice Interruptions*, 40 JUST. SYS. J. 173, 187 (2019); Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379, 1482 (2017).

11. Elaine Martin, *Men and Women on the Bench: Vive la Difference?*, 73 JUDICATURE 204, 208 (1990).

12. Hristina Nikolova & Cait Lamberton, *Men and the Middle: Gender Differences in Dyadic Compromise Effects*, 43 J. CONSUM. RES. 355, 367 (2016).

13. Afsoun Afsahi, *Gender Difference in Willingness and Capacity for Deliberation*, 28 SOC. POL. 1046, 1059-60 (2021).

Part I of this Article provides an overview of the relevant literature on collegial courts and the impact of gender on deliberation and consensus. I begin by describing why the federal appellate courts function under norms of collegiality and the circumstances under which judges might defy such norms. Then, I review the contributions women make to group decision-making. Both as leaders and in the background of group discussions, women have the potential to enhance unanimity. However, this may depend on the gender composition of a group, and there are competing theories about how women will behave when they are heavily outnumbered by men in a given group. I thus provide an overview of the literature that suggests—possibly due to subconscious gender bias—that including women in a group of judges may lead to greater conflict on the court. Finally, I integrate these theories on general deliberation with relevant studies on women in the courts.

In Part II, I lay out my key expectations. Because there is some tension in the literature, I present competing theories. Under my first set of hypotheses, women will enhance consensus on the courts: compromising to ensure the majority opinions they author are unanimous and preserving collegiality norms by choosing not to author concurrences and dissents. Conversely, I propose that women might exacerbate dissensus on the court. Because men on the court may harbor some subconscious bias against women, they may be more likely to author separate opinions when a woman is in charge of the majority opinion, leading to lower levels of unanimity. Further, if women feel they are not being heard by a majority author, they may actually be more likely to author separate opinions themselves. Either way, these findings will likely be conditional upon the gender composition of a panel. While each proposed theory provides different implications for a single “token” woman on a panel, both would posit that all-woman panels should lead to the greatest levels of consensus. These expectations are derived from a holistic consideration of the literature on gender, deliberation, and the courts.

Part III describes my empirical data collection methods and key variables. The data include nearly 9,200 majority opinions and nearly 1,900 non-majority opinions in fourteen issue areas over the past 24 years. I test my hypotheses on these data in Part IV. Ultimately, I find more evidence for my second set of hypotheses. That is, women seem less likely than men to bring about consensus unless they are surrounded by other women. Specifically, judges are seemingly more likely to author separate opinions, and these separate opinions tend to be harsher (e.g., in the form of a dissent rather than a concurrence) when a majority author is a woman compared to when a majority author is a man. Furthermore, when they are not charged with authoring the majority, women tend to be more

likely to opt into writing a separate opinion than men. The exception is all-woman panels, which exhibit higher levels of unanimity than both gender-heterogeneous and all-male panels.

In Part V, I draw upon qualitative evidence to clarify the possible mechanism behind my findings. Examining a number of oral histories of women and men on federal appellate courts elucidates three themes related to gendered dissensus. First, women seem to approach judging more collaboratively than do men, even if the empirical evidence indicates that this method often fails. Second, women describe heightened gender consciousness and experience with bias on the basis of sex that might reduce their ability to successfully deliberate with men. Third, while many women discussed their experiences with gender bias, nearly as many women recounted moments of allyship by men in the legal profession. This might indicate that the implicit bias experienced during judicial deliberation is often subtle rather than overtly hostile.

This Article concludes with a discussion of possible implications in Part VI. Namely, there may be some concern that women judges are expending more time and resources on both majority and separate opinions when there is dissensus. However, perhaps this additional work leads to more robust judicial decisions. In other contexts, diversifying a decision-making apparatus has been correlated with enhanced reasoning.¹⁴ If conflict on the court leads to more well-considered opinions, perhaps we should strive for greater dissensus. As long as this does not fracture judicial opinions to the extent that public perceptions of judicial legitimacy are threatened, collegial conflict may be desirable.

I. LITERATURE REVIEW

While substantial work in the realm of judicial politics has endeavored to discern the effect of women judges on case outcomes, there is a relative dearth of research analyzing women's impact on the process of judicial decision-making. This is somewhat surprising given the large corpus on both how deliberation functions in the courts and how women affect group deliberation more generally. I begin with an overview of the federal appellate courts, summarizing the findings on how judges work together to come to a decision. I especially focus on how custom encourages collaboration on the courts. Next, I provide a synopsis of the literature on gender and group decision-making. I consider both how women differ

14. See SCOTT PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* 335 (Princeton Univ. Press 2007).

from men as team leaders and how they function in the background of deliberations. I also analyze how the behavior of women varies as the gender composition of a group changes. Finally, I outline research on gender in the judiciary as it relates to this project.

A. Collegiality on the Courts

The federal appellate courts are a fundamentally deliberative institution. That is, judges sitting on a panel must make a group decision as to the outcome in a given case.¹⁵ Leading up to this decision, panels have plenty of opportunities for interaction. For one, judges can communicate their preferences to each other through questions during oral argument.¹⁶ Privately, after oral argument, judges generally attend a case conference to cast tentative votes on the holding and discuss individual reasoning.¹⁷ It is at this initial conference that the presiding judge—either the chief or seniormost judge—assigns out majority authorship.¹⁸ The assigned author will then circulate draft opinions for comments by other judges on the panel.¹⁹ Judges who feel that their comments have not been taken into

15. Kim, *supra* note 5, at 1320.

16. Timothy R. Johnson, Ryan C. Black & Justin Wedeking, *Pardon the Interruption: An Empirical Analysis of Supreme Court Justices' Behavior during Oral Arguments*, 55 LOY. L. REV. 331, 335-36 (2009).

17. Donald McG. Rose, *Oral Argument in the Sixth Circuit*, 19 U. TOL. L. REV. 229, 229 (1988) (discussing this practice as it relates to the Sixth Circuit).

18. TIMOTHY R. JOHNSON, CONFERENCE, OPINION WRITING, AND ORAL ARGUMENTS, ORAL ARGUMENTS AND DECISION MAKING ON THE UNITED STATES SUPREME COURT 89 (Robert J. Spitzer ed., State Univ. of N.Y. Press 2004).

19. See, e.g., Richard J. Lazarus, *The (Non)Finality of Supreme Court Opinions*, 128 HARV. L. REV. 540, 556 (2014) (describing the “harsh criticism” draft opinions often receive during circulation at the Supreme Court). In some state courts, draft opinions may be circulated prior to oral argument. See, e.g., Mark Hummels, *Distributing Draft Decisions Before Oral Argument on Appeal: Should the Court Tip Its Tentative Hand - The Case for Dissemination*, 46 ARIZ. L. REV. 317, 329-30 (2004); Daniel J. Bussel, *Opinions First—Argument Afterwards*, 61 UCLA L. REV. 1194, 1196 (2014). Even in federal courts, where this is typically not the case, scholars have argued that oral argument has no deliberative value, since judges have preferences on court outcomes that are not malleable. JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* 280 (2002); DAVID W. ROHDE & HAROLD J. SPAETH, *SUPREME COURT DECISION MAKING* 153 (1976). Other scholars have pointed to examples where judges switched their votes after oral argument, indicating that their minds were open to reasoned change during this process. See, e.g., Timothy R. Johnson & Thomas K. Pryor, *Oral Arguments*, in ROUTLEDGE HANDBOOK OF JUDICIAL BEHAVIOR 221, 226-27 (Robert M. Howard & Kirk A. Randazzo eds., 2017); Eve M. Ringsmuth, Amanda C. Bryan & Timothy R. Johnson, *Voting Fluidity and Oral Argument on the U.S. Supreme Court*, 66 POL. RES. Q. 429, 430 (2013).

consideration by the majority author may consider writing a discretionary concurrence—or even a partial dissent—to have their voices heard.²⁰ Eventually, the opinion(s) are sent out into the world, often as published in the corresponding Federal Reporter.

Most scholars agree that the majority author has the most influence over the content of the ultimate opinion, even though disposing of the case is not an individual endeavor.²¹ Thus, the choice as to which judge will author the majority is a critical one. This decision is not necessarily random. One study on opinion assignment found that appellate judges with certain subject-matter expertise were more likely to be assigned to author relevant appeals.²² In state courts of last resort, women may be more likely to be assigned authorship, especially if a case deals with a gendered issue.²³ This latter point echoes a study on the Courts of Appeals, which finds that women and more liberal judges are more likely to be assigned authorship of sexual harassment cases.²⁴ However, another study of the federal appellate courts finds that opinion assignment is more so a function of institutional factors, such as the workload of judges on a given panel.²⁵

Even if a given author has disproportionate influence on the content of a majority opinion, this does not mean that no other judge will be involved in the process or that the voices of the other judges on the panel

20. Lazarus, *supra* note 19, at 556.

21. Chris W. Bonneau, Thomas H. Hammond, Forrest Maltzman & Paul J. Wahlback, *Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court*, 51 AM. J. POL. SCI. 891, 902 (2007); Jeffrey R. Lax & Charles M. Cameron, *Bargaining and Opinion Assignment on the U.S. Supreme Court*, 23 J. L., ECON. & ORG. 276, 296 (2007).

22. Jonathan Remy Nash, *Expertise and Opinion Assignment on the Courts of Appeals: A Preliminary Investigation*, 66 FLA. L. REV. 1599, 1657 (2015) (finding that judges who served on the Sentencing Commission were more likely to be assigned sentencing appeals and former bankruptcy judges were more likely to be assigned bankruptcy cases).

23. Erin B. Kaheny, John Szmer & Robert K. Christensen, *Status Characteristics and their Intersectionality: Majority Opinion Assignment in State Supreme Courts*, 8 POL., GROUPS, & IDENTITIES 894, 911 (2020). Note that state court judges are different from federal judges in several ways—namely, they tend to be elected rather than appointed. Thus, it should not be taken as given that any findings about state judges throughout this Article automatically apply to federal judges.

24. Sean Farhang, Jonathan P. Kastellec & Gregory J. Wawro, *The Politics of Opinion Assignment and Authorship on the U.S. Court of Appeals: Evidence from Sexual Harassment Cases*, 44 J. LEGAL STUD. S59, S81 (2015).

25. JENNIFER BARNES BOWIE, DONALD R. SONGER & JOHN SZMER., *THE VIEW FROM THE BENCH AND CHAMBERS: EXAMINING JUDICIAL PROCESS AND DECISION MAKING ON THE U.S. COURTS OF APPEALS* 82 (Gregg Ivers & Kevin T. McGuire eds., 2014). Finding that while this effect is substantively small, it is still greater than the null effects found for strategic and ideological considerations on opinion assignment. Further, in interviews, several judges stated that institutional concerns were at the forefront of their decisions on opinion assignment. *Id.* at 69–71.

do not matter. Because opinions require majority support, the federal appellate courts are generally described as operating under norms of collegiality and consensus. That is, judges are expected to compromise on their individual policy preferences in a case to accord with their fellows on a panel.²⁶ It tracks that judges would abide by such customs. The judiciary technically has no enforcement mechanism for its decisions and thus relies on notions of institutional legitimacy to ensure any sort of policy impact.²⁷ Signals of divisiveness on the court through the issuance of separate opinions have the potential to threaten public perceptions of legitimacy.²⁸ However, that has not prevented the publication of such opinions. In fact, concurrences and dissents are a relatively common practice on the courts today, though that isn't to say that unanimous opinions are a notion of the past.²⁹

The persistence of unanimity is indicative of the collaboration among panel judges in the content of a majority opinion. Studies have found that majority authors craft their opinions to capture the median member of the court, or at the very least the median member of the majority coalition.³⁰ This tendency need not be strategic on the part of the majority author. Some scholars propose that judges may be susceptible to conformity bias that leads to a deferral to the group preference.³¹ This could impact the psychology of either the majority

26. E.g., Paul J. Wahlbeck, James F. Spriggs II & Forrest Maltzman, *The Politics of Dissents and Concurrences on the U.S. Supreme Court*, 27 AM. POL. Q. 488, 491 (1999). Some have argued that the court should operate under norms of full consensus—contending that a requirement of unanimity would ensure opinions to be both fairer and better. See David Orentlicher, *Judicial Consensus: Why the Supreme Court Should Decide Its Cases Unanimously*, 54 CONN. L. REV. 303, 344 (2022).

27. Dino P. Christenson & David M. Glick, *Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy*, 59 AM. J. POL. SCI. 403, 403 (2015).

28. See Cass R. Sunstein, *Unanimity and Disagreement on the Supreme Court*, 100 CORNELL L. REV. 769, 804–05 (2015). An early version of the Code of Judicial Conduct (the “Judicial Canon of Ethics”) expressly discouraged judges from authoring separate opinions, though the 1974 replacement contained no such language. See also Wahlbeck, Spriggs & Maltzman, *supra* note 26, at 489.

29. Sunstein, *supra* note 28, at 784 (finding that 62% of cases in the Supreme Court's 2013 term were unanimous). Some scholars argue that unanimity in the courts fluctuates over time depending upon the strength of consensual norms in a given period. See Gregory A. Caldeira & Christopher J. W. Zorn, *Of Time and Consensual Norms in the Supreme Court*, 42 AM. J. POL. SCI. 874, 900 (1998).

30. See Cliff Carrubba, Barry Friedman, Andrew D. Martin & Georg Vanberg, *Who Controls the Content of Supreme Court Opinions?*, 56 AM. J. POL. SCI. 400, 408–09 (2012) (theorizing and finding that the median member of the winning coalition is what matters, in contrast to previous research positing that the median of the bench shapes majority content).

31. E.g., David Schkade, Cass R. Sunstein & Reid Hastie, *What Happened on Deliberation Day?*, 95 CALIF. L. REV. 915, 925 (2007).

author or others on the bench. Or, perhaps judges are genuinely open to a new point of view expressed by their peers and thus experience authentic shifts in judgement.³² Regardless of motivation, empirical evidence has found that judges do in fact adapt their partialities as the composition of the court varies, indicating that consensus is important to the court.³³ Furthermore, past cooperation with a judge in a majority coalition has been found to discourage future dissent from that judge when she goes on to author a majority.³⁴

Nonetheless, separate opinions do remain pervasive on the court. Many scholars have undertaken efforts to understand when and why judges decide to author separate opinions. After all, this is a wholly discretionary decision that requires substantial time and effort.³⁵ In addition to imposing costs on the individual author and possibly threatening public perceptions of the court, authorship of separate opinions imposes a tangible cost on majority authors, who must allocate more resources to respond to the views of their dissenters in an opinion. One study on the Courts of Appeals found that the presence of a dissent was correlated with a 20% increase in the length of the corresponding majority opinion.³⁶

Perhaps there are case-level factors that could explain this correlation. For example, empirical evidence has shown that separate opinions are more likely to be authored as a case becomes more complex and that concurrences (but not dissents) are more likely to be authored as a case becomes more politically and/or legally salient.³⁷ There may also be judge-level factors that impact consensus on a court. On the Supreme Court, judges tend to be more likely to author separate opinions the more ideologically distant they are from the majority author.³⁸ At the level of state courts of last resort, one study found that individual judge characteristics influence consensus on a case. Specifically, as a court becomes more homogenous on social, legal, and political traits, separate opinions are less

32. See, e.g., Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PA. L. REV. 1639, 1645 (2003).

33. Scott R. Meinke & Kevin M. Scott, *Collegial Influence and Judicial Voting Change: The Effect of Membership Change on U.S. Supreme Court Justices*, 41 L. & SOC'Y REV. 909, 931 (2007).

34. Wahlbeck, Spriggs & Maltzman, *supra* note 26, at 502.

35. Caldeira & Zorn, *supra* note 29, at 877. These costs likely cause dissent rates to decrease as caseloads increase in a given circuit. See Lee Epstein, William M. Landes & Richard A. Posner, *Why (And When) Judges Dissent: A Theoretical and Empirical Analysis*, 3 J. LEGAL ANALYSIS 101, 131 (2010).

36. Epstein, Landes & Posner, *supra* note 35, at 104.

37. Wahlbeck, Spriggs & Maltzman, *supra* note 26, at 502-03.

38. *Id.* at 501.

likely to be authored.³⁹ Judges may also author separate opinions to simply guard their reputation in some way.⁴⁰ For example, Justice Neil Gorsuch tends to champion Tribal sovereignty.⁴¹ Thus, it would have been surprising if Justice Gorsuch had failed to author a dissent when the Court recently found that the United States did not have a duty to secure water for the Navajo Reservation under its Treaty with the Nation.⁴²

Of course, even if these factors contribute to the authorship of a separate opinion, such authorship is predicated on something simpler: two judges disagreeing in some way. Dissents tend to express heightened disagreement with the majority, often arguing that the case should have come down in the opposite direction or been otherwise dismissed for procedural reasons. One set of scholars has found that majorities and dissents on a case cite to completely different legal precedent.⁴³ This suggests that when judges disagree over an outcome, it is not due to a disagreement over the interpretation of a specific test, but rather over which cases and tests should be applied in the legal analysis. In the case of a dissent in part, the judge may wholly agree with one aspect of the majority while differing on another aspect.

Concurrences express lesser degrees of dissensus. A concurring judge agrees with the holding of a case but may disagree with the reasoning used to attain that holding (usually deemed a “concurrence in judgment”). Or, the judge may agree with the reasoning but still have something additional to say, perhaps about the caselaw that the reasoning is predicated upon. In one proposed typology, a concurrence might be: (1) groundlaying; (2) signaling; (3) preserving; (4) defending; or (5) weakening.⁴⁴ Groundlaying concurrences are those that disagree with the test used in a case and propose an alternate rule for such cases.⁴⁵ Signaling concurrences acknowledge a tangential legal issue or precedent that wasn’t properly raised in the instant case but ought to be revisited in the near future.⁴⁶ Preserving opinions have little value to future opinions and are authored simply for a judge to preserve their current

39. See generally John W. Patterson & Gregory J. Rathjen, *Background Diversity & State Supreme Court Dissent Behavior*, 8 *POLITY* 610, 619 (1976).

40. Epstein, Landes & Posner, *supra* note 35, at 102.

41. Michael J. Sanders, *Original Understandings of Tribal Sovereignty: Native Americans in Justice Gorsuch’s Jurisprudence*, *AM. INDIAN L. REV.* (forthcoming 2026).

42. *Arizona v. Navajo Nation*, 599 U.S. 555, 570 (2023).

43. Anthony Niblett & Albert H. Yoon, *Judicial Disharmony: A Study of Dissent*, 42 *INT’L REV. L. & ECON.* 60, 70 (2015).

44. Charles C. Turner & Lori Beth Way, *Classifying Supreme Court Concurrences: The Case of Justice Clarence Thomas*, 31 *J. POL. SCI.* 139, 148 (2003).

45. *Id.* at 148.

46. *Id.* at 149.

thoughts.⁴⁷ Defending concurrences are those that champion a certain jurisprudence more broadly.⁴⁸ Finally, a weakening opinion narrows the scope or authority of the majority.⁴⁹ These latter types of concurrences are most likely to be designated as concurrences “in part.”

There is still substantial research to be done on the authorship of separate opinions. For example, it isn’t wholly clear what the broader value is of concurrences and dissents. While some scholars have posited that separate opinions might impact future adjudications and legislative activity, others have argued that these speculated effects have never been empirically validated.⁵⁰ Nonetheless, it is worth recalling here that separate opinions are authored in only a minority of cases. In the 2023–2024 term, even the Supreme Court—widely reported to be highly polarized—issued unanimous rulings in nearly 75% of its cases.⁵¹ Unanimity is likely higher on the Courts of Appeals, where the small number of judges (namely, three) on a typical panel heavily encourages conformity.⁵²

B. *Gender and Consensual Leadership*

Norms of consensus may be even stronger when a woman is at the helm of a group deliberation. A vast literature exists in the business realm typifying management styles and attributing some such styles as more “feminine” or “masculine.”⁵³ For example, women may be perceived as “connective” leaders—i.e., those focused on their interpersonal relationships within the workplace.⁵⁴ Gender role theory casts women as empathetic and community-focused, and theories of management expect

47. *Id.* at 151.

48. *Id.* at 152.

49. *Id.* at 153.

50. Compare Sunstein, *supra* note 28, at 802-03 with Steven A. Peterson, *Dissent in American Courts*, 43 J. POL. 412, 432 (1981).

51. Fatima Yazdi, *Amid Controversy, Supreme Court Shows Surprising Unanimity in Most Rulings—So Far*, CAPITAL NEWS SERVICE (May 16, 2024), [https://perma.cc/65Y3-XLEN]. Appendix A reports time trends in unanimity from 2000-2024 within my dataset.

52. Burton M. Atkins, *Judicial Behavior and Tendencies Towards Conformity in a Three Member Small Group: A Case Study of Dissent Behavior on the U.S. Court of Appeals*, 54 SOC. SCI. Q. 41, 43 (1973).

53. See, e.g., Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573, 576 (2002).

54. Jean Lipman-Blumen, *Connective Leadership: Female Leadership Styles in the 21st-Century Workplace*, 35 SOC. PERSP. 183, 200 (1992). Various works on this topic conceive of this form of leadership as “relational,” “participatory,” “authentic,” “democratic,” and “transformative,” among other terms. I employ “connective” as it seems to most accurately capture both the relational and participatory aspects of this leadership style.

these traits to persist in women leaders.⁵⁵ Since connective leaders tend to focus on collective rather than individual success, they prioritize fostering communication and trust within their subordinates and consider the interactions among networks within their organizations.⁵⁶ Such leaders also tend to engage in social exchanges with their colleagues to bolster working relationships.⁵⁷ In addition to focusing on relationships, connective leaders tend to prioritize collaboration.⁵⁸ The primary way that women and men managers have been found to differ is that women tend to be more democratic in their leadership styles.⁵⁹ That is, women are more likely to reach out for input from others, listen to the views of subordinates, and seek consensus in decision-making.⁶⁰

Traditional notions of leaders cast them as agentic—i.e., aggressive, ambitious, independent, and competitive—rather than connective.⁶¹ But communal notions of leadership may be more desirable in modern management. Because the behavior of followers is integral to the success of leaders, contemporary theories of leadership call for integrating subordinates into certain management decisions.⁶² Connective leadership has been found to correlate with higher levels of organizational effectiveness as compared to other management styles.⁶³ This may be because collaborative decision-making often leads to more well-considered outcomes.⁶⁴ Furthermore, workers may experience higher levels of job

55. Alice H. Eagly & Mary C. Johannesen-Schmidt, *The Leadership Styles of Women and Men*, 57 J. SOC. ISSUES 781, 783 (2001).

56. Mary Uhl-Bien, *Relational Leadership Theory: Exploring the Social Processes of Leadership and Organizing*, in 27 LEADERSHIP, GENDER, & ORG. 75, 87-92 (Patricia H. Werhane & Mollie Painter-Morland eds., Springer 2011).

57. *Id.* at 78.

58. Lipman-Blumen, *supra* note 54, at 184.

59. Alice H. Eagly & Blair T. Johnson, *Gender and Leadership Style: A Meta-Analysis*, 108 PSYCHOL. BULL. 233, 242 (1990). *See also* Katie L. Badura, Emily Grijalva, Daniel A. Newman, Thomas Taiyi Yan & Gahyun Jeon, *Gender and Leadership Emergence: A Meta-Analysis and Explanatory Model*, 71 PERSONNEL PSYCHOL. 335, 348 (2018) (finding that a gender gap in leadership style persists nearly 30 years after the Eagly & Johnson study, though it has decreased over time).

60. Adrianna Kezar & Marissiko M. Wheaton, *The Value of Connective Leadership: Benefiting from Women's Approach to Leadership While Contending with Traditional Views*, 21 ABOUT CAMPUS 19, 21 (2017).

61. Eagly & Johannesen-Schmidt, *supra* note 55, at 783.

62. Bruce J. Avolio, *Promoting More Integrative Strategies for Leadership Theory-Building*, 62 AM. PSYCHOL. 25, 26 (2007).

63. Dean Elmuti, Heather Jia & Henry H. Davis, *Challenges Women Face in Leadership Positions and Organizational Effectiveness: An Investigation*, 8 J. LEADERSHIP EDUC. 167, 180 (2009).

64. Michael W. Kramer & David A. Crespy, *Communicating Collaborative Leadership*, 22 LEADERSHIP Q. 1024, 1035 (2011).

satisfaction under connective leaders.⁶⁵ Likewise, laypersons tend to substantially prefer working with managers who are more relational.⁶⁶ Feminine styles of leadership may also be most preferable in moments of crisis, where collaboration, communication, and trust are most imperative.⁶⁷

Given that workers prefer connective leaders and that women in management roles tend to be more connective, we expect employees to prefer reporting to women superiors. But research finds that women in leadership face a double bind.⁶⁸ That is, if women act within their gender role by leading relationally and collaboratively, they face criticism for their soft leadership style.⁶⁹ However, if women use agentic leadership strategies—in conformity with typical expectations for leaders—they are criticized for acting outside of their gender role.⁷⁰ This “think manager, think male” ideology may persist today. For instance, a recent study found that, although workers substantially prefer participatory leadership, they still overwhelmingly favor men as managers.⁷¹ However, this may simply be because men still tend to dominate leadership positions.⁷²

C. Gender and Group Deliberation

Women clearly impact group decisions through their leadership styles, but this isn’t the only way that gender affects group decisions.

65. Soonhee Kim, *Participative Management and Job Satisfaction: Lessons for Management Leadership*, 62 PUB. ADMIN. REV. 231, 237 (2002).

66. Kenneth S. Rhee & Tracey H. Sigler, *Untangling the Relationship Between Gender and Leadership*, 30 GENDER IN MGMT.: AN INT’L J. 109, 123 (2015). In addition to preferring to work for participatory managers, participants also rated such leaders as more effective.

67. See, e.g., Abbie Griffith Oliver, Michael D. Pfarrer & François Neville, *Grand Challenges and Female Leaders: An Exploration of Relational Leadership During the COVID-19 Pandemic*, 63 BUS. & SOC’Y 954, 960 (2024).

68. Eagly & Karau, *supra* note 53, at 576.

69. *Id.* at 578.

70. *Id.* at 577. See also Jun-Yeob Kim, Ning Hsu, Daniel A. Newman, P.D. Harms & Dustin Wood, *Leadership Perceptions, Gender, and Dominant Personality: The Role of Normality Evaluations*, 87 J. RES. PERSONALITY 1, 6 (2020) (finding that women leaders are especially penalized when they display dominant personalities). But see Anyi Ma, Shelby Rosette & Christy Zhou Koval, *Reconciling Female Agentic Advantage and Disadvantage with the CADDIS Measure of Agency*, 107 J. APPLIED PSYCHOL. 2115, 2115 (2022) (finding that women leaders are punished for possessing some, but not all agentic traits; women leaders are actually encouraged to possess the agentic traits of competence, diligence, and independence). *Id.* at 2133.

71. Rhee & Sigler, *supra* note 66, at 123.

72. Elmuti, Jia & Davis, *supra* note 63, at 168. This may be because there are still many barriers to advancement for women—such as discrimination, stereotyping, and the demands of family life. *Id.* at 179.

Specifically, the gender composition of a group may impact both considered outcomes and the deliberative environment more generally. Further, the presence of a woman in a group ensures that women's needs and interests are considered during the deliberation.⁷³ Women have been found to have a preference for more altruistic and universalistic solutions as compared to men, who tend to be more self-interested and competitive.⁷⁴ Importantly, women can influence men to be more universalistic, with majority-women groups more likely to prefer equitable solutions over solutions that would maximize self-gain.⁷⁵ Conversely, male-dominated teams come to decisions that are not only less equitable but also less accurate.⁷⁶ Not only are groups with more women likely to come to more accurate solutions, but such groups also tend to display higher levels of collective intelligence post-deliberation.⁷⁷

This may be because women are more socially sensitive and allow for more equality in conversational turn-taking.⁷⁸ Women in group settings are more likely to express agreement with other speakers, ask for others' opinions, and pause to give the floor to others as compared to men.⁷⁹ Greater proportions of women in a group have also been correlated with

73. CHRISTOPHER F. KARPOWITZ & TALİ MENDELBERG, *THE SILENT SEX: GENDER, DELIBERATION & INSTITUTIONS* 178-79 (2014).

74. Carole Kennedy, *Gender Differences in Committee Decision-Making: Process and Outputs in an Experimental Setting*, 25 *WOMEN & POL.* 27, 34-35 (2003). *See also* Linda Kamas, Anne Preston & Sandy Baum, *Altruism in Individual and Joint-Giving Decisions: What's Gender Got to Do with It?*, 14 *FEMINIST ECON.* 23, 41-42 (2008) (finding that, in addition to women's tendency for individual altruism in dictatorship games, they can influence men to be more altruistic in joint-giving games).

75. Kennedy, *supra* note 74, at 37-38.

76. Jeffrey A. LePine, John R. Hollenbeck, Daniel R. Ilgen, Jason A. Colquitt & Aleksander Ellis, *Gender Composition, Situational Strength, and Team Decision-Making Accuracy: A Criterion Decomposition Approach*, 88 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 445, 466 (2002) (finding that the proportion of men on a team was exponentially correlated with inaccuracy in a war gaming task). Furthermore, all-male groups were much more overaggressive in their decisions than were groups of all women. *Id.* at 467. This is likely because men tend to be more risk-taking and competitive and thus more likely to pick extreme responses in a given situation. *Id.* at 451. *See also* Graham D. Fenwick & Derrick J. Neal, *Effect of Gender Composition on Group Performance*, 8 *GENDER, WORK, & ORG.* 205, 216 (2001) (finding that groups with more women score higher on certain group performance metrics).

77. Anita Williams Woolley, Christopher F. Chabris, Alex Pentland, Nada Hashmi & Thomas W. Malone, *Evidence for a Collective Intelligence Factor in the Performance of Human Groups*, 330 *SCI.* 686, 688 (2010). "Collective intelligence" is defined as the ability of a group to "perform a wide variety of tasks." *Id.* at 687.

78. *Id.* at 686.

79. Lynn Smith-Lovin & Dawn T. Robinson, *Gender and Conversational Dynamics*, in *GENDER INTERACTION & INEQ.* 122, 123-24 (Cecelia L. Ridgeway ed., 1st ed. 1992).

fewer interruptions and a greater ability to stay on-topic.⁸⁰ Interestingly, there are even gendered differences in the way group members use humor, with women more likely to use jokes to build cohesion.⁸¹ Perhaps because of these effects on the deliberation space, groups with more women have been found to come to decisions that are more likely to be unanimous.⁸² Or, such decisions might be more likely to be unanimous because women tend to facilitate compromise during joint decisions.⁸³

However, women may have difficulty positively impacting deliberative environments if they are unable to be heard.⁸⁴ Traditionally, social role theory casts women as listeners rather than speakers.⁸⁵ It may be because of this that men tend to dominate turn-taking in group discussions.⁸⁶ Research shows that, although women express a greater willingness to deliberate, they are often undermined by the negative deliberation behavior—i.e., interruptions—of men.⁸⁷ Even when a group is filled with mostly women, men dominate conversation, though changing the decision rule in a group may encourage women to speak more.⁸⁸ Thus, when gender-homogenized groups of women do not have

80. Pamela Ban, Justin Grimmer, Jaclyn Kaslovsky & Emily West, *How Does the Rising Number of Women in the U.S. Congress Change Deliberation? Evidence from House Committee Hearings*, 17 Q.J. POL. SCI. 355, 382 (2022).

81. Dawn T. Robinson & Lynn Smith-Lovin, *Getting a Laugh: Gender, Status, and Humor in Task Discussions*, 80 SOC. FORCES 123, 143 (2001).

82. Kennedy, *supra* note 74, at 36-37.

83. Nikolova & Lamberton, *supra* note 12, at 367. Interestingly, compromise in group decision-making might also be affected by the gender composition of the audience for a given deliberation. That is, men tend to be less compromising when they are observed by other men; women, conversely, are more accommodating when monitored by other women. Gary Charness & Aldo Rustichini, *Gender Differences in Cooperation with Group Membership*, 72 GAMES & ECON. BEHAV. 77, 83 (2011).

84. Christopher F. Karpowitz, Tali Mendelberg & Lee Shaker, *Gender Inequality in Deliberative Participation*, 106 AM. POL. SCI. REV. 533, 534 (2012).

85. Elizabeth S. Parks & Kristen Barta, *Are You My Mother? Perpetuating Gender Inequality Through Listening Expectations and Relational Roles*, 8 J. RES. GENDER STUD. 28, 32-33 (2018).

86. See, e.g., Denisa Kostovicova & Tom Paskhalis, *Gender, Justice and Deliberation: Why Women Don't Influence Peacemaking*, 65 INT'L STUD. Q. 263, 272 (2021) (finding that men seriously dominate the deliberative environment in one set of peacemaking negotiations); Nancy S. Marder, *Gender Dynamics and Jury Deliberations*, 96 YALE L.J. 593, 596 (1987) (reviewing findings that men participate in jury deliberation at higher rates than women).

87. Afsahi, *supra* note 13, at 1059-60. See also Tali Mendelberg, Christopher F. Karpowitz & J. Baxter Oliphant, *Gender Inequality in Deliberation: Unpacking the Black Box of Interaction*, 12 PERSP. POL. 18, 29 (2014).

88. KARPOWITZ & MENDELBERG, *supra* note 73, at 138-39 (finding that women talk more under majority rule as more women join the group, but this effect does not persist under unanimous rule).

to contend with the domineering behavior of men, turn-taking in discussions is much more equitable.⁸⁹

Conversely, as already established, groups with only a few “token” women may suffer from the domineering behavior of men in a way that further limits the participation of these women.⁹⁰ Tokenization can have broader consequences outside of group deliberation. When a woman is tokenized in a workspace, she is more visible and thus subject to certain performance pressures.⁹¹ This creates a psychological incentive for her to either blend into the background as much as possible or embrace the spotlight and focus on overachieving.⁹² Of course, the token women who choose to over-achieve are likely already exceptional at their work.⁹³ For example, women who are elected to legislative office tend to be of a higher political quality as compared to their male peers.⁹⁴ It thus makes sense that token women in state legislatures tend to be at least as successful, if not more successful than men at passing bills.⁹⁵ So, while women tend to fare better in deliberation when they comprise a majority in the group, it may be possible for women to succeed while tokenized, contingent on individual-level factors.

D. Judges & Gender Bias

Of course, the success of women in masculinized fields, especially in the context of court consensus, will also depend on the behavior of men. To that extent, it’s worth noting that there may be a systemic gender bias that leads to dissensus when a woman joins a panel of judges. While much of the judicial process is somewhat of a black box, survey data shows that women on the court perceive bias against them from male colleagues.⁹⁶ This perception has been somewhat validated at certain

89. See Karpowitz, Mendelberg & Shaker, *supra* note 84, at 540.

90. Karpowitz, Mendelberg, & Shaker, *supra* note 84, at 536 (finding that token men participate in group discussion at a greater rate than token women).

91. ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION: NEW EDITION* 210-12 (1993).

92. *Id.* at 220. Kanter’s initial research focuses on women in one anonymous corporation, but similar findings have been replicated in a variety of contexts. See, e.g., Janice D. Yoder, *Rethinking Tokenism*, 5 GENDER & SOC’Y 178, 179 (1991).

93. KANTER, *supra* note 91, at 219.

94. See generally Sarah A. Fulton, *Running Backwards and in High Heels: The Gendered Quality Gap and Incumbent Electoral Success*, 65 POL. RES. Q. 303, 308 (2012) (using political activists to rate the “political quality” of legislators).

95. See Kathleen A. Bratton, *Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures*, 1 POL. & GENDER 97, 121 (2005).

96. Martin, *supra* note 11, at 207.

stages of the judicial process. In the venue of state courts, women have also been found to be disproportionately assigned writing assignments that are “less important.”⁹⁷ Gender bias is also on display at the court’s most public occasion for judging—oral argument. Specifically, empirical evidence demonstrates that male Supreme Court Justices (along with male attorneys) interrupt women Justices at a higher rate than they do other men.⁹⁸ This latter finding is significant to the instant study since Justices are more likely to vote against other Justices that they interrupt at high rates.⁹⁹

More generally, women judges may confront obstacles simply because they are members of an outgroup in the masculinized occupation of judging.¹⁰⁰ Psychological evidence suggests that women in masculinized careers may be seen as “unfit” workers by peer males.¹⁰¹ Women in such careers who conform to more masculinized or agentic work styles may be punished by peer males for breaking gender norms,

97. Robert K. Christensen, John Szmer & Justin M. Stritch, *Race and Gender Bias in Three Administrative Contexts: Impact on Work Assignments in State Supreme Courts*, 22 J. PUB. ADMIN. RES. & THEORY 629, 641 (2012).

98. See Jacobi & Schweers, *supra* note 10, at 1482. Men on the bench also appear to display gender biases against female attorneys and female clerks. Dana Patton & Joseph L. Smith, *Lawyer, Interrupted: Gender Bias in Oral Arguments at the US Supreme Court*, 5 J. L. & CTS. 337, 345 (2017) (finding that judges interrupt female lawyers sooner, more frequently, and with longer comments as compared to male attorneys); see also Shane A. Gleason, Jennifer J. Jones & Jessica Rae McBean, *The Role of Gender Norms in Judicial Decision-Making at the U.S. Supreme Court: The Case of Male and Female Justices*, 47 AM. POL. RES. 494, 514 (2019) (finding that male Justices are more likely to vote for a case when the emotional content of a brief matches the gender norms of the attorney writing the brief); see also Alex Badas, Bailey K. Sanders & Katelyn E. Stauffer, *The Role of Judge Gender and Ideology in Hiring Female Law Clerks*, J. L. & CTS. 1, 20 (2024) (finding that male judges and conservative judges are less likely to hire female clerks); see generally Connie Lee, *Gender Bias in the Courtroom: Combating Implicit Bias Against Women Trial Attorneys and Litigators*, 22 CARDOZO J. L. & GENDER 229 (2016) (reviewing studies on gender bias in the courts and proposing tactics to combat this bias). Interestingly, men on the courts may also be biased when it comes to female litigants, though in this case benevolent sexism may work in favor of the individual in some contexts. See Jeffrey J. Rachlinski & Andrew J. Wistrich, *Benevolent Sexism in Judges*, 58 SAN DIEGO L. REV. 101, 133 (2021) (finding judges favor mothers over fathers in family court and dole out more lenient sentences to female defendants); see also Max Schanzenbach, *Racial and Sex Disparities in Prison Sentences: The Effect of District-Level Judicial Demographics*, 34 J. LEGAL STUD. 57, 90 (2005) (finding that benevolent sex disparities in criminal sentencing decrease as more women join the court).

99. Tonja Jacobi & Kyle Rozema, *Judicial Conflicts and Voting Agreement: Evidence from Interruptions at Oral Argument Interruptions*, 59 B. C. L. REV. 2260, 2311 (2018).

100. AMERICAN BAR ASSOCIATION, *supra* note 3.

101. Madeline E. Heilman, *Gender Stereotypes and Workplace Bias*, 32 RES. ORG. BEHAV. 113, 116-17 (2012).

creating a so-called *double bind*.¹⁰² Recent initiatives by former presidents Obama and Biden have greatly increased the percentage of women serving on federal courts.¹⁰³ However, this may have only exacerbated hostility toward women judges. When women are seen as benefiting from diversity initiatives, men may view them as less competent.¹⁰⁴ Additionally, men may be resistant to the integration of more women into masculinized careers, possibly because they feel this threatens their status in the workplace hierarchy.¹⁰⁵

Outside of panel dynamics, the behavior of women judges may also be influenced by a need to prove themselves to non-court actors. Importantly, women on the court appear to experience bias from political actors and the public. For example, male senators are more likely to “grill” women nominees on their judicial philosophies and areas of perceived expertise during confirmation hearings.¹⁰⁶ Senators also interrupt women nominees at higher rates than they do men.¹⁰⁷ Similarly, male attorneys in front of the Supreme Court are more likely to interrupt female Justices than male ones during oral argument.¹⁰⁸ This bias among lawyers is also reflected in the multiple studies demonstrating that ABA ratings of judges tend to be biased against women.¹⁰⁹ Furthermore,

102. See Eagly & Karau, *supra* note 53, at 576.

103. See Matthew E. Baker, Christina L. Boyd, Aidan N. González & Karson A. Pennington, *Race and Gender in Judicial Selection in the United States*, in Research Handbook on Judicial Politics 143, 147 (Michael P. Fix & Matthew D. Montgomery eds., 2024).

104. Suzette Calero & Madeline E. Heilman, *What Could Go Wrong? Some Unintended Consequences of Gender Bias Interventions*, 7 ARCHIVES SCI. PSYCHOL. 71, 73-74 (2019).

105. See, e.g., Amy Jones, Rhiannon N. Turner & Ioana M. Latu, *Resistance Towards Increasing Gender Diversity in Masculine Domains: The Role of Intergroup Threat*, 25 GROUP PROCESSES & INTERGROUP REL. NP24, NP42 (2022) (finding this effect in samples of STEM students and professionals).

106. See PAUL M. COLLINS, JR., LORI RINGHAND & CHRISTINA L. BOYD, SUPREME BIAS: GENDER AND RACE IN U. S. SUPREME COURT CONFIRMATION HEARINGS, 117 (2023) (finding that male senators are more likely than their female colleagues to aggressively question female nominees, especially regarding legal philosophy and qualifications).

107. *Id.* at 145-46 (documenting that female nominees are interrupted more frequently than male nominees in confirmation hearings).

108. Jacobi & Schweers, *supra* note 10, at 1482.

109. See, e.g., Maya Sen, *How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates*, 2 J. L. & CTS. 33, 59 (2014) (finding that women and minority judges receive lower ratings than male and white judges with similar professional, educational, and political characteristics); Susan Navarro Smelcer, Amy Steigerwalt & Richard L. Vining, Jr., *Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees*, 65 POL. RES. Q. 827, 833 (2012) (finding that men receive a “Well Qualified” rating from the ABA at a rate 12.3% higher than that of women); see also Rebecca D. Gill, *Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This*, 35 JUST. SYS. J. 271, 319 (2014) (finding that Judicial Performance Evaluations fielded to attorneys tend to be biased against women and minority judges).

surveys have found that a large plurality of Americans believe women judges are biased in favor of women.¹¹⁰

E. Gendered Judging

The public likely need not be so concerned about such bias. While research on gender and judging is still burgeoning, several scholars have already endeavored to discern whether there are gendered effects on case outcomes.¹¹¹ Generally, the findings point to no.¹¹² This finding may persist because both men and women on the federal courts have gone through similar legal socialization processes—i.e., education at the same top 14 law schools—and face identical constraints on the bench that ought to lead them to the same legal conclusions on a case.¹¹³ This tracks with legal theories of judicial decision-making, which hold law to be the primary determinant of case outcomes and thus would predict that judicial decisions ought not differ based on factors such as a judge’s gender.¹¹⁴ If case outcomes are dependent solely on the law, any judge

110. Yoshikuni Ono & Michael A. Zilis, *Do Americans Perceive Diverse Judges as Inherently Biased?*, 11 POL., GROUPS, & IDENTITIES 335, 338 (2023) (finding that Americans view women and Hispanic judges as biased toward their in-groups).

111. *See, e.g.*, Christina L. Boyd, *She’ll Settle It?*, 1 J.L. & CTS. 193, 211 (2013) (finding women judges are more likely to foster settlements); Todd Collins & Laura Moyer, *Gender, Race, and Intersectionality on the Federal Appellate Bench*, 61 POL. RES. Q. 219, 225 (2008) (finding minority women on the Court of Appeals are more likely to support the claims of criminal defendants); Donald R. Songer & Kelly A. Crews-Meyer, *Does Judge Gender Matter? Decision Making in State Supreme Courts*, 81 SOC. SCI. Q. 750, 759 (2000) (finding that women judges tend to vote more liberally in certain kinds of cases and that Democratic women on state high courts tend to prefer the more liberal position in some cases that are not necessarily gendered); Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 YALE L.J. 1759, 1779-81 (2005) (discussing why there may be gendered differences in certain types of case outcomes).

112. *See, e.g.*, Boyd, Epstein & Martin, *supra* note 9, at 406 (finding no gendered difference in outcomes except in cases dealing with sex discrimination); Peresie, *supra* note 111, at 1776 (finding women may be more likely to rule for plaintiffs in sex harassment and gender discrimination cases).

113. Darrell Steffensmeier & Chris Hebert, *Women and Men Policymakers: Does the Judge’s Gender Affect the Sentencing of Criminal Defendants?*, 77 SOC. FORCES 1163, 1168 (1999). Though minimal differences in judging may still exist. *Id.* at 1186 (finding “many similarities yet some differences in the sentencing decisions of women and men judges” that sit on Pennsylvania courts).

114. Legal theories posit that judges base their decisions primarily on the law. *See, e.g.*, CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 14 (Aaron Thomas, ed., Aaron Thomas & Jeremy Parzen, trans., 2008) (1764). Scholars of the legal model are sometimes known as “legalists” or “formalists.” *Id.*

ought to come to the same conclusion in a given case.¹¹⁵ And empirical evidence has shown that judges are at least somewhat constrained by the law when reaching the disposition of a case.¹¹⁶ For example, judges have been found to defer to agency actions that they might otherwise ideologically oppose.¹¹⁷

However, even if women and men on the bench tend to come to the same legal conclusions, that does not mean they function identically during the decision-making process that culminates in these decisions. Motivated by the finding that women leaders tend to be more collaborative, one researcher tested and found evidence that women district court judges foster settlement more often and more frequently.¹¹⁸ On state high courts, women judges have been found to exert more independence by authoring separate opinions even when the majority author is a co-ideologue.¹¹⁹ As majority authors, women on state high courts have been found to foster greater unanimity in certain cases.¹²⁰ On the Courts of Appeals, women appear to author opinions that are longer and include both more citations and “deeper” citations as compared to opinions authored by men.¹²¹

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115. RICHARD A. POSNER, *HOW JUDGES THINK* 175 (2008) (discussing the Dworkinian view that there is “one right answer to every legal question”); RONALD DWORKIN, *LAW’S EMPIRE* viii-ix (1968) (arguing that even “hard” cases usually have a correct answer).
 116. See, e.g., Frank B. Cross, *Decisionmaking in the U.S. Circuit Courts of Appeals*, 91 CALIF. L. REV. 1457, 1514 (2003); Rachel K. Hinkle, *Legal Constraints in the US Courts of Appeals*, 77 J. POL. 721, 731 (2015) (considering judicial treatment of binding precedent in Fourth Amendment cases).
 117. Kent Barnett, Christina L. Boyd & Christopher J. Walker, *Administrative Law’s Political Dynamics*, 5 Vand. L. Rev. 1463, 1499 (2018).
 118. Boyd, *supra* note 111, at 211.
 119. Stephen J. Choi, Mitu Gulati, Mirya Holman & Eric A. Posner, *Judging Women*, 8 J. EMPIRICAL LEGAL STUD. 504, 525 (2011).
 120. Meghan E. Leonard & Joseph V. Ross, *Gender Diversity, Women’s Leadership, and Consensus in State Supreme Courts*, 41 J. WOMEN POLIT. & POL’Y 278, 294 (2020) (finding that woman-authored opinions on employment discrimination and search and seizures tend to be more unanimous than corollary opinions authored by men). *But see* Mikel Norris, *Beyond Consensus: Gender, Chief Justices, and Leadership on State Supreme Courts*, 43 J. WOMEN POLIT. & POL’Y 134, 146 (2022) (surveying chief justices in state courts and finding that women do not believe their primary responsibility is to form consensus on the court; instead, they are more likely to place importance on interactions with state legislatures).
 121. See Laura P. Moyer, John J. Szmer, Susan B. Haire & Robert K. Christensen, “*All Eyes are on You*”: *Gender, Race, and Opinion Writing on the U.S. Courts of Appeals*, 55 L. & SOC’Y REV. 452, 464 (2021) (hereinafter Moyer et al.) (operationalizing “deep cites” as those that discuss a case in depth). *Id.* at 462. See also Haire, Moyer & Treier, *supra* note 8, at 320 (finding that panels with a majority of women/minority judges produce opinions that are longer and include more points of law, as measured by Westlaw keycites); Kaleigh A. Ruiz, *Gender Differentials in the Content of Judicial Opinions*, 57 ARIZ. ST. L. J.

Furthermore, scholars have found that—in the rare cases where women’s views differ from those of men—a woman may be able to persuade her peers to take her view of the case. Specifically, for cases involving sexual harassment suits, the presence of a woman on a panel increases the chance that the case will be disposed of in favor of the plaintiff.¹²² Additionally, court outcomes may change as more women attain judgeships. One study finds that, as women reach a critical mass on a court, they tend to be more likely to rule in favor of criminal defendants.¹²³ Another finds that increasing the proportion of women on a bench is correlated with a decreased sex disparity in criminal sentencing.¹²⁴ Taken together, this research indicates that women do seem to have an impact on deliberation in the courts.

II. KEY EXPECTATIONS

I test competing theories as to the impact of women on panel consensus. Because women have a tendency toward democratized leadership and collaborative work styles, one possibility is that women will facilitate consensual decisions on the court, ensuring heightened unanimity for panels including them. Conversely, implicit gender bias among men on the court might lead to greater dissensus when a woman is present on a panel. However, either way, panels with all women ought to lead to the highest levels of unanimity. Additionally, consensus on the courts may be contingent on other factors, such as the gender composition of a panel and the issue area of the case. As judges deliberate over a case’s outcome, both the gender of the majority author and the number of women on that panel may matter. Thus, the literature on gender, deliberation, and courts all coalesce to engender a series of both panel- and judge-level hypotheses.

1825, 1861-62 (2025) (women judges write differently about issues as compared to men). *See also* Michael A. Livermore, Nina Varsava, Keith Carlson & Daniel N. Rockmore, *Gendered Judicial Opinions*, 1 J. L. & EMPIRICAL ANALYSIS 1, 12 (2024).

122. Boyd, Epstein & Martin, *supra* note 9, at 402-06; Peresie, *supra* note 111, at 1778; Sean Farhang & Gregory Wawro, *Institutional Dynamics on the U.S. Court of Appeals: Minority Representation under Panel Decision Making*, 20 J. L., ECON., & ORG. 299, 320 (2004).

123. Paul M. Collins, Kenneth L. Manning & Robert A. Carp, *Gender, Critical Mass, and Judicial Decision Making*, 32 L. & POL’Y 260, 271-73 (2010).

124. Schanzenbach, *supra* note 98, at 74.

A. *Women Judges as the Harbingers of Compromise*

My first set of hypotheses is predicated on the assumption that women will have a positive effect on group deliberations. Initially, I consider the impact of majority-author gender on consensus. In the context of judicial opinions, majority authors field several iterations of draft opinions to their fellow panel members for comments. The literature on leadership tells us that women tend to be more democratic in their decision-making.¹²⁵ If women who author majorities hold democratized views of leadership, they should be more likely to incorporate comments from their colleagues into a finalized opinion as compared to men. This prediction is bolstered by the general literature indicating that women tend to be more compromising than men.¹²⁶ With their comments taken into consideration, panel members will likely be deterred from authoring separate opinions to express their views—or at least mitigate the strength of their dissensus in any separate opinion authored. For example, a judge planning to author a full concurrence upon circulation of a draft majority might ultimately decide to enter a concurrence in part if the text of the majority is subsequently modified to placate that judge. This prediction can be succinctly stated thus:

H_{1A}: Panels will come to *greater* consensus on a case when the majority is authored by a woman.

However, consensus may also depend on the other judges on a panel.¹²⁷ Thus, I consider the behavior of women on a panel who are not tasked with authoring a majority opinion.¹²⁸ Again, I rely on the literature that finds women tend toward greater collaboration and compromise.¹²⁹ If this behavior extends to women judges, then they should be less likely to author separate opinions, even if they feel that their views have not

125. Eagly & Johnson, *supra* note 59, at 242.

126. Nikolova & Lamberton, *supra* note 12, at 367.

127. In fact, the discretionary behavior of separate opinion authorship likely provides some of the most substantial evidence for gendered behavior on the courts given that majority authorship is assigned out by a presiding judge. While one could argue that this assignment process is plausibly random, there are likely many factors impacting a presiding judge's decision to assign out a majority. For example, if a presiding judge assumes women can better facilitate compromise, they might systematically assign women judges to author more contentious cases, confounding the results predicted by my first theory.

128. While a majority author could always choose to author a separate opinion in addition to the majority, this is a highly unlikely occurrence.

129. Nikolova & Lamberton, *supra* note 12, at 367.

been taken into account by the author of the majority opinion. Furthermore, collegial norms that disincentivize separate opinion authorship will likely be heightened for women, especially when tokenized. Thus:

H_{1B}: Women will be *less* likely than men to write separate opinions.

Taken together, this first set of predictions hypothesizes that both woman-majority-authorship and the presence of women on a panel will lead to greater consensus in case outcomes.

B. *Gender-Based Dissensus*

Conversely, it could be the case that women judges may contribute to dissensus on the courts. Again, I start with the case of a majority opinion authored by a woman. Recall that there is evidence that men on the court tend to disproportionately interrupt peer women,¹³⁰ and that interruption behavior leads to conflict that is reflected in the divisions of case outcomes.¹³¹ This alone is enough to predict that majority opinions authored by women might be less unanimous than those authored by men. However, other factors might exacerbate this effect. Namely, judging is still a heavily masculinized career. If men on the court feel that women are not a correct fit for their position—especially the leadership position of authoring a majority—they may be less likely to value that woman's opinion. Additionally, because men are accustomed to playing the societal role of speaker rather than listener, it may feel natural for them to author a concurrence—thereby speaking up—to more appropriately represent their point of view even if they agree with the majority opinion. More insidiously, perhaps implicit gender bias influences men on the court to harbor some distrust of the work product of women judges, leading such men to violate norms of collegiality to author separate opinions when a woman is tasked with majority authorship. In any case, I predict that:

H_{2A}: Panels will come to *lesser* consensus on a case when the majority is authored by a woman.

130. *E.g.*, in the case of interrupting women attorneys at heightened rates during oral argument. Jacobi & Schweers, *supra* note 10, at 1482.

131. *See* Jacobi & Rozema, *supra* note 99, at 2311.

Further, even if women judges may be reluctant to violate collegial norms to author discretionary opinions, they may choose to do so if it is the only way for their voices to be heard. Although opinion writing is generally a collaborative task, the fact remains that the majority author has the final say in the ultimate text of that opinion. Thus, it is wholly within the discretion of that author to integrate (or not integrate) the comments of their peers on the bench. If implicit gender bias functions such that men authoring a majority discount the comments of peer women, women will need to publish a separate opinion if they want their thoughts on the case to be published. Thus:

H_{2B}: Women will be *more* likely than men to write separate opinions.

In this case, both woman-authorship and the mere presence of women on a court will seemingly lead to greater panel dissensus.

C. *Common Panel Effect*

Finally, I anticipate that the highest levels of consensus will be observed when a panel comprises all women. This follows from either theory, regardless of whether women enhance or impede consensus on the courts. If women are more democratizing as majority authors and more compromising as panel members, there should be very little reason for an all-woman panel to author separate opinions. Recall that groups with a majority of women tend to reach more unanimous decisions in non-judicial contexts.¹³² On the other hand, if men experience gender bias that leads to dissensus on mixed-gender panels, this dissensus should be assuaged by the elimination of any men on the panel. Even if women judges are not more collaborative than men under this latter theory, panel women ought to be less likely to author separate opinions since they are less likely to feel voiceless *qua* women when a peer woman authors the majority.¹³³ Thus, in either case:

H₃: All-woman panels will exhibit higher levels of consensus compared to gender-heterogeneous panels.

132. Kennedy, *supra* note 74, at 38.

133. Additionally, we might think that preferences on the outcome of a case converge as a group becomes gender-homogenous, though we should be cautious about this assumption. See, e.g., Alexander Bolton & Sharece Thrower, *Studying Bureaucracy in a Diverse Democracy*, 50 CONGRESS & THE PRESIDENCY 135, 142 (2023) (noting that “all groups have some level of heterogeneity consequently ignored”).

III. EMPIRICAL DATA

A. *Sample of Cases*

The dataset includes information from 11,022 federal appellate opinions spanning various issue areas from 2000 to 2024. Data was gathered using Westlaw to search all published cases in each specific issue area over the specified time frame.¹³⁴ I begin in 2000 as this is the year in which women comprised 20% of all judges in the federal appellate courts. The data include 9,167 majority/plurality opinions and 1,855 separate opinions. Of the separate opinions, about 35% are concurrences, about 41% are dissents, and about 25% are concurrences in part and dissents in part. These separate opinions occur in 1,721 cases, including 114 cases with three total opinions and ten cases with four total opinions (i.e., where the majority author writes a separate opinion along with both other members of the panel). There are also nine cases in the dataset where a judge flags their disagreement with the majority via a footnote but does not author a separate opinion.

B. *Measuring Gender*

To determine the gender of each judge in the dataset, I used a series of regular expressions¹³⁵ to capture the names of all judges on a panel for a

134. Those fourteen issue areas are: (1) abortion; (2) disability advocacy; (3) affirmative action; (4) campaign finance; (5) capital punishment; (6) Commerce Clause; (7) Contracts Clause; (8) piercing the corporate veil; (9) criminal appeals; (10) environmental protection; (11) gender discrimination; (12) race discrimination; (13) sexual harassment; and (14) takings. These issue areas were initially selected by Sunstein, Schkade & Ellman to test the attitudinal model of judicial decision-making—i.e., whether the ideology of a judge explains her decision in a particular case. See Cass R. Sunstein, David Schkade & Lisa Ellman, *Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation*, 90 VA. L. REV. 301, 311-13 (2004). Later work on whether gender factored into the attitudinal model utilized the Sunstein, Schkade & Ellman database but eliminated cases on criminal appeals. See Boyd, Epstein & Martin, *supra* note 9, at 397. I replicated the collection method employed by these scholars, with slightly modified Boolean searches. Appendix B presents the Boolean searches and number of cases in each issue area.

135. A regular expression is a sequence of characters specified to match a pattern within text-as-data. For example, the majority of opinions on Westlaw list the panel of judges that heard a case after the word “before” and a colon. Thus, to capture the panel, I would write a regular expression specifying the return of the words after this pattern and before a new line. This would be the corollary regular expression: “(?<=Before)(.*?)(?=\n)”. While there are sometimes errors in the opinion text that cause the regular expression to be unable to capture a judge (i.e., it just returns a blank

given case as well as the majority opinion author. For those cases with separate opinions authored, I manually checked each case for the author and the type of the separate opinion. Once I had judge names, I matched these to unique judicial identifier codes from the Federal Judicial Center (“FJC”). The FJC publishes an up-to-date dataset of demographic information for all judges. Thus, once the unique identifier was coded into the dataset, I merged in demographic data—including gender—for each judge on the panel. About 24 percent of opinions in the dataset are authored by women, and about 24 percent of panel judges in the dataset are women.

Using the FJC data, I also calculate the number of women on each panel. Because my scope is federal appellate courts (and I exclude en banc decisions), nearly all of the cases in the dataset were decided by a panel of three judges.¹³⁶ The majority of panels include either no women (about 42 percent) or one woman (about 44 percent); about 12 percent of panels include two women and about 1 percent of panels are composed of all women.

C. *Measuring Consensus*

I use a few different measures of consensus to test my panel-level hypotheses (H_{1A} , H_{2A} , and H_3): (1) unanimity; (2) number of separate opinions; and (3) indexed level of consensus. At the individual level, I employ binary variables that track the authorship of separate opinions (both cumulatively and by type). All variables were hand-coded. The binary unanimity variable takes a value of “1” if the majority opinion is the only opinion in the case and a “0” otherwise. Over 80% of cases in the dataset are unanimous.

For the second dependent variable, cases may have just one opinion or as many as four opinions. However, I reverse the coding for this variable to ensure interpretation is consistent with other dependent variables. Thus, “number of separate opinions” ranges from 0–3 where a “3” represents that all three judges have agreed (and thus only a single

space), a random verification on 50 cases found that the code never returned an incorrect (non-authoring) judge.

136. About 0.3% of cases (i.e., thirty-two cases) were decided by a two-judge “quorum” according to circuit-level internal operating procedures. In all such cases, a third judge was initially part of the panel. For eleven of these cases, the third judge passed away before the opinion’s disposition. For three cases, the third judge (namely, Sonia Sotomayor) was elevated to the Supreme Court prior to publication. For another three cases, the third judge retired before the opinion was published. For the remaining fifteen cases, the third judge either discovered there was reason to recuse themselves or was not able to participate in the opinion for unspecified reasons.

majority opinion was published) and a “0” represents that no judge could agree, creating four separate opinions on the matter. The average case in the dataset produces a value of about 2.8 for this variable, in alignment with the fact that most of the opinions in the dataset are unanimous.

The variable for indexed consensus is on a ten-point index ranging from 0–1 calculated based on both the number of separate opinions and the qualitative types of separate opinions in a case. The typology of a separate opinion gives a relative proxy of the strength of disagreement with the majority. So, for example, a case with a single, regular concurrence represents only minor disagreement among judges, whereas a case with one dissent and one concurrence in judgment represents quite a lot of disagreement. On this index, “0” represents cases with the greatest dissensus (with two separate opinions written that partially concur and partially dissent); a “1” represents cases with the highest level of consensus—i.e., unanimity. Table 1 presents all possible designations on the index with the number of cases that fit into each designation.¹³⁷

TABLE 1: CONSENSUS INDEX AND NUMBER OF DESIGNATED CASES

Index Level	Types of Cases	# Cases
1	unanimous majority with no separate opinions	7436 (~81%)
0.9	majority + concurrence in part majority + concurrence in footnote	21 (~0.2%)
0.8	majority + concurrence	338 (~4%)
0.7	majority + concurrence in judgment majority + concurrence dubitante majority + dissent in footnote	155 (~2%)
0.6	majority + dissent in part majority + concurrence in part and dissent in part (“partial”)	479 (~5%)
0.5	majority + dissent majority + concurrence in part + concurrence in part	613 (~7%)
0.4	majority + concurrence + concurrence majority + concurrence in judgment + concurrence	13 (~0.1%)
0.3	majority + concurrence in part + partial majority + concurrence in part + dissent in part	3 (~0.03%)

137. Note that there may be other permutations of opinions not present in this dataset that are thus unlisted on Table 1.

0.2	majority + concurrence in judgment + partial majority + concurrence + partial majority + concurrence + dissent in part majority + concurrence in part + dissent	29 (~0.3%)
0.1	majority + concurrence + dissent majority + concurrence in judgment + dissent majority + partial + partial majority + dissent in part + dissent in part majority + concurrence (any) + concurrence (any) + concurrence (any)	71 (~0.8%)
0	majority + partial + dissent majority + concurrence (any) + concurrence (any) + dissent majority + concurrence (any) + dissent in part + dissent in part	9 (~0.1%)

The judge-level data include 27,501 total judge-case pairings. Many judges are repeat players in this dataset, with 972 unique judges. Theoretically, every time a judge is on a panel for a case, they have the opportunity to write an opinion. They may be designated to write the majority opinion or may take it upon themselves to author a separate opinion based on how they feel about the ultimate text of the majority. To test the gendered likelihood of writing separate opinions (H_{1B} and H_{2B}), I create a variable simply called “writes” that takes a value of “1” if the judge writes any sort of opinion on the case and a “0” otherwise. I also create binary variables that track whether a judge authors a concurrence, a dissent, or a combination concurrence/dissent (“partial”).¹³⁸ I exclude majority authors from the judge-level analyses, since they are highly unlikely to write a separate opinion in addition to their assigned majority.¹³⁹ With the exclusion of majority authors, the data includes 18,334 judge-case pairs.

138. For the purposes of these designations, a partial concurrence, concurrence in judgment, concurrence dubitante, etc. are included in “concurrences” whereas a dissent in part is included as a “dissent.” “Partials” encompass those opinions that a judge specifies to be “concurring in part and dissenting in part” (or some variation on this language).

139. Less than 0.5% of cases in the dataset include a separate opinion written by a majority author ($n = 44$).

D. *Controls*

There are likely other factors that contribute to panel consensus on a case.¹⁴⁰ To this extent, I implement controls for: (1) chief status; (2) visiting status; (3) relative seniority; and (4) ideological spread. The operationalization of these controls varies slightly depending upon the hypothesis tested. The first three of these variables are meant to control for certain individual-level characteristics as they impact a panel. For my predictions on panel-level consensus, chief status, visiting status, and relative seniority take values of “1” when the author of the opinion meets the relevant condition and a “0” otherwise. For my judge-level hypotheses testing the effect of gender on separate opinion authorship, these three controls take a value of “1” when the judge considered meets the condition and a “0” otherwise.

The “chief” condition is met when the authoring/specified judge was the chief of their circuit in the year that a case was handed down. Assuming circuit judges have some level of heightened respect for their current chief, they may feel constrained in expressing any disagreement via a separate opinion when their chief is the majority author. Additionally, a chief may feel more able to write a separate opinion when not authoring a majority given their relative position of power. Alternatively, perhaps chiefs are less likely to write separate opinions because their administrative workload is too high to allow for optional opinions, or because they care about setting a good example for their circuit regarding norms of collegiality and consensus. In either case, there are slight gender differences in chief status that render this an important control. Roughly 7.5 percent of men had chief status while sitting on a panel in the dataset, compared with about 7.0 percent of women.

The “visiting” condition is met when a given judge is a member of a panel despite the fact that they are not a judge on that circuit court. There are three possible types of visiting judges. Most commonly, a district judge from one of the courts in a circuit’s jurisdiction will be called upon to sit on a panel for various reasons. In other cases, a circuit judge will sit on a panel in a different circuit. Least frequently, a Supreme Court Justice may sit on a panel in one of their assigned circuits.¹⁴¹ Judges who are visiting are less likely to feel bound by the norms of collegiality within

140. Controls allow us to hold all else equal and consider just the effect of gender on the consensus variables. So, for example, if we suspect that chief judges author opinions with higher levels of consensus than non-chief judges, implementing a control for “chief” status would allow the model to compare women chiefs to men chiefs and women non-chiefs to men non-chiefs.

141. See 28 U.S.C. § 42.

a given circuit. So long as they do not frequent that circuit, they do not have to worry about repeat deliberations with the same judges. Because of this, such visiting judges may feel free to write separate opinions in a case without worrying about how their panel-mates will react to this norm breach. Conversely, when a visiting judge authors a majority opinion, others on the panel may also feel more able to express disagreement in the form of a separate opinion without concern of downstream effects. About 7.0 percent of men on panels were visitors compared with about 4.0 percent of panel women.

Next, I control for relative seniority. The rationale here is similar to that for chief status. Judges who are more senior on a panel may feel more or less constrained by norms of collegiality. Further, when an opinion is written by the most senior judge on a panel (who may be the “presiding” judge if the chief does not sit on the panel), other panel members may feel disinclined to author separate opinions. To capture relative seniority, I first calculate the years that a judge has spent on a federal appellate court in the year a case was published. The seniority condition is met for the binary variable when the specified judge has the highest federal appellate experience as compared to all other judges on the panel. Note that another judge on the panel may have more total judicial experience from tenure on district, state, or international courts. Nonetheless, I anticipate that federal appellate experience is the best measure of seniority for the purposes of this research since it is at this level that norms of collegiality likely become most entrenched.

Finally, I implement a control for ideological spread. This measure is calculated using Judicial Common Space (“JCS”) scores for individual judges. JCS scores are calculated by comparing the votes of an individual judge to the votes of other judges on the court and then rescaling these metrics to comport with the ideology of judges’ appointing Presidents and home-state Senators.¹⁴² For my first and third sets of hypotheses, I determine ideological spread using the panel-level standard deviation in JCS scores. A high standard deviation indicates that the panel includes judges who are quite distant from each other ideologically. Conversely, a small standard deviation indicates that all judges on the panel are rated similarly on their ideology. This measure examines the raw distances among

142. Lee Epstein, Andrew D. Martin, Jeffrey A. Segal & Chad Westerland, *The Judicial Common Space*, 23 J. L., ECON, AND ORG. 303, 4-6 (2007). While there are other measures of ideology that could be used—such as Clerk-Based Ideology (“CBI”) and Database on Ideology, Money in Politics, and Elections (“DIME”) scores—I utilize JCS scores because they are available for nearly all judges in the dataset, whereas the other databases are less complete and thus missing ideology scores for several judges. All three scores tend to be highly correlated with each other.

the ideologies of judges without distinguishing between relative partisanship. So, a panel of all-liberal judges could garner the same ideological spread score as a panel including both conservative and liberal judges. For my second set of hypotheses, I calculate this control as the difference between the individual judge and authoring judge, on the assumption that the third judge's ideology will simply be less influential on the decision to author an opinion separate from the majority.

My expectation is that dissensus will increase as a panel includes more ideologically distant judges. JCS scores range from -1–1, where a value of “-1” represents high liberalism and a value of “1” represents high conservatism. At the panel level, the ideological spread control varies from 0–0.7566, with an average of 0.3497. At the judge level, the variable ranges from 0–1.307, with an average of 0.4305. Given that the total scale is just 2 points, these averages might be interpreted as indicating mid-sized ideological spreads.

IV. KEY FINDINGS

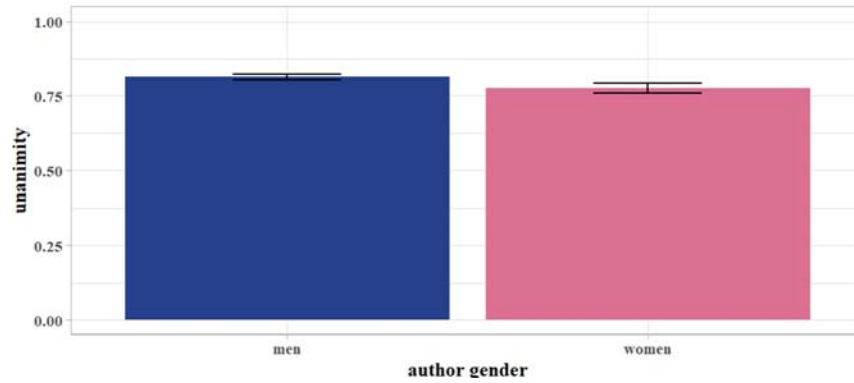
In testing my competing theories, the data generally tend to support the latter. That is, panels experience greater dissensus when an opinion is authored by a woman, and women tend to author more separate opinions when not tasked with majority authorship. Despite this, my common panel effect rings true with all-woman panels engendering the most unanimous opinions. I also present a series of subsidiary findings considering judge ideology, differences in issue areas, and circuit-level effects on gendered consensus on the courts. The possible causes and implications of these findings will be discussed further in Parts V and VI.

A. *Impact of Author Gender on Panel Consensus (H_{1A} v. H_{2A})*

I first consider whether woman-authored opinions will be more consensual or less consensual than those authored by men. Regardless of the measurement used, the findings suggest that majority opinions authored by women create more dissensus than those authored by men. Figure 1 presents the percentage of cases in the dataset that are unanimous by gender of opinion author. As this figure shows, about 78% of opinions authored by women are unanimous (i.e., all judges on the panel voted with the majority author), compared to about 81% of opinions authored by men. This difference in means is statistically significant at the highest threshold. While this 3% difference is somewhat

small, it is likely moderated by the possibility of ceiling effects, given that collegial norms produce such high levels of unanimity to begin with.

FIGURE 1: OPINION UNANIMITY BY AUTHOR GENDER



The subsequent analyses deal with the subset of 1,855 non-unanimous cases in the dataset. At this level, I can determine the impact of woman authorship on consensus among already divided panels. An average non-unanimous opinion authored by a man scores about 0.60 on the consensus index, with about 2.03 on the recorded number of opinions variable. The corollary averages for a woman-authored opinion are 0.60 and 2.05, respectively. Recall that a 0.50 on the unanimity index represents a case with either one dissenter or two concurring judges. A designation of “2” on the reverse-coded number of opinions variable indicates that two judges agreed wholly with the majority, while one judge wrote a separate opinion of some sort. The differences in means between genders are quite small and statistically insignificant. Nonetheless, they suggest that woman-authored majority opinions are more likely to beget more severe levels of disagreement than majority opinions authored by men.

I also run a series of ordinary-least squares regressions to test the relationship between author gender and panel consensus.¹⁴³ Models without controls (“bivariate models”) are presented in Table 2. The numbers reported on the top half of the table are coefficients that represent the predicted change in unanimity/consensus as the author of a majority opinion switches from male to female. The results echo those of the differences in means—both in substance and statistical significance—with

143. Ordinary-least squares (“OLS”) models allow a researcher to determine the responsiveness of one variable (here, the metrics of unanimity/consensus) to a change in one of its determinants (here, the gender of the majority author or number of women present on a panel). *See* JEFFREY S. ZAX, *INTRODUCTORY ECONOMETRICS: INTUITION, PROOF, AND PRACTICE*, 8-9 (Stanford Economics and Finance, 2011).

the coefficients on gender signed negatively in all models, indicating that opinions authored by men engender greater panel consensus than those authored by women. The first row of the results indicate that a majority opinion authored by a woman is about 3.8% less likely to be unanimous, with about 0.018 more opinions and garnering a score on the unanimity index about 0.004 less than that of a majority opinion authored by a man. The coefficient is significant for the model predicting unanimity only. This indicates that, for non-unanimous opinions, the difference in severity of dissensus correlated with a majority author's gender is statistically indistinguishable from 0. The bottom half of the table includes statistical information about the strength of the relationship between gender and the unanimity/consensus variables, and the low R-squared value indicates that these relationships are relatively weak.

TABLE 2: BIVARIATE RELATIONSHIP BETWEEN MAJORITY AUTHOR GENDER AND PANEL CONSENSUS

	unanimity	# opinions (reverse coded)	indexed consensus
gender	-0.038*** (0.010)	-0.018 (0.019)	-0.004 (0.010)
constant	0.814*** (0.005)	1.971*** (0.010)	0.600*** (0.005)
Observations	9,167	1,794	1,794
R ²	0.002	0.0005	0.0001
Adjusted R ²	0.002	-0.0001	-0.0005
Residual Std. Error	0.396 (df = 9165)	0.355 (df = 1792)	0.183 (df = 1792)
F Statistic	15.554*** (df = 1; 9165)	0.877 (df = 1; 1792)	0.160 (df = 1; 1792)
<i>Note:</i>		*p<0.1; **p<0.05; ***p<0.01	

The gender of a majority author is likely not the only factor that impacts a case's unanimity. Table 3 presents the results for models that include controls ("multivariate models") for: (1) ideological spread; (2) chief status; (3) visiting status; and (4) relative seniority.¹⁴⁴ Note that the latter three controls are measured as binary. Gender retains negative signage in all models, indicating that men continue to author more unanimous opinions regardless of other factors that might be thought to have an impact on consensus. The substantive value of the coefficients on gender do not change much from those in the bivariate model. The ideological spread control is highly statistically significant in all models, indicating that panels with a one-unit increase in ideological distance

144. Any concerns about post-treatment bias in these controls ought to be assuaged by the robustness to the initial bivariate models presented.

among judges are more than 20% less likely to be unanimous. Furthermore, this shift in ideological distance is also correlated with a decrease in consensus levels, even within non-unanimous opinions.

Chief status and relative seniority are also positively correlated with the various measures of consensus, although these coefficients are substantively small and do not attain traditional levels of statistical significance. Nonetheless, the direction of these coefficients is as expected. When a majority is authored by either the chief or the most senior judge on a panel, the panel is more likely to come to consensus and reach higher levels of consensus on non-unanimous opinions. Interestingly, the signage on the “visiting status” coefficients is mixed. This indicates that panels are more likely to produce unanimous opinions when a visiting judge authors the majority, but will demonstrate greater levels of dissensus within non-unanimous opinions in such circumstances. This coefficient is significant in two of the three models and takes a value higher than that of the coefficient on gender.

TABLE 3: MULTIVARIATE RELATIONSHIP BETWEEN MAJORITY
AUTHOR GENDER AND PANEL CONSENSUS

	unanimity	# opinions (reverse coded)	indexed consensus
gender	-0.031*** (0.010)	-0.016 (0.019)	-0.003 (0.010)
ideological spread	-0.206*** (0.022)	-0.168*** (0.045)	-0.061*** (0.023)
chief status	0.015 (0.016)	0.035 (0.033)	0.024 (0.017)
visiting status	0.043** (0.019)	-0.077* (0.043)	-0.030 (0.022)
relative seniority	0.0005 (0.009)	0.007 (0.018)	0.008 (0.009)
constant	0.880*** (0.010)	2.035*** (0.021)	0.620*** (0.011)
Observations	9,141	1,792	1,792
R ²	0.012	0.010	0.006
Adjusted R ²	0.011	0.008	0.004
Residual Std. Error	0.395 (df = 9135)	0.353 (df = 1786)	0.182 (df = 1786)
F Statistic	21.286*** (df = 5; 9135)	3.721*** (df = 5; 1786)	2.272** (df = 5; 1786)

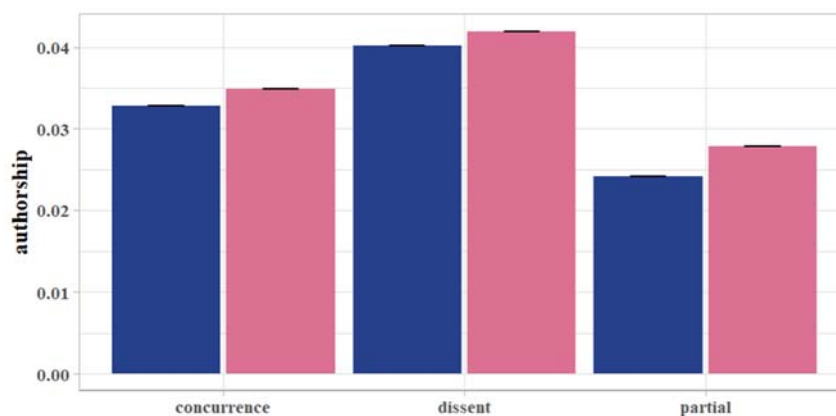
Note:

*p<0.1; **p<0.05; ***p<0.01

B. *Impact of Gender on Separate-Opinion Authorship* (H_{1B} v. H_{2B})

Thus, women's leadership seems to lead to dissensus on the court. I next analyze the behavior of individual women not tasked with authoring a majority opinion. Once again, my findings suggest that women are more likely to create dissensus on the courts, being much more likely than men to author separate opinions. Initially, I consider how many men and women judges take the opportunity to author a separate opinion when confronted with this choice. Of the 13,915 instances of men sitting on a panel but not authoring an opinion, approximately 9.7% opted into authoring a separate opinion of some sort. While there are fewer women on the court and thus scarcer opportunities for separate opinion authorship (4,382), women seized these opportunities at a higher overall rate (about 10.5%). Figure 2 charts these gender differences by type of opinion. Notably, women choose to author all three types of opinions at a higher rate than men, though these gender gaps are at a magnitude of less than half a percent.

FIGURE 2: SEPARATE OPINION AUTHORSHIP BY GENDER AND TYPE OF OPINION



To confirm my findings from this descriptive analysis, I ran a series of linear probability (“probit”) models predicting the likelihood that a judge will choose to author a separate opinion based on her gender. Probit models are used when both the dependent and independent variable of interest are binary. Table 4 presents bivariate results for these models. The models predict that women will be more likely to author all types of opinions, though the coefficient on gender does not quite rise to levels of statistical significance in any of the models.

TABLE 4: BIVARIATE RELATIONSHIP BETWEEN JUDGE GENDER AND SEPARATE OPINION AUTHORSHIP

	separate opinion	concurrence	partial	dissent
gender	0.084 (0.057)	0.063 (0.095)	0.146 (0.107)	0.046 (0.087)
constant	-2.229*** (0.029)	-3.383*** (0.048)	-3.699*** (0.055)	-3.174*** (0.043)
Observations	18,297	18,297	18,297	18,297
Log Likelihood	-5,905.786	-2,674.127	-2,140.241	-3,107.986
Akaike Inf. Crit.	11,815.570	5,352.254	4,284.481	6,219.972

Note:

*p<0.1; **p<0.05; ***p<0.01

The direction of the coefficient on gender does not change when controls are implemented, as evidenced in Table 5. With the exception of relative seniority, all of the controls attain high levels of statistical significance. It appears that being the most senior judge on a panel is not associated with any difference in separate opinion authorship behavior. The signage on the coefficients for all other controls indicates that, when an individual judge is ideologically close to the majority author, has chief status, or has visiting status, they will be less likely to author any type of separate opinion. None of these predicted effects are particularly surprising, though the ideology coefficient is quite substantively large. Specifically, as a judge becomes one point more ideologically distant from the majority author, the likelihood that a separate opinion will be authored increases by about 88 percent.

Compared to non-chiefs, a current chief judge is predicted to be 45% less likely to author a separate opinion and is the most deterred from authoring dissents. One simple explanation for this is that a chief's opinion on a case may be taken into high consideration when comments are circulated on the draft majority, leaving him no reason to dissent. Further, the chief may care the most about norms of consensus and thus take it upon themselves personally not to sow dissensus. Additionally, the chief likely has other administrative duties that keep them too busy to spend time writing optional opinions. Visiting judges are also highly unlikely to author separate opinions, especially dissents. Table 5 also shows that, overall, visiting judges are predicted to be about 36% less likely than non-visitors to author a separate opinion. Recall that a visiting judge might be a member of the Supreme Court or another circuit but may also be a district court judge. Thus, there may be some heterogeneity to uncover within this variable. It does seem to track that at least district court judges might feel the need to come to a consensus on a case. Many judges are elevated to the

Courts of Appeals from a lower district court. Thus, visiting district court judges might anticipate that their panel fellows may soon be their everyday colleagues and conform to the norms of the circuit for this reason. Visitors from the Supreme Court are often semi-retired, and thus may also be less likely to take on the discretionary work of separate opinion authorship.

TABLE 5: MULTIVARIATE RELATIONSHIP BETWEEN JUDGE GENDER AND SEPARATE OPINION AUTHORSHIP

	separate opinion	concurrence	partial	dissent
gender	0.036 (0.058)	0.024 (0.096)	0.081 (0.109)	0.010 (0.088)
ideological spread	0.881*** (0.068)	0.595*** (0.113)	0.774*** (0.130)	1.026*** (0.103)
chief status	-0.453*** (0.114)	-0.367** (0.187)	-0.282 (0.208)	-0.576*** (0.184)
visiting status	-0.364*** (0.117)	-0.107 (0.175)	-0.350 (0.223)	-0.587*** (0.201)
relative seniority	0.063 (0.051)	0.157* (0.084)	0.158 (0.097)	-0.086 (0.077)
constant	-2.618*** (0.052)	-3.699*** (0.085)	-4.097*** (0.100)	-3.562*** (0.078)
Observations	18,136	18,136	18,136	18,136
Log Likelihood	-5,764.464	-2,637.154	-2,100.310	-3,027.118
Akaike Inf. Crit.	11,540.930	5,286.308	4,212.620	6,066.237

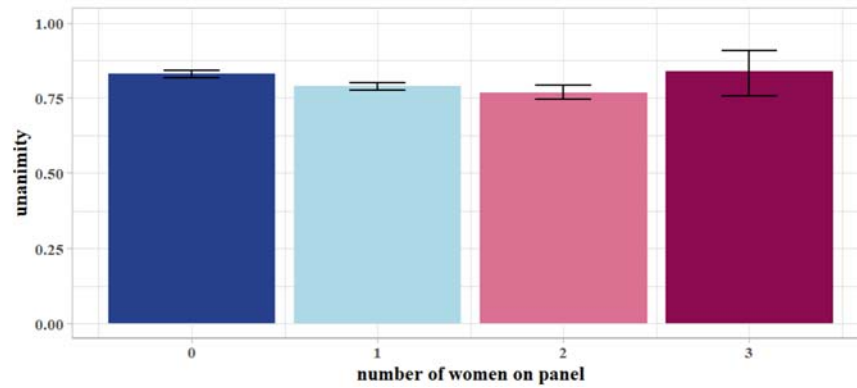
Note: *p<0.1; **p<0.05; ***p<0.01

C. Impact of Gender Homogenization on Panel Consensus (H_3)

Despite these findings that panels are less likely to come to consensus both when the opinion is authored by a woman and when a panel contains non-author women, I predict and find evidence that all-woman panels demonstrate higher levels of consensus than gender-heterogeneous panels. In fact, the findings suggest that all-woman panels come to higher levels of consensus than all-man panels. Figure 7 charts the differences in means for opinion unanimity based on the number of women on a panel. Note that the vast majority of the panels in this dataset have just one or no women. Only ninety-nine panels (about 1% of those in the data) include three women. All-woman panels attain the highest likelihood of unanimity (about 83.8%), edging out all-man panels by nearly a percentage point. Panels with two women and one man appear to create the most dissensus,

with about a 76.8% chance of attaining unanimity. The shift from having no women to having all women does produce a difference in means that is statistically significant.

FIGURE 3: UNANIMITY BY GENDER COMPOSITION OF PANEL



Regressions for this analysis can be viewed in Table 6. Given the small number of all-women panels in the dataset, it makes sense that increasing the number of women on a panel is correlated with a decrease in unanimity. However, the substantive values of these coefficients are all quite small and statistically insignificant.

TABLE 6: MULTIVARIATE RELATIONSHIP BETWEEN GENDER COMPOSITION AND PANEL CONSENSUS

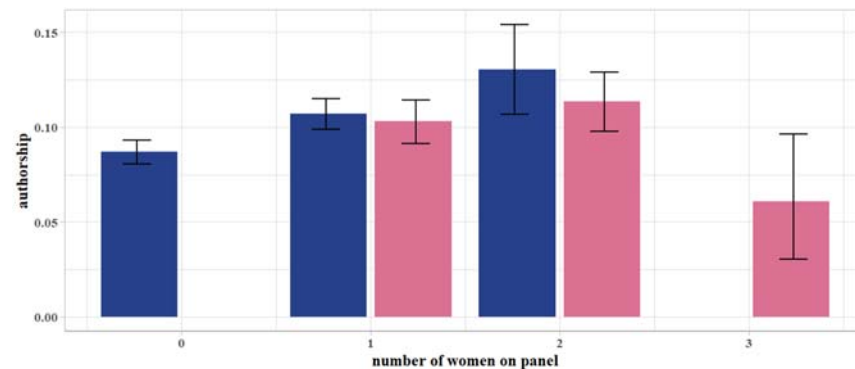
	unanimity	# opinions	indexed unanimity
# women	-0.023*** (0.006)	0.011 (0.012)	0.002 (0.006)
ideological spread	-0.202*** (0.023)	-0.171*** (0.045)	-0.061*** (0.023)
chief status	0.014 (0.016)	0.034 (0.033)	0.023 (0.017)
visiting status	0.046** (0.019)	-0.073* (0.043)	-0.029 (0.022)
relative seniority	0.004 (0.009)	0.008 (0.018)	0.008 (0.009)
constant	0.886*** (0.010)	2.022*** (0.022)	0.618*** (0.011)
Observations	9,141	1,792	1,792
R ²	0.012	0.010	0.006
Adjusted R ²	0.012	0.008	0.004
Residual Std. Error	0.395 (df = 9135)	0.353 (df = 1786)	0.182 (df = 1786)
F Statistic	22.380*** (df = 5; 9135)	3.758*** (df = 5; 1786)	2.262** (df = 5; 1786)

Note:

*p<0.1; **p<0.05; ***p<0.01

As might be inferred from Figure 3, panel women are least likely to author a separate opinion when on a panel of all women. Figure 4 demonstrates this result, showing the rate of authoring a separate opinion by the number of women on a panel. Note that women on all-woman panels are even less likely than men on all-man panels to author a separate opinion (at rates of about 6.1 and about 8.9, respectively). Both men and women author separate opinions at higher rates in gender-heterogeneous panels, with two-woman panels appearing to cause the most dissensus. Further, the differences in means are all statistically significant (at the 0.1 level for the difference between single-woman and dual-woman panels and the 0.01 level otherwise).

FIGURE 4: SEPARATE OPINION AUTHORSHIP BY GENDER COMPOSITION OF PANEL AND JUDGE GENDER



Given that all-woman panels are so consensual, perhaps women's positive impact on panel deliberation is conditional on the presence of both women's leadership and other women on the panel. To test whether this is the case, I ran a series of regressions interacting the two variables, the results of which are reported in Table 7. Note that, although the coefficient on the individuals remains negative—suggesting that women impede consensus—the coefficient on the interaction term is positive in this model. This indicates that woman-authored majority opinions are more likely to produce consensus as other women join the panel. The interaction term is highly statistically significant for the binary unanimity outcome.¹⁴⁵ Thus, the findings on an individual woman's impact on consensus appear to be conditional upon the gender composition of the panel.

145. Appendix C provides the multivariate models testing this relationship.

TABLE 7: INTERACTIVE EFFECT OF AUTHOR GENDER*PANEL COMPOSITION ON PANEL CONSENSUS

	unanimity	# opinions (reverse coded)	indexed unanimity
gender	-0.061*** (0.023)	-0.051 (0.045)	-0.021 (0.023)
# women	-0.031*** (0.008)	0.017 (0.016)	0.0002 (0.008)
gender*# women	0.037** (0.017)	0.013 (0.033)	0.012 (0.017)
constant	0.829*** (0.006)	1.962*** (0.013)	0.600*** (0.007)
Observations	9,167	1,794	1,794
R ²	0.003	0.002	0.0005
Adjusted R ²	0.003	0.0001	-0.001
Residual Std. Error	0.396 (df = 9163)	0.355 (df = 1790)	0.183 (df = 1790)
F Statistic	10.416*** (df = 3; 9163)	1.063 (df = 3; 1790)	0.296 (df = 3; 1790)
<i>Note:</i>			*p<0.1; **p<0.05; ***p<0.01

Table 8 reports similar effects for interacting judge gender and panel composition on separate opinion authorship. As with the interactive models shown in Table 7, the two gender variables alone act to decrease consensus. When interacted however, signage flips on the coefficient, indicating that woman-authored opinions are less likely to garner separate opinions as more women join their panel, as predicted. The coefficient for the interaction term is quite significant in the models for the combination of all separate opinions as well as that for dissents.

TABLE 8: INTERACTIVE EFFECT OF AUTHOR GENDER AND PANEL COMPOSITION ON SEPARATE OPINION AUTHORSHIP

	separate opinion	concurrence	partial	dissent
gender	0.038*** (0.012)	0.009 (0.007)	0.012* (0.006)	0.017** (0.008)
# women	0.013*** (0.004)	0.002 (0.003)	0.002 (0.002)	0.008*** (0.003)
gender*# women	-0.020** (0.009)	-0.003 (0.005)	-0.004 (0.005)	-0.013** (0.006)
constant	0.089*** (0.003)	0.031*** (0.002)	0.022*** (0.002)	0.036*** (0.002)
Observations	18,334	18,334	18,334	18,334
R ²	0.001	0.0003	0.001	0.001
Adjusted R ²	0.001	0.0001	0.0004	0.001
Residual Std. Error (df = 18330)	0.301	0.179	0.156	0.201
F Statistic (df = 3; 18330)	9.101***	1.902	3.395**	4.376***
<i>Note:</i>			*p<0.1; **p<0.05; ***p<0.01	

D. *Ideology Effects*

One potential confounder for the above analysis is ideology. After all, women tend to be more liberal than men,¹⁴⁶ and, within the dataset, women do tend to be slightly more liberal than men. Using JCS scores, the average woman judge scores about a -0.06, whereas a peer man scores about a 0.12 (recall the range for this score is -1 to 1, with 1 representing the most conservative judges). Thus, to determine whether the above story is one of gender or ideology, I split the data into four subgroups. Figure 5 presents the average unanimity of a case authored by judges in these subgroups. The differences in means indicate that conservative men author cases with the highest levels of unanimity (about 0.83) whereas liberal women author cases with the lowest levels of unanimity (about 0.78). However, while conservative women author cases that are statistically significantly less unanimous than conservative men, the difference in average unanimity among men and women who are liberals does not rise to traditional levels of statistical significance (p-value = 0.2772). Furthermore, the difference between conservative men and liberal men is highly statistically significant, while the difference in averages between conservative women and liberal women is statistically indistinguishable from 0. Thus, there appear to be both gender and ideology drivers to dissensus in majority opinion authorship.

FIGURE 5: OPINION UNANIMITY BY AUTHOR GENDER/IDEOLOGY SUBGROUP

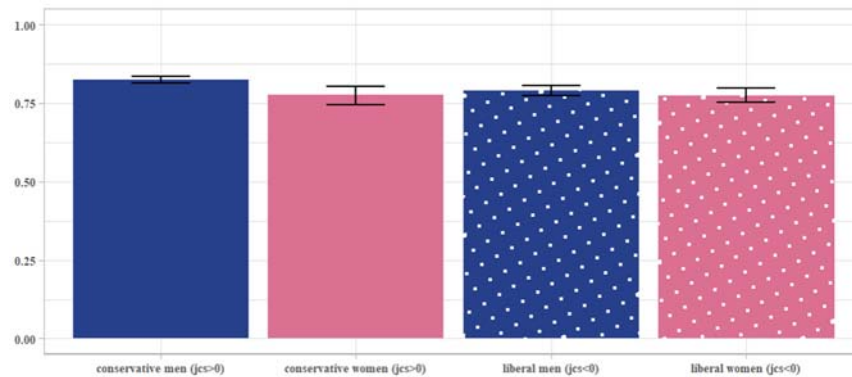


Figure 6 shows cumulative differences in means for authoring all types of separate opinions. Again, there seems to be a large difference in consensus-seeking behavior among men—dependent upon ideology—but

146. See, e.g., Mary-Kate Lizette, *Public Opinion and Gender*, in *Handbook on Politics and Public Opinion* 193, 195 (Thomas Rudolph ed., 2022).

not among women. Liberal men are the most likely to author a separate opinion, writing about 12% of the time when they sit on a panel but are not assigned to author the majority. Conservative men are the least likely to author a separate opinion, at a rate of about 8.5%. Women who are liberal author separate opinions at a rate of about 10.3% compared to about 10.8% for conservative women.

FIGURE 6: SEPARATE OPINION AUTHORSHIP BY JUDGE GENDER/IDEOLOGY SUBGROUP

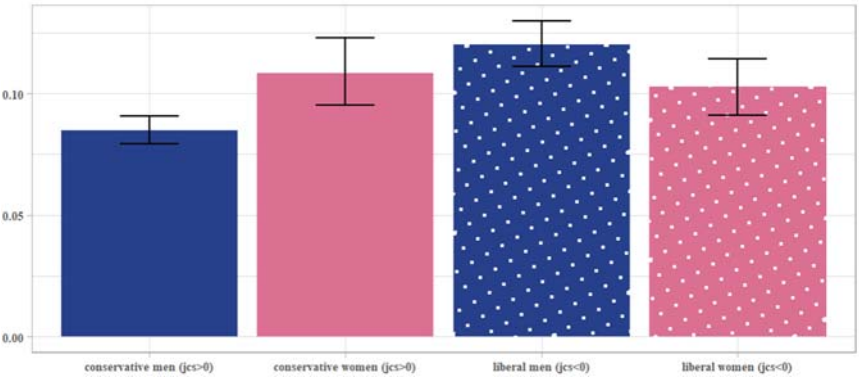


Table 9 shows differences in means among subgroups across key dependent variables. Note that the average on the unanimity index and number of opinions is virtually identical across all groups. Conservative men are the least likely to author separate opinions of all types, whereas the behavior of liberal men actually shows them to be the most likely to author partials and dissents. Regarding separate opinion authorship, only the average for dissents is statistically significant across ideology groups (and across the gender group for men but not for women). This echoes the finding above; liberal men’s behavior with respect to consensus is more similar to that of women than that of conservative men.

TABLE 9: OPINION UNANIMITY BY AUTHOR GENDER/IDEOLOGY SUBGROUP

	<i>unanimity</i>	<i>index</i>	<i># opinions</i>	<i>concurs</i>	<i>partials</i>	<i>dissents</i>
conservative men	0.83	0.60	2.03	3.1%	2.0%	3.3%
conservative women	0.78	0.60	2.04	3.6%	2.6%	4.6%
liberal men	0.79	0.59	2.03	3.6%	3.1%	5.3%
liberal women	0.77	0.60	2.05	3.5%	2.9%	3.9%

E. Issue-Area Effects

There may also be heterogeneous issue-area effects worth considering here. For example, research on state high courts indicates that women are more likely to dissent in cases involving issues that are particularly salient to their group, or so-called “women’s” issues.¹⁴⁷ Further, research has found that women judges can sometimes influence peer men to vote with them on issues they have more experience on, as with cases involving sexual harassment.¹⁴⁸ Given this research, I wondered whether women’s consensus behavior would change when the relevant case involves a gendered issue area. Of the 9,167 cases in the dataset, 1,519 consider a gendered issue (abortion, gender discrimination, or sexual harassment).¹⁴⁹ First, I considered the effect of majority author gender on unanimity for both gendered and non-gendered cases. Interestingly, cases involving a gendered issue area are far less likely to be unanimous when authored by a woman—though women have a disadvantage at attaining unanimity even for cases involving non-gendered issues. Among opinions authored by men, cases involving gendered issue areas are slightly less likely to be unanimous than those involving non-gendered issue areas. Figure 7 presents these differences in means, which are quite statistically significant.

147. John Szmer, Robert K. Christensen & Erin B. Kaheny, *Gender, Race, and Dissensus on State Supreme Courts*, 96 SOC. SCI. Q. 553, 571 (2015) (also finding that women tend not to dissent in non-gendered cases where women comprised a minority of the panel).

148. Boyd, Epstein & Martin, *supra* note 9, at 406.

149. 323 cases in the dataset were designated as considering two key issues. Of the 1,476 cases referenced, fifty-four dealt with one gendered issue and one non-gendered issue. These situations occur most commonly in workplace disputes, where an employee might claim gender discrimination as well as race discrimination or discrimination in violation of the ADA. It also sometimes occurred when abortion was related to a criminal appeal. Additionally, 151 of the 1,476 cases dealt with two gendered issues simultaneously.

FIGURE 7: OPINION UNANIMITY BY AUTHOR GENDER AND ISSUE AREA

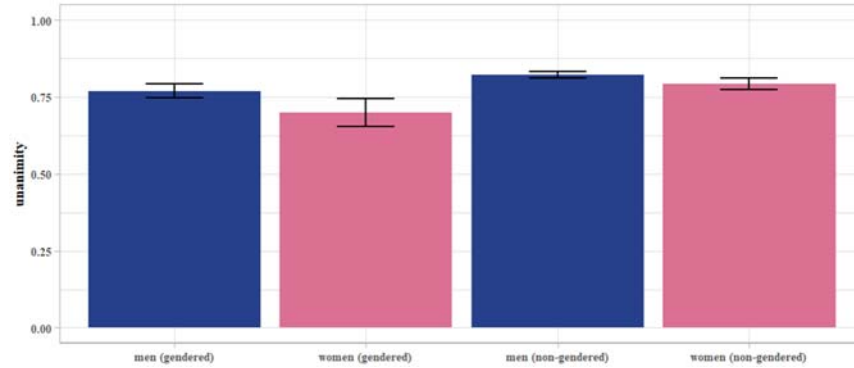
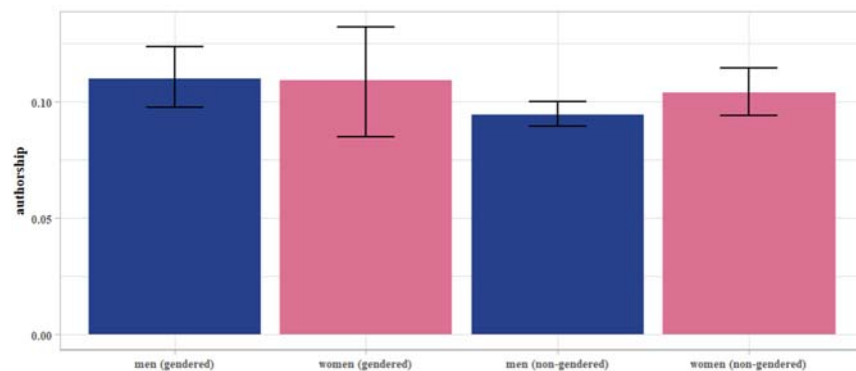


Figure 8 charts the rate at which judges author separate opinions by gender and issue area grouping. The figure shows that women author separate opinions at a near-equal rate regardless of the issue area involved. And in fact, the pattern that I expected among women is seen more prominently among men—who are more likely to author a separate opinion when the case involves a gendered issue area as compared to a non-gendered issue area (at a rate of about 1.5 additional percentage points).

FIGURE 8: SEPARATE OPINION AUTHORSHIP BY ISSUE AREA



I also analyze this trend by type of separate opinion. Table 10 reports key means. For cases involving gendered issues, women are less likely to author a concurrence (both as compared to men authoring concurrences on gendered cases and women authoring concurrences on non-gendered cases) but are much more likely to author a partial. Men seem to author more dissents in cases involving gendered issues (both as compared to men authoring dissents in cases with non-gendered issues and women authoring any type of opinion on any type of case). This finding indicates

that women are not necessarily less likely than men to stay silent when they disagree with the majority. However, when considering a gendered issue, women may be more likely to shift from a concurrence to a concurrence in part and dissent in part. This might show that, although women may not be expressing disagreement more often in gendered cases, they are expressing somewhat more severe disagreement when they do publish a separate opinion. Among women, the 1.4% decrease in concurrences and the 1.7% increase in partials are both statistically significant differences (at the 0.05 level) as a case shifts to including a gendered issue. Among men, the 1.3% increase in dissents from a non-gendered case to a gendered case is similarly statistically significant. Again, given the relatively low rates of dissensus on the court, a 1–2% difference does seem substantive.¹⁵⁰

TABLE 10: SEPARATE OPINION AUTHORSHIP BY JUDGE
GENDER/ISSUE AREA SUBGROUP

	<i>cumulative</i>	<i>concurs</i>	<i>partials</i>	<i>dissents</i>
men (gendered)	11.0%	3.3%	2.6%	5.1%
women (gendered)	10.9%	2.3%	4.2%	4.4%
men (non-gendered)	9.4%	3.3%	2.4%	3.8%
women (non-gendered)	10.4%	3.7%	2.5%	4.2%

F. *Circuit-Level Effects*

As a final analysis, I wondered whether there might be heterogeneity among circuits in how gender affects consensus. After all, circuits vary in the number of women appointed, which might have an impact on the gendered norms surrounding case deliberation. To test whether this might be the case, I subsetted the data to the circuit level and ran a simple bivariate

150. Appendix D reports probit models with an interactive effect for gendered issue areas. Appendix D also presents average consensus rates for each of the fourteen issue areas individually, along with coefficient plots with 95% confidence intervals for key variables within the level of each of the fourteen issue areas. Notably, man-authored opinions are more unanimous than those authored by women (at a statistically significant level) on cases involving takings, gender discrimination and criminal appeals. Women are significantly less likely to author discretionary separate opinions on abortion cases. In general, cases involving abortion are the least likely to be unanimous, garnering separate opinions in about 75% of cases. Commerce Clause and capital punishment cases are also relatively contentious, with unanimity rates of about 56% and 60%, respectively. The most consensual cases appear to be those involving race discrimination, with about 87% of such cases being unanimous.

analysis predicting unanimity based on the gender of an opinion's author. Figure 9 reports the coefficients for these models with 95% confidence intervals. Gender attains positive signage in the Second, Seventh, and Eleventh Circuits, and negative signage in all other circuits. This indicates that women-authored opinions are less likely to be unanimous than those authored by men in ten out of thirteen federal circuits. However, the coefficient is only statistically significant in the models for the First, Fifth, and Tenth Circuits. Interestingly, there is no clear pattern among circuits either based on the number/percentage of women on the circuit or the predicted ideology of the circuit. For example, the Second and D.C. Circuits have roughly 55% women (the highest of all circuits), but their gender coefficients attain opposite signage. The Fourth and Tenth Circuits have the fewest women (roughly 33%), but neither has the lowest unanimity ratings, and the Fourth Circuit has a coefficient relatively close to 0 as compared to other circuits. On ideological mapping, it's notable that the D.C. and Sixth Circuits have roughly the same coefficients even though the D.C. Circuit is composed of 64% Democrats and the Sixth has 63% Republicans.

FIGURE 9: CIRCUIT-LEVEL EFFECTS OF MAJORITY AUTHOR GENDER ON OPINION UNANIMITY

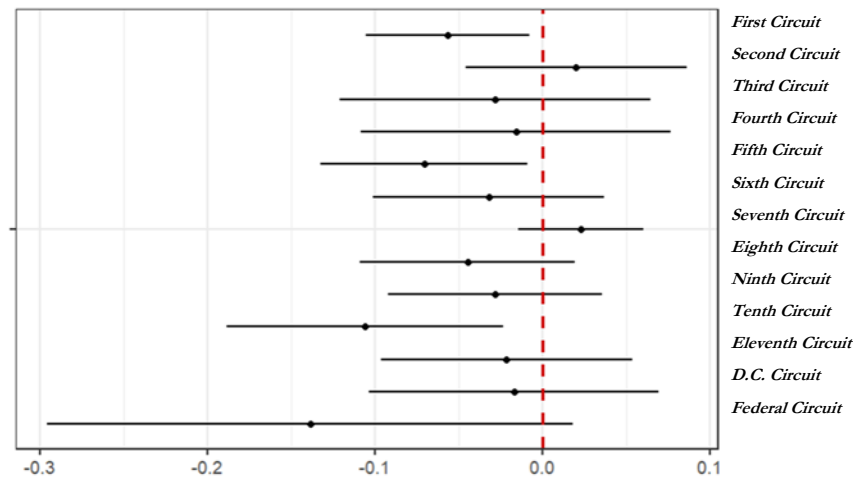


Figure 10 presents bivariate coefficients with 95% confidence intervals for gendered effects on authoring a separate opinion. In nine out of thirteen circuits, women are predicted to author discretionary separate opinions at higher rates than men. However, two of the coefficients that attain statistical significance at this level are those in the Fourth and Fifth Circuits, where men are predicted to author separate opinions at higher rates. The coefficients also attain significance in the Seventh, Eleventh,

and D.C. Circuits, all of which predict that women will author separate opinions at higher rates than men. Again, there is no clear pattern explaining these circuit-level differences. It's also interesting that this plot is not a perfect mirror of the one presented in Figure 9, which is what we would expect if women drive dissensus. For example, in the Fifth Circuit, women-authored opinions are significantly less likely to be unanimous; yet, when a woman sits on a panel without being assigned the majority, she is much less likely than a peer man to author a separate opinion of any sort. Conversely, in the Seventh Circuit, opinions authored by women are more likely to be unanimous (though this finding is not statistically significant) while women sitting on panels are simultaneously more likely to author separate opinions when not assigned to the majority.

FIGURE 10: CIRCUIT-LEVEL EFFECTS OF JUDGE GENDER ON SEPARATE OPINION AUTHORSHIP

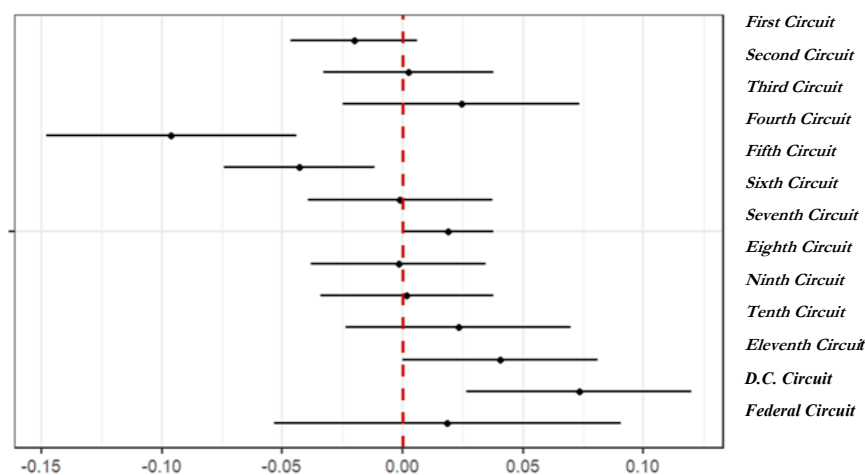


Table 11 provides the coefficients displayed in Figures 9 and 10 as well as coefficients run on circuit-level models predicting the effect of panel composition on opinion unanimity and separate opinion authorship.¹⁵¹ Boxes shaded pink are those in which the coefficient predicts that women will have a positive impact on consensus with statistical significance at or above the level of 95% confidence. Boxes shaded in blue indicate corollary significant coefficients where men enhance consensus. For the most part, these coefficients confirm the earlier findings that woman-authorship and increasing women on panels are often correlated with increases in dissensus. However, there are circuits that do not follow this story perfectly, and many circuits where

151. Coefficient plots for these latter two effects can be viewed in Appendix E.

there seems to be no statistical difference in the consensus-seeking behavior of women and men (the Second Circuit has the most glaring null effects across all models).

TABLE 11: SEPARATE OPINION AUTHORSHIP BY JUDGE
GENDER/ISSUE AREA SUBGROUP

	<i>author gender</i> ~ <i>unanimity</i>	<i>judge gender</i> ~ <i>separate ops</i>	<i>panel composition</i> ~ <i>unanimity</i>	<i>panel composition</i> ~ <i>separate ops</i>
First Circuit	-0.056	-0.020	-0.028	0.008
Second Circuit	0.020	0.002	0.010	-0.013
Third Circuit	-0.028	0.024	-0.036	0.021
Fourth Circuit	-0.016	-0.096	0.061	-0.031
Fifth Circuit	-0.070	-0.043	0.005	-0.014
Sixth Circuit	-0.032	-0.001	-0.043	0.026
Seventh Circuit	0.023	0.019	-0.0003	0.001
Eighth Circuit	-0.045	-0.002	0.013	-0.008
Nine Circuit	-0.028	0.002	-0.042	0.016
Tenth Circuit	-0.106	0.023	-0.065	0.029
Eleventh Circuit	-0.021	0.041	-0.030	0.014
D.C. Circuit	-0.017	0.073	-0.052	0.036
Federal Circuit	-0.139	0.018	-0.057	0.027

V. QUALITATIVE EXPLANATIONS OF GENDERED DISSENSUS

My findings suggest that women are more likely than men to bring dissensus to judicial deliberation, but that panels of all women seemingly come to the highest levels of consensus. This lends some support to the second of my competing theories—i.e., that men on the bench may be discounting the views of women, leading to high levels of dissensus on gender-heterogeneous panels. To discern whether this is the driving mechanism for my findings, I consider the perspectives of judges themselves, engaging in a systematic analysis of recorded oral histories for twenty-nine federal appellate judges. These oral histories derive from the American Bar Association, the Library of Virginia, the Institute of Judicial Administration, and the Portia Project—a podcast aimed at capturing the oral histories of trailblazing women in the law. In total, I examine twenty-four oral histories of women and five oral histories of

men—all hailing from a variety of circuits.¹⁵² Interviews with judges on the federal courts are hard to come by, and these oral histories offer a rare peek inside the minds of those sitting on the bench.

While several themes surfaced from this analysis, three are most relevant to the instant research. First, while a majority of judges stressed the collegial environment of the appellate courts even in the face of disagreement, women seemed much more attuned to democratizing and compromising during the judicial process. Second, nearly all women discussed experiences with sex discrimination and/or gender bias at some point in their career, and a few described specific obstacles they faced as women on the bench.¹⁵³ Finally, many women recounted positive stories of mentorship and/or friendship with peer men on the bench.¹⁵⁴ Taken together, these interviews might indicate that, while women judges are generally more collaborative than their male peers, they struggle to build consensus due to either perceived or actual bias against women, even with the support of some men. Importantly, many of these judges were still sitting on the bench at the time of their interviews and thus are likely to exercise some restraint in their revelations. Accordingly, any insights provided may reflect only a small portion of a woman judge's actual experiences on the bench.

A. *Woman Judges' Collaborative Workstyle*

More than 66% of women (and 40% of men) indicated that their experience as a judge had been highly collegial, though there was some variance by court and/or individual judge.¹⁵⁵ As Judge Bernice B. Donald

152. The majority of oral histories track the lives of judges on the Courts of Appeals, though I also analyze the oral histories of Supreme Court Justices Breyer, Ginsburg, O'Connor, and Sotomayor (all of whom initially served on various Courts of Appeals). All federal appellate courts are represented with the exception of the Tenth Circuit. Appendix F contains further information on all oral histories.

153. Several judges also recounted experiences with bias based on other identifiers (e.g., race, ethnicity, religion). Their intersecting identities may have contributed to heightened perceptions of bias.

154. See, e.g., *Transcript of Interview with Rosemary Barkett*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER'S PROJECT (Nov. 2, 2006; Oct. 29, 2007; Oct. 11, 2008; Nov. 2009), [<https://perma.cc/Q44F-LEJZ>].

155. For example, Judge Patricia M. Wald of the D.C. Circuit notes that, "You hear so much these days about collegiality not just on the Supreme Court but on the various Circuits. It's interesting to me because not all of the people who talk about collegiality, once you get to know them, turn out to be the most collegial people. I suppose it's better to have it on your mind even if you don't follow it in practice." *Transcript of Interview with Patricia*

puts it, “I have enjoyed, first of all, the collegiality of my colleagues. We [on the Sixth Circuit] are a highly collegial court. . . . We work collaboratively on these cases.”¹⁵⁶ Some judges pointed to the efforts of specific Chief Judges as enhancing the collaborative culture of the court.¹⁵⁷ And several judges discussed friendships and family-like relationships with peer judges—though such stories were more common in reference to time spent on state courts than on the federal courts.¹⁵⁸ For example, Judge Rosemary Barkett noted a shift in culture when she moved from a state to a federal court: “[O]n the Florida Supreme Court, everybody was in Tallahassee . . . and it became very familial. You know, you could be arguing and you became—you were able to argue like a family would argue where—whereas on the Eleventh Circuit, you were much more cautious about the arguing.”¹⁵⁹

Both women and men stressed the necessity of treating colleagues with respect and kindness while expressing disagreement. As Judge O’Sannlain notes, “Sure, judges will disagree and sometimes there will be dissents, but it’s so important to have that disagreement to be agreeable. So, do not in your dissents say mean things to the majority, or to accuse them of simply not being able to read the English language, or whatever.”¹⁶⁰ However, men were more likely than women to emphasize

M. Wald, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (June 5, 2006; June 19, 2006; June 23, 2006), [https://perma.cc/TPV8-EUF7].

156. THE PORTIA PROJECT: *Episode 126: Bernice B. Donald* (June 1, 2023), [https://perma.cc/3G2X-83CW].

157. Ruth Bader Ginsburg notes, “Today the D.C. Circuit is, I’d say, a much more collegial place than it was in the past, thanks to the efforts of Harry Edwards when he was the Circuit’s Chief Judge.” *Transcript of Interview with Ruth Bader Ginsburg*, NEW YORK UNIVERSITY INSTITUTE OF JUDICIAL ADMINISTRATION (July 5, 2017), [https://perma.cc/F599-QRQC]. Judge Diarmuid O’Sannlain attributes the collegiality on the Ninth Circuit to Chief Judge Jim Browning, “Who really made it a fetish almost to be sure that people could disagree. As we frequently do, there are a lot of dissents that are written in Ninth Circuit cases, but . . . the cordiality between judges is still there. We really make the effort to respect each other.” *Transcript of Interview with Diarmuid O’Sannlain*, NEW YORK UNIVERSITY INSTITUTE OF JUDICIAL ADMINISTRATION (Sept. 30, 2017), [https://perma.cc/VA8L-22VP].

158. *See* Barkett Tr., *supra* note 154. Discussing her experience on the Supreme Court of Virginia, Barbara M. Keenan states, “We had a lot of fun. We worked hard and then we played tennis afterwards, and we ate too many doughnuts in the morning together and talked about how fat we were getting. We just lived life together. We got to know each other, each other’s families. We were really a very cohesive group, and they’re still my dearest friends.” *Transcript of Interview with Barbara M. Keenan*, LIBRARY OF VIRGINIA (June 6, 2018), [https://perma.cc/Q44F-LEJZ].

159. *See* Barkett Tr., *supra* note 154.

160. *See* O’Sannlain Tr., *supra* note 157. *See also* *Transcript of Interview with Mary M. Schroeder*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (Aug. 30, 2006; Sept. 16,

that the collegial norms of the court were not frayed by disagreements over case outcomes, while a few women noted their struggles adapting to this norm of collegial conflict. One judge remembers a time when a draft dissent was circulated to her that she found quite harsh. She recounts calling the dissenter and confronting him: “I thought you were my friend.’ He said ‘I am your friend.’ I said, ‘Well look, this opinion is terrible.’ He said, ‘What? I toned it down so much.’”¹⁶¹ The same judge noted the restraint she practiced in rarely authoring separate opinions to preserve collegiality.¹⁶²

Furthermore, women may go to extra lengths to restore relationships when they do choose to express disagreement. Judge Carolyn D. King describes her process of communicating disagreement with draft opinions by memo while moderating any criticism as much as possible: “If there’s a problem, you say, ‘Well, I think that three-fourths of this is just fine and I appreciate your effort. I have a question about this particular issue,’ and you lay out what your problem is You have to have fulsome praise about the parts that you do agree with.”¹⁶³ Judge Barkett emphasized that, while some of her colleagues would write near-hostile dissents, she always attempted to keep things cordial.¹⁶⁴ Justice Ruth Bader Ginsburg describes authoring her first opinion on the Supreme Court, which Justice Sandra Day O’Connor dissented from.¹⁶⁵ Despite their difference of opinion on the outcome of the case, Justice Ginsburg recalls receiving a note from Justice O’Connor as she announced the summary of the opinion, which

2006; Oct. 13, 2006; Jan. 3, 2007), [https://perma.cc/EBC6-AJLN] (“I learned how to disagree without disliking colleagues and without being disliked.”); *Transcript of Interview with Carolyn Dineen King*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (July 19, 2010; Sept. 1, 2010; Dec. 20, 2010; Jan. 14, 2011), [https://perma.cc/6BX4-36S6] (“And even when you get something that you think is right, and you’ve done the best you can, reasonable people differ about it, and you have to understand that and don’t take those disagreements personally.”).

161. See Barkett Tr., *supra* note 154.

162. *Id.* (“I don’t think I wrote very many separate concurring opinions . . . [M]ost of the objections that I would have had because I don’t think it’s, it’s good collegial message to constantly be writing a separate dissent . . . It doesn’t help you in, in a collegial sense, and it also doesn’t really help the law, I don’t think, very much if you’re constantly doing that. I would write a separate opinion if I thought and couldn’t get the majority to resolve it a different way, and I thought that it might affect the law badly.”).

163. See King Tr., *supra* note 160.

164. See Barkett Tr., *supra* note 154 (“It was always fun where I had—if I had somebody also dissenting, who would do this wild crazy like the majority is terrible and so on and so forth. But I tried to be—I tried to write in a, in a legalistic style that exposed what I thought were the flaws in the arguments that the other side was using.”).

165. See Ginsburg Tr., *supra* note 157.

stated: “Ruth, this is your first opinion of the Court, it’s a fine one, I anticipate dozens more.”¹⁶⁶

This supports the theory that women judges tend to be relational. Further evidence from the interviews demonstrates that women judges tend toward democratized decision-making and strive for consensual opinions. Judge Betty B. Fletcher describes gender differences in approaching a case, stating, “[T]here is kind of a women’s culture or process, I do think. At meetings we [women] like to consult, look at all sides of questions whereas it’s kind of a trait of some men judges, oh let’s just vote on it and move on.”¹⁶⁷ Another woman illustrates her process in trying to find the “second vote” to attain majority in a case, explaining that she must “understand [her] colleagues, how they think, and what issues are important.”¹⁶⁸ Of course, this relationality is not necessarily unique to women. For example, Judge Barbara M. Keenan describes a male peer on the Supreme Court of Virginia as “always emphasiz[ing] the interpersonal relationships and how important it was to think of the other person in working in these three-judge panels.”¹⁶⁹

B. *Women Judges’ Experience with Gender Consciousness and Discrimination*

Thus, women judges seemingly demonstrate a propensity for consensus building. The qualitative evidence also supports that women seem to be highly attuned to norms of collegiality on the bench. Nonetheless, consensus might be stymied in two ways if women are struggling to overcome gender bias. First, women may struggle to be adequately heard during judicial deliberations, thus causing conflict during opinion writing. Second, women may feel the need to prove themselves to peer men, authoring separate opinions as a way to signal their competence and diligence. The vast majority of women discussed struggles with gender bias at some point in their legal career. Furthermore, a few women detailed acute awareness of their position as a token on the bench, which could further exacerbate women’s

166. See Ginsburg Tr., *supra* note 157.

167. *Transcript of Interview with Betty Binns Fletcher*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (Jan. 10, 2006; Feb. 22, 2006; Apr. 17, 2006), [https://perma.cc/WF8L-HDYW]. Responding to this anecdote, Judge Fletcher’s interviewer comments: “It sounds like, my observation has been when you’re talking about the yea and nay vote up until then is that women are more consensus builders.” *Id.* To which Judge Fletcher simply responds, “Yes.” *Id.*

168. THE PORTIA PROJECT: *Episode 99: Consuelo Maria “Connie” Callaban* (Feb. 27, 2023), [https://perma.cc/9WMW-63SG].

169. See Keenan Tr., *supra* note 158 (discussing Justice Lawrence L. Koontz, Jr.).

perceptions of bias and lead to this need to prove themselves and/or have their voice heard.

Three-quarters of women recounted experiences with gender bias and/or sex discrimination in their oral histories, with one-third recalling negative experiences effected by male judges. Most notably, Judge Dolores Sloviter describes an event where several male colleagues *hissed* after she gave a speech pointing out the low percentage of women lawyers selected to attend that year's Judicial Conference and calling upon the legal field to do its part in the fight for justice and equality.¹⁷⁰ Another judge recounts that even a female colleague on the more conservative end of the spectrum once mentioned to her, "Well, you know, if I make a good suggestion about anything at the court meeting, if the men pick up on my idea, it's all their idea then no longer mine."¹⁷¹ Judge Diana E. Murphy describes a time she advocated for her circuit to adopt a sexual harassment policy. Afterwards, a male judge came into her chambers and asked: "Why did you have to do that?"¹⁷²

Many of the judges in this set of interviews were some of the first women to join their circuit. Thus, several women noted that their peer men were a bit unsure of them at first but were quickly assuaged as the women demonstrated their proficiency as judges. Judge Fletcher describes her experience being initially underestimated: "One of the judges when I was new on the court said 'Here was this very soft voice. Then we began to listen to what she said. She was not pulling her punches.' And I was always able to speak up, stating my views on things that I felt strongly about, but I think that, I think a woman's voice does have something to do with how you're judged at least for a while."¹⁷³

170. *Transcript of Interview with Dolores Korman Sloviter*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER'S PROJECT (June 26, 2006; Aug. 18, 2006; Apr. 13, 2007; July 25, 2007), [<https://perma.cc/QG69-B95E>].

171. *See* Fletcher Tr., *supra* note 167. Judge Fletcher goes on to state, "There is that aspect of male dominance; I think in part, our voices maybe aren't as loud, and we do not have a say." *Id.*

172. *Transcript of Interview with Diana E. Murphy*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER'S PROJECT (Feb. 6, 2006; Feb. 28, 2006; Mar. 20, 2006; Apr. 11, 2006; May 25, 2006; Aug. 8, 2006; Sept. 19, 2006; Nov. 1, 2006; Dec. 20, 2006; Apr. 25, 2007; June 26, 2007; July 3, 2007; Aug. 23, 2007; Apr. 25, 2008; June 23, 2008; Apr. 7, 2009; May 21, 2009; June 23, 2009; Feb. 18, 2010), [<https://perma.cc/8CSY-CW2V>].

173. *See* Fletcher Tr., *supra* note 167. Similarly, Judge Phyllis A. Kravitch notes, "The first few years on the Court were difficult. I think it took a while before the other judges, all of them, got used to a woman being on the Court. I noticed for a couple of years I was not assigned the opinions that I thought I should have been given." *Transcript of Interview with Phyllis A. Kravitch*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER'S PROJECT (July 17, 2013; July 19, 2013; Aug. 7, 2013), [<https://perma.cc/8HW3-SJLY>]. Of course, some women deny that they experienced any gender bias on the court.

For these early women on the bench, their sheer visibility forces a sort of gender consciousness. As Judge Mary M. Schroeder explains, “I was the only woman appellate judge when I arrived on the state court of appeals. And I was very conscious of it as were all of the judges.”¹⁷⁴ This can lead women to feel that their views will be initially “discounted.”¹⁷⁵ It can also lead to women having to overcompensate to prove themselves. Judge Rosemary S. Pooler comments,

“In the early days of the women’s movement, we used to say, ‘We’re fighting for the right to be as mediocre as some of the men we see around us.’ We always were so much smarter, better, and harder working. I don’t see it yet though in all the women I know on the bench are so spectacular. I don’t see that we’ve achieved that yet.”¹⁷⁶

In the sense that authoring a separate opinion requires substantial time and effort, perhaps the gender gap in authorship reflects women’s need to prove themselves as hard workers.

C. *Women Judges’ Positive Experiences with Ally Men*

Despite all the gender bias women judges faced, about 62.5% of them detailed positive experiences where men championed them, mentored them, and/or supported them in their careers. Discussing the white male appellate judge who called her up to ask her to fill a newly

See Sloviter Tr., *supra* note 170 (“I don’t think there’s any such thing as discrimination against female judges.”).

174. *See* Schroeder Tr., *supra* note 160. Another judge simply states, “I’m certainly conscious of it that I’m the only woman in the room a lot of the times.” Barkett Tr., *supra* note 154. *See also* Murphy Tr., *supra* note 172 (“You obviously stick out like a sore thumb because you’re the only woman.”).

175. *See* Barkett Tr., *supra* note 154. Judge Barkett goes on to state, “But can I say that, you know, I haven’t gotten a job because of my gender or anything like that? No, I don’t think I can. Can I say that some people opposed me getting a job because of my gender? I’m sure there have been occasions when that has happened when I—I’ve been aware of it . . . I think I’ve just been very fortunate frankly.” *Id.*

176. Pooler Tr., *supra* note 1. Other judges similarly stated that women have come a long way in the legal field but still have yet to reach true gender equality. *See, e.g.,* Barkett Tr., *supra* note 154 (“Yes, we got the amendment letting [women] vote, but you still couldn’t serve on a jury and you still—I mean, there were so many things that you were still being unable to do as a woman. And then eventually, all of those things got undercut and we became more and more equal. Are we equal today? No.”); *See* Fletcher Tr., *supra* note 167 (“[U]ntil we get women to be completely on a level playing field we have to face up to performing exceptionally and working very hard.”).

vacant seat on his court, Judge Donald notes, “Even though I’m talking about being the first woman of color, our mentors and our sponsors will often not look like us.”¹⁷⁷ Judge Julia Smith Gibbons similarly recognizes the Senator who recommended her to the judiciary: “[W]e need to give credit to the people who enabled my career for wanting to see women in positions that men had traditionally occupied.”¹⁷⁸ Many of these positive experiences started in childhood, with judges pointing to feminist mothers who encouraged them to pursue their dreams.¹⁷⁹ And in fact, several women judges wound up working at their fathers’ firms when no other firm would consider hiring a woman.¹⁸⁰

While a few women described negative experiences with male law professors,¹⁸¹ several could point to a law professor who was heavily

177. See Donald Tr., *supra* note 156.

178. THE PORTIA PROJECT: *Episode 85: Julia Smith Gibbons* (Jan. 9, 2023), [<https://perma.cc/8WEX-G8V3>]. See also *Transcript of Interview with Ilana D. Rovner*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (Aug. 20, 2007; Aug. 28, 2007; Sept. 28, 2007; Nov. 8, 2007), [<https://perma.cc/4ZVM-RKF9>] (“I have the late, magnificent Harlington Wood, in great measure, to thank for [my judgeship] because when he decided to become a senior judge in 1992, he wrote to thank President Bush and said that no person of color or a woman had ever sat on the Seventh Circuit and that although he realized that he had absolutely no say in who should have this judgeship, he hoped that the President would take that into account and that letter received a lot of publicity. And so I was one of the few who was called in for interviews.”).

179. See Callahan Tr., *supra* note 168; Schroeder Tr., *supra* note 160. Speaking of her family, Judge Callahan states, “People often think it’s women encouraging women, but it’s the combination. As you hear people’s stories, you find out a lot of times there are as many influential men in people’s families as there are women.” Callahan Tr., *supra* note 168.

180. *Transcript of Interview with Cornelia G. Kennedy*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (Jan. 5, 2012; Jan. 12, 2012; May 10, 2012; June 8, 2012; June 14, 2012; June 15, 2012; Oct. 19, 2012), [<https://perma.cc/DVH9-JJM5>]. Of course, this alone did not stop clients from discriminating against women lawyers. See, e.g., Kravitch Tr., *supra* note 173 (“In fact in the beginning, when I first passed the Bar and started to practice, at least once a week, two or three times a week, there’d be a knock on my door and my father would usher in a person or a couple and explain that this is my daughter and she graduated University of Pennsylvania and she was on Law Review and I’m going to have her work on your case. And then, invariably, they would say, ‘Mr. Kravitch, I’m sure your daughter is a very smart young lady, but we need a real lawyer.’ And I finally said if he did that one more time, I’m walking out.”).

181. See, e.g., *Transcript of Interview with Stephanie K. Seymour*, AMERICAN BAR ASSOCIATION WOMEN TRAILBLAZER’S PROJECT (Oct. 6, 2006; Apr. 24, 2007; Feb. 27, 2008), [<https://perma.cc/3692-2DBW>] (“There were professors who rarely called on the women. I mean, that was very overt and obvious that there were professors there who thought we shouldn’t be there. I can’t think of any particular one because there was more than one. So probably the most dramatic thing for me was when I really ran up against what I thought was overt sexism from classmates and professors who thought I didn’t belong there simply because I was female.”); See also Slovirer Tr., *supra* note 170

invested in their success.¹⁸² Justice Ginsburg recalls a time one of her professors called up an appellate judge to recommend her for a clerkship, threatening that he would never recommend another Columbia graduate to that judge unless he took Ginsburg on as a clerk.¹⁸³ While law firms discriminated heavily against women in the years that the first cohort of woman judges came to age,¹⁸⁴ many recalled individual partners at firms that advocated for them.¹⁸⁵ Most importantly, some judges detailed positive receptions with judges when they joined the bench. For example, Judge Barkett recounted Justice Jimmy Adkins on the Florida Supreme Court saying to her, “I want you to remember that you are one-seventh of this court and you have an equal right to speak as any other justice here, and I hope you don’t forget that.”¹⁸⁶ Judge Patricia Wald described that the most conservative man on her court was always kind to women, attributing his allyship to his fondness for his “fire brand of a daughter.”¹⁸⁷ These positive experiences indicate that women on the bench are far from wholly oppressed, even if they face some obstacles to judging based on the implicit biases of some peer men.

(“I remember I was interviewed by W. Foster Reeves, who later became a professor of mine. He said to me, ‘Why should we let you into the law school? You’ll only take a seat for a man, and you will make no contribution to the law school and to the legal profession.’”).

182. *See, e.g.,* Wald Tr., *supra* note 155 (“[N]obody said ‘you can never do this because you are a woman.’ I mean both of the professors I told you about recommended me to Judge Frank.”). Another judge explained that one of her professors had an inaccurate reputation for disliking women when what he really disliked was that he was in charge of placing students in law firms and it was extremely difficult to find firms to hire women. *See* Kennedy Tr., *supra* note 180.
183. *See* Ginsburg Tr., *supra* note 157.
184. *See, e.g.,* King Tr., *supra* note 160. Judge Carolyn D. King describes a candid conversation with her employer who refused to make her partner despite stating that she worked harder than all the other attorneys at the firm, “So I had spent ten years of my life completely committed to the law firm, but they were operating on the unspoken premise that I was going to just have a baby and leave and obviously I wasn’t going to make partner.”
185. *See, e.g.,* Schroeder Tr., *supra* note 160;
186. *See* Barkett Tr., *supra* note 154. *See also* Rovner Tr., *supra* note 178 (“Many judges helped me. Judge Flaum helped me enormously. Judge Bauer, Judge Grady, Judge Parsons.”).
187. *See* Wald Tr., *supra* note 155. This is not the only mention of male allyship associated with the status of fatherhood of strong daughters. *See, e.g.,* Kravitch Tr., *supra* note 173 (“And I’ll tell you who was also in the Georgia Legislature and was very helpful, and that was Julie Carnes’ father. I remember him because he was very supportive, which most of the people were not. His daughter was in law school.”).

VI. IMPLICATIONS

This Article tested two competing theories. On the first account, women judges would facilitate consensus on the court due to gendered differences in work styles, with women prioritizing collaboration and democratized decision-making. Under the second story, bias against women and suppression of their voices would lead to greater dissensus when a woman joined a panel. My empirical evidence found that gender-heterogeneous panels experienced higher levels of dissensus and that all-woman panels produced the most consensual opinions.¹⁸⁸ Qualitatively, I found evidence that, while women do appear to be more likely to compromise and build consensus, they might be stymied in this effort by implicit gender bias. If their voices are suppressed, they will need to write their own opinions to be heard. Further, perhaps women author separate opinions to prove that they are hard workers.¹⁸⁹ Still, this is certainly not a problem with “all men” on the bench, and several women affectionately recalled moments of allyship from men in their lives and on their courts. These findings may have several important implications for the courts and the public more broadly.

First, we might wonder what exactly this means for women on the court. On their own, women author majority opinions that garner higher levels of dissensus and are more likely to express disagreement when not tasked with authoring a majority. On both ends, this likely means that women have a higher workload than do men. This is potentially problematic, especially if it somehow limits the ability of women to climb the judicial hierarchy. Nonetheless, this is not a new notion in general. Previous research has found that women judges expend more effort crafting majority opinions than do men.¹⁹⁰ And my qualitative evidence suggests that women believe they must work more diligently because of their gender. In fact, Judge Fletcher’s advice to young women in the legal field is to “adjust to the fact that until we get women to be completely on a level playing field we have to face up to performing exceptionally and

188. This mirrors findings in executive agencies that women agency heads are more successful than men, but only when they are surrounded by other supportive women. See Rachel Augustine Potter & Craig Volden, *A Female Policy Premium? Agency Context and Women’s Leadership in the U.S. Federal Bureaucracy*, 31 J. PUB. ADMIN. RES. & THEORY 91, 105 (2021).

189. Another possibility is that women author more separate opinions—specifically dissents—because they were originally assigned a majority and later vote switching causes that majority to become a different type of opinion.

190. See Moyer et al., *supra* note 121, at 464; see also Ruiz *supra* note 121, at 1890.

working very hard.”¹⁹¹ Thus, perhaps it’s not surprising that women are more willing to expend the effort it takes to author separate opinions when they are not tasked with writing the majority.

Second, note that the authorship of separate opinions increases the workload of not just those authoring the separate opinions, but also the judge tasked with authoring the majority, who must respond to the criticisms evident in a concurrence or dissent. While this might be seen as stretching judicial resources, perhaps this is an expense worth paying. If the presence of a separate opinion enhances the majority in some way, perhaps heightened dissensus on the courts actually leads to “better” opinion content. At the very least, majority opinions that contend with separate opinions ought to include better consideration of alternate points of view (namely, those expressed in draft concurrences and dissents) in reaching their outcomes. This is especially the case if disagreement is possible without jeopardizing collegiality on the court, as several judges indicated.

Certainly, heterogeneity in group characteristics has been found to correlate with well-reasoned decision-making in other contexts.¹⁹² Thus, the fact that gender-heterogeneous panels seemingly produce the most conflict may reflect the diversity of opinions included during judicial deliberation. Conversely, homogeneous panels may be more willing to take extreme stances,¹⁹³ which is likely undesirable in a venue like the federal courts. Perhaps then, there is reason to prefer decisions by gender-heterogenous panels despite—or maybe even because of—the heightened expressions of dissensus on these panels.

Of course, we might also worry that the presentation of a fractured court will impact public perceptions of the court. Scholars tend to conceive of consensus on the court as not only normatively positive but even necessary to ensure the court is publicly perceived to be legitimate. This would suggest that mixed-gender panels of judges are threatening the court’s power. However, we may need to rethink these normative notions of unanimity. If dissensus actually enhances the quality of court output, perhaps the court becomes more legitimate when there is more serious deliberation over case outcomes. This will be especially true if the conflict on the court is seen as relatively academic rather than personal. Infamously, Justices Antonin Scalia and Ruth Bader Ginsburg were close

191. See Fletcher Tr., *supra* note 167.

192. PAGE, *supra* note 14, at 335.

193. Cass R. Sunstein, *The Law of Group Polarization?*, 10 J. POL. PHIL. 175, 184 (2002); but see Robert C. Luskin, Gaurav Sood, James S. Fishkin & Kyu S. Hahn, *Deliberative Distortions? Homogenization, Polarization, and Domination in Small Group Discussions*, 52 BRIT. J. POL. SCI. 1205, 1223 (2022) (finding in an experimental setting that hypothetical negatives of group deliberation were not borne out).

colleagues who got along rather well, despite often being on the opposite side of vote splits.¹⁹⁴ It's also worth reiterating that more than 80% of cases in the dataset were unanimous, showing that dissensus occurs on a relatively low percentage of cases to begin with.

CONCLUSION

Fifty years ago, only five women sat in one of the 521 authorized federal judgeships, with just one of them sitting on a federal appellate court.¹⁹⁵ But with President Joe Biden appointing a record high number of women (more than two-thirds of his appointees), women now make up 41% of judges on the Courts of Appeals.¹⁹⁶ Thus, women judges have become all the more important to study, especially if their judicial process differs in salient ways from that of men. Given that women tend toward consensus building during group deliberation but are sometimes impeded by gender bias from men, I tested competing theories as to the behavior of women in the heavily deliberative environment of the federal appellate courts. My empirical evidence demonstrates that gender-heterogeneous panels exhibit higher levels of dissensus but that all-women panels exhibit the lowest levels of dissensus. Using qualitative evidence, I found evidence both that women judges attempt to drive consensus and that they may experience bias that holds them back from successfully attaining consensus. While this likely leads to women judges exerting more effort on their work as compared to peer men, it may also result in more well-reasoned conclusions if gender diversity on a panel leads to productive disagreement, assuming the conflict remains collegial. Provided the legitimacy of the court is not threatened—and given that the vast majority of federal appellate cases remain unanimous, it ought not be—perhaps gendered dissensus on the courts is a healthy byproduct of diverse deliberation.

194. Justice Stephen G. Breyer notes a similar relationship with Justice Scalia in his oral history. *Transcript of Interview Stephen G. Breyer*, NEW YORK UNIVERSITY INSTITUTE OF JUDICIAL ADMINISTRATION (May 18, 2017), [https://perma.cc/RBV5-CA39] (“With Nino Scalia, we were friends and it was fun, he made it fun even though we disagreed about quite a lot of things.”).

195. Mary L. Clark, *One Man's Token is Another Woman's Breakthrough? The Appointment of the First Women Federal Judges*, 49 VA. L. REV. 487, 492-93 (2004). Note that there had been seven women total to serve on the federal bench at this time, two of which retired prior to 1974. *Id.* at 492. The first woman to serve on a federal appellate court was Florence E. Allen, who sat on the Sixth Circuit from 1934-1966 (the latter seven of these years served as a senior judge on the bench). *Id.*

196. Viviana Bernal, *Women's Representation in the Judiciary*, REPRESENT WOMEN (2024).

APPENDIX A: TIME TRENDS IN CONSENSUS

FIGURE A.1: AVERAGE LEVEL OF UNANIMITY IN CASES OVER TIME

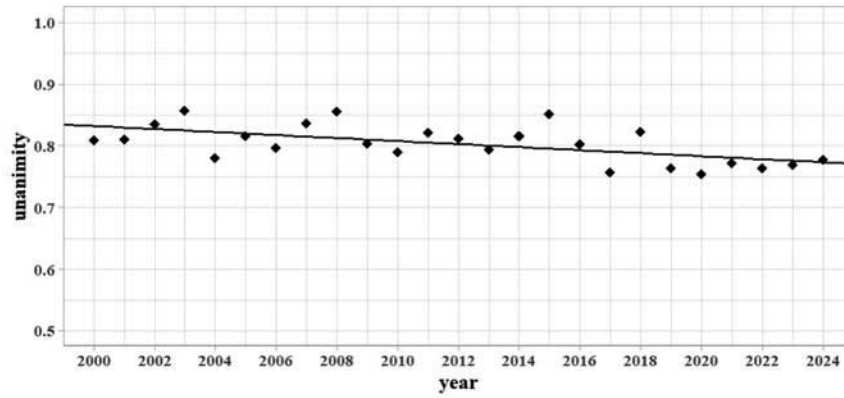


FIGURE A.2: AVERAGE LEVEL OF UNANIMITY IN CASES OVER TIME, BY MAJORITY AUTHOR GENDER

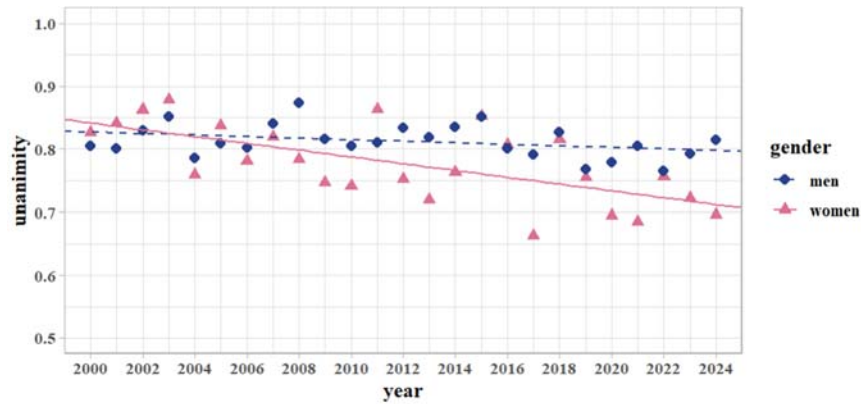


FIGURE A.3: AVERAGE LEVEL OF SEPARATE OPINION AUTHORSHIP OVER TIME

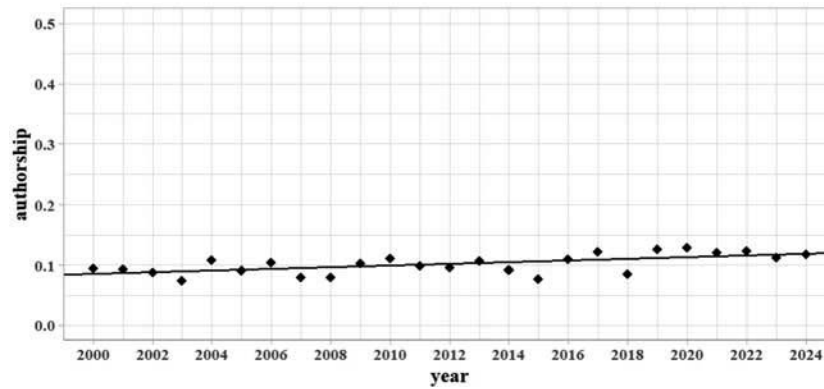
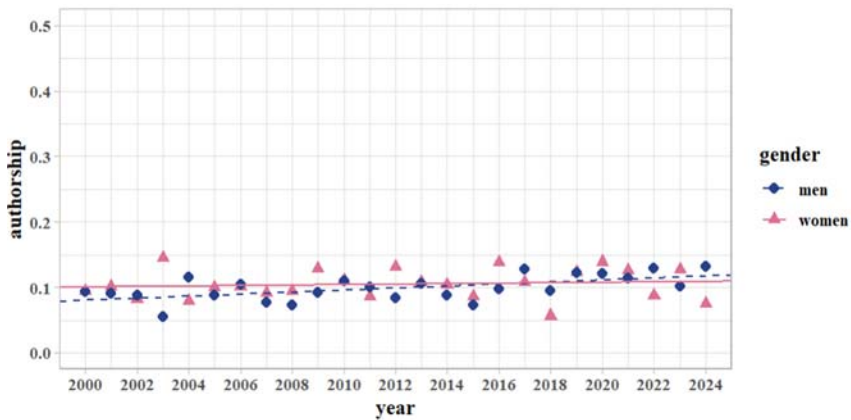


FIGURE A.4: AVERAGE LEVEL OF SEPARATE OPINION
AUTHORSHIP OVER TIME, BY JUDGE GENDER



APPENDIX B: ISSUE AREA BREAKDOWN

TABLE B.1: BREAKDOWN OF CASES BY ISSUE AREA WITH BOOLEAN
SEARCH TERMS

issue area	search	n
<i>abortion</i>	abortion /s constitution!	210
<i>disability advocacy</i>	“americans with disabilities act” & plaintiff/2 disab!	464
<i>affirmative action</i>	affirmative /2 action /s constitution!	116
<i>campaign finance</i>	“Buckley v. Valeo” & campaign	162
<i>capital punishment</i>	capital /2 punishment % batson	641
<i>Commerce Clause</i>	“commerce clause” /p federalism	83
<i>Contract Clause</i>	“contract clause” /s constitution!	188
<i>corporate veil</i>	pierc! /s “corporate veil”	537
<i>criminal appeals</i>	(convict! OR acquit!) & crim!	3723
<i>environmental protection</i>	“environmental protection agency”/s regulat!	522
<i>gender discrimination</i>	“title VII” /p gender % race	459
<i>race discrimination</i>	“title VII” /p race % gender	731
<i>sexual harassment</i>	sex! /3 harass!	809
<i>takings</i>	“fifth amendment” & “just compensation”	522

TABLE B.2: BREAKDOWN OF CASES WITH MULTIPLE ISSUE AREAS
BY ISSUE AREA

issue area 1	issue area 2	n
abortion	affirmative action	1
“ ”	campaign finance	2
“ ”	Contract Clause	1
“ ”	criminal appeals	1
disability advocacy	corporate veil	1
“ ”	environmental protection	1
“ ”	race discrimination	12
“ ”	sexual harassment	7
affirmative action	campaign finance	1
“ ”	criminal appeals	2
“ ”	race discrimination	3
“ ”	sexual harassment	1
campaign finance	corporate veil	1
“ ”	criminal appeals	1
“ ”	takings	2
capital punishment	criminal appeals	43
“ ”	Commerce Clause	2
Commerce Clause	criminal appeals	4
Contract Clause	takings	20
corporate veil	criminal appeals	9
“ ”	environmental protection	1
“ ”	sexual harassment	4
criminal appeals	affirmative action	1
“ ”	capital punishment	1
“ ”	corporate veil	1
“ ”	environmental protection	1
“ ”	sexual harassment	1
“ ”	takings	2
environmental protection	campaign finance	2
“ ”	Commerce Clause	2
“ ”	Contract Clause	1
“ ”	corporate veil	1
“ ”	takings	5
gender discrimination	disability advocacy	2
“ ”	affirmative action	1
“ ”	corporate veil	3
“ ”	sexual harassment	156
race discrimination	corporate veil	3
“ ”	sexual harassment	28
sexual harassment	disability advocacy	3
“ ”	campaign finance	1
“ ”	corporate veil	1
takings	affirmative action	1

APPENDIX C: SUPPLEMENTARY ANALYSES FOR PART IV-C

TABLE C.1: MULTIVARIATE MODELS FOR INTERACTIVE
RELATIONSHIP OF AUTHOR GENDER AND PANEL COMPOSITION ON
KEY CONSENSUS VARIABLES

	unanimity	# opinions (reverse coded)	indexed consensus
gender	-0.051** (0.023)	-0.047 (0.046)	-0.019 (0.024)
# women	-0.025*** (0.008)	0.022 (0.016)	0.002 (0.008)
ideological spread	-0.200*** (0.023)	-0.171*** (0.045)	-0.060** (0.023)
chief status	0.015 (0.016)	0.035 (0.033)	0.024 (0.017)
visiting status	0.044** (0.019)	-0.079* (0.043)	-0.030 (0.022)
relative seniority	0.003 (0.009)	0.004 (0.018)	0.007 (0.009)
gender*# women	0.030* (0.017)	0.008 (0.033)	0.010 (0.017)
constant	0.890*** (0.010)	2.025*** (0.022)	0.620*** (0.012)
Observations	9,141	1,792	1,792
R ²	0.013	0.012	0.007
Adjusted R ²	0.012	0.008	0.003
Residual Std. Error	0.395 (df = 9133)	0.353 (df = 1784)	0.182 (df = 1784)
F Statistic	16.678*** (df = 7; 9133)	3.093*** (df = 7; 1784)	1.720* (df = 7; 1784)
Note:		*p<0.1; **p<0.05; ***p<0.01	

APPENDIX D: SUPPLEMENTARY ANALYSES FOR PART IV-E

TABLE D.1: RELATIONSHIP BETWEEN JUDGE GENDER AND SEPARATE OPINION AUTHORSHIP BY ISSUE AREA

	separate opinion	concurrence	partial	dissent
gender	-0.007 (0.141)	-0.391 (0.285)	0.520** (0.233)	-0.155 (0.212)
gendered issue	-0.169** (0.073)	-0.017 (0.126)	-0.078 (0.143)	-0.309*** (0.105)
gender*gendered issue	0.113 (0.154)	0.519* (0.303)	-0.460* (0.262)	0.251 (0.232)
constant	-2.091*** (0.066)	-3.369*** (0.114)	-3.635*** (0.130)	-2.924*** (0.093)
Observations	18,297	18,297	18,297	18,297
Log Likelihood	-5,903.098	-2,672.226	-2,137.362	-3,103.866
Akaike Inf. Crit.	11,814.200	5,352.451	4,282.724	6,215.733

Note:

*p<0.1; **p<0.05; ***p<0.01

TABLE D.2: OPINION UNANIMITY BY ISSUE AREA SUBGROUP

	<i>unanimity</i>	<i>index</i>	<i># opinions</i>	<i>concurs</i>	<i>partials</i>	<i>dissents</i>
abortion	~0.25	~0.74	~2.35	~6.9%	~5.5%	~11.9%
disability advocacy	~0.81	~0.58	~1.94	~2.9%	~2.3%	~5.1%
affirmative action	~0.73	~0.57	~1.88	~4.6%	~6.7%	~3.8%
campaign finance	~0.68	~0.57	~1.87	~5.9%	~3.9%	~7.1%
capital punishment	~0.60	~0.56	~1.90	~6.9%	~5.6%	~9.2%
Commerce Clause	~0.56	~0.55	~1.87	~8.6%	~5.7%	~9.8%
Contract Clause	~0.82	~0.61	~1.94	~3.7%	~2.1%	~3.4%
corporate veil	~0.85	~0.59	~1.98	~2.6%	~0.8%	~4.5%
criminal appeals	~0.85	~0.60	~1.95	~2.8%	~2.0%	~2.9%
environmental protection	~0.76	~0.58	~1.94	~3.6%	~3.3%	~5.5%
gender discrimination	~0.84	~0.57	~1.90	~2.7%	~2.4%	~3.4%
race discrimination	~0.87	~0.58	~1.89	~2.7%	~1.5%	~2.9%
sexual harassment	~0.83	~0.57	~1.92	~2.5%	~2.5%	~4.0%
takings	~0.83	~0.62	~1.97	~3.4%	~1.7%	~3.5%

FIGURE D.1: ISSUE-AREA-LEVEL EFFECTS OF MAJORITY AUTHOR GENDER ON OPINION UNANIMITY

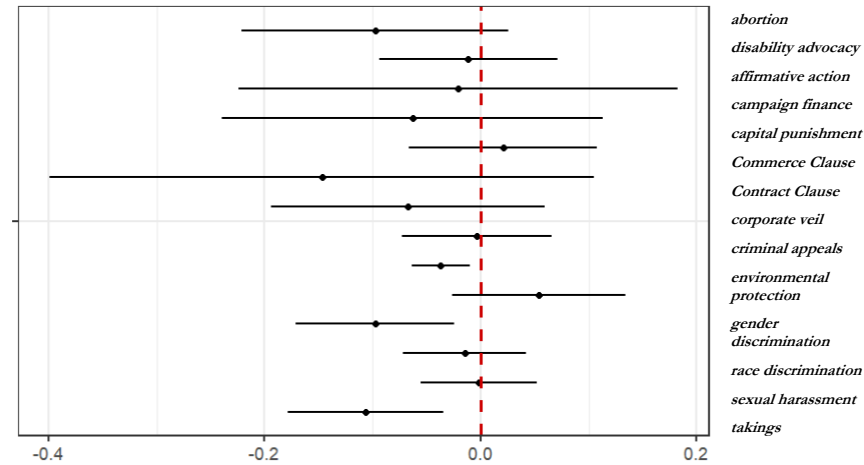
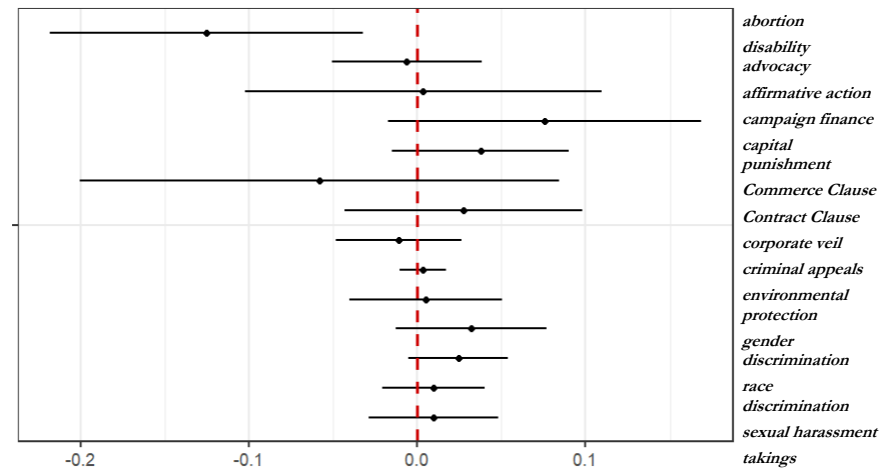


FIGURE D.2: ISSUE-AREA-LEVEL EFFECTS OF MAJORITY AUTHOR GENDER ON SEPARATE OPINION AUTHORSHIP



APPENDIX E: SUPPLEMENTARY ANALYSES FOR PART IV-F

TABLE E.1: CIRCUIT-LEVEL EFFECTS OF PANEL COMPOSITION ON
OPINION UNANIMITY

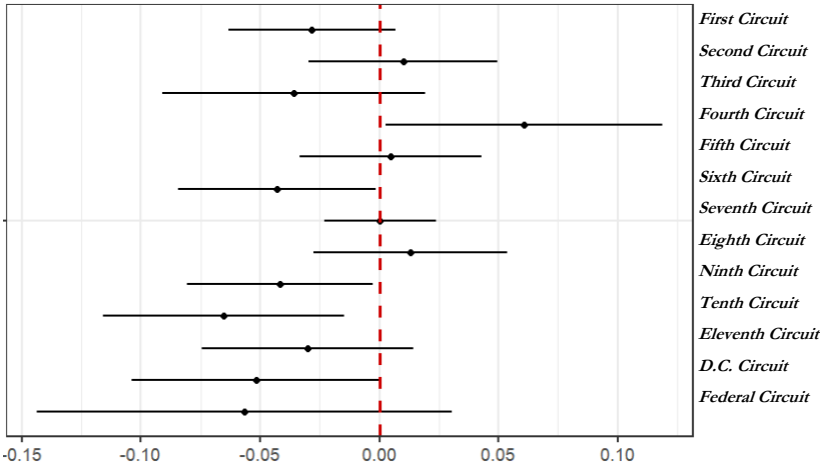
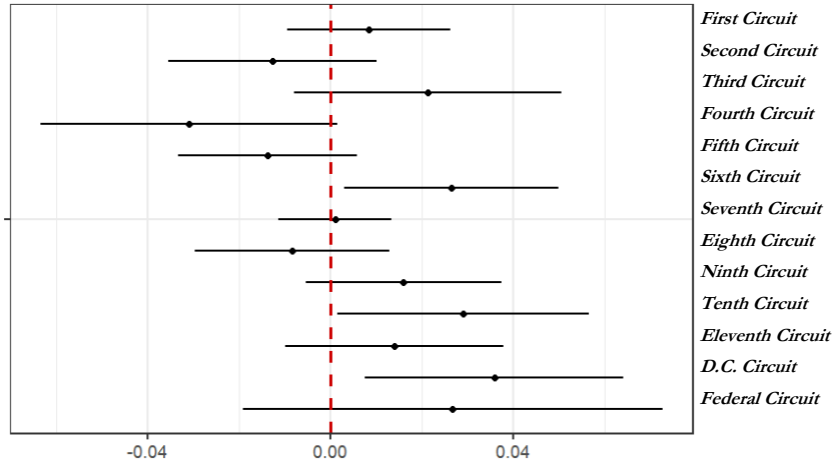


TABLE E.2: CIRCUIT-LEVEL EFFECTS OF PANEL COMPOSITION ON
SEPARATE OPINION AUTHORSHIP



APPENDIX F: ORAL HISTORIES

TABLE F.1: ORAL HISTORY TRANSCRIPT INFORMATION

<i>judge</i>	<i>tenure</i>	<i>court</i>	<i>interview date(s)</i>	<i>length</i>	<i>source</i>
Rosemary Barkett	1994–2013	Eleventh Cir.	11.02.22	2:09:04	Inst. Judicial Administration
Stephen Breyer	1990–2022	First Cir., S. Ct.	05.18.17	1:23:01	Inst. Judicial Administration
Guido Calabresi	1994–present	Second Cir.	06.23.17	1:12:10	Inst. Judicial Administration
Consuelo Callahan	2003–present	Ninth Cir.	02.27.23 (posted)	1:18:33	Portia Project
Bernice B. Donald	2011–2023	Sixth Cir.	06.01.23 (posted)	1:21:04	Portia Project
Frank Easterbrook	1985–present	Seventh Cir.	08.13.19	2:52:24	Inst. Judicial Administration
Betty Binns Fletcher	1979–2012	Ninth Cir.	01.10.06; 02.22.06; 04.17.06	40 pgs	ABA Women Trailblazers
Julia Smith Gibbons	2002–present	Sixth Cir.	01.09.23 (posted)	1:41:54	Portia Project
Ruth Bader Ginsburg	1980–2020	D.C. Cir., S. Ct.	07.05.16	1:11:35	Inst. Judicial Administration
Barbara M. Keenan	2010–present	Fourth Cir.	06.06.18	2:38:21	Library of Virginia
Cornelia G. Kennedy	1979–2014	Sixth Cir.	01.05.12; 01.12.12; 05.10.12; 06.8.12; 06.14.12; 06.15.12; 10.19.12	153 pgs	ABA Women Trailblazers
Carolyn D. King	1979–present	Fifth Cir.	07.19.10; 09.01.10; 12.20.10; 01.14.11	173 pgs	ABA Women Trailblazers
Phyllis A. Kravitch	1979–2017	Eleventh Cir.	07.17.13; 07.19.13; 08.07.13	109 pgs	ABA Women Trailblazers

M. Margaret McKeown	1998–present	Ninth Cir.	01.26.23 (posted)	1:09:18	Portia Project
Patricia Millett	2013–present	D.C. Cir.	06.26.23 (posted)	0:51:21	Portia Project
Diana E. Murphy	1994–2018	Eighth Cir.	02.06.06; 02.28.06; 03.20.06; 04.11.06; 05.25.06; 08.08.06; 09.19.06; 11.01.06; 12.20.06; 04.25.07; 06.26.07; 07.03.07; 08.23.07; 04.25.08; 06.23.08; 04.07.09; 05.21.09; 06.23.09; 02.18.10	707 pgs	ABA Women Trailblazers
Dorothy W. Nelson	1979–present	Ninth Cir.	05.24.06; 09.11.06	43 pgs	ABA Women Trailblazers
Jacqueline Nguyen	2012–present	Ninth Cir.	12.15.22 (posted)	0:44:19	Portia Project
Sandra Day O'Connor	1981–2006	S. Ct.	01.30.15	0:48:44	Inst. Judicial Administration
Diarmuid O'Scannlain	Ninth Cir.	1986–present	09.30.17	1:39:13	Inst. Judicial Administration
Rosemary S. Pooler	1998–present	Second Cir.	10.13.22 (posted)	0:31:59	Portia Project
Ilana Rovner	1992–present	Seventh Cir.	08.20.07; 08.28.07; 09.28.07; 11.08.07	53 pgs	ABA Women Trailblazers
Mary M. Schroeder	1979–present	Ninth Cir.	08.30.06; 09.16.06; 10.13.06; 01.03.07	99 pgs	ABA Women Trailblazers

Stephanie K. Seymour	1979–present	Tenth Cir.	10.06.06; 04.24.07; 02.27.08	167 pgs	ABA Women Trailblazers
Laurence H. Silberman	1985–2022	D.C. Cir.	05.17.17	3:29:44	Inst. Judicial Administration
Dolores Sloviter	1979–2022	Third Cir.	06.26.06; 08.18.06; 04.13.07; 07.25.07	138 pgs	ABA Women Trailblazers
Sonia Sotomayor	1998–present	Second Cir., S. Ct.	11.03.17	0:55:09	Inst. Judicial Administration
Patricia M. Wald	1979–1999	D.C. Cir.	06.05.06; 06.19.06; 06.23.06	187 pgs	ABA Women Trailblazers
Diane Wood	1995–present	Seventh Cir.	09.01.22 (posted)	0:59:03	Portia Project