

RULING FROM THE BENCH OR THE PEW?

**Investigating Religion's Influence on Federal Circuit Judges'
Decision-Making on LGBT+ Rights Case Law**

By

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ABSTRACT.

Does religion influence a circuit judge's decision-making, as measured by their votes, in LGBT+ rights cases? This thesis endeavors to answer that important question. Previous scholarship has shown how extra-legal factors, ranging from the economy to race and gender, meaningfully influence a judge's decision-making when salient to the case before them. However, existing literature has been inconclusive on whether a judge's religion similarly influences their decision-making. Several papers have uncovered a potential "Jewish effect" – that Jewish judges alone behave differently – while other papers have shown no religious effect for any faith. Yet, it stands to reason that religion, much like gender and race, is an essential component of one's identity and could influence one's decision-making. My research question focuses on a previously unexamined area of case law: LGBT+ rights. With a new, comprehensive dataset of federal Court of Appeals LGBT+ rights cases, I examine the relationship between different religious denominations and voting for or against LGBT+ rights. Using a logit regression and predicted probabilities, I uncover a statistically significant difference in voting behavior between Jewish judges and their Christian colleagues, with Jewish judges being upwards of 13% more likely to vote in favor of LGBT+ rights than judges of other faiths. These findings intimate questions regarding the importance of descriptive identity on the bench, its practical consequences in jurisprudence, and descriptive identity's role in potentially democratizing the judiciary.

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

Associate Supreme Court Justice Oliver Wendell Holmes Jr. (1902-1932).

Quotation from his book, *The Common Law* (1881).

I am a judge born, raised, and proud of being a Jew. The demand for justice runs through the entirety of the Jewish tradition. I hope, in my years on the bench of the Supreme Court of the United States, I will have the strength and the courage to remain constant in the service of that demand.

Associate Supreme Court Justice Ruth Bader Ginsburg (1993-2020).

Quotation from her 1995 address to the American Jewish Committee.

INTRODUCTION.

Scholarship has shown that non-legal factors influence our judges, and this fact is observable across any level of the judiciary and for either federal or state judges (Harris and Sen 2019). Researchers have shown that macroeconomic forces change jurisprudence and that the appointing party of a judge is the strongest non-legal influence over their jurisprudence (Brennan, Epstein, and Staudt 2009; Merrill 2017; Harris and Sen 2019). Moreover, the race and gender of a judge influences their decision-making when those identities are relevant to the case before them (Boyd, Epstein, and Martin 2010; Kastellec 2013). In fact, for circuit judges, even the race and gender of other judges on their panel influences their decision-making (Boyd, Epstein, and Martin 2010; Kastellec 2013). Therefore, it stands to reason that religion, another essential component of an individual's identity, could also influence judges. Yet, research into whether a judge's religion similarly influences their decision-making has yielded confused, uncertain, and contradictory results. This thesis endeavors to add clarity to this area of scholarship.

In pursuit of an answer, I ask: *does religion influence a circuit judge's decision-making, as measured by their votes, in LGBT+ rights cases?* Focusing on LGBT+ rights departs from most recent scholarship in this area, which predominantly focused on Free Exercise and Establishment Clause cases. This choice was a deliberate attempt to investigate a new area of law, perhaps one with more potential for providing a clearer, more definitive answer. In addition, LGBT+ rights cases were selected because the area of law is of both great public intrigue and strongly salient to religion. Indeed, if a judge's religion influences their decision-making, it will most likely be when religion is salient to the case before them.

In order to answer my research question, I created a new, comprehensive dataset of U.S. Court of Appeals cases. After analyzing over 2,500 cases from 1986 to 2015, I narrowed my

dataset to 315 LGBT+ rights cases with 1,069 judge-level observations. As a result of my effort, I am confident that what was created is the most comprehensive, recent dataset on LGBT+ rights case for the federal circuit courts.

After having the dataset completed, I paired my data with Shahshahani and Liu's (2017) dataset of circuit judges' descriptive data, including their religions. I hypothesized that religion does influence judicial decision-making and that different faiths would behave in a significantly different manner from one another in accordance with their respective faith's doctrine. I calculated a logit regression and predicted probabilities models for Jewish, Catholic, mainline Protestant, evangelical Protestant, and Mormon judges, accounting especially for a judge's appointing party and gender. All else being equal, being Jewish has a positive, statistically significant relationship with voting for LGBT+ rights, with Jewish judges being upwards of 13% more likely than Catholic judges and 10% more likely than mainline Protestant judges to rule in favor of LGBT+ rights. Other faiths were not associated with statistically significant outcomes, but approximate tendencies may be interpreted from the results.

The results of this thesis answer some questions while raising others. The observed "Jewish effect" in my paper is found in several other papers, providing more confirmation that such an effect exists. However, my results also raise questions about what motivations lie beneath these observed effects among Jewish jurists and whether or not these findings should change the way we approach our judiciary.

LITERATURE REVIEW.

For some, it may seem peculiar that religion, or any non-legal factor, would influence judicial behavior. Indeed, the prevailing normative assumption of the judiciary is that judges are impartial arbiters, applying the law neutrally to a set of facts (Harris and Sen 2019). However, an

increasing body of political science literature has demonstrated the extent to which judges — both state and federal judges on all levels of the judicial hierarchy — are influenced by extra-legal factors. Recently, scholars have investigated the impact of the economy, political preferences and ideology, race, and gender on judicial behavior. Sometimes judges are influenced by their own personal attributes and preferences, but also by the attributes of their fellow judges, known as panel effects (Boyd, Epstein, and Martin 2010; Kestelc 2013; Boyd 2013; Shahshahani and Liu 2017).

It is important to emphasize that traditional legal factors, like *stare decisis* and judicial restraint, remain incredibly influential in judicial decisions (Ashenfelter, Eisenberg, and Schwab 1995; Bailey and Maltzman 2008). However, legal factors alone cannot account for a judge’s decision-making process (George and Epstein 1992). Even Supreme Court justices, albeit tortuously, admit they amount to “policy-makers” in some form or another (Segal and Spaeth 2002, 6-8).¹

The remainder of this literature review is organized by extra-legal influences (i.e., race or ideology), with each subsequent section being more relevant to my own research. This structure was chosen to firmly situate religion in a growing list of extra-legal factors affecting judicial decision-making.

I. THE ECONOMY.

Only a small number of articles have investigated the influence of the economy on judicial decision-making. Of these, most of them analyze how macroeconomic factors influence judicial decisions on economic-related law (Brennan, Epstein, and Staudt 2009; Merrill 2017). Some

¹ Segal, Jeffrey, and Harold Spaeth, “The Supreme Court and The Attitudinal Model Revisited,” September 16, 2002, 6-8. In the case *Gregory v. Ashcroft*, “Justices White and Stevens, concurring in the result, had no hesitation to call a spade a spade. Using Webster’s definition of policy, they concluded by quoting the lower court whose decision the Supreme Court reviewed: ‘[E]ach judge, as a separate and independent judicial officer, is at the very top of his particular ‘policymaking’ chain, respond-ing . . . only to a higher appellate court.’”

scholarship posits that the Supreme Court justices signal their approval or disapproval of the Congress' and president's economic stewardship by ruling more in favor or against them depending on the health of the economy (Brennan, Epstein, and Staudt 2009). Worsening economic conditions, especially higher unemployment levels, heavily correlates with the number of economic cases granted *writ of certiorari* by the Supreme Court, indicating a responsiveness by the Court to the nation's economy (Merrill 2017). Indeed, scholars agree that the Supreme Court, and the judiciary more broadly, use their decisions to respond to exogenous factors and address the public's needs (Brennan, Epstein, and Staudt 2009; Merrill 2017).

II. POLITICAL IDEOLOGY, PARTISAN IDENTIFICATION, and ELECTIONS.

A great deal of political science has focused on the influence of political ideology, partisan identification, and electoral systems on judicial decision-making. To measure the political ideology of appointed judges (like those sitting on the United States Court of Appeals), political scientists often use the political party of the appointing president or governor as a proxy (Clark 2009; Bonica and Sen 2017; Harris and Sen 2019; Beim, Clark, and Lauderdale 2020). Political ideology, measured as described, is the most influential non-legal factor on judicial decision-making (Harris and Sen 2019, 245-247).

Republican- and Democratic-appointed judges routinely behave differently, all else being equal. For example, majority Republican-appointed judicial panels are significantly more likely to deny relief to defendants in death penalty cases than majority Democratic-appointed panels (Beim, Clark, and Lauderdale 2020). Political ideology may even be the *only* exogenous factor that influences judicial decision-making in Establishment Clause cases (Sisk and Heise 2012). For example, Republican-appointed judges are significantly less likely to sustain challenges to

governmental actions that engage or recognize religion in the public sphere, like a public display of a Christian cross (Sisk, Heise, and Morriss 2004). Moreover, political ideology is influential in Free Exercise and religious accommodation cases in educational environments (i.e., school prayer), where Democratic-appointed judges routinely rule more secularly than their Republican-appointed colleagues (Sisk, Heise, and Morriss 2004). Some have shown that politicians select judges who are ideologically like themselves, injecting political ideology into the judiciary, especially in the higher levels of the judicial hierarchy (Bonica and Sen 2017).

Other scholars have investigated the influence of partisan labeling and electoral systems on judicial decisions. Elected non-partisan judges are more responsive to public opinion than elected partisan judges, especially when ruling on highly salient issues (Calderone, Canes-Wrone, and Clark 2009). An additional paper showed that judges sentence criminal defendants far more harshly as their re-elections approach, fearing an electoral defeat if they appear weak or ineffective (Huber and Gordon 2004). There is a scholarly consensus that elected judges, whether partisan or non-partisan, are highly responsive to non-legal factors, like public opinion and political party platforms (Huber and Gordon 2004; Calderone, Canes-Wrone, and Clark 2009; Harris and Sen 2019).

Jeffrey Segal and Harold Spaeth concisely wrote that judges “decid[e] disputes in light of the facts of the case vis-à-vis the[ir] ideological attitudes and values.... Simply put, Rehnquist vote[d] the way he [did] because he [was] extremely conservative; Marshall voted the way he did because he was extremely liberal” (Segal and Spaeth 2002, 86). Judges do not disregard legal principles, but they do not ignore their personal preferences either.

III. RACE.

Scholars have investigated the influence of race on judicial decision-making in three ways: a judge's own race, the race of another judge (panel effects), and the race of litigants. Race has been found to substantially change judicial behavior, especially when it is salient to the case (Kastellec 2013; Sen 2015; Harris and Sen 2019). For example, African-American judges vote significantly differently on affirmative action cases than non-Black judges who are otherwise similar in every dimension but race (Kastellec 2013). The race of one judge can influence other judges on a panel to rule differently than they otherwise would. Perhaps surprisingly, a single African-American judge has a stronger effect on a non-Black Republican judge than two non-Black Democratic judges, even when the Republican is in the ideological majority in the former (with a single African-American colleague) and the minority in the latter (Kastellec 2013). In practice, this means that having a single African-American judge on a panel nearly guarantees the success of an affirmative action policy.

Some scholarship has questioned whether African-American judges are prejudiced against by their White colleagues. One paper shows that African-American judges are reversed 10% more often on appeal than White judges (Sen 2015). However, the author could not conclude that race is the causal factor, only that the difference in reversal rates is not significantly associated with other explanatory factors (i.e., political ideology).

Some scholars have investigated how a plaintiff's race influences judicial decision-making. In a troublesome finding, African-American death row defendants with White victims had higher reversal rates in direct appeal and habeas corpus cases than White defendants with African-American victims or cases where the defendant and victim were the same-race in Southern trial courts (Alesina and La Ferrara 2014). In other words, Southern trial court judges are less concerned

about condemning an innocent person to capital punishment when the defendant is a minority and the victim is White than when the victim is also a minority.

IV. GENDER.

Several political scientists have uncovered a significant difference between how male and female judges behave, all else being equal. For instance, female judges foster case settlements more often *and* more quickly than male judges (Boyd 2013). Christina Boyd concludes that there exists a broader “female effect” on judicial behavior because women are more “likely than their male colleagues to foster collaboration, bridge building, and negotiation in their case management environment” (Boyd 2013, 211). She believes that this gendered affect can influence the litigation process regardless of whether the cases deal with typically gender-salient issues (Boyd 2013). Other scholars have confirmed that female and male judges behave differently but argue that this behavioral difference *only* materializes in sex discrimination cases (Boyd, Epstein, and Martin 2010). This paper also found gender panel effects on sex discrimination cases, where a single female judge on a panel guarantees a greater likelihood of success for the plaintiff than any all-male panel (Boyd, Epstein, and Martin 2010).

These findings parallel Kastellec’s findings on race, where judges behaved differently only when race was a salient issue for the case. Both of these papers offer powerful reminders of the *practical* effect of extra-legal influences in the judiciary. For instance, even if a judge’s sex is rarely a causal influence, it still remains one *sometimes*. Moreover, these findings provide a theoretical framework for my own thesis. If gender and race can be influential when those identities are salient to the case, it is reasonable to presume a judge’s religious identity can become influential in their decision-making in religiously-relevant cases.

V. JUDGES AND RELIGION.

Despite all the progress academia has made on understanding judicial behavior, the influence of religion has been under-investigated. Moreover, there is little consensus across the scholarship that does exist. One article showed that Jewish and non-mainstream Christian judges behave significantly differently than other judges, routinely ruling in favor of claimants in Free Exercise cases and secularly in Establishment Clause cases (Sisk, Heise, and Morriss 2004). Subsequent research also found a statistically significant "Jewish effect" in religious freedom cases (Shahshahani and Liu 2017). All else being equal, Jewish judges vote against public displays of religion – like school-mandated prayer or the Christian cross on public property – more than any other religious denomination (Sisk, Heise, and Morriss 2004; Shahshahani and Liu 2017). Indeed, being Jewish can have a stronger predictive value in judicial behavior than political ideology for religious freedom decisions (Shahshahani and Liu 2017). Moreover, Catholic judges have a stronger tendency to support religious claimants in Free Exercise cases and are more likely to permit government interaction and engagement with religion than other religious groups (Sisk, Heise, and Morriss 2004).

However, other research refutes these conclusions. One paper concluded that religion was *not* influential in judicial decision-making on Establishment Clause cases (Sisk and Heise 2012, 1205). A different paper found “no evidence that a judge's religious worldview affected his or her ruling [...] for Religious Free Exercise/Accommodation” cases (Heise and Sisk 2013). Somewhat relatedly, religious “panel effects,” akin to those seen with gender and race, have not yet been observed, though this is not evidence of their non-existence (Shahshahani and Liu 2017).

Notably, most articles on religious influence have relied on the same dataset, modifying it slightly as necessary (Sisk, Heise, and Morriss 2004; Sisk and Heise 2012; Heise and Sisk 2013;

Shahshahani and Liu 2017). The dataset includes cases involving the Establishment and Free Exercise Clauses and various federal religious accommodation statutes (Sisk, Heise, and Morriss 2004; Sisk and Heise 2012; Heise and Sisk 2013; Shahshahani and Liu 2017). By relying on the same dataset, political scientists have fallen into the same pitfall: minimally expanding upon the areas of law being investigated for evidence of religious influence. It should be rather evident that countless religiously-relevant cases exist beyond those two Constitutional provisions and the selected federal laws. Consider the fact that none of these four papers would include the landmark transgender rights case *Bostock v. Clayton County* (2020) in their analyses, though *Bostock*'s majority opinion discusses the case's religious relevance at length.² It is imperative for future research to evolve the conceptualization of religiously-relevant cases in order to more fully understand how and when religion influences judges.

Notably, one study has previously analyzed the influence of religion, among other variables, in gay rights cases. Jewish judges were found to be significantly more hospitable towards gay rights than both Protestant and Catholic judges (Pinello 2003). In contrast, being Catholic was one of the strongest predictors of anti-LGBT voting amongst judges (Pinello 2003). In addition, Protestant fundamentalists were 20% more likely to deny LGBT rights claims than other Protestants, but their sample was too small for statistical significance (Pinello 2003). While having important implications, this study examined a relatively small sample of both state and federal cases from 1981-2000 (Pinello 2003). In contrast, my study focuses exclusively on the

² In *Bostock*, the Supreme Court ruled that "sex discrimination" as used in Title VII of the Civil Rights Act of 1964 includes discrimination on the basis of one's sexual orientation or transgender identity. As it was a "sex discrimination" case, none of the four papers previously described would include it in their datasets. But, the relevance of religion to this case is self-evident. Justice Neil Gorsuch wrote in the majority opinion that the Supreme Court is "deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution... [b]ut worries about how Title VII may intersect with religious liberties are nothing new" and did not discourage the majority from ruling as it did. *Bostock* represents some of the rich case law being overlooked by current scholarship. *Bostock v. Clayton County*, 590 U.S. ____ (2020), 32-33.

influential United States Court of Appeals and includes 15 years of more recent case law, providing a more focused and accurate analysis of the current state of religious influence.

VI. LEGISLATORS AND RELIGION: A POTENTIAL PARALLEL.

Legislators offer an important parallel to judges, as both attempt to actualize their preferences within the constraints placed by their respective institutions. Put another way, the way identity affects a Senator could operate similarly to how it affects a judge. Unlike the judiciary, religion's influence in the United States Congress has been extensively analyzed by political scientists. Religion does influence a Senator's legislative behavior, being more influential than a Senator's gender, but far less influential than their party affiliation (Arnon 2018). Moreover, religious influence is observed in all legislative areas, not just on religiously-salient issues like abortion (Newman et al. 2016; Arnon 2018). Additionally, various religious denominations behave significantly differently from one another (Mctague and Pearson-Merkowitz 2015; Arnon 2018). Mormons, mainline Protestants, and Catholics vote more inconsistently on abortion and LGBT+ rights than Jews and evangelical Protestants, who voted consistently liberal and conservatively, respectively (Mctague and Pearson-Merkowitz 2015). Last, one paper concluded that being a conservative Protestant was a prominent causal factor in voting against abortion in at least one state legislature (Yamane and Oldmixon 2006) while another paper showed how legislators absorb many of the opinions of the dominant religion in their district (Oldmixon and Calfano 2007).

In sum, political scientists have observed how extensively religion influences legislative behavior. Furthermore, this research demonstrates how different religious groups differ in their behavior, especially on highly salient religious issues (Mctague and Pearson-Merkowitz 2015). Therefore, it is plausible that religious judges would emulate these same behaviors in religiously salient cases.

THEORY AND HYPOTHESES.

I. THEORY.

This thesis theorizes that if judges are influenced by their religion, it will most likely be when they handle divisive issues salient to their religious identity. This assumption follows the conclusions drawn by research on gender and race's influence (Boyd, Epstein, and Martin 2010; Kastellec 2013). Religion, along with gender and race, is among the most integral parts of one's identity. Therefore, it is rather peculiar that existing research has reached no consensus on the influence of religion on judicial decision-making but has on gender and race. Indeed, if race and gender can at least partially motivate a judge's decision-making when those identities are relevant to a case before them, then it stands to reason that religion should, too.

The inconclusiveness regarding religion's influence on judicial decision-making is made more confusing when considering that other scholarship demonstrates that religion assuredly influences legislators on the state and federal level, even on issues unrelated to religion (Yamane and Oldmixon 2006; Mctague and Pearson-Merkowitz 2015; Newman et al. 2016; Arnon 2018). Perhaps this inconclusiveness comes from recent scholarship relying largely on the same dataset to uncover religious influence, all while still coming to contradictory conclusions (Sisk, Heise, and Morriss 2004; Sisk and Heise 2012; Heise and Sisk 2013; Shahshahani and Liu 2017). Perhaps religious influence in Free Exercise and Establishment Clause cases is too difficult to meaningfully uncover. Regardless, it is excessively unlikely that religious influence in judicial decision-making would, should it exist, only be found in these First Amendment cases. Additionally, while some have analyzed gay rights case law in the past, their data – now outdated – included a small number of observations across both state and federal judiciaries, providing a partially diluted analysis

(Pinello 2003). Therefore, any new analysis of LGBT+ rights requires the creation of a new, comprehensive dataset.

I am examining LGBT+ case law because few issues motivate religion as much as LGBT+ rights (Pelham and Crabtree 2009; Newport 2012; Masci and Lipka 2015; Doherty, Kiley, and Weisel 2015). Therefore, the selected cases satisfy the theoretical framework that religious identity influences decision-making when the case is religiously salient. Moreover, I am choosing to analyze LGBT+ rights case law due to the interest and passions these cases often motivate in the general public. By analyzing these cases, I hope to find the intersection of publicly relevant and academically novel.

II. HYPOTHESES

I have drafted primary and secondary null and alternative hypotheses for my project. My primary null hypothesis is that there is no statistically significant relationship between religion and judicial decision-making. My primary alternative hypothesis is that religion does have a statistically significant relationship with judicial decision-making. Moreover, I hypothesize that different religious denominations behave differently. Therefore, my secondary null hypothesis is that religious denominations do not behave significantly differently from one another on LGBT+ rights cases. In contrast, my secondary alternative hypothesis is that religious denominations will behave differently from one another while deciding LGBT+ rights cases, paralleling the behavior seen in previous research.

I am exploring the secondary hypotheses for several reasons. First, national polling shows that different religious denominations — both the official position of the faith and its adherents — hold starkly different views on LGBT+ rights (Pelham and Crabtree 2009; Newport 2012; Masci and Lipka 2015; Doherty, Kiley, and Weisel 2015). Therefore, I want to explore whether that

national religious divide is emulated in our judiciary. As previously stated, some existing literature has already found that different religious denominations are associated with significantly different judicial behavior (Pinello 2003; Sisk, Heise, and Morriss 2004; Shahshahani and Liu 2017). Those researching religious influence in legislators have also found that different religious denominations exhibit different behavior, all else being equal (Mctague and Pearson-Merkowitz 2015; Arnon 2018). Since we know that a judge's identity can influence their behavior when the case is salient to their identity, it is reasonable to see this phenomenon replicated with religiously-salient, LGBT+ rights cases (Boyd, Epstein, and Martin 2010; Kastlelec 2013). Consequently, my thesis has the opportunity to uncover whether religion influences our judiciary more broadly, but also how particular religions influence circuit judges on specific types of cases.

More specifically, I anticipate circuit judges to behave in ways similar to that seen in previous research. I expect certain denominations to behave more consistent to their faith's doctrine and conclusively pro- or anti-LGBT+ rights, much like the behavior seen in U.S. Senators (Mctague and Pearson-Merkowitz 2015; Arnon 2018). Most of all, I anticipate a statistically significant "Jewish effect," which has routinely been shown in relevant judicial politics research (Pinello 2003; Sisk, Heise, and Morriss 2004; Shahshahani and Liu 2017). I predict Jewish judges will be overwhelmingly liberal, more so than any other religion, and regardless of gender or party. I anticipate Catholics, Mormons, and Evangelicals to vote conservatively, though I am unsure that their coefficients will be statistically significant. Indeed, previous research has shown that these three faiths are strongly associated with conservative judicial decisions (or legislative priorities), but not at a statistically significant level (Pinello 2003; Sisk, Heise, and Morriss 2004; Yamane and Oldmixon 2006; Mctague and Pearson-Merkowitz 2015; Shahshahani and Liu 2017). In addition, one paper conclusively found that identifying as Catholic was one of the strongest

predictors of anti-LGBT+ behavior on the bench (Pinello 2003). Lastly, I expect mainline Protestants to be the most moderate religion – neither decisively conservative or liberal – regardless of gender or party. Put another way, I expect their predicted probability of voting in favor of LGBT+ rights to hover around the middle of all the religions. This prediction is premised on previous research finding them relatively ideologically neutral – neither especially liberal nor conservative – as a faith (McTague and Pearson-Merkowitz 2015; Shahshahani and Liu 2017; Arnon 2018).

METHODOLOGY.

I. CASE SELECTION.

This thesis creates a new, more comprehensive dataset of LGBT+ rights cases from the United States Court of Appeals. Doing so was necessary since existing datasets either focus on different courts, are less comprehensive, or cover a smaller period of time. As this dataset is a major component of – and contribution from – this paper, it warrants extended discussion in this section.

After conferring with the University of Michigan’s government and law librarian, Catherine Morse, and my advisor, Professor Deborah Beim, I created the following Westlaw search:

- **Advanced Search:** “(homosexual or LGBT or lesbian or gay or bisexual or transgender or transsexual or queer or sexual orientation or same-sex) % asylum”
- **Filters:**
 - Federal Court of Appeals (“Fed. Ct. App.”)
 - Time Period: January 1, 1986 to December 31, 2015
 - Report Status: Reported

This search yielded 2,540 cases across twelve appellate courts.³

Asylum cases were excluded (the “%” notation) from the search because LGBT+ individuals can seek asylum on the basis of their identity as a matter of settled federal law. Therefore, there is less judicial discretion in the process, and as a result, less potential for bias. The asylum process has its own codified legal standards for awarding asylum, and I believe the plethora of asylum cases may dilute research into “domestic-focused” LGBT+ rights case law.

The time period is constrained to January 1, 1986 to December 31, 2015 because this period overlaps with the dataset of circuit judges’ biographical information compiled by Shahshahani and Liu (2017). Their dataset will be discussed in more detail later.

The initial search yield of 2,540 cases was over-inclusive and required further narrowing. As a result, every case was discretely reviewed to ensure it was materially relevant to the research question. For example, hundreds of cases were criminal proceedings for sexual predators, being included in the search for the inclusion of the word “sexual.” In other instances, cases cited other cases that included search terms but then did not themselves relate to LGBT+ rights.

A discrete review of each case was selected over reliance on Westlaw’s “GLBT” case law “tag” because of the tag’s severe under-inclusiveness. Indeed, cases regarding discrimination by an employer on the basis of sexual orientation were tagged “labor and employment.” In another example, cases where transgender inmates challenged their denial of sexual reassignment surgery on Eighth Amendment grounds were labeled “prisons.” There are several other examples of case law being exceedingly relevant to LGBT+ rights but would not have been included when relying on Westlaw’s “GLBT” tag.

³ I excluded the Court of Appeals for the Federal Circuit as its docket predominantly covers economic issues, like intellectual property. The Court yielded less than 35 results and a cursory review indicated none were relevant to my study.

During my discrete review, cases were included if they involved a legal question substantially about LGBT+ rights (i.e., discrimination on the basis of sexual orientation, same-sex couple adoption rights, or the ability for students to wear homophobic apparel under the First Amendment). Several cases involved no LGBT+ litigants directly, but still clearly involved an LGBT+ rights-related issue. For instance, several cases involved the First Amendment rights of law schools prohibiting military recruiting on campus in protest of the military's discrimination of LGBT+ servicemembers. Other examples are cases involving schools restricting anti-LGBT+ speech. The litigants in these cases often were disciplined homophobic students (or their parents) and the school district's administrators, rather than any LGBT+ party. Yet, I find it self-evident why cases like these warrant inclusion in the dataset.

Cases that merely involved LGBT+ parties were not automatically included. Indeed, there were several cases involving homosexual plaintiffs or defendants, but their identity had no material relation to the legal questions presented. I excluded these cases because they do not directly involve an LGBT+ plaintiff's right, but rather merely involved an LGBT+ individual.

Sexual harassment cases warranted the longest individual reviews. Many cases were included in the initial search because they involved "same-sex" parties, but then were not materially about LGBT+ issues (i.e., alleged harassment between two heterosexuals or harassment between two homosexuals, but not *discrimination* based on sexual orientation). Other cases were simply heterosexual sexual harassment. Therefore, nearly all sexual harassment cases were extensively read to ensure they were regarding LGBT+ discrimination.

Sometimes, more "procedural" decisions were included, namely decisions announcing a denial of rehearing *en banc*. I decided to include these cases because they represented another, if redundant, opportunity for a judge to intimate their (potential) religious influence, either from their

vote or a dissent to the motion (known as a “dissent” when written in this context). Numerous times, denials of rehearing *en banc* elicited robust dissents, sometimes more candid than an ordinary opinion. Other procedural decisions included other rehearings (often following remand) and issuances of injunctions or stays. Regarding injunctions and stays, these cases often involved judges using their discretion to determine the “harm” done by an anti-LGBT law or individual; an opportunity ripe for potential religious bias to influence their decision.

Following this discrete review, there were 315 cases included in the dataset with 1,106 judicial voting observations. However, some judges “sit by designation” in a court where they are not permanently stationed. If a judge sat by designation but belonged to a different circuit, they were involved in the analysis. If it was a district judge sitting by designation, they were excluded in the analysis. Ultimately, 37 judge-level observations were excluded from the data: one recusal, and 36 district judges sitting by designation. Therefore, the final dataset included 315 cases with 1,069 judicial voting observations.

II. CODING THE CASES.

There were two components in coding the selected cases: case details and judge/panel votes. As for case details or characteristics, there are two coded variables: “Reversed?” and “En Banc.” If the circuit court reversed a district court’s holding, it was coded “1,” while an “affirm” was coded “0.” For cases where parts were both affirmed and reversed, I coded it “1” – reversed – if any portion substantially relating to the LGBT+ right was reversed. For example, if a circuit court affirmed a plaintiff had standing but reversed a district court’s ruling on whether sexual orientation discrimination violated the Constitution, I coded it as reversed. Hypothetically, if the opposite had happened, it would have been coded as “affirmed.” Cases that were heard *en banc* or any published opinions involving a denial for rehearing *en banc* were coded “1.” Denials of

rehearing *en banc* were coded as affirmed (“0”) for they maintain the previous holding of the circuit court, effectively affirming their decision.

I coded both judge-level and panel-level observations. For every case, the panel decision was coded either “Lib” or “Con” – liberal or conservative. Liberal decisions were those where the panel majority ruled in favor of an LGBT+ right or LGBT+ plaintiff/allied organization, at least substantially. Conservative decisions were cases where the panel majority ruled against LGBT+ rights or an LGBT+ plaintiff/allied organization.

For every case, individual judges were coded. If they signed onto the panel’s decision – either conservative or liberal – then they were coded “0” including for concurrences in judgment. If a judge dissented from the panel’s judgment, they were coded “1.” Sometimes, a judge would dissent on certain parts, but concur with the final judgment. In these situations, judges were coded “0.”

For some opinions, not all paneled judges’ names were published with their decision (vote) on a case. In these cases, since the recorded decisions *were* relevant to my research question, I coded what was available. There are two unrecorded judge-level observations in the voting analyses (1,067 versus 1,069 observations) because a judge’s vote was unavailable for analyzing.

Before performing analyses, I needed to synchronize the panel-level and judge-level voting behavior. To do this, I coded a judge with a “Panel Vote” that is “Lib” and a dissent that is 0 as “1,” meaning “Liberal.” In addition, a “Panel Vote” that is “Con” with a judge dissenting, or coded “1,” is also coded “1” for “Liberal.” I did the opposite for coding conservative opinions. Synchronizing the panel- and judge-level voting allows for performing regression and predicted probabilities on a judge-level, and therefore, religious-level, rather than panel-level. By coding

liberal outcomes “1,” this means positive coefficients for regressions and higher coefficients for predicted probabilities will correspond to liberal, pro-LGBT+ voting tendencies.

III. JUDGE CHARACTERISTICS.

Fortunately, a robust dataset on circuit judges’ biographical information exists. Shahshahani and Liu generously developed a comprehensive dataset of circuit judge’s religion – to a denominational level – along with other co-variates, like common space scores, gender, race, appointment year, and previous experience in the military or as a law professor (Shahshahani and Liu 2017). Thankfully, this thorough dataset readily provides religious information (my independent variable of interest) along with variables requiring control in my regression analysis.

The construction of their dataset is discussed in their informative paper and I do not need to recount that information here.⁴ Their dataset includes up to 29 distinct religious denominations, though many have one or no adherents on the bench. Using their dataset and its corresponding codebook, I coded for evangelical Protestants, Catholics, Mormons, mainline Protestants, “Other Protestants,” “Other Christians,” Jews, and “Other.” “Other Protestants” were those of Protestant traditions that were neither mainline nor evangelical. “Other Christians” were Christians who were not either of the three Protestant groups, Catholics, or Mormons. Lastly, “Other” is comprised of almost entirely of judges whose religious information could not be found and a singular observation for a Baha’i judge. A thorough analysis of the descriptive data itself is found in a forthcoming section.

Judges in my dataset were simply matched with their biographical data provided in the Shahshahani and Liu (2017) dataset. Therefore, their voting and biographical information could be synchronized, and regression and predicted probabilities could be readily calculated.

⁴ The information can be found in their paper, cited in my bibliography, on pages 6 through 11.

IV. REGRESSION ANALYSIS.

The first way I analyze my dataset is calculating a logit regression analysis in R. Regressions are standard in judicial politics literature as a means for readily approximating a relationship between independent variables and a binary dependent variable. For this paper, a regression is used to intimate any relationship – positive or negative – between religion and whether a judge rules positively (liberal) or negatively (conservative) in gay rights cases. I have provided a helpful summary of the variables examined in this regression:

- **Independent Variable:** The independent variable of interest is a circuit judge’s religion. I analyze mainline Protestantism, evangelicalism, Judaism, Catholicism, and Mormonism, with “Other Protestant,” “Other Christian” and “Other” being included but too undefined as a category for meaningful review.
- **Dependent Variable:** The dependent variable is a circuit judge’s vote – either for LGBT+ rights (coded as liberal) or against LGBT+ rights (coded as conservative). This is the operationalization of judicial decision-making and behavior.
- **Confounding Variables:** My models control for race, including general minority status, as well as examining Black, Asians, and Latinos, specifically; gender; judicial common space score; party of the appointing president (labeled “republican”); three levels of American Bar Association ratings; appointment year; prior military, government, judicial, or law professor experience.
- **Significance Level:** My alpha level, or significance level, is 0.05.

To run a regression, one of the examined religious denominations must be selected as a “reference category” by which the other denominations are compared to. For my regression, I selected mainline Protestants as my reference category for two reasons. First, the Shahshahani and Liu (2017) paper uses “Protestants” – a category overwhelmingly comprised of Mainline Protestants – as their reference category. As their paper is both the most recent attempt to examine religion and judicial decision-making and is a significant foundation for my own paper, I wanted

to provide some continuity among our analyses. Second, previous literature demonstrates that Jews are strongly associated with liberal tendencies while Catholics and Evangelicals are strongly associated with Conservative ones, but Mainline Protestants have a more undefined, if not moderate ideology on religiously relevant issues (Pinello 2003; Sisk, Heise, and Morriss 2004; Yamane and Oldmixon 2006; Mctague and Pearson-Merkowitz 2015; Shahshahani and Liu 2017). I decided that the reference category should be the most moderate denomination, or at least the one associated the least with one ideological tendency or another. As such, the regression will show a religion's negative (conservative) or positive (liberal) relationship with deciding LGBT+ rights cases *vis-à-vis* mainline Protestants.

V. PREDICTED PROBABILITIES.

Since a logit regression's ability to provide interpretable data is somewhat limited, I also calculated predicted probabilities. I calculated predicted probabilities via R by using the logit regression described above. The benefit of predicted probabilities is two-fold: it provides a meaningful coefficient (the predicted probability of a judge ruling for LGBT+ rights), and this coefficient can easily be compared to the predicted probabilities of other religious denominations.

I will run four predicted probability models: Democratic-appointed men and women and Republican-appointed men and women. The theoretical motivation is simple. Previous studies have shown that the appointing political party of a judge is a consistently statistically significant variable, even within religiously-relevant case law (Sisk, Heise, and Morriss 2004; Sisk and Heise 2012; Heise and Sisk 2013; Shahshahani and Liu 2017). Aside from this theoretical motivation, analyzing both Democratic- and Republican-appointed judges provides an interesting point of comparison. I am analyzing men and women on similar grounds: gender may be influential in case law unrelated to gender (Boyd 2013) and it provides an insightful point of comparison.

To run a predicted probability, everything but the religion, gender, and appointing political party must be held constant. In order to do this, I examined the frequency of each covariate and selected whatever biographical data was most common to create a data frame that, aside from the aforementioned independent variables, is most representative of the Court of Appeals. For instance, the judiciary is overwhelmingly White, so the data frame by which a predicted probability was calculated was coded for a White judge over a Black judge. In another example, most judges had no previous military experience, so the predicted probability was coded for a judge with no military experience. I have provided a summary of the coding for the predicted probabilities to better visualize this practice.

TABLE 1: SUMMARY OF PREDICTED PROBABILITY CO-VARIATES

VARIABLE	CODE (0 = Minority; 1 = Majority)
Minority	0
Asian/Latino	0
Black	0
Common Space Score	Mean (0.06)
ABA Above Qualified	1
ABA Qualified	0
ABA Below Qualified	0
Appointment Year	Mean (1986.58)
Military Experience	0
Government Experience	1
Prior Judicial Experience	0
Law Professor Experience	0
N = 1,069	

A “0” meant the variable described the minority of judges while a “1” meant the variable described the majority. For non-binary variables (Common Space Score and appointment year), I was able to take the mean of these values. Therefore, the predicted probabilities were calculated for a White judge who the American Bar Association deems above qualified, has previous government experience, and is of average ideology and tenure for the Court of Appeals. In previous papers, only appointing party and religion have proven consistently statistically significant in religiously salient cases (Sisk, Heise, and Morriss 2004; Sisk and Heise 2012; Heise and Sisk 2013; Shahshahani and Liu 2017), so my coding practice does not endanger the reliability of the results by excluding certain variables (i.e., coding military experience as 0). The four calculated predicted probability models reflect the majority of our Court of Appeals.

VI. LIMITATIONS.

While I defend the methodology of this paper and the decisions I have made in producing and analyzing my data, social science is often imperfect. The largest limitation with this paper is sample size. I predict that, outside of Judaism, Catholicism, and Mainline Protestantism, there will be very few other denominations represented on the bench, including Mormons and evangelicals. Even if the absolute number of these denominations is sufficient to reliably analyze, it is unlikely that when I analyze them by gender and party each sub-category will have enough observations to produce reliable results. Therefore, the models can do their best to make estimates, but it may be with large intervals of confidence.

Moreover, my regression and predicted probabilities will be unable to determine causality outright. Of course, assuming my results are statistically significant, strong inferences and relationships can be uncovered between religion and judicial voting behavior, but this is a step below saying, for example, Judaism causes pro-LGBT+ behavior. However, this limitation does not undermine the theoretical framework of my paper. I am not arguing that religion alone determines a judge's behavior, but that their religious identity, like other components of their identity, *can* influence behavior when salient to the cases before them. Therefore, while I cannot say Judaism or Catholicism *causes* a certain behavior, I am still able to say certain denominations are *associated* with certain behavior, all else being equal, and this may intimate religion's influence in judicial behavior.

Lastly, it must be said that while uncovering statistical significance is the objective, it can be unnecessary in uncovering a *practically* significant effect. That is to say, some coefficients may not be statistically significant, but they may still uncover an important correlation between a

religion and judicial behavior. In this sense, general trends in the data are important to consider along with anything that is statistically significant outright.

DESCRIPTIVE DATA.

Before discussing whether religion influences judicial decision-making, I wanted to provide summary statistics for my dataset. This section provides several tables that visualize my dataset and contextualize the forthcoming results of my regression and predicted probabilities. In addition, this section provides insights into the demographics of circuit judges more generally.

Table 2 provides summary statistics for the variables in my regression model. The most informative summary statistic is the mean, which roughly illustrates the tendencies and characteristics of the Court of Appeals. In fact, for any binary variables, the mean is a *percentage*. For instance, the mean for “Female” is 0.19, meaning that approximately 19% of the judge observations in the dataset are women. Strikingly, only 6% of the judge observations in my dataset are Black.

For the two variables that are not binary – appointment year and common space score – the mean is not a percentage, but the more typical arithmetic mean: it is the center of the data. In my dataset, the mean appointment year was roughly halfway through 1986 and the mean ideology of all the judges was 0.06, on a -1 (most liberal) to +1 (most conservative) scale. On a cursory level, this indicates the bench is relatively middle-aged and quite moderate.

For all these summary statistics, it is important to note that they describe my dataset, but not necessarily the Court of Appeals more generally. While the dataset is comprehensive, it does not include every circuit judge from 1986 to 2015. Moreover, my judge-level observations include most judges several times. For instance, Judge Richard Posner of the Seventh Circuit is observed 16 times in my dataset, once for every time he heard an LGBT+ rights case during 1986 to 2015.

Although he is observed far, far more than most judges, his example underscores the fact that the summary statistics are most helpful and accurate for contextualizing my dataset, while providing only a rough portrait of the Court of Appeals at-large during 1986 and 2015.

TABLE 2: SUMMARY STATISTICS FOR MODEL VARIABLES

VARIABLE	MEAN	MINIMUM	MAXIMUM
Dissent (1 = Yes)	0.14	0	1
En Banc (1 = Yes)	0.24	0	1
Female (1 = Female)	0.19	0	1
Minority (1 = Minority)	0.12	0	1
Asian/Latino (1 = Yes)	0.06	0	1
Black (1 = Yes)	0.06	0	1
Republican Appointed (1 = Yes)	0.59	0	1
Common Space Score (-1 Most Lib / +1 Most Con)	0.06	-0.59	0.54
ABA Above Qualified (1 = Yes)	0.60	0	1
ABA Qualified (1 = Yes)	0.28	0	1
ABA Not Qualified (1 =Yes)	0.12	0	1
Appointment Year	1986.58	1950	2011
Military Experience (1 =Yes)	0.41	0	1
Government Experience (1 = Yes)	0.62	0	1
Prior Judicial Experience (1 = Yes)	0.29	0	1
Law Professor Experience (1 = Yes)	0.14	0	1

N = 1, 069 Judge-level observations across 315 cases

TABLE 3: SELECT BINARY VARIABLE BREAKDOWN

VARIABLE :	VALUE :
MALE JUDGES	867
FEMALE JUDGES	202
DEMOCRATIC-APPOINTED JUDGES	433
REPUBLICAN-APPOINTED JUDGES	636
MINORITY JUDGES	132
NON-MINORITY JUDGES	937
CONSERVATIVE VOTES	511
LIBERAL VOTES	556

N = 1,069 except for vote counts, where it is 1,067; two observations in the dataset did not have a published vote.

Table 3 provides the number of observations for select characteristics. Unsurprisingly, the judge-level observations are overwhelmingly male and White, as was (and still is) the Court of Appeals during 1986 to 2015. Perhaps more surprising is that the circuit courts are considerably more stocked with Republican-appointed judges than Democratic-appointed ones. Democratic presidents were in office for 14 of the 29 years covered by my dataset (48.27% of the time), but their appointees account for only 40.51% of all circuit judges. Of course, these are rough inferences about the Court of Appeals, as per the reasoning described above.

Notably, despite there being decisively more Republican-appointed judge observations, there were more liberal votes – votes in favor of LGBT+ rights – than conservative votes. This implies that voting behavior on LGBT+ rights cannot be accounted for by appointing party alone. In addition, it indicates that at least some Republican-appointed judges were willing to vote in favor of LGBT+ rights despite their appointing party being variably opposed to such policies.

TABLE 4: CIRCUIT COURTS AND JUDGE-LEVEL OBSERVATIONS

CIRCUIT	NUMBER OF JUDGE-LEVEL OBSERVATIONS
District of Columbia Circuit.	68
First Circuit	47
Second Circuit	76
Third Circuit	35
Fourth Circuit	39
Fifth Circuit	92
Sixth Circuit	77
Seventh Circuit	129
Eighth Circuit	85
Ninth Circuit	326
Tenth Circuit	36
Eleventh Circuit	59

TABLE 5: RACE AND GENDER BY APPOINTING PARTY

	DEMOCRATIC- APPOINTED	REPUBLICAN- APPOINTED
MAN	295	572
WOMAN	138	64

	DEMOCRATIC- APPOINTED	REPUBLICAN- APPOINTED
NON- MINORITY	349	588
MINORITY	84	48

Tables 4 and 5 breakdown judge-level observations by circuit court and cross-tabulating race and gender by appointing party, respectively. Unsurprising due to its size, the Ninth Circuit has the most judge-level observations, with the Seventh Circuit in a very distant second. As one may suspect, most women and minorities appear to be Democratic-appointed; there are approximately twice as many observations for Democratic- appointed women and minorities than Republican-appointed women and minorities.

TABLE 6: RELIGIONS

RELIGION	NUMBER OF OBSERVATIONS
Mainline Protestant	256
Catholic	268
Evangelical	56
Jewish	223
Mormon	35
Other	128
Other Christian	25
Other Protestant	78
N = 1,069	

TABLE 7: GENDER and RELIGION

RELIGION	MAN	WOMAN
Mainline Protestant	230	26
Catholic	227	41
Evangelical	53	2
Jewish	172	51
Mormon	35	0
Other	78	50
Other Christian	17	8
Other Protestant	55	23
N = 1,069		

TABLE 8: APPOINTING PARTY and RELIGION

RELIGION	DEMOCRATIC-APPOINTED	REPUBLICAN-APPOINTED
Mainline Protestant	89	167
Catholic	86	182
Evangelical	11	45
Jewish	117	106
Mormon	6	29
Other	72	56
Other Christian	14	11
Other Protestant	38	40
N = 1,069		

TABLE 9: VOTES and RELIGION

RELIGION	CONSERVATIVE	LIBERAL
Mainline Protestant	128	126
Catholic	149	119
Evangelical	31	25
Jewish	83	140
Mormon	20	15
Other	50	78
Other Christian	9	16
Other Protestant	41	37
N = 1,067		

Tables 6 through 9 are the most illustrative summaries in this section. Table 6 provides the overview of my independent variable, while confirming some initial assumptions about number of observations for each religion. The data, however, are unsurprising. Table 7 and 8 contextualize my forthcoming predicted probabilities and any associated standard errors. For instance, I will run a predicted probability on both Democratic- and Republican-appointed Mormon women, but there are no observations from Mormon women judges (and there are very few Mormon men, too). Overall, there are very few female judge observations, but the plurality come from Jewish judges. Of course, the lack of sample size for some denominations will be seen in the presumably large confidence interval.

Table 8 is especially interesting for what it can demonstrate about the political parties' appointment tendencies. For instance, there are twice as many mainline Protestant observations for Republican-appointed judges than Democratic-appointed ones. In addition, there are *more* than twice as many observations for Republican-appointed Catholic judges than Democratic-appointed Catholics. The disparity is even larger for Mormons and evangelicals. Indeed, we can infer that mainline Protestants, Catholics, Mormons, and evangelical Protestants judges are much more likely to be appointed by Republicans than Democrats. As for Jewish judges, the number of observations are roughly equal, with a few more Democratic-appointed observations than Republican ones. However, this roughly indicates that Jewish judges are appointed by the political parties in roughly equal proportions, at least in comparison to the other major religious denominations.

From Table 9 we can already see decisions from mainline Protestants are incredibly moderate (128 conservative votes to 126 liberal ones); those from Catholics, Mormons, and evangelicals are more conservative; and, lastly, decisions from Jewish judges are overwhelmingly

liberal. Importantly, we can see from Table 8 and 9 that the judge's appointing party does not translate neatly to vote outcomes for these denominations. Again, take mainline Protestants as an example: there are nearly two times as many Republican-appointed observations than Democratic ones for this faith, yet mainline Protestants are just as likely to vote for LGBT+ rights as against them. There is a similar trend in Catholic judges, too. Though 67.91% of Catholic observations are Republican appointees, only 55.59% of their votes are conservative. We see the same trend for evangelicals and Mormons, where they vote much more moderately than their initial appointment breakdown may suggest. In contrast, Jewish judges vote far more liberally than their appointment breakdown. Whereas 52.47% of Jewish observations were Democratic appointees, Jewish judges in this dataset voted liberally 62.78% of the time. Considering these disparities, the data indicates that appointing party is not the only predictor of decision-making on LGBT+ rights cases.

Certainly, we cannot draw any conclusions from these tendencies until the results from my regression and predicted probabilities. Nevertheless, these tables provide interesting summary statistics about my dataset and the circuit courts at-large. From these tables, we can tease out the demographics of the Court of Appeals, the potential appointing tendencies of our political parties, and the religious diversity of the bench generally and by gender and appointing party. Perhaps visualizations like these can inspire future research, including research unrelated to religious influence.

RESULTS.

In this section, I will present the results of my logit regression and predicted probabilities. At this time, it is important to remember that mainline Protestants are my reference category and are therefore omitted from my regression. In addition, positive coefficients indicate liberal, pro-LGBT+ voting behavior and negative coefficients indicate the opposite. However, these regression coefficients are related to the behavior of mainline Protestants.

TABLE 10: REGRESSION MODEL

=====	
	Dependent variable: Vote for LGBT+ Rights

Catholic	-0.04 (0.04)
Evangelical	0.04 (0.07)
Jewish	0.09** (0.05)
Mormon	-0.07 (0.09)
Other	0.08 (0.06)
Other Christian	0.12 (0.10)
Other Protestant	-0.04 (0.06)
Female	-0.11** (0.05)
Minority	-0.11 (0.24)
Common Space Score	-0.11 (0.10)
Asian/Latino	0.10 (0.25)
Black	0.03 (0.25)
Republican	-0.23*** (0.07)
ABA Above Qualified	0.07 (0.05)
ABA Qualified	-0.02 (0.06)

ABA Below Qualified	N/A
Appointment Year	0.00 (0.00)
Military	-0.04 (0.04)
Government	0.00 (0.03)
Judge	0.03 (0.04)
Law Professor	-0.01 (0.05)
Constant	-3.95 (3.09)

Observations	1,067
Log Likelihood	-714.51

Note: *p<0.1; **p<0.05; ***p<0.01
 "ABA Below Qualified" provided no coefficient; no relationship was found.

From the regression, we see that three variables have p-values sufficient for statistical significance: being Jewish, a woman, and Republican-appointed. Judaism and womanhood are statistically significant at a 0.05 level but being Republican-appointed has an even stronger relationship with case outcomes, with significance at a 0.01 level.⁵ These preliminary results indicate that the “Jewish effect” seen in previous literature may very well be replicated here. All else being equal but their religion, Jewish judges rule differently than their Christian colleagues at a statistically significant level. Unsurprisingly, Jewish judges have a positive coefficient, indicating they are at least associated with more liberal votes than mainline Protestants (who were shown to be almost perfectly neutral in their voting behavior in Table 9).

Moreover, these initial findings validate the methodology of my forthcoming predicted probabilities: both gender and appointing party are statistically significant, warranting my four probability models (one for each combination of party and gender). Notably, being female is associated with conservative outcomes. In confirmation with previous literature, the appointing party of the judge appears to have the strongest relationship with case outcomes (Harris and Sen 2019).

Since the rest of the variables fail to reach any significance level, interpreting them may be an exercise in vain since a logit model’s coefficients are relatively uninterpretable beyond significance level and positivity or negativity. Therefore, predicted probabilities were calculated to allow for a direct comparison between all denominations – including mainline Protestants – and provide a readily interpretable result: coefficients are the probability of the judge voting in favor of LGBT+ rights.

⁵ As a robustness check, two other regressions were calculated by splitting the data by appointing party. Within the same appointing party, religion is uncorrelated with voting in favor or against LGBT+ rights at my significance level (0.05). The effect of religion is the same for Democratic- and Republican-appointees.

TABLE 11: PREDICTED PROBABILITIES by GENDER AND PARTY**TABLE 11.1: REPUBLICAN-APPOINTED MALE JUDGES**

Evangelical	Jewish	Catholic	Mainline Protestant	Mormon
0.52	0.58	0.45	0.48	0.41
(0.08)	(0.05)	(0.05)	(0.05)	(0.09)

TABLE 11.2: REPUBLICAN-APPOINTED FEMALE JUDGES

Evangelical	Jewish	Catholic	Mainline Protestant	Mormon
0.41	0.47	0.34	0.37	0.30
(0.09)	(0.06)	(0.06)	(0.06)	(0.10)

TABLE 11.3: DEMOCRATIC-APPOINTED MALE JUDGES

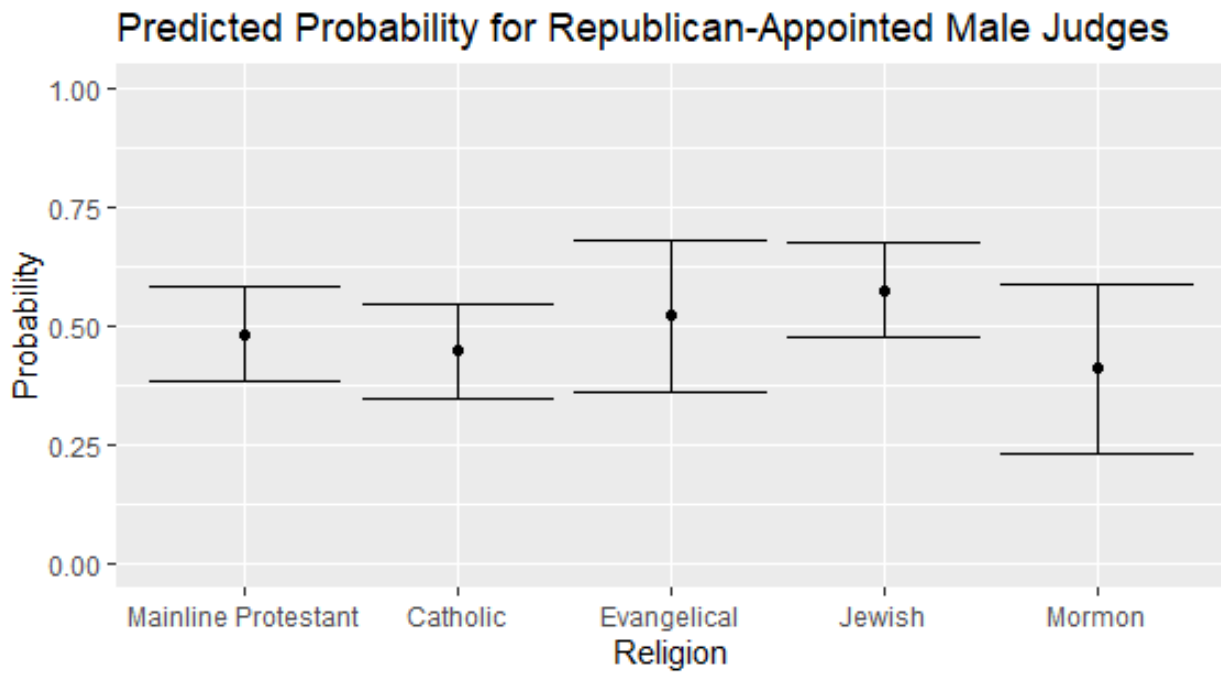
Evangelical	Jewish	Catholic	Mainline Protestant	Mormon
0.75	0.80	0.67	0.71	0.64
(0.09)	(0.06)	(0.06)	(0.06)	(0.10)

TABLE 11.4: DEMOCRATIC-APPOINTED FEMALE JUDGES

Evangelical	Jewish	Catholic	Mainline Protestant	Mormon
0.64	0.69	0.56	0.60	0.52
(0.09)	(0.06)	(0.06)	(0.06)	(0.10)

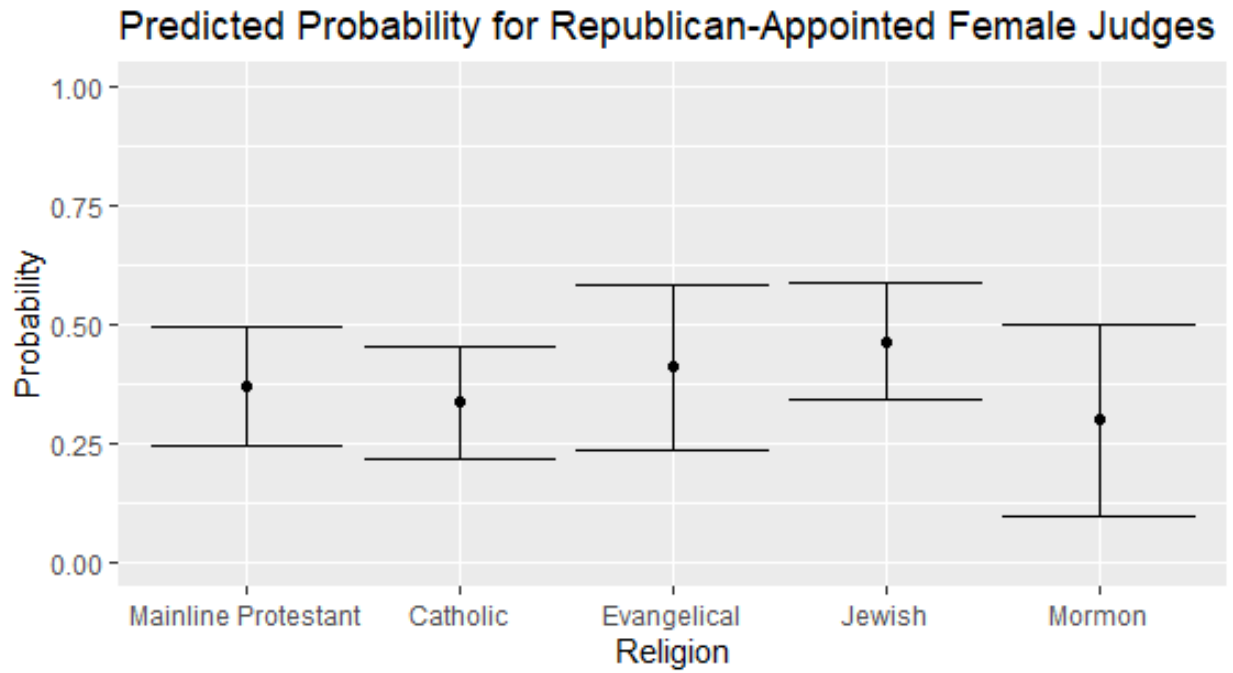
Note: For all models, N = 1,067.

FIGURE 1:



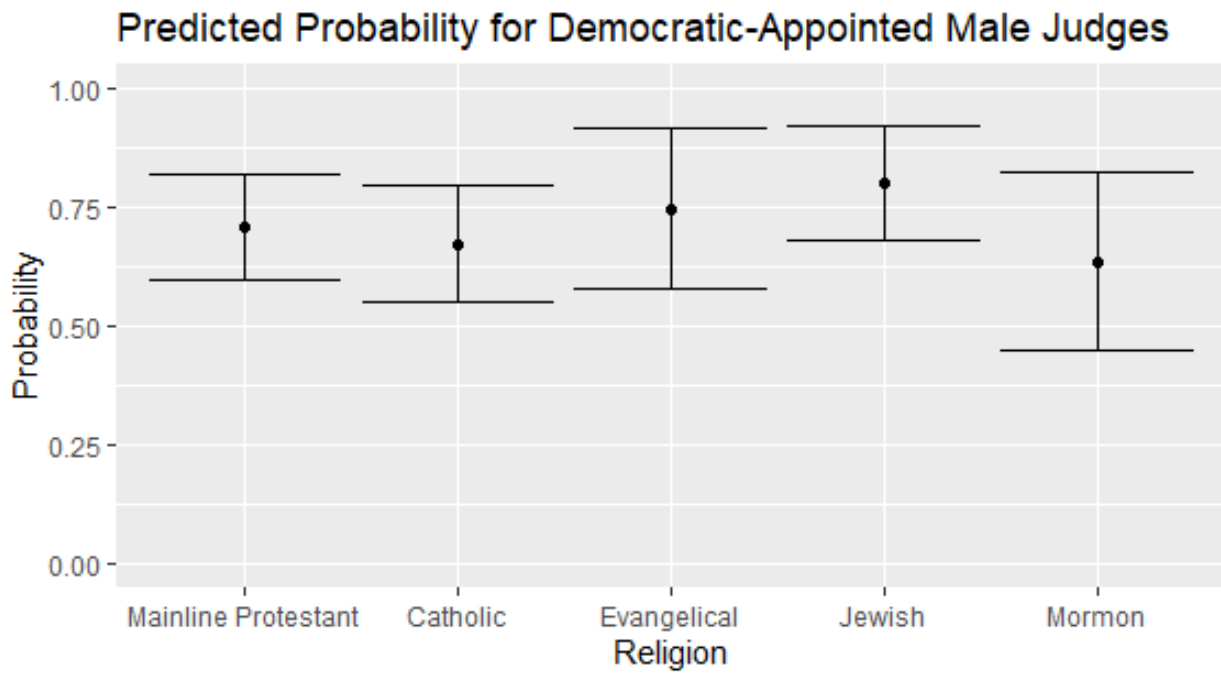
Note: Graph shows the coefficient as well as the 95% confidence interval that a Republican-appointed male judge decides in favor of LGBT+ rights. N = 1,067

FIGURE 2:



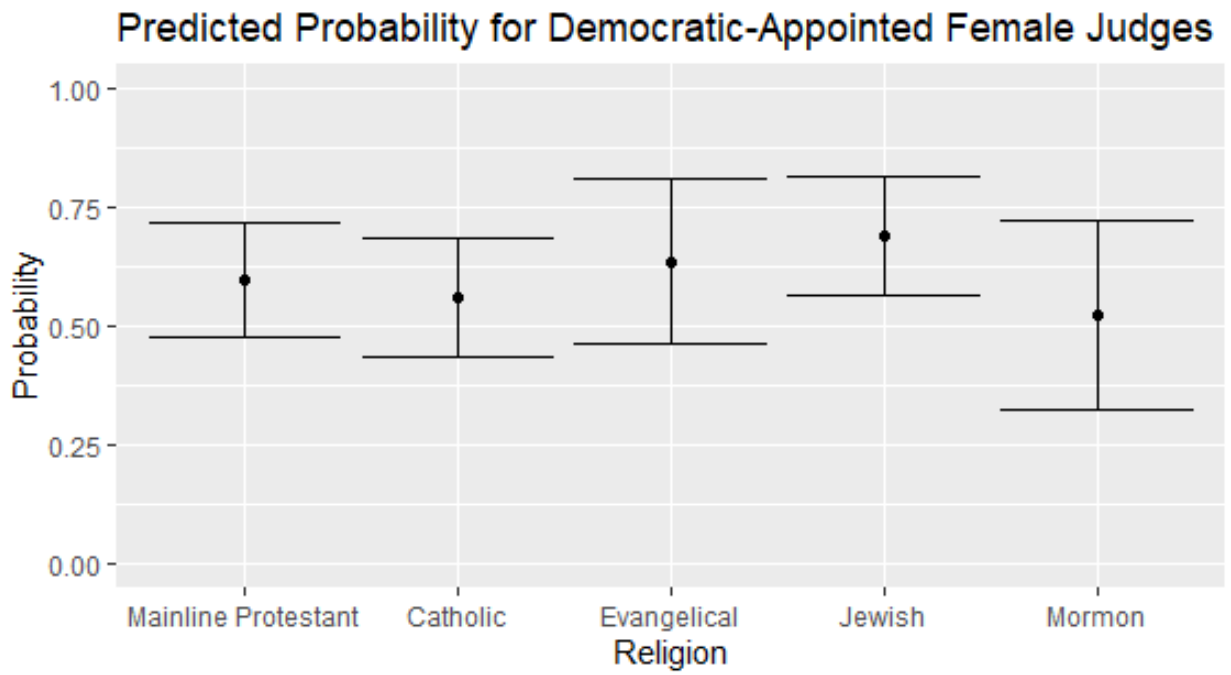
Note: Graph shows the coefficient as well as the 95% confidence interval that a Republican-appointed female judge decides in favor of LGBT+ rights. N = 1,067

FIGURE 3:



Note: Graph shows the coefficient as well as the 95% confidence interval that a Democratic-appointed male judge decides in favor of LGBT+ rights. N = 1,067.

FIGURE 4:



Note: Graph shows the coefficient as well as the 95% confidence interval that a Democratic-appointed female judge decides in favor of LGBT+ rights. N = 1,067.

Table 11 provides the precise coefficients and standard errors for the five tested religions in each model and Figures 1 through 4 visualize those same coefficients with each religion's 95% confidence interval. Immediately, we see the initial findings of the regression validated: Republican-appointed judges are less likely to rule in favor of LGBT+ rights than Democratic-appointed judges, female judges are uniformly more conservative than their same-party male counterparts, and Jewish judges are far more liberal than any other judge in each of the four models.

Evangelical and Mormon judges are subject to wide confidence intervals, diminishing the meaningfulness of their results. Across all the models, evangelicals are surprisingly the second most liberal faith, only behind Jewish judges. This is certainly contrary to my hypothesis and previously observed behavior, but considering their small sample size (only 55 observations), it is likely these results are inaccurate. Even though the results for Mormon judges are expected – being very unlikely to vote in favor of LGBT+ rights – the sample size for these judges was even smaller and included no women. Therefore, those results will largely be undiscussed, as well. Instead, my discussion section will largely focus on the results for mainline Protestants, Jews, and Catholics, with each denomination having at least 220 observations, making their results rather reliable.

Before beginning the discussion section, it warrants being said that the strength of having four predicted probabilities lies within its ability to respect how gender and appointing party influence decision-making while still demonstrating religion's visible effect on judges. Indeed, the theory of this paper was never that religion alone influences circuit judges, but that their religion in concert with other legally exogenous attributes impacts their jurisprudence. The predicted probabilities show how these variables interact with one another while demonstrating the statistically significant effect of a judge's Judaism (as seen in Table 10). As stated several times in

this thesis, religion is not the only non-legal influence in judicial decision-making, but it may be one of many. These tables and figures show the importance of using models that incorporate the interaction between several non-legal influences.

DISCUSSION.

This paper endeavors to answer whether religion influences circuit judges' decision-making on LGBT+ rights case law. I hypothesized that religion *does* influence a judge's decision-making and that appreciable differences will be observed across different faiths, largely following previous scholarship and the faith's doctrinal position on LGBT+ issues. Following my analysis, I can answer that religion does influence decision-making for Jewish judges. The results in this paper affirm previous research findings of a so-called "Jewish effect" on the judiciary. In addition, insightful religious trends are seen across party and gender: each religion has different probabilities for voting in favor of LGBT+ rights and their relative likelihood vis-à-vis one another remains constant across the models. That is to say, a Jewish judge is always the most liberal regardless of gender or party, a Catholic always the second most conservative, so on and so forth.

First, I discuss the most consequential and meaningful results: the "Jewish effect." As seen in my regression (Table 10), Judaism was the only religion to achieve any level of statistical significance. This finding was also illustrated by the predicted probabilities: in each model, Jewish judges are always the most likely to rule in favor of LGBT+ rights than their equally situated Christian colleagues. The practical consequence of this effect is considerable. In my dataset, there were 223 Jewish observations, making Judaism the third largest faith in the dataset and only trails Catholics – the largest faith – by 45 observations. Of the 223 Jewish observations, 82 were Democratic-appointed men; 35 were Democratic-appointed women; 90 were Republican-appointed men, and; 35 were Republican-appointed women. Consequently, 188 of the

observations (84.3%) involve Jewish judges who would rule in favor of LGBT+ rights *at least* 58% of the time. Of course, Democratic-appointed male Jewish judges – the second largest group within Jewish judges – rules in favor of LGBT+ rights approximately 80% of the time. All Democratic-appointed judges (52.5% of all Jewish observations) rule in favor of LGBT+ rights at least approximately 69% of the time. The most conservative bloc of Jewish judges – Republican-appointed women – are still predicted to rule in favor of LGBT+ rights approximately 47% of the time. While this is the only group within Jewish judges with a coefficient below 50%, that figure is still higher than any other faith among Republican-appointed women and is higher than Republican-appointed Mormon and Catholic men.

Among Democratic-appointed men – the most pro-LGBT+ group – Jewish judges are roughly 13% more likely than Catholics and 9% more likely than mainline Protestants to vote in favor of LGBT+ rights. Those differences persist among each model. For Democratic-appointed women, Jews are 13% and 9% more likely to rule in favor of LGBT+ rights than Catholics and mainline Protestants, respectively. For both Republican-appointed men and women, Jews are approximately 13% more likely than Catholics and 10% more likely than mainline Protestants to rule in favor of LGBT+ rights. Certainly, these are estimates, but even a small difference between the probabilities associated with different faiths translates to *meaningful* practice consequences for litigants and the LGBT+ community. Jewish judges – in consideration to their sizeable representation on the courts – have no doubt played a leading hand in advancing LGBT+ rights through the federal judiciary.

The other denominations do not reach a level of statistical significance, but the patterns they exhibit may still tease out some less strong relationships between religion and decision-making. Certainly, Figures 1 through 4 tell the same story as the regression: Jews are the most

distinct religious group, while other faiths largely exist in one another's confidence intervals. This makes it impossible to say that Catholics and mainline Protestants vote different on the basis of their religion alone, but it would be erroneous to discard these findings outright. Consider Republican-appointed Catholic and mainline Protestant men, by far the largest sub-group within these two faiths; there are 143 observations for Republican-appointed mainline Protestant men and 170 Catholic observations for the same profile. Among this group, mainline Protestants are approximately 3% more likely to rule in favor of LGBT+ rights than Catholics (48% versus 45%). For each of these faiths, Democratic-appointed men are the (distant) second largest sub-group (87 observations for mainline Protestants and 57 for Catholics). Among this group, mainline Protestants are also 4% more likely than Catholics to rule in favor of LGBT+ rights. The 3-4% difference in probability repeats for women for both political parties. Though significantly smaller than the difference seen in the coefficients for Jews and these faiths, it may still indicate that Catholic judges are more conservative than mainline Protestant judges, all else being equal. Again, even small differences between predicted probabilities can translate to meaningful practical consequences across decades of case law.

Based on the evidence, I can confirm my hypothesis that religion influences the judiciary. Even if religion only influences Jewish judges, they comprise a significant percentage of the total judiciary. In addition, I can also confirm my sub-hypothesis that there is a "Jewish effect" and that Jewish judges would vote liberally at a statistically significant level. This "Jewish effect" is seen in regression and predicted probability models with rigorous controls, demonstrating its strength. The growing evidence of a "Jewish effect" has large-scale practical consequences on the nation's jurisprudence that must be further examined.

I also hypothesized that different denominations would behave significantly different from one another, in approximate accordance with their faith's doctrine on LGBT+ issues. I must reject this hypothesis: aside from Jews, no other faith exhibited statistically significant behavior, all else being equal. In some sense, this hypothesis *may* still be true, but my analysis is simply unable to confirm this effect. Perhaps future research will still yet uncover statistically significant differences across other faiths, but as of now, that remains an open question. Perhaps faith is influential for non-Jewish judges, but not at the level that it is for Jewish judges.

CONCLUSION.

Normative expectations make it easy to forget that judges are humans, not automatons imparting unbiased, legal fact and formulae. Like any human, judges are full of experiences, identities, and biases that deeply influence them. Literature has continuously demonstrated this very fact as it relates to judges' gender, race, and political preferences, but not yet conclusively with regards to their religion. Does a judge's religion influence their decision-making? I show that it does for Jewish jurists – not at the exclusion of legal or extra-legal considerations, like gender or appointing party – but in concert with them.

While the results are not as conclusive as I would have wished, I did confirm that a statistically significant “Jewish effect” exists for LGBT+ case law, similar to what has been shown in other areas of the law (Pinello 2003; Sisk, Heise, and Morriss 2004; Shahshahani and Liu 2017). Across any probability model, Jewish judges were significantly more liberal than any other faith and Judaism was the only religion to have any statistically significant affect in my regression. All else being equal, Judaism is statistically significantly related to how a judge decides LGBT+ cases.

A growing body of research indicates that Jewish judges have unique jurisprudential tendencies, and further scholarship is essential in exploring the theoretical motivations for why

this phenomenon exists. Perhaps there are theological motivations within the Jewish tradition, or perhaps the answer lies in Jewish jurists, being a historically oppressed minority themselves, empathizing with other disadvantaged individuals. The answer remains unclear, but nonetheless essential for understanding this “Jewish effect” in particular and the decision-making of our nation’s judges more generally.

It is important to remember that this thesis does not prove, nor even argue, that religion is the only or most influential factor in judicial decision-making. Instead, I argued that religion is one of many non-legal factors that could influence a judge’s decision-making, especially when their religion is salient to the case before them. Indeed, this is why the predicted probability models accounted for the interaction of religion with appointing party and gender. This thesis shows that religion, specifically Judaism, is a statistically significant extra-legal influence in judicial decision-making on LBGT+ rights cases along with a judge’s appointing party and gender.

In the very least, the findings in this paper underscore the importance of further descriptive and normative analyses on the judiciary. On the one hand, this thesis raises concerns regarding whether we should be worried about religious influence in our judiciary, especially as it relates to the separation of church and state. For instance, if religion is even partially influential in judicial decision-making, does that bias systemically disadvantage certain individuals or legislation and undermine the Constitution? This paper also intimates broader questions regarding diversity on the bench. If identity influences judges, is it not important to consider that while appointing new judges? Indeed, diversity of jurisprudential thought is one thing, but should we not recognize and consider the practical consequences of descriptive diversity on our nation’s jurists?

While these questions require answers from individuals far more qualified than myself, it is important for each citizen to come to their own answers. Indeed, the judiciary, much like any

branch of government, is *ours* – it ultimately serves us. No doubt, the judiciary has a (often important) democratic deficit, but I believe an essential aspect of making the judiciary more democratic and fairer is by diversifying the judiciary and having citizens reap the practical benefits of said diversity. In my opinion, this conclusion has less to do with what we *ought* to have as a judiciary, but more to do with accepting the reality of human nature. Judges are individuals, and individuals are biased. Our future approach to the judiciary must be less about propagating a myth of impartial, unaffected judges and more about how we can incorporate recent scholarship into the creation of a more just, representative judiciary.

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