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## Women Rule: Gendered Leadership and State Supreme Court Chief Justice Selection

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### ABSTRACT

While women are underrepresented in many political institutions and leadership positions, nearly half of state supreme court chief justices are women. Is there something about the role of state supreme court justice that facilitates the recruitment of women to this important political position? We examine whether the selection of a woman chief is driven by the court's institutional need for women's leadership style or simply the supply of qualified justices. We find that ideological diversity drives demand for a woman chief. A supply of experienced women justices also has a significant impact on likelihood of selection.

### KEYWORDS

Chief justices; state courts;  
judicial selection

The purpose of this article is to explore the factors that lead state supreme courts to choose women as their chief justices. Despite the many criticisms levied against different levels of government that different positions of political leadership are inaccessible to women, women have been quite successful in achieving this position of authority. As of the beginning of 2014, 24 of 50 state supreme court chief justices were women. The position of chief justice on a state supreme court is not a trivial one. Chief justices are able to build consensus or sow discord on their court because of their leadership style (Caldiera and Zorn 1998; Corley, Steigerwalt, and Ward 2013; Danelski 1986; Haynie 1992; Kobylka 1989; Langer et al. 2003; Swanson 2007; Walker, Epstein, and Dixon 1988). The fruits of their leadership can have profound effects on their court's legitimacy and its confidence in the eyes of the state's citizenry (Crowe 2007; Slotnick 1979). Chief justices on state supreme courts also serve as the spokespeople for their state's court systems. These individuals must continually interact and foster good relations with their state's legislature. Failure on the part of the chief justice to maintain a good relationship with the state's legislature can result in the loss of jurisdiction, loss of funding for the state court system, and ultimately, the inability to implement policy (Boyea and Farrar-Myers 2011).

Despite the importance of this position in state politics, there is relatively little research that analyzes the recruitment of state supreme court chief justices or how state chief justices lead their respective courts after they

assume their position. Furthermore, there is no literature that attempts to explain why women have been more likely to reach this position of leadership. Are women chosen to fill this important position because they exhibit leadership skills that may be beneficial to the state supreme court's institutional well-being at a particular time? Are they chosen to fill the token role commonly referred to in the literature on women and courts (Allen and Wall 1993), or are women chosen merely because they are "present" on a given state supreme court? It is important to answer these questions if we are to deepen our understanding of the role women play in the courts in the United States. Extensive literature analyzes the effect gender has on judging in state courts. But most of this literature, while informative, does not explain why women are chosen as leaders on these courts.

We attempt to answer these questions by examining the selection of chief justices in states where the justices on a state supreme court choose the chief justice from among their colleagues on the court from 1970 to 2008. While there are five different methods of chief justice selection among the states, selection of the chief justice by the members of a state supreme court is the most common selection method. Examining this selection method also enables us to more clearly examine the role gender may play in the chief justice selection process. Many studies of leadership, both in general and in the legislative realm, suggest that men and women typically have different leadership styles (Carey, Niemi, and Powell 1998; Eagly and Johnson 1990; Eagly, Makhijani, and Klonsky 1992; Volden, Wiseman, and Wittner 2013). We contend that if state supreme court justices are aware of these differences in leadership style, they will be more likely to choose a woman for the position of chief justice when the political environment or institutional factors on the state supreme court call for collaborative leadership. Conversely, if a woman is chosen for the position of chief justice under different conditions, it is possible she is chosen to make the court more descriptively representative, or because she was simply "present" on the court at the right time.

### **State chief justices: powers and selection**

There is little research on state supreme court chief justices, though the existing literature is informative. One reason for the dearth of literature on this topic is that the position of state supreme court chief justice is not perceived to be an especially powerful position. This perception may exist because, unlike the Chief Justice of the United States Supreme Court, many state chief justices do not have the power to assign court opinions. Indeed, only 20 states allow their chief justice to assign court opinions in some form (Hughes, Wilhelm, and Vining 2015).<sup>1</sup> The voluminous literature examining opinion assignment on the United States Supreme Court shows that this power is a potent agenda-setting and organizational tool (Maltzman and Wahlbeck

1996; Johnson, Spriggs, and Wahlbeck 2005; Maltzman and Wahlbeck 2004; Wahlbeck 2006). He can use his power to reward or punish associate judges.<sup>2</sup> He can also use opinion assignment to bend judicial policy toward his own preferences, either through assigning the opinion to another justice or to himself (Johnson, Spriggs, and Wahlbeck 2005; Sill, Ura, and Haynie 2010).

Still, chief justices on state supreme courts do have power over their courts; they serve as leaders regardless of whether they assign majority opinions. The literature on this topic concludes that chief justices act strategically to use their institutional powers whenever they can (Christenson, Szmer, and Stritch 2012). Like the Chief Justice of the United States Supreme Court, state chief justices who can assign majority opinions do use their assignment powers to affect policy, often assigning the most salient opinions to themselves (Vining and Wilhelm 2011). In some states, chief justices control the order of discussion among the justices, and in some states they are given the power to vote last among their peers on decisions on the merits, which gives them the benefit of knowing other justices' views in a case (Hughes, Wilhelm, and Vining 2015). Chief justices are essential in performing institutional maintenance to ensure that the court, as a coequal branch of government, is protected from the adverse actions of the other branches of government (Boyea and Farrar-Myers 2011; Langer et al. 2003). Chief justices fulfill these goals by working with state legislatures to secure money and resources for the courts, serving as the mouthpiece for state courts, and building public confidence in state court systems (Langer and Wilhelm 2005).

Chief justices meet these ends by fostering intrainstitutional cooperation and consensus. Leadership skills are necessary to build consensus, and building consensus on state supreme courts is seen by many chief justices as the most important part of their job (Brace and Hall 1990; Langer et al. 2003; Swanson 2007). Scholars have identified two forms of leadership that successful chief justices possess: task leadership and social leadership. Task leadership is a chief justice's ability to effectively frame cases and clear his or her court's docket, while social leadership is the ability to alleviate tensions that arise among justices during the decision-making process (Danelski 1986; Hendershot et al. 2012; Walker, Epstein, and Dixon 1988). The literature concludes that failure on the part of chief justices to exhibit these forms of leadership can have important consequences for the court's institutional development. For example, it is widely accepted that the demise of consensual norms on the Supreme Court can be traced to Chief Justice Harlan Stone's inability to manage the Court's workload and the often heated interpersonal relationships among the justices during his tenure (Corley, Steigerwalt, and Ward 2013; Hendershot et al. 2012; Walker, Epstein, and Dixon 1988). Likewise, scholars indicate the rise of concurring opinions on the Court can be traced to Chief Justice Warren Burger's lack of task and social leadership (Haynie 1992; Kobylka 1989; Maveety, Turner, and Way 2010).

Chief justices must also use their leadership skills to understand and act appropriately in the environment in which their court operates, which can create difficult leadership conditions for chief justices even if they are excellent task and social leaders (Haynie 1992; Hendershot et al. 2012). One such environmental constraint is the chief justice's ability to assign court opinions; however, courts can also be constrained by factors, such as the ideological intensity of the other branches of government or the state's citizenry, whether the court's justices are electorally accountable to the people, or whether the state legislature or governor are able and willing to reprimand courts for the decisions they make (Brace and Hall 1990). Good chief justices will be able to comprehend and handle different contexts and either cajole or coerce the members of the court to react in a way that will protect the court's interests (Boyea and Farrar-Myers 2011; Langer 2003; Langer et al. 2003).

Although the leadership functions of the chief justice are substantial, there is no uniform pattern of how states select their chief justices. While pure politics determines who is selected in some states (e.g., in states that elect their chief justices or in a state where the chief justice is chosen by the governor), simply retaining a seat on a state supreme court that uses a seniority system to choose its chief justice is sufficient. In either case, leadership skills are not as important a determinant as they may be in other selection contexts.

However, one selection method quite possibly takes leadership skills into consideration: selection of the chief justice by state supreme court justices themselves.<sup>3</sup> Langer and colleagues (2003) analyze the selection of chief justices on state supreme courts where the chief justice is chosen by the members of a court and find that, when selecting a chief, justices pursue personal goals when the chief justice has the power of opinion assignment because by choosing a chief justice that shares his/her ideological proclivities, the individual justice may be better able to shape judicial policy. However, justices in states where the chief justice does not have the power of opinion assignment pursue institutional goals. They specifically find that—in the latter case—justices choose a chief justice who is ideologically proximate to other elites in the state's political system.

On the basis of the different duties chief justices perform across states and that chief justices do use the powers of their office to pursue personal and institutional interests, it is possible that associate justices analyze the leadership styles of possible chief justice candidates. It is also possible that associate justices recognize differences in leadership styles of men and women and determine that in particular environments, a leadership style attributed to men or women is superior to the other in furthering an associate justice's personal and/or institutional goals. More generally, our analysis extends Langer and colleagues' (2003) research by heeding their call to examine how selecting chief justices via peer vote diversifies chief justices on state

supreme courts (see Langer et al. 2003, 672–73). It is distinct from their analysis because, although we do attempt to discern whether personal and/or institutional goals affect whether state associate justices choose a female chief justice, we also explore the possibility that the justices on these courts select (or do not select) women to be chief justice of their respective courts simply because they are women.<sup>4</sup>

### **Competing explanations of female chief justice selection**

Because the purpose of this study is to determine when and why state supreme courts that choose their chief justice by a vote of its members choose women to fill the position of chief justice, it is important to first ascertain why justices on a state supreme court would want to choose a female chief justice in the first place. Because there is no explanation in literature pertaining to the emergence of female chief justices, we offer two competing explanations for the selection of female chief justices to state high courts.

#### ***Women's leadership explanation of female chief justice selection***

This explanation is rooted in literature examining differences in men's and women's leadership styles. There is wide-ranging research across multiple academic disciplines that explains how the leadership styles of men and women differ. If such differences exist, they may explain why male and female leaders make different decisions in different contexts, or—more importantly for this study—whether different leadership environments are more amenable to male or female leadership styles (Burnier 2005; Nutt 1990; Yoder 2001).

Research generally finds that men and women exhibit different approaches to leadership. Women in positions of leadership tend to have more interactive leadership styles. This type of leadership style is democratic in nature and emphasizes participation, collaboration, empowerment, and the building of consensus through the use of empathy and care (Eagly and Johnson 1990; Flammang 1985; Kathlene 1994). Conversely, male leadership is commonly defined as being autocratic in nature. Male leadership is characterized by the seeking out of opportunities to exert authority over outcomes. This type of leadership has proven to be most effective in hierarchical and performance-oriented cultures, whereas women's leadership is seen to be most effective in cultures interested in transformation and empowerment (Yoder 2001). Evidence of this behavior is found among women in state legislatures. For instance, women in state legislatures tend to adopt leadership styles that favor collaboration and consensus building that is distinct from men's political leadership (Carey, Niemi, and Powell 1998; Flammang 1985; Kathlene 1994; Rinehart 1991; Volden, Wiseman, and Wittner 2013).

Women's leadership style might have a particularly significant impact when it comes to selecting chief justices on state supreme courts. Although it is true that chief justices are generally considered to be "leaders over peers rather than subordinates" (Boyd 2013, 97), chief justices perform a multitude of inter- and intrainstitutional tasks where they are required to exhibit their leadership capabilities. For example, chief justices are called upon to provide state-of-the-judiciary addresses, petition their state legislatures for resources, make public statements and appearances, and generally foster amicable relations between the judicial branch and other branches of government (Douglas and Hartley 2003).

Chief justices must provide leadership for their peers on the bench. First, a chief justice must be able to foster consensus on his or her court. This leadership function is vital for institutional maintenance of a court (Boyea and Farrar-Myers 2011). When there is too much dissensus on a court, it "weakens precedent, confuses law, encourages further appeals, and leads to dissatisfaction among the justices" (Sheldon 1999, 15). Furthermore, continued dissensus on a court can lead to tensions with the other branches of government and can even lead to interbranch retaliation (Langer 2003). In times like these, courts must promote universalistic and consensual interbranch agreement to shield the courts as institutions from harm (Boyea and Farrar-Myers 2011; Brace and Hall 1990, 1993; Sheldon 1999). Thus, a leadership style focused on collaboration to reach consensus (typically associated with women's leadership style) should be in demand.

If this explanation is accurate, we should observe state high courts selecting female chief justices when certain political and institutional conditions are present. First, we should observe states selecting female chief justices when there is a high level of dissensus on a court. There are no viable measures of consensus or dissensus of all state high courts over time; however, one condition that leads to greater dissensus—in the form of more dissenting and/or concurring opinions—on a court is ideological disparities among the justices (Goff 2006; Maveety, Turner, and Way 2010). This leads us to formulate the following hypothesis:

*Women's Leadership Hypothesis 1: State supreme courts where the justices themselves choose the chief justice will be more likely to choose a female chief justice when there is greater ideological disparity among the justices on that court.*

Second, we should observe states selecting female chief justices when there is ideological disparity between the court and other branches of state government. Growing ideological disparity between a state supreme court and other branches of state government could result in retaliation of other branches of state government to court decisions. At these times the branches of state government and other justices on the state supreme court look to the court's chief justice to lead the court by providing legal

clarity, generating consensus, and reprimanding justices for objectionable decisions (Langer 2003). It appears that this type of environment would be suitable for a women's leadership style. This leads us to formulate a second hypothesis:

*Women's Leadership Hypothesis 2: State supreme courts where the justices themselves choose the chief justice will be more likely to choose a female chief justice when there is greater ideological disparity between the court and the other branches of state government.*

Finally, we should observe a conditional effect of opinion assignment on the selection of a female chief justice. Because it is implied that women will actually lead differently than men, we should see women chosen in states where chief justices possess the tools to proactively resolve intracourt dissensus and nurture interbranch relationships. Therefore, we would expect that states that give their chief justice the power of opinion assignment will be more likely to select a female chief justice than other states when there is greater intracourt or intrabran­ch conflict.<sup>5</sup> This leads us to formulate a third hypothesis:

*Women's Leadership Hypothesis 3: State supreme courts where the justices themselves choose the chief justice will be more likely to choose a female chief justice when the chief justice has the power of opinion assignment.*

### **Supply-side explanation for female chief justice selection**

Of course, it is also entirely plausible that women are chosen to fill the position of chief justice for reasons other than the fact that they are women. Although there is substantial literature on the topic of whether male and female judges decide cases differently and exhibit different behaviors on the bench (see Boyd, Epstein, and Martin 2010 for a thorough discussion of this topic), there is a growing recognition among scholars that gender may not have as much of an effect on judicial decision making as previously thought. This is not to say that there are not differences between male and female judges. However, the growing consensus—even among female judges who consider themselves to be feminist judges—is that the differences between men and women on the bench are small (Kenney 2012b).

Instead of emphasizing the essentialist proposition that male and female judges are different, judges who have joined the discussion about the differences between male and female judges have instead focused on the need to increase the number of female judges to increase diversity and points of view on a court to make better decisions (Besson 2005; Kenney 2012b). These arguments are analogous to the extensive debates about the importance of descriptive representation in political institutions generally, and the courts in particular.



Two theories commonly used to explain descriptive representation and its impact on policy making are critical mass theory and the proportionality model. Critical mass theory posits that a certain number of members of an insular group need to be present in an institution before change can occur. In contrast, the proportionality model examines the ratios between token members of a group and the members of a dominant group to ascertain how different tipping points can change the operational culture of an organization (Beckwith 2007; Kanter 1977). Despite their differences, both theories emphasize the number of people from an insular group that operate in an institution and not the characteristics of the insular group that make them unique in the first place.

Based on these theoretical explanations of the importance of descriptive representation in the policy-making process, a possible explanation for the selection of a female chief justice by her colleagues on a state supreme court could be a supply-side explanation of chief justice selection: the probability of a female justice being selected as chief justice will increase as more women continue to fill more positions on state high courts. That is, it is possible women are selected to be chief justice merely because there are several female justices “present” on a given court, or because political conditions in that state make it more likely that a female justice will be chosen because descriptive representation will be a goal in and of itself in a particular state. For example, Prehus (2006) finds that minorities are more likely to obtain institutional positions of leadership in Democrat-controlled state legislatures because that insular group has been incorporated into the Party. Smith, Reingold, and Owens (2012) also find that women are more likely to be descriptively represented in positions of power in American cities when the ideological climate of that city is more liberal. In this alternative explanation, leadership skills attributed to men and women are unimportant. Rather, it is the broader political environment in which the choice of chief justice is made that is important.

If this explanation is accurate, we should observe state high courts selecting female chief justices when there are a greater number of female justices sitting on the court. While this observation may be a mundane one, it does align with the literature on descriptive representation and candidate emergence concluding that members of insular groups are more successful in attaining higher offices when more members of that group occupy other political positions surrounding that office. For example, Windett (2011) finds that female candidate emergence for governor is more likely when there are more women in the state legislature. Likewise, Smith, Reingold, and Owens (2012) find that female mayoral candidates are likely to emerge when there are more women on a city council. There is similar evidence in the literature examining the emergence of female justices on state supreme courts. A common finding in the literature is that the selection method used by a state to choose its justices does not affect the emergence of a female justice,

although there are apparent upward trends in the selection of women to state high courts over time (Bratton and Spill 2002; Hurwitz and Lanier 2008; Kenney 2012a). Women are also more likely to be seated on state supreme courts when there is greater turnover on those courts due to institutional rules, and when there is a heightened attention to diversity due to the appointment of minorities to the Supreme Court (Golezhauser 2011). However, the emergence of a female state chief justice most likely differs from the emergence of an associate justice in one important aspect. Research shows that women often emerge as choices for associate justice when a court is predominantly or entirely composed of male justices (Bratton and Spill 2002). Yet there is no evidence to suggest that associate justices would choose a woman as chief justice if she was the only female justice on a state supreme court. This leads us to formulate our first supply-side hypothesis:

*Supply-Side Hypothesis 1: State supreme courts where justices themselves choose the chief justice will be more likely to choose a female chief justice when there are more female associate justices on the court.*

We should also observe state supreme courts choosing female chief justices when those female justices have more seniority on their court than their other colleagues. Langer et al. (2003) find that previous experience on the bench serves as an important predictor of candidate emergence for the position of chief justice. Because the supply-side explanation of female chief justice selection is based on objective criteria like experience, we would expect that experience will remain a valid predictor of candidate emergence regardless of the gender of the chief justice being chosen. This leads us to our second supply-side hypothesis:

*Supply-Side Hypothesis 2: State supreme courts where justices themselves choose the chief justice will be more likely to choose a female chief justice when a female justice has more experience on the state supreme court than their other colleagues.*

Finally, we should observe state supreme courts choosing female chief justices when national and state-level political conditions are conducive to the selection of a female chief justice. These conditions would be prevalent if there is a Democratic president, when a state's citizenry is more liberal leaning, or when a state's institutions—including the court itself—are more liberal leaning. It should also be prevalent when other branches of state government have women in important positions of leadership.<sup>6</sup>

## **Data and methods**

The aim of this study is to explain why some state supreme courts, when given the choice to select their own chief justice, make the decision to select a woman to that position. We examine two explanations: (1) that courts

strategically choose women based on perceptions of gendered leadership characteristics that fill some institutional goal (e.g., collaboration with other state institutions, intracourt bargaining) and (2) that courts select a woman when an experienced woman associate justice(s) is present. We consider that multiple instances of a court selecting a woman justice may further elucidate the women's leadership versus supply-side explanations for selection. Given our theoretical approach and following similar approaches in the literature (most notably, Langer et al. 2003), we test our hypotheses with an event history model. Event history analysis is used to examine not only the timing but also the situational characteristics that lead to a specific event, in our case, the selection of a woman as a state supreme court chief justice. To maximize methodological flexibility, we estimate a Cox proportional hazards model (Box-Steffensmeier and Jones 1997; Scott and Bell 1999). Cox models eliminate concerns about duration dependence and relieve assumptions about the impact of time on the likelihood that the event will occur, which is particularly useful when the baseline hazard is unknown. The hazard rate effectively represents the probability of selection of a woman chief justice per unit of time (in this case, year). The related survival function is the probability that a state will not choose a woman chief during survival time  $t$ .

Our data include multiple selections of women by individual courts; this provides us with a richer examination of the factors that might influence selection of a woman, given that some courts have selected a woman chief justice more than once during the time period in question. Thus, we adjust the Cox model for multiple events, using robust standard errors with observations clustered by state.<sup>7</sup> Because we are particularly interested in states where supreme courts select their chief justices via peer vote, we observe the 20 states that use this method of chief justice selection (see Table 1) with the goal of identifying those factors most likely to lead to selection of a woman.

The window for selection opens in 1970, as Arizona's state supreme court selected Lorna Lockwood as its first woman chief justice.<sup>8,9</sup> Florida and Michigan, the last states to select a woman chief justice during the time period in question, did so in 2008; however, data are right-censored (i.e., the period of observation concludes with seven states surviving).<sup>10</sup> This results in

**Table 1.** States with Peer Selection of State Supreme Court Chief Justice.

Alaska	Missouri
Arizona	New Mexico
Colorado	Oklahoma
Florida	Oregon
Georgia	South Dakota
Idaho	Tennessee
Illinois	Utah
Iowa	Virginia
Kentucky	Washington
Michigan	Wyoming

726 total state/year observations. The risk set is more narrowly defined as those years in which the courts in question had a chief justice vacancy. The risk set thus yields 226 state/years.

### **Dependent variable**

The dependent variable effectively measures the time until a state supreme court selects a woman chief justice. The unit of analysis is the state-year, or more specifically, each state supreme court is “at risk” of selecting a woman chief justice in each year covered by the time period of this study. Selection of a woman chief justice occurred in 13 of 20 states during the time period in question (1970–2008). As previously stated, we allow for multiple selections of a woman as chief justice; across the 13 courts that did select a woman chief justice from 1970 through 2008, women were selected 23 times.

### **Independent variables<sup>11</sup>**

In keeping with previous literature and our theoretical propositions about why and when state supreme court justices might choose a woman as their chief, we control for both institutional and political factors statewide. We control for the **state supreme court ideological median** by using party-adjusted judge ideology scores (hereafter, PAJID scores) (Brace, Hall, and Langer 2000), which measure justice ideology on a scale of 0 (most conservative) to 100 (most liberal). We also consider the range of ideological diversity by including a control for the **standard deviation of the court’s ideological median** and the **range of justice ideology on the court**.<sup>12</sup> We expect that more liberal courts will be more likely to select a woman as chief justice and that more ideologically diverse courts might also have reason to select a woman, because such diversity could increase demand for a more collaborative leadership style to bridge basic ideological disagreements among justices.

A state supreme court might demand a woman chief justice to navigate interinstitutional ideological conflict as much as intrainstitutional diversity. To control for this possibility, we calculate the **ideological distance between the state supreme court and the state elite**, using PAJID scores and state elite (government) ideology scores developed by Berry and colleagues (1998). The Berry et al. (1998) scores also range from 0 (most conservative) to 100 (most liberal) and account for gubernatorial ideology as well as legislative ideology (including both chambers). We expect that greater distance signals an increased likelihood of selecting a woman chief justice, again on the assumption that the court recognizes its need to compete with ideologically distant institutions, thus requiring a leader with a collaborative bargaining approach. In addition, we control for whether the state has a **female governor** as a proxy for political acceptance of women leaders in state governing institutions.

Justices in states with sitting female leaders might be more likely to select a woman chief justice, either as a reflection of political culture or experience with women's leadership style. For similar reasons, we also include the *ideological distance between the state supreme court and the citizenry*, again utilizing scores devised by Berry et al. (1998). As with elite ideology, citizen ideology scores range from 0 (most conservative) to 100 (most liberal).

It is possible that state supreme courts choose a woman not because institutional needs demand a woman's leadership style but because political conditions and the presence of experienced women on the bench allow women leaders to emerge. We measure the political availability of women justices in two ways: the *number of women on the bench* in a given state and the *average seniority of women on the bench* in a given state. If supply-side explanations are correct, an increase in each of these should lead to an increased probability of the selection of a woman chief justice.

Finally, we control for institutional and environmental structures that might influence justices' perceptions of the role of the chief and the extent of his or her powers. For instance, *chief justices' length of term* could operate in one of two ways. Longer term lengths could attract more justices to seek the position, including women, because a longer term equates to more policy power and more time to build relationships and coalitions, but it might also increase competition among the justices for this leadership role, making it less likely for justices to select a woman who is perceived as a consensus builder instead of a policy ideologue. Whether state supreme court justices are appointed or elected may also influence justices' willingness to select a woman. Justices in states where the *method of judicial selection* includes some sort of election may be less likely to select a woman if the state's prevailing political culture is not as friendly to women leaders. To refine this expectation, we also control for the interaction of *ideological distance between the court and citizenry \* judicial selection*. Perhaps the most significant formal power of state supreme court chief justices, we enter a control for the ability of the chief to make *opinion assignment*. As suggested by Langer et al. (2003), the impact of opinion assignment on chief justice selection is likely conditional upon ideological factors. We use two interaction terms to explore this possibility: *opinion assignment \* standard deviation of court ideological median* and *opinion assignment \* ideological distance between court and state elite*. We also control for national political climate by including a dummy variable indicating whether a *Democratic president* was in office in each state-year.

## Discussion of results

We estimate two Cox proportional hazards models, the findings of which suggest that state supreme courts choose women chief justices as a matter of institutional characteristics and demand based on the ideological

environment on the court, although the presence of qualified women and the political environment are crucial enabling factors. Hazard rates and coefficients for both models are presented in Table 2.

The second and third columns in Table 2 report hazard rates and coefficients from the full specification of the model (Model 1). Hazard ratios above 1.0 correspond to positive coefficients, indicating an increase in the probability of an event taking place, in our case, the selection of a woman chief justice. Hazard ratios below 1.0 correspond to negative coefficients,

**Table 2.** Factors Influencing Selection of a Woman State Supreme Court Chief Justice (1970–2008) Results of Cox Proportional Hazards Model

Variable	Model 1		Model 2	
	Hazard Ratio ( $p >  z $ )	Coef. ( $RSE$ )	Hazard Ratio ( $p >  z $ )	Coef. ( $RSE$ )
Court Ideological Median	1.007 (0.798)	0.006 (0.026)	1.003 (0.873)	0.003 (0.021)
Standard Deviation of Court Ideological Median	1.16 (0.096)	0.153 (0.096)	1.158 (0.000)	0.147 (0.035)
Court Ideological Range	0.905 (0.001)	-0.099 (0.001)	.906 (0.000)	-0.098 (0.014)
Ideological Distance between Court and Citizenry	0.999 (0.985)	-0.001 (0.050)	0.993 (0.867)	-0.006 (0.038)
Ideological Distance between Court and State Elite	0.997 (0.858)	-0.002 (0.016)	0.994 (0.657)	-0.005 (0.013)
Female Governor (=1)	0.913 (0.879)	-0.090 (0.593)	0.626 (0.414)	-0.467 (0.571)
Number of Women on the Bench	1.765 (0.016)	0.568 (0.234)	1.809 (0.003)	0.593 (0.196)
Average Seniority of Women on the Bench	6.462 (0.090)	1.865 (1.100)	5.738 (0.093)	1.747 (1.040)
CJ Length of Term	1.002 (0.003)	0.002 (0.003)	1.019 (0.014)	0.018 (0.007)
Method of Judicial Selection (Elected = 1)	0.946 (0.940)	-0.054 (0.733)	0.503 (0.187)	-0.687 (0.521)
Opinion Assignment (=1)	0.491 (0.494)	-0.711 (1.04)	0.372 (0.014)	-0.988 (0.404)
Democratic President (=1)	14.872 (0.003)	2.69 (0.895)	15.487 (0.003)	2.740 (0.922)
Opinion assignment*Std. Dev. of Court Ideological Median	0.964 (0.669)	-0.036 (0.085)	-	-
Opinion assignment* Ideological Distance between Court and State Elite	1.000 (0.994)	0.000 (0.025)	-	-
Ideological Distance between Court and Citizenry*Judicial Selection (Elected = 1)	0.918 (0.152)	-0.848 (0.059)	-	-
N	226		226	
Log pseudolikelihood	-67.08		-67.93	
Wald chi2 (prob>chi2)	387.66 (0.000)		484.65 (0.000)	

Notes. Results of Cox proportional hazard models with time-varying covariates, using the Breslow method for ties. Hazard ratios greater than one indicate a positive relationship; hazard ratios less than one indicate a negative relationship. Dependent variable is number of years passed before the state supreme court selects a woman chief justice.

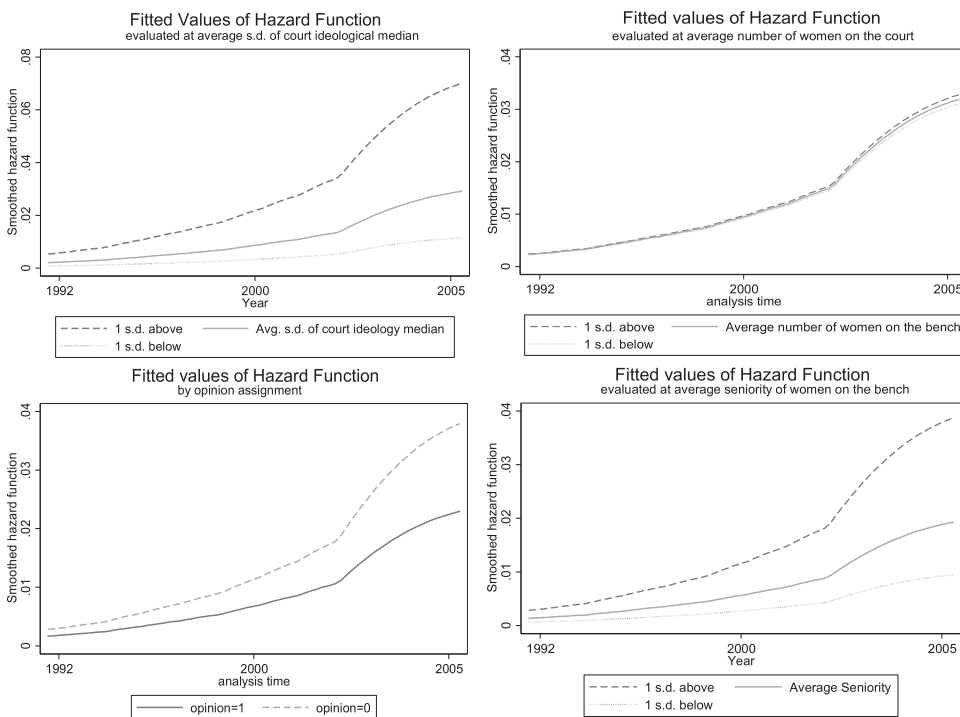
indicating a decrease in the probability of selecting a woman chief justice. While the ideology of the state court and its ideological distance from both citizens and state institutions has no statistically significant bearing on the selection of a woman chief, intrainstitutional ideological diversity does make a difference. With respect to our Women's Leadership hypotheses, a one-unit increase in the standard deviation of a court's ideological median results in a 16 percent increase in the probability that court will select a woman chief. The more justices diverge ideologically from the median justice, the more likely it is that they will choose a woman, perhaps as a way to bridge the divide between and among colleagues. However, courts with greater ideological range are less likely to choose a woman; a one unit increase in the distance between justices on the end left and end right results in a 10 percent decrease in the likelihood of choosing a woman chief. It is possible, then, that there is an ideological limit to the demand for a woman chief. While individual divergence from the median favors the selection of a woman justice, in more extreme ideologically combative environments, the consensus-building leadership style that is associated with women leaders might be less desirable.

Model 1 also provides strong support for our competing explanation for the rise of women chief justices: that a supply of emerging women justices naturally leads to the likelihood of a woman being selected as chief. A one standard deviation increase in the number of women on the bench leads to a 76 percent increase in the likelihood of selecting a woman chief justice, whereas a one unit increase in the average seniority of women on the bench leads to a sixfold increase in the probability of selecting a woman. Two of our controls for institutional structures and political environment reached statistical significance. Justices appear to be slightly more likely to select a woman chief in states where the chief's term is longer. And national political environment has a significant impact, with the presence of a Democratic president translating to a 14-fold increase in the probability that a woman chief will be selected.

It is interesting that the power of the chief to assign opinions—even when conditional upon ideological factors and judicial selection method (represented by interaction terms)—does not appear to influence the likelihood of selecting a woman chief. On the basis of this finding, we estimated a second model eliminating those interaction terms. The results of Model 2 are presented in columns 4 and 5 of [Table 2](#). All variables that were statistically significant in Model 1 retain their significance in Model 2, with fairly consistent hazard ratios and coefficients across both models. Only one variable—opinion assignment—is newly significant in Model 2. Here, state courts that yield opinion assignment power to the chief are 73 percent less likely to select a woman chief than state courts where the chief does not have such power, suggesting that fellow associate justices may not be comfortable selecting a woman chief when the institution grants that chief significant power.

To further elucidate the factors influencing the likelihood of selecting a woman chief across time, we plotted fitted values of the hazard function in Model 2 for our four most substantively significant variables: standard deviation of the court's ideological median, number of women on the bench, average seniority of women on the bench, and the presence of opinion assignment power. Each variable is fitted at its mean and at one standard deviation above and below that mean.

The hazard functions in Figure 1 estimate the effect of covariates on the likelihood (or risk) of selecting a woman chief justice over time. The upper-left panel plots the fitted values of the hazard function for the standard deviation of court ideological median. While the hazard rate at all values is relatively low prior to the year 2000, states at just one standard deviation above the mean of that variable are at significantly greater risk of selecting a woman chief after roughly 2002. Similarly, states with an average seniority of women at just one standard deviation above the mean are clearly at greater risk of selecting a woman than are states at the mean (lower-right panel). The hazard rates for the other two variables presented here—average number of women on the court (upper-right panel) and opinion assignment (lower-right panel)—hew closer to the mean, with slighter changes above and below the mean hazard rate.



**Figure 1.** Fitted Values of Hazard Function for Select Independent Variables Model 2 —Cox Proportional Hazards Model.



## Conclusion and future discussion

In general, we find merit in both explanations for the rise of women chief justices on state supreme courts. State supreme courts are more likely to choose women chiefs when the court—liberal or conservative—is ideologically diverse with a readily available supply of women who are experienced and have paid their dues on the bench. However, there is a caveat with respect to ideology. As ideological diversity gives way to ideological polarization, courts are significantly less likely to choose a woman chief. This could be because fellow justices do not distinguish between men's and women's leadership style in more polarized institutional settings or because leadership style is not perceived as a major factor in selecting a chief justice under those conditions. Alternatively, women justices could be perceived as more ideological and thus less desirable leaders on polarized courts. In other words, justice perception of a woman's ideological dogmatism might matter more than reality.

Furthermore, institutional setting matters. Just as with ideological conditions, women are more or less likely to be selected given certain institutional conditions. Women are slightly more likely to be selected as chief in courts where chief justice term length is greater, signaling that justices are not suspicious of selecting a woman chief for longer periods of time. However, Model 2 reveals that justices might be less willing to give a woman more significant powers than longevity: specifically, the power to assign opinions to fellow justices, regardless of ideology. Langer et al. (2003) find that opinion assignment is an important conditioning factor when it comes to whether justices pursue personal or institutional goals in selecting a chief, and we find similar results in one of our model specifications. Not only does ideological diversity alter the chief selection calculus but the length of the chief's term and the power available to her together have an impact on the likelihood of selection. Thus, it is entirely possible that women judges might be viewed differently in these terms under specific conditions. Future research should examine this possibility further, perhaps through a comparison of courts who select their chiefs with those that do not directly select their chiefs.

If a state supreme court wishes to diversify its leadership, one prescription is clear: women must advance through the court's ranks to increase the probability of being selected as chief justice. Without an institutionally acceptable (i.e., experienced) supply of women judges, a court will not have the option of selecting a woman leader, and women chiefs will not have the opportunity to exercise their leadership on the courts.

Our plans for further research on this topic include the examination of whether female state supreme court justices directly foster greater consensus on their courts. The results of our large-N study have identified results that suggest there is some interesting qualitative data to be gathered here.

Although our analysis does not provide primary source evidence that state supreme court justices consider different leadership styles when choosing a chief justice, this does not mean that men and women in fact exhibit the same leadership styles once they assume the position of chief justice. A possible way forward for this line of research would be to examine via survey research and interviews whether female chief justices on state supreme courts are able to foster more consensus on their courts than male chief justices. This line of research would also prove fruitful because, unlike the findings presented here, it would not be limited to state supreme courts where the justices on the court choose their chief justice.

One positive implication of our research is that descriptive representation matters on state supreme courts. In short, more women on a state supreme court increases the chances women will eventually lead that court. On the basis of previous research showing that descriptive representation increases legitimacy, it is worthwhile to determine if—regardless of selection method—more women chief justices on state supreme courts increases legitimacy with the public. If so, this will have important implications not just for state supreme courts but for women’s emergence as leaders in other state institutions as well.

## Notes

1. The states that allow some form of discretionary opinion assignment are Arizona, California, Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Montana, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, West Virginia, and Wyoming.
2. We use “he” in this instance because to date only men have served as Chief Justice of the United States Supreme Court.
3. It has been asked why we only analyzed this one type of chief justice selection method because other selection methods may also take leadership style and ability into account. Our rationale follows the rationale of Langer et al. (2003) for studying chief justice selection in states that select their chief justice via a vote from the sitting members of the court. First, it allows us to examine factors about why some candidates are selected over others. Second, because the justices in these states choose a chief justice from among their own, we have complete data on possible choices for chief justice. While it is possible that qualities examined here may be used to assess possible chief justices in states using other selection methods, those who select the chief justice in these states often assess possible candidates who are not sitting justices. Because this is the case, we would not be able to identify all potential nominees for chief justice in these states.
4. There is anecdotal evidence of justices taking personal factors like gender into account when choosing their chief justice. The best example involves the (non) selection of Elizabeth Lacy as chief justice of the Supreme Court of Virginia. Prior to a change in the law, Virginia chose its chief justice by seniority. The change in the law allowed the justices to choose their own chief justice. Justice Lacy was the most senior member of the court at the time the justices got to choose their first

chief justice; however, she was not chosen to be the new chief justice. Rather, the justices chose Leroy Rountree Hassell Sr. as their chief justice. Chief Justice Hassell was the first African American to serve as chief justice on the Supreme Court of Virginia.

5. It is plausible that justices on a state high court may believe that they can appease state elites or the state's citizenry simply by choosing a female chief justice without regard for her possible leadership style or capabilities. Examples of this type of behavior abound in other areas of American politics (e.g., Ronald Reagan nominating Sandra Day O'Connor to the United States Supreme Court, Walter Mondale choosing Geraldine Ferraro as his vice presidential running mate in 1984, and John McCain choosing Sarah Palin as his vice presidential running mate in 2008). This is not to say that these people do not have the capacity to lead; however, it is understood that these women were chosen for these positions in part because they were women.
6. It should be noted that the power of opinion assignment is not relevant to the supply-side explanation of selection. State supreme courts that are simply interested in diversifying their court are not concerned with differences in leadership styles and therefore should also be uninterested in how male or female chief justices use this power—at least in the context of male and female leadership styles (see Langer et al. 2003).
7. The Schoenfeld test statistic confirmed proportionality of the hazard rate across circuit-year observations for the risk set. For Model 1 ( $\text{prob} > \chi^2 = 0.245$ ). For Model 2 ( $\text{prob} > \chi^2 = 0.114$ ).
8. The first state/year for Virginia is 2002, because that was the first year the court was able to select its own chief justice.
9. Justice Lockwood served as Arizona's chief justice twice: from 1965 to 1967 and again from 1970 to 1971.
10. All states except for Virginia are analyzed from 1970 to 2005. We selected this time range because of limitations on our ability to collect PAJID scores before and after these years. However, we were able to extend the time range for nearly all 20 states, given that there was no turnover on the supreme courts under observation. We were able to extend the time period as follows: 2006 (CO, GA, IL, KY, OR, TN); 2007 (AK, AZ, ID, MO, NM, OK, WA); 2008 (FL, SD, VA); 2009 (MI); 2010 (UT, WY).
11. Descriptive statistics for all variables are included in Appendix A.
12. Because our unit of observation is the state/court-year rather than the justice-year, we use the range of court ideology in place of distance between justices and the court median to approximate the diversity of ideological positions on the bench.

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## Appendix A

**Table 3.** Descriptive Statistics for Select Variables

Variable	Mean (s.d.)	Std. Error
Court Ideological Median	40.79 (14.41)	0.533
Standard Deviation of Court Ideological Median	10.09 (7.27)	0.268
Range of Court Ideology	24.31 (15.74)	0.582
Ideological Distance between Justice and Citizenry	8.72 (8.18)	0.266
Ideological Distance between Court and State Elite	16.78 (12.50)	0.439
Female Governor (=1)	.052 (.222)	0.008
Number of Women on the Bench	.796 (.946)	0.005
Average Seniority of Women on the Bench	.241 (.278)	0.000
CJ Length of Term	8.40 (20.08)	1.06
Method of Judicial Selection (Elected = 1)	.412 (.492)	0.756
Opinion Assignment (Power to Assign = 1)	.221 (.415)	0.015
Democratic President (=1)	.318 (.466)	0.017