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Decisionmaking on Multimember Courts: The Assignment Power in the Circuits

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In cases heard by multimember courts, one judge usually has the primary responsibility for assigning the majority opinion. In this article, we investigate whether this “assignment power” affects outcomes on three-judge panels in the U.S. federal circuit courts. To do so, we gather novel data on all circuit court cases published between 1993 and 2007, identifying the judge with primary opinion-assignment responsibility in each one. Under circuit rules, the same judge may have the assignment power on one panel and not on the next, depending on the composition of each panel and the relative seniority of its members. Exploiting between- and within-circuit variation in institutional procedures that determine the assignment power, we estimate that the assignment power reduces the probability that a judge dissents by 16 percent. We find evidence that assigning judges influence case outcomes through strategic assignment of opinions to other panel members, rather than through strategic self-assignment of majority opinions. Our results suggest that decisionmaking on multimember courts is shaped not only by panel composition but also by the allocation of the assignment power among panel members.

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I. INTRODUCTION

A standard assumption in the judicial behavior literature holds that decisions of multimember courts conform to the preferences of the median judge (e.g., Black, 1948; Martin, Quinn, and Epstein, 2004). In these settings, however, one judge usually has the responsibility for assigning the panel opinion, and the judge with this “assignment power” might wield disproportionate influence regardless of whether they are the median member.¹ The assignment power offers judges an opportunity to shape case outcomes by assigning opinions to themselves (allowing them to assert agenda control through the opinion draft), by strategically allocating opinions to sympathetic copanelists, and by using desirable and undesirable writing assignments as bargaining chips with which to influence other panel members (Cheng, 2008).

In this article, we investigate the ways in which allocation of the assignment power among panel members affects decisionmaking in the U.S. federal circuit courts. Circuit court cases are decided by three-judge panels, with one of the panel members designated as the “presiding judge.” The presiding judge wields the gavel and sits centerstage at oral argument, enforces certain procedural rules during advocates’ presentations, and typically leads a discussion among panel members afterwards at which judges cast their preliminary votes on each case (Boudin, 2009, p. 1687; Bowie, Songer, and Szmer, 2014, p. 63). The chief judge of the circuit is the presiding judge any time she sits on a panel; otherwise, the most senior active judge on the panel presides (28 U.S.C. § 45(b)). Importantly, although most circuit courts adhere to a similar structure, there are subtle differences in internal rules across circuits that can be exploited to study the effects of the assignment power. In one circuit (the Fourth), the formal power to assign panel opinions lies with the chief judge, whether or not the chief judge is a member of the relevant panel.

¹ Judges have suggested that the assignment power might be used to shape outcomes (e.g., Fortas, 1975), and scholars have studied the effect of the assignment power outside the context of the federal circuit courts (e.g., Hettinger, Lindquist, and Martinek, 2003; Lax and Cameron, 2007; Collins and Martinek, 2011; Kastellec, 2011; Eisenberg, Fisher, and Rosen-Zvi, 2013; Beim and Kastellec, 2014; Kastellec, 2017). In a now-public 1972 memorandum, Supreme Court Justice William O. Douglas alleged that Chief Justice Warren Burger used his assignment power “to keep control of the merits” in a high-profile case (Wahlbeck, 2006, p. 1730). Likewise, Harold Medina, a longtime judge on the second circuit, once wrote that “the ultimate and definitive decision in a particular case” may depend “in no small measure” on how the presiding judge wields the assignment power (Medina, 1961, p. 152).

Moreover, there is between-circuit variation in whether presiding judges have the assignment power when they are not in the majority. We exploit this variation in the allocation of the assignment power to disentangle the effect of assignment power on case outcomes from other effects associated with presiding judge status.

To study the effects of the assignment power in shaping decisions on federal circuit courts, we first built a dataset of the hierarchical structure of each circuit court laid out in a statutory framework. The dataset allows us to determine the statuses of each judge in judicial panel that is necessary to determine the assignment power at the circuit-month-year level. Next, we compile data on the outcome of cases in which an opinion was published from 1993 to 2007. For each case, we determine the members of the panel, how each member voted, and which member wrote the majority opinion. Finally, our key innovation is to use the dataset on the statutory framework to determine which member was the presiding judge and which judge has the assignment power for each case.²

We first consider whether the assignment power increases the likelihood that a panel member will achieve an outcome that is satisfactory from her own perspective. We use a revealed preference measure of outcome satisfaction: whether the judge dissents from the majority. We find that judges with the assignment power are less likely than other judges on the panel to dissent, which suggests that these judges are indeed more likely to achieve what they consider to be a satisfactory outcome. The magnitude of the effect is large: the assignment power decreases the probability that a judge will dissent by 16 percent. This represents an effect approximately a fifth as large as the increase in dissent from a judge being an ideological minority on the panel. This finding remains robust to the inclusion of control variables for chief judge status and relative experience of panel members.

Next, we exploit variation in the allocation of opinion assignment authority across and within circuits to disentangle the effect of opinion assignment from other channels through which status might influence case outcomes. If the effect of presiding judge

² Not every opinion has an identifiable author: 20 percent of cases in our sample result in “per curiam” opinions (i.e., opinions issued in the name of the court rather than a particular judge). We include per curiam opinions in our analysis and discuss their implications below.

status on case outcomes is entirely attributable to the presiding judge's authority over opinion assignment, then we would expect that effect to be weaker or nonexistent in the one circuit in which presiding judge status does not carry with it formal opinion assignment authority. Similarly, if presiding judges are more likely to vote with the majority in order to retain authority over opinion assignment, then we would expect presiding judges to dissent less in the circuits where assignment power is contingent upon membership in the majority than in circuits where it is not. Exploiting this variation, we find no evidence of an effect of presiding judge status other than through opinion assignment, and we find that the negative effect of the assignment power on dissent is not merely a function of strategic voting by presiding judges who seek to retain authority over opinion assignment. Indeed, we find that presiding judges are *less* likely to dissent in circuits where the presiding judge's opinion assignment authority does not depend on whether they are a member of the majority.

Finally, we consider pathways through which presiding judges may exert influence over case outcomes via opinion assignment. One possibility is that presiding judges with power over opinion assignment shape outcomes by assigning opinions to themselves, which allows them to assert agenda control through the opinion draft. Another possibility is that presiding judges with the assignment power strategically allocate opinions to sympathetic co-panelists. While we cannot rule out the possibility that presiding judges with the assignment power give sensitive cases to themselves in order to influence outcomes, we find that the effect of assignment power on dissent does not operate solely through this channel. The results suggest that presiding judges with the assignment power influence case outcomes at least in part through strategic assignment of opinions to other panel members. Specifically, we find that presiding judges with the assignment power are less likely than other judges to dissent from panel opinions when *not* the panel opinion author.

Given the fact that a newly appointed judge is less likely to be the presiding judge in most panels, the findings have implications for the likelihood and pace of doctrinal change. In particular, since presiding judge status accompanied by the assignment power helps judges shape outcomes to their satisfaction, new appointees exert less sway in their

early years than because of the rules for allocating the assignment power. The results also generate insights regarding small-group decisionmaking more broadly. We find that status per se – here, presiding judge status – appears to have a smaller effect on decisional outcomes than does the power that status confers – here, the assignment power. Though the effects of status and power may vary across contexts, our results underscore the behavioral significance not only of status hierarchies but also of the particular powers conferred by them.

This article contributes to the judicial behavior literature examining how hierarchical relationships among different judges and different courts affect case outcomes (for an insightful review, see Kastellec, 2017). More generally, the article contributes to the literature documenting the influence of factors other than case merits on judicial decisionmaking.³ Outside the literature on judicial behavior, the article contributes to the rich literature documenting how the allocation of authority in small groups affects outcomes across different organizations.⁴

The remainder of our article is organized as follows. Section 2 introduces the institutional setting and discusses the mechanisms by which the assignment power can influence case outcomes. Section 3 describes the data. Section 4 sets out the identification strategy and reports the results. Section 5 concludes.

³A large literature documents ways in which case outcomes are influenced by parties' characteristics, including by gender (e.g., Starr, 2015) and race (e.g., Anwar, Bayer, and Hjalmarsson 2012; Alesina and La Ferrara, 2014; Rehavi and Starr, 2014; Yang, 2015); judge characteristics; including by partisanship (e.g., Sunstein et al., 2006; Cohen and Yang, 2019), race (e.g., Boyd, Epstein, and Martin 2010), and gender (e.g., Kastellec 2013; Lim, Silveira, and Snyder, 2016); judges' personal relationships (e.g., Glynn and Sen, 2015); emotions from unexpected shocks (Eren and Mocan, 2018); temperature (Heyes and Saberian, 2019); newspaper coverage (Lim, Snyder, and Strömberg, 2015); the law clerks that help judges perform their duties (e.g., Bonica et al., 2019); and other panel members (e.g., Cross and Tiller, 1998; Kastellec, 2011; Cox and Miles, 2008; Farhang and Wawro, 2004; Kim, 2009; Miles and Sunstein, 2006; Revesz, 1997; Sunstein et al. 2006; Peresie 2005; Boyd, Epstein, and Martin 2010; Fischman, 2011; Fischman, 2015).

⁴For empirical evidence, see Berger et al., 2005; Rajan and Wulf, 2006; Acemoglu et al., 2007; Bloom, Sadun, and Van Reenen, 2009; Canales and Nanda, 2012; Seru, 2014; Skrastins and Vig, 2018). For theoretical frameworks, see, e.g., Coase (1937), Aghion and Tirole (1997), and Chen and Suen (2019).

2. INTUITIONAL SETTING

This section discusses the mechanisms through which status as chief judge, status of presiding judge, and the assignment power could influence case outcomes in the U.S. circuit courts.

Chief Judge Status. There are a number of reasons to believe that chief judge status may affect dissent. Hettinger, Lindquist, and Martinek (2003a, p. 100) posit that chief judges “may enjoy some level of enhanced influence over colleagues on individual panels” due to “powers of persuasion derived from institutional status.” Similarly, Collins and Martinek (2011, p. 199) suggest that “judges on collegial courts” may be “especially influenced by jurists who presumably occupy high-status positions, such as chief judges on the courts of appeal.” Enhanced influence derived from chief judge status may allow those judges to achieve greater satisfaction with case outcomes.

Chief judges also may be less likely to dissent for reasons unrelated to outcome satisfaction. Hettinger, Lindquist, and Martinek (2003, p. 111) suggest that chief judges, by virtue of their status, may be “more motivated to promote consensus and collegiality within the circuit as a whole.” If that is so, then chief judges may be less likely than other judges to register disagreement publicly when they are dissatisfied with case outcomes. Chief judges also may be less likely than other judges to dissent because dissenting opinions take time to write, and chief judges are consumed by the additional responsibilities that come with their office (Black and Owens, 2013).⁵ These responsibilities include supervising the court’s paid staff, reviewing misconduct complaints against judges within the circuit, presiding over circuit court policymaking meetings, representing the circuit on the nationwide Judicial Conference of the United States, and performing a host of other largely ceremonial but often time-consuming functions (Wasby, 2003).

Presiding Judge Status. Presiding judge status may affect dissent through several channels. Eisenberg, Fisher, and Rosen-Zvi (2013, p. 284) suggest that “[t]he presiding

⁵ Dissents are usually accompanied by opinions explaining the dissenter’s disagreement with the panel opinion, but not always. See, e.g., *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366 (Fed. Cir. 2006) (Newman, J., dissenting) (stating only that “Circuit Judge Newman would affirm the judgment of the district court”).

justice's special role in a case may generate a feeling of enhanced responsibility for a case's outcome." The presiding judge may care more deeply about maintaining panel collegiality, thus decreasing dissent. Alternatively, presiding judges, by virtue of their enhanced sense of responsibility, may be less willing to go along in outcomes with which they disagree, thus increasing dissent.

Apart from any feeling of enhanced responsibility, the presiding judge's position may allow her to influence decisions in ways that affect outcome satisfaction and, with it, dissent. As the enforcer of procedural rules at oral argument, the presiding judge may use that power to favor one advocate over another, thereby structuring colleagues' consideration of the case. Moreover, the presiding judge – as leader of the post-argument conference among panel members – may have opportunities for agenda control that allow her to push for a particular outcome, notwithstanding that panel decisions are ultimately made by majority vote (Arrow, 1950). This opportunity for agenda control is distinct from the power to assign the panel opinion, which is not an authority associated with presiding judge status in every circuit.

Assignment Power. The power to assign the panel opinion – a power that, in all but one circuit, falls in the first instance to the presiding judge – offers additional opportunities to influence case outcomes. The assigned author of the panel opinion generally sends her first draft to co-panelists before any competing opinions are circulated, giving her a window in which she can structure the panel's choice among policy alternatives. The norm that the assigned author circulates her draft prior to any competing opinions also may allow her to obtain early commitments from co-panelists before all counterarguments have been aired (Wahlbeck, 2006, p. 1734). By assigning the panel opinion in a sensitive case to her or to a close ally, the judge with the assignment power may increase the likelihood that she will be satisfied with the end result.

A judge who wields the assignment power also may exert influence over co-panelists by using desirable and undesirable writing assignments as bargaining chips. Judges may find some writing assignments to be more congenial than others (Cheng, 2008). For example, a judge who was an antitrust lawyer earlier in her career may have a preference for writing in antitrust cases. A writing assignment in a high-profile or

precedent-setting case may be attractive to a judge who desires public attention or subsequent citations. Conversely, writing the opinion in a record-intensive case may be undesirable because it takes longer. The assigning judge thus may be able to use her power over opinions to exert pressure on other panel members. Even if such bargaining is not explicit, the assigning judge's ability to structure the workload of her co-panelists may make others more deferential to the assigning judge's preferences so that they receive more desirable opinions. This, in turn, may decrease dissent for judges with the assignment power.

Assign-from-Dissent. In all but the Fourth Circuit, the presiding judge has an opportunity to assign the panel opinion even though they may sacrifice that opportunity by voting preliminarily at conference to dissent. Only in the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits (and formerly in the Eleventh) does the presiding judge retain formal authority over opinion assignment even when in dissent. We refer to a presiding judge in a circuit that allows them to assign the panel opinion regardless of their preliminary vote as judges who "assign-from-dissent".

The authority to assign from dissent may affect whether the presiding judge dissents. On the one hand, presiding judges whose circuit rules do not allow them to assign from dissent may be less likely to dissent precisely so that they can retain the assignment power. On the other hand, the power to assign from dissent may give the presiding judge greater bargaining leverage over their co-panelists, thus decreasing dissent. By assigning the panel opinion to the most moderate member of the majority coalition, a presiding judge who preliminarily votes to dissent at conference also may increase the likelihood that the ultimate panel opinion is one they will join.

3. DATA AND DESCRIPTIVE STATISTICS

A. Statutory Framework of U.S. Federal Circuit Courts

We study the thirteen U.S. federal courts of appeals: the First through Eleventh Circuits, the District of Columbia Circuit, and the Federal Circuit.⁶ Each of these courts

⁶ The Federal Circuit primarily hears appeals involving patent laws, certain monetary and employment-related claims against the U.S. government, and international trade-related disputes.

adheres to a similar hierarchical structure, but there are subtle differences in internal rules across circuits that we exploit for identification. We collected these internal rules to be able to determine the presiding judge and the assignment power for the complete set of three-judge panels that could have convened within a circuit in each calendar month.

All thirteen courts follow the same criteria—codified at 28 U.S.C. § 45(a)—for selecting their chief judge. When the chief judgeship becomes vacant, the longest-serving active judge who is under the age of 65, who has served for at least one year as a circuit judge, and who has not served previously as chief judge ascends to the post. If no circuit judge satisfies those criteria, the youngest active circuit judge who has served for at least one year becomes the chief. The chief judge’s term ends after seven years or when the chief judge turns 70, whichever occurs earlier. A judge may decline the chief position, though eligible judges rarely if ever exercise that option (Wald, 1992, p. 1134).

Whenever the chief judge sits on a three-member panel, they serve as the panel’s presiding judge; otherwise, the longest-serving active judge of the circuit will preside (28 U.S.C. § 45(b)). As one senior judge notes, “[p]erhaps the only significant thing that a senior judge cannot do” is serve as presiding judge on a merits panel (Aldisert, 2013, p. 191).⁷ The panel’s presiding judge typically wields the gavel and sits centerstage at oral argument, enforces certain procedural rules during advocates’ presentations, and leads a discussion among panel members afterwards. That discussion—known as “conference” (or, in the First Circuit, “semble”)—is where judges cast their preliminary votes on each case (Boudin, 2009, p. 1687; Bowie, Songer, and Szmer, 2014, p. 63).

In addition to the presiding judge’s symbolic and substantive roles at and immediately after oral argument, the presiding judge in all but one circuit also assigns the panel opinion whenever they are in the majority (Cheng, 2008, p. 527 n. 35; Nash, 2014, p. 1625 n. 86). The one exception is the Fourth Circuit. That court’s internal operating procedures state that “[o]pinion assignments are made by the Chief Judge on the basis of recommendations from the presiding judge of each panel on which the Chief

⁷ Senior judges also are generally excluded from participating in *en banc* review of panel decisions, though several circuits have adopted local rules that allow senior judges to participate in *en banc* proceedings if they were a member of the three-judge panel whose decision is under review.

Judge did not sit.”⁸ While it is not clear how often the Fourth Circuit chief judge overrules the presiding judge’s recommendation (Cheng, 2008, p. 530 n. 53), the fact that the chief judge ultimately must approve all opinion assignments potentially serves to limit the presiding judge’s ability to exert influence through the assignment channel.

The circuits also differ in how they allocate the assignment power when the presiding judge is in dissent. In the Fifth, Sixth,⁹ Seventh, Eighth, and Ninth Circuits, the presiding judge enjoys an especially strong form of the assignment power: they assign the panel opinion regardless of whether they are in the majority or in dissent. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the presiding judge assigns the panel opinion only when they are in the majority. In cases in these circuits where the presiding judge is not in the majority, the next highest-ranking judge in the majority assigns the panel opinion (Cheng, 2008, p. 527 n. 35). While the circuits differ in rules for allocating the assignment power, the rules regarding opinion assignment have remained stable in all but one circuit throughout the 15-year period that we examine. The exception is the Eleventh Circuit, whose written rules allowed for assignment from dissent until a rule change that took effect on April 1, 1998.

B. Data on Court of Appeals Judges

We use data on judge appointment date, retirement date, and termination date from the Biographical Directory of Federal Judges, maintained by the Federal Judicial Center. The directory does not include information on the date that a judge became or ceased to serve as chief judge, so we hand-collected data on chief judges from court websites and news accounts.

⁸ U.S. Court of Appeals for the Fourth Circuit, *Local Rules of the Fourth Circuit; Internal Operating Procedures*, I.O.P. 36.1, at 32 (Apr. 1, 2019), <http://www.ca4.uscourts.gov/docs/rules/LocalRules.pdf>.

⁹ Sources differ in their description of the Sixth Circuit’s opinion assignment practices (Bowie, Songer, and Szmer, 2014, p. 67; Hettinger, Lindquist, and Martinek, 2003a, p. 91). We have confirmed on the basis of Sixth Circuit’s internal operating procedures as well as interviews with former clerks that opinions are assigned by the presiding judge on each panel. U.S. Court of Appeals for the Sixth Circuit, *Federal Rules of Appellate Procedure; Sixth Circuit Rules; Sixth Circuit Internal Operating Procedures; Sixth Circuit Guide to Electronic Filing*, 6 Cir. I.O.P. 32.1(a)(1), at 87 (Dec. 1, 2018), https://www.ca6.uscourts.gov/sites/ca6/files/documents/rules_procedures/Full%20Rules%20w%20F RAP_0.pdf; U.S.Ct. of App. 6th Cir. App. III, IOP 22, 28 U.S.C.A (West) (revised June 12, 1991) (“[O]pinion writing is assigned by the presiding judge of the panel.”).

From this information, we first establish a panel that identifies the status of each court of appeals judge as chief, active, or senior in each calendar month. From these data, we build a dataset identifying who the presiding judge and the judge with the assignment power would be for the complete set of three-judge panels that could have convened within a circuit in each calendar month according to the statutory framework outlined above.

C. Data on Court of Appeals Opinions

To create a dataset on panel composition and case outcomes, we obtained text files of every court of appeals opinion published in the Federal Reporter, Third Series (F.3d) from 1993 to 2007 through the nonprofit organization Public.Resource.Org. These cases are only the cases that make precedent for the circuit. Non-precedential decisions are excluded. Thus, although the federal courts of appeals usually resolve more than 30,000 cases on the merits each year (Administrative Office of the U.S. Courts, 2016), opinions published in F.3d account for a fraction of all cases heard (less than one-fifth of the total in some of the years in the sample).

Our focus on published decisions is consistent with most of the empirical literature on the U.S. courts of appeals.¹⁰ Publication decisions are themselves fruitful topics of inquiry (Merritt and Brudney, 2001; Hazleton, Hinkle, and Jeon, 2016; Grunwald, 2018), but dissents are much rarer in unpublished decisions than published ones (Hazleton, Hinkle, and Jeon, 2016, p. 663). The fact that so much of the judicial-behavior literature is limited to published opinions raises legitimate concerns about selection bias affecting well-known findings (Carlson, Livermore, and Rockmore, 2020). We nonetheless believe that focusing on published opinions is appropriate for two reasons. First, in every circuit, published decisions set legal precedent and unpublished decisions do not (McAlister, 2020, p. 546). Focusing on published decisions allows us to draw inferences about the effect of judicial status on voting patterns in precedent-setting cases. Our research design thus facilitates valid inferences over a substantively important domain.

¹⁰ For example, see Hettinger, Lindquist, and Martinek, 2003b; Farhang and Wawro, 2004; Miles and Sunstein, 2006; Kim, 2009; Boyd, Epstein, and Martin, 2010; Collins and Martinek, 2011; Kastellec, 2011; Kastellec, 2013; Hinkle, 2016; Hinkle, 2017; Clark, Engst, and Staton, 2018; Reid, Schorpp, and Johnson, 2020.

Second, the inclusion of unpublished decisions would raise other, potentially more serious selection concerns because, somewhat surprisingly, there is no complete or nearly complete record of unpublished decisions across the federal courts of appeals. For example, Kagan, Gill, and Marouf (2018)—in a study of immigration appeals filed from 2009 to 2012—find that a large number of unpublished decisions are not available to the public through the federal courts’ PACER system or in the Lexis and Westlaw commercial databases. Moreover, the inclusion of unpublished decisions in these databases varies dramatically across circuits. While the Lexis database, with the broadest coverage, includes 100 percent of unpublished merits decisions from the Tenth Circuit over the study period, only 7 percent of unpublished merits decisions from the Second Circuit appear in that database (Kagan, Gill, and Marouf, 2018, p. 698).

Each case file contains the entire court opinion. The files typically follow a standard format, which allows us to parse the opinions and extract the following information for cases: (1) the judges on the case, (2) the judge who wrote the panel opinion, (3) any judge who dissented, (4) the date that the opinion was handed down, and (5) the circuit in which the case was heard. Most cases are decided by a panel entirely composed of judges from that circuit. Occasionally, however, federal judges from other courts hear cases on a circuit court by designation. These include federal district court judges, judges from other circuits, and senior associate justices of the Supreme Court. Under 28 U.S.C. § 45(b), a judge of another court cannot serve as presiding judge.¹¹ We retain only the votes of judges who were appointed to the circuit in which the case was heard. This allows us to focus on sets of judges who interact repeatedly with each other but who occupy different status positions across time.

We also follow most of the panel effects literature and exclude en banc decisions—decisions rendered by panels significantly larger than three judges.¹² We do so for two reasons. First, the selection of cases and panels for en banc review is neither random nor

¹¹ The one exception to this rule is that the sitting Supreme Court justice who serves as circuit justice for a particular circuit will preside over any panel of which they are a member. 28 U.S.C. § 45(b). This is an extremely rare occurrence and occurred only once during the 1993-2007 period. *Banner v. United States*, 428 F.3d 303 (D.C. Cir. 2005).

¹² For example, see Farhang and Wawro, 2004; Miles and Sunstein, 2006; Kastellec, 2013; Blackstone and Collins, 2014; Farhang, Kastellec, and Wawro, 2015; Hinkle, 2017.

quasi-random. In all circuits except the Ninth, judges vote on whether to take a matter en banc with full knowledge of who will hear the case and what their relative statuses will be.¹³ Second, cross-case variation in judicial status is much lower for en banc cases than for cases decided by three-judge panels. The en banc setting does not allow us to distinguish the effect of chief judge status from the effect of presiding judge status, because the presiding judge is almost always the chief.¹⁴ En banc decisionmaking certainly is a worthy subject of study in its own right (e.g., Giles, Walker, and Zorn, 2006; Giles, Hettinger, Zorn, and Peppers, 2007), but the en banc environment is materially different from the three-judge panel setting that is our focus here.

This leaves us with 126,224 cases. At the case level, 3.1 percent of cases have a dissenting opinion. Our primary dataset is at the judge-case level for judges who were appointed to the circuit, which leaves us with 346,463 home judge votes. Given that we exclude non-home court judges, there are an average of 2.7 judges per case. At the judge-case level, the dissent rate is 1.1 percent (3.1 percent of cases/2.7 judges per case).

Our primary outcome variable of interest is whether a judge dissented from the panel opinion. We focus on dissent for two reasons. First, dissent operates as a revealed preference measure of outcome dissatisfaction. It is a signal of the dissenting judge's unwillingness to endorse the result that their co-panelists have reached. Dissent is an imperfect proxy for outcome dissatisfaction. A judge may join an opinion with which they disagree in order to maintain collegiality, to minimize the workload associated with writing a separate opinion, or to exert influence on the panel opinion's content from within the majority coalition. Second, judicial dissent is a phenomenon worthy of study regardless of its function as a proxy for outcome dissatisfaction (e.g., Epstein, Landes, and Posner, 2011; Hettinger, Lindquist, and Martinek, 2004; Narayan and Smyth, 2007). Judicial dissents can serve as informative signals to other legal-system actors and as

¹³ Uniquely among the circuits, the Ninth Circuit employs a procedure whereby 10 judges plus the chief judge are randomly selected to sit as a "mini en banc" (or "super-panel") court (Giles, Hettinger, Zorn, and Peppers, 2007, p. 457).

¹⁴ Senior judges are also excluded from en banc participation with two exceptions. Circuits have the statutory option of allowing senior judges to participate in en banc decisionmaking if (1) the senior judge was a member of the panel whose decision is under review, or (2) the senior judge was in regular active service when the case was heard or reheard by the en banc court (28 U.S.C. § 46(c)).

clarion calls to future generations (Urofsky, 2015). The study of judicial dissent also can potentially help us better understand the causes of and constraints on protest within hierarchical institutions beyond the judiciary (e.g., Lichbach, 1995).

An alternative approach to defining outcome dissatisfaction would be to include both dissent and concurrence as an indication of disagreement. In some cases, a judge may disagree with the panel's reasoning but concur because a separate line of reasoning leads them to the same ultimate disposition. Whether or not they reach the same bottom line result (e.g., "affirm," "remand," "vacate") can be less significant than the reasoning they apply. Concurrences of this variety are often labeled as "concurrences in part" or "concurrences in the judgment." In other circumstances, a judge may agree with the panel's reasoning in full but may write a separate concurrence to raise a point not addressed by the majority (e.g., to suggest that a relevant precedent should be overturned or to draw attention to an argument that the parties failed to fully brief). We focus on dissents as a more conservative measure of outcome dissatisfaction. As a robustness check, we repeat our analyses defining outcome dissatisfaction as dissenting or concurring and find consistent results (see Appendix).

D. Descriptive Statistics

Figure 1 plots the number of cases, number of votes, and dissent rate over time. In Panel A, the number of decisions published by circuit courts spiked during the mid-1990s to around 15,000 cases per year, and remained fairly constant at around 6,000 cases per year during the 2000s. The number of votes is roughly three times the number of cases, reflecting the fact that most panels have three home court judges. The year-to-year changes in votes closely tracks the changes in cases, which suggests that the share of home court judges on cases is fairly constant over time. In Panel B, the dissent rate during the mid-1990s was relatively constant at around 0.9 percent. The rate increased to around 1.5 percent the late 1990s and reached a peak near 2 percent in 2002, followed by a modest decline. Viewed in light of the decrease in the number of published decisions in the late 1990s from Panel A, the increase in the dissent rate could reflect the fact that judges tend to write some number of dissenting opinions each year regardless of how many cases they decide.

Table 1 provides descriptive statistics by circuit. Each column reports annual averages by circuit. The average number of home judges who heard at least one case in a year varies considerably between circuits, from as high as an average of 42 judges on the Ninth Circuit to as low as 10 judges on the First Circuit. Note that this includes both active and senior judges. The number of cases heard also varies considerably across circuits and, as expected, is typically higher for circuits with more judges. The average number of votes in a given year is less than three times the number of cases, which is a result of the majority of panels being three home judges but some panels including one or two judges sitting by designation. The dissent rate ranges from as high as 3.0 percent on the Third Circuit to as low as 0.3 percent on the First Circuit.¹⁵

To assess the extent that judges differ in their propensity to dissent, Figure 3 plots the distribution of the dissent rate at the judge level. The median dissent rate is 1.5 percent, but a sizable fraction of judges dissent at rates above 2 percent and even 3 percent. This substantial variation across judges illustrates the importance of assessing within-judge variation in dissent when studying the relationship between status and dissent.

4. RESEARCH DESIGN AND RESULTS

Studying the assignment power on the federal courts of appeals can shed light on important aspects of judicial behavior for at least four reasons. First, the identity of the assigning judge on the federal courts of appeals is much more variable than on the Supreme Court: hundreds of judges have wielded the assignment power on different federal court of appeals panels over the past several decades, while only four individuals have served as chief justice of the U.S. Supreme Court since 1953. Moreover, the same judge may be the presiding judge on panel and not on the next, depending on the composition of each panel and the relative seniority of its members. To take one example: In the first full week of November 2018, Judge Sri Srinivasan of the D.C. Circuit did not hold the assignment power on a Monday panel, held the assignment power on a Wednesday panel, and did not hold the assignment power on a Thursday panel. This

¹⁵ The high dissent rate in the Third Circuit may reflect the fact that judges in that circuit are particularly likely to dispose of uncontroversial cases without a published opinion (Grunwald, 2018).

institutional feature provides within-judge variation in the assignment power from one day to the next that allows us to examine whether the same judge behaves differently over the same time period depending on whether she has the opportunity to wield the assignment power.

Second, variation across and within circuits in the allocation of opinion assignment authority allows us to disentangle the effect of opinion assignment from other channels through which status might influence case outcomes. If, for example, the effect of presiding judge status on case outcomes is entirely attributable to the presiding judge's authority over opinion assignment, then we would expect that effect to be weaker or nonexistent in the one circuit in which presiding judge status does not carry with it formal opinion assignment authority. Similarly, if presiding judges are more likely to vote with the majority in order to retain authority over opinion assignment, then we would expect presiding judges to dissent less in the circuits where assignment power is contingent upon membership in the majority than in circuits where it is not. We exploit these differences in internal procedures in order to examine the effect of institutional rules and practices on judicial behavior.

Third, the judge with first claim to the assignment power on the federal courts of appeals is usually not the chief judge of the relevant circuit. In all but one of the circuits, the chief judge wields the assignment power only with respect to panels on which they sit. As a result, the federal court of appeals setting allows us to disentangle the influence that the chief justice wields through the assignment power from the influence that the chief justice exerts by virtue of being the leader of the institution. By contrast, in the Supreme Court setting, there is likely no credible way to separate the effect of the chief judge from the effect of the assignment power.

Fourth, the federal courts of appeals are a worthy subject of study in their own right because of the extraordinary influence they have on the development of American law. The federal courts of appeals resolve thousands of cases each year, whereas in recent years the U.S. Supreme Court has issued fewer than 100 merits opinions per term.

Oftentimes it is a federal court of appeals, not the Supreme Court, that speaks the last word on a case of national significance.¹⁶

A. Research Design

Equation (1) sets out our primary specification.

$$d_{ict} = \alpha + \beta C_{ict} + \eta P_{ict} + \gamma S_{ict} + \kappa Y_{ic} + \zeta M_{it} + \theta A_{ict} + \psi I_{it} + \phi_i + \sigma_t + \varepsilon_{ict} \quad (1)$$

where d_{ict} is an indicator for whether judge i dissented in case c in year t , C is an indicator for chief status, P is an indicator for presiding judge status, and S is an indicator for assigning judge status. We control for the number of years that the judge has served (Y), whether a judge is the most experienced member of the panel (M), whether the judge is in active rather than senior status (A),¹⁷ and whether the judge is an ideological minority on the panel (I). We use the party of the appointing president as a proxy for ideology, where $I = 1$ either for a Democratic appointee who is joined on a panel by two Republican appointees or for a Republican appointee who is joined by two Democratic appointees. In all specifications, we control for year fixed effects σ_t and for judge fixed effects ϕ_i . Thus, we identify the effect of status on dissent using within-judge variation in chief judge status, active judge status, and presiding judge status.

Generally, all three judges on a panel will hear a series of cases together in a single

¹⁶ For recent examples of particular prominence, see *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *affirmed by an equally divided Court*, 136 S. Ct. 2271 (2016), in which the Fifth Circuit struck down Obama administration executive actions regarding undocumented immigrants; and *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017), in which the Ninth Circuit upheld an order blocking implementation of the Trump Administration's ban on entry from seven predominantly Muslim countries.

¹⁷ A judge begins in active service and becomes eligible to take senior status when they reach age 65, have served for at least 10 years, and additionally satisfies the "rule of 80" (that is, the sum of their age and years of service is 80 or more). These rules, like the chief judge criteria, have been codified by Congress (28 U.S.C. § 371). Senior judges generally hear a smaller number of cases than active judges, though no minimum or maximum reduction is specified by statute or rule. As one senior judge writes, "[t]he nature of the senior judge's workload is the product of the customs and practices of the particular court and the predilections of the particular senior judge" (Bloc, 2007, p. 541). There are several reasons why one may expect dissent to differ in active status. Active judges generally hear more cases than senior judges and presumably expect to serve for a longer time than judges who already have entered semiretirement. Active judges therefore may be more affected by repeat-player dynamics, both bolstering their credibility in intra-panel bargaining and enhancing their concern for circuit-wide collegiality norms. Active judges also may be affected by workload considerations that render them more reluctant to invest time in writing dissenting opinions. Alternatively, senior judges – by virtue of their lower status – may be more deferential to higher-status colleagues and thus less likely to dissent, in which case active judge status would be associated with a higher dissent probability.

day, though recusals for personal or financial conflicts may cause individual judges to sit out particular cases (28 U.S.C. § 455; Levy, 2017, p. 99 n.179). As a result, statuses are assigned to judges at the case level. Therefore, we cluster standard errors at the case level (Abadie, Athey, Imbens, and Wooldridge, 2017), but we find consistent results if we cluster standard errors at the judge, year, or year-month level.

Key to our identification of the assignment power effect is the fact that circuits differ in their rules for allocating assignment authority. Without variation in the assignment power among presiding judges, it would be impossible to isolate the effect of the assignment power from other effects associated with presiding judge status. We use two sources of variation. First, the Fourth Circuit, with its unique rule for opinion assignment, serves as a natural experiment to test the effect of presiding judge status without the concomitant assignment power. When a judge other than the chief judge presides in the Fourth Circuit, we observe the effect of presiding judge status separate from any effect of formal assignment power ($P = 1; S = 0$). The identifying assumption is that the effect of presiding judge status on dissent is constant across circuits.

Second, we exploit between-circuit variation in whether the presiding judge has the power to assign the opinion even if they are in the dissent. As discussed above, the presiding judge retains the assignment power if they are in the dissent only in the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, and formerly in the Eleventh Circuit. This source of variation allows us to test whether judges are willing compromise their vote in order to retain the assignment power.

Importantly, formal rules regarding the allocation of the assignment power will have varying effects across circuits, panels, and cases. As noted above, the chief judge of the Fourth Circuit may defer to the presiding judge's recommendations regarding opinion assignment. And in the Second Circuit, a senior judge on a panel will often express a preference as to which opinion she would or would not like to write; the presiding judge customarily defers to that preference but also has the power to override the senior judge's wishes (Levy, 2021, p. 1250). Our research design focuses on the formal allocation of the assignment power, with the understanding that judges who wield that power may choose not to exercise it aggressively due to informal institutional norms,

personal friendships, or other factors. One can think of this as an “intention-to-treat” analysis: we study the effect of giving a judge the *opportunity* to assign the panel opinion, even though the judge may choose to allow other members of the court to influence opinion assignment.

B. Results

Table 2 reports the results. Column 1 includes only presiding judge status and the set of control variables. We find that presiding judge status decreases the probability of dissent by 0.18 percentage points. Relative to the mean dissent rate of 1.14 percent, this represents a 16 percent reduction in dissent. Column 2 adds an indicator for the chief judge. The effect of presiding judge status on dissent is largely unaffected by the inclusion of the indicator for chief judge status, suggesting that the negative effect of presiding status is not driven by chief judges being less likely to dissent.

To put the magnitude of the effect of presiding judge status in context, the effect of presiding judge status on dissent is approximately a fifth as large as the effect of ideological minority status on dissent. While presiding status is not as influential on dissent as ideology, the results suggest that viewing judges in strictly ideological terms omits an important determinant of voting patterns. Another way of framing the size of the status effects is in comparison to the effect of experience. We measure experience in both relative and absolute terms: whether a judge is the most experienced member of the panel and the number of years that the judge has served on the circuit court. Our results suggest that being the most experienced member of the panel has an effect on dissent that is similar in size to – but in the opposite direction of – the effect of presiding judge status. Note that the effect of presiding judge status and the effect of relative experience are both identified off a considerable amount of variation after conditioning on the other: the presiding judge is often not the most experienced judge on a panel (e.g., when the presiding judge sits alongside a senior judge or when the chief judge sits with a longer-serving colleague). Specifically, roughly one third of cases have a presiding judge who is not the most experienced judge on the panel.

Column 3 considers whether the effect of presiding judge status on dissent operates through the channel of opinion assignment. We find that the negative effect of

presiding judge status is entirely driven by the assignment power. The estimate on presiding judge is now positive and not statistically significant. Meanwhile, the opportunity to assign the panel opinion has a large and negative effect on dissent: a reduction of 0.33 percentage points (29 percent relative to the baseline of 1.14 percent).

Column 4 adds an indicator for whether, under circuit rules, presiding judges hold the assignment power even if they dissent in the case. The results are inconsistent with the theory that judges with the opportunity to assign the panel opinion will vote strategically with the majority in order to retain opinion assignment authority. In fact, we find at least some weak evidence that presiding judges are *less* likely to dissent where circuit rules allow dissenting judges to assign the panel opinion than where circuit rules divest dissenters of that authority. The fact that the estimate on assignment power is largely unchanged by the inclusion of assign-from-dissent along with the lower bound confidence interval on the estimate of assign-from-dissent provides evidence to rule out the possibility that the results for the assignment power are driven by strategic voting on the part of the presiding judge.

Column 5 considers whether the effect of assignment power on dissent is larger in cases where the judge with the opportunity to assign the panel opinion is an ideological minority on the panel. The point estimate for the interaction term of assignment power and ideological minority status is negative though insignificant. The results provide some – albeit inconclusive – evidence that the assignment power has the largest negative effect on dissent in precisely those circumstances where dissent is most likely: where the judge is outnumbered two to one by appointees of the opposite party. Although again we find that the effect of ideology is greater than the effect of status, the results in Column 5 suggest that status can moderate the effect of ideology on case outcomes.

C. Mechanisms

Next, we consider possible pathways that might allow the presiding judge to influence case outcomes via the assignment power. First, we investigate the extent that presiding judges use the assignment power to claim a larger share of writing assignments for themselves. Second, we investigate the extent that presiding judges might use the assignment power to shape outcomes in cases in which they do not write the panel

opinion.

Self-Assignment. We first consider whether presiding judges are disproportionately likely to write panel opinions. Such a finding would suggest that self-assignment is a pathway through which presiding judges influence case outcomes. We use the same specifications as in Table 2, but now the outcome is an indicator for whether the judge wrote the panel opinion. As discussed above, many opinions are “per curiam” (meaning there is no author of the opinion) and that non-home judges are excluded from the sample. This explains why the average judge in the sample writes the panel opinion in only 18 percent of cases, compared to 33 percent if there were no per curiam opinions and all judges were home judges.

Table 3 presents these results. In Column 3, we find that presiding judge status increases opinion writing by 3.5 percentage points independent of any effect from the assignment power. Importantly, we find no evidence that the assignment power has a substantial independent effect on opinion writing. The estimate on assignment power is precise enough to rule out both large positive and large negative effects.

In Column 4, we find that judges with the power to assign the panel opinion from dissent are less likely to author majority opinions than judges who have the assignment power only when in the majority. The magnitude of the point estimate, -0.8 percentage points, is modest (4 percent relative to the baseline of 18.3 percent), and the lower bound of the 90 percent confidence interval rules out negative effects larger than 1.5 percentage points (8 percent relative to the baseline of 18.3 percent). One possible explanation for this finding is that judges with this strong form of the assignment power have the unique option of dissenting while simultaneously assigning the majority opinion to the most ideologically sympathetic co-panelist. By contrast, judges with a weaker form of the assignment power may choose in similar circumstances to assign the majority opinion to themselves and write it narrowly.

In Column 5, we consider whether the effect of the assignment power on writing the panel opinion is larger for judges in the ideological minority. The estimate on the interaction between assignment power and ideological minority status is weakly negative, and it is precise enough to rule out the possibility that presiding judges are

substantially more likely to self-assign when in the ideological minority.

Overall, the results in Table 3 provide no evidence of meaningful strategic self-assignment in sensitive cases. The norm across circuits is for panel members to divide up opinions equally, so the opportunity to write an extra opinion will generally arise only when the number of opinions generated by a sitting is not divisible by three (Bowie, Songer, and Szmer, 2014). Presiding judges who wield the assignment power still may be more likely to self-assign panel opinions in sensitive cases where disagreement is especially likely, even though we can observe no strong relationship between the assignment power and panel opinion writing overall.

Strategic Assignment to Other Panel Members. Finally, we investigate whether presiding judges with the assignment power exert influence over case outcomes through strategic assignment of panel opinions to other panel members. Specifically, we assess whether judges with the assignment power are less likely than other judges to dissent when *not* the panel opinion author. We restrict the sample to votes of judges who did not write the panel opinion, and test whether non-authoring judges with the assignment power are less likely to dissent than other non-authoring judges.

Table 4 presents the results. Column 1 repeats the preferred specification from Column 3 of Table 2 for the restricted sample. We find that the assignment power decreases dissent by 0.39 percentage points for non-authoring judges (29 percent relative to the baseline of 1.34 percent).¹⁸ The fact that the assignment power is associated with a lower dissent rate among non-authoring judges suggests that strategic assignment of opinions to other panel members drives at least part of the lower dissent rate among assigning judges overall.

Column 2 adds an indicator for the authority to assign from dissent. Column 3 considers whether the effect of the assignment power on the dissent of non-authoring judges is stronger for non-authoring judges in the ideological minority. Although the estimates are not statistically significant at conventional levels, we find some weak evidence that the ability to assign from dissent decreases dissent among non-authoring

¹⁸ The dependent variable mean is higher in Table 4 (1.34 percent) than Table 2 (1.14 percent).

judges, and that this effect is strongest when the non-authoring judge is an ideological minority.

D. Robustness Checks

Our results regarding the effects of presiding judge status rely on a straightforward identification strategy, making use of substantial within-judge variation across circuits. Our effort to disentangle the effect of presiding judge status from the effect of the assignment power relies on a more nuanced identification strategy that exploits a subtle difference in institutional rules between the Fourth Circuit and the other twelve circuits. In particular, our research design allows us to disentangle the effect of presiding judge status from the effect of the assignment power because presiding judges on the Fourth Circuit (other than the chief) do not have ultimate opinion-assignment authority.

To assess whether the estimated assignment-power effect could be attributable to random variation between the Fourth Circuit and the other circuits, we conduct two placebo tests. First, we re-estimate our preferred specification in Table 2, Column 3 under the counterfactual that the First Circuit follows the outlier rule and the Fourth Circuit follows the majority rule (i.e., with presiding judges other than the chief judge wielding the assignment power in the Fourth Circuit but not the First). We repeat this placebo test with every other circuit replacing the Fourth Circuit as the outlier. In Figure 3, we compare the results of the twelve placebo tests to the actual estimate (with the Fourth Circuit as the circuit with the unique assignment rule). In none of the twelve placebo tests does the assignment power have a statistically significant negative effect on dissent. In only one of the twelve placebo tests – involving the Third Circuit as the outlier – is the point estimate lower (i.e., more negative) than the point estimate in Table 2, Column 3, but the estimate for the Third Circuit is sufficiently noisy that the 95 percent confidence interval includes zero.

Second, we undertake a more extensive series of placebo tests in which circuits are randomly assigned either to the Fourth Circuit rule or to the standard rule that the presiding judge holds the assignment power. For each of those placebos, we re-estimate our preferred specification in Table 2, Column 3. We simulate the placebo tests 100,000 times. Figure 4 reports the distribution of point estimates from the placebo tests along

with a vertical line for the actual point estimate. The actual point estimate on the assignment power of -0.33 percentage points represents a larger negative effect than in all but 0.2 percent of placebo tests. This strongly suggests that our main result is unlikely to be attributable to random chance.

Finally, in an appendix, we reproduce all of our results with the outcome variable redefined to include concurrences in addition to dissents. Concurrences – like dissents – can signal a judge’s dissatisfaction with the majority’s approach (Hettinger, Lindquist, and Martinek, 2003b), though they also can be written for other reasons. Occasionally, even the author of the majority opinion may file a concurrence to raise or underscore a point not necessary to the disposition.¹⁹ In any event, all of our results remain substantially the same regardless of whether the outcome variable is limited to dissents or also encompasses concurring opinions.

5. CONCLUSION

In this article, we investigated the effect of opinion assignment authority on case outcomes across the U.S. federal circuit courts. Our main result is that presiding judge status, which is typically associated with the power to assign the panel opinion, leads to a substantial decrease in the probability of dissent (a reduction of 16 percent). To further examine whether the effect of presiding judge status on case outcomes is attributable to the assignment power or to other aspects of presiding, we took advantage of a natural experiment made possible by the Fourth Circuit’s unique rules regarding opinion assignment. If the assignment power were the source of the presiding judge’s influence over case outcomes, then we would not expect presiding judges on the Fourth Circuit (other than the chief judge) to exhibit a lower propensity to dissent. Consistent with that expectation, we found that the effect of presiding judge status on dissent manifests only when the presiding judge wields the assignment power.

We then exploited a further difference in assignment rules across circuits: the fact that presiding judges in five circuits can assign the panel opinion even when in dissent

¹⁹ See, for example, *Thomas v. Holder*, 750 F.3d 899 (D.C. Cir. 2014) (majority opinion and concurrence by Judge Tatel); and *Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872 (D.C. Cir. 2006) (majority opinion and concurrence by Judge Kavanaugh).

while presiding judges in seven other circuits can assign the panel opinion only when in the majority. We found that the negative effect of the assignment power on dissent is greatest for judges who wield authority to assign the panel opinion from dissent. This finding provides evidence inconsistent with the theory that presiding judges vote strategically with the majority so that they can retain authority to assign the panel opinion.

Finally, we investigated whether judges with the assignment power exert influence over case outcomes through self-assignment or through strategic assignment of opinions to other panel members. We found little evidence that judges with the assignment power write a disproportionate share of majority opinions, though we cannot rule out the possibility that judges use their assignment power to retain writing assignments in sensitive cases for themselves. Instead, we found evidence that assigning judges exert influence over case outcomes through strategic assignment of opinions to other panel members.

Overall, the results yield at least two important lessons for judicial behavior and small-group decisionmaking more generally. First, the results reveal that presiding judge status has a meaningful impact on voting patterns on circuit courts where it is associated with opinion assignment authority. Beyond the implications for individual cases, these results potentially shed light on patterns of doctrinal change. Because new additions to a circuit court are less likely to hold presiding judge status during their first few years on the bench, and because presiding judges appear to wield greater influence over case outcomes, the pace of doctrinal evolution on the courts of appeals may be somewhat slower than shifts in ideological composition would otherwise suggest.

Second, the results generate insights regarding the relationship between status and power that may be applicable to small-group decisionmaking more broadly. We find that status *per se*—here, presiding judge status—appears to have a smaller effect on decisional outcomes than does the power that status confers — here, the assignment power. Though the effects of status and power may vary across contexts, our results underscore the behavioral significance not only of status hierarchies but also of the particular powers conferred upon decisionmakers at each rung of the hierarchy.

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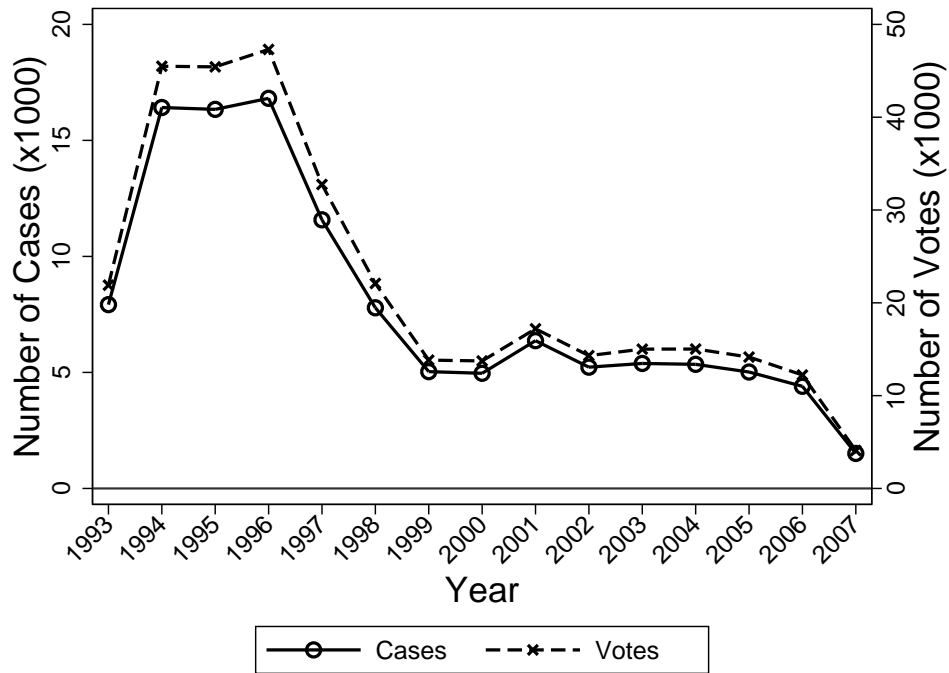
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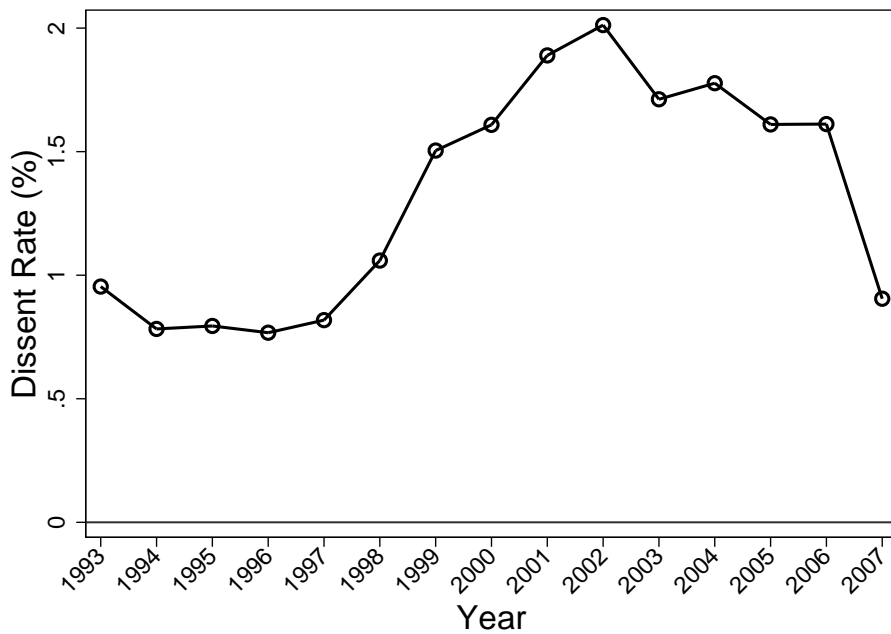
Figures and Tables

Figure 1: Descriptive Statistics

A. Cases and Votes Over Time



B. Dissent Rate Over Time



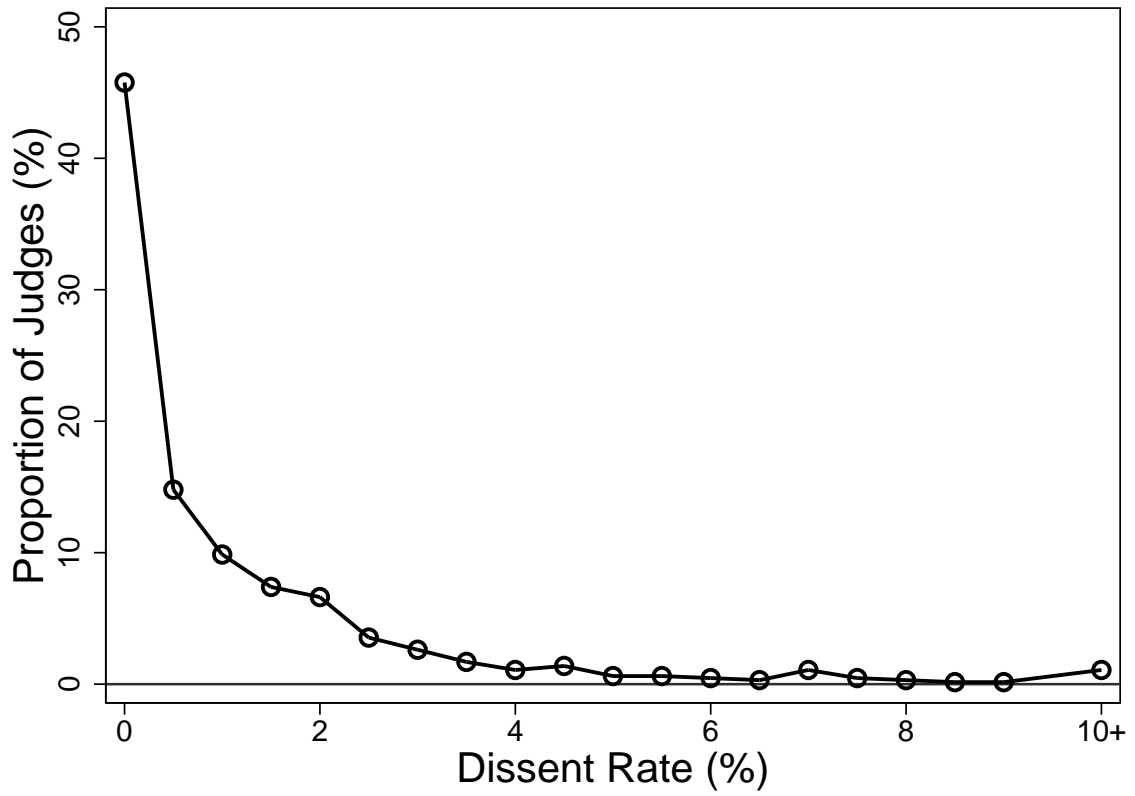
Note: The panels report descriptive statistics of home circuit judges for non-en banc court of appeals opinions published in the Federal Reporter, Third Series from 1993 to 2007. Panel A reports the number of cases and number of votes. Panel B reports the dissent rate.

Table 1: Descriptive Statistics by Circuit

Circuit	(1) <i>Home Judges</i>	(2) <i>Yearly Cases</i>	(3) <i>Yearly Votes</i>	(4) <i>Dissent Rate (%)</i>
1	10	366	998	0.3
2	20	444	1138	0.8
3	18	190	499	3.0
4	14	856	2448	2.6
5	19	438	1229	0.8
6	21	728	1844	1.7
7	15	797	2321	0.8
8	17	842	2345	1.5
9	40	1582	4314	2.0
10	17	699	1878	0.8
11	17	331	833	1.2
DC	11	257	749	1.0
FC	15	359	1057	2.0

Note: The table reports descriptive statistics for non-en banc court of appeals opinions published in the Federal Reporter, Third Series from 1993 to 2007 by circuit. Column (1) reports the average number of home judges in the circuit from 1993 to 2007. Column (2) reports the average number of annual cases with published opinions. Column (3) reports the average number of home judge votes for cases with published opinions. Column (4) reports the average dissent rate at the judge-case level.

Figure 2: Distribution of Dissent Rate



Note: The figure reports the distribution of judge-level dissent rates in non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007, by circuit.

Table 2: Influence of Assignment Power on Dissent

	<i>Dissent</i>				
	(1)	(2)	(3)	(4)	(5)
Presiding Judge	-0.0018*** (0.0005)	-0.0017*** (0.0005)	0.0012 (0.0015)	0.0013 (0.0015)	0.0013 (0.0015)
Chief Judge		-0.0013 (0.0010)	-0.0011 (0.0010)	-0.0012 (0.0010)	-0.0012 (0.0010)
Assignment Power			-0.0033** (0.0015)	-0.0027* (0.0016)	-0.0024 (0.0016)
Assign-from-Dissent				-0.0009 (0.0009)	-0.0010 (0.0009)
Assignment Power × Ideological Minority on Panel					-0.0019 (0.0012)
Active Judge	-0.0006 (0.0010)	-0.0005 (0.0010)	-0.0004 (0.0010)	-0.0004 (0.0010)	-0.0004 (0.0010)
Ideological Minority on Panel	0.0088*** (0.0006)	0.0088*** (0.0006)	0.0088*** (0.0006)	0.0088*** (0.0006)	0.0094*** (0.0008)
Most Experienced Judge on Panel	0.0019*** (0.0006)	0.0019*** (0.0006)	0.0018*** (0.0006)	0.0018*** (0.0006)	0.0018*** (0.0006)
Years Active (10 years)	0.0053 (0.0041)	0.0053 (0.0041)	0.0054 (0.0041)	0.0054 (0.0041)	0.0054 (0.0041)
Covariates					
Judge FE	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes
N	334,551	334,551	334,551	334,551	334,551
Dep Var Mean	0.0114	0.0114	0.0114	0.0114	0.0114

Note: The table reports the results of estimating Equation (1) for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented in the case. Each circuit has a chief judge who serves a term of up to 7 years before returning to non-chief judge status on the court. Home circuit judges are either in regular “active” service or hold “senior” status (a form of semi-retirement). Each case has a presiding judge who formally oversees panel proceedings. Each case also has one judge who has primary responsibility for assigning the panel opinion (“Assignment Power”). See the text for the rules governing the status of a judge as chief, active, and presiding. Presiding judges other than the chief judge do not hold the assignment power in the Fourth Circuit. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the next ranking judge in the majority assigns the panel opinion when the presiding judge dissents. In the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the presiding judge assigns the majority opinion even when she dissents (indicated as “Assign-from-Dissent”). Standard errors are in parentheses and are clustered at the case level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 3: Influence of Assignment Power on Opinion Writing

	<i>Wrote Majority Opinion</i>				
	(1)	(2)	(3)	(4)	(5)
Presiding Judge	0.032*** (0.002)	0.031*** (0.002)	0.035*** (0.004)	0.036*** (0.004)	0.036*** (0.004)
Chief Judge		0.011** (0.004)	0.012*** (0.004)	0.011** (0.004)	0.011** (0.004)
Assignment Power			-0.004 (0.005)	0.001 (0.005)	0.001 (0.005)
Assign-from-Dissent				-0.008** (0.004)	-0.008** (0.004)
Assignment Power × Ideological Minority on Panel					-0.003 (0.004)
Ideological Minority on Panel	-0.016*** (0.002)	-0.016*** (0.002)	-0.016*** (0.002)	-0.016*** (0.002)	-0.015*** (0.002)
Active Judge	-0.010*** (0.003)	-0.010*** (0.003)	-0.010*** (0.003)	-0.010*** (0.003)	-0.010*** (0.003)
Most Experienced Judge on Panel	0.006*** (0.002)	0.007*** (0.002)	0.006*** (0.002)	0.006*** (0.002)	0.006*** (0.002)
Years Active (10 years)	0.069*** (0.011)	0.069*** (0.011)	0.069*** (0.012)	0.069*** (0.012)	0.069*** (0.012)
Covariates					
Judge FE	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes
N	334,551	334,551	334,551	334,551	334,551
Dep Var Mean	0.183	0.183	0.183	0.183	0.183

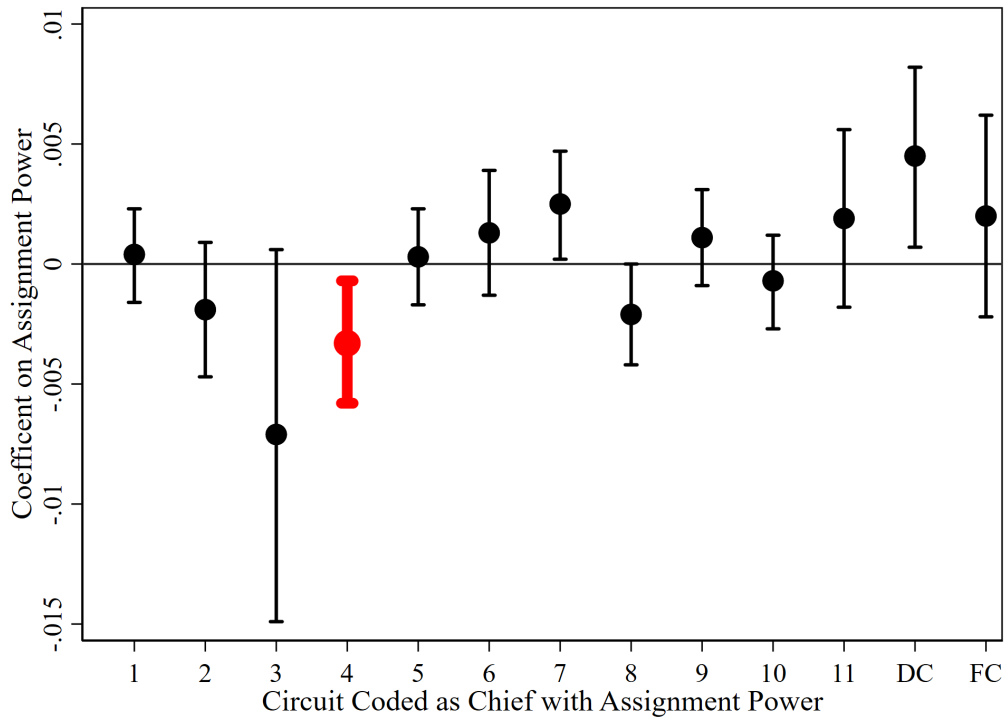
Note: The table reports the results of estimating Equation (1) for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge wrote the majority opinion in the case. Each circuit has a chief judge who serves a term of up to 7 years before returning to non-chief judge status on the court. Home circuit judges are either in regular “active” service or hold “senior” status (a form of semi-retirement). Each case has a presiding judge who formally oversees panel proceedings. Each case also has one judge who has primary responsibility for assigning the panel opinion (“Assignment Power”). See the text for the rules governing the status of a judge as chief, active, and presiding. Presiding judges other than the chief judge do not hold the assignment power in the Fourth Circuit. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the next ranking judge in the majority assigns the panel opinion when the presiding judge dissents. In the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the presiding judge assigns the majority opinion even when she dissents (indicated as “Assign-from-Dissent”). Standard errors are in parentheses and are clustered at the case level. * p<0.1, ** p<0.05, *** p<0.01.

Table 4: Influence of Assignment Power on Dissent for Non-Majority Writer

	<i>Dissent</i>		
	(1)	(2)	(3)
Presiding Judge	0.0018 (0.0017)	0.0018 (0.0017)	0.0018 (0.0017)
Chief Judge	-0.0013 (0.0013)	-0.0014 (0.0014)	-0.0014 (0.0014)
Assignment Power	-0.0039** (0.0018)	-0.0032* (0.0019)	-0.0029 (0.0019)
Assign-from-Dissent		-0.0012 (0.0012)	-0.0012 (0.0012)
Assignment Power × Ideological Minority on Panel			-0.0018 (0.0015)
Active Judge	-0.0000 (0.0012)	0.0000 (0.0012)	0.0001 (0.0012)
Ideological Minority on Panel	0.0100*** (0.0007)	0.0100*** (0.0007)	0.0106*** (0.0009)
Most Experienced Judge on Panel	0.0028*** (0.0006)	0.0028*** (0.0006)	0.0028*** (0.0006)
Years Active (10 years)	0.0055 (0.0078)	0.0055 (0.0078)	0.0055 (0.0078)
Covariates			
Judge FE	Yes	Yes	Yes
Year FE	Yes	Yes	Yes
N	271,373	271,373	271,373
Dep Var Mean	0.0134	0.0134	0.0134

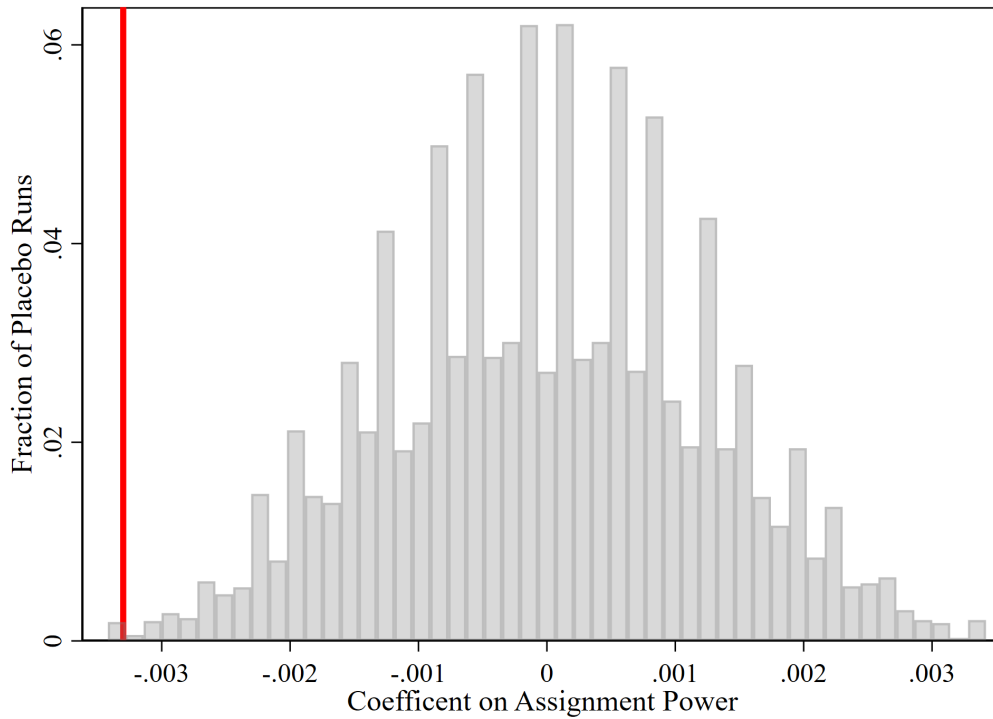
Note: The table reports the results of estimating Equation (1) for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented in the case. The sample is restricted to judge-votes of judges who do not write the majority opinion. Each circuit has a chief judge who serves a term of up to 7 years before returning to non-chief judge status on the court. Home circuit judges are either in regular “active” service or hold “senior” status (a form of semi-retirement). Each case has a presiding judge who formally oversees panel proceedings. Each case also has one judge who has primary responsibility for assigning the panel opinion (“Assignment Power”). See the text for the rules governing the status of a judge as chief, active, and presiding. Presiding judges other than the chief judge do not hold the assignment power in the Fourth Circuit. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the next ranking judge in the majority assigns the panel opinion when the presiding judge dissents. In the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the presiding judge assigns the majority opinion even when she dissents (indicated as “Assign-from-Dissent”). Standard errors are in parentheses and are clustered at the case level. * p<0.1, ** p<0.05, *** p<0.01.

Figure 3: Circuit Level Placebo Tests



Note: The figure reports the results of estimating the preferred specification in Table 2, Column 4 for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented in the case. Point estimates and 95 percent confidence intervals are reported. The placebo test estimates separate regressions assuming that the circuit in question follows the outlier rule from the Fourth Circuit (with the chief judge wielding the assignment power) and the Fourth Circuit follows the majority rule (with presiding judges other than the chief judge wielding the assignment power). Standard errors are clustered at the case level.

Figure 4: Placebo Tests with Multiple Circuits



Note: The figure reports the results of estimating preferred specification in Table 2, Column 4 for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented in the case. The figure reports the distribution of point estimates from placebo tests estimating separate regressions randomly assuming that some circuits follow the outlier rule from the Fourth Circuit (with the chief judge wielding the assignment power) and other circuits follow the majority rule-(with presiding judges other than the chief judge wielding the assignment power). The vertical line reports the actual point estimate in the regression from Table 2, Column 4.

Table A1: Influence of Assignment Power on Disagreement (Dissent or Concur)

	<i>Dissent or Concur</i>				
	(1)	(2)	(3)	(4)	(5)
Presiding Judge	-0.0022*** (0.0006)	-0.0021*** (0.0006)	0.0020 (0.0017)	0.0021 (0.0017)	0.0021 (0.0017)
Chief Judge		-0.0021* (0.0012)	-0.0017 (0.0012)	-0.0020* (0.0012)	-0.0020* (0.0012)
Assignment Power			-0.0045** (0.0018)	-0.0028 (0.0019)	-0.0026 (0.0019)
Assign-from-Dissent				-0.0028** (0.0012)	-0.0028** (0.0012)
Assignment Power × Ideological Minority on Panel					-0.0012 (0.0015)
Active Judge	-0.0011 (0.0013)	-0.0010 (0.0013)	-0.0008 (0.0013)	-0.0008 (0.0013)	-0.0008 (0.0013)
Ideological Minority on Panel	0.0114*** (0.0008)	0.0114*** (0.0008)	0.0114*** (0.0008)	0.0114*** (0.0008)	0.0118*** (0.0009)
Most Experienced Judge on Panel	0.0027*** (0.0007)	0.0027*** (0.0008)	0.0026*** (0.0007)	0.0026*** (0.0007)	0.0026*** (0.0007)
Years Active (10 years)	0.0072 (0.0052)	0.0073 (0.0052)	0.0073 (0.0052)	0.0073 (0.0052)	0.0073 (0.0052)
Covariates					
Judge FE	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes
N	334,551	334,551	334,551	334,551	334,551
Dep Var Mean	0.0182	0.0182	0.0182	0.0182	0.0182

Note: The table reports the results of estimating Equation (1) for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented or concurred in the case. Each circuit has a chief judge who serves a term of up to 7 years before returning to non-chief judge status on the court. Home circuit judges are either in regular “active” service or hold “senior” status (a form of semi-retirement). Each case has a presiding judge who formally oversees panel proceedings. Each case also has one judge who has primary responsibility for assigning the panel opinion (“Assignment Power”). See the text for the rules governing the status of a judge as chief, active, and presiding. Presiding judges other than the chief judge do not hold the assignment power in the Fourth Circuit. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the next ranking judge in the majority assigns the panel opinion when the presiding judge dissents. In the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the presiding judge assigns the majority opinion even when she dissents (indicated as “Assign-from-Dissent”). Standard errors are in parentheses and are clustered at the case level. * p<0.1, ** p<0.05, *** p<0.01.

Table A2: Influence of Assignment Power on Disagreement (Dissent or Concur) for Non-Majority Writer

	<i>Dissent or Concur</i>		
	(1)	(2)	(3)
Presiding Judge	0.0025 (0.0018)	0.0026 (0.0018)	0.0026 (0.0018)
Chief Judge	-0.0021 (0.0017)	-0.0025 (0.0017)	-0.0025 (0.0017)
Assignment Power	-0.0052*** (0.0020)	-0.0033 (0.0022)	-0.0032 (0.0022)
Assign-from-Dissent		-0.0030** (0.0015)	-0.0030** (0.0015)
Assignment Power × Ideological Minority on Panel			-0.0008 (0.0018)
Active Judge	0.0000 (0.0015)	0.0000 (0.0015)	0.0001 (0.0015)
Ideological Minority on Panel	0.0130*** (0.0009)	0.0130*** (0.0009)	0.0133*** (0.0011)
Most Experienced Judge on Panel	0.0038*** (0.0008)	0.0038*** (0.0008)	0.0038*** (0.0008)
Years Active (10 years)	0.0096 (0.0099)	0.0096 (0.0099)	0.0096 (0.0099)
Covariates			
Judge FE	Yes	Yes	Yes
Year FE	Yes	Yes	Yes
N	271,373	271,373	271,373
Dep Var Mean	0.0211	0.0211	0.0211

Note: The table reports the results of estimating Equation (1) for a dataset at the judge-vote level for non-en banc court of appeals cases with published opinions in the Federal Reporter, Third Series from 1993 to 2007. The outcome is an indicator for whether the judge dissented or concurred in the case. The sample is restricted to judge-votes of judges who do not write the majority opinion. Each circuit has a chief judge who serves a term of up to 7 years before returning to non-chief judge status on the court. Home circuit judges are either in regular “active” service or hold “senior” status (a form of semi-retirement). Each case has a presiding judge who formally oversees panel proceedings. Each case also has one judge who has primary responsibility for assigning the panel opinion (“Assignment Power”). See the text for the rules governing the status of a judge as chief, active, and presiding. Presiding judges other than the chief judge do not hold the assignment power in the Fourth Circuit. In the First, Second, Third, Tenth, Eleventh, D.C., and Federal Circuits, the next ranking judge in the majority assigns the panel opinion when the presiding judge dissents. In the Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the presiding judge assigns the majority opinion even when she dissents (indicated as “Assign-from-Dissent”). Standard errors are in parentheses and are clustered at the case level. * p<0.1, ** p<0.05, *** p<0.01.