The "Odd Party Out" Theory of *Certiorari**

Adam Bonica[†] Adam Chilton[‡] Maya Sen[§]

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Abstract

We study how the ideological positions of petitioners, respondents, and appeals panels influence the Supreme Court's decision to hear cases. We theorize that the Court is more likely to grant cert petitions when there is (1) ideological distance between the parties and (2) the appeals panel is aligned with the winning side. In these cases, the petitioning party is an "Odd Party Out," which conveys information about the possibility of lower court bias. We test the theory using a new dataset of almost 18,000 cert petitions that includes advocate and judge ideology. We find that cert is more likely when the petitioner—regardless of ideology—is the Odd Party Out. This effect is driven by civil cases, but is similar for low- and high-salience cases. We argue that our results are consistent with justices being more willing to exercise oversight when a possibility of ideological bias in lower courts exists.

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[†]Stanford University (https://web.stanford.edu/~bonica).

[‡]University of Chicago (http://www.adamchilton.org).

[§]Harvard University (https://scholar.harvard.edu/msen).

1 Introduction

The role of ideology in Supreme Court decision-making is one of the most well-studied topics in judicial politics. There is strong evidence that ideology not only shapes how justices vote (e.g., Segal and Spaeth, 2002), but also that it motivates other behavior. For example, given that the justices only hear around 70 to 80 cases per year, it is not surprising that many studies have found that the pursuit of ideological interests plays a role in whether at least four justices agree to hear a case—that is, to grant *certiorari* (e.g., Lindquist, Haire and Songer, 2007; Hall, 2009).

But in addition to using the cert process to advance their own ideological interests, the justices may also use it to submit instances of possible ideological bias in the lower courts to greater oversight. Prior research has documented how the justices sometimes de-emphasize the appearance of ideological bias in the judiciary, like by purposefully avoiding splits along partisan lines in high-profile cases (Minow, 2012), issuing unanimous opinions where possible (Feldman, 2019), and emphasizing continuity with past decisions (Lakier, 2015). Closer to our inquiry, another line of research has examined the interplay between lower court judges' ideologies and the Supreme Court's median (e.g., Cameron, Segal and Songer, 2000), suggesting that the justices exercise closer scrutiny when lower court decisions may be at odds with their own preferences.

We build on this research by identifying another instance where justices may be willing to exercise additional oversight over perceived ideological behavior. Specifically, when a lower court rules in favor of an ideological ally and against an ideological opponent, the justices may be unable to rule out the possibility of ideological favoritism. (This would be the case, for example, if a former president lost an executive privilege case before 3 judges appointed by a president of a different party.) However, when a lower court decides against an ideological ally and they appeal, the justices may infer that the party had a weaker case and thus can more readily rule out the possibility that the lower court was ideologically motivated. (This would be the case if the former president lost before 3 judges he appointed.) Based on this intuition, we hypothesize that cert is more likely to be granted when the party petitioning for review (the petitioner) is ideologically opposed to both the party responding (the respondent) and the lower court panel. In other words, the probability of cert will increase when the petitioner is the "Odd Party Out."

To test the theory and investigate what it reveals about Supreme Court behavior, we assembled a novel dataset of 17,871 Supreme Court cert petitions filed between 2003 and 2015 and related amicus data. These data include individual-level estimates of ideology for advocates and judges. Using these new data, we find strong evidence in favor of the Odd Party Out theory, with the presence of an Odd Party Out petitioner, but not a respondent, being associated with between a 2.3 and 3.0 percentage point increase in cert being granted. Given that only 6.4 percent of cert petitions with no Odd Party Out are granted, this translates into up to a 47 percent higher probability of cert. And, as we show, this increased probability is even greater looking at cases that advance to the merits stage (as opposed to a "grant, vacate, remand" (GVR) order). The relationship is robust to controlling for a range of variables known to influence cert decisions.

To shed light on the substantive implications of these results, we also explore whether the effect depends on the type of case. First, because the relative ideological positions of the parties may be more informative for civil cases, we test if the effect varies across civil and criminal cases. We find that the main results are driven by civil cases, in which Odd Party Out petitioners are 4.1 percentage points (or 51 percent) more likely to have their cert petitions granted. Next, we use new data on amicus briefs filed in support or opposition of cert petitions as a measure of the case's salience. Although some of these results are imprecisely estimated, we find that the Odd Party Out effect appears to be similar for cases with and without amicus briefs, consistent with the possibility that the petitioner's Odd Party Out status conveys information even in high-salience cases. Lastly, and most importantly, we do not find any differences if an Odd Part Out petition was filed by a liberal or conservative petitioner. Taken together, these findings are consistent with the possibility that the Court exercises greater scrutiny when there is the possibility of ideological bias in the lower courts, regardless of the direction of that bias.

Our research makes three contributions. First, we build on existing scholarship assessing the role of ideology in judicial decision making, but our new data allows us to more directly incorporate the ideology of the litigating parties into our understanding of the certiorari process. Second, our research identifies a new feature that is strongly associated with the probability of cert success—the ideological positioning of the losing party at the lower court level. Third, we

complement scholarship that documents the existence of ideologically motivated behavior in the judiciary by exploring an instance consistent with the Court possibly acting to reduce it.

This paper proceeds as follows. Part 2 explains prior research on cert decisions, while Part 3 develops our Odd Party Out theory. Part 4 introduces the data we use to test this theory. Part 5 presents results showing that, when petitioners are the ideological Odd Party Out, the probability of cert increases significantly. Part 6 shows that the petitioner being the Odd Party out is predictive regardless of the petitioner's ideology. Part 7 validates key assumptions. Part 8 discusses the results and concludes.

2 Prior Research on Cert Decisions

The theoretical and empirical research on cert decisions can be roughly grouped into three categories, all of which motivate our Odd Party Out theory.

2.1 Cue Theory

The first line of research on cert decisions argues that the presence of certain important features signals that a petition is worthy of attention (Perry, 1991; Feldman and Kappner, 2017). The idea that the Court relies on these signals when deciding which petitions to grant is known as "cue theory" (Tanenhaus et al., 1963). For example, cert is more likely when lower courts disagree (e.g., Caldeira and Wright, 1988; Caldeira, Wright and Zorn, 1999; Black and Owens, 2009); when amicus briefs are filed on the petitioner's behalf (Caldeira and Wright, 1988); when an appeals court has heard the case *en banc* (George and Solimine, 2001); when a dissenting opinion was filed (Caldeira, Wright and Zorn, 1999; Kastellec, 2007; Beim, Hirsch and Kastellec, 2014); and when the lower court's ideological composition was in opposition to the Supreme Court's ideological composition (Cameron, Segal and Songer, 2000; Hammond, Bonneau and Sheehan, 2005; Hall, 2009; Black and Owens, 2012). The category of cues most relevant to our theory involves the identities of the individuals asking the Court to grant cert. For example, the Court is more likely to hear a case when the request was made by the U.S. Solicitor General (Tanenhaus et al., 1963; Bailey, Kamoie and Maltzman, 2005); when the litigants have higher "status" (Black and Boyd, 2012); and when the advocates have previously argued before the Court (Feldman and Kappner,

2017). This category of cues suggests that the identity of the advocates may convey relevant information to the justices about the case's legal and political importance.

2.2 Error Correction

The second line of research on cert decisions argues that the justices have preferences over case outcomes and theorizes that cert is a way to revisit cases inconsistent with the median's preferences (e.g., Brenner, 1997). These are typically characterized as "error correcting" theories because the models underlying them "generally privilege error correction as a motivation for discretionary jurisdiction" (Clark and Kastellec, 2013, p. 151). However, appeals courts decide tens of thousands of cases each year, so the Court necessarily orients its resources to the most important errors. Recognizing these resource constraints, several studies argue that the justices audit the lower courts strategically (Cameron, Segal and Songer, 2000). By this logic, the Court monitors the appeals courts and scans cert petitions for cues that rulings were "incorrect" (from the perspective of the Court's median).

For our theory, a key insight from this literature is that the ideological positions of the parties can send an important signal about whether cert should be granted. For instance, Lindquist, Haire and Songer (2007) find that more cert petitions are granted from circuits that are ideologically distant from the Court's median; Black and Owens (2012) find that cert petitions are more likely to be granted when the panel median is ideologically distant from the Court's median; and Bryan and Owens (2017) find that the justices craft their agenda to audit judges in ideologically distant states. Just as the Court is likely to look closely at cases where a lower court is ideologically distant from its median (Cameron, Segal and Songer, 2000), the justices may be more likely to look closely at a case where the lower court panel has ruled against an ideological opponent.

2.3 Jurisprudential Development

The third line of research on cert decisions has emphasized that the justices' objective is to make contributions to doctrine (Perry, 1991; Clark and Kastellec, 2013; Beim, 2017). These papers are motivated by the insight that, if the justices were acting purely to correct errors, they would review hundreds more cases where obvious errors are made. Building on this insight, this line of research argues that the justices vote to hear cases that contribute to the Court's

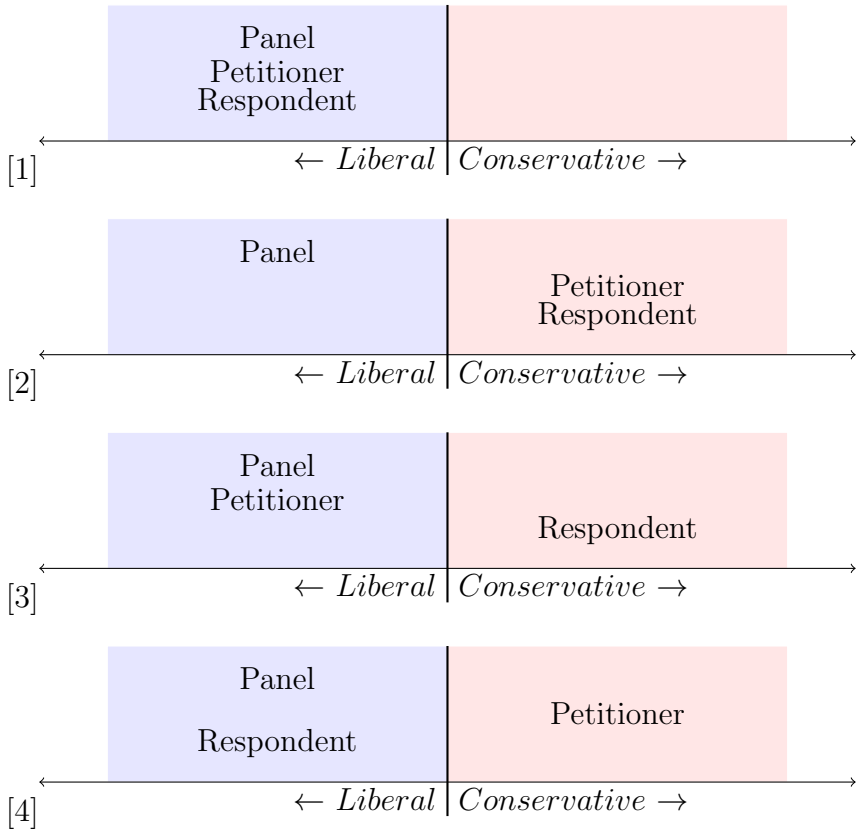
status as an interpreter of laws and the Constitution. As Clark and Kastellec (2013, p. 150) argue, "[b]ecause their docket is so selective, the justices use most of these cases not to engage in simple error correction of lower courts; instead, they can focus on taking cases that present novel and interesting questions of law." Applying this logic, Clark and Kastellec (2013) theorize that the Court observes lower court case development as a way to learn about interesting issues and potential legal doctrines. This theme is echoed by Beim (2017), which models the Court as leveraging the lower courts' role as "laboratories" of law to learn about doctrinal approaches. This literature thus implies that the Court grants cert when it believes the case is exceptionally important or likely to contribute to jurisprudential development.

To test these theories, this research has mostly focused on one specific indicator of case importance: the presence of circuit splits. As Beim (2017, p. 592) notes, "decisions informing the Supreme Court are often in conflict with one another, which the Supreme Court uses to its advantage." Indeed, circuit splits are so important that the Supreme Court's internal rules require petitioners to address them in their legal briefs and advocates frequently claim a split exists regardless of the state of the law (Russell, 2007). For the purposes of our theory, circuit splits are one indicator of a case's potential importance, but the relative ideologies of the parties involved may be another, as suggested by the literature on error correction. Indeed, if the Court is looking for politically or doctrinally important cases, then one useful proxy could be polarization among the parties, which could indicate the case is likely to be important. However, as we discuss below, we do not see evidence that this could fully explain our results.

3 The Odd Party Out Theory of Certiorari

We now turn to developing our Odd Party Out Theory of *Certiorari*. Our theory builds on prior literature by incorporating the ideology of the two litigating parties, in tandem with that of the lower court panel's median, to explain an additional reason why cert petitions are granted. Our theory also suggests that the litigating parties' relative ideology should be particularly salient for some of the parties' ideologies (e.g., Odd Party Out petitioners as opposed to respondents) and for some types of cases (civil as opposed to criminal).

Figure 1: **Stylized Illustrations of Odd Party Out Possibilities**



3.1 Odd Party Out Framework & Stylized Examples

Assume a lower court panel, the petitioning party, and the respondent party could each be one of two types, *Liberal* or *Conservative*.[1] Figure 1 depicts the four possible combinations of parties' type when the lower court panel is liberal (we omit combinations where the lower court panel is conservative for simplification). We define an Odd Party Out as a party that is of the opposite type as the other two parties.

[1]: No Party Out. When both the parties and the lower court panel are the same type (Figure 1, Row 1), there is no Odd Party Out, and the framework generates no predictions.

[2]: Panel is the Odd Party Out. When the petitioner and respondent are ideologically aligned but the panel is the ideological outliner (Figure 1, Row 2), then there is also no prediction. From the perspective of possible ideological bias, the lower court panel has sided with one ideo-

[1] Consistent with research such as Bonica and Sen (2017), we assume that the ideology of the advocates correlates with the ideologies of the parties, such that the former—which we can estimate from the cert petitions—is a valid proxy of the latter. Part 5.1 provides evidence validating this assumption.

logical opponent and against another ideological opponent, so the ideological configuration does not send a useful signal to the Court. The resulting prediction is that *cert will be no more likely to be granted when the panel is an Odd Party Out.*

[3]: Respondent is the Odd Party Out. When the respondent is an Odd Party Out (Figure 1, Row 3), the Court has little reason to suspect ideological bias by the lower court. Indeed, these are cases where the petitioner has enjoyed a favorable (i.e., ideologically aligned) panel and still lost. As a result, these cases should be associated with no higher probability that cert would be granted.[2] The resulting prediction is that *cert will be no more likely to be granted when the respondent is an Odd Party Out.*

[4]: Petitioner is the Odd Party Out. When the petitioner is an Odd Party Out (Figure 1, Row 4), there is cause for concern: the ideological configuration suggests that the conservative loser faced an unfavorable panel. Without knowing more, it would be difficult for the Court to rule out the possibility that the case would have been decided differently with a conservative panel. In these cases, the Court may think that the case is particularly suitable for review. The resulting prediction, with certain caveats about the Court's median below, is that *cert will be more likely to be granted when the petitioner is an Odd Party Out.*

3.2 Possible Mechanisms

The combinations in Figure 1 also generate predictions about three possible mechanisms that provide insights into Court behavior. But before discussing them, it is important to note that under the "Rule of 4," only 4 of 9 justices must agree for cert to be granted. (During the time of our analyses, at least 4 justices were appointed by Democrats and at least 4 were appointed Republicans, making the directionality of the preferences of the pivotal justice for purposes of cert unclear.) However, for this discussion, we frequently take the Court's median as a proxy for the Court's preference over its docket. We do so because the justices' votes at cert are private, and

[2]We could hypothesize that these cases may generate a lower probability of cert compared to cases with no Odd Party Out. However, prior research suggests that factors that reduce the probability of cert have modest effects. Feldman and Kappner (2017), for example, note that negative factors only "tamper" the probability of cert. This is both because the base rate for cert grants is low and because petitioners typically do not file cert petitions when there is reason to believe they have an abnormally low chance of success.

because it is consistent with research on the cert process (e.g., Cameron, Segal and Songer, 2000; Lindquist, Haire and Songer, 2007; Hall, 2009; Owens and Simon, 2011).

This approach is also supported by prior research showing that the median justice has substantial control over the Court's docket. For example, Lax (2003) finds that the Rule of 4 strengthens the position of the median and, by extension, of the Court's majority. (As Lax notes, the Rule of 4 is endogenous and would have already been replaced if it did not benefit the majority.) Relatedly, Johnson (2018) finds that, under the Rule of 4, the majority is usually successful in controlling most of the docket and that at most a small number of cases originate within the minority voting bloc. Johnson also finds that the preferences of the Chief Justice—in his case, like ours, a Republican appointee—matter greatly, likely owing to his ability to vote first. In addition, Perry (1991) notes that justices in the minority often employ "defensive denials"—that is, voting against hearing cases if they think their colleagues would rule in an unfavorable direction, which would further support relying on the median. However, we discuss in greater detail below how the Rule of 4 and the Court's median may affect the substantive interpretation of our findings.

Mechanism #1: Promoting Jurisprudential Development. As noted above, cases contributing to jurisprudential development are more likely to be heard. Many of the highest salience cases involve disputes between ideologically polarized parties, including those involving election outcomes, civil rights, redistricting, and health care. Thus, the parties' polarization may be a proxy for a case's importance and its ability to contribute to legal doctrine. The observable implication here is that we should see the Odd Party Out effect hold for *both the petitioner and respondent*. Indeed, if case importance tracks polarization, this would imply a positive cert relationship in both the third and fourth rows of Figure 1, not just the fourth.

Mechanism #2: Advancing Ideological Preferences. There is strong evidence that the justices act to further their ideological interests in the cert process. In Odd Party Out cases where the lower court ruled against a party that is aligned with the median justice, granting cert would provide an opportunity for the Court to advance the median's preferences. (Under the Rule of 4, a minority bloc of four justices may also advance its ideological preferences.) If Odd

Party Out cases are granted cert at higher rates because of this, we would expect to see disparate effects by ideology—for example, *a positive effect when the Odd Party Out is aligned with the Court's median member*. Moreover, this effect would only exist when the ideologically aligned Odd Party Out was a petitioner, as there is no need to grant cert where the ideologically aligned Odd Party Out was a respondent (after all, they would have already won in the lower courts). If this were the case, because our sample is from 2003-2015—a time when the Court's ideological medians were Sandra Day O'Connor or Anthony Kennedy—we would expect to find larger effects for *conservative petitioners*, but any kind of disparate effect by the ideology of petitioner could suggest the justices are primarily trying to advance their specific ideological interest.

Mechanism #3: Higher Scrutiny in Where There May be Ideological Bias. The justices occasionally take steps to reduce the appearance that the judiciary is ideologically biased. For example, justices have been known to avoid partisan splits on important cases (Minow, 2012) and to issue unanimous opinions where possible (Feldman, 2019). If the reason that cert is granted at higher rates for Odd Party Out cases is that they provide an opportunity for the Court to more closely scrutinize possible instances of ideological bias, we would expect to see the *positive Odd Party Out effect for conservative and liberal petitioners at comparable rates*. The substantive takeaway would be that the Court is exercising greater oversight in cases where ideological bias cannot be ruled out—not just in the ones where the Court's median (or minority, operating under the Rule of 4) benefits.

Importantly, if the Court is granting cert to Odd Party Out petitioners at a higher rate in order to scrutinize cases with possible ideological bias, the effect is more likely to be present for some kinds of cases than for others. For instance, we would only expect to see an effect when the Odd Party Out is a petitioner, as an Odd Party Out respondent only exists when lower courts rule against their ideological type, suggesting that ideological bias would not have driven their decision. Moreover, for criminal cases, the Solicitors General's office is the respondent in nearly every case. As a result, the relative ideological positions of the parties may be less informative in criminal cases than in civil cases, meaning that the Odd Party Out effect may be more likely in civil disputes. Lastly, for this kind of oversight to be meaningful, we would expect an increased

Table 1: **Predictions Generated By Three Possible Mechanisms**

	Respondent OPO	**Petitioner OPO**
Promoting Jurisprudential Development	Positive	Positive
Advancing Ideological Preferences	No Effect	Positive for Ideologically aligned
Monitoring Ideological Bias	No Effect	Positive

probability of merits decisions (not simply other types of dispositions, such as "grant, vacate, remand" orders).

Table 1 summarizes the basic predictions generated by each mechanism.

4 Cert Petitions and Ideology Data

Testing our theory requires knowing the identities and ideologies of the litigating parties and the lower court judges. Because administrative data does not include this information, we collected new data on cert petitions filed for over a decade. In addition, we use the ideology of lawyers as a proxy for the ideologies of the litigating parties, a choice we justify below.

Cert Petition Data. We gathered cert petitions from the Supreme Court's website, which included all cert petitions from the U.S. Courts of Appeals from 2003 to 2015.[3] This represented 42,567 total petitions. For each petition, we extracted the names of the attorneys representing the petitioners and respondents, other case features, and outcomes of the petitions. (These data do not include the individual justices' cert votes, which are private.) We also collected data on whether any amicus briefs were filed, discussed in greater depth below. For our primary analysis, we code petitions as granted if the Court issues either an order allowing the petition to move to the merits stage or an order to "grant, vacate, remand" (GVR).

Lower Court Decisions Data. We collected data on all U.S. Court of Appeals cases decided between 2003 and 2015 from the Federal Judicial Center's Integrated Database.[4] These data provide detailed information on case characteristics and outcomes but purposefully omit the names of the judges that heard the cases. We thus obtained lower court decisions from the CourtListener

[3] http://supremecourt.gov. We start our data collection in 2003 because we detected some inconsistencies in how cert petitions are reported by the Court before 2003.

[4] https://www.fjc.gov/research/idb.

database,[5] and parsed the names of the lower court judges from the opinions. This ranged from three judges for standard panels to over a dozen judges for cases heard by all judges in a circuit sitting *en banc*. We also parsed whether a case generated a dissenting opinion.

Ideology Data. Estimating the ideology of the parties involved in cert petitions is not straightforward. The litigating parties frequently include entities like municipal bodies or administrative agencies that do not possess a single "ideology," and the identifying information necessary to link a litigating party to ideological measures is not readily available in most cert petitions. However, these obstacles do not exist for the *advocates* who file the cert petitions. Research has shown that political donations are a reliable way to measure ideology (Bonica, 2019), that it is possible to match lawyers to their political donations (Bonica, Chilton and Sen, 2016), and that lawyers are prolific donors (Bonica et al., 2017). As a result, even though it may not be possible to estimate the ideology of a litigating party named *Paul Smith*, it is possible to link the Supreme Court litigator *Paul Smith* to his political donations, thereby allowing us to estimate his ideology.

Not only are the advocates key players in Supreme Court litigation (e.g., McGuire and Caldeira, 1993; McGuire, 1995), but, as we show below using a subset of our data, the ideologies of Supreme Court advocates and the positions they represent are correlated (Bonica and Sen, 2017). Although the correlation might be weaker at lower levels, Supreme Court litigation is sufficiently politicized that parties advancing liberal positions typically hire liberal advocates and parties advancing conservative positions typically hire conservative advocates. For instance, litigator Paul Smith has represented the liberal side in high-profile cases like *Lawrence v. Texas* (2003), and well-known conservative litigator Paul Clement represented the conservative position in high-profile cases like *United States v. Windsor* (2013). Of course, lawyers may represent causes and clients that they do not agree with. However, such cases often generate publicity precisely because they are exceptions. Moreover, to the extent the ideological alignment between advocates and their positions is imperfect, the measurement error will create attenuation bias, which would bias our results towards zero and make it more difficult for us to test the theory, not easier.

This operationalization does not imply that the justices are relying on any signal provided

[5] http://courtlistener.org.

by the advocates' identity when making cert decisions. In fact, because the justices rely on briefs prepared by clerks that typically do not include attorney names, the justices may be unaware of the advocates' identities for the majority of the cert petitions. Instead, our argument is that the advocates' ideology is best considered a proxy for the ideological positions of the parties they represent, a claim we test in Part 5.1. Additionally, in Part 7.5, we report results showing that repeat litigators are no more likely to show heightened Odd Party Out effects.

To estimate ideology, we use data from the Database on Money, Ideology, and Elections (DIME). DIME uses information from over 20 million individual donors and 250 million political donations to generate an estimate of each donor's ideology called the CFscore (or "campaign finance" score) (Bonica, 2014, 2019).[6] CFscores offer several key advantages. First, CFscores are available for both judges and attorneys who have not previously held elected office. Second, CFscores place judges and attorneys on a single common scale. Third, for judges' ideology, CFscores provide a finer estimate of ideology than other standard measures (Bonica and Sen, 2017). Finally, prior research has measured ideology at the circuit level (e.g., using the ideology of the median judge on a circuit as a proxy for all panels), but because we collected information on individual panel members and their corresponding CFscores, we can measure ideology at the panel level (and of the panel median), giving us a better ability to evaluate our theory and mechanisms.

Summary Statistics Out of 42,567 cert petitions in our overall dataset, we have complete ideology data for a sample of 17,871 cert petitions. Table 2 presents summary statistics on the sample with complete ideology data.[7] Importantly, the data are not missing at random. For instance, although 4.5 percent of cert petitions were granted in the full dataset of 42,567 cases, 6.6 percent of cert petitions were granted in the sample of 17,871 cases for which we have complete data. This higher grant rate is likely because we are more likely to have ideology data for elite lawyers and repeat players. In other words, our data disproportionately includes exactly the kind of litigants who are more likely to have their cert petitions granted (e.g., McGuire, 1995). That

[6]The CFscores are based on the weighted average of the ideologies of candidates that a donor has contributed to. They are scaled so that the mean ideology is 0, a score of -1 is one standard deviation more liberal than the average donor, and a score of +1 is one standard deviation more conservative than the average donor.

[7]Appendix A1 reports summary statics for the overall dataset.

Table 2: **Summary Statistics**

	All Cases		Civil Cases		Criminal Cases	
	Mean	S.D.	Mean	S.D.	Mean	S.D.
Outcome						
Cert Granted	0.066	0.248	0.084	0.277	0.055	0.229
– *Merits Grant*	0.022	0.148	0.051	0.220	0.005	0.072
– *GVR Grant*	0.044	0.205	0.033	0.178	0.050	0.219
Odd Party Out						
No OPO	0.795	0.404	0.835	0.371	0.772	0.420
Panel OPO	0.064	0.244	0.067	0.250	0.062	0.241
Respondent OPO	0.057	0.233	0.048	0.213	0.063	0.243
Petitioner OPO	0.084	0.277	0.050	0.218	0.103	0.304
Procedural History						
En Banc	0.016	0.124	0.030	0.172	0.007	0.085
Dissenting Opinion	0.072	0.259	0.137	0.344	0.036	0.187
District Court Reversed	0.080	0.271	0.161	0.368	0.032	0.175
Case Dismissed	0.801	0.399	0.653	0.476	0.890	0.313
Litigant Characteristics						
Solicitor General (Pet.)	0.005	0.068	0.010	0.099	0.002	0.043
Solicitor General (Resp.)	0.688	0.463	0.289	0.453	0.997	0.057
Corporation (Pet.)	0.068	0.252	0.172	0.377	0.002	0.048
Corporation (Resp.)	0.078	0.268	0.202	0.402	0.001	0.025
Pro Se (Pet.)	0.045	0.207	0.072	0.258	0.029	0.169
Veteran Atty. (ln)	0.564	1.136	0.419	1.050	0.648	1.175
Case Salience						
Amicus Briefs Filed	0.044	0.206	0.112	0.315	0.005	0.069
Observations	**17,871**		**6,354**		**11,265**	

said, this subset still represents one of the largest samples used to study the cert process,[8] and Part 7 shows that possible non-random missingness is unlikely to be driving our results.

5 Evidence in Favor of the Odd Party Out Theory

We now turn to testing the Odd Party Out theory. We first present evidence suggesting that advocate ideology is a valid proxy for party ideology. We then test the basic predictions of the theory and explore how the results differ according to important case characteristics.

5.1 Advocate Ideology is Related to Party Ideology

A key assumption of our design is that advocate ideology is related to party ideology. As discussed in Part 4, prior research and anecdotal evidence suggest that, in litigation before the Supreme Court, parties are likely to hire lawyers who are ideologically like-minded. We empirically test this assumption in two ways. First, for cases that were granted cert, the Supreme Court Database codes whether the decision reached by the Court and lower court was conservative or

[8]For example, Cameron, Segal and Songer (2000) use a random sample of 273 search and seizure petitions from 1972 to 1986; Black and Owens (2012) use a random sample of 358 non-death penalty petitions from 1986 to 1993; and Mak, Sidman and Sommer (2013) use a sample of 169 cert petitions from religion cases from 1946 to 2006.

Table 3: **Attorney Ideology and the Directionality of Court Decisions**

	Supreme Court Decisions		Lower Court Decisions	
	(1)	**(2)**	**(3)**	**(4)**
Winning Attorney CFscore	0.092***	0.107***	0.066***	0.030**
	(0.014)	(0.014)	(0.014)	(0.014)
Losing Attorney CFscore	-0.081***	-0.054***	-0.148***	-0.151***
	(0.014)	(0.015)	(0.013)	(0.013)
Observations	1,277	1,232	1,275	1,228
R-squared	0.060	0.124	0.105	0.234
Circuit Fixed Effects	No	Yes	No	Yes
Term Fixed Effects	No	Yes	No	Yes

Notes: The sample of cases is petitions where cert was granted. The dependent variable for columns (1) and (2) is "1" if the Supreme Court decision on the merits was coded as conservative by the Supreme Court database, and the dependent variable for columns (3) and (4) is "1" if the lower court decision on the merits was coded as conservative by the Supreme Court database. All regressions are estimated using a linear probability model with standard errors clustered by term. The constant is omitted. ***p < .01; **p < .05; *p < .1

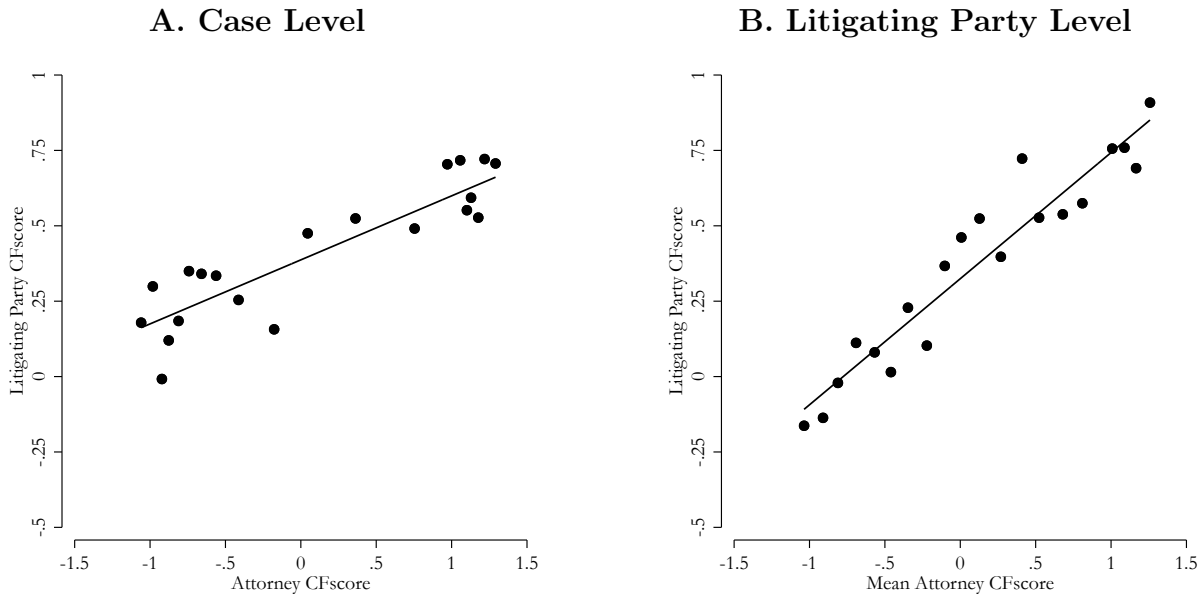
liberal (Spaeth et al., 2015). In decisions that were granted cert, we can thus test whether the ideology of the winning and losing advocates is related to whether the decisions were conservative or liberal.[9] To do so, Table 3 reports the results of a series of regressions where the independent variable is the CFscore of the winning and losing attorneys and the dependent variables are whether the substantive outcome of the Supreme Court and the lower court decision was conservative.

As Table 3 shows, more conservative ideologies (higher CFscores), are strongly associated with conservative decisions. For Column 2, moving from a CFscore of the winning attorney in the bottom 25th percentile (very liberal) to a CFscore in the top 75th percentile (very conservative) is associated with a 22.4 percentage point higher probability that the case outcome at the Supreme Court is conservative. Similarly, Column 4 shows that the same shift is associated with a 5.3 percentage point higher probability that the lower court decision is conservative. The implication of Table 3 is that when the winning attorney is more conservative (or liberal), the decision returned by the Supreme Court or lower court is more likely to be conservative (or liberal) as well. This suggests a close correspondence between attorney ideologies and the sides they represent.

Second, we directly estimated the relationship between the ideology of a sample of advo-

[9]We can only test this relationship when cert was granted, but the relationship between advocate ideology and the positions they represent may not hold, or be substantially weakened, in cases where cert was denied.

Figure 2: **Binscatter Plots of Party Ideology and Attorney Ideology**



Note: Relationship between attorney CFscores and Litigating Party CFscores. Panel A is at the case level, with one observation for each of 2,584 the cases where we have data on the CFscores of both the lead attorney and the litigating party. Panel B is aggregated by Litigating Party, with one observation for each of the 440 litigating parties where we have data on their CFscore and at least one lead attorney that represents them. The binscatter plots show the averages for 20 equal-sized bins of the observations in each sample.

cates and the parties they represent. As Part 4 explained, the cert petitions do not contain the information necessary to easily link the identities of litigating parties to their political donations and many litigating parties have made no political donations. But for a subset of our sample, we were able to obtain the CFscores of the litigating parties by subsetting on repeat players (that appeared in four or more cases where attorney ideology is observed) and then manually matching to the donor file. (Because only the surname typically appears for private individuals, these matches are mostly organizations.) We were able to obtain the CFscores of 440 litigating parties that participated in 2,584 cert petitions for which we also have data on the advocates' ideologies.

Using this data, Figure 2 reports binscatter plots of the relationship between advocate ideology and party ideology. Panel A uses data at the case level, showing a positive relationship between advocate ideology and the ideology of the parties they represent (correlation of 0.36). Panel B collapses the data to the litigating-party level by taking the average CFscore for the advocates representing the 440 litigating parties we have ideology data on, and it reveals an even

Table 4: **Attorney Ideology and Party Ideology**

	Case Level	**Litigating Party Level**
	(1)	**(2)**
Attorney CFscore	0.212***	
	(0.011)	
Mean Attorney CFscore		0.418***
		(0.325)
Observations	2,584	440
R-squared	0.126	0.279

Notes: The dependent variable for all columns is the litigating party's CFscore. The sample for Column 1 is at the case level, and the sample for Column 2 is at litigating party level. All regressions are estimated using OLS Models. The constant is omitted. ***p < .01; **p < .05; *p < .1

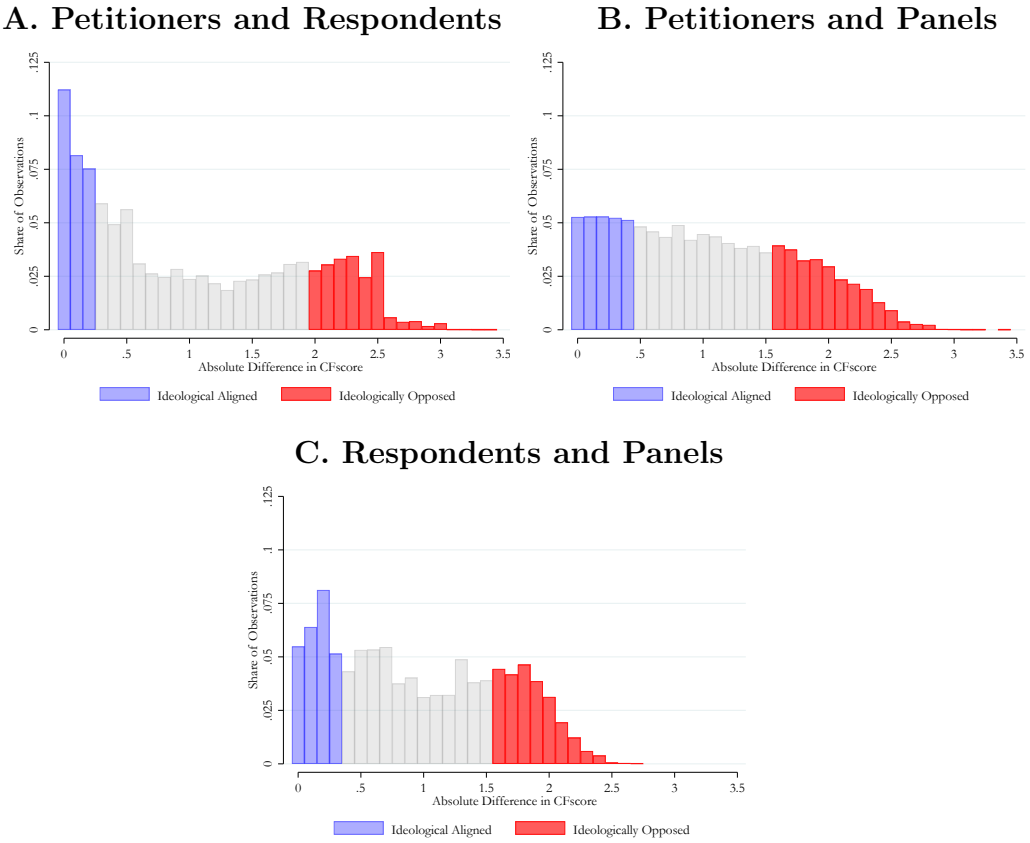
stronger relationship (correlation of 0.53). This stronger correlation should be expected because averaging across cases would reduce the measurement error between the advocates hired for each individual case and the parties' ideologies. Table 4 further reports regressions that show advocate ideology is a highly significant predictor of the parties' ideology. Taken together, these results support our argument that advocate ideology is a valid proxy for parties' ideology.

5.2 Baseline Results

We now look at the evidence for the Odd Party Out theory. For simplicity, our primary analysis uses a distributional cutoff to capture whether a panel, respondent, or petitioner is an Odd Party Out. We calculate the absolute distance of CFscores between the panel, respondent, and petitioner for each case. Pairs with distances below the 25th percentile are *ideologically aligned* and pairs with distances greater than the 75th percentile are *ideologically opposed*. To illustrate, Figure 3 plots the distribution of these relationships. It shows, for instance, that ideologically opposed petitioners and respondents have CFscores that are nearly 2 points apart. To put the difference in perspective, this is roughly the distance between the CFscores for Barack Obama and Mitt Romney (Bonica, Chilton and Sen, 2016).

After calculating which parties are ideologically aligned and opposed, we code petitioners, respondents, or panels as an Odd Party Out if they are ideologically opposed to the other two. Using this definition, our sample includes 13,634 cases (76.3%) without an Odd Party Out; 1,749

Figure 3: **Distribution of Absolute Differences in CFscores Between Parties**

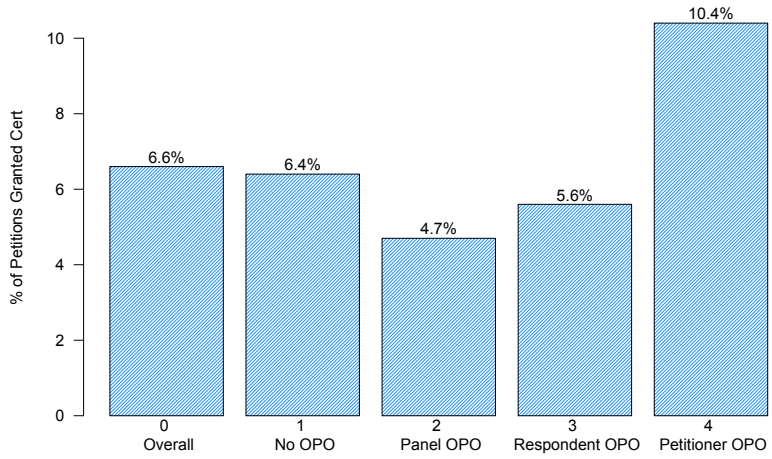


cases (9.8%) where the panel is an Odd Party Out; 906 cases (5.1%) where the respondent is an Odd Party Out; and 1,582 cases (8.9%) where the petitioner is an Odd Party Out.

Figure 4 graphs the share of successful cert petitions for each category. Overall, cert was granted for 6.6 percent of cases in the sample. The numbers are similar for cases where there was no Odd Party Out (6.4%). There is a modest decrease in grant rates for cases where the panel was an Odd Party Out (4.7%) and for cases where the respondent was an Odd Party Out (5.6%). However, the grant rate increases to 10.4 percent for cases where the petitioner was an Odd Party Out. This constitutes roughly a 62 percent increase in the probability of cert compared to cases with no Odd Party Out. The raw data thus suggests that the Court may be more interested in reviewing petitions where there is an Odd Party Out petitioner.[10]

[10]Appendix Figure A1 reports results showing that, for the granted cert petitions, lower-court decisions are also affirmed at a lower rate when there is an Odd Party Out petitioner. For example, overall, 12.4 percent of the granted cert petitions in our sample are affirmed by the Court, but only 9.0 percent of the granted cert petitions with an Odd Party Out petitioner are affirmed. This is consistent with the argument that the Court may be

Figure 4: **Share of Cert Petitions Granted by Odd Party Out Possibilities**



5.3 Regression Results

To formally assess the relationship between a party being an Odd Party Out and the probability of cert, we estimate the following regression

$$cert_{jct} = \beta_0 + \beta_1 * Panel\ Odd\ Party\ Out_{jct} + \beta_2 * Respondent\ Odd\ Party\ Out_{jct}$$
$$+ \beta_3 * Petitioner\ Odd\ Party\ Out_{jct} + \gamma X_{jct} + \mu_c + \delta_t + \varepsilon_{jct}$$

for whether cert was granted for petition j, from circuit c, in Supreme Court term t. $PanelOddPartyOut$, $Respondent\,Odd\,Party\,Out$, and $Petitioner\,Odd\,Party\,Out$ are dummy variables that capture the ideological positions of the parties and panel median using the distributional cutoffs from Part 5.2. Our theory predicts that the coefficients associated with β_3 should be positive and larger than the coefficients associated with β_1 and β_2. Moreover, γX denotes a vector of control variables that capture various petition-level characteristics, discussed below. To control for the possibilities that there are differences in grant rates across circuits or terms, all specifications include circuit fixed effects (μ_c) and Supreme Court term fixed effects (δ_t). The term fixed effects should also account for any term-invariant aspects of the Supreme Court's ideology. (Part 6.2 reports results that instead account for the Court's median ideology by including the median Martin-Quinn score from when the petition was decided.) We use a linear probability model and cluster standard

granting petitions filed by Odd Party Out petitioners to subject them to greater scrutiny.

Table 5: **Determinants of Cert Grants — Primary Results**

	(1)	(2)	(3)	(4)
Panel Odd-Party-Out	-0.005	-0.005	-0.016*	-0.016*
	(0.008)	(0.007)	(0.009)	(0.008)
Respondent Odd-Party-Out	-0.003	-0.002	0.001	0.001
	(0.007)	(0.007)	(0.007)	(0.007)
Petitioner Odd-Party-Out	0.027*	0.030**	0.023*	0.024*
	(0.013)	(0.013)	(0.012)	(0.012)
En Banc		0.056**		0.044*
		(0.026)		(0.024)
Dissenting Opinion		0.055***		0.039**
		(0.016)		(0.014)
District Court Reversed		0.051***		0.034**
		(0.017)		(0.015)
Case Dismissed		-0.019		-0.011
		(0.013)		(0.011)
Solicitor General (Pet.)			0.450***	0.430***
			(0.068)	(0.065)
Solicitor General (Resp.)			-0.038*	-0.026
			(0.018)	(0.016)
Corporation (Pet.)			0.024	0.019
			(0.016)	(0.015)
Corporation (Resp.)			-0.023**	-0.020**
			(0.009)	(0.009)
Pro Se (Pet.)			0.002	0.004
			(0.011)	(0.011)
Veteran Atty. (ln)			0.036***	0.035***
			(0.006)	(0.006)
Observations	17,871	17,871	17,871	17,871
R-squared	0.068	0.081	0.120	0.125
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

errors at the term level to account for dependencies in cases in a given term.[11]

Table 5 reports the results. Column 1 includes only circuit and term fixed effects. Column 2 adds variables that control for the procedural history of the case (if there was *en banc* review, a court of appeals dissent, a reversal by the court of appeals of the district court, and the case was dismissed by the appeals panel). Column 3 adds variables that control for the identities of the parties (if the parties include the Solicitors General's office, the parties are corporations, the petitioner is proceeding *Pro Se*, and the petitioning attorney is a veteran Supreme Court litigator[12]). Finally, Column 4 includes the full battery of control variables.

[11] Appendix A2 reports results using logit models and circuit-level clustered standard errors.

[12] We define veteran attorneys based on their number of prior cert grants, as ln(previous cert grants + 1).

In all specifications, the coefficient for the petitioner being an Odd Party Out is positive, statically significant, and substantively large. The presence of an Odd Party Out petitioner is associated with between a 2.3 percentage point (Column 3) and a 3.0 percentage point (Column 2) higher probability of cert being granted. This translates into between a 36 and 47 percent higher probability of cert being granted when there is an Odd Party Out petitioner compared to no Odd Party Out. To put the effect size in context, Column 4 suggests that the probability of cert increases by 3.9 percentage points when there was a lower court dissenting opinion and by 4.4 percentage points when the circuit court heard the case *en banc*. The coefficients for whether the panel or respondent is an Odd Party Out are substantively smaller than the coefficient for petitioners and are not consistently statistically significant. We discuss this below, as it has implications for the mechanism behind our findings.

We also note that we only have data on the universe of cases in which a cert petition was filed. However, deducing backward, we would expect that parties may rationally anticipate the Odd Party Out effect, meaning that petitioners who are not ideological Odd Parties Out may be disinclined to pursue cert unless they otherwise had strong cases. Moreover, we would also expect that parties who do not file cert petitions have weaker cases than parties who do. In the aggregate, this would make our subset of data, if anything, a "hard test case" to find an Odd Party Out effect. That is, in expectation the effects we find would be bigger if our sample includes a large number of cases where there was a proportionately lower share of Odd Party Out cases and where cert was less likely to be granted.

5.4 Heterogenous Results

The results in Figure 4 and Table 5 suggest that Odd Party Out petitioners are significantly more likely to have their cert petitions granted. However, it is possible that a petitioner's Odd Party Out status is more relevant for some cases than others. We thus explore whether the effects are heterogenous along three dimensions: civil versus criminal cases, low-salience versus high-salience cases, and merits versus GVR grants.

To begin, the summary statistics in Table 2 suggest that there are significant differences in our sample between civil cases and criminal cases. For instance, the Solicitor General is the

respondent in 99.7 percent of criminal cases, compared to just 28.9 percent of civil cases. And since the Solicitor General's presence in a case is an independently powerful signal to the Court, a petitioner's Odd Party Out Status may be less relevant in criminal cases.

To explore this, Table 6 separately estimates the regression specifications from Table 5 for civil and criminal cases in our sample. Panel A reveals that the effect for Odd Party Out petitioners is larger in civil cases than in the overall sample, with Column A showing that an Odd Party Out petitioner is 4.1 percentage points (or 51%) more likely to have their cert petitions granted than petitioners in cases with no Odd Party Out. In contrast, Panel B suggests that Odd Party Out petitioners in criminal cases are not more likely to have their cert petitions granted. These results suggest that the Odd Party Out effect is driven by civil cases. We therefore focus on the set of civil cases for our additional analyses exploring the Odd Party Out effect.

It is also possible that a party's Odd Party Out status may be relevant in low-profile cases but not in high-profile cases. Unfortunately, measures that have been used to assess the importance of Supreme Court cases—like whether the decision was mentioned on the *New York Times* front page—are only available for cert petitions that are granted (e.g., Epstein and Segal, 2000; Clark, Lax and Rice, 2015). But because our sample is cert petitions that are filed, and not just petitions that are granted, we cannot use these measures for our analysis. That said, prior research has suggested that the presence of at least one amicus brief at the cert stage is an important proxy for the salience of a case (e.g., Caldeira and Wright, 1988; Feldman, 2019). We thus acquired data on whether amicus briefs were filed to either support or oppose the cert petitions in our sample. In total, at least one amicus brief was filed for 11.2 percent of civil cases in our sample.

Table 7 recreates our primary specifications for civil cases while fully interacting the presence of an amicus brief with all of the variables in the regression. The results in Column 4 suggest that, for cases without an amicus brief filed, the presence of an Odd Party Out petitioner increases the probability of cert from 5.6 percent to 10.0 percent; for cases with an amicus brief filed, the presence of an Odd Party Out petitioner increases the probability of cert from 28.2 percent to 32.7 percent. In other words, the effect is roughly 4.5 percentage points for cases with and without amicus briefs, with no statistically significant difference in effect size across the two. This lends

Table 6: **Determinants of Cert Grants — Civil and Criminal Cases**

	(1)	(2)	(3)	(4)
A. Civil Cases				
Panel Odd-Party-Out	-0.008	-0.004	-0.008	-0.006
	(0.016)	(0.016)	(0.012)	(0.012)
Respondent Odd-Party-Out	0.006	0.006	0.004	0.003
	(0.018)	(0.019)	(0.016)	(0.017)
Petitioner Odd-Party-Out	0.063***	0.063***	0.041***	0.041***
	(0.013)	(0.014)	(0.012)	(0.013)
Observations	6,354	6,354	6,354	6,354
R-squared	0.021	0.048	0.127	0.139
B. Criminal Cases				
Panel Odd-Party-Out	0.001	0.001	-0.009	-0.008
	(0.006)	(0.006)	(0.006)	(0.006)
Respondent Odd-Party-Out	-0.003	-0.003	-0.001	-0.000
	(0.008)	(0.008)	(0.008)	(0.008)
Petitioner Odd-Party-Out	0.006	0.007	0.005	0.005
	(0.009)	(0.010)	(0.008)	(0.009)
Observations	11,265	11,265	11,265	11,265
R-squared	0.190	0.192	0.212	0.213
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The control variables correspond to the control variables included in Table 5. The constant is omitted. ***p < .01; **p < .05; *p < .1

support to the argument that the Odd Party Out effect exists regardless of case importance.

Finally, an additional possibility is that the party's Odd Party Out status may result in certain kinds of cert grants and not others, illustrating the exercise of different kinds of oversight by the Court. As Part 4 noted, our initial coding counted cert petitions as granted if they either allow the case to move to the merits stage or if they order a "grant, vacate, remand" (GVR), where the justices at once either grant the petition, vacate the lower court order, and remand it for further consideration. Because the justices do not have the same opportunity to fully scrutinize GVR cases, if justices were indeed granting petitions with an Odd Party Out petitioner to investigate the possibility of bias, we would suspect that a petitioner Odd Party Out would lead to a greater likelihood of merits cases and less so for GVR cases.

Table 7: **Determinants of Cert Grants — Interacting Amicus Briefs**

	(1)	(2)	(3)	(4)
Amicus Briefs Filed	0.216***	0.227***	0.207***	0.226***
	(0.025)	(0.043)	(0.030)	(0.045)
Panel Odd-Party-Out	0.007	0.010	0.002	0.004
	(0.014)	(0.013)	(0.012)	(0.012)
Panel Odd-Party-Out∗	-0.127*	-0.123*	-0.100	-0.095
Amicus Briefs Filed	(0.062)	(0.065)	(0.057)	(0.058)
Respondent Odd-Party-Out	0.003	0.004	0.003	0.002
	(0.016)	(0.017)	(0.016)	(0.017)
Respondent Odd-Party-Out∗	-0.043	-0.039	-0.025	-0.023
Amicus Briefs Filed	(0.062)	(0.063)	(0.065)	(0.064)
Petitioner Odd-Party-Out	0.065***	0.067***	0.044***	0.045***
	(0.014)	(0.015)	(0.013)	(0.014)
Petitioner Odd-Party-Out ∗	-0.083	-0.087	-0.070	-0.073
Amicus Briefs Filed	(0.100)	(0.097)	(0.089)	(0.088)
Observations	6,354	6,354	6,354	6,354
R-squared	0.073	0.091	0.155	0.165
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The control variables correspond to the control variables included in Table 5; however, each control variable is also interacted with the "Amicus Brief Filed" variable. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table 8 re-examines the sample of petitions for civil cases, but Panel A only codes cert as being granted if the case proceeded to the merit stage and Panel B only codes cert as being granted if the petition resulted in a GVR. Panel A indicates that petitions with Odd Party Out petitioners are more likely to result in merits grants at a statistically significant level by around 3.4 percentage points (a 67 percent increase compared to cases without an Odd Party Out). The results in Panel B show less consistency for GVR grants. For instance, Column 4 shows an increased probability of cert of around 1.4 percentage points (a 41 percent increase), but the results are not statistically significant. That said, even if there is less precision, Table 2 suggests that civil cases in our sample are roughly 1.5 times more likely to receive merits grants than GVR grants (5.1 percent compared to 3.3 percent). As a result, even though the effect size for Odd Party Out petitioners is smaller and imprecisely estimated for the results in Panel B, we cannot rule out the possibility that the

Table 8: **Determinants of Cert Grants — Merits versus GVR Grants**

	(1)	(2)	(3)	(4)
A. Merits Grants				
Panel Odd-Party-Out	-0.013	-0.011	-0.013	-0.012
	(0.014)	(0.013)	(0.011)	(0.011)
Respondent Odd-Party-Out	0.014	0.014	0.014	0.014
	(0.012)	(0.012)	(0.012)	(0.012)
Petitioner Odd-Party-Out	0.044***	0.044***	0.034**	0.034**
	(0.014)	(0.014)	(0.014)	(0.014)
Observations	6,145	6,145	6,145	6,145
R-squared	0.014	0.037	0.098	0.109
B. GVR Grants				
Panel Odd-Party-Out	0.004	0.004	0.003	0.003
	(0.008)	(0.008)	(0.007)	(0.007)
Respondent Odd-Party-Out	-0.009	-0.010	-0.011	-0.011
	(0.011)	(0.012)	(0.009)	(0.010)
Petitioner Odd-Party-Out	0.027**	0.026**	0.014	0.014
	(0.010)	(0.011)	(0.009)	(0.009)
Observations	6,030	6,030	6,030	6,030
R-squared	0.014	0.023	0.073	0.077
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: For Panel A, the dependent variable is coded as "1" if a cert petition was advanced to the merit stage. For Panel B, the dependent variable is coded as "1" if a cert petition was "Granted, Vacated, and Remanded." All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The control variables correspond to the control variables included in Table 5. The constant is omitted. ***p < .01; **p < .05; *p < .1

effect sizes are the same for merits grants and GVR grants.

6 Mechanisms Explaining the Odd Party Out Results

The results in Part 5 reveal that having an Odd Party Out petitioner substantially increases the probability that cert is granted in civil cases, but having an Odd Party Out panel or respondent does not alter this probability. This combination of findings are consistent with some, but not all, of the mechanisms outlined in Part 3.2.

6.1 Limited Support for Promoting Jurisprudential Development

If an Odd Party Out effect was driven by the justices' desire for jurisprudential development exclusively, Table 1 predicted higher rates of cert grants for either Odd Party Out respondents or

Odd Party Out petitioners. However, the results in Tables 5 and 6 reveal an asymmetric effect: the presence of an Odd Party Out *petitioner* is associated with higher cert grants, but the presence of an Odd Party Out *respondent* is not. This is inconsistent with the symmetric effect that would likely be associated with a jurisprudential development mechanism. That said, our results are not completely inconsistent with a learning theory. The cases where there is polarization among the parties and the petitioner is the Odd Party Out are still likely to be jurisprudentially important cases, which is consistent with the theory and which we investigate below. But, given that we see no positive findings with Odd Party Out respondents, we do not believe jurisprudential learning can be the exclusive explanation.

6.2 Limited Support for Advancing Ideological Preferences

If the Odd Party Out effect was driven primarily by the median's desire to advance their and the majority's ideological interests, Table 1 predicted that the effect would be limited to cases with petitioners who are ideologically aligned with the median member of the Court. Given that the majority was conservative in all of the years of our sample (with O'Connor and Kennedy as medians), a strong version of this mechanism would predict that conservative Odd Party Out petitioners will have higher cert rates than liberal Odd Party Out petitioners. If the minority bloc under the Rule of 4 was naively doing the same (contrary to the existing research), then we would expect to see the same, but for liberal Odd Party Out petitioners.

To examine this, Table 9 replicates the specifications from Panel A of Table 6, but interacts each variable with an indicator for the petitioner being conservative (i.e., CFscore > 0).[13] The results in Table 9 show that the interaction between petitioner Odd Party Out and conservative petitioner is small and not significant, suggesting that conservative and liberal Odd Party Out petitioners are about equally likely to have cert granted. For instance, Column 4 shows that the probability of cert increases by roughly 4.3 percentage points when an Odd Party Out petitioner is liberal (from 7.8 to 12.1 percent), and by roughly 4.3 percentage points when an Odd Party Out petitioner is conservative (from 8.8 to 13.1 percent).

[13] We use a fully interacted model because it is possible that each control variable could have different associations with the likelihood of cert depending on the ideology of the parties.

These results are inconsistent with what we would expect if only petitions from one ideological stripe were driving the Odd Party Out effect. For liberals, the Rule of 4 empowers a smaller four-member bloc. If these justices were motivated by ideological optimizing, this would result in a higher share of liberal petitioner Odd Party Out cases being granted cert. But as Table 9, shows, we see equal effects across the two groups. For conservatives, the fact that we see no larger Odd Party Out effect for conservative petitioners, despite a conservative median justice on the Court, suggests the same—the majority is not simply exercising additional scrutiny over cases where there may be simple ideological bias against conservatives.

We further note that, in our primary findings, the inclusion of term fixed effects should account for the Court's median ideology in a given term. However, as an alternative to accounting for the median ideology of the Supreme Court, Appendix A3 reports results that directly control for the ideology of the Supreme Court by including Martin-Quinn scores for the median justice each term in the regressions (Martin and Quinn, 2002). When doing so, the results are consistent with our primary results. We also report results interacting the justices' median Martin-Quinn score with whether the petitioner is an Odd Party Out—as well as results that include a triple interaction with whether the petitioner was conservative—and show that the Odd Party Out effect for petitioners is consistent across the values of median Martin-Quinn scores.

6.3 Support for Monitoring Ideological Bias

Finally, if an Odd Party Out effect was driven by heightened scrutiny in cases where ideological bias by the lower courts cannot be ruled out, Table 1 predicted that there would be no effect when a respondent is an Odd Party Out and a positive effect when either a liberal or conservative petitioner is an Odd Party Out. Our results are consistent with both of these predictions. The results in Table 5 reveal no effect for Odd Party Out respondents, and the results in Table 9 reveal a positive effect for Odd Party Out petitioners, regardless of whether those petitioners are liberal or conservative. This is additional evidence in favor of the Odd Party Out theory and, in particular, is consistent with the argument that it allows for heightened scrutiny in cases where there may be ideological bias against petitioners across the ideological spectrum, not just against petitioners aligned with the median's preferred positioning.

Table 9: **Determinants of Cert Grants — Interacting Conservative Petitioner**

	(1)	(2)	(3)	(4)
Conservative Petitioner	0.025***	0.018	0.018**	0.010
	(0.004)	(0.017)	(0.008)	(0.014)
Panel Odd-Party-Out	-0.002	-0.001	-0.006	-0.006
	(0.015)	(0.016)	(0.012)	(0.013)
Panel Odd-Party-Out∗	-0.006	0.014	0.015	0.027
Conservative Petitioner	(0.052)	(0.052)	(0.046)	(0.046)
Respondent Odd-Party-Out	-0.004	-0.001	-0.004	-0.003
	(0.033)	(0.030)	(0.023)	(0.021)
Respondent Odd-Party-Out∗	0.003	-0.000	0.005	0.002
Conservative Petitioner	(0.032)	(0.026)	(0.027)	(0.025)
Petitioner Odd-Party-Out	0.053***	0.055***	0.042**	0.043**
	(0.015)	(0.015)	(0.016)	(0.017)
Petitioner Odd-Party-Out ∗	0.039	0.026	-0.010	-0.015
Conservative Petitioner	(0.045)	(0.043)	(0.031)	(0.033)
Observations	6,354	6,354	6,354	6,354
R-squared	0.023	0.051	0.130	0.143
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The control variables correspond to the control variables included in Table 5; however, each control variable is also interacted with the "Conservative Petitioner" variable. The constant is omitted. ***p < .01; **p < .05; *p < .1

We cannot rule out two other nuanced possibilities, both of which are still consistent with this type of mechanism. First, we cannot rule out the possibility that the results are a reflection of the preferences of a moderate median justice, such as Sandra Day O'Connor. (These are likely less consistent with the preferences of her more conservative successor, Anthony Kennedy.) That said, someone like O'Connor wanting to hear cases with both liberal and conservative Odd Party Out petitioners is consistent with close scrutiny of possible instances of ideological bias. Second, we cannot rule out the possibility that our results are not due to individual justice behavior; they may instead be a product of the Rule of 4 occasionally empowering a minority voting bloc. The roughly even shares of cert petitions across the two groups could be, in this sense, a coincidence resulting from the Rule of 4. That said, the Rule of 4 is endogenous (Lax, 2003), so even such an outcome is consistent with the idea that the Court is, institutionally at least, exercising greater

scrutiny of petitioner Odd Party Out case, even if the individual justices are not.

7 Addressing Alternative Explanations

All of the results rely on several assumptions about our ability to measure the ideology of the litigating parties. We now explore these more closely. Full results of these robustness checks are presented in the Supplemental Appendix.

7.1 Using a Distributional Cutoff Is Not Driving Our Results

A concern is that our result could be dependent on specific cut-offs for assessing which, if any, party is an Odd Party Out. To assuage this concern, we also estimate the relationship between whether a petitioner is an Odd Party Out and the probability of cert when using continuous measures of ideology. Appendix A4 reports these results, which are substantively similar to the estimates in Table 5 and Table 6. For example, the coefficient of interest—the interaction between attorney distance and the panel distance—is similar in direction, statistical significance, and magnitude to our primary results.

7.2 Our Results Are Not Simply Attributable to the Polarization of the Parties

Scholarship suggests that the polarization of parties may be associated with higher cert rates (Grant, Hendrickson and Lunch, 2012; Beim and Rader, 2023). It is thus possible that our findings simply reflect the fact that Odd Party Out cases feature more polarized parties. To assess this possibility, Appendix A5 regresses the absolute difference in advocates' CFscore (shown in Panel A of Figure 3) against the probability of cert. Using the same specifications and the sample of civil cases, we find that the polarization of parties is indeed a statistically significant predictor of cert grants. For instance, our results suggest that moving from the 25th to 75th percentile of absolute difference in advocates' CFscore is associated with roughly a 1.7 percentage point increased probability of cert. However, using the same specification, we find that a petitioner Odd Party Out is associated with a much greater 4.1 percentage point increase. This suggests that the petitioner Odd Party Out effect is capturing more than just the parties' polarization.

7.3 Missing Ideology Data Is Not Driving Our Results

As Part 4 explained, we excluded cases from our sample when our measure of ideology is missing for at least one party. This non-random missingness could still be affecting our inferences if, for example, moderates are more likely to be non-donors than those who are ideologically extreme. To evaluate this possibility, Appendix A6 re-estimates our primary specifications after conducting two simulations: (1) simulating the missing data as coming from ideological moderates by replacing missing CFscores with 0, and (2) simulating the missing data as coming from ideologically average lawyers by replacing missing CFscores with a draw from a bimodal normal distribution. These latter simulations basically introduce classical measurement error into our key independent variable, which should in expectation attenuate our results towards zero. Although some of the coefficients are predictably attenuated in both of these simulations, the coefficients of interest are consistent with respect to sign, significance, and rough magnitude to the results in Table 5 and Table 6. This suggest that missing ideology data is unlikely to be driving our results.

7.4 CFscores are a Reliable Measure of Judicial Ideology

Another assumption is that CFscores provide a valid measure of judicial ideology, not just advocate ideology. Although CFscores have been validated and used by judicial politics scholars elsewhere (see, e.g., Bonica and Sen, 2017), they are likely less familiar than the widely used Judicial Common Space scores (Epstein et al., 2007). Moreover, some research has suggested that unidimensional measures of judicial ideology may not accurately capture variance among judges (Lauderdale and Clark, 2012). Appendix A7 thus reports two tests validating CFscores as a measure of judicial ideology. First, we test whether the judicial CFscores can predict dissents at the appellate level. We do so using data on the universe of federal appeals court decisions filed between 2003 to 2015 compiled from the Federal Judicial Center's Integrated Database and from CourtListener. The results confirm that greater ideological spreads between the members of an appeals panel, as measured by CFscores, are positively associated with greater probabilities of a dissent. Second, we test whether the median ideology of the appeals court panel predicts the ideological leaning of the outcome of the case itself. For this, we use as a dependent variable the Supreme Court Database's coding of the ideological direction of lower court decisions for cases

that were granted cert. The results confirm that more conservative panels are associated with more conservative decisions.

7.5 Results are not Dependent on Repeat Players

As Part 4 explained, the justices are typically unaware of the advocates' identities when voting on cert petitions. The Odd Party Out argument is thus that advocate ideology helps predict cert because it is a proxy for the ideological positions of the parties, not some sort of independent attribute. An empirical implication of this claim is that our results should not be driven by cases where the justices are likely to know the advocates' ideology. To test this implication, Appendix A8 reports regressions interacting the Odd Party Out petitioner variable with an indicator for whether the advocate has previously argued before the Supreme Court. For civil cases, we do find that veteran Supreme Court litigators are more likely to have their cert petitions granted; however, the interaction between the petitioner being an Odd Party Out and veteran Supreme Court litigator is not significant and substantively small. This suggests that our results are not driven by the justices knowing certain advocates' ideological reputations, and it is consistent with advocate ideology primarily being a proxy for the positions they represent.

7.6 Omitted Variable Bias Is Not Driving Our Results

Although our data allow us to control for a range of case-level characteristics, we are unable to control for every possible confounding variable. Most notably, we are unable to control for the existence of a circuit split, or disagreement among the lower courts on the issues involved. Although circuit splits are a well-known driver of cert decisions (e.g. Tanenhaus et al., 1963; Caldeira, Wright and Zorn, 1999; Black and Owens, 2009), they are difficult to measure directly because nearly all petitioners claim the presence of a circuit split (Russell, 2007). (For an exception, see Beim and Rader (2019).) We conducted a sensitivity analysis to assess whether omitted variable bias, due to our inability to control for factors like circuit splits, is driving our results. Appendix A9 reports this analysis, which shows that the Odd Party Out configuration would have to be approximately 1.4 to 1.5 times more likely among circuit split cases to explain away our results. This suggests that omitted factors like circuit splits are unlikely to be driving our main findings.

7.7 Our Results Are Robust to Pre-Processing with Matching

One concern with our results could be that the set of cases with an Odd Party Out is simply systematically different than the cases without an Odd Party Out. To investigate whether this may be driving our results, Appendix A10 pre-processes our data with matching (e.g., Ho et al., 2007). We specifically matched cases using the full set of control variables from Column 4 in Table 5. This approach ensures that we are comparing cases that are similar, conditional on the observables from our regressions. The results when using this approach are again consistent with our primary results reported in Table 5 and Table 6.

8 Discussion and Conclusion

We hypothesized that cert is more likely to be granted when the petitioner is an Odd Party Out—that is, when the party filing the petition is ideologically distant from both her opponent and the median judge on the lower court panel. Our results suggest that an Odd Party Out petitioner increases the probability of cert in civil cases but not in criminal cases; an Odd Party Out petitioner increases the probability of cert roughly comparable across high and low-salience cases; and an Odd Party Out petitioner increases the probability of merits grants in civil cases, but the effects on GVR grants are smaller and imprecisely estimated. Additionally, we also find no relationship between cert rates and when the panel or the respondent is an Odd Party Out.

These results have strong implications for our understanding of justices' behavior. If large gaps between the ideologies of the litigating parties were simply indicative of the case's potential to be important and to contribute to legal doctrine then we would expect respondent Odd Parties Out to also trigger a higher cert rate. However, since the results are asymmetric—only petitioners gain from being the Odd Party Out—they are unlikely to be exclusively explained by the Court trying to review cases that simply have a high potential for jurisprudential development. Another possible explanation is that justices in both the majority and minority voting blocs dislike, and therefore are more likely to review, ideologically driven behavior. Such an explanation would be consistent with seeing Odd Party Out effects only with a petitioner because the justices in these cases could reasonably question whether the petitioner would have gotten a different result had she drawn an ideologically favorable panel.

However, it is important to note that increased scrutiny of decisions in light of possible ideological bias is not the only possible explanation for our results. It is possible that our results are a product of the time period we study. Notably, Justices O'Connor and Kennedy are the only median justices in our sample, and our results may simply reflect them having moderate ideological preferences. Moreover, even if our results do reflect a desire to investigate instances of ideological bias, the justices may not have the same preferences going forward. By contrast, the current 6-3 conservative majority ensures that no liberal bloc can attain the minimum four votes to grant cert on its own. This in turn may reduce the success of liberal Odd Party out petitioners, which may be enough to attenuate the Odd Party Out effect or change its interpretation.

Finally, our findings point to new directions for research. Although we explored the kinds of cases that produce an Odd Party Out effect in several ways, future research could more deeply probe the heterogeneousness and limits of our results. Additionally, our results suggest that the Supreme Court may grant cert petitions when there is the risk that ideological bias may have influenced the lower court's decision. Future research should explore whether granting cert in these cases deters appellate panels from issuing ideologically biased decisions. Finally, we suggested that one motivation for granting cert in these cases may be reducing the perception that ideological bias drives outcomes, possibly because it undermines institutional legitimacy. Future research could further disentangle this issue by looking into the backgrounds of the Odd Party Out petitions that are granted and the likely motivations of the justices at the individual level.

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The "Odd Party Out" Theory of *Certiorari*

Supplemental Appendix

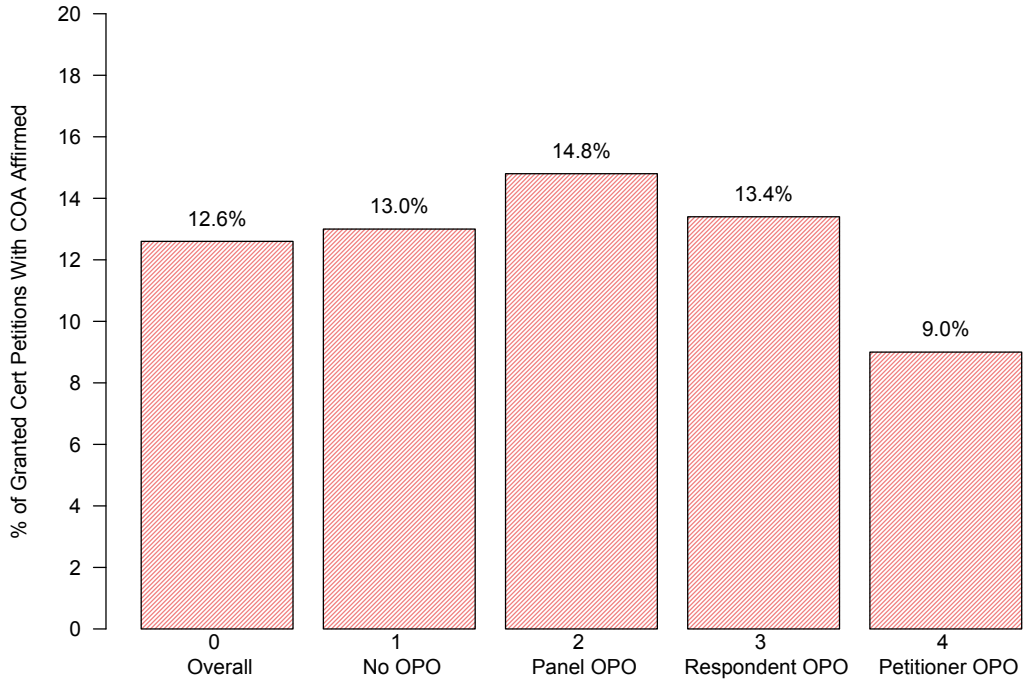
This appendix reports ten sets of additional results and analysis. Part A1 reports additionally summary statistics for our sample. Part A2 reports additional specifications for our primary regression results. Part A3 reports robustness checks using an alternative approach for controlling for the median ideology of Supreme Court justices. Part A4 reports regression results using a continuous measure of ideology to define whether a party is an Odd Party Out. Part A5 reports regression results assessing the impact of parties' polarization on the probability of cert. Part A6 reports the results of simulations assessing whether missing missing ideology data is driving results. Part A7 reports results validating CFscores as a measure of judicial ideology. Part A8 reports results suggesting that our findings are not driven by repeat players at the Supreme Court. Part A9 examines the sensitivity of our main findings to the presence of circuit splits. Part A10 reports results when pre-processing the data using matching.

A1 Additional Summary Statistics

Table A1: Summary Statistics for Sample With and Without CFscores

	Complete CFscores	**Missing CFscores**
Outcome		
Cert Granted	0.066	0.045
Odd Party Out		
No Odd-Party-Out	0.763	– – –
Panel Odd-Party-Out	0.098	– – –
Respondent OPO	0.051	– – –
Petitioner Odd-Party-Out	0.089	– – –
Procedural History		
En Banc	0.015	0.010
Dissenting Opinion	0.072	0.052
District Court Reversed	0.080	0.055
Case Dismissed	0.801	0.760
Litigant Characteristics		
Solicitor General (Pet.)	0.005	0.003
Solicitor General (Resp.)	0.688	0.624
Corporation (Pet.)	0.068	0.040
Corporation (Resp.)	0.078	0.068
Pro Se (Pet.)	0.045	0.277
Veteran Atty. (ln)	0.564	0.337

Figure A1: **Share of Granted Cert Petitions With Lower Court Decision Affirmed**



Note: The figure reports the percent of granted cert petitions where the court of appeals decision is affirmed for the 1,185 petitions in our sample that are granted. The results are broken out by the Odd-Party-Out status of the parties.

A2 Alternative Regression Specifications

Table A2: **Determinants of Cert Grants — Primary Results — Logit**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	-0.121	-0.118	-0.281	-0.269
	(0.162)	(0.160)	(0.191)	(0.187)
Respondent Odd-Party-Out	-0.072	-0.062	-0.001	-0.015
	(0.140)	(0.142)	(0.154)	(0.156)
Petitioner Odd-Party-Out	0.389***	0.433***	0.375***	0.377***
	(0.117)	(0.115)	(0.112)	(0.110)
Observations	17,822	17,822	17,822	17,822
B. Civil Cases				
Panel Odd-Party-Out	-0.113	-0.068	-0.003	0.015
	(0.232)	(0.244)	(0.212)	(0.215)
Respondent Odd-Party-Out	0.093	0.109	0.065	0.047
	(0.242)	(0.255)	(0.243)	(0.254)
Petitioner Odd-Party-Out	0.699***	0.707***	0.528***	0.536***
	(0.105)	(0.129)	(0.139)	(0.158)
Observations	6,348	6,348	6,348	6,348
C. Criminal Cases				
Panel Odd-Party-Out	0.143	0.156	-0.125	-0.108
	(0.192)	(0.195)	(0.143)	(0.149)
Respondent Odd-Party-Out	0.039	0.053	0.104	0.118
	(0.229)	(0.235)	(0.232)	(0.244)
Petitioner Odd-Party-Out	0.047	0.048	0.035	0.034
	(0.135)	(0.143)	(0.095)	(0.098)
Observations	11,222	11,222	11,222	11,222
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a logit model with standard errors clustered by Supreme Court term. The constant is omitted. $^{***}p < .01$; $^{**}p < .05$; $^{*}p < .1$

Table A3: **Determinants of Cert Grants — Primary Results — Cluster by Circuit**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	-0.005	-0.005	-0.016**	-0.016*
	(0.007)	(0.006)	(0.007)	(0.007)
Respondent Odd-Party-Out	-0.003	-0.002	0.001	0.001
	(0.009)	(0.008)	(0.009)	(0.010)
Petitioner Odd-Party-Out	0.027**	0.030***	0.023**	0.024**
	(0.009)	(0.009)	(0.009)	(0.009)
Observations	17,871	17,871	17,871	17,871
R-squared	0.068	0.081	0.120	0.125
B. Civil Cases				
Panel Odd-Party-Out	-0.008	-0.004	-0.008	-0.006
	(0.022)	(0.021)	(0.013)	(0.013)
Respondent Odd-Party-Out	0.006	0.006	0.004	0.003
	(0.015)	(0.014)	(0.015)	(0.015)
Petitioner Odd-Party-Out	0.063***	0.063***	0.041**	0.041**
	(0.020)	(0.020)	(0.016)	(0.017)
Observations	6,354	6,354	6,354	6,354
R-squared	0.021	0.048	0.127	0.139
C. Criminal Cases				
Panel Odd-Party-Out	0.001	0.001	-0.009	-0.008
	(0.003)	(0.004)	(0.005)	(0.006)
Respondent Odd-Party-Out	-0.003	-0.003	-0.001	-0.000
	(0.012)	(0.012)	(0.012)	(0.012)
Petitioner Odd-Party-Out	0.006	0.007	0.005	0.005
	(0.008)	(0.008)	(0.009)	(0.009)
Observations	11,265	11,265	11,265	11,265
R-squared	0.190	0.192	0.212	0.213
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Circuit that that the petition arose from. The constant is omitted. ***p < .01; **p < .05; *p < .1

A3 Controlling for Median Justice Ideology

Table A4: **Controlling for Median Justice Ideology & Term FE**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	-0.005	-0.005	-0.016*	-0.016*
	(0.008)	(0.007)	(0.009)	(0.008)
Respondent Odd-Party-Out	-0.003	-0.002	0.001	0.001
	(0.007)	(0.007)	(0.007)	(0.007)
Petitioner Odd-Party-Out	0.027*	0.029**	0.023*	0.023*
	(0.013)	(0.013)	(0.012)	(0.012)
Observations	17,871	17,871	17,871	17,871
R-squared	0.069	0.082	0.121	0.126
B. Civil Cases				
Panel Odd-Party-Out	-0.008	-0.005	-0.008	-0.007
	(0.016)	(0.016)	(0.013)	(0.013)
Respondent Odd-Party-Out	0.006	0.006	0.004	0.003
	(0.018)	(0.019)	(0.016)	(0.017)
Petitioner Odd-Party-Out	0.064***	0.064***	0.042***	0.042***
	(0.013)	(0.014)	(0.012)	(0.013)
Observations	6,354	6,354	6,354	6,354
R-squared	0.022	0.048	0.128	0.140
C. Criminal Cases				
Panel Odd-Party-Out	0.001	0.001	-0.009	-0.008
	(0.006)	(0.006)	(0.006)	(0.006)
Respondent Odd-Party-Out	-0.003	-0.003	-0.001	-0.000
	(0.008)	(0.008)	(0.008)	(0.008)
Petitioner Odd-Party-Out	0.005	0.006	0.004	0.004
	(0.010)	(0.010)	(0.009)	(0.009)
Observations	11,265	11,265	11,265	11,265
R-squared	0.192	0.194	0.213	0.214
MQ Median Justice	Yes	Yes	Yes	Yes
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

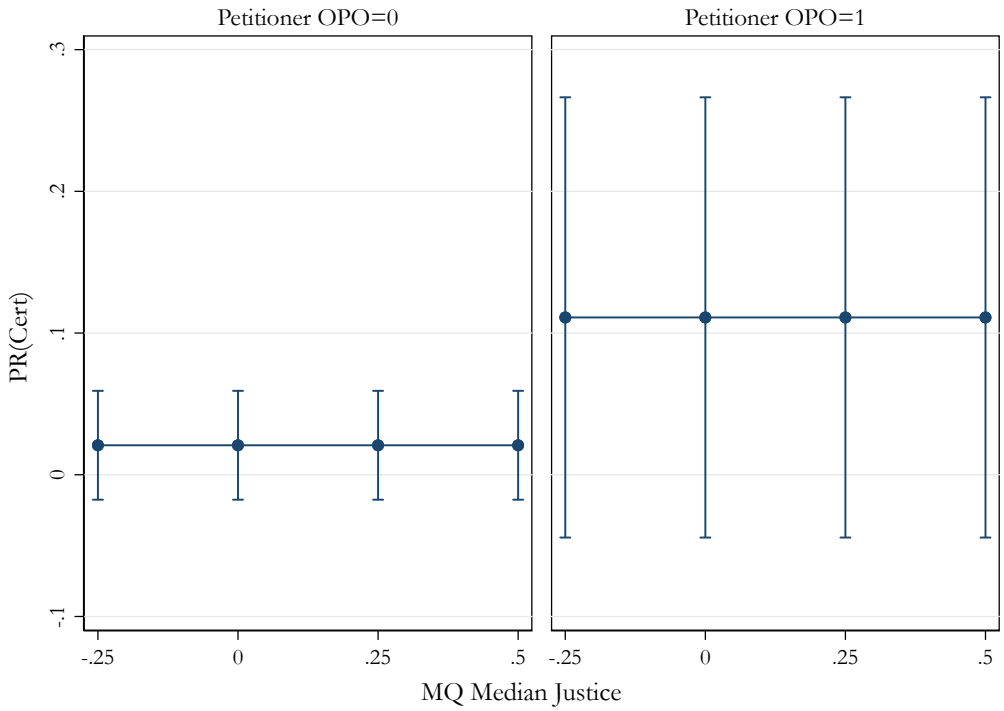
Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A5: **Controlling for Median Justice Ideology without Term FE**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	-0.017	-0.016	-0.028*	-0.028*
	(0.014)	(0.014)	(0.014)	(0.014)
Respondent Odd-Party-Out	-0.006	-0.005	-0.003	-0.003
	(0.008)	(0.008)	(0.008)	(0.008)
Petitioner Odd-Party-Out	0.044*	0.046*	0.045*	0.045*
	(0.024)	(0.023)	(0.024)	(0.023)
Observations	17,871	17,871	17,871	17,871
R-squared	0.007	0.022	0.052	0.059
B. Civil Cases				
Panel Odd-Party-Out	-0.008	-0.004	-0.011	-0.009
	(0.016)	(0.016)	(0.013)	(0.013)
Respondent Odd-Party-Out	0.006	0.006	0.003	0.003
	(0.019)	(0.020)	(0.017)	(0.017)
Petitioner Odd-Party-Out	0.063***	0.063***	0.043***	0.043***
	(0.013)	(0.014)	(0.012)	(0.013)
Observations	6,354	6,354	6,354	6,354
R-squared	0.015	0.042	0.119	0.131
C. Criminal Cases				
Panel Odd-Party-Out	-0.022	-0.021	-0.028	-0.028
	(0.021)	(0.021)	(0.019)	(0.018)
Respondent Odd-Party-Out	-0.008	-0.007	-0.006	-0.006
	(0.009)	(0.009)	(0.009)	(0.009)
Petitioner Odd-Party-Out	0.040	0.040	0.040	0.040
	(0.027)	(0.027)	(0.028)	(0.027)
Observations	11,265	11,265	11,265	11,265
R-squared	0.017	0.021	0.033	0.035
MQ Median Justice	Yes	Yes	Yes	Yes
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	No	No	No	No
Control Variables	No Controls	Case History	Party Controls	All Controls

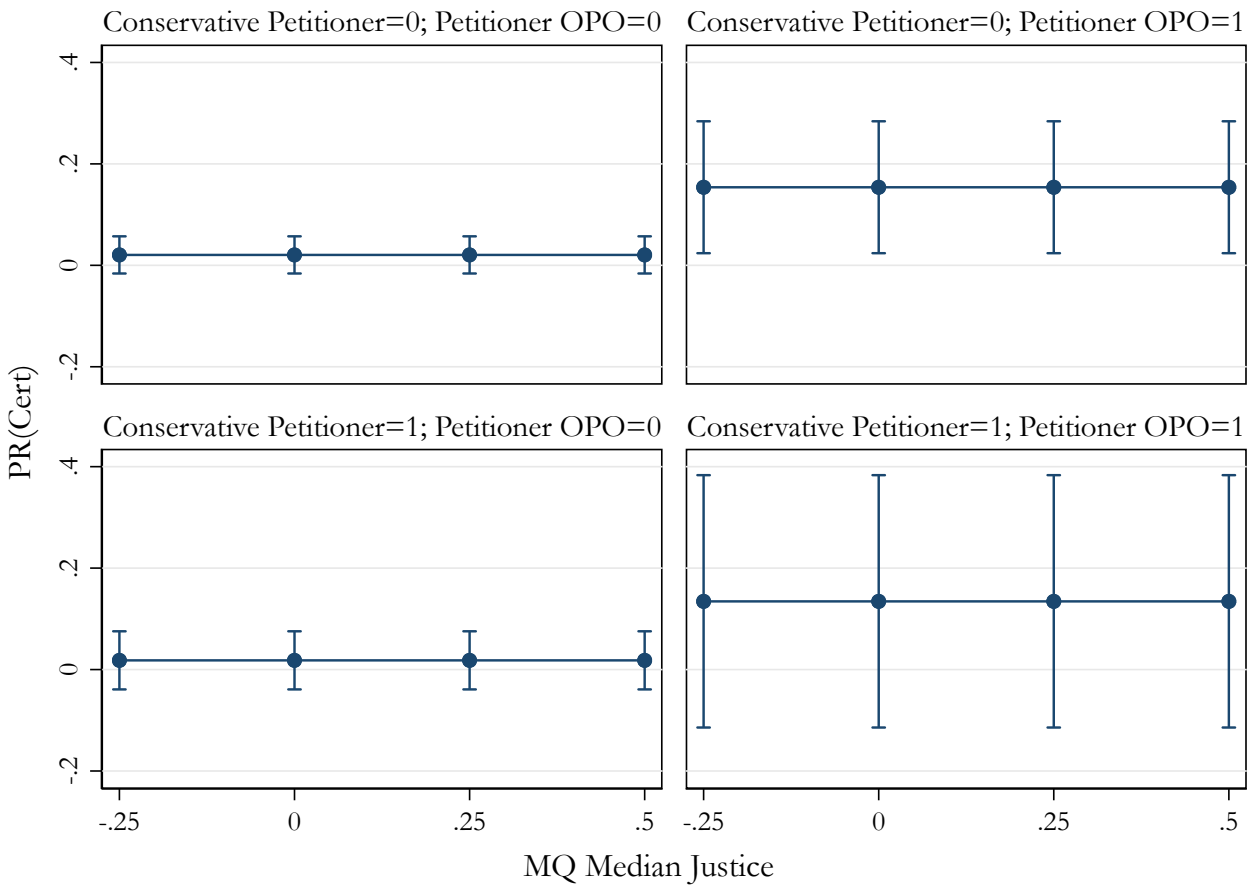
Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Figure A2: **Marginal Effects When Interacting MQ Scores for Median Justices with Petitioner OPO**



Note: The figure reports the marginal effects of a regression interacting the Petitioner Odd-Party-Out variable with the MQ Median Justice variable for our sample of civil cases. To estimate these results, we use the regression specification from Column 1 in Table A5, but then add an interaction between the Petitioner Odd-Party-Out variable and the MQ Median Justice variable. The figure reports the marginal effects for cases with and without a Petitioner Odd-Party-Out for the range of MQ Median Scores in our sample. Although the results are imprecisely estimated, they show that the effect of a Petitioner Odd-Party-Out is consistent associated with higher cert rates across different median ideologies of the Supreme Court.

Figure A3: **Marginal Effects When Triple Interacting MQ Scores for Median Justices with Petitioner OPO and Conservative Petitioners**



Note: The figure reports the marginal effects of a regression triple interacting the Petitioner Odd-Party-Out variable with Conservative Petitioner and with the MQ Median Justice variable for our sample of civil cases. To estimate these results, we use the regression specification from Column 1 in Table A5, but then add a variable for Conservative Petitioner, as well as an interactions between the Petitioner Odd-Party-Out variable and the Conservative Petitioner variable, the Petitioner Odd-Party-Out variable and the MQ Median Justice variable, the Conservative Petitioner and MQ Median Justice variable, and all three variables together. The figure reports the marginal effects for cases with and without a Petitioner Odd-Party-Out and Conservative Petitioner for the range of MQ Median Scores in our sample. Although the results are imprecisely estimated, they show that the effect of a Petitioner Odd-Party-Out is consistent across different median ideologies of the Supreme Court, and also consistent regardless of whether the petitioner is liberal or conservative.

A4 Alternative Specifications—Continuous Ideology Measure

Our primary results use a cut-off to define whether parties are an Odd Party Out. We also estimate the relationship between whether a petitioner is an Odd Party Out and the probability of cert when using continuous measures of ideology. To do so, we use the following regression framework:

$$\begin{aligned} cert_{jct} = \beta_0 &+ \beta_1(cf_P - cf_R) + \beta_2(cf_P - cf_M) \\ &+ \beta_3((cf_P - cf_R) \times (cf_P - cf_M)) \\ &+ \gamma X + \mu_c + \delta_t + \varepsilon_{cjt} \end{aligned} \tag{1}$$

In equation (2), cf denotes the CFscore of the pertinent actor, while P corresponds to the petitioner, R to the respondent, and M to the lower court panel median. Thus, $cf_P - cf_R$ is the signed ideological distance between the petitioner and the respondent ("Atty. Distance"), and $cf_P - cf_M$ is the signed ideological distance between the petitioner and the circuit panel's median ("Panel Distance"). In this specification, β_3 is the main effect of interest. Higher values of β_3 indicate that both the panel and respondent are moving away from the petitioner in the same direction. (For instance, the extreme case would be a very liberal panel ruling for a very liberal respondent against a very conservative petitioner.[14]) Like with equation (1), γX denotes a vector of control variables that capture various case characteristics, μ_c are circuit fixed effects, δ_t are Supreme Court term fixed effects, and ε_{jct} denotes the error term.

[14]Using the signed ideological distance for *Atty. Distance* and *Panel Distance*, as opposed to the absolute value of the distance, is necessary to ensure that higher values of the interaction term only occur when the respondent and panel move away from the petitioner in the same direction.

Table A6: Determinants of Cert Grants — Continuous Ideology Measures

	(1)	(2)	(3)	(4)
A. All Cases				
Atty. Distance	-0.003	-0.004	-0.008	-0.008
	(0.009)	(0.008)	(0.007)	(0.007)
Panel Distance	0.012*	0.012*	0.016**	0.015**
	(0.006)	(0.006)	(0.006)	(0.006)
Atty. Distance *	0.006***	0.006***	0.005***	0.005***
Panel Distance	(0.001)	(0.001)	(0.001)	(0.001)
Observations	17,871	17,871	17,871	17,871
R-squared	0.007	0.022	0.052	0.059
B. Civil Cases				
Atty. Distance	0.006	0.004	-0.000	-0.001
	(0.006)	(0.006)	(0.004)	(0.004)
Panel Distance	0.014**	0.014**	0.011**	0.011**
	(0.006)	(0.005)	(0.005)	(0.005)
Atty. Distance *	0.011***	0.009***	0.006**	0.005**
Panel Distance	(0.003)	(0.003)	(0.002)	(0.002)
Observations	6,354	6,354	6,354	6,354
R-squared	0.026	0.051	0.129	0.140
C. Criminal Cases				
Atty. Distance	-0.001	-0.001	-0.002	-0.002
	(0.004)	(0.004)	(0.004)	(0.004)
Panel Distance	-0.001	-0.001	0.002	0.002
	(0.002)	(0.002)	(0.003)	(0.003)
Atty. Distance *	-0.001	-0.001	-0.000	-0.000
Panel Distance	(0.002)	(0.002)	(0.002)	(0.002)
Observations	11,265	11,265	11,265	11,265
R-squared	0.190	0.192	0.212	0.213
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

A5 Polarization of the Advocates and the Probability of Cert

Table A7: **Determinants of Cert Grants – Polarization of Advocates**

	(1)	**(2)**	**(3)**	**(4)**
Absolute Difference in Advocates CFscore	0.018***	0.017***	0.013***	0.012**
	(0.005)	(0.005)	(0.004)	(0.004)
En Banc		0.054*		0.043
		(0.027)		(0.025)
Dissenting Opinion		0.077***		0.054***
		(0.018)		(0.017)
District Court Reversed		0.039**		0.025
		(0.015)		(0.016)
Case Dismissed		-0.038**		-0.023
		(0.015)		(0.014)
Solicitor General (Pet.)			0.325***	0.313***
			(0.070)	(0.067)
Solicitor General (Resp.)			-0.032***	-0.023***
			(0.005)	(0.005)
Corporation (Pet.)			0.014	0.010
			(0.009)	(0.009)
Corporation (Resp.)			-0.016*	-0.011
			(0.008)	(0.008)
Pro Se (Pet.)			-0.014	-0.010
			(0.014)	(0.015)
Veteran Atty. (ln)			0.072***	0.068***
			(0.009)	(0.009)
Observations	6,354	6,354	6,354	6,354
R-squared	0.021	0.047	0.128	0.139
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A8: **Determinants of Cert Grants – Polarization of Advocates**

	(1)	(2)	(3)	(4)
Absolute Difference in Advocates CFscore	0.018***	0.017***	0.013***	0.012**
	(0.005)	(0.005)	(0.004)	(0.004)
Court of Appeals Median CFscore	-0.027***	-0.025***	-0.019***	-0.019***
	(0.006)	(0.006)	(0.005)	(0.005)
En Banc		0.055*		0.044
		(0.028)		(0.025)
Dissenting Opinion		0.077***		0.054***
		(0.018)		(0.017)
District Court Reversed		0.039**		0.025
		(0.015)		(0.016)
Case Dismissed		-0.037**		-0.022
		(0.014)		(0.014)
Solicitor General (Pet.)			0.323***	0.311***
			(0.070)	(0.067)
Solicitor General (Resp.)			-0.031***	-0.022***
			(0.005)	(0.005)
Corporation (Pet.)			0.013	0.009
			(0.009)	(0.009)
Corporation (Resp.)			-0.015*	-0.011
			(0.008)	(0.008)
Pro Se (Pet.)			-0.014	-0.009
			(0.015)	(0.015)
Veteran Atty. (ln)			0.072***	0.068***
			(0.009)	(0.009)
Observations	6,354	6,354	6,354	6,354
R-squared	0.024	0.050	0.129	0.140
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. $^{***}p < .01$; $^{**}p < .05$; $^{*}p < .1$

A6 Assessing the Effect of Missing Ideology Data

Our sample does not include cases where our measure of ideology is missing for one or more parties. This non-random missingness, however, could be affecting our inferences. But it is worth noting that it is unlikely that the non-donors have more extreme ideologies than the donors. Instead, the non-donors are more likely to be ideologically moderates. To evaluate where our results would hold up if we had a larger sample of cases that included more ideological moderates, we re-estimated the specifications in Table 5 and Table 6 after conducting two simulations: (1) simulating the missing data coming from ideological moderates by replacing missing CFscores with 0 and (2) simulating the missing data coming from ideologically average lawyers by replacing missing CFscores with a draw from from a bimodal normal distribution. These simulations introduce classic measurement error into our key independent variable, which should in expectation attenuate our results towards zero. Although some of our coefficients are predictably attenuated in these simulations, the coefficients of interest remain positive, similar in magnitude, and statistically significant in all specifications. These results, presented in the following tables, suggests that missing ideological data is unlikely to be driving our results.

Table A9: **Determinants of Cert Grants — Replace Missing CFscore with 0**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	0.007	0.004	-0.011	-0.011
	(0.008)	(0.008)	(0.009)	(0.008)
Respondent Odd-Party-Out	0.009	0.008	0.001	0.000
	(0.006)	(0.006)	(0.006)	(0.006)
Petitioner Odd-Party-Out	0.039**	0.037**	0.028**	0.027**
	(0.013)	(0.013)	(0.012)	(0.012)
Observations	42,567	42,527	42,567	42,527
R-squared	0.067	0.078	0.120	0.125
B. Civil Cases				
Panel Odd-Party-Out	0.022**	0.018*	0.001	0.001
	(0.010)	(0.009)	(0.007)	(0.007)
Respondent Odd-Party-Out	0.023	0.016	0.004	0.002
	(0.016)	(0.016)	(0.015)	(0.015)
Petitioner Odd-Party-Out	0.045***	0.038***	0.015**	0.015**
	(0.006)	(0.006)	(0.006)	(0.006)
Observations	21,530	21,530	21,530	21,530
R-squared	0.023	0.054	0.141	0.153
C. Criminal Cases				
Panel Odd-Party-Out	0.000	-0.000	-0.011*	-0.011*
	(0.004)	(0.004)	(0.006)	(0.005)
Respondent Odd-Party-Out	-0.003	-0.003	-0.002	-0.002
	(0.007)	(0.007)	(0.007)	(0.007)
Petitioner Odd-Party-Out	0.010	0.010	0.010	0.010
	(0.009)	(0.009)	(0.008)	(0.008)
Observations	20,480	20,480	20,480	20,480
R-squared	0.195	0.196	0.216	0.217
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Table A10: **Determinants of Cert Grants — Replace Missing CFscore with Random**

	(1)	(2)	(3)	(4)
A. All Cases				
Panel Odd-Party-Out	0.008**	0.007*	-0.011*	-0.011*
	(0.003)	(0.003)	(0.006)	(0.006)
Respondent Odd-Party-Out	-0.003	-0.003	-0.004	-0.004
	(0.004)	(0.004)	(0.004)	(0.004)
Petitioner Odd-Party-Out	0.018**	0.019**	0.013*	0.014*
	(0.008)	(0.008)	(0.007)	(0.007)
Observations	42,567	42,527	42,567	42,527
R-squared	0.066	0.077	0.119	0.124
B. Civil Cases				
Panel Odd-Party-Out	0.018***	0.015**	0.006	0.005
	(0.006)	(0.006)	(0.004)	(0.005)
Respondent Odd-Party-Out	-0.002	-0.002	-0.002	-0.003
	(0.006)	(0.006)	(0.006)	(0.006)
Petitioner Odd-Party-Out	0.015**	0.016**	0.008*	0.009*
	(0.005)	(0.006)	(0.004)	(0.004)
Observations	21,530	21,530	21,530	21,530
R-squared	0.021	0.053	0.140	0.153
C. Criminal Cases				
Panel Odd-Party-Out	0.003	0.002	-0.010	-0.010
	(0.006)	(0.006)	(0.006)	(0.006)
Respondent Odd-Party-Out	-0.003	-0.003	-0.003	-0.003
	(0.006)	(0.006)	(0.005)	(0.006)
Petitioner Odd-Party-Out	0.004	0.004	0.002	0.002
	(0.007)	(0.007)	(0.007)	(0.007)
Observations	20,480	20,480	20,480	20,480
R-squared	0.195	0.196	0.216	0.217
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes
Control Variables	No Controls	Case History	Party Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by term The constant is omitted. ***p < .01; **p < .05; *p < .1

A7 Measuring lower court Ideology with CFscores

We conducted two tests to validate that the CFscore are a valid way to measure of circuit court panels mean member. First, we tested whether the judicial CFscores can predict dissents at the appellate level. Existing research suggests that greater ideological diversity within panels increases the probability of a dissenting opinion (e.g., Hettinger, Lindquist and Martinek, 2003). If CFscores are a reliable predictor of the ideology of the panel, then greater spreads between the most liberal and most conservative members of the panel should be associated with more dissents. (In turn, additional dissents would also predict a higher probability of cert (e.g. Beim, Hirsch and Kastellec, 2014).) Using the data on lower court opinions that we compiled from the Federal Judicial Center's Integrated Database and from CourtListener, we tested this possibility on the entire universe of federal appeals court decisions filed between 2003 to 2015. The results of these regressions are reported in Table A11, where the dependent variable is the existence of a dissenting opinion. The table easily confirms that greater ideological spreads between the members of an appeals panel are positively associated with greater probabilities that a dissenting opinion will be written. For instance, the estimate in Column 2 of Table A11 suggests that moving the from the bottom 10th percentile to the top 90th percentile of the absolute value of the distance in panel CFscores is associated with the probability of dissent going from 2.5 percent to 5 percent. In other words, the probability of dissent roughly doubles. This provides additional evidence that these measures capture meaningful ideological variation in lower court panels that judicial politics scholarship would connect to substantive outcomes.

Table A11: Within-Panel Ideological Divisions and Dissent

	(1)	(2)
|Panel DIME$_{max}$ − Panel DIME$_{min}$|	0.021***	0.017***
	(0.001)	(0.001)
Circuit Fixed Effects	No	Yes
Term Fixed Effects	No	Yes
Observations	260,797	260,797
R-squared	0.004	0.027

Notes: The sample of cases is Court of Appeals decisions. The dependent variable is coded as "1" if there was a dissenting opinion at the Court of Appeals level. All regressions are estimated using a linear probability model with standard errors clustered by term. The constant is omitted. ***p < .01; **p < .05; *p < .1

Second, we tested whether the appeals panel's median ideology predicts the ideological leaning of case outcomes. For this, we again use the Supreme Court Database's coding of the ideological direction of lower court decisions for cases that were granted cert as a dependent variable. In Table A12, Column 1 reports the results of regressions where the main explanatory variable is the panel's median CFscore, and Column 2 reports the same while adding circuit and term fixed effects. The positive relationship implies that more conservative panel medians (as measured by CFscores) are returning more conservative decisions—a finding that supports the validity of CFscores. In addition, Columns 3 and 4 provide a simple comparison to JCS scores. These results are consistent: more conservative panels, as measured by median JCS score, are associated with more conservative decisions. The models with the CFscores, however, have a modestly higher R^2 and thus explain more of the variance in the outcome.

Table A12: Judicial Ideology Measures and the Directionality of lower court Decisions

	(1)	**(2)**	**(3)**	**(4)**
CoA Panel Median (DIME)	0.188***	0.097***		
	(0.021)	(0.026)		
CoA Panel Median (JCS)			0.299***	0.115**
			(0.042)	(0.046)
Circuit Fixed Effects	No	Yes	No	Yes
Term Fixed Effects	No	Yes	No	Yes
Observations	1,236	1,236	1,236	1,236
R-squared	0.059	0.147	0.039	0.141

Notes: The sample of cases is petitions where cert was granted. The dependent variable for all columns is coded as "1" if the lower court decision on the merits was coded as conservative by the Supreme Court database. All regressions are estimated using a linear probability model with standard errors clustered by term. The constant is omitted. ***p < .01; **p < .05; *p < .1

A8 Repeat Players

Table A13 replicates our primary specifications for civil cases while interacting the Petitioner Odd Party Out variable with whether the petitioner was a veteran attorney—that is, someone who has made more than one oral argument before the Supreme Court. This explicitly checks whether the presence of well-known litigators matters more for the probability that cert is granted in Odd Party Out cases. The results in Table A13 suggest that, for civil cases, veteran Supreme Court litigators are about 6.7 percentage points more likely to have their cert petitions granted; however, the table also shows that the interaction between Petitioner Odd Party Out and Veteran Supreme Court Litigator is *statistically insignificant and substantively small*. This suggests that our primary results are not driven entirely by the justices knowing the ideological reputations of the advocates. This lends further support to our argument that advocate ideology serves primarily as a proxy for the ideology positions of the parties they represent (and not that the justices are relying solely on the ideological reputations of the advocates).

Table A13: **Determinants of Cert Grants – Interacting Veteran Attorneys**

	(1)	**(2)**	**(3)**	**(4)**
Panel Odd-Party-Out	-0.012	-0.010	-0.008	-0.006
	(0.013)	(0.013)	(0.012)	(0.012)
Respondent Odd-Party-Out	0.001	0.002	0.004	0.003
	(0.017)	(0.018)	(0.016)	(0.017)
Petitioner Odd-Party-Out	0.026*	0.028*	0.032**	0.033**
	(0.013)	(0.013)	(0.013)	(0.013)
Veteran Atty. (ln)	0.079***	0.075***	0.071***	0.067***
	(0.009)	(0.009)	(0.009)	(0.009)
Petitioner Odd-Party-Out ∗	0.022	0.022	0.014	0.014
Veteran Atty. (ln)	(0.019)	(0.020)	(0.019)	(0.019)
En Banc		0.044		0.044
		(0.025)		(0.025)
Dissenting Opinion		0.057***		0.055***
		(0.017)		(0.017)
District Court Reversed		0.032*		0.025
		(0.016)		(0.017)
Case Dismissed		-0.025		-0.024
		(0.014)		(0.014)
Solicitor General (Pet.)			0.321***	0.309***
			(0.068)	(0.065)
Solicitor General (Resp.)			-0.029***	-0.021***
			(0.006)	(0.005)
Corporation (Pet.)			0.014	0.010
			(0.009)	(0.009)
Corporation (Resp.)			-0.016*	-0.011
			(0.008)	(0.008)
Pro Se (Pet.)			-0.014	-0.009
			(0.014)	(0.014)
Observations	6,354	6,354	6,354	6,354
R-squared	0.112	0.126	0.127	0.139
Circuit Fixed Effects	Yes	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes	Yes

Notes: The dependent variable is coded as "1" if a cert petition was granted. All regressions are estimated using a linear probability model with standard errors clustered by Supreme Court term. The constant is omitted. ***p $<$ .01; **p $<$ .05; *p $<$ .1

A9 Sensitivity Analysis on Possible Circuit Split Confounding

As we noted in Part 5.4, a possible concern with our results is that we do not have information on which petitions present genuine splits among the Court of Appeals. Specifically, the presence of such a "circuit split"—or disagreement among the twelve Courts of Appeals on a particular legal issue—is thought to be a strong predictor of whether the Court is likely to grant cert. However, given the importance ascribed to these intra-court splits, petitioners commonly make the claim—even when it is legally dubious—that a circuit split is present. This makes the text of petitions themselves unreliable markers of the presence of a split.

Although some scholars have made headway identifying which cases present genuine circuit splits by having skilled coders (e.g. law students) independently research whether a circuit split is actually present (e.g., Beim and Rader, 2019), the scope of our data made such in-depth qualitative coding impossible. This means that a possible concern with our findings is that they being driven by omitted variable bias due to our inability to control for the presence of a circuit splits. This would be a concern if Odd Party Out cases are much more likely to feature genuine circuit splits than other cases. As we noted in Part 5.4, this seems like a remote possibility: although it is possible that circuit splits correlate with a large ideological distance between the parties, we no reason why circuit splits would predict a large ideological distance between the panel and the litigants (or vice versa), especially since panel assignment is orthogonal to issue area.

Nonetheless, we address this by conducting a straightforward sensitivity analysis using a method recommended by VanderWeele and Ding (2017). Sensitivity analyses are commonly used when researchers are worried about an unobserved confounder (or set of unobserved confounders) is driving a result. The method of sensitivity analysis developed by VanderWeele and Ding (2017) returns a quantity called the "E-value," the interpretation of which relies on risk ratios. Specifically, as VanderWeele and Ding (2017, p. 3) explains, the "E-value is the minimum strength of association, on the risk ratio scale, that an unmeasured confounder would need to have with both the treatment and outcome, conditional on the measured covariates, to explain away a

Table A14: E-values from Primary Regression Specifications

	(1)	(2)	(3)	(4)
Specification from Table 5	1.4	1.5	1.4	1.4

treatment-outcome association."

The results from this analysis are shown in Table A14. This Table is based on calculating the E-value for the "Petitioner Odd-Party-Out" variable for the regression specification from the five columns of Table 5. The results in Table A14 show an E-value of between a 1.4 and 1.5. In our substantive context, this suggests that cert would have to be granted 1.4 or 1.5 times higher in the circuit split group versus non-circuit split group *and* the Odd Party Out configuration would have to be 1.4 or 1.5 times higher in the circuit split group than in the non-circuit split group, *above and beyond those covariates already included in the model specification.* Perhaps the former could be the case, but it seems unlikely that the Odd Party Out configuration would be 1.4 or 1.5 times more prevalent in circuit split cases, especially given the high rate of petitioners claiming the presence of a circuit split.

A10 Pre-Processing the Data by Matching

It is important to caution that our results should not be interpreted as causal estimates. Indeed, advocates undoubtedly gravitate toward representing certain cases that echo their ideological concerns, suggesting that unobserved case covariates could correlate with attorney ideology. Thus, our findings do not imply that litigants could double the probability of successful cert petitions by simply hiring an ideologically extreme attorney. Moreover, whether there is an Odd Party Out in a given case is likely deeply endogenous with a range of other factors that may independently influence the probability of cert. Any efforts to claim causal estimates in this context would thus simply not be credible.

That said, one concern with our results could be that the set of cases with an Odd Party Out are simply systematically different than the cases without an Odd Party Out. To ensure that this is not driving our results, we pre-processed our data with matching (e.g., Ho et al., 2007). We specifically created THREE separate datasets that match cases based on whether there is a petitioner that is an Odd Party Out using the sets of control variables and fixed effects from column 5 in Table 5 and Table 6. (We use nearest neighbor matching with a caliper of 0.25.) This approach ensures that we are comparing cases that are similar, conditional on the observables from our regressions.

Table A15 reports these results. The estimates are largely consistent with our primary results. For instance, the estimate in Column 5 suggests that the presence of a petitioner that is an Odd Party Out is associated with 1.3 percentage points higher probability of cert being granted. Although this estimate is smaller in magnitude than the estimates in Table 5, it is important to emphasize that pre-processing the data in this way creates a sample of cases where cert is dramatically more likely than normal. For instance, the probability of cert was 4.5 percent in our overall sample of 42,567 cert petitions, 6.6 percent in our sample of 17,871 cert petitions with complete ideology data, and 9.7 percent in the matched sample of 3,152 cert petitions from Column 5. Yet, even in this set of cases, petitioners that are an Odd Party Out are still more likely to have their cert petitions granted.

Table A15: Determinants of Cert Grants — Data Pre-Processed by Matching

	(1) All Cases	(2) Civil Cases	(3) Criminal
Petitioner Odd-Party-Out	0.021	0.046**	0.013
	(0.017)	(0.018)	(0.020)
Observations	2,950	632	2,290
R-squared	0.163	0.219	0.197
Circuit Fixed Effects	Yes	Yes	Yes
Term Fixed Effects	Yes	Yes	Yes
Control Variables	All Controls	All Controls	All Controls

Notes: The dependent variable is coded as "1" if a cert petition was granted. Each column uses a different dataset that was pre-processed by matching cases for the presence of a Petitioner that is an Odd Party Out using the variables corresponding to column 5 from Tables 5 and 6. All regressions are estimated using a linear probability model with standard errors clustered by term. The constant is omitted. ***p < .01; **p < .05; *p < .1