

Diversity in Judicial Leadership in the American States

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Chief justices in American state courts of last resort have been more diverse than their federal counterparts. Unlike the federal chief justices, women make up a significant proportion of state chief justice seats in the modern era. Meanwhile, representation for racial minorities has grown less rapidly but still exists. In this research, we examine state chief justice selection to determine whether certain institutional rules facilitate more diverse leadership. We also examine the impact of politics and other contemporaneous factors. Our analysis includes all chief justice selection events in the states from 1970 to 2020. We find that government appointment selection methods help further racial diversity among state court leaders but discover little evidence that such methods affect gender diversity. However, court size, mandatory retirement laws, and bench diversity are all associated with a greater likelihood of a woman or person of color serving as chief justice.

Keywords: chief justice, state supreme courts, judicial leaders, judicial diversity

In 1992, a voting rights settlement created an additional, temporary seat on the Louisiana Supreme Court.¹ Bernette Joshua Johnson was elected to this judgeship as the state's first Black female justice in 1994.² After her initial term, she won reelection to a permanent seat on the court in 2000 and 2010. When the court's sitting chief justice announced her retirement in 2012, Johnson assumed that she would become the court's leader because state law assigns leadership to

1. Steve Cannizaro, "Settlement May Seat Black Justice," *The Times-Picayune* (August 21, 1992), 1B.

2. Prior to Johnson's election, the seat was held by Justice Revius Ortiq, Jr., the first African American justice in Louisiana; see Will Sutton, "Actually, the La. Supreme Court Should Have 2 Black Justices," *The Times-Picayune* (November 5, 2023), 7B.

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the longest-serving justice on the court. Controversy arose when some members of the court, including the retiring chief justice, suggested that Johnson's first six years of service on the Court—those prior to her election in 2000—should not count toward her seniority. When the court gave notice of its plan to debate whether to seat Johnson as chief justice, she openly criticized the process and sued in federal court. Media coverage called the events “racially insensitive” and “bare knuckled.”³ Johnson's legal representation told reporters, “I can't say whether it's racism or not . . . I will say this: I do not think that this would be happening to Justice Johnson if she were not African-American.”⁴ That sitting members of the court would oppose their own colleague was viewed by many as damaging to the court's reputation, particularly since constitutional guidance was clear.

Johnson won her federal lawsuit and became the state's first Black chief justice in 2013, serving in the position until she retired in 2020. During her tenure, Johnson was periodically the only woman on the court as well as the only person of color, as membership on the court evolved. Her leadership priorities often reflected these differences. In legal opinions, she forcefully condemned state law that gave Louisiana the nation's highest incarceration rate, decrying its specific impact on the Black population of the state. Beyond her opinions, Johnson wrote her colleagues in the wake of protests surrounding the death of George Floyd and urged them to “acknowledge with me the part we each play in maintaining a system that leaves many of our fellow citizens, especially our African American citizens, feeling that they cannot breathe.”⁵ As she neared retirement, she remarked somewhat wearily to the press: “I did all I could do . . . What the court will do in the future, I'm going to leave it to them.”⁶

Johnson's tenure as Louisiana's chief justice provided symbolic, descriptive, and substantive representation for a group of citizens who were not represented otherwise on the high court.⁷ Political scientists have historically considered the concept

3. See Stephanie Grace, “Johnson Makes a Strong Case for Herself,” *The Times-Picayune* (August 16, 2012), 7B; and John Simerman, “Bernette Johnson, Louisiana's First Black Chief Justice, Leaves Office Speaking Her Mind,” *The New Orleans Advocate* (December 26, 2020), https://web.archive.org/web/20210112030507/https://www.nola.com/news/courts/article_093097e8-446a-11eb-8424-1b72e7dc04d2.html.

4. Debbie Elliott, “La. Court In Racially Charged Power Struggle, Again,” NPR.org (August 14, 2012), <https://web.archive.org/web/20240315001949/https://www.npr.org/2012/08/14/158603523/la-court-in-racially-charged-power-struggle-again>.

5. Simerman, “Bernette Johnson, Louisiana's First Black Chief Justice.”

6. *Ibid.*

7. Hanna F. Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press 1967).

of representation in executive and legislative leadership but less so in judicial leadership.⁸ Of course, diversity among state chief justices and chief judges is a relatively recent phenomenon. The judges of state high courts were almost all white men for the first two centuries of United States history. As the number of women and people of color have grown in state judiciaries, so too has diversity in court leadership.

Chief Justice Johnson's story illustrates how a state's institutional design for chief justice selection can affect who gets chosen to lead the state judiciary. Inarguably, the law prescribing chief justice selection in Louisiana was consequential for Johnson's elevation to the position. If Louisiana had a chief justice selection process that resembled other states, such as a peer selection or statewide election, Johnson may not have become chief justice in 2013. Her story also reminds us that the individuals who are chosen to lead state judiciaries are intrinsically linked to the history and politics of a place, given that Johnson has thus far been the only person of color to lead the Louisiana Supreme Court.

Two fundamental questions emerge from Chief Justice Johnson's story. First, to what degree can a state's institutional selection rules facilitate diversity in judicial leadership? Second, to what degree does the state political environment influence the selection of diverse court leaders? In this research, we consider these questions. We analyze whether chief justice selection rules influence the selection of underrepresented leaders on state high courts, specifically women and people of color. We also consider factors relevant to the political environment of each state. Our data include all chief justice selection events across the American states from 1970 to 2020. We find that diversification of the chief justice seat is closely associated with the composition, size, and retirement rules of the state court, though we also find some evidence that selection rules favoring government actors can promote the selection of nonwhite candidates.

8. Kathleen A. Bratton, and Kerry Haynie, "Agenda Setting and Legislative Success in State Legislatures: The Effects of Race and Gender," *Journal of Politics* 61 (1999): 658–79; Tracy L. Osborn, *How Women Represent Women: Political Parties, Gender, and Representation in the State Legislatures*, (New York: Oxford University Press, 2012); Beth Reingold, and Adrienne R. Smith, "Welfare Policymaking and Intersections of Race, Ethnicity, and Gender in US State Legislatures," *American Journal of Political Science* 56 (2012): 131–47; Michele L. Swers, "Research on Women in Legislatures: What Have We Learned, Where Are We Going," *Women & Politics* 23 (2001): 167–85; Michele L. Swers, "Connecting Descriptive and Substantive Representation: An Analysis of Sex Differences in Cosponsorship Activity," *Legislative Studies Quarterly* 30 (2005): 407–33; and Jason Windett, "Differing Paths to the Top: Gender, Ambition, and Running for Governor," *Journal of Women, Politics & Policy* 35 (2014): 287–314.

Historical Diversity Among Chief Justices

During most of American history, all state chief justices in the US were white and male, consistent with the overall profile of the bar and bench.⁹ Although nonwhite and female state supreme court justices first joined such courts in 1870 and 1922, respectively, they remained rare for several decades.¹⁰ An influx of judges from underrepresented groups occurred from 1959 to 1969, but their numbers remained small.¹¹ Female and minority judges became more common in the 1970s and 1980s, including several in leadership roles.¹² Their numbers later increased substantially as the membership of state high courts diversified, and these judges gained a foothold in the highest levels of state courts.

Female Chief Justices

As of 2022, forty-two of the fifty-two state high courts have been led by a woman.¹³ As shown in Figure 1, the total number of chief justices who were female in the US increased substantially from 1970 to 2020. In 1970, only one state chief justice was a woman—a figure that remained fairly constant until 1995.¹⁴ In the mid-1990s, however, female representation in state court leadership increased exponentially. By 2000, fourteen state chief justices were female. Women’s representation reached a peak of twenty-three in 2014 before settling back in at eighteen in 2020.

9. The leader of the state high court is referred to as the “chief judge” in New York and Maryland. We refer to leaders of state courts of last resort as “chief justices” given the use of this term in forty-eight of fifty states. The leaders of the Texas Court of Criminal Appeals and Oklahoma Court of Criminal Appeals are known as the “presiding judge.”

10. The earliest nonwhite and female justices were Jonathan Jasper Wright of South Carolina (African American) and Florence E. Allen of Ohio (female). For profiles of trailblazing female and nonwhite chief justices, see Richard L. Vining, Jr. and Teena Wilhelm, “Trailblazing Chief Justices in the American States,” *Judicature* 106 (2023): 42–51.

11. Greg Goelzhauser, “Diversifying State Supreme Courts,” *Law & Society Review* 45 (2011): 761–81.

12. *Ibid.*; Mark S. Hurwitz, and Drew N. Lanier, “Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts,” *State Politics and Policy Quarterly* 3 (2003): 329–52; Mark S. Hurwitz, and Drew Noble Lanier, “Diversity in state and Federal Appellate Courts: Change and Continuity Across 20 Years,” *Justice System Journal* 29 (2008): 47–70; and Elaine Martin, and Barry Pyle, “Gender and Racial Diversification of State Supreme Courts,” *Women and Politics* 24 (2002): 35–52.

13. As of 2021, the state high courts without a female chief justice in their history include those in Delaware, Hawaii, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, and Kentucky. The Texas Supreme Court has never had a female chief justice, but the Texas Court of Criminal Appeals has been led by Chief Justice Sharon Keller since 2001.

14. N.O. Stockmeyer, Jr., “Hail to the Chiefs: A Tribute to America’s Women Chief Justices,” *Women Lawyers Journal* 80 (1994): 9–11.

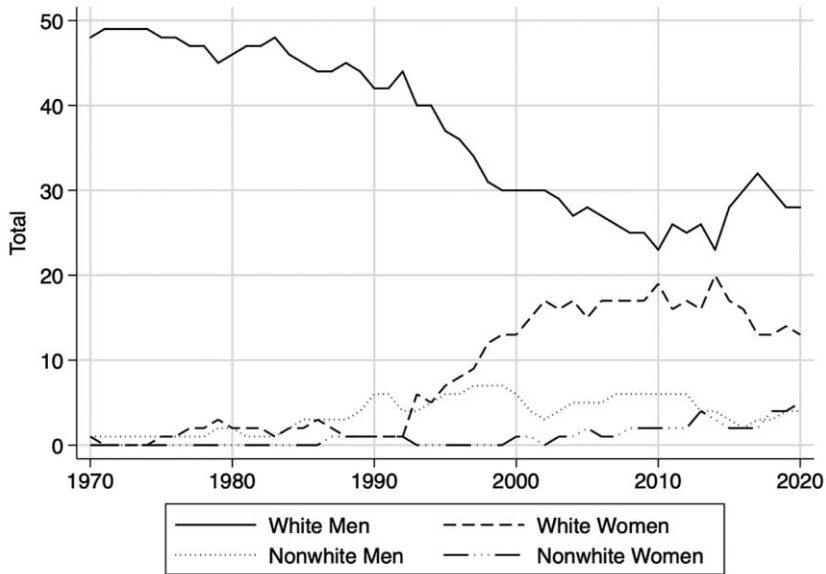


Figure 1. Total state supreme courts with white male, white female, nonwhite male, or nonwhite female chief justice in a given year (1970–2020).

Minority Chief Justices

Nonwhite Americans were also excluded systematically from the legal profession and law schools for much of American history. This limited the ability of racial and ethnic minorities to participate in the judicial system, including state high courts.¹⁵ Racial diversity on state supreme courts was extremely limited until the mid-1970s.¹⁶ As shown in Figure 1, minority chief justices have remained relatively rare, though they reached historical highs in recent years. In 1970, only one chief justice in the US was nonwhite, and by 2020, that figure rose to nine.

Between 1970 and 2020, thirty-nine individuals from a minority racial group have served as chief justice in twenty-one states. Nine of these individuals were women. In terms of more specific identities, twenty-four were Black, with the majority of these individuals serving in former Confederate or border South states. The remaining fifteen were either Hispanic or Latino American (nine), Asian and Pacific Islander American (five), or Indigenous/ Native American (one).¹⁷

15. Gregory L. Acquaviva, and John D. Castiglione, “Judicial Diversity on State Supreme Courts,” *Seton Hall Law Review* 39 (1999): 1203–61.

16. *Ibid.*

17. Chief Justice Jean A. Turnage of Montana was an enrolled member of the Confederated Salish and Kootenai Tribes from Lake County on the Flathead Reservation; see Luana Ross,

These chief justices primarily served in states with larger minority populations, often in the American west.

The Impact of Diverse Judicial Leadership in State Supreme Courts

Most judicial activity in the United States, about 95% of all case dispositions, happens at the state level. The highest courts in the states interpret state constitutions and issue the final say on many consequential legal matters, given the rarity that cases reach the Supreme Court of the United States. In terms of jurisdictional impact, state supreme courts can (and have) interpreted their own constitutions to have more rights than the US Constitution. These include the right to abortion, as well as other rights related to equal protection of laws. State supreme courts also often write their state's rules of criminal procedure, shaping the rights of the criminally accused at all stages of criminal justice.

As state supreme courts are consequential in the American legal system, particularly for issues that disproportionately affect women and minorities, it is important to consider factors that influence who is selected to lead these courts. Judicial leadership has a significant impact within courts, as well as outside them. Existing research suggests that the chief justice, whether by leadership style or by powers afforded the position, can influence court norms, decisions, opinion writing, and overall consensus.¹⁸ Judicial leaders may also alter the institutional organization of the court.¹⁹ Finally, judicial leaders can have an outsized impact on how the judicial branch is represented in the broader political environment, and the degree to which successful reform or maintenance of the judiciary can be achieved.²⁰

Given all this, it is important to consider whether identity and diversity might affect judicial leadership. Research analyzing the consequences of diversity among court leaders is minimal and almost singularly focused on gender. For example,

Inventing the Savage: The Social Construction of Native American Criminality (Austin, TX: University of Texas Press, 1998), 25. For more thorough discussion of non-white chief justices over time, see Richard L. Vining, Jr. and Teena Wilhelm, *Administering Justice: Placing the Chief Justice in State Politics* (Ann Arbor, MI: University of Michigan Press, 2023).

18. David J. Danelski, "The Influence of the Chief Justice in the Decisional Process of the Supreme Court," paper presented at the Annual Meeting of the American Political Science Association, New York, September 1960; Stacia L. Haynie, "Leadership and Consensus on the U.S. Supreme Court," *The Journal of Politics* 54 (1992): 1158–69; and Gregory A. Caldeira, and Christopher J.W. Zorn, "Of Time and Consensual Norms in the Supreme Court" *American Journal of Political Science* 42 (1998): 874–902.

19. Forrest Maltzman, and Paul J. Wahlbeck, "May It Please the Chief? Opinion Assignment in the Rehnquist Court," *American Journal of Political Science* 40 (1996): 421–43.

20. Vining and Wilhelm, *Administering Justice*.

Leonard and Ross examined whether there are gender differences in achieving intra-court consensus, and Norris found that state supreme court justices perceive female court leaders as more focused on maintaining congenial interbranch relations than male chiefs.²¹

When diversity on courts is considered more broadly, scholars have found that racial and gender diversity can affect not only judicial behavior but also court collegiality. For example, Black judges vote more liberally in cases like employment discrimination and criminal justice, while female judges tend to vote more liberally in cases involving sex discrimination.²² Furthermore, judicial panels with greater gender diversity are associated with a higher likelihood that male judges will support the party alleging sex discrimination.²³ Similarly, racial diversity on judicial panels is associated with a greater likelihood that white judges will vote in favor of affirmative action programs.²⁴

Other research finds that increased diversity on courts is associated with increased legitimacy for the judiciary, particularly among historically underrepresented groups.²⁵ Chief Justice Charles E. Freeman of Illinois explained that diversity on his court fostered a better understanding of issues on its docket:

When people of different backgrounds and different persuasions can sit down and express views privately to other judges and make points that they may not understand, diversity ends up being good for understanding some of the issues before us and some of the social problems that are created in those issues.²⁶

It is also feasible that diverse chief justices provide substantive representation for underrepresented groups (e.g., Chief Justice Johnson’s response to the civil rights protests of 2020), though that prospect requires empirical testing. Anecdotal

21. Meghan E. Leonard, and Joseph V. Ross, “Gender Diversity, Women’s Leadership, and Consensus in State Supreme Courts,” *Journal of Women, Politics & Policy* 41 (2020): 278–302; and Mikel Norris, “Beyond Consensus: Gender, Chief Justices, and Leadership on State Supreme Courts,” *Journal of Women, Politics & Policy* 43 (2022): 134–51.

22. Susan B. Haire, and Laura P. Moyer, *Diversity Matters: Judicial Policy Making in the U.S. Courts of Appeals* (Charlottesville, VA: University of Virginia Press 2015).

23. Christina L. Boyd, Lee Epstein, and Andrew Martin, “Untangling the Causal Effects of Sex on Judging,” *American Journal of Political Science* 54 (2010): 389–411.

24. Jonathan P. Kastellec, “Racial Diversity and Judicial Influence on Appellate Courts,” *American Journal of Political Science* 57 (2013): 167–83.

25. Nancy Scherer, and Brent Curry, “Does Descriptive Race Representation Enhance Judicial Legitimacy? The Case of the U.S. Courts,” *Journal of Politics* 72 (2010): 90–104.

26. Kevin Chappell, “Record Number of Black Chief Justices: Six Jurists Head D.C. and State Supreme Courts,” *Ebony Magazine* (October 1997), 122–30.

evidence suggests that such representation occurs. For example, Chief Justice Conrad L. Mallett of Michigan remarked in 1997 that as the state's first Black chief justice he was "keenly aware" of his "particular responsibility to be heard on issues of importance that affect the urban dwellers and poor people across [the] state."²⁷ Chief Justice Leroy R. Hassell, Sr. reminded the Virginia Judicial Conference in 2003 that racial discrimination was once rampant in Virginia and judges there must "recommit [themselves] to the fair and equal treatment of the law for all Virginians, regardless of race, creed, religion, or gender. To expect less is unacceptable; to do less is simply wrong."²⁸ Late in his tenure as chief justice he explained that "I made it my business to ensure that on every major commission we had geographical diversity, religious diversity, racial diversity, and gender diversity. It is my belief that unless the judiciary is diverse, we will not enjoy the support of all segments of Virginians. And that, my friends, is very, very, very important to me."²⁹ The priorities and actions of these chiefs were clearly influenced by their personal backgrounds.

Research on the Selection of Underrepresented Chief Justices

There is little empirical research to explain the selection of diverse chief justices. Political scientists frequently focus on judicial selection and tenure in the states, but they seldom focus specifically on court leaders. The research that does focus on judicial leadership is limited to analyses of single selection systems, and primarily focused on gender diversity.

Fife et al. analyzed chief justice selection in states where the court's leader is selected by peer voting.³⁰ They found that peer selection was "unbiased" in selecting diverse judicial leadership. Specifically, their findings indicated that women and people of color were no less likely to be chosen as court leaders than white men. Instead, seniority and the dissenting behavior of justices had more impact on

27. Conrad L. Mallett Jr., "State of Judiciary," Address to the Michigan Legislature, (October 23, 1997), <https://web.archive.org/web/20230321084216/https://www.micourthistory.org/special-sessions/state-of-judiciary-mallett/>.

28. Leroy R. Hassell Sr., "State of the Judiciary Message," in Virginia State of the Judiciary Report (Richmond, VA: Supreme Court of Virginia, 2003), <https://web.archive.org/web/20220503094226/https://www.vacourts.gov/courtadmin/aoc/judpln/csi/sjr/2003/introduction.pdf>, xi–xv.

29. Leroy R. Hassell, Sr., "State of the Judiciary Message," in Virginia State of the Judiciary Report, (Richmond, VA: Supreme Court of Virginia, 2009), https://web.archive.org/web/20230520201544/https://www.vacourts.gov/courtadmin/aoc/djs/programs/cps/csi/sjr/2010/state_of_the_judiciary_report.pdf, xi–xvi.

30. Madelyn Fife, Greg Goelzhauser, and Stephen T. Loertscher, "Selecting Chief Justices by Peer Vote," *State Politics and Policy Quarterly* 21 (2021): 165–94.

who was chosen to lead the court. In terms of factors that increase the likelihood that an underrepresented leader might be chosen, Norris and Tankersley found that state judicial peers were more likely to choose women as their leaders when the court is ideologically diverse, when the baseline of experienced women on the court is greater, and when chief justices serve longer terms.³¹ While these collective findings are meaningful, it is important to consider the narrow focus of the research. These analyses focus exclusively on peer vote systems, a method used by fewer than half of all states to select chief justices.

Beyond analysis of judicial leaders, scholars have examined the relationship between judicial selection methods and diverse representation on courts both generally and more specifically on courts of last resort.³² In state supreme courts selected by popular election, Gill and Eugenis found that female challengers to judicial incumbents have an electoral advantage over male challengers.³³ In states with appointed justices, Arrington identified the phenomenon of “gendered replacement” whereby women are more likely to be selected if filling a vacancy left by another woman.³⁴

When scholars compare overall judicial diversity across all selection systems, the findings are mixed. Bratton and Spill found that merit or gubernatorial appointment systems were more likely to produce the first women on a state supreme court but were not associated with increased diversity beyond the initial appointment.³⁵ Reddick et al. found that state supreme court diversity was more often achieved with merit selection, but recent research by Lanier and Hurwitz found

31. Mikel Norris, and Holley Tankersley, “Women Rule: Gendered Leadership and State Supreme Court Chief Justice Selection,” *Journal of Women, Politics & Policy* 39 (2018): 104–25.

32. Nicholas O. Alozie, “Black Representation on State Judiciaries,” *Social Science Quarterly* 69 (1988): 979–86; Nicholas O. Alozie, “Distribution of Women and Minority Judges: The Effects of Judicial Selection Methods,” *Social Science Quarterly* 71 (1990): 315–25; Barbara Luck Graham, “Do Judicial Selection Systems Matter? A Study of Black Representation on State Courts,” *American Politics Quarterly* 18 (1990): 316–36; and Frank C. Thames, and Margaret S. Williams, *Contagious Representation: Women’s Political Representation in Democracies Around the World* (New York: New York University Press, 2013).

33. Rebecca D. Gill, and Kate Eugenis, “Do Voters Prefer Women Judges? Deconstructing the Competitive Advantage in State Supreme Court Elections,” *State Politics & Policy Quarterly* 19 (2019): 399–427.

34. Arrington, Nancy B. “Gender and judicial replacement: The case of US state supreme courts.” *Journal of Law and Courts* 6 (2018): 127–54.

35. Kathleen A. Bratton, and Rorie L. Spill, “Existing Diversity and Judicial Selection: The Role of the Appointment Method in Establishing Gender Diversity in State Supreme Courts,” *Social Science Quarterly* 83 (2002): 504–18.

that differences in systems decreased over time.³⁶ The most comprehensive analyses come from Goelzhauser, who found no difference in selection systems for increased gender diversity.³⁷ He also found that the probability of seating minority justices was lower in election systems than in either merit or government appointment systems, but no singular selection system was significantly associated with increased court diversity.

The broader research on diversity in courts is limited in its application to court leadership. This is partly because a state's chief justice selection rules do not directly mirror rules for overall judicial selection. This is also because there is an intrinsic difference between selection of court *members* versus selection of a court *leader*. Given this, we do not have a full understanding of the factors that influence the diversification of judicial leadership in the states. Specifically, we do not know whether institutional structures can increase (or decrease) the selection of underrepresented court leaders, nor do we understand the degree to which the political environment might influence the selection of diverse chief justices. Answering these questions requires (1) an understanding of how chief justices are selected in the states, (2) consideration of the potential influence of rules on selection outcomes, and (3) identification of the political factors that may affect the selection process.

Rules of Chief Justice Selection

While roughly nine *distinct* methods are used to pick the leaders of state high courts, chief justice selection can be classified into five general system types: peer vote (twenty-three states), popular election (seven states), government appointment without commission (four states), commission-assisted appointment (eleven states), and rotation/seniority (five states).³⁸ We provide a current list of states in each classification in Table 1.

36. Malia Reddick, Michael J. Nelson, and Rachel Paine Caufield, "Racial and Gender Diversity on State Courts—An AJS Study," *Judges' Journal* 48 (2009): 28–32; and Drew N. Lanier and Mark S. Hurwitz, "Elections and Judicial Diversity," in *Judicial Elections in the 21st Century*, eds. Chris W. Bonneau and Melinda Gann Hall, (New York: Routledge, 2017), 233–45.

37. Greg Goelzhauser, *Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform* (Philadelphia, PA: Temple University Press, 2016); and Greg Goelzhauser, "Intersectional Representation on State Supreme Courts," in *Open Judicial Politics*, eds. Rorie Spill Solberg, Jennifer Segal Disascro, and Eric Waltenburg (Corvallis, OR: Oregon State University Press, 2021), 65–86.

38. For a broader discussion of chief justice selection rules, see Vining and Wilhelm, *Administering Justice*. Our data account for changes over time and within states, which occur in Idaho, New York, Utah, Virginia, West Virginia, and Wisconsin.

Table 1. Chief Justice Selection System Classifications

<i>Commission</i>	
California	New Hampshire
Delaware	New Jersey
Hawaii	New York
Indiana	Rhode Island
Massachusetts	Vermont
Nebraska	
<i>Government</i>	
Connecticut	South Carolina
Maine	
Maryland	
<i>Peer Election</i>	
Alaska	North Dakota
Arizona	Oklahoma
Colorado	Oregon
Florida	South Dakota
Georgia	Tennessee
Idaho	Utah
Illinois	Virginia
Iowa	Washington
Kentucky	West Virginia
Michigan	Wisconsin
Missouri	Wyoming
New Mexico	
<i>Popular Election</i>	
Alabama	North Carolina
Arkansas	Ohio
Minnesota	Texas
Montana	
<i>Rotation/Seniority Assignment</i>	
Kansas	Nevada
Louisiana	Pennsylvania
Mississippi	

An important question to consider is whether there are reasons to expect that a selection system will directly impact the gender or racial identity of the chief justice who is chosen using that rule. In other words, *can a selection rule by itself influence the prevalence of diverse leadership?* To answer this, we consider Goelzhauser's comprehensive analysis of judicial selection rules and overall state supreme court diversification.³⁹ In that research, he observed:

39. Goelzhauser, "Intersectional Representation."

Along with diversity, selectors emphasize characteristics such as experience, temperament, and ideology. Given that selection institutions are designed for myriad reasons, there is no strong a priori theoretical justification for rank ordering them with respect to success in promoting diversity.⁴⁰

We believe that chief justice selectors also emphasize other characteristics besides diversity when they choose judicial leaders. Accordingly, while selection rules may engender greater diversification of court leadership, the relationship may not be directly causal. After all, selection rules do not occur in a vacuum but exist alongside historical and political factors in each state. Among other things, this can affect the pool of eligible candidates for chief justices.

For these reasons, we posit that *diversification of court leadership is a function of selection rules in concert with other factors*. Accordingly, we do not assign formal expectations for the impact of each selection rule but instead discuss each with a more general consideration of diversity.

Chief Justice Selection by Peer Vote

In peer vote systems, used by a plurality of states, justices select a leader from the court's roster.⁴¹ Most chief justices chosen by their peers serve for a single term of predetermined length, though they may be reelected by their colleagues and routinely serve multiple terms in some states. In terms of selecting leaders, a high court's members are likely to be highly capable given the working relationships and experiences between colleagues that can inform leadership choices.

Still, judges face several unique constraints in choosing a court leader, including consideration of intra-court norms regarding seniority and previous professional experience. Their decisions are sometimes influenced by the ages, retirement plans, health status, personalities, or leadership abilities of their colleagues. They are also limited by the size of their option pool—the five to nine members of the court. As can be seen in Figure 2, states utilizing peer selection between 1970 and 2020 produce chief justices who are female 16% of the time, who are nonwhite 8% of the time, and who are either female or nonwhite (“underrepresented”) 22% of the time.

Chief Justice Selection by Popular Election

Popular elections are the most visible selection mechanisms for chief justices, as candidates—whether a current justice or not—run in (potentially) competitive

40. Ibid., 68.

41. We include North Dakota in “peer vote” states although the state's chief justice is technically chosen by a process that incorporates the state's district judges and the state supreme court.

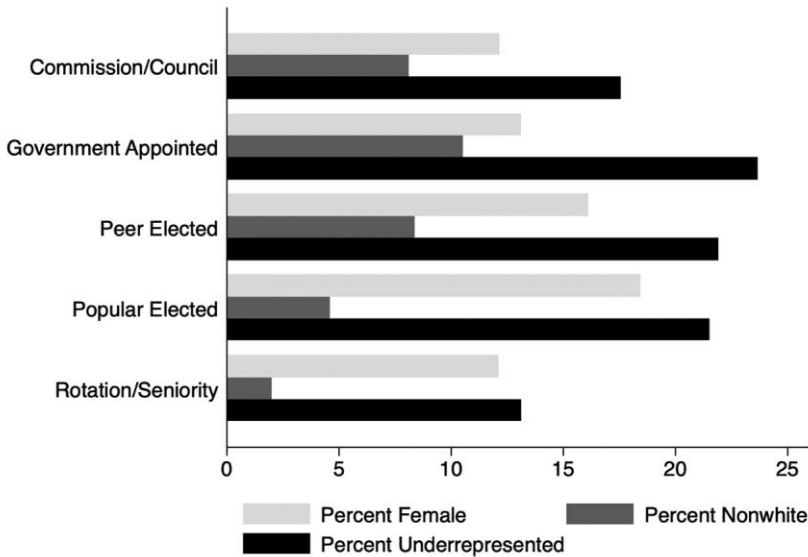


Figure 2. Percentage of chief justices who are female, nonwhite, or underrepresented (combined), by selection system (1970–2020)

elections.⁴² These court leaders can be reelected and can serve multiple terms. With respect to selection outcomes, evidence from research on overall judicial diversity suggests that popular elections have an increased potential for bias.⁴³ Accordingly, this method may coincide with less diverse leadership. When an electorate is charged with selecting the court leader, judicial selection is more likely to be politicized. This is particularly true as history has favored white, male leadership across most elected government institutions in the United States. According to the results presented in Figure 2, states utilizing popular election of chief justices between 1970 and 2020 produced female chiefs 19% of the time (the most of any selection system in our sample), nonwhite chiefs 5% of the time, and underrepresented chiefs 22% of the time.

Chief Justice Selection by Government Appointment (No Commission)

Chief justices chosen by governmental elites include unilateral selections made by either governors or state legislatures. Importantly, we categorize these chief justices

42. Richard L. Vining, Jr., Teena Wilhelm, and Emily Wanless, “Succession, Opportunism, and Rebellion on State Supreme Courts: Decisions to Run for Chief Justice,” *Justice System Journal* 40 (2019): 286–301.

43. See, for example, Lanier and Hurwitz, “Elections and Judicial Diversity;” and Hurwitz and Lanier, “Explaining Judicial Diversity.”

separately from government-appointed leaders whose selection process includes commission nomination or approval. Court leaders selected in this manner tend to have relatively long terms and are not subject to reelection by citizens. In terms of selection outcomes, governmental appointment likely favors candidates who share a political or ideological similarity with the appointing governor or legislature.⁴⁴

Historically, governmental appointments were likely made without attention to the underrepresentation of women or minorities. As contemporary concerns about diversity gained political importance, the unconstrained nature of these appointments may have facilitated leadership choices shaped by diversity goals. The pool of candidates for consideration is also relatively unrestricted under this system. Given this, selection outcomes in governmental appointment systems likely depend on the ideological leanings and political goals of the elite(s) responsible for chief justice appointments, which may or may not be oriented toward diverse judicial leadership. According to the results in Figure 2, government appointment (without commission assistance) methods were the most likely between 1970 and 2020 to produce diverse chief justices (11% and 24%, respectively).

Chief Justice Selection by Commission-Assisted Appointment

In states utilizing commission-assisted appointments, chief justices are chosen by a process that uses a judicial nominating commission to assist with (most often) governor appointment.⁴⁵ Commission-assisted selection involves heightened scrutiny of judicial qualifications and an enhanced candidate review process. The pool of candidates under consideration is constrained by the set of applicants given formal consideration. With greater emphasis on qualifications over political connections, this system may afford more opportunity for advancing underrepresented candidates.⁴⁶ Consequently, commission-assisted selection may have increased potential for diverse outcomes compared to some others.⁴⁷ Even still, according to the results

44. Teena Wilhelm, Richard L. Vining, Jr., and David A. Hughes, "Chief Justice Selection Rules and Judicial Ideology," *State Politics & Policy Quarterly* 23 (2023): 267–82.

45. In at least one state (Indiana), the commission is completely responsible for chief justice selection.

46. cf., Greg Goelzhauser, "Does Merit Selection Work? Evidence from Commission and Gubernatorial Choices," *Journal of Law and Courts* 6 (2018): 155–87; and Richard L. Vining Jr., Charles S. Bullock III, and Ethan D. Boldt, "The Politics of Interim Judicial Appointments," *Journal of Law and Courts* 11 (2023): 350–69.

47. Arrington suggests that commission-based processes may give the appointing authority cover to choose fewer diverse nominees given the prima facie fairness of merit selection. See Nancy B. Arrington, "Judicial Merit Selection: Beliefs about Fairness and the Undermining of Gender Diversity on the Bench," *Political Research Quarterly* 74 (2021): 1152–67.

in Figure 2, chief justices chosen via commission-assistance were the least likely institution between 1970 and 2020 to produce female chief justices (12%), though 8% of all chiefs chosen this way were nonwhite.

Chief Justice Selection by Rotation/Seniority

In several states, leaders are chosen based on seniority of tenure on the court, or according to an established cycle of rotation. Individuals who become chief justice in these systems are not specifically chosen as leaders but take a turn in the role based on a default of time-served or division of labor. Terms for these justices may be lengthy (say, until a leader departs the court) or relatively short. In the latter situation, a justice can serve in the chief justice position multiple times. The pool of candidates under these rules is limited to the justices currently serving on the court. If a state's high court has not been historically diverse, opportunities for underrepresented leaders are limited where seniority determines the court leader. Rotation systems offer more opportunities assuming a judge serves long enough to take his or her turn in the center seat. The likelihood of diverse leadership in seniority and rotation systems depends on diversity within the court itself. And as can be seen from Figure 2, these institutions were the least likely between 1970 and 2020 to produce nonwhite (2%) or underrepresented chief justices (13%).

Political Considerations

While the independent impact of selection mechanisms on diversity in judicial leadership is subject to a host of contextual factors, the impact of politics ought to be more straightforward.⁴⁸ Liberal political attitudes are typically more favorable toward demographic diversity than conservative ones and are more likely to extend opportunity to minority groups in ways viewed suspiciously by the American right.⁴⁹ Given this, left-leaning voters and political elites should be more likely to prioritize demographic diversity than their conservative counterparts. Additionally, left-leaning political actors are likely to see political advantage associated with promoting diversity. Women and minorities tend to be more supportive of liberal political

48. Note, for example, that Hurwitz and Lanier concluded in their study of judicial diversity in 1985 and 1999 that “the lack of influence of judicial selection systems” was consistent throughout their study with the impact of selection systems conditioned by the ideology of elites and voters. See Hurwitz and Lanier, “Explaining Judicial Diversity.”

49. Kathryn A. Howard, Daniel Cervone, and Matthew Motyl, “On the Varieties of Diversity: Ideological Variations in Attitudes Toward, and Understandings of Diversity,” *Personality and Social Psychology Bulletin* 48 (2022): 1039–53.

actors and policies than men or white Americans.⁵⁰ Liberal politicians also tend to rely on the votes of social groups including women and racial minorities to win elections, thereby providing incentives to distribute political benefits to these groups.⁵¹

Previous studies of judicial selection provide empirical evidence that political ideology influences the selection of diverse state judges. Bratton and Spill found that women were more likely to be appointed to state high courts when the governor is a Democrat, and the state's population is more liberal.⁵² Hurwitz and Lanier also found significant interactive effects between elite ideology and appointment systems in models explaining the number of minority state judges in the mid-1980s and aggregated female and minority state supreme court judges in 1999.

Given what we know about the differences between liberal and conservative citizens and elites, in addition to the findings of previous scholarship, we have a general expectation about the relationship between the political environment and the selection of diverse chief justices.

Specifically, we expect that *diversification of judicial leadership is likely associated with more liberal state citizenries as well as more liberal political elites*. We incorporate data on political attitudes into our analysis from Berry et al.⁵³

Other Considerations

We also consider the impact of several control variables in our analysis. Specifically, we consider court size and mandatory judicial retirement rules given that the findings of previous research indicate they influence state supreme courts' diversity.⁵⁴ Because selection of an underrepresented court leader can also depend

50. Tiffany D. Barnes, and Erin C. Cassese, "American Party Women: A Look at the Gender Gap within Parties," *Political Research Quarterly* 70 (2017): 127–41; Janet M. Box-Steffensmeier, Suzanna De Boef, and Tse-Min Lin, "The Dynamics of the Partisan Gender Gap" *American Political Science Review* 98 (2004): 515–28; Brad Lockerbie, "Race and Religion: Voting Behavior and Political Attitudes," *Social Science Quarterly* 94 (2013): 1145–58; and Sarah Poggione, "Exploring Gender Differences in State Legislators' Policy Preferences," *Political Research Quarterly* 57 (2004): 305–14.

51. Matt Grossmann, and David A. Hopkins, *Asymmetric politics: Ideological Republicans and Group Interest Democrats* (New York: Oxford University Press, 2016).

52. *Ibid.*

53. William D. Berry, Evan J. Ringquist, Richard C. Fording, Russell L. Hanson, "Measuring Citizen and Government Ideology in the American States, 1960-1993," *American Journal of Political Science* 42 (1998): 327–48.

54. Goelzhauser's analysis also includes control variables for court professionalism and court term length, which we chose not to include; see Goelzhauser, "Intersectional Representation." Notably, the most used indicator for court professionalism does not vary over time for most of the years of our analysis; see Peverill Squire, "Measuring the Professionalization of US State Courts of Last Resort," *State Politics & Policy Quarterly* 8 (2008): 223–38; and Peverill

on the pool of available candidates, we also consider diversity on the court itself. We operationalize court diversity as the percentage of a court that is either non-white or female at the time of a chief justice selection event. Data on court size and retirement rules were obtained from state court websites and the *Book of the States* (various years). Finally, because judicial diversity has increased over time, we include three controls to address temporal dependence. Consistent with the approach suggested by Carter and Signorino, we include in our regression models a demeaned time-count for each year in the dataset in addition to a squared and cubed version of this variable.⁵⁵

Analysis and Results

To improve our understanding of the factors associated with the selection of diverse court leaders, we examine data on all chief justices who were selected to serve in the state supreme courts between 1970 and 2020. Information about state chief justice selection events over this time period comes from an original dataset, compiled by the authors. Classifications related to gender and race were confirmed from media reports, law review articles, obituaries, court histories, and published biographies.

Because a chief justice can serve multiple terms (i.e., win re-election, be reelected by peers for a subsequent term, etc.), individuals may appear in the data multiple times. The data include 586 chief justice selection events (with 538 unique chief justices). Of the selection events in this period, 16.3% resulted in the selection of a woman and 7.4% of a racial minority. A total of 116 justices from underrepresented groups are represented in these data (21.6%). Notably, the proportion of chief justices from diverse backgrounds looks similar to the overall composition of the state high courts during a comparable time frame.⁵⁶

Squire and Jordan Butcher, "An Update to the Squire State Court of Last Resort Professionalization Index," *State Politics & Policy Quarterly* 21 (2021): 326–33. In addition, chief justice term length is difficult to standardize for those courts with "duration of service" term lengths or "til 70" guidelines. This presents a measurement problem for inclusion of that variable. For this reason, and the fact that no control variable in Goelzhauser's models reach statistical significance, we opted not to include these somewhat problematic variables.

55. David B. Carter, and Curtis S. Signorino, "Back to the Future: Modeling Time Dependence in Binary Data," *Political Analysis* 18 (2010): 271–92.

56. Between 1960 and 2014, 16% of all state supreme court seats were filled by women, 9% by nonwhite minorities, and 23% by overall underrepresented judges; see Goelzhauser, *Choosing State Supreme Court Justices*, 102.

Table 2. Predicting the Selection of Female, Nonwhite, or All Underrepresented Chief Justices

Variable	Female	Nonwhite	All Underrepresented
Citizen Ideology	-0.01 (0.01)	-0.01 (0.01)	-0.01 (0.01)
Elite Ideology	0.01 (0.02)	0.03 (0.02)	0.01 (0.01)
Court Size	0.20* (0.07)	0.08 (0.16)	0.17* (0.06)
Mandatory Retirement	0.45* (0.24)	1.17* (0.37)	0.62* (0.20)
Percent Female	0.03* (0.01)	—	0.03* (0.01)
Percent Nonwhite	—	0.09* (0.01)	0.03* (0.01)
Peer Election	0.09 (0.30)	0.26 (0.66)	0.17 (0.31)
Popular Election	0.09 (0.47)	-0.19 (0.78)	0.08 (0.45)
Gov't. Appointment	0.19 (0.47)	0.82 (0.67)	0.70* (0.38)
Commission/Council	-0.39 (0.46)	-0.33 (0.95)	-0.12 (0.42)
Rotation/Seniority	<i>Reference Category for Each Regression</i>		
Time	0.08* (0.03)	0.02 (0.02)	0.05* (0.02)
Time ²	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)
Time ³	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)
Constant	-4.68* (1.00)	-6.48* (1.62)	-4.11* (0.62)
N	518	520	517
Wald χ^2	174.80*	125.14*	105.90*

Note: Table entries are logistic regression coefficients with standard errors in parentheses. Each regression clusters standard errors at the state-level. Asterisks (*) indicate statistical significance at the 0.05 level (one-tailed).

This is consistent with conclusions drawn by Norris and Tankersley regarding the conditions that facilitate the selection of a female chief justice.⁵⁷ Diversity among high court judges yields diversity among court leaders.

Our statistical models estimate the likelihood that a chief justice selected was (1) a woman, (2) a racial minority, or (3) underrepresented (female and/or racial minority). Given that each dependent variable is dichotomous, the models are fit with logistic regression. Standard errors are clustered by state to account for non-independence within states. The results of our models are reported in Table 2. While the estimated coefficients and standard errors provide important information, the substantive impacts of the variables are not readily interpretable. In our discussion that follows, therefore, we provide the results of post-estimation techniques that indicate changes in predicted probabilities related to variables of significance.

57. Ibid.

Selection of Female Chief Justices

We begin with results from our model that consider the selection of female state supreme court chief justices. First, it is important to note that none of our institutional selection methods for chief justice achieve statistical significance.⁵⁸ Compared to systems using rotation or seniority, no other method for selecting state supreme court chief justices is statistically different.⁵⁹ Likewise, neither of our ideological variables are associated with women's representation among state supreme court chief justices. Rather, only four predictors allow us to reject the null hypothesis.

First, our results indicate that as court size increases, so too does the likelihood that a chief justice selected is female, all things being equal. The average state supreme court has six members. According to the results from our regression model, a court with five members has a 12.9% chance of seating a female chief justice compared to a 17.1% chance on a court with seven members (a 33.1% increase). Larger courts increase the likelihood of women in leadership positions.

Second, we find that courts with mandatory retirement provisions yield a higher likelihood of selecting a woman as chief, all things being equal. According to the results of our regression model, states without mandatory retirement provisions have a 13.4% chance of seating a female chief justice. States with such provisions have an 18.4% chance of seating a female chief (a 37.3% increase). It stands to reason that mandatory retirement laws, which cause more frequent turnover on courts, increase the opportunities for a departing chief justice to be replaced by a female leader.

Our results also show that as the percentage of women on a state court increases, so too does the likelihood of a female leader, all things being equal. We plot this effect in the left-hand pane of Figure 3. When a state supreme court is all-male at the time of a chief justice selection event, there is only a 6.5% chance of seating a female chief justice. When women make up half the court, the likelihood of seating a female chief justice improves to 27.8%. Finally, when 80% of a court is female (the highest on record in our sample), selection of a female chief justice rises to a 43.3% likelihood.⁶⁰ While men are still more likely to receive the chief justiceship in all scenarios, more women on the court improves the likelihood of a female leader being chosen to lead the court.

58. For completeness, we re-estimated the regression by systematically excluding one institutional selection type at a time. No method of selection achieved statistical significance with respect to any reference category.

59. We chose rotation/seniority as the reference category for our institutional controls because, unlike the other methods under analysis, no individual or group of individuals makes a conscious decision to select a given individual to become chief justice.

60. New Mexico is responsible for this figure.

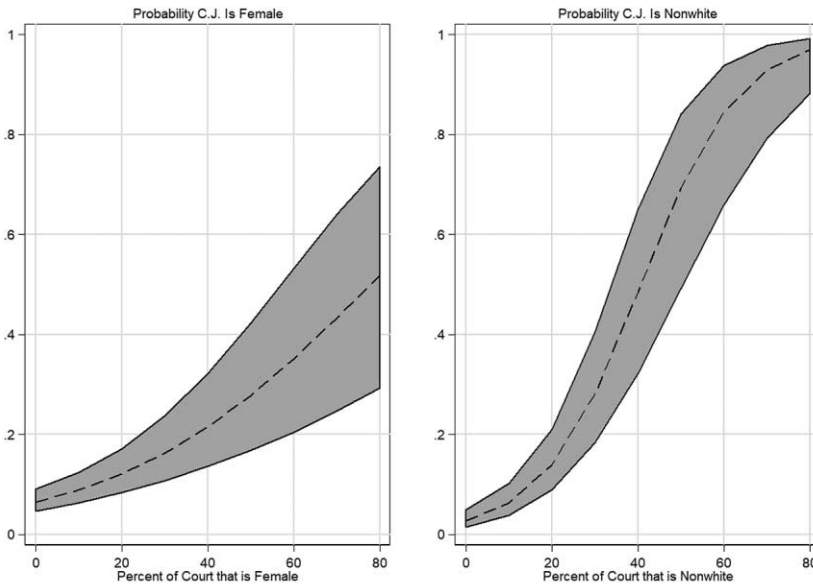


Figure 3. Probability a female or nonwhite individual becomes chief justice given court demographics

Finally, we note that time is a statistically significant factor in the selection of a female chief justice, all things being equal. We depict this relationship graphically in the northwest quadrant of Figure 4. In 1970, the likelihood of a chief justice selection event resulting in a female chief justice was 2.2%. By the mid-1990s, this increased to 13.6%, and by 2015 the likelihood had increased to 42.2%. Clearly, the passage of time has proved favorable to female representation among the ranks of state supreme court leadership.

Selection of Minority Chief Justices

The second column of results in Table 2 contains regression results for the selection of nonwhite chief justices. Our findings indicate that similar factors associated with the selection of female judicial leaders are associated with the selection of nonwhite leaders. Of course, nonwhite individuals are generally less likely to be selected as leaders compared to women.

Our results first show that states with mandatory retirement provisions are significantly more likely to seat racial minorities for chief justice, all things being equal. We find that the likelihood of selecting nonwhite leadership is 4.6% in states with no mandatory retirement, which increases to 10.2% in states with mandatory retirement (a 120.6% increase). This result shows that enforced turnover on courts

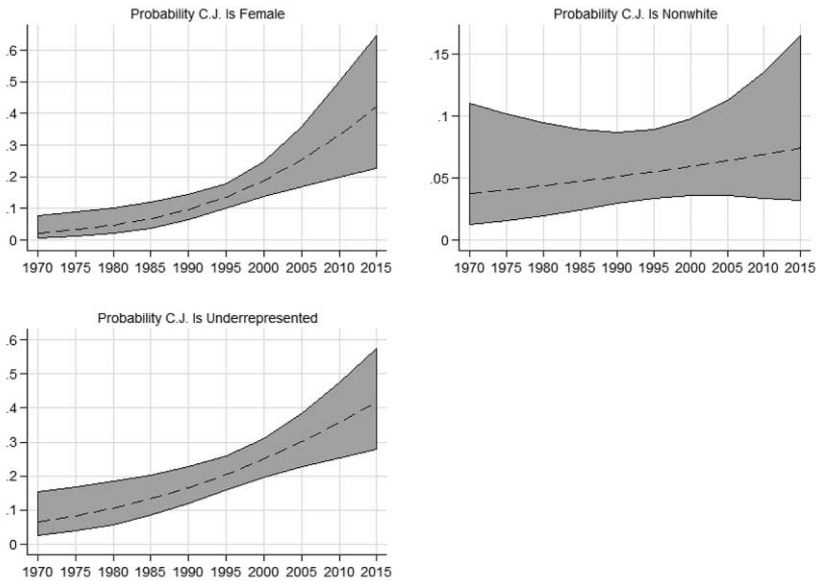


Figure 4. Probability a female or nonwhite individual becomes chief justice over time

benefits historically marginalized groups by enhancing the prospects for descriptive representation. Still, the benefit from mandatory retirement remains smaller for nonwhite individuals compared to women.

Next, we find that courts with more nonwhite members have a higher likelihood of selecting nonwhite leadership, all things being equal. We plot this relationship in the right-hand pane of Figure 3. Our analysis shows that an all-white court has a 2.7% chance of seating nonwhite leadership. Meanwhile, a court that is 40% nonwhite has a 48.5% chance of seating a nonwhite leader, and a court that is 80% nonwhite (the maximum in our sample),⁶¹ has a 96.9% chance of seating a nonwhite chief justice.

Unlike the previous section, we do find statistically significant evidence that institutional selection methods for chief justice can affect the likelihood a racial minority is chosen to lead the court. In terms of institutional methods, none achieves statistical significance with respect to the omitted category (rotation/seniority). Still, we find that government appointment selection methods are significantly more likely to produce nonwhite chief justices compared to systems utilizing popular elections or commission-assisted appointments. According to the model results,

61. Hawaii is responsible for this figure.

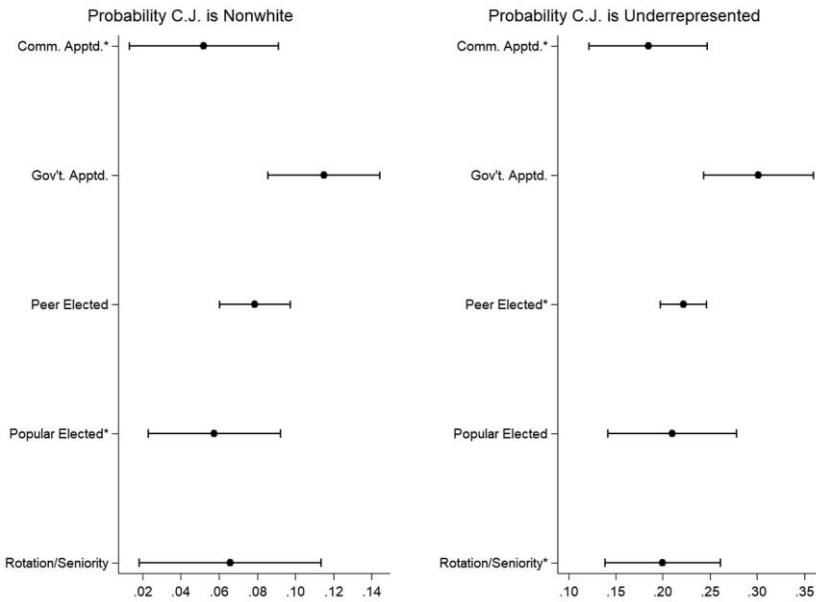


Figure 5. Probability a chief justice is from an underrepresented group, by institutional selection system. Asterisks on variable names indicate a given predicted probability is significantly less compared to government appointment systems.

government appointed systems have an approximately 11.5% chance of selecting nonwhite individuals. By comparison, popular elections are associated with only a 5.8% likelihood, and commission-assistance only a 5.2% likelihood. We plot these results graphically in the left-hand pane of Figure 5. These results indicate that even when controlling for citizen or elite ideology, the composition of the bench, and so forth, government appointment methods result in more racial diversity among state court leaders compared to popular elections or merit selection.

We find no significant evidence that court size or the passage of time⁶² affect the likelihood a racial minority is selected as chief justice. These results reinforce that racial minorities face greater obstacles to achieving leadership positions compared to other historically marginalized groups. Consistent with our findings on female leadership, however, is the result that the ideology of citizens/elites has no significant effect upon the selection of racial minorities for leadership positions on state supreme courts.

62. See the northeastern quadrant of Figure 4 for this null result.

Selection of Underrepresented Chief Justices

Our final model pools the previous two efforts insofar as it examines the likelihood that either a female or nonwhite individual is chosen for chief justice in a selection event. The results from this statistical regression appear in the third column of Table 2.

Overall, court size and mandatory retirement provisions are significantly associated with the selection of an underrepresented chief justice, all things being equal. A hypothetical court with five members has an 18.4% likelihood of seating an underrepresented chief compared to 22.8% for a seven-member court (a 23.3% increase). Similarly, states without mandatory retirement provisions have a 17.1% chance of seating an underrepresented chief justice compared to 25.4% for states with such provisions (a 48.0% increase).

Not surprisingly, we also find that state high courts with greater representation for women and nonwhites are significantly more likely to have diverse judicial leaders, all things being equal. A court that is all-male has an 11.1% chance of selecting an underrepresented leader, while a court that is all-white has a 15.1% chance of selecting an underrepresented leader. Meanwhile, a court that is 40% female has a 32.5% chance of selecting an underrepresented chief justice, and a court that is 40% nonwhite has a 34.3% chance of selecting someone underrepresented. Finally, a court that is 80% female has a 65.0% chance of selecting a diverse chief justice, and a court that is 80% nonwhite has a 60.4% chance of selecting a diverse chief justice.

As with our first regression model, we find that time is a significant factor for the selection of underrepresented chief justices, all things being equal. We plot this association in the southwestern quadrant of Figure 4. In 1970, the likelihood of selecting an underrepresented chief justice was 6.6%. By 1990, that likelihood increased to 16.6%, and by 2015, it stood at 41.9%. These results indicate that, all things being equal, white men are still more likely to become chief justices, but this statistical advantage has been significantly reduced in recent decades.

In terms of institutional selection methods for state supreme court chief justices, we find that government appointment methods of selection are significantly more likely to produce underrepresented chief justices when compared to commission-assisted systems, peer elected systems, and systems utilizing rotation/seniority. We plot these results in the right-hand pane of Figure 5. All things being equal, government appointment systems have a 30.2% chance of selecting diverse leaders. By comparison, commission-assisted systems have only an 18.5% chance of selecting an underrepresented chief; peer elected systems have a 22.2% chance; and rotation/seniority systems have a 20.0% chance. Interestingly, government appointment is not significantly more likely compared to popular elections to produce diversity in chief justices.

Discussion

Our research reveals that the state chief justices have been a more diverse lot than their federal counterparts. Women make up a significant proportion of chief justice seats in the modern era, while racial minority representation among state chief justices has grown less rapidly.

Investigation of the factors that increase diversity in judicial leadership reveals several significant findings. First, larger court sizes and mandatory retirement provisions are associated with the selection of more diverse chief justices. Intuitively, we also find that courts that have more diverse membership are more likely to have diverse leadership. We also find that certain types of chief justice selection systems—specifically, those utilizing government appointment without commission assistance—are more likely to produce racial diversity among court leaders, but it is less clear that such methods further gender diversity. Finally, we find that as time goes by, state courts are more likely to be led by underrepresented individuals.

Our results provide important information about the impact of selection rules for chief justices and the conditions that foster the ascendance of diverse chief justices. While increasing diversity among court leaders may be desirable and yield positive benefits for court legitimacy, intra-court consensus, or interbranch relations, lawmakers are limited in their ability to promote it via reform in chief justice selection rules. Establishing a given method of chief justice selection affects who picks the leader of the state judiciary, but it does not necessarily translate to choosing more diverse court leaders. It is worth consideration that the lone selection method associated positively with minority or female chiefs is government appointment. This system gives a governor (usually) or state legislature a free hand to choose a diverse chief justice without participation from a commission, voters, or the current bench. In this scenario an elite political actor who either values diversity per se or wishes to appeal to a group within the electorate can appoint a female or underrepresented chief justice to advance their goals.

Anecdotal evidence reflects how government appointment selection can often be associated with diversity efforts by a determined government leader. In 2018, Governor Dannel P. Malloy of Connecticut nominated the state's first openly gay chief justice. His selection, Associate Justice Andrew McDonald, was opposed by Republicans in the state Senate and rejected by a party-line confirmation vote. Malloy then nominated Richard Robinson, who ultimately won confirmation and became the state's first Black chief justice.⁶³ Malloy's selections seem to be guided,

63. Dave Collins, "New Chief Justice Wants to Improve Confidence in Judiciary," *Associated Press* (May 13, 2018), <https://apnews.com/general-news-4b17a1599e804b40876063faafc5a01e>.

at least in part, by representation goals. In a similar way, GOP Governor Charlie Baker of Massachusetts elevated Judge Kimberly Budd to become the state's first Black female chief justice in 2020, despite some "stark" differences in political opinions. When asked about his reasons for nominating Budd, despite such differences, he remarked "in the world we live in these days, leaders need to be able to inspire confidence in people and a sense that their voice matters."⁶⁴

While we maintain that institutional arrangements for chief justice selection should be considered in conjunction with state political conditions, advocates of judicial diversity may find aspects of our study encouraging. There is compelling evidence here that as state high courts have increasingly diversified along with the legal profession, more women and nonwhite judges have become chief justices and chief judges. Our opening vignette is instructive—the creation of a new supreme court seat for New Orleans helped facilitate African American representation on the Louisiana Supreme Court. Once Justice Johnson was elected to that seat, she was in line for a leadership role several years later. Trends toward diversity in court leaders are likely to continue as the legal and social barriers that once excluded women and nonwhites from law schools, the bench, and the bar are toppled by court rulings, legal reform, and social change.

The direct association we identify between court size and the emergence of diverse chief justices is both intuitive and interesting. A larger court provides a greater number of justices who could be elevated to the center seat and provides more opportunities to select diverse judges as vacancies occur. Notably, this may also be an unintended consequence of efforts to increase the size of courts. Whether the size of states' high courts is increased to help manage their workloads or "pack" the courts with ideological allies,⁶⁵ additional seats also increase the odds of female or nonwhite court leadership.

Given the trends in our data, it is interesting that several states still have not had a female chief justice, and a majority of states (twenty-nine) have never had a nonwhite leader of the state's high court. Trends we uncovered in this research suggest that these numbers ought to drop gradually as the bench becomes more diverse, courts are enlarged to match growing caseloads, and political elites place value on fostering diversity for its own sake or to appeal to important constituencies.

64. Steph Solis, "Massachusetts Gov. Charlie Baker Seeks to Elevate Judge Kimberly Budd to Chief Justice of the Supreme Judicial Court," *MassLive.com* (October 28, 2020), <https://www.masslive.com/politics/2020/10/massachusetts-gov-charlie-baker-elevates-judge-kimberly-budd-to-chief-justice-of-the-supreme-judicial-court.html>.

65. Martin K. Levy, "Packing and Unpacking State Courts," *William & Mary Law Review* 61 (2019): 1121–58.

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