

Democratizing U.S. Courts: Perceived Representation and Support for Judicial Elections

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Abstract

The American mass public abstractly supports the federal judiciary, but supports concrete alterations to the institution (e.g., term limits). We argue that some efforts to alter the institution are not exclusively punitive, but relate to broader, non-judicial orientations toward government. Using nationally representative data from the 2020 Cooperative Election Study (CES), we find that attitudes toward representation and which types of people ought to hold power underlie support for judicial elections. Specifically, perceived representation, believing men to be better suited to politics than women, and holding racist attitudes are related to support for appointments over elections, even when controlling for diffuse support, perceived judicial politicization, and other relevant measures regarding the judiciary. We argue such individuals wish to maintain the appointment system which has yielded perceived benefits. Additionally, political sophistication exacerbates these effects. Rather than just a way to alter courts for delivering displeasing policy, support for some judicial changes may relate to efforts to democratize, and thereby diversify, courts.

Keywords

judicial elections, representation, political sexism, racial attitudes

The Platonic ideal of a federal court judge is a legalistic, impartial arbiter of the law.¹ Yet, not only do judges of all stripes employ strategic behavior to achieve political goals (Epstein and Knight 1998; Hettinger, Lindquist, and Martinek 2006), large swaths of the American public view judges in such a manner (Bartels and Johnston 2012). Although there is broad and *abstract* support for the judiciary in the form of legitimacy (see Gibson and Caldeira 2009), and beliefs about fair procedures typically underlie institutional support (Baird 2001), many in the mass public favor court reform to some degree. For instance, recent polling data reveals a majority of Americans support term limits for Supreme Court justices,² with young people particularly in favor of systematic court reform.³ Nearly 68% support removing lifetime appointments for justices.⁴ Concrete support for altering the institutional structure of the judiciary is connected to political predispositions and perceptions of a political court (Bartels and Johnston 2012, 2020; Clark and Kastellec 2015). For example, individuals who view themselves as distant from the Supreme Court in ideological space wish to impose term limits on justices (Badas, 2019).

While scholars have investigated the instrumental (i.e., partisan and ideological) dynamics of support for changing the structure and rules of the federal judiciary, far less attention has been paid to the basic orientations that may underlie such support. Here, we consider support for federal judicial elections, a particular type of alteration to the courts. We choose to focus on this design feature, rather than others (like term limits), intentionally. More than just an expression of displeasure with the judiciary, support for judicial elections involves democratizing the institution, bringing it explicitly into the political fold. We argue support for judicial elections relates to broad beliefs about civil society and government, as well as preferences regarding which types of people wield power. Though many investigations into specific forms of altering the

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court focus on instrumental policy benefits individuals see the courts delivering (e.g., [Armaly and Lane 2023](#); [Badas, 2019](#); [Clark and Kastellec 2015](#)), we theorize there is more to support for electing federal judges beyond (dis)satisfaction with the policies they produce. On an average day, stripping away explicitly ideological/partisan cues, who supports democratizing the courts?

Importantly, supporting such institutional changes may not be exclusively punitive (or even rise to the level of court “curbing”), especially outside of the context of disappointment with a particular decision (e.g., [Bartels and Johnston 2020](#)). Rather, supporting such institutional changes may emanate from more fundamental views about how citizens relate to the institutions that govern their lives, as well as the perceived capabilities of the individuals operating those institutions. Indeed, such an argument is not without precedent; myriad scholarship views judicial elections as an equally viable method of selecting judges, not just as a mechanism for undermining judicial independence (e.g., [Goelzhauser 2016, 2019](#); [Tarr 2012](#)). Elections can even enhance institutional support ([Gibson 2012](#)), and citizens support elected judges more in some instances ([Stone and Olson forthcoming](#)).

We propose that one’s views of how government ought to operate and for whom, as well as who should hold power, will bear on the desire to elect federal judges. Specifically, we consider perceptions regarding representation, political sexism,⁵ and racial attitudes and how they relate to support for elections. Those who feel that the government is responsive may wish to maintain the status quo (i.e., appointments). Indeed, those who feel represented—either in substantive or symbolic terms—have little reason to alter existing structures. Conversely, those who believe access to politics is somehow systematically limited will wish to increase avenues for representation. Each of these constructs bears on views of whom government is working for and who is an effective government official.

More than adding an assortment of new variables to the study of support for court alterations, we argue these constructs are related to one’s views of how government ought to operate and for whom, as well as who should hold power. In turn, we suggest these attitudes will underscore preferences regarding the procedures by which the judiciary is staffed. Indeed, [Arrington \(2020\)](#) shows that selection mechanisms and on-bench diversity are in some ways connected in the minds of individuals. And, later in this paper, we bring some data to bear on this question; in short, individuals believe elections are likely to yield more diverse benches in terms of both sex and race. As such, those who feel well-represented will be wary to democratize the courts, as doing so many open avenues for those who do not represent them to hold power. So, too, will those who

believe certain groups—here, women and racial minorities—are ill-suited to politics, as elections may induce diversity on the bench.

To test our theory that political sexism, perceived representation, and racial attitudes will be (negatively) related to support for judicial elections, we use nationally representative data from the pre-election wave of the 2020 Cooperative Election Study (CES; [Ansolabehere et al., 2020](#)).^{6,7} We also consider the unique role of political sophistication, given substantial evidence that political sophistication underlies court attitudes (e.g., [Armaly and Enders 2022](#); [Gibson and Caldeira 2009](#)). Consistent with existing evidence, we anticipate that those more familiar with politics—and, thereby, the likeliest to be aware that the court is not a democratically elected institution—are more afflicted by entanglements between representation and the judiciary. Finally, in the interest of testing the robustness of our findings to alternative specifications, we estimate many additional regression models to ensure that sexism, perceived representation, and racial attitudes are related to support for elections (rather than being only idiosyncratically related given our particular specification). Overall, we find support for all of our main hypotheses; the constructs under investigation negatively relate to support for elections, even when considering judiciary-specific support (i.e., both diffuse and specific support), support for other institutional actors (i.e., presidential approval), and political predispositions (i.e., partisanship and ideology). These effects are exacerbated for those who are sophisticated. Finally, results are consistent across all specifications.

All in all, we demonstrate that broad postures about the political world, and for whom it operates and offers access, relate to beliefs about democratizing the judiciary. We believe these results are important for several reasons. First and foremost, many examinations of support for altering the court’s procedures or structure relate to court-specific attitudes, like ideological proximity ([Bartels and Johnston 2020](#)), support for the rule of law ([Badas 2019](#)), and support for particular court decisions ([Clark and Kastellec 2015](#)). These are critical assessments worthy of investigation. Yet general propositions about political affairs that, at least ostensibly, are not directly related to the judiciary *do* influence views of the courts (e.g., [Armaly and Enders 2022](#)). Thus, court attitudes are not always institution-specific; one’s views of the political world, generally, bear on the judiciary. Here, we find the same is true of explicit calls to elect judges.

We also believe our results highlight nuance in support for efforts to alter the judiciary.

Support for elections may not *always* equate to support for curbing, classically defined. That is, the desire to alter the courts may not always be a desire to reduce the court’s authority or as “punishment” for disliked case outcomes

or the current ideological tendencies of the judiciary. It may also be favored as a way to democratize the institution, presumably among those who believe the Court is—as Justice Scalia called it in his dissent in *Obergefell v. Hodges*—“...a select, patrician, highly unrepresentative panel of nine...” Views of the political world, writ large, are an important component of the equation when it comes to altering the court, and can help differentiate distinct motivations for supporting forms of “fixing” the courts.

Support for Altering the Courts

Americans tend to support the judiciary, at least in abstract terms (see Gibson and Nelson 2015, 2016). There are myriad reasons for this support, including unique socialization to the judiciary (Gibson and Caldeira 2009), symbols that bolster positive affect even in the face of politicization (Armaly 2018b; Gibson, Lodge, and Woodson 2014), perceptions about the fairness of the institution (Baird 2001), and democratic values (Gibson and Nelson 2015). Generally, this type of support is viewed as the *lack* of willingness to make fundamental changes to the institution, to grant to it authority and autonomy. In other words, it is support for the sake of support (Bartels and Johnston 2020).

Despite this broad form of support, it seems that many are not particularly committed to uphold the institution’s autonomy, especially when they are politically displeased with the courts. For instance, Armaly (2018a) indicates that trusted political leaders prove capable of reducing supports’ faith in the judiciary by criticizing the institution (also see Nelson and Gibson 2019). Bartels and Johnston (2013, 2020) show that policy dissatisfaction frequently relates to lessened levels of support (also see Christenson and Glick 2015). Zilis (2018) finds that people are particularly displeased with rulings that favor a disliked political group (e.g., racial minorities or LGBT+ individuals). Thus, despite the wealth of research indicating high levels of support, there appears to be an instrumental element to support for the institution.

However, it is not the case that individuals support judicial alterations, such as elections, *only* to curb the institution. Indeed, a great deal of scholarship has indicated that elections are simply an alternative form of selection and are not exclusively viewed as “punishment” (e.g., Goelzhauser, 2016, 2019; Tarr, 2012). Furthermore, Bonneau and Hall (2009) suggest that individuals lend more legitimacy to the institution when under judicial elections (also see Gibson, 2012). We believe this indicates that mass support for judicial elections is more associated with support for democratization than it is support for “tearing down” the institution.⁸ Finally, if individuals believe elections are associated with more

transparency and accountability (e.g., Geyh 2016), they may very well view elections as a *positive* change.

We argue greater consideration of the basic antecedents of support for judicial elections is important. This is especially true in light of (a) recent polling data suggesting increased support for many such propositions, (b) political fallout from a string of recent staffing controversies (see Glick, 2022; Rogowski and Stone 2019), and (c) scholarly attention (see Badas, 2019; Bartels and Johnston 2020). To be sure, there are clear instrumental considerations to all proposals to alter the courts: individuals who dislike the courts on policy grounds seem willing to alter the design of the institution. For instance, subjective ideological or partisan disagreement relates to support for altering the institution (Armaly and Lane 2023; Badas 2019; Bartels and Johnston 2020).⁹

Yet these types of concerns tend to be sensitive to things like the salience of a ruling (e.g., Christenson and Glick 2015), suggesting that instrumental support for making changes to courts is more of a “what have you done for me lately” consideration. Moreover, individuals do not perform well at placing the courts in ideological space (Bartels and Johnston 2013; Hetherington and Smith 2007; Jessee, Sen, and Malhotra 2022), meaning subjective dissatisfaction is context/case dependent and ripe with miscalculation. This is all to say that the existing research offers an account where support for altering the court is fleeting. But we do not believe that *all* forms of support for altering the court are fleeting. Here, we are concerned with the *general* antecedents of curbing support, outside of the context of a specific court ruling that can be interpreted via a partisan or ideological lens. More simply, we ask: on the average day, with the courts out of sight and mind, who supports democratizing the courts? We suspect there are a plethora of factors that may play a role and focus on three that we argue prove important: perceived representation, political sexism, and racial attitudes.

Perceived Representation, Political Sexism, and Racial Attitudes

Our major premise is that some orientations and attitudes that are not directly related to the judiciary, but are central to all types of political evaluations, will bear on feelings about and support for the courts. This is not without precedent (e.g., Armaly and Enders 2022; Zilis, 2021). Indeed, extensive scholarship links the attitudes under investigation here to support for elections (albeit not in the context of the judiciary). For instance, individuals who prioritize egalitarian principles are inclined to support democracy, as democracy aligns with and strives to uphold those values (e.g., Hu, Tai, and Solt 2024; Sigman

and Lindberg 2019). Similarly, those with racist or sexist attitudes are more likely to support centralized authority, endorse leaders who undermine democratic principles, and are less prone to engage in the democratic process (e.g., Oliver and Rahn 2016; Reny, Collingwood, and Valenzuela 2019; Schaffner, MacWilliams, and Nteta 2018). Furthermore, there is a substantial body of research on the impact of race—largely among Black Americans—on attitudes regarding the judiciary (see, Armaly et al., 2024; Caldeira and Gibson 1992; Rosenblatt 2020). The same is true of women’s attitudes regarding the judiciary (see Krewson and Schroedel 2020, 2023).

Despite extant scholarship considering how demographic characteristics like race and sex relate to support for the judiciary, it is important to describe how the *attitudinal* constructs under investigation relate to views of the federal judiciary and, more specifically, support for elections. Each of the attitudes under consideration here relate to feelings about how government operates, who has a place in government, and whom government should serve. To put it simply, one who believes, for instance, that males are better suited to serve in politics than females surely would doubt the judicial capabilities of women, and would likely oppose selection mechanisms that may produce more female judges. The same is true with, say, Black or Latinx judges. Of course, this requires that individuals link elections with diversity in their minds. We return to this proposition later. For now, we more explicitly theorize about the relationship between each of our constructs of interest and support for judicial elections.

Perceived Representation

Perceived representation refers to the belief that the government and its officials will listen and respond to the demands of the public. The concept has long been used to describe individual evaluations of government, institutions, leaders, and willingness to participate in the political process (e.g., Campbell, Gurin, and Miller 1954; Lane, 1959). In short, those who believe that they have a say in government are more supportive, trusting, and participatory. We argue that perceiving oneself to be well-represented by the existing system should relate to a wish to maintain the selection mechanisms that produced that system, even systems that do not include elections. One who feels they have a say in government are likely to support the status quo—here, judicial appointments. Conversely, we suppose that those low in perceived representation—who believe their voices are neither heard nor heeded—are more likely to promote changes that may be seen as increasing representation. Democratizing an

undemocratic institution may be viewed as a viable way to do just that.

One major question is why such feelings would relate to the judiciary at all. Representation is often considered in the context of the responsiveness of elected institutions and officials, which excludes the unelected judiciary. There are several reasons to believe that this perception extends beyond the elected branches. For starters, the influence of *descriptive* representation on courts is well-studied (e.g., Armaly, Krewson, and Lane 2024; Badas and Stauffer 2023; Kaslovsky, Rogowski, and Stone 2021; Scherer and Curry 2010), so it is not the case that no form of representation is considered when people are evaluating courts. More pointedly, Caldeira and Gibson (1992) write “...those who express confidence in their own abilities to influence politics show greater commitment to the Court” (652). Thus, there is some evidence that feeling one has a say influences attitudes regarding unelected institutions. Indeed, the items commonly used to measure the concept refer to “a broad and unspecified set of actors” (see Esiasson et al., 2015). So, we argue that judicial actors are wrapped up in expectations about the ways that government listens to its citizens.

We have additional reasons to believe that perceived representation will relate to support for judicial elections. Esiasson et al. (2015) highlights that feelings of efficacy, just like views of the judiciary, are affectively charged (see Clark and Kastellec 2015). Perceptions of both one’s voice in government and of institutions may be drawn, partially, from the same well. Thus, group- and affect-based considerations of representation may also bear on the Court (see Zilis, 2017, 2021). In addition, Badas and Stauffer (2017) hint that the Court can, in symbolic (i.e., non-policy) terms, induce feelings of representation. Finally, much research suggests that judges are responsive to changes in citizen preferences (e.g., Casillas, Enns, and Wohlfarth 2011; Epstein and Martin 2010; but see Giles, Blackstone, and Vining 2008). If judges can be responsive, citizen perceptions of representation could extend to the courts.

Political Sexism and Racist Attitudes

Next, we consider the role attitudes on race and sex play in support for judicial elections. One obvious way that political sexism and racial attitudes may bear on courts is the historic domination of white men in the institution. Only 5% of Supreme Court justices have been female. Only 27% of sitting lower federal court judges are female. For racial minorities, these values are around 3.5% (Supreme Court) and 21% (lower federal courts).¹⁰

However, we do not necessarily argue that members of the mass public are acutely aware of the demographic composition of courts, especially lower courts. Nor is our argument that courts are perceived as overtly sexist or racist (even though they frequently rule on issues salient to women, such as reproductive rights and salient to racial minorities, such as affirmative action). Rather, it is that race and sex factor into perceptions about how certain groups will fare at governing.

Specifically, both the stereotype fit hypothesis and role congruity theory lead us to believe that those who hold negative sexist and racial attitudes will not view minorities and females—groups underrepresented in the judiciary—as capable of holding office. Inasmuch as judicial elections are seen as begetting diversity (which we discuss below; also see Arrington, 2018, 2020), democratizing the institution will not be supported among individuals harboring these attitudes. As Levinson, Bennet, and Hioki (2016) Levinson et al. (2016, 65) write:

American judges, and lifetime-appointed federal judges in particular, are often revered as the pinnacle of objectivity, possessing a deep commitment to fairness, and drive to seek justice as they interpret federal laws and the United States constitution.

We argue that political sexism and racial attitudes will relate to support for judicial elections because only a select few are viewed as capable of meeting the very high standard of being the “pinnacle of objectivity,” the perfectly impartial judge (Maroney and Gross 2014). Thus, only some are seen as capable of offering representation on the bench.

The stereotype fit hypothesis suggests that individuals will experience prejudice when they are in roles that their group has stereotypically not held (e.g., Fiske, 2018). This would certainly be the case for non-white and female judges in the historically white and male judiciary. Of course, these groups have increasingly been appointed. So, even if the stereotype fades for some, role congruity theory (e.g., Eagly and Karau 2002) purports that some will view individuals as unsuited to some roles because certain traits—perceived as inherent to particular groups—are not associated with success. A classic example is hesitation to elect females to executive roles because of alleged indecisiveness (Knuckey, 2019; Rose 2013). Women are perceived as more emotional than men (Plant et al., 2000), which is inconsistent with the “ideal of the dispassionate judge” (Maroney and Gross 2014). Some racial minorities are viewed as primarily holding subordinate roles (e.g., Barreto, Manzano, and Segura 2012), inconsistent with holding high judicial office. Ono and Zilis (2021) highlight that Americans perceive diverse judges (i.e., non-white and female) as inherently biased.

Many believe, for instance, that female judges cannot appropriately adjudicate an abortion case and that a Hispanic judge cannot fairly adjudicate an immigration case. Thus, there is a clear association between a judge’s race/sex and public attitudes about fairness in judging, about which Americans care a great deal (Scheb and Lyons 2000).

As it pertains to judicial elections, specifically, individuals who do not believe that women and minority judges can deliver unbiased decisions, let alone fulfill the high demands of federal judicial office, will surely wish to maintain the status quo appointment system that has led to a largely white, male bench. (We wish to be clear, though, that our theory is not about an express, explicit preference for a white, male judiciary.)¹¹ In contrast, those who do not harbor sexist political attitudes and are more racially egalitarian may wish to democratize the institution.

One critical step in the theorized process is that individuals view selection mechanisms and diversity as inextricably linked. Even one who believed that women were ill-suited to be judges would not care about judicial elections if they didn’t believe selection mechanism and diversity were linked. Individuals do seem to link selection mechanism and diversity in their minds. Arrington (2018) shows a connection in the minds of individuals between the institutional selection mechanism and institutional gender diversity. Perceptions of procedural fairness in selection (i.e., selecting on merit) also make individuals more accepting of non-diverse panels of judges (Arrington, 2020). While we believe scholarship offers theoretical justification to proceed with the assumption that individuals *think* elections beget diverse institutions and that this relates to institutional support, we bring data to bear on this critical element of our theory later in this paper. Support for elections, then, should be a function of the *perceived* diversity a selection mechanism might beget, attitudes surely impacted by existing attitudes regarding race and sex.

Finally, we note that political elites and commentators do expressly link elections and diversity, giving us additional reason to believe that people think about selection mechanism and diversity as related. More specifically, individuals are likely exposed to comments (sometimes hyperbolic) on the use of elections to increase diversity. This is a common trope in popular media. For instance, one report states that groups are using “behavioral psychology” to “get women to vote...in battleground states.”¹² The same is true of race, where some pundits purport it is a strategy to “import” new voters.¹³ The implication in each instance is that voters are manipulated, or electorates constructed, to produce electoral advantage for political minorities. This is all to say there is strong reason to expect that people anticipate greater diversity under

election systems (compared to appointment systems). As such, individuals who do not believe that women or minority judges are up to the task—again, even implicitly—will not support elections to staff the courts.

The Influence of Political Sophistication

Before proceeding to our empirical investigation, we also wish to detail our expectations regarding political sophistication. We suspect sophistication will play a conditional role, and are of two minds on how this will play out. On the one hand, it is often said that “to know the Court is to love it” (Gibson and Caldeira 2009), suggesting that individuals higher in political sophistication are prone to extend more support to the judiciary. Those more interested in and attuned to politics are likelier to understand that the judiciary isn’t *supposed* to be a representative institution, that the very justification for the appointment system was to remove the type of pressures faced by elected officials to heed public demands. As a result, there is reason to anticipate that, among those high in political sophistication, the effect of political sexism, racial attitudes, and perceived representation on support for elections will be diminished, relative to those lower in sophistication. In other words, the effects of the attitudes under consideration here may be weakened among those high in political sophistication.

On the other hand, sophistication also exacerbates the influence of certain factors on support for the institution (see Armaly and Enders 2022). Individuals who understand politics better may be more exposed to narratives indicating that elections may produce a more diverse judiciary, and among those who harbor racist or sexist sentiments, such sophisticated individuals would be more strongly in favor of appointments. Thus, there is reason to believe that the effect of the central independent variables we consider here will be exacerbated by sophistication. That is, the effects of attitudes on here may be strengthened. We lean toward this second explanation. Inasmuch as sophistication relates to understanding how to achieve what one wants from the system and better understanding one’s own political views, we expect sophisticated respondents will be aware of the (perceived) consequences of elections and support them less.

Linking Selection Mechanism and Diversity

We argue that attitudes regarding race, sex, and representation relate to support for federal judicial elections. One critical question is why people would relate attitudes about, say, women to their attitudes about judicial

elections if they did not think elections would beget greater on-bench diversity. We believe there is theoretical justification for this assumption, although we also begin the empirical portion of this paper by bringing data to bear to empirically bolster our theoretical claim.

Existing scholarship makes adjacent inquiries, but does not tackle the relationship between elections and perceived diversity head on. One notable question is whether judicial selection mechanisms with an electoral component *actually* increase diversity. Results are decidedly mixed (see Bratton and Spill 2002; Goelzhauser, 2016; Graham, 1990). However, for our purposes, we only care if individuals *think* elections lead to greater diversity. There is some reason to believe they do. For starters, one of the major justifications for systems that include elections was to create “more opportunities for people from historically disadvantaged groups” (Goelzhauser, 2016, 157).¹⁴ Again, whether that bears out in practice is immaterial for our inquiry. Additionally, Arrington (2020) indicates there is some connection between diversity, fairness, and certain election systems in the minds of survey respondents. Yet this research only hints at a critical component of our theory: that people think judicial elections would yield a more diverse bench.

To lend additional credence to our theoretical expectation, we presented 500 survey respondents with the following¹⁵:

Judges in federal courts are appointed by the president and confirmed by the Senate. But, in many states, state judges are elected. When compared to appointing judges, electing judges will probably lead to more judges who are racial and ethnic minorities on courts.

Survey respondents could answer on a 1–5, Likert-type “strongly disagree” to “strongly agree” scale. We also asked respondents the same question, but swapped “judges who are racial and ethnic minorities” for “female judges.” We acknowledge that these data are not nationally representative (though the CES data presented below are), which limits our ability to make generalizable inferences. As such, we do not formally test hypotheses and treat this as a descriptive exercise. Given the robust theoretical expectations regarding the association between judicial elections and increased diversity, we feel comfortable using these data for this limited purpose. The mean response to each item, along with 95% confidence intervals, appear in Figure 1.

In short, mean responses are well above the neutral midpoint (3), meaning that most believe judicial elections, when compared to judicial appointment, will lead to more female judges and more racial/ethnic minority judges.

Again, this is an important step in our theory. It is relatively trivial to state that those who hold, for example,

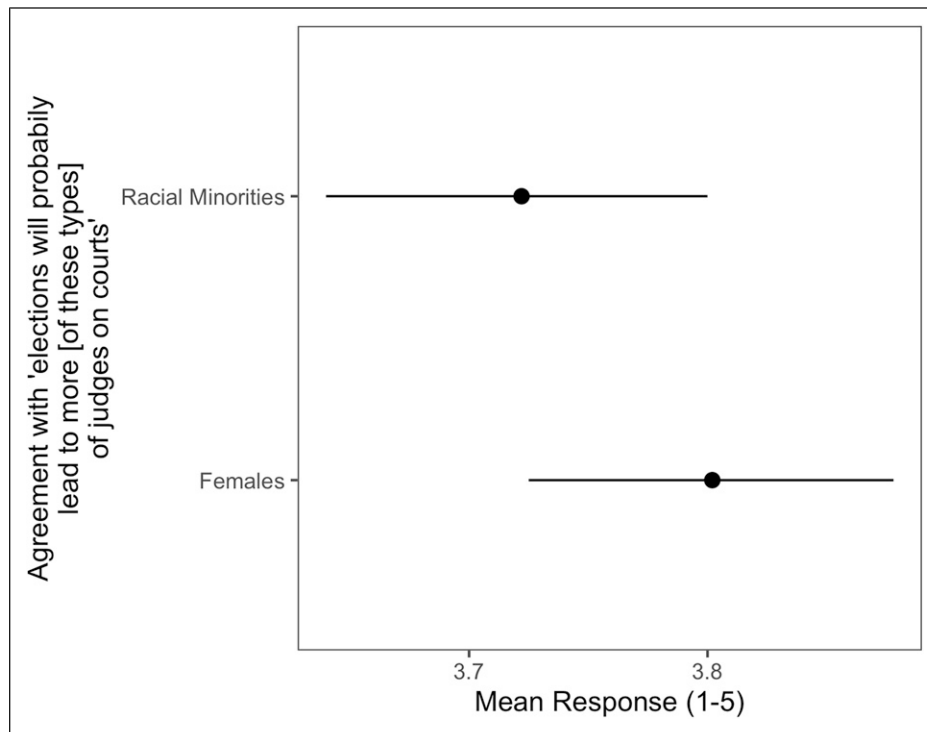


Figure 1. Mean response to items asking whether judicial elections beget greater diversity. Horizontal bars are 95% confidence intervals.

racist attitudes likely doubt the judicial capabilities of individuals who do not fit the stereotypical cultural context of American judges. It is another thing to state those individuals oppose selection mechanisms that may produce more judges of that ilk, especially if we cannot state that those two thoughts are linked. We find that those two thoughts are linked. (Of course, the same logic applies to an individual who holds sexist attitudes and who feel government listens to them; such individuals would have no reason to change selection mechanisms, as the appointment status quo seems to work in their favor).

Representation and Support for Elections

Having demonstrated empirical support for the theoretically supported notion that individuals link elections with diversity, we now move on to consider our main argument. All of the survey items used in the remainder of our analysis were recorded as part of a 1000-respondent pre-election module of the 2020 CES, which is nationally representative and fielded online by YouGov. The data we employ were collected in October 2020. We begin this empirical section of this paper by describing our main variables of interest. In the interest of space, we present our non-demographic variables in Table 1, though a longer, more detailed descriptions of our variables, and

their justification for being included in our models, appears in the [supplemental appendix](#).

With our variables in hand, the remainder of our empirical section unfolds in three parts. First, we highlight descriptive differences in support for judicial elections, specifically across perceived representation, racial attitudes, and political sexism. Then, we consider the multivariate context to determine which variables predict support for elections. We estimate both an additive OLS regression to test our broad hypothesis and a series of interactive models to specifically analyze the role of political sophistication. Finally, we consider robustness to alternative specifications to ensure that our variables of interest do not only idiosyncratically relate to election support as a function of the variables we are able to employ (a practice particularly useful on surveys that use resource pooling and where researchers cannot field all potentially relevant items).

Empirical Results

We begin by considering descriptive bivariate relationships between support for judicial elections and several of the potential correlates detailed above. Figure 2 contains three panels, each a scatterplot with lowess estimates, or nonparametric scatterplot smoothers which depict relationships without functional form assumptions. Plotting

Table 1. Summary of variables of interest, measurement properties, and brief justification. Question wording and summaries of all variables included in multivariate models can be found in the supplemental materials.

Variable (direction)	Mean (0–1 scale)	Reliability	Source	Justification
Support for Judicial Elections (DV)	0.534	0.74	Agreement that judges should be elected and belief decisions would be better under elections. Used in Lane and Armaly (2023) ¹⁶	See text
Political Sexism (-)	0.322	0.73	Agreement with four items from Pew, such as “Men are better suited to politics than women”	See text
Implicit Racial Attitudes (-)	0.377	0.80	Agreement with two items from CES common content, such as “White people in the US have certain advantages because of the color of their skin.” These items are from the FIRE index (DeSante and Watts-Smith)	See text
Perceived Representation (-)	0.345	0.68	Agreement with two items from ANES, such as “Public officials don’t care much what people like me think”	See text
Diffuse Support (-)	0.487	0.81	Agreement with three items, such as “We ought to have a stronger means of controlling for the actions of the U.S. Supreme Court.” Used by Gibson and his colleagues (e.g., 2003) ¹⁷	Critical assessment of judiciary. Captures lack of willingness to alter institution’s autonomy. Also captures variance of other Court attitudes, like democratic values, unavailable on CES
Court Politicization (+)	0.610	0.70	Agreement with two items, such as “...judges are really basing their decisions on their own personal beliefs.” Used in Bartels and Johnston (2012)	Those who view courts as politicized explicitly prefer political selection mechanism (see Bartels and Johnston 2012)
Court Approval (-)	0.483	n/a	4-point measure of performance satisfaction	Those who support judicial outcomes unlikely to change selection mechanism
Presidential Approval (-)	0.518	n/a	4-point measure of performance satisfaction	Those who support the individual responsible for appointments likely prefer that system
Affective Polarization (+)	0.462	n/a	Absolute difference between feeling thermometer ratings of Democrats and Republicans	Those more affectively polarized are less supportive of judiciary (see Armaly and Enders 2022)
Sophistication (-)	0.766	n/a	Predicted factor scores following factor analysis of self-reported interest, self-reported voting, and knowledge of who controls House of Representatives. First dimension explains 95% of variance	Greater political sophistication generally related to support for the judiciary (see Gibson and Caldeira 2009)

points have been jittered for the ease of visual inspection. Each of the bivariate relationships are as hypothesized. Those high in political sexism, racial attitudes, and perceived representation are less likely to support elections. These relationships indicate that those who feel left out of the political system, believe men to be better suited to politics than women, and that racial divides are overblown do not support efforts to democratize courts, to potentially open them to diverse judges.

Next, we estimate an ordinary least squares regression with the full complement of covariates described above, plus demographic characteristics, to

estimate the controlled correlations between these constructs and support for judicial elections. We expect these relationships to persist in the presence of controls. Figure 3 displays OLS coefficient estimates; horizontal bars are 95% confidence intervals. Where confidence intervals intersect the dashed vertical line at 0, the coefficient is not statistically significant. Full model estimates appear in the supplemental appendix. Figure 4 displays model-based predictions for the three main variables of interest.

Recall that our expectations are that the main variables in which we are interested will be *negatively* related to support

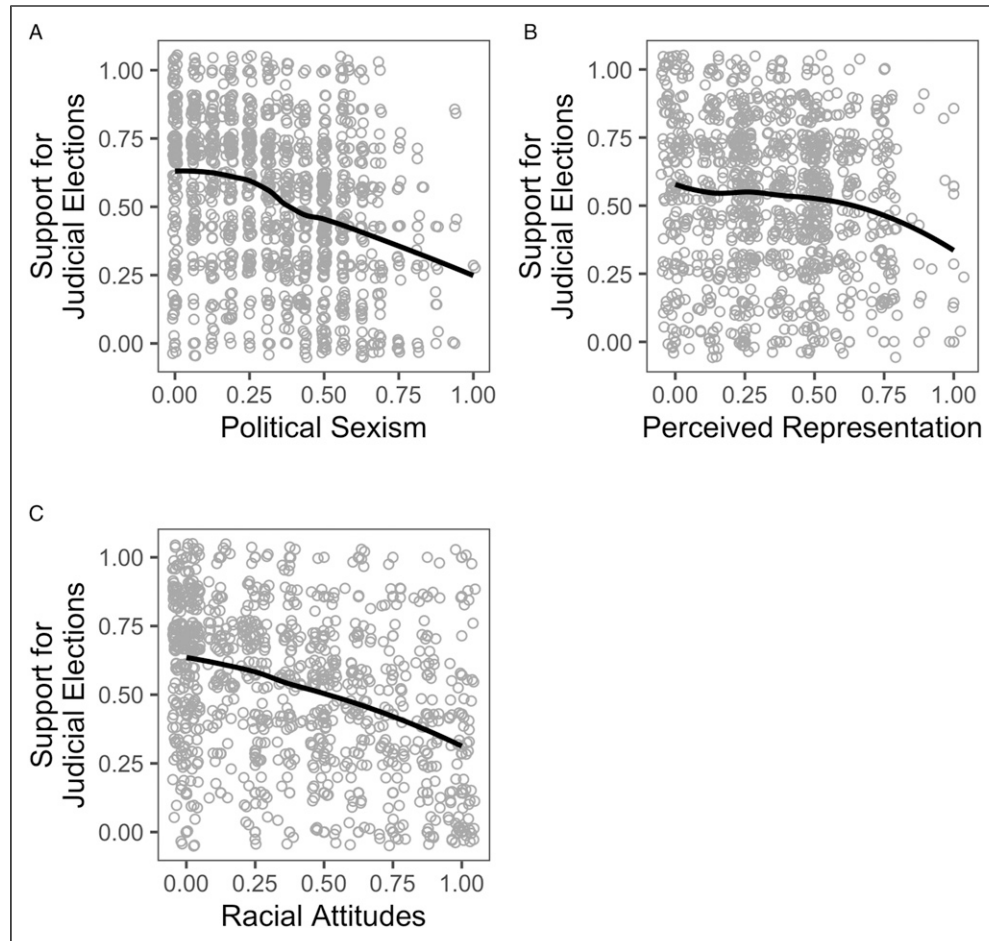


Figure 2. Scatter plot of support for judicial elections and main independent variables of interest, with nonparametric regression lines.

for elections (which is to say positively related to support for appointments). Unsurprisingly, diffuse support is the strongest predictor of (lack of) support for judicial elections. Across the range of diffuse support, support for judicial elections decreases by 51.5%. Individuals with broad, abstract support for the autonomy of the institution wish to maintain that autonomy in the specific sense.

Most importantly for our purposes, support for judicial elections is not merely a reflection of diffuse support. Indeed, four other variables significantly predict election support: political sexism, racial attitudes, perceived representation, and biological sex (i.e., being female). Across the range of perceived representation, support for elections decreases 18.0%. Thus, individuals who feel they have a say in the operation of government wish to preserve the systems that have facilitated that feeling. Across the range of sexist attitudes, support for elections decreases by 23.2% and for racial attitudes it is 18.5%. That is, individuals who feel that women are underserved politically support judicial elections. Seemingly, individuals believe that if women are not offered

equal footing politically, elections can reverse this fate (including in the judiciary); indeed, women win elections at rates equal to men (Lawless and Pearson 2008; Sanbonmatsu, 2006). Conversely, an individual who feels that there are plenty of women in politics and that their chances of political success are equal to those of men wishes to preserve the appointment system. Such an individual likely thinks the current appointment system is yielding equitable access to the bench (and, therefore, no changes are necessary) or, less charitably, wishes to preserve male domination of the judiciary. The idea should operate similarly among those who do not harbor implicitly racist sentiments.

Altogether, we find support for the proposition that perceptions of whether the government will respond to one's political demands and the sense that some groups are systematically unsuited to politics impacts the desire to control the judiciary via direct elections. Importantly, this is true even in the face of controls for diffuse support for the judiciary and job approval ratings. Critically, we find this support *absent* any specific information about recent

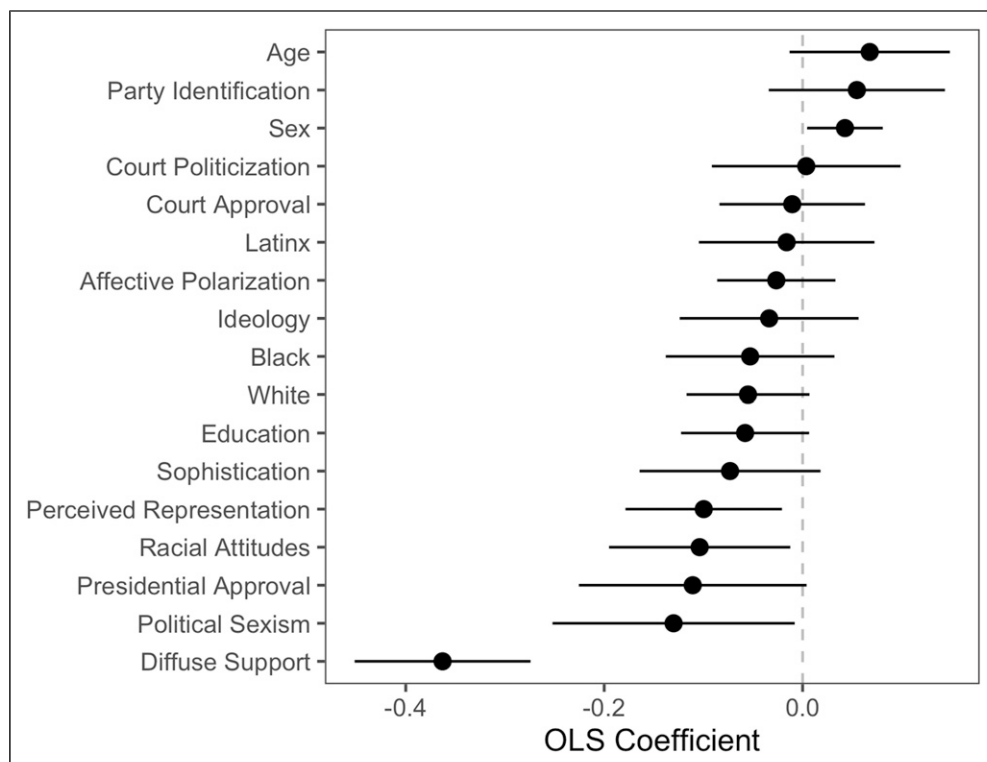


Figure 3. Coefficient estimates following OLS regression of support for judicial elections.

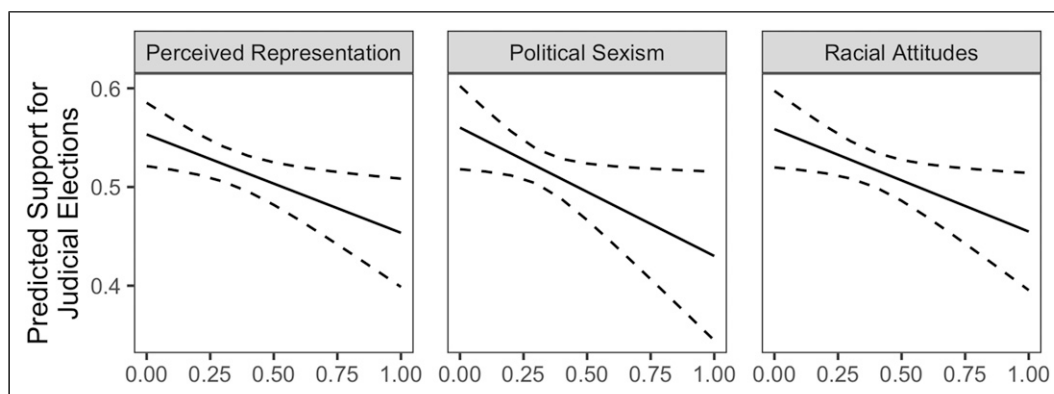


Figure 4. Predicted support for judicial elections for main variables of interest.

court decisions. Finally, we think the relationship between sexism and support for elections is important in the context of Justice Barrett's nomination; people had genuine reason to believe that appointments can beget diversity, yet we still observe the relationship between support for elections and sexism.

The Conditional Effect of Political Sophistication

Having demonstrated that our main variables of interest play a meaningful role in the wish to

democratize US courts, we next consider what role political sophistication might play. As we detailed earlier, political sophistication could plausibly attenuate or exacerbate the relationships we have uncovered (though we suspect it will exacerbate them). To find out, we estimate separate ordinary least squares models with multiplicative interaction terms. We omit the estimates here in favor of visual depictions of the conditional relationship, though estimates can be found in the [supplemental appendix](#). Additionally, a single model with multiple interaction terms yields

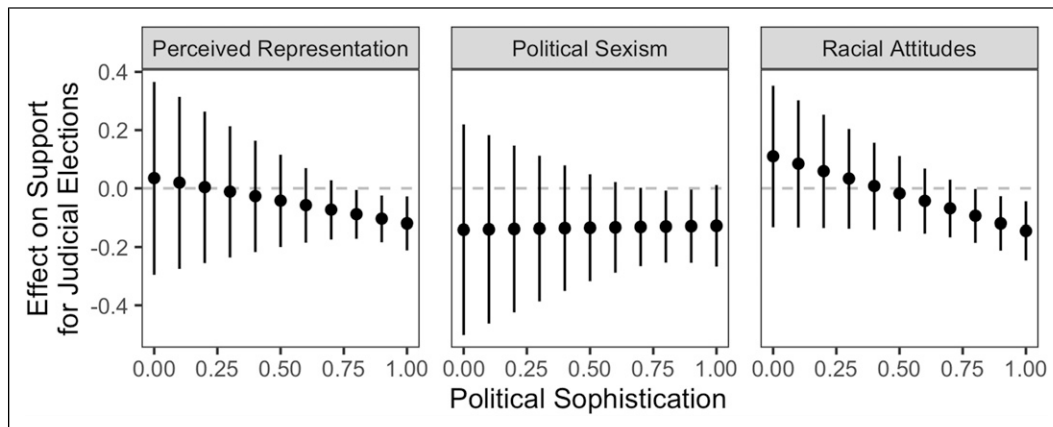


Figure 5. Marginal effect of variable of interest on support for judicial elections, across political sophistication.

similar results; more details can be found in the [supplemental appendix](#). Note that these data are from the 2020 CES.

Figure 5 displays the marginal effect of each variable of interest across the range of political sophistication. For the most part, we see very little difference in the effect of each independent variable on support for judicial elections across much of the range of sophistication, except for those who are the highest in political sophistication. In these instances, we do see a negative interaction effect. In particular, the marginal effect of each variable is statistically significant for those with sophistication of greater than 0.75 (with the lone exclusion of the most sophisticated in the political sexism case). More simply, the people who are the most sophisticated bring their attitudes on representation, sexism, and racism to bear on elections to the greatest degree. A relatively unsophisticated respondent does not seem to link, say, sexism and election support, but sophisticated respondents do.

In all, we believe these results indicate that those who *least* want a judiciary that represents the largest swath of the country (i.e., those high in political sexism, etc.) *and* think that elections are likely to beget a diverse judiciary prefer appointments to elections. That is, sophistication exacerbates the normatively concerning results demonstrated in the additive models above.

Robustness to Alternative Specification

In this final empirical section, we consider the robustness of the results presented above. More specifically, there are potential concerns about model specification. Indeed, several of our primary variables of interest are significantly correlated with one another; for instance, women are less politically sexist and feel less represented. Likewise, Court approval, diffuse support, and perceived

politicization are each strongly correlated. In addition, we were limited by the survey items we were able to add to the CES, meaning potentially relevant constructs are not included in our analysis. To ensure that the statistical significance of coefficients in our regression are not merely a function of our particular model specification, we turn to the model robustness procedure described by [Young and Holsteen \(2017\)](#). This entails estimating models with all possible combinations of the independent variables in our model and examining the distribution of coefficient estimates related to our key independent variables (here, sexism, racial attitudes, and perceived representation).

In total, we estimate 196,608 least squares regression models (65,536 per independent variable of interest). Both our statistical and substantive conclusions are robust to these alternative model specifications. The robustness ratios, which Young and Holsteen suggest can be interpreted similarly (though not identically) to t-statistics, are all less than -2 . For racial attitudes, this ratio is -2.70 , -2.01 for political sexism, and -2.34 for perceived representation. In other words, our results do not hinge on idiosyncratic elements of specification, missing variables that are unavailable on resource pooling surveys like the CES, or any particular dependencies within our data. Broad orientations toward power, access to politics, and who should wield it—both broadly and in terms of race and sex—relate to support for democratizing the judiciary.

Discussion

Our goal in this paper was to contribute to the burgeoning literature on public support for making fundamental alterations to the United States judiciary, such as elections, term limits, or more achievable removal of judges. While

extant research has adeptly identified instrumental considerations in support for court curbing (e.g., [Clark and Kastellec 2015](#)), we believe there is more to support for electing federal judges than mere dissatisfaction with the policies produced by courts. Using nationally representative survey data, we find that perceived representation, politically sexist attitudes, and racist attitudes relate to supporting the status quo of judicial appointment. Stated conversely, those who do not believe the current system works for them, who believe men and women are equally as suited to politics, and who are more racially egalitarian wish to democratize courts.

In addition to demonstrating that attitudes about federal elections are not *merely* instrumental, we also show that attitudes about institutional design are not solely reactions of who is in power. The constructs we describe are less likely to be impacted by the circumstances of any given presidential regime, Court decision, or political situation than other, more inherently transient features of politics. For instance, in our 2020 survey, perhaps it was Republicans and Trump supporters who heralded the appointment system; in 2022, when Justice Jackson was confirmed, it may have been Democrats and Biden supporters. And while none of the variables we consider are immune to these political changes (e.g., see [Norris, 2015](#); [Winter, 2022](#)), they are reactions to more abstract, system-level forces. As such, the links between representation, who is seen as *able* to represent, and altering courts may persist across presidents, Supreme Court personnel/ideology, and the like. In this sense, we have contributed to the broad postures that have been shown to bear on courts (e.g., [Armaly and Enders 2021](#)).

We also believe our results indicate the need for future scholarship in this area. In particular, there is no consensus on whether judicial election systems *actually* produce more diverse judiciaries. Subsequent research should focus on the gap between the perception about elections begetting diversity and the (uncertain) reality. Furthermore, emerging scholarship on the importance of descriptive representation—in terms of race, sex, and intersectionality—further highlight the importance of these types of questions (see [Armaly, Krewson, and Lane 2024](#); [Badas and Stauffer 2017, 2023](#); [Kaslovsky, Rogowski, and Stone 2021](#)). Thus, we encourage future scholarship to focus explicitly on democratizing the institution in the descriptive representation framework.

There are, of course, limitations to our study. For starters, some of our data are not generalizable to the mass public, although we make no broad claims about individuals linking diversity and selection mechanisms; as we note, we believe extant scholarship soundly points in this direction. Additionally, we were unable to include all potentially relevant variables on the CES. While we took steps to address this (i.e., with model robustness checks),

we encourage future investigations into court curbing that include additional relevant variables. Our data were also collected during a contentious presidential election and Supreme Court nomination, in particular of a female justice. As we noted above, we observe no differences in any of our variables of interest across dates, meaning we observe no “Barrett effect.” Our model also replicates when treating date linearly. In other words, it does not seem that our results are afflicted by the salient nomination of Barrett. Finally, we think other identities—such as religious—might be useful for further study in this domain, beyond the influence of race and sex.

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Supplemental Material

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Notes

1. Replication data available at <https://doi.org/10.7910/DVN/DG1MBP>
2. <https://fixthecourt.com/wp-content/uploads/2020/06/PSB-May-2020-key-findings-TL.pdf>
3. https://www.uml.edu/docs/2020-Youth-Topline_tcm18-331314.pdf
4. <https://www.nbcnews.com/politics/supreme-court/most-americans-want-end-lifetime-supreme-court-appointments-justices-n1264423> (NBC 2021)
5. In a sense, all sexism can be viewed as political. Here, we use “political sexism” to refer specifically to sexism about the role of women in politics.
6. The CES was formerly the CCES, or the Cooperative Congressional Election Study.
7. We note that these data were collected during the nomination of Amy Coney Barrett, and return to the implications of this in the discussion section. In short, existing research leads us to believe this is not of great consequence, as even Republican senators advocated delaying hearings (see [Armaly and Lane 2023](#)). Further, we observe no differences in responses to our main variables of interest when comparing responses recorded before and after Barrett’s confirmation. Specifically, t-tests indicate insignificant differences; for election support $p = 0.24$,

for racial attitudes 0.12, for sexism 0.19, and for representation 0.09 (all on two-tailed tests). Furthermore, a variable that indicates pre- and post-Barrett confirmation is not significant in our multivariate model, and relationships between our central independent variables and the dependent variable are unchanged.

8. This is not to say that support for elections is never curbing. Bartels and Johnston (2020), who do consider some elements of elections as curbing, suggest this is a function of specific disagreement with outcomes; in the context of our survey, where we do not expose individuals to information about cases, this is an unlikely mechanism.
9. Once again, we do not necessarily argue that implementing federal elections is curbing; indeed, our theory purports that individuals could simply favor democratizing the judiciary, yet not primarily to reduce its authority.
10. As of 2020, when our data were collected. Source is the Federal Judicial Center's "Biographical Directory of Article III Federal Judges." These data are summarized at <https://www.americanprogress.org/article/examining-demographic-compositions-u-s-circuit-district-courts/>
11. Consistent with extant research and theories on stereotypes and role congruity, some individuals may believe others are less suited to certain roles, even implicitly. Thus, one could argue that they support meritocratic institutions, even without harboring any form of animus toward racial minorities or women.
12. <https://tinyurl.com/4ednm2uc>
13. <https://tinyurl.com/4sryekrz>
14. Golezhauser (2016) examines merit selection systems, specifically, which have an electoral component. Our survey did not describe specific election systems, and we refer to "judicial elections" generally.
15. These responses are drawn from a different source than the nationally representative 2020 CES data used in the remaining analysis. Rather, we surveyed 500 respondents using Amazon's Mechanical Turk. This platform does not offer probability samples, so we make no statements about the generalizability of the responses to these two items. However, the scholarship referenced above provides these theoretical expectations that bear out in the data.
16. In keeping with Armaly and Lane (2023), who refer to the first item as a "direct measure" of support for judicial elections, we also test our hypotheses using the single item as our dependent variable. Results are statistically and substantively similar. See supplemental materials for more information.
17. The diffuse support measure asks about the Supreme Court, specifically, while the dependent variable inquires about the federal judiciary, broadly. We believe the diffuse support measure still captures important variation that might explain support for elections, even if we are not asking about diffuse support for the lower courts. See supplemental materials for more information.

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