Identifying Judicial Empathy:
Does Having Daughters Cause Judges to Rule for Women’s Issues?*

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Abstract

In this paper, we leverage the natural experiment of a child’s gender to identify the effect of having daughters on the votes of judges. Using new data on the family lives of U.S. Courts of Appeals judges, we find that, conditional on the number of children a judge has, judges with daughters consistently vote in a more pro-woman fashion on gender issues than judges who have only sons. This result survives a number of robustness tests and appears to be driven primarily by Republican judges. More broadly, this result demonstrates that personal experiences influence how judges make decisions, and it is the first paper to show that empathy may indeed be a component in how judges decide cases.

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“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

- Barack Obama, on a 2007 campaign stop

1 Introduction

Upon Justice David Souter’s retirement in May of 2009, President Obama made it clear that one of the criteria he would use in selecting Souter’s replacement would be “empathy” – that is, a potential nominee’s ability to identify “with people’s hopes and struggles as an essential ingredient for arriving at just decisions and outcomes” (Obama, 2009). The statement echoed much of what Obama emphasized throughout his campaign: that the ability to empathize with others is, and ought to be, a key criterion for nomination to the nation’s federal courts.

Obama’s press statement was among the first by a U.S. president acknowledging the possible effect of empathy on the way judges decide cases, and it ignited a fierce and ongoing debate. Critics have strongly questioned Obama’s assertion that judges do (or should) have any kind of empathetic feelings based on their relationships with others. As one commentator complained, having “empathy” would translate into judges “being partial instead of being impartial,” when, in fact, “a judge is supposed to have empathy for no one but simply to follow the law” (Garrett, 2009). Supporters, on the other hand, have applauded Obama’s sense that empathy and identifying with others was and ought to be an important part of judicial decision making, with some commentators going as far as arguing that the “single value we should demand in a justice [has] nothing to do with race or gender,” but “everything to do with empathy for others” (Lithwick and West, 2010). So divisive has been this debate that discussions about “empathy” largely dominated coverage of Sonia Sotomayor’s and Elena Kagan’s Supreme Court nominations, leading one news organization to label the
attendant vitriol as the “Empathy Wars” (Just, 2009).

Despite the public shouting match, there has been little to no theoretical or empirical evidence within the scholarly literature proving (or disproving) the theory that personal relationships could affect judicial decision making. We do, however, have plenty of anecdotal evidence. For example, Sally Blackmun, the daughter of future Justice Harry Blackmun, became pregnant at 19, dropped out of college, and married her 20-year old boyfriend. The pregnancy eventually ended in miscarriage, but Sally Blackmun would later say about this period that “I was not at all pleased with myself about [it]. It was a big disappointment to my parents [and it] was a decision that I might have made differently[] had Roe v. Wade been around” (Cooper, 2004). Indeed, seven years later, Justice Blackmun, her father, would go on to write that opinion, leading many to cite his daughter’s experience as a catalyst. Similarly, it is widely believed that William Rehnquist’s close relationship with his struggling divorced daughter Janet affected his views on issues like the Family and Medical Leave Act (Bazelon, 2009; Novak, 2003). However, while the Blackmun and Rehnquist examples provide some observational evidence, one can usually provide an alternative explanation for such opinions on the basis of jurisprudence.

This paper is the first to provide empirical support for the idea that empathy and personal relationships, as distinct from race and gender, may affect how judges decide cases, and this evidence cannot be explained by jurisprudence alone. We do so by by focusing on the particular personal transformation that Justices Blackmun and Rehnquist experienced: having daughters. Not only could parenting daughters cause a judge to change his or her substantive position (for example, by becoming more progressive on gender issues), but it also provides a clear methodological advantage: once a couple decides to have a child, the sex of that child is outside of that couple’s control, resulting in a natural quasi-experiment (Washington, 2008). Employing a new dataset on federal judges’ families in tandem with a new dataset on nearly one thousand gender-related cases, we show that judges with at least
one daughter vote in a more liberal fashion on gender issues than judges with sons, conditional on the number of children. The effect is robust and appears driven largely by Republican appointees. Taken together, these results are the first to demonstrate that empathy and personal relationships – as distinct from partisanship or ascriptive characteristics – may indeed influence how judges reach decisions.

This paper proceeds as follows. Section 2 discusses the existing literature on personal attributes and judicial decision making, focusing specifically on the literature linking parenting and political beliefs. Section 3 links these issues to the judicial context and develops our core hypotheses. We discuss the data and methods in Section 4 and present the key results in Section 5. We consider possible mechanisms and alternate explanations in Section 6 and conclude in Section 7 by emphasizing the implications of this research on the existing debate about empathy and judicial actors.

2 Whether Empathy and Daughters Affect Beliefs

Relatively little attention scholarly attention has been paid to the possible influence that judges’ relationships or personal connections could exert on their decision making, no doubt due in part to the inherent difficulties involved in researching judges’ personal lives. Most closely on point is the growing body of literature that examines how judges’ ascriptive backgrounds influence decision making. The studies most relevant to our inquiry have examined differences in decision making between men and women judges. For example, Boyd, Epstein and Martin (2010) conclude that judge gender does indeed make a difference when it comes to case outcomes – but only in instances involving sex discrimination. Other literature has

\[1\] An even larger body of literature considers the strong influence on decision making of judges’ political beliefs – i.e., the “attitudinal” model of judicial decision making and related scholarship (Rohde and Spaeth, 1976; Schubert, 1974; Segal and Spaeth, 2002; Howard and Segal, 2002; Sunstein et al., 2006). Mindful of this literature, we note the possibility that the effect of having girls might vary according to the political attitudes of individual judges.
found that being a woman judge has an effect on cases involving sexual harassment, sex discrimination, or the sentences of criminal defendants (Baldez, Epstein and Martin, 2006; Peresie, 2005; Massie, Johnson and Gubala, 2002; Segal and Spaeth, 2002; Crowe, 1999; Davis, Haire and Songer, 1993). Others have found little or no effects associated with a judge’s gender (Manning, Carroll and Carp, 2004; Kulik, Perry and Pepper, 2003; Ashenfelter, Eisenberg and Schwab, 1995). A companion body of literature has found differences between and among judges of different races (Kastellec, 2012; Cox and Miles, 2008; Scherer, 2004; Gottschall, 1983).

Another subset of studies have looked at the role that individual experiences, as opposed to individual ascriptive traits (e.g., gender), might have on judicial decision making. Most of these studies have, however, looked at purely professional experiences (Epstein, Knight and Martin, 2003), and most of these have done so within the criminal sentencing context (Sisk, Heise and Morriss, 1998). Very few studies have looked at personal experiences, and, to our knowledge, no empirical inquiry has ever been done on the potential effect that familial relationships (e.g., being a parent) might have on judicial decision making. This fact is surprising given that judges are routinely asked to make difficult decisions regarding guardianships, custody disputes, and juvenile sentencing.

Although we can point to no literature within judicial politics, public opinion scholarship provides some evidence on parenting – and in particular the transformative experience of parenting girls versus boys. Most of this literature suggests that having daughters leads

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2A robust literature within political science has, however, explored how individuals form and hold onto political attitudes. One school is that partisanship is an affective characteristic that is passed on from parent to child (Campbell et al., 1966; Zuckerman, Dasović and Fitzgerald, 2007) through social education and also perhaps through genetic links (Dawes and Fowler, 2009). Dovetailing with this, studies such as Green, Palmquist and Schickler (2004) have suggested that political ideology is more of a social identification (rather than a rationally grounded one) and, as such, relatively stable: once an individual has identified as either “Democrat” or “Republican” very little can change the identification. In this sense, people are about as likely to switch political parties as they are to convert religions or begin identifying with a different racial or ethnic group (Green, Palmquist and Schickler, 2004). Somewhat less attention has been paid to those factors that have the potential to change partisanship – e.g., moving to different city, marrying a person with a different ideology or religion, etc. We show in this paper that having daughters may be one of these
individuals to have more liberal political and social positions than those who have sons. For example, Warner (1991) finds that both men and women who have daughters are more likely to support feminist positions than those who do not. Warner and Steel (1999) similarly demonstrate that support for policies promoting gender equity increases for both men and women when they have daughters. More recently, Oswald and Powdthavee (2010) finds evidence that having daughters makes British parents more “left-wing” when it comes to their politics, while having sons makes them more “right-wing.” Shafer and Malhotra (2011) likewise provide evidence that parenting daughters as opposed to sons leads men to have less traditional views of gender roles, but has no effect on women. The exception to this growing body of literature is Conley and Rauscher (2010), who find that having female children leads to more conservative identification. In other fields, having daughters has been shown to increase the probability that parents will divorce (Dahl and Moretti, 2004), that male investors will shift their money into stocks as opposed to bonds (Bogan, 2009), and that fathers will work longer and earn more wages but not as much as they would have if they had had sons (Lundberg and Rose, 2002).

This literature thins significantly when it comes to elite decision making. To our knowledge, no study has looked at this issue in the context of executive decision making. Within the legislative context, the study most similar to our own is Washington (2008), which found that U.S. Congress members who have daughters are more likely to vote in favor of women’s issues (as defined by the legislative scores assigned to them by the National Organization for Women and by the American Association of University Women) than those who have sons. Washington (2008) also takes a similar approach to the one taken here, leveraging the randomized nature of gender assignment pre-birth. Her results have also been replicated and strengthened by subsequent matching analyses in Iacus, King and Porro (2011). There are, however, strong reasons to think that Congressional legislators differ substantially from factors.
federal judges, who are not only unelected and appointed for life, but also older on average when they begin their appointments. Judges also serve under the sometimes binding constraint of legal precedent – which has led some commentators to assert that judges should not place any import on personal relationships.

3 Identification of Daughters’ Impact

We note at the outset that the basic decision to have a child is undoubtedly deeply connected with – and motivated by – factors such as race, gender, religion, political ideology, age, etc. These are in turn the same factors that we might expect to also affect judicial decision making. To this extent, we do not have a clear prediction as to the association between daughters and progressive votes because it is possible that a conservative judge would not only have (a) many children and, as a result, (b) many daughters. We should also not be surprised that, being conservative, such a judge may also have (c) viewpoints that run contrary to those espoused by progressive women’s groups. Thus, the total number of children a judge has not only affects the number of girls but also reflects his or her personal beliefs.

We take this into account by examining the effect of having daughters only after conditioning on the number of children a judge has, following the methodology of Washington (2008). Conditional on having a child, the sex of the child is analogous to a natural experiment; that is, once a couple decides to have a child, the sex of that child is effectively outside of that couple’s control and will therefore be unrelated to other individual characteristics, including partisanship or ideology. If judges are affected by their daughters to vote in the liberal direction, then this natural quasi-experiment implies our first and most important hypothesis: conditional on the number of children a judge has, an increase in the number of daughters should be associated with an increase in the likelihood of voting in the liberal
direction on gender-related cases.³

A possible complication to this identification strategy is the use by couples of “fertility stopping rules,” or the practice by which couples continue or stop having children in part based on the gender of the children they already have.⁴ It could be the case, for example, that judges (1) keep having children until gender parity is achieved, (2) are conservative and so are content with having had only boys, or (3) are liberal so are content with having had all girls. To address concern (1) and to partially address concerns (2) and (3), we more closely examine couples who only have one child – for whom the fertility stopping rules are, as we note later on, significantly less of a concern. This leads us to a related supposition: the daughters effect should also manifest among judges with only one child.⁵ We provide a detailed discussion of fertility stopping rules and other threats to identification in Section 6.

In addition, the extant literature on parenting and political attitudes, and the more limited literature on parenting by elite political actors, suggests that the number of daughters a judge has will increase the likelihood of a vote in a more progressive direction – but only on issues with a substantial gender dimension. This is a notion in line with the literature on gender and judging (Boyd, Epstein and Martin, 2010), which has established that female judges vote differently than male judges, but only with regard to cases involving sex dis-

³Phrasing this in terms of the proportion of children that are daughters, although tempting, would conflate two processes: the proportion would increase as the number of daughters increases but alternatively as the number of children decreases. Hence, we would not be able to isolate the daughters effect without further assumptions.

⁴These sorts of fertility stopping rules are referred to in the demography literature as “differential stopping behavior” (Clark, 2000). In the United States, the preference is in gender balance, and many families prefer to continue having children until they have at least one boy and one girl (Clare and Kiser, 1951; Freedman, Freedman and Whelpton, 1960; Sloane and Lee, 1983; Yamaguchi and Ferguson, 1995). Evidence that this preference has diminished over time is explored in Pollard and Morgan (2002).

⁵This research design more generally fails with regard to other kinds of child-gender manipulations, such as the adoption of children. Parents often have strong preferences about a child’s gender, and, if given a choice, may opt for adopting a girl over a boy, a boy over a girl, or one child of each gender. (Chief Justice John Roberts, for example, has two adopted children, one boy and one girl.) Because parental values might play a large role in the gender of non-biological children, we drop from this analysis any adopted children or step-children. In addition, we assume that judges are not having sex-selective procedures, including sex-selective abortions.
cration. We therefore expect that a judge who has many daughters will be more likely to support expansive abortion rights, vote in favor of women plaintiffs in sex discrimination cases, and advocate for the treatment of gender as a suspect classification under the U.S. Constitution. We would not, however, expect the influence of having daughters to extend to other issue areas – business litigation, criminal procedural, taxation, bankruptcy, etc. Our second hypothesis is therefore that, all other things being equal, judges with daughters will have more liberal voting records on women’s rights cases, and on women’s rights cases only.

Lastly, although we posit that having daughters will on average increase the probability of judges voting in a feminist direction in gender-related cases, we also hypothesize that the effect will vary across different population subsets. For example, because judges appointed by Democrats may already hold progressive opinions on gender-related issues, they might be less affected by the experience of having girls as opposed to sons. Thus, our third hypothesis is that the greatest impact of having daughters will be among judges appointed by Republicans. Relatedly, because women judges will already have been exposed to female socialization, they may also be less affected by having girls as opposed to boys. Our fourth hypothesis is therefore that the daughters effect will be driven by male, not female, judges. Both of these hypotheses are in line with the results found for legislators by Washington (2008).

4 Data and Methods

Data\textsuperscript{6} come from the U.S. Courts of Appeals, the middle tier in the federal court system. We choose appellate courts over lower-level district courts because appellate courts hear cases that involve purely legal (or mixed law-factual) questions, which provide the sort of context within which personal experiences may exert some influence and which stand in contrast to the factual questions heard by lower courts. In addition, with approximately two hundred

\textsuperscript{6}All data and accompanying statistical code will be posted to a public online data archive at the conclusion of this project.
Table 1: Number of children and girls for U.S. Courts of Appeals judges participating in gender-related cases (1996-2002)

<table>
<thead>
<tr>
<th>Number of Children</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>12</td>
<td>13</td>
<td>33</td>
<td>24</td>
<td>15</td>
<td>4</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>103</td>
</tr>
<tr>
<td>Republican</td>
<td>13</td>
<td>8</td>
<td>44</td>
<td>30</td>
<td>15</td>
<td>7</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>121</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Girls</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrats</td>
<td>26</td>
<td>35</td>
<td>29</td>
<td>10</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Republicans</td>
<td>36</td>
<td>43</td>
<td>31</td>
<td>9</td>
<td>2</td>
<td>0</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

judges at any given time, we have more data on appellate courts than if we just focused on the nine justices on the U.S. Supreme Court. Lastly, the Courts of Appeals follow a long-standing practice of randomly assigning cases to judges; thus, judges with daughters may not request to hear gender-related cases.

**Family Data.** While several databases on appellate judges’ personal characteristics exist, we know of no extant dataset that contains information on judges’ family lives. We therefore created a new dataset that includes the number of children for each appeals judge and how many of them are girls. Table 1 provides a summary. This information was gathered from publicly available sources, including biographical blurbs published in compendiums like *Who’s Who in American Law*, college alumni or church newsletters, newspaper articles, and public announcements such as obituaries or weddings notices. In some instances, we looked to Senate confirmation hearings, in which references to judges’ families are often made. We combined this data with existing data amassed by Zuk, Barrow and Gryski (2009) on judges’ partisanship (e.g., the party affiliation of the appointing president), the year they were born, and the judge’s race, gender, and religious identification. Note that data on the birth order of children – i.e., which child was born first, second, third, etc. – was either completely unavailable or impossible (or risky) to infer, as was information on the approximate age of each child.
Case-level Data. Our supposition is that having daughters will affect judicial decision making in those cases having a specific gender frame or angle. Because extant databases have few of these sorts of cases, we collected new data to capture the universe of gender-related cases decided by the U.S. Courts of Appeals. To collect this data, we started with all of the cases, published and unpublished, decided from 1996 and 2002 that had “gender,” “pregnancy,” or “sex” in the LexisNexis case classification headings. This initial search yielded approximately 1,450 cases, but included 134 cases having nothing to do with women’s rights (e.g., race-based discrimination cases where gender was mentioned only in passing); we therefore subset this population into cases that explicitly involved (1) employment discrimination on the basis of gender by private actors, (2) employment discrimination on the basis of pregnancy by private actors, (3) reproductive rights or abortion, and (4) claims made under Title IX. This left us with 1,325 cases that had a gender component, of which the greatest share (92%) were employment discrimination cases. Of these 1,325 cases, 310 were brought by male or transsexual plaintiffs or by plaintiffs representing men’s or LGBT interests. Because these cases did not go to the heart of our inquiry (and because many included male plaintiffs suing for adverse employment decisions due to sexual harassment by the plaintiff), we excluded them.

After discarding cases brought by men, we were left 990 gender-related cases involving discrimination against women or women’s rights. For each of these, we collected the names of the appeals court judges on the three-judge panel (excluding non-appeals court visiting judges). We also coded the directionality of each of the judges’ votes as being (1) anti-

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7 We chose to include unpublished cases as well because having girls could affect the decision to publish an opinion; including both published and unpublished cases avoids such potential bias.

8 For the sake of legal and historical consistency, we focus on cases from June 27, 1996 moving forward. This has the effect of including only those cases that were decided after the last major Supreme Court case involving women’s rights issues, United States v. Virginia. We choose 2002 as our end point to make this data analysis parallel to the collection of cases compiled by Songer, Kuersten and Haire (2007). We do this because we use the data from Songer, Kuersten and Haire (2007) in order to address the question of whether daughters have an effect on non-gender related cases.
Table 2: Demographics of U.S. Court of Appeal Judges who voted on gender-related cases (1996-2002)

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>Democrats</th>
<th>Republicans</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean No. Children</td>
<td>2.47</td>
<td>2.40</td>
<td>2.54</td>
<td>1.58</td>
<td>2.66</td>
</tr>
<tr>
<td>Mean No. Girls</td>
<td>1.24</td>
<td>1.33</td>
<td>1.16</td>
<td>0.71</td>
<td>1.34</td>
</tr>
<tr>
<td>Proportion who have 0 children</td>
<td>0.11</td>
<td>0.12</td>
<td>0.11</td>
<td>0.29</td>
<td>0.08</td>
</tr>
<tr>
<td>1 Child</td>
<td>0.09</td>
<td>0.13</td>
<td>0.07</td>
<td>0.21</td>
<td>0.07</td>
</tr>
<tr>
<td>2 Children</td>
<td>0.34</td>
<td>0.32</td>
<td>0.36</td>
<td>0.26</td>
<td>0.36</td>
</tr>
<tr>
<td>3 Children</td>
<td>0.24</td>
<td>0.23</td>
<td>0.25</td>
<td>0.13</td>
<td>0.26</td>
</tr>
<tr>
<td>4 Children</td>
<td>0.13</td>
<td>0.15</td>
<td>0.12</td>
<td>0.08</td>
<td>0.15</td>
</tr>
<tr>
<td>5 Children</td>
<td>0.05</td>
<td>0.04</td>
<td>0.06</td>
<td>0.03</td>
<td>0.05</td>
</tr>
<tr>
<td>6 Children or More</td>
<td>0.03</td>
<td>0.02</td>
<td>0.03</td>
<td>-</td>
<td>0.03</td>
</tr>
<tr>
<td>Proportion Female</td>
<td>0.17</td>
<td>0.26</td>
<td>0.09</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Proportion Republican</td>
<td>0.54</td>
<td>-</td>
<td>-</td>
<td>0.29</td>
<td>0.59</td>
</tr>
<tr>
<td>Proportion White</td>
<td>0.91</td>
<td>0.78</td>
<td>0.99</td>
<td>0.93</td>
<td>0.91</td>
</tr>
<tr>
<td>Mean Year Born</td>
<td>1932.55</td>
<td>1931.23</td>
<td>1933.43</td>
<td>1938.57</td>
<td>1931.49</td>
</tr>
<tr>
<td>N</td>
<td>224</td>
<td>103</td>
<td>121</td>
<td>38</td>
<td>186</td>
</tr>
</tbody>
</table>

feminist or (2) partially or entirely feminist. The feminist decision would be one in which the judge voted in favor of the female plaintiff or in favor of the plaintiff representing women’s interest (for example, if the Equal Employment Opportunity Commission was bringing a suit on behalf of women employees). The anti-feminist decision would be one in which the judge voted in favor of defendant employers, or in favor of sustaining a restrictive anti-abortion statute. The end result was 2,674 unique votes cast by 244 unique appeals court judges.

We were able to track down fertility data for 224 of these judges (Tables 1 and 2). In general, it was more difficult to confirm the absence of children than the presence and sex of children. It is therefore quite likely that many of judges for whom we are missing fertility data did not have any children, and are not relevant for the results discussed in the next section. In addition, we could not find the gender breakdown for the handful of individuals with extremely large numbers of children (e.g., Republican Wallace Clifford, who had 15 children, or Democrat Henry Politz, who had 11); for these individuals, we simply had no counterpoints to provide comparison, meaning that they would be excluded in any event.
Lastly, there is no ex ante reason to believe that any missingness or measurement error would be differential for daughters as opposed to sons.

Summary statistics on the 224 judges for whom we could find fertility data are described in Table 2. These judges have on average 2.47 children per judge, with Republicans having more children on average than Democrats (2.54 versus 2.40 – both higher than the population average of 2.1), but the difference in proportion of female children between Democrats and Republicans is small enough to be attributable to chance. Female judges tend to have fewer children than male judges (1.58 versus 2.66), with nearly 30% of female judges having zero children. Given the extraordinarily small fraction of judges who more than five children, we at times drop these individuals from the analysis (which we motivate in our results discussion below). We also repeat the analyses for judges who only have one child, for whom fertility stopping rules appear to be less of a motivation. Other concerns pertaining to fertility stopping rules are addressed in Section 6.

**Methodology.** Our primary explanatory variable is the number of natural-born daughters that each judge has, conditioned on the total number of children, per the methodology of Washington (2008). We treat the number of daughters as categorical variables in order to explore whether the effect of having girls proceeds in a non-linear fashion. As we discuss below, the effect of having daughters may be the strongest for having one girl and may diminish for subsequent daughters non-linearly. We therefore at times include a dummy variable

<table>
<thead>
<tr>
<th></th>
<th>Democrats</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Child</td>
<td>0.46</td>
<td>0.54</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.38</td>
<td>0.62</td>
<td>-</td>
</tr>
<tr>
<td>2 Children</td>
<td>0.15</td>
<td>0.48</td>
<td>0.36</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.32</td>
<td>0.50</td>
<td>0.18</td>
</tr>
<tr>
<td>3 Children</td>
<td>0.08</td>
<td>0.46</td>
<td>0.33</td>
<td>0.12</td>
<td>-</td>
<td>-</td>
<td>0.13</td>
<td>0.37</td>
<td>0.37</td>
</tr>
<tr>
<td>4 Children</td>
<td>0.07</td>
<td>0.07</td>
<td>0.53</td>
<td>0.33</td>
<td>0</td>
<td>-</td>
<td>0.07</td>
<td>0.27</td>
<td>0.60</td>
</tr>
<tr>
<td>5 Children</td>
<td>0</td>
<td>0</td>
<td>0.25</td>
<td>0.50</td>
<td>0</td>
<td>0.25</td>
<td>0.14</td>
<td>0.00</td>
<td>0.43</td>
</tr>
<tr>
<td>7 Children</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0.33</td>
<td>0</td>
</tr>
<tr>
<td>9 Children</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 3: Proportion of girls (conditional on number of children) for U.S. Courts of Appeals judges participating in gender-related cases (1996-2002)
Figure 1: Distribution of the proportion of cases decided in a feminist direction out of all gender cases decided 1996-2002.

representing whether the judge has at least one girl or not. Furthermore, we condition on the total number of children by including fixed effects, which estimates the effects of having girls among judges with the same number of children. (In all analyses, 0 is the omitted category for girls and 1 is the omitted category for children.)

A potential problem with looking at appellate judges is that these judges nearly always hear cases in groups of three. Thus, a judge who has many daughters might lobby his panel colleagues on issues pertaining to women’s rights more strongly than if he had sons, thereby creating a certain panel effect. Such a scenario may result not only in lessened independence across observations, but may also result in an inaccurate estimate of the daughters effect. (From a causal perspective, this issue represents a possible violation of the Stable Unit
Treatment Variance Assumption, or SUTVA (Rubin, 1980). As in the analysis of Boyd, Epstein and Martin (2010), however, we would expect that if judges on a panel influence each other’s decisions, this should tend to produce underestimates for the effects of daughters: i.e., if anything, judges without daughters will, due to the influence of their colleagues, act more like judges with daughters. To address some of these issues empirically, however, we examine as our key outcome variable a judge’s overall track record of voting on gender-related cases by examining the proportion of votes made in a feminist direction. This measure provides a straightforward analogy to Washington (2008)’s Congressional scores and is less sensitive to potential panel effects. (In fact, the composition of Congress changes very little or not at all from vote to vote, while judges are likely to be members of very different panels for each vote.) The distribution of these votes is graphically displayed in Figure 1.

Another consideration is that, unlike votes taken in Congress, the number of gender-related cases heard by each judge varies (Table 4). This variation is natural, and is largely due to (1) different lengths of service, (2) different jurisdictions hearing different numbers of cases, and (3) the random fluctuations associated with (random) case assignment. Thus, we cannot use an ordinary least squares specification with the proportion of cases decided in a feminist direction as the outcome variable; doing so would “weight” as equal judges who cast only one vote with judges who cast dozens, which would violate one of the key OLS assumptions: the variance of the outcome would clearly vary according to whether the judge heard 1 case or 46. We therefore take a weighted least squares (WLS) approach by weighing each judge by the number of cases he or she heard, summary statistics for which are reported

<table>
<thead>
<tr>
<th></th>
<th>Min.</th>
<th>1st Qu.</th>
<th>Median</th>
<th>Mean</th>
<th>3rd Qu.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Judges</td>
<td>1</td>
<td>5</td>
<td>8</td>
<td>11.10</td>
<td>14</td>
<td>46</td>
</tr>
<tr>
<td>Democrats</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>10.12</td>
<td>13</td>
<td>39</td>
</tr>
<tr>
<td>Republicans</td>
<td>1</td>
<td>5</td>
<td>9</td>
<td>11.94</td>
<td>14</td>
<td>46</td>
</tr>
</tbody>
</table>

Table 4: Distribution of the number of gender-related cases heard per judge, 1996-2002.
in Table 4. We note that the substantive results are unaffected when running an unweighted OLS model.

Lastly, to assess how other factors could play a role, we at times include in our analysis control variables that are standard in the judicial politics literature (and also used in other “daughters effects” studies – Washington (2008) and Iacus, King and Porro (2011)), including (1) partisanship (as measured by party of the appointing President), (2) gender, (3) age (at time of commission), (4) race, and (5) whether the judge is Catholic. Some of these characteristics may be realized after a judge has decided to have children, which means that their inclusion may introduce post-treatment bias. (For example, a judge who has at least one daughter might be less likely to self-identify with a conservative religious group later on in life, perhaps directly due to the influence of having a girl.) Although mindful of this post-treatment issue, we nonetheless find that our substantive conclusions do not change with the inclusion (or removal) of these covariates.

5 Results

We begin by presenting our core results in Table 5, which displays the coefficients of WLS analyses for all 199 judges who had at least one child (Models 1 and 2). Our outcome variable here, and in all subsequent analyses, is the judges’ track record on voting on gender rights cases, which we take to be the proportion of cases that each judge decided in a feminist-leaning direction. Model 1 shows the results when we include the number of girls as a categorical variable – that is, we compare how the effect varies between having no daughters and having up to five daughters, compared among judges who have the same number of children. Substantively, what the first row of Model 1 tells us is that an increase in the number of girls from none to 1, conditional on the total number of children, translates on average into a 9% increase in the proportion of gender-related cases in which a judge will vote
Table 5: Weighted least squares results. Outcome is judges’ proportion of feminist (or liberal) votes on gender-related cases (Columns 1-4) and non-gender related cases (Column 5), 1996-2002. All models include fixed effects for total number of children and use weights based on number of cases heard. Columns 3, 4, and 5 include judges with 1-4 children. Column 5 uses a random subset of all published U.S. Court of Appeal cases, 1996-2002 (n = 6,652), collected by Songer.

<table>
<thead>
<tr>
<th></th>
<th>All Judges</th>
<th>4 Children or Fewer</th>
<th>Non-Gender Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
<td>Model 3</td>
</tr>
<tr>
<td>Intercept</td>
<td>0.31*</td>
<td>0.32*</td>
<td>0.31*</td>
</tr>
<tr>
<td></td>
<td>(0.04)</td>
<td>(0.04)</td>
<td>(0.04)</td>
</tr>
<tr>
<td>1 Girl</td>
<td>0.09*</td>
<td></td>
<td>0.09*</td>
</tr>
<tr>
<td></td>
<td>(0.04)</td>
<td></td>
<td>(0.04)</td>
</tr>
<tr>
<td>2 Girls</td>
<td>0.05</td>
<td></td>
<td>0.05</td>
</tr>
<tr>
<td></td>
<td>(0.04)</td>
<td></td>
<td>(0.04)</td>
</tr>
<tr>
<td>3 Girls</td>
<td>0.06</td>
<td></td>
<td>0.08</td>
</tr>
<tr>
<td></td>
<td>(0.06)</td>
<td></td>
<td>(0.07)</td>
</tr>
<tr>
<td>4 Girls</td>
<td>-0.35</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.45)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Girls</td>
<td>0.27</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.17)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At Least 1 Girl</td>
<td>0.07*</td>
<td>0.07*</td>
<td>0.04</td>
</tr>
<tr>
<td></td>
<td>(0.03)</td>
<td>(0.03)</td>
<td>(0.03)</td>
</tr>
<tr>
<td>Child Dummy Variables</td>
<td>✓ ✓ ✓ ✓ ✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>199</td>
<td>199</td>
<td>182</td>
</tr>
<tr>
<td>R²</td>
<td>0.06</td>
<td>0.04</td>
<td>0.04</td>
</tr>
<tr>
<td>adj. R²</td>
<td>-0.00</td>
<td>-0.00</td>
<td>0.01</td>
</tr>
<tr>
<td>Resid. sd</td>
<td>0.63</td>
<td>0.63</td>
<td>0.62</td>
</tr>
</tbody>
</table>

* indicates significance at $p < 0.05$

Standard errors in parentheses

in a progressive or feminist direction. Comparable results are given by looking at increases from 0 to 2 girls, 0 to 3 girls, and 0 to 5 girls, although the small number of judges with so many daughters means that these estimates are statistically insignificant. Surprisingly, we see a negative effect when we examine increases from 0 to 4 girls, although the effect is not significant.

Nearly the same substantive result is yielded by Model 2, in which we include a dummy variable for whether a judge has at least one daughter. Here, having at least one daughter
corresponds to a 7% increase in the proportion of cases in which a judge will vote in a feminist direction. The findings in both Model 1 and Model 2 are significant at the 5% level, meaning that we can be fairly confident of a positive, non-zero relationship between having at least one girl and being more likely to have a higher share of votes be in a progressive or feminist direction. Taken together, the results from Model 1 and Model 2 demonstrate that the greatest effect from having daughters comes simply from having at least one girl; there is no added impact on having additional girls and the effect does not increase linearly. Thus, we move forward by collapsing explanatory variables to look at the effect of having at least one daughter, conditioning on the total number of children (Model 2), and we take this as our “treatment” of interest.

We are also mindful of the extremely small number of judges with five or more children. The small sample size in these groups leads to extremely poor balance in terms of fraction of girls (Table 3) and results in an inability to precisely estimate the effects among this group, as seen in Model 1. (In fact, of the group of judges with 5 or more children, only one judge has zero girls.) Mindful that these 17 judges could be driving the results, we also present results limiting the sample space to judges with four children or fewer – who collectively represent 92% of all judges. These results are presented in Table 5’s Models 3 and 4 and demonstrate that the effect of having daughters is strong and significant: having at least one girl results in an approximate 7% increase in the share of cases in which a judge will vote in a feminist direction. (The results are even stronger if we limit the sample space to the 80% of judges with fewer than four children; because the effect for judges with four children appears mixed, we include the four-child judges in the interest of transparency and presenting conservative results.) Because these results are comparable in all respects, and because they reduce reliance on a small sample of unusually highly fertile judges, we move forward comparing judges with four children or fewer in subsequent analyses.

As a point of comparison, we also report a WLS regression of the outcome on having at
Table 6: Weighted least squares results for judges with 1 child. Outcome is judges’ proportion of feminist votes on gender-related cases (1996-2002). All models include weights for number of cases heard.

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>0.27*</td>
<td>0.26*</td>
</tr>
<tr>
<td></td>
<td>(0.05)</td>
<td>(0.06)</td>
</tr>
<tr>
<td>Child is Girl</td>
<td>0.16*</td>
<td>0.16*</td>
</tr>
<tr>
<td></td>
<td>(0.07)</td>
<td>(0.07)</td>
</tr>
<tr>
<td>Democrat</td>
<td>0.04</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.07)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>$R^2$</td>
<td>0.23</td>
<td>0.24</td>
</tr>
<tr>
<td>adj. $R^2$</td>
<td>0.19</td>
<td>0.16</td>
</tr>
<tr>
<td>Resid. sd</td>
<td>0.55</td>
<td>0.56</td>
</tr>
</tbody>
</table>

Standard errors in parentheses
* indicates significance at $p < 0.05$

least one daughter for non-gender-related cases using a random subset of 6,652 published cases from the U.S. Courts of Appeals, 1996-2002 collected and coded by Songer, Kuersten and Haire (2007). The outcome variable here is the judges’ track records of liberal (not feminist) voting on these non-gender related cases. These results, presented in Table 5, Column 5, show that there is no statistically significant relationship between having at least one daughter and voting in a more liberal direction. This is true regardless of model specification, and regardless of whether we include all judges or only judges with four children or fewer. Thus, we have evidence supporting our second hypothesis: to the extent that we see a “daughters effect,” it is only for cases having a gender dimension.

**Daughters Effect For Single-Child Judges.** A possible concern is that judges are using fertility stopping rules in deciding whether to have children. To provide some evidence on this point, we also display results in Table 6 from models that include only the 21 judges with one child. (These do not include child fixed effects, as all the judges have one child.) As noted earlier, fertility stopping rules are less of an issue for this subset. Within this
<table>
<thead>
<tr>
<th>Subset</th>
<th>Republicans Only</th>
<th>Democrats Only</th>
<th>Men Only</th>
<th>Women Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>0.31*</td>
<td>0.32*</td>
<td>0.29*</td>
<td>0.33*</td>
</tr>
<tr>
<td></td>
<td>(0.05)</td>
<td>(0.05)</td>
<td>(0.05)</td>
<td>(0.06)</td>
</tr>
<tr>
<td>At Least 1 Girl</td>
<td>0.07*</td>
<td>0.03</td>
<td>0.07*</td>
<td>0.08</td>
</tr>
<tr>
<td></td>
<td>(0.04)</td>
<td>(0.05)</td>
<td>(0.04)</td>
<td>(0.08)</td>
</tr>
<tr>
<td>2 Children</td>
<td>-0.06</td>
<td>0.14*</td>
<td>0.02</td>
<td>0.09</td>
</tr>
<tr>
<td></td>
<td>(0.05)</td>
<td>(0.05)</td>
<td>(0.05)</td>
<td>(0.09)</td>
</tr>
<tr>
<td>3 Children</td>
<td>-0.02</td>
<td>0.10</td>
<td>0.05</td>
<td>-0.04</td>
</tr>
<tr>
<td></td>
<td>(0.06)</td>
<td>(0.06)</td>
<td>(0.05)</td>
<td>(0.10)</td>
</tr>
<tr>
<td>4 Children</td>
<td>-0.06</td>
<td>0.19*</td>
<td>0.05</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>(0.07)</td>
<td>(0.07)</td>
<td>(0.06)</td>
<td>(0.13)</td>
</tr>
<tr>
<td>N</td>
<td>99</td>
<td>85</td>
<td>158</td>
<td>26</td>
</tr>
<tr>
<td>$R^2$</td>
<td>0.07</td>
<td>0.12</td>
<td>0.05</td>
<td>0.16</td>
</tr>
<tr>
<td>adj. $R^2$</td>
<td>0.03</td>
<td>0.08</td>
<td>0.02</td>
<td>-0.00</td>
</tr>
<tr>
<td>Resid. sd</td>
<td>0.60</td>
<td>0.65</td>
<td>0.67</td>
<td>0.75</td>
</tr>
</tbody>
</table>

Standard errors in parentheses

* indicates significance at $p < 0.05$

• indicates significance at $p < 0.10$

Table 7: Weighted least squares results for judges with four children or fewer. Outcome is judges’ proportion of feminist votes on gender-related cases (1996-2002). All models include fixed effects for total number of children and weights for number of cases heard.

subset, having one daughter as opposed to one son is linked to an even higher 16% increase in the proportion of gender-related cases decided in a feminist direction. Despite the smaller sample size, the effect is significant at the 5% level with a $p$-value of 0.03. The effect persists after including controls for party of appointing President (Table 6, Column 2).

**Daughters Effect By Party.** If the assumption of the random nature of sex assignment (conditional on the number of children) holds, then the models Table 5 should identify the causal effect of having at least one daughter, with the caveats discussed below. As we have noted throughout, however, we are interested in further assessing how this effect might vary over population subsets, especially by party.

There is some concern about conditioning on party because this variable is measured post-treatment. That is, party identification could change early on in the judge’s career, and,
given the comparative elderly age at which judges are nominated, the act of having daughters could sway how a judge will eventually identify and which party’s President would nominate him or her. In other words, because most judges have completed their reproductive years prior to our measurement of their party, we might worry that their partisanship is affected by having daughters. Mindful of this concern, we note that the following analysis assumes that a binary coding of partisanship has not been affected by having daughters.

The first two columns of Table 7 present results that are disaggregated by the party of the appointing president. Column 1 presents the results for judges that were appointed by a Republican president, and Column 2 presents the results for judges that were appointed by a Democratic president. As before, the outcome variable is the proportion of cases a judge decided in a feminist direction on gender-related cases. Comparing the two columns makes clear that the effect is being driven by Republican judges – the effect for Republican judges is an average 7% increase in the proportion of cases decided in a feminist direction (and significant at the 10% level, with a $p$-value of 0.09, for judges with fewer than five children, and at the 5% level, with $p$-value of 0.03, for judges with fewer than four children for judges with three children or fewer) while the effect for Democrat judges is on average 3% (and is not significant under any model specification or population subset). Thus, we see some evidence in favor of the idea that the daughters effect works primarily for individuals whose political affiliations suggest they would otherwise be conservative. However, the difference between Democrat and Republican legislators is not statistically significant at traditional levels. This is consistent with the findings by (Washington, 2008). As a robustness check, we note that the inclusion of controls for (1) age, (2) Catholicism, and (3) gender in addition to party of appointing president does not change the overall daughters effect estimate (Table 8, below), which is still significant for all judges at the 5% level.

**Daughters Effect By Gender.** Washington (2008) found that the daughters effect for
Congressional representatives was particularly strong for male legislators while insignificant for female legislators. For judges, we would also expect to see a daughters effect primarily for men and not for women. One difficulty with this is, however, that the pool of female judges differs markedly from the pool of male judges. As Table 2 shows, there are fewer women than men on the appellate courts during this period. Additionally, women judges

\[
\begin{array}{l|c|c}
 & \text{All Judges} & \text{Republicans Only} \\
\hline
\text{Intercept} & 0.14 & 0.12 \\
 & (0.16) & (0.19) \\
\text{At Least 1 Girl} & 0.09^* & 0.08^* \\
 & (0.04) & (0.04) \\
\text{2 Children} & -0.02 & -0.03 \\
 & (0.06) & (0.07) \\
\text{3 Children} & -0.01 & -0.01 \\
 & (0.06) & (0.07) \\
\text{4 Children} & -0.05 & -0.08 \\
 & (0.07) & (0.08) \\
\text{Age} & 0.00 & 0.00 \\
 & (0.00) & (0.00) \\
\text{Catholic} & -0.06 & -0.03 \\
 & (0.04) & (0.04) \\
\text{Woman} & -0.04 & -0.02 \\
 & (0.05) & (0.07) \\
\text{Democrat} & 0.14^* & \\
 & (0.04) & \\
\text{African American} & -0.03 & \\
 & (0.08) & \\
\hline
\text{N} & 130 & 85 \\
\text{R}^2 & 0.18 & 0.06 \\
\text{adj. R}^2 & 0.12 & -0.02 \\
\text{Resid. sd} & 0.59 & 0.58 \\
\end{array}
\]

Table 8: Weighted least squares results for judges with four children or fewer. Outcome is judges’ proportion of feminist votes on gender-related cases (1996-2002). All models include fixed effects for total number of children and weights for number of cases heard.
are much more likely than male judges to have no children (29% versus 8%) and on average have fewer numbers of children than do male judges (1.58 versus 2.66); consequently, there are also fewer women \( n = 38 \) than men \( n = 186 \) in the sample. Despite the low sample size, we show some results from models including the gender of the judge (Columns 3 and 4 of Table 7). The results are only partially consistent with the theoretical predictions. We do find a strong and significant effect for the male judges (Column 3), which confirms the prediction that an effect will exist for men. However, the effect for female judges is similar in magnitude (although it is insignificant at this sample size). Given the incredibly small number of women, and the even smaller of women who have children, we cannot rule out that there is no relationship between parenting girls (as opposed to sons) and voting in a more feminist direction on gender-related cases. We therefore abstain from making firm conclusions about this hypothesis.

**Daughters Effect After Controlling for Additional Covariates.** We conclude this discussion by noting that the overall effect of having daughters persists with the inclusion of other covariates, including (1) age, (2) Catholic religion, (3) judge gender, (4) party of appointing President, and (4) race. There are very few judges of minority backgrounds, with 91% of all judges in the sample being white; here we use the distinction between white and black judges, who comprise 7% of the population (and we cannot even make this comparison for Republicans, among whom there are no black judges). Results are presented in Table 8, and show that the overall daughters effect is not perturbed by the inclusion of additional covariates. For Republicans, for whom we previously saw the greatest effect, the effect is significant at the 10% level for judges with fewer than five children, but the magnitude of the effect is otherwise comparable.
6 Alternative Explanations of the Results

To summarize, the results presented suggest that there exists a positive effect of having girls on whether a judge votes in a liberal direction on gender-related cases. The effect is most striking when we look at whether a judge has at least one girl and appears driven primarily by Republican appointments. Taken together, the results suggest that the shift in voting comes from the act of parenting daughters, which possibly cause judges to learn about women's issues (Reingold and Foust, 1998; Bolzendahl and Myers, 2004), or causes them to change or re-align their preferences (Gerson, 1993; Kane and Sanchez, 1994; Coltrane, 1997; Bolzendahl and Myers, 2004). It is also likely that judges feel a strong emotional attachment to their daughters and so, when they make a decision, they do so in a way that is favorable to women, or that they rely on motivated reasoning through process of emotion.

Other theories may, however, also explain the daughters effect, bringing with them dramatically different substantive interpretations. A key aspect of our analysis – and also of Washington (2008) and Iacus, King and Porro (2011) – has been that the likelihood of a child being born a boy or a girl is out of the parents’ control and, once a couple decides to have a child, the child’s gender is unrelated to any factors that could affect decision making – e.g., gender, political ideology, religion, race, etc. However, because we could not obtain information on the birth order of children, we could only condition on the number of children, and we are therefore concerned about the effects of fertility stopping rules.

9The possibility does exist, however, that in fact the likelihood of having either a son or daughter varies from one person to another according to specific traits. For example, it may be the case that more conservative people have a higher chance of have more boys, or that more progressive or liberal people have a higher chance of having girls. Although no study to our knowledge has made these ideologically based claims, studies conducted by Kanazawa have put forth the possibility that more physically attractive people have more daughters (Kanazawa, 2007) and that taller and heavier people (Kanazawa, 2005), battered women (Kanazawa, 2008), and violent men (Kanazawa, 2006) tend to have a disproportionate share of sons. Despite Kanazawa’s research, we note that this literature is hotly contested (Gelman and Weakliem (2009) and Denny (2008) provide rebuttals) and that, with the possible exception of violent tendencies, it is unlikely that these other traits would influence judicial decision making.
Fertility Stopping Rules. We cannot ignore the possibility that people with certain beliefs may be more inclined to have sons over daughters (or vice versa) – and that this could mislead us into thinking that a daughters effect exists. Of particular concern is that judges in our sample may be using fertility stopping rules to control the gender balance of one’s offspring. Consider Table 3, which provides some limited suggestion of fertility stopping rules: Democrats are more likely to have one boy and one girl, while Republicans more likely to have two boys. This might suggest that Republicans are content with having two boys and do not choose to have more children to achieve gender parity.

Although we do not rule out that judges might be using fertility stopping rules, they do not appear to be driving the results here for three reasons. First, as we have discussed in Section 5, the daughters effect remains intact (and even increases in magnitude) when we examine judges with only one child. These are judges for whom concerns about fertility stopping rules are minimal. Second, if true that more liberal judges continue having children until they have at least one girl (or that more conservative judges are content to “stop” with having all boys), then this would mean that having girls is correlated with across-the-board liberal beliefs – which would translate into liberal voting across all cases, not just ones with a substantial gender dimension. In this analysis, however, we see an effect of having daughters, but only for gender-related cases. Lastly, although we do see in Table 3 some evidence of the possible use of fertility stopping rules across party, we have presented evidence that the daughters effect persists conditioning on party; in other words, we can see some effect of having girls even when we subset the data to examine just Republicans (and not at all when we subset to Democrats). For fertility stopping rules to call this into question would mean that there would have to be differentially applied stopping rules within all Republicans, something for which we have no evidence.
Selection Bias. Finally, as in Washington (2008) and Iacus, King and Porro (2011), we must consider the potential for selection bias in how appeals court judges are appointed. As we have emphasized elsewhere, we assume that having child is a fundamentally life-altering experience, and that anything that happens following the birth of a child will be deeply affected by that experience. This raises the question of whether the decision to become a judge, or the decision by the President to appoint a judge to the federal appellate courts, is affected by the number of daughters an individual has (conditional on the number of children one has), and whether this effect results in conservative judges having fewer daughters. We are not aware of any evidence that Presidents take into account the number or gender of potential nominees’ children when making judicial appointments, and the initial career decisions of top-tier law students are often made prior to having children. If a selection effect is responsible for a daughters effect, then it is likely occurring once individuals have already started their legal careers.

Even if such selection is occurring, different theories of selection would imply different observed effects. For example, if having sons increases an individual’s desire for high paying jobs (as suggested by Lundberg and Rose (2002)), then having sons might make a career in the judiciary less attractive than a career in the private sector. If this primarily affects conservative judges in the lower-tier courts, then they may choose to exit the judiciary. Alternatively, having daughters may have a generally liberalizing effect, and if appellate court judges are usually selected from among highly conservative lower court judges (by Republican Presidents) and highly liberal lower court judges (by Democrat Presidents), then some conservative judges with daughters might select (or be selected) out of the judiciary.

While concerns about selection could complicate the interpretation of the results, it is not clear whether either explanation would indicate an estimated effect for all cases or just for gender-related cases. For example, if a selection effect is due to selection by the president, we would likely see this effect for all cases, as presidents are unlikely to select judges only on the
basis of one type of case. Similarly, if having daughters tends to drive generally conservative judges out of the judiciary, then we would expect to see a daughters effect for all types of cases, not just gender-related cases. We do not, however: we see only an effect for having daughters for cases having to do with gender-related issues. Thus, it seems unlikely that the effects seen here derive exclusively from a selection bias story.

7 Why Empathy Matters in Judicial Selection

Political science scholarship on the courts has mostly focused on the impact on judicial decision making of two salient attributes: preferences (e.g., ideology, partisanship) and ascriptive characteristics (e.g., race, gender). Less well-developed is the notion that personal relationships and experiences – including contacts with close family members – could influence decision making. In this paper, we presented evidence that some types of personal relationships do in fact affect judges’ actions. Indeed, across cases involving gender issues, judges who parent daughters as opposed to sons are more likely to reach liberal decisions. This might be the case because having daughters causes judges to learn about women’s issues (Reingold and Foust, 1998; Bolzendahl and Myers, 2004) or because their preferences simply change over time (Gerson, 1993; Kane and Sanchez, 1994; Coltrane, 1997). Having daughters might also forge strong emotional attachments, leading judges to cast votes more generally in favor of women. Whatever the reason, these results are squarely in line with similar studies in a Congressional context (Washington, 2008; Iacus, King and Porro, 2011) as well as those in the public opinion context (Warner, 1991; Warner and Steel, 1999; Shafer and Malhotra, 2011).

Two points are further worth noting. First, this effect exists when decision making concerns gender-related issues – discrimination, sex discrimination, pregnancy discrimination, etc. The effect does not extend to other areas, including racial or ethnic discrimination,
or to a liberal or progressive voting inclination more generally. These results are, to this extent, in accord with those of Washington (2008), which found the effects of having daughters for Congressmembers’ NOW and AAUW scores, and with Boyd, Epstein and Martin (2010), which found effects associated with being a female (as opposed to male judge) in cases involving sex or gender discrimination issues. These results are also inconsistent with a general selection bias – that conservative lawyers with daughters select (or are selected) out of the judiciary and/or that liberal lawyers with sons select (or are selected) out of the judiciary. Second, the effect is robust to different model specifications and it persists even after controlling for those personal characteristics that judicial politics scholars routinely take into account (e.g., age, gender, race, Catholicism). Eliminating judges with extremely large numbers of children only strengthens the effect. Although more research is needed to identify the exact pathway of the effect (learning versus motivated reasoning), having daughters does cause judges to vote differently.

Taken together, our empirical findings have several implications for judicial processes. The first is that personal relationships do indeed hold the possibility of shaping views. We show here that decision making appears to be shaped not just by ideology or, in the legal context, applicable legal precedent, but also by a host of other considerations, including intimate experiences and personal connections. In this immediate paper, we have shown the effect via having daughters, but we might think the effect exists via other pathways – for example, having a gay or lesbian child or sibling (e.g., Dick Cheney or Newt Gingrich), or having a disabled or mentally ill son or daughter (e.g., Sarah Palin). We encourage scholarship to explore these pathways actively; empathy does shape judicial decisions, and the natural quasi-experiment of having daughters provides only one kind of empirical example.

Second, this fact has broader implications on descriptive representation on the courts. Scholarship has demonstrated that women judges decide cases differently from men (Boyd, Epstein and Martin, 2010), and that African Americans also decide cases differently from
whites (Kastellec, 2012). However, what we see here is that white male judges who have daughters are more likely to vote in a liberal direction – despite not having those ascriptive characteristics that would otherwise be linked to progressive views on women’s rights. To this extent, despite Sonia Sotomayor’s comment that “a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life,” we find that empathy is a cross-cutting effect. Non-minority judges can change their views to reflect personal relationships and experiences. Those experiences might vary according to background; what the quasi-experiment of daughters shows is that empathy is not, and need not, limited to one group or one party.
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