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## A gendered voice: Effects of gender on Supreme Court decisions

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## A gendered voice: Effects of gender on Supreme Court decisions

### Abstract

After 191 years, the first woman was named to the US Supreme Court. Today, three women sit on the high court. Do they speak with a different voice when compared to their male counterparts? This research assesses the potential and additive impact of female justices on the behavior of the United States Supreme Court. Controlling for ideology, gender, and legal factors, this paper analyzes whether the gender of Supreme Court justices impacts case outcomes.

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Supreme Court, gender, equal protection, discrimination, judicial decision-making

**A GENDERED VOICE: EFFECTS OF GENDER ON SUPREME COURT DECISIONS**

**By**

**Maya Rich**

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**Eastern Michigan University**

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**with**

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## **Introduction:**

It was over 190 years before the first woman sat on the Supreme Court of the United States of America. Today, three women sit on the high court. Does the gender of Supreme Court justices impact their decision-making? This research seeks to answer that question through both a quantitative and qualitative examination of Supreme Court decisions. Through reading Supreme Court decisions authored by both men and women and running statistical analyses on these Court decisions, I have been able to uncover whether or not gender has an effect on the decisions Justices make.

As the number of women on the Court grows, more and more opportunities are created to study the possible effects on gender on Supreme Court decisions. Yet, researchers have not reached one consensus on how significant gender may be on decisions making. This is due, in part, to competing theoretical models. Researchers and theorists studying gender seem to fall within one of three different models on the effect of gender: the conventional or attitudinal model, the different voice model, or the gendered or representative voice model. This paper seeks to test the impact of gender on Supreme Court behavior. I utilize both qualitative and quantitative approaches and discover that gender does matter along with other factors. Simply put, at times, Justices O'Connor and Ginsberg behave in a manner different than their male counterparts controlling for ideology, gender, and case factors such as legal issues and case facts.

## **Existing Models of Judicial Behavior:**

Scholarship in political science posits two primary models of judicial decision-making, the legal and the attitudinal model. The legal model is a model of legal determinism

where the law drives judicial behavior. Under the legal model, judges play the role of mere facilitators or voices for what the law “is”. Applied to gender and decision-making, this model holds that judicial choice will not be affected by gender. Men and women will simply follow the law and nothing else. Years of scholarship in political science and the legal realism movement in legal scholarship, show that the legal model assumes too much about the authority of law and the willingness of judges and justices to follow it. The attitudinal model incorporates human nature into the decision-making process. It holds that judges and justices do not simply follow the law. Instead, they use their ideology to make decisions based on their political preferences. Justices and justices are either liberal or conservative and that ideology and little else drive their behavior. For the attitudinal model, if gender impacts ideology, then gender matters. That is, if gender matters it only matters, then it only matters because it has a common impact on the development of ideology in men and women. Given the limitations of these two general models, feminist and non-feminist scholars interested in gender and judging have developed other gender specific models to explain political and judicial choice. These models include the conventional, different voice and representative voice models.

The conventional model believes that gender has no effect on Court decisions. This model holds that male and female justices will behave the exact same ways and that either law or ideology motivates them. The ultimate conclusion is that men and women are not different when making judicial decisions. Thus, the conventional model is consistent with both the legal and attitudinal models. In their article “Making a Difference: Women in the Judiciary”, Elaine Martin and Barry Pyle write, “The most conservative, and perhaps the most common, conventional view is that women judges and men judges will come to essentially the same

conclusions in law” (Martin and Pyle 256). In this manner, the conventional model is consistent with the legal model. Judges are simply applying the law, which has one meaning, to the facts in front of them. Martin and Pyle write about this as well, saying “the conventional legal model is closely related to the traditional belief that law is objective and that judges merely find rather than make law” (Martin and Pyle 256). Barbara Palmer in her article “‘To Do Justly’: The Integration of Women into the American Judiciary” acknowledges that a lot of the research focused on the effects, or lack thereof, of women in the judiciary has focused on Sandra Day O’Connor, as she was the first woman to sit on the Supreme Court. Palmer writes “others have argued...there is very little evidence that Justice O’Connor speaks in [a] different voice” (Palmer 237). This conventional model of thinking, that men and women are the same, may not be entirely accurate. The attitudinal model helps to explain what we actually see in judicial decision making slightly more, since it acknowledges that there are times where men and women will make different decisions. But, these differences are not due to gender, and instead are caused by something else, most often explained by political ideology that might be influenced by gender. Martin and Pyle describe this way of thinking when they write, “this next generation of judicial decision-making scholarship...concentrated on the psychological and the purely political aspect of how judges acquired their judicial preferences through socialization and the influences of their personal backgrounds and characteristics. Objective studies of such features as the justices’ partisan affiliations, prior career patterns, and religion have shown them to be important variables in explaining judicial decision-making...Political views and attitudes replace the law as the primary factor in decision-making” (Martin and Pyle 257). These models assume that judges are either completely separate from any type of external influence (the conventional model),

or that the only way in which they can possibly be influenced is through their political ideology (the attitudinal model). This straightforward approach fails to recognize the complex systems at work within people that influence every decision they make. Other models present in the research on gender and judicial decisions making do a better job of acknowledging that things around them and the things that they have experienced impact everyone, judges included. All told, the conventional model merely assumes that men and women are the same. It's all about attitudes or the law.

The second model, the different voice theory, acknowledges that men and women have experienced life differently. Martin and Pyle use an example centered around Justice Ginsberg, the second woman to sit on the Supreme Court, to discuss how men and women experience life differently. They write "When U.S. Supreme Court Justice Ginsberg went to law school in the 1950's there were only nine women in her class more than five hundred. She recalls the Dean of Harvard Law holding a reception for those nine women, and then asking them one by one to explain what they were doing at the law school occupying a seat that could have been filled by a man" (Martin and Pyle 259). In their article "Women and Men Policymakers: Does the Judge's Gender Affect the Sentencing of Criminal Defendants?", Darrell Steffensmeier and Chris Hebert label these people who subscribe to the different voice model as "maximalists". They define this group as believing that "sexes are fundamentally different cognitively, emotionally, and behaviorally as a result of the interaction of biological, psychological, and experiential realities of being male or female" (Steffensmeier and Herbert 1165). The different voice theorists believe that men and women will behave differently regardless of the issue they approach because they are different people. They have experienced different things and see the world in different ways and this

difference goes beyond ideology. Susan B. Haire and Laura P. Moyer talk about this difference in their book Diversity Matters: Judicial Policy Making in the U.S. Court of Appeals. They write “[women’s] shared experiences with differential treatment in law school and their legal profession had a profound effect, for many, in shaping their perspectives on being a...judge” (Haire and Moyer 36). On this topic, Martin and Pyle say “It is important to understand that this different voice is defined as a *feminine* voice, not a *feminist* voice” (Martin and Pyle 258). This means that the different voice of women will persist across any issue in front of them, regardless of their ideology. They will always see things and think about things differently than their male counterparts with similar ideological perspectives. On the contributions female justices make to the Court, Martin and Pyle write, “One way in which...differences could emerge is with women judges providing a counterbalance to male-dominated perspectives. Feminist legal scholars contend that the law itself is male. That is, that the legal system, the legal language and style of legal reasoning used to support the law have historically been founded on the basis of the life experiences and values of privileged, educated white men. Furthermore, these are the same men who have administered and interpreted the law in its application to women” (Martin and Pyle 261). However, the final model disagrees with this assessment of how gender affects judicial decision-making.

Some researchers believe that there are certain issues or areas of the law around which women will speak up with a gendered voice different than that of their male colleagues, and they belong to the third model of thinking, the gendered-representative voice model. This may occur for many reasons. There may be certain issues around which women feel more comfortable speaking, or issues around which they have knowledge that is different from male judges. The female justices themselves have discussed this. Justice Ginsberg heard, in

her time on the Court, a case dealing with the experiences of a young girl. Savana Redding was a 13-year-old middle school student when she was accused of possessing pills in violation of the school's drug policy. When she denied that the pills were hers, the assistant principal ordered a strip search. Justice Ginsberg spoke about this case to the media. When discussing the male judges and their understanding of the case, she said "They have never been a 13-year-old girl. It's a very sensitive age for a girl. I don't think that my colleagues, some of them, quite understood" (Martin and Pyle 255). Or it may be that women feel obligated to stick up for other women and to represent them. Martin and Pyle discuss a plethora of research pointing to specific issues around which women and men behave differently. "More recent research studies suggest that there may be some gender effects as they relate to some specific issues and decision-making contexts. For example, Allen and Wall found that women on state supreme courts are more likely to than men to be the most pro-female members of their court on women's issues...McCall finds that women side with defendants in police brutality cases...An analysis of gay rights reveals that women are more supportive regardless of party and a variety of other control variables" (Martin and Pyle 260). Palmer also talks about this in her article, where she looks at the impact of increasing the number of women judges. She believes, based on other research, that it does in one particular area. She talks about this, saying "There is a general consensus that [women's] impact is greatest in one particular area of law: sex discrimination" (Palmer 237). It is that area of the law that was examined in this research to look for the possibility of that gendered-representative voice. Yet, this research also takes into account other factors, such as political ideology. Gender cannot be looked at in a vacuum and all possible explanations of different decision making between men and women must be examined.

The above description of the models can be used to create a series of expectations.

These are presented in the figure below.

Figure 1: Models and Expectations	
Legal Model	The type of law and the facts of the case are the only things that matter.
Attitudinal Model	Political ideology is the only thing that matters.
Conventional Model	The law may matter and ideology may matter, but gender does not matter.
Different Voice Model	Gender is the only thing that matters. Women will behave differently regardless of ideology.
Representative Voice Model	Gender, ideology, and case facts all matter because each variable will have a different impact in different types of cases.

**Beyond the Empirical Question:**

If men and women behave differently, then it is clear that female representation on the Court matters. If women have a different perspective that leads to different decisions, then those perspectives and decisions have a place on the Court. Diverse opinions and discussions are what lead to the best judicial and decisions and legal interpretations. But if men and women act the same way, female representation still matters. Even if there is absolutely no difference in the way genders behave and make judicial decisions, representation is still important. Women make up over half of the population and they deserve to have equal representation in all places of society, including the legal system. Individuals going before the Court should be able to see people that look like them on the bench in front of them, and

that includes women. Female representation is also important for the socialization of young girls. We can't expect young children and girls to become involved in the legal system if they never see themselves represented. Regardless of the outcome of research on the effects of gender on Court decisions, we should always be striving for more diverse and equal representation in the judiciary.

**Methodology:**

The results of this research will be able to tell us what factors matter in judicial decision-making and how much they matter. If it is found that only political ideology is statistically significant, then that means that decisions will be driven solely due to political ideology. Gender will not matter. If only gender is statistically significant, on the other hand, then gender matters in judicial decision-making and political ideology does not. However, it is possible that both gender and political ideology are statistically significant, that they both matter. If this is the case, it is possible that political ideology matters more, and has a greater impact, than does gender. And vice versa. It is my hypothesis that gender will matter in judicial decision making, but that it will not matter as much as a justice's political ideology. I expect whether a justice is conservative or liberal will drive their decisions more than their gender. But, consistent with representative voice, gender will matter with some issues heard by the Court, though not all.

I decided to focus my research on sex discrimination cases under the fourteenth amendment's equal protection clause. If there is going to be a difference in the way in which men and women undergo judicial decision-making, previous research tells us it is most likely to be found in these types of cases. I performed a general search on Westlaw for cases dealing with gender and discrimination. I then searched the case database Oyez for the same

thing. After I cross-examined these two lists I had over 90 cases dealing with gender discrimination. Because this research examines the behavior of women on the Court, who were not represented for most of the Court's history, I narrowed down the cases I would examine to those that occurred after 1971. That was the year the Court heard *Reed v. Reed*, 404 U.S. 71 (1971), a turning point for the Court that began their serious treatment of equal protection cases. In total I examined fifty-five Supreme Court cases and 492 individual justice votes. After I had a set of cases, I needed to get them in a format in which they could be analyzed by STATA, the analyses software that I used.

Coding was done under the guidance and with the assistance of Dr. Pyle. When coding, every aspect of a case is called a variable, and each variable is assigned a value. I coded two different types of data: court data and individual data. Court data included all information pertaining to a case on a court level. Once this data was collected, I broke it down by individual justice for the individual level data. The Court data set includes 56 cases and 33 variables with 1,848 individual data points. The individual level data includes 490 votes of the individual justices. This data set has 50 variables to create 24,500 data points for analysis.

Once data sets were created, I used STATA to create logit models and conditional effect probabilities. Martin and Pyle discuss logit models in their article "Gender, Race, and Partisanship on the Michigan Supreme Court". They write "Logit analysis is appropriate when the dependent variable is dichotomous" (Martin and Pyle 1226). In this data, the dichotomous dependent variable is the outcome of cases. They are coded as one of two things, and only one of two: For equality (1) or against it (0). Martin and Pyle continue, saying "the logit model calculates the maximum likelihood estimators (MLE) or coefficients

that indicate the direction and strength of the relationship between the dependent and an independent variable, controlling for the influence of other independent variables” (Martin and Pyle 2000). Coefficients, however, can only tell one so much, so you can use them to calculate conditional effect probabilities tell you how much of an increase in the probability of a decision for equality is there if a variable has a specific value.

### **Dependent and Independent Variables:**

I started with the Court level data. I read every Court opinion to determine the date the case was decided, the case name, its citation in the United States Reports, and the outcome of the case. Outcome was scored one if the Court decided in favor of the individual or group seeking the protection from sex discrimination. I also coded the legal doctrine used in the decision, the number of justices in the majority opinion, the dissents, and the concurrence. A majority opinion is when a justice writes the opinion of the Court, a concurrence is written when a justice agrees with the outcome of the case, but not the rationale, or wants to add something that is not in the majority opinion. A dissent is written by a justice who disagrees with the outcome of a case. Next I measured the total number of dissents and concurrences written, the number of women who heard the case, and the gender of the parties in the case. Next I turned to the case issues and facts. I assessed whether the case dealt with equal protection, due process, the military, family law, sexual harassment, retaliation, or was a statutory issue, and, finally, whether or not the government was one of the parties in the case.

I followed a similar strategy when building the second data set. Individual data includes all of the information pertaining to how the individual justices behaved. Cases were read to determine which way each justice voted, what doctrine each justice used, whether they wrote a majority, concurring, or dissenting opinion, and whether or not they joined in

another's majority, concurring, or dissenting opinion. I also made sure to include what the Martin-Quinn score was for each justice during the year the case decided. Martin-Quinn scores are a way to measure a justice's political ideology (Martin and Quinn 2002; Ho and Quinn 2008). Positive numbers mark a justice as being conservative, while a negative number identifies them as a liberal. The larger the positive number, the more conservative they are and the larger a negative number, the more liberal. These scores are calculated for each year a justice sits on the court, for political ideology is not a stable variable. Justices can, and do, change their political ideology over time. Figure 2 is an example of three cases partially coded for Court data and Figure 3 an example of coding partially done for individual data.

#### **A Note About the Scope of the Research:**

This research deals with two women who have sat on the Supreme Court: Justice Sandra Day O'Connor and Justice Ruth Bader Ginsberg. These are not the only two women who have ever sat on the Court. We now have Justices Elena Kagan and Sonia Sotomayor. However, the Court has not heard sex discrimination cases under the fourteenth amendment since these two women have arrived on the bench. In order to understand how gender may operate within Justice O'Connor and Justice Ginsberg, it is important to know a little bit about each of them. Sandra Day O'Connor was nominated to the Court in 1981 by President Ronald Regan. She was known as a more conservative justice, with her average Martin-Quinn score for the cases that I analyzed being 1.08, marking her as a more moderate conservative. Ruth Bader Ginsberg was nominated to the Court in 1993 by President Bill Clinton. She is still one of the more liberal justices on the court. Her average Martin-Quinn score for the cases I analyzed was -1.36, showing her as fairly liberal, yet not as liberal as

other justices who have sat on the Court. Reading opinions written by each of these women helped me to be able to understand them a little bit better. Walking through the types of cases they wrote on and what they were saying shows us what these women were thinking as they were going through judicial decision making.

### **Qualitative Court Opinion Analysis:**

One extremely well known case where the two women agreed was *US v. Virginia*, 518 U.S. 515 (1996). In this case, Justice Ginsberg wrote the majority opinion, which Justice O'Connor joined. The Virginia Military Institute was a single sex school for men only. Women brought suit claiming that the school was discriminating on the basis of sex in violation of the fourteenth amendment's equal protection clause. The Court of Appeals for the lower Fourth Circuit ordered Virginia to remedy a constitutional violation, which they attempted to do by proposing a parallel program for women, that is, a separate military school for women only. The Supreme Court held that a parallel program did not remedy the constitutional violation created by the gender discrimination. The admittance of only men was found to be in violation of the equal protection clause, because Virginia was unable to show an "exceedingly persuasive justification" for the discrimination. That "exceedingly persuasive justification" was the standard of review the Court applied, in *US v. Virginia*, to sex discrimination cases. A standard of review is a test the Court uses to determine if a constitutional violation has occurred. Standards of review typically fall into one of three categories" rational basis, where the discrimination need only be rationally related to some type of interest, strict scrutiny, which means there must be a compelling a compelling interest and the discrimination must be done by the least restrictive means possible, or intermediate scrutiny, which is a test between rational basis and strict scrutiny. The "exceedingly

persuasive justification” test applied in *US v. Virginia* is a form of intermediate scrutiny. Justice O’Connor joined Justice Ginsberg in this momentous decision.

Justice O’Connor and Justice Ginsberg do not always join together in all sex discrimination cases, however. One such example of this is *Gebser v. Lago Vista Independent School District*, 524 US 274 (1998). Here, Justice O’Connor wrote the majority opinion while Justice Ginsberg dissented. A high school student was engaged in a sexual relationship with her male teacher. When the two were discovered, the girl and her mother sued the school district for damages, claiming that they had violated Title IX. The Court held that damages could not be recovered unless a school district official who had the ability to institute corrective measures on behalf of the district had notice of the conduct and failed to act, which was not the case for Lago Vista Independent School District.

Just from an initial qualitative examination of Court opinions I was able to see the impact of gender on Court doctrines. In *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), an adult male was denied admittance to the Mississippi University for Women, who only admitted women into its School of Nursing. The man sued, claiming that Mississippi University for Women was violating the equal protection clause by discriminating against men. The Court held that such discrimination did in fact violate the equal protection clause, but they did something more. They kept the same “exceedingly persuasive justification” test they had previously used, but shifted the burden proof onto the proponent of the discrimination. That is, the state, organization, or body attempting to discriminate now had the burden to show that they had an exceedingly persuasive justification for discriminating. This shift may seem like a small thing, but it makes it harder for bodies attempting to discriminate to do so, because they now have a burden of proof they must meet

to allow their discrimination to stand. This case was decided in 1982, the year after Justice O'Connor came onto the Court. In fact, she wrote the majority opinion in *Mississippi University for Women v. Hogan*. It's quite possible that it was the presence of Justice O'Connor on the Court that created this shift in doctrine that made it more difficult for bodies to discriminate on the basis of gender. This finding would support both the different voice and representative voice models. It's clear that gender does matter somewhat, but it is unclear from simply a qualitative examination if it is the only thing that matters, or if there are other variables that are also in play.

Unfortunately, while qualitative analysis can tell us important information about a few cases, the results are in the end anecdotal. Each of the cases addressed above are important landmark decisions but there were 53 other cases. For that reason, I turned to a quantitative analysis.

#### **Statistical Analysis of Court Opinions:**

So even from an examination of Court opinions and their contents, we can see that there is a possibility of gender influencing Court decisions. Yet, we cannot say this for sure based solely on qualitative data, which is why I next turned to statistical analysis. Because I used two different data set types, I had two different types of statistical results: statistical Court data and statistical individual data. In analyzing this data, I coded the outcome of a case as either "for equality" or "against equality". An outcome of "for equality" means that some kind of discrimination was found and held to be unconstitutional. Oftentimes, this is a ruling for an individual. "Against equality" means that discrimination was upheld and allowed to continue.

One of the first things I looked at was whether there was an additive effect of gender on the Court. If there is just one woman on the Court, they may feel uncomfortable speaking up for women or may be influenced by the overwhelming majority of men on the Court. However, if there are multiple women, it may be that women feel more comfortable speaking up or more supported. In order to see if there was any validity to this hypothesis, I examined the outcomes of cases when compared to the number of women on the Court. What I found can be seen in Figure 4 (see Appendix 3). There is no difference in outcomes from simply one woman being on the Court. This could mean that gender does not have a large impact on Court decisions. However, when I looked at outcomes with two women on the Court, O'Connor and Ginsberg, I could see a change. There were more outcomes "for equality" when there are two women on the Court than when there are one or none at all. This helps to validate the idea that women are more comfortable speaking up when there are multiple of them on the Court, supporting the representative voice model. If gender was the only variable that mattered, such as the different voice theory proposes, I should have seen a difference in judicial decisions with just Justice O'Connor on the bench. However, this was not the case. When both Justice O'Connor and Justice Ginsberg sat on the Court, outcomes were more likely to expand individual liberties.

During my coding, I made sure to mark what type of issue a case was dealing with, making differentiations between equal protection cases, Title IX cases, and Title VII cases. Statutory cases are different than cases dealing with the equal protection clause because they do not deal with a constitutional question. The Court is not being asked to interpret the Constitution, merely to apply statutory law to a specific situation. When I separated out Title IX cases and examined outcomes by gender, which can be found in Figure 5 (see Appendix

4), I saw no differences between men and women. They make decisions “for equality” at the same rate as men. This would support the legal model, attitudinal model, or conventional model, as all consider gender to not matter in judicial decision-making and I couldn’t see any differences between the way men and women behaved. This is not true for Title VII, however. The breakdown of gender and outcomes for Title VII cases can be seen in Figure 6 (see Appendix 5). Male justices, when decided Title VII cases, actually make decisions “against equality” more often than they vote “for equality”. Women do not act the same way, however. They vote “for equality” a lot more than they vote against it. This is quite a large difference, supporting the representative voice model. It is clear that gender has an effect on judicial decision making, but so does case type, since the results for Title VII and Title IX cases were so different. One reason for this difference between Title VII and Title IX cases may be that title IX cases are typically much more controversial. These are often cases dealing with sexual harassment and very difficult topics. With Title IX, there is less consensus which may explain why justices, both male and female, are deciding for and against equality at about the same rate.

The final breakdown I did of Court level data before turning to individual decisions and Court outcomes was to look at decisions dealing solely with equal protection cases. This was one of the more interesting outcomes I saw, which can be seen in Figure 7 (see Appendix 6). Male justices act like they do in most other types of cases, ruling in favor of equality slightly more often than they rule against it. But this is the only issue in which women actually rule for and against equality at exactly the same rate, meaning that they rule for equality less often than men, once again supporting the representative voice model.

I also examined gender and Court outcomes, which can be seen in Figure 8 (see Appendix 7). I examined the gender of the justices and the outcome of their decisions. This where we can begin to see a real difference when we break down decisions by gender. Male justices have outcomes “for equality” slightly more often than they have outcomes “against equality”. Yet, female justices have outcomes “for equality” far more often than they have outcomes “against equality”. While the statistical court data can tell us there is a difference between the way men and women act, and while it may generally support the representative voice model, what it can’t tell us is whether or not those differences are actually caused by gender. To examine that, I turned to individual data.

Because what I was dealing with was a dichotomous dependent variable, either an outcome for or against equality (a 1 or a 0), I was able to use a logit model to predict the log likelihood of either a zero or a one. The logit model, thus, is able to predict the outcome of the case, that is, whether or not the outcome will be for or against equality. In order to understand the results of the logit model, one does not necessarily need to understand the math behind it. The logit model calculates maximum likelihood estimators (MLE’s) that tell us the direction and magnitude of the relationship between two variables, the dependent and independent, controlling for other independent variables. The logit model can be seen in Figure 9 (see Appendix 8). At the bottom of the table is the chi-square with a value of 124.74. This number tells us that the model as a whole is statistically significant. Above the chi-square is the rate of correct categorization, which is 72.4%. This means that the logit model was able to correctly predict the outcome of 72.4% of the cases analyzed. That is a very good rate of categorization. Directly below that number is the reduction of error, at 32.4%. In order to understand this percentage, we also need to discuss the mean of the

dependent variable, which is .59, or 59%. From simply looking at the data set, we know that there are more outcomes for equality than against it, that is more 1's than 0's. If we were to always choose 1 as the outcome of the case, because we know there are more of those, we could be right 59% of the time. The logit model, however, has reduced that error by 32.4% making it much more accurate.

A logit model also provides coefficients, marked on the table, and described earlier, as maximum likelihood estimators. These can be difficult to interpret, but two things they can tell us is the direction and the magnitude of the effect a certain variable will have on the outcome of a case. If a MLE is negative, there is a decreased likelihood of a one for an outcome. If it positive, there is an increased likelihood. Two of these coefficients, Martin-Quinn scores and gender of the justice, are highlighted on the table. Because I am looking at if gender matters for Supreme Court decisions, controlling for ideology, I focused on these two variables as these are two measures in the model that directly deal with the issues of gender and ideology. As can be seen in the table, I have also controlled for other legal and case issues. The logit model doesn't only look at two variables, like gender and outcome, it controls for all the variables listed in the table. This gives me a much more complex and accurate understanding of what variables really do have an effect and how much of an effect they have and allows me to judge the effect a variable has on an outcome when controlling for other variables. All the variables on the table are statistically significant under the accepted standard error rate of .05, except for presence of women on the Court. That means that each of the coefficients for the variables is considered accurate and statistically significant.

You need to examine what the actual coefficients are for Martin-Quinn scores and justice gender and in order to know what they mean. The Martin-Quinn MLE is negative,

which means that as a Martin-Quinn score increases and becomes more conservative, meaning the justice is more conservative, there is a decreasing likelihood of a 1. This may be what you would expect. As a justice becomes more conservative they are less likely to vote for equality. This relationship also works the other way. That is, as a justice becomes more liberal and their Martin-Quinn score decreases, there is an increasing likelihood that their outcome will be a 1 and that they will vote for equality. The number for gender of the justice is not negative, however, it is positive. As the value of the gender variable becomes more positive, a 1, there is an increasing likelihood that the outcome will also be positive, a 1. So if a justice is a woman, there is an increased likelihood their outcome will be a 1, for equality. This tells us that gender does matter and does affect the way in which justices make decisions, even when controlling for ideology. This logit model and its coefficients does not only tell us the direction of the effect, but also the magnitude of that effect, or the strength of the independent variable's ability to impact the likelihood of the dependent variable, in this research, the outcome of the case. For the magnitude, the positivity or negativity of the coefficient does not matter, but the number itself does. The coefficient for Martin-Quinn scores is .47, and the coefficient for gender, if we remove the negative sign, is 1.35. This tells me that gender has a larger effect on outcome, because the coefficient for gender is larger than that of the coefficient for Martin-Quinn scores. This is a very interesting finding that continues to support the representative voice model that gender and other factors all matter. When we control for gender, ideology, and other factors, we discover that gender is actually more important to the outcome of the case than the ideology of the justice. So while both ideology and gender matter, which we can see from the coefficients and the fact that they are statistically significant, gender matters more.

Because these coefficients are so difficult to interpret substantively, I calculated a series of conditional effect probabilities. These tell us how much of an increase in the probability of a decision for equality is there if a variable has a specific value. For example, if the variable of gender has a value of 1, that is if a justice is female, the conditional effect probabilities can tell us how much of an increase in the probability of a decision for equality there will be. The conditional effect probabilities hold all other variables constant at their means, which means that these other variables are being controlled for. In order to calculate these conditional effect probabilities, you plug the coefficients from the logit model into the logit equation and run with the values of the variables and run a series of calculations that allow you to eventually get the conditional effect probabilities. I focused on the top two conditional effect probabilities found on Figure 10 (see Appendix 9), which have been highlighted. These are the two that deal most directly with gender effects, controlling for ideology and other factors.

The first conditional effect probability on the table is Martin-Quinn scores. I used the average Martin-Quinn scores of each of the two female justices for this analysis. These scores are relatively moderate liberal and moderate conservative scores, for Justice Ginsberg and Justice O'Connor respectively. It can be seen from the table that based on her Martin-Quinn Score, Justice Ginsberg has a 77.5% likelihood of voting for equality, when controlling for other factors. With her Martin-Quinn score, Justice O'Connor only has a 52.0% likelihood of voting for equality. But what is really interesting are the results for the likelihood of equality votes for different genders, which is the next highlighted portion of the table. If the variable of gender has a value of 1, so if a person is a female, they have an increased likelihood of voting for equality of 78.0%. This is a larger percentage than even

that based on political ideology that the Martin-Quinn scores show. If a justice is male, the gender variable has a value of 0, they only have a 47.9% likelihood of voting for equality, and are actually more likely to vote against it. This means that not only does gender have an effect on the outcome of individual justice votes without being only the factor to matter, as in the representative voice model, but it has a rather substantial effect.

It is clear from the statistical research that the gender of the justice does matter when they are casting their individual vote. That is not to say, however, that gender is the only variable that matters. The justices are complex people with many different intersecting identities. They may be influenced by gender sometimes, political ideology other times, and some other factor a third time. I cannot say for certain that an outcome was based solely on gender; we simply don't have the ability to support that claim with valid research. However, we can see that when compared with other factors, gender seems to matter more and to have a larger impact on justices' decision making than even political ideology has.

### **Potential Concerns:**

There are some potential problems with this research. First, is the number of women examined. Unfortunately, due to the types of cases I analyzed and the lack of female representation on the Court for hundreds of years, I was only able to study two female justices. It would certainly be worthwhile to revisit this research when more women sit on the Supreme Court. There is also a lack of other potential influencing factors being represented. It is impossible to examine the effects of race when there is only one nonwhite justice (Justice Thomas) represented in my data set. There are other potential influencing factors, such as personal background, education, etc, that are not noted in this data. These factors would not, on their own, discredit the finding that gender has an effect on decisions, but they could be

additional factors that influence judicial decision making. The final issue I have identified with this data analysis is the concept of coding outcomes as being “for equality” or “against equality”. Having read all 55 cases represented in the data set, I know just how complex these legal issues are. A vote upholding discrimination, or a vote against it, cannot be so easily coded as being “for” or “against equality”. When doing dichotomous coding, it is necessary to break categories such as outcome down into 1’s and 0’s and there is something about the nuances and complexities of Court opinions that gets lost in this representation of outcomes. Martin and Pyle address this in their article *Making a Difference: Women in the Judiciary*. They write “By using a dichotomous dependent variable, these studies force judicial decision making into an unrealistic liberal/conservative, plaintiff/defendant, or women/men choice” (Martin and Pyle 260).

### **Final Results and Recommendations:**

This research has confirmed that gender does have an impact on judicial decisions making and that the representative voice model best captures the way in which judges undergo judicial decision-making. The genders of the justices sitting on the Supreme Court matters and has an effect on the decision of the Court. In fact, the gender of the justices matters more than any other factor we controlled for, including political ideology. This means that my hypothesis was correct in part and incorrect. Gender matters, which is what I initially hypothesized. In fact, it actually matters more than political ideology. My hypothesis was that ideology, not gender, would matter more.

Moving forward, I believe this research should be revisited and continued. Other legal topics should be studied. While this research can tell us that gender matters for decisions dealing with sex discrimination and the equal protection clause, it cannot speak to other

issues. In order to confirm either of the different voice or gendered-representative voice theories, non-gendered legal topics should undergo this same research. Understanding how gender impacts judicial decision making is a difficult thing. Judges are people and they think in complex ways. However, this research needs to be continued so we can have a better understand of how judicial decision making occurs.

Currently, there are only three women who sit on the Supreme Court. They are expected to represent half of the population while only making up a third of the Court. These women have experienced life differently than the male judges that sit next to them. They understand the struggles and challenges that women face and this allows them to see the law differently, at least around issues dealing with gender and discrimination. We may never be able to know exactly why justices make the decisions that they make. But research like this can bring us a little bit closer.

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## Appendix I

Figure 2:

Date	Case Name	Cite	Outcome	Num. Justice Majority	Num. Justice Concur	Num. Justice Dissent
June 27, 1983	Lehr v. Robertson	81-1756	0	6	0	3
June 20, 1983	Newport Shipbuilding v. EEOC	82-411	1	7	0	2
June 25, 1981	Rostker v. Goldberg	80-251	0	6	0	3

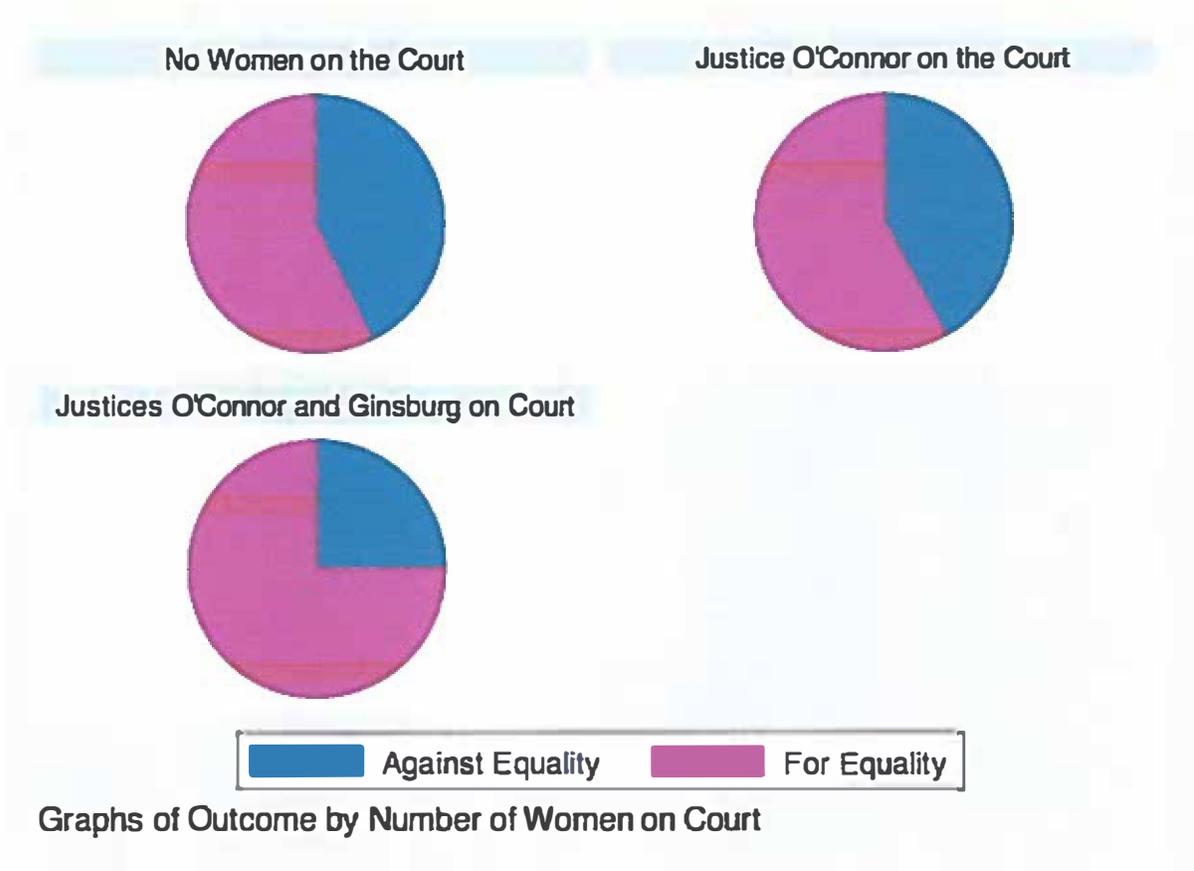
## Appendix II

Figure 3:

Case Name	Justice Name	MQ Justice	Justice Outcome	Justice Doctrine	Justice Join D	Justice Join C	Justice Join M
Geduldig v. Aiello	Burger	2.183	0	3	0	0	0
Geduldig v. Aiello	Douglas	-6.619	1	1	1	0	0
Geduldig v. Aiello	Brennan	-2.034	1	1	0	0	0
Geduldig v. Aiello	Stewart	0.421	0	3	0	0	0
Geduldig v. Aiello	White	0.61	0	3	0	0	0
Geduldig v. Aiello	Marshall	-1.533	1	1	1	0	0
Geduldig v. Aiello	Blackmun	1.058	0	3	0	0	0
Geduldig v. Aiello	Powell	1.146	0	3	0	0	0
Geduldig v. Aiello	Rehnquist	4.305	0	3	0	0	0

Appendix III

Figure 4:



Appendix IV

Figure 5:



Graphs Gender , Outcome and Title IX

Appendix V

Figure 6:



Graphs by Outcome and Gender in Title VII Cases

Appendix VI

Figure 7:



Graphs by Justice Gender, Outcome and Equal Protection Clause

Appendix VII

Figure 8:



Graphs Outcomes and Gender

Appendix VIII

Figure 9:

<b>Table 1: Multivariate Logit Model of Gender and Preferences Controlling for Legal and Court Factors (1=For Equality, 0=Against Equality)</b>	<b>Maximum Likelihood Estimator (M.L.E.)</b>	<b>Standard Error (S.E.)</b>
<b>Independent Variables</b>		
<b>Martin and Quinn Scores</b>	-0.47***	0.06
<b>Gender of Justice</b>	1.35***	0.50
<b>Gender of Individual Party</b>	-0.47*	0.26
<b>Title VII Case</b>	1.84***	0.36
<b>Title IX Case</b>	1.03**	0.43
<b>Equal Protection Case</b>	0.77**	0.43
<b>A Woman on US Supreme Court</b>	-0.21	0.32
<b>Constant</b>	-0.18	0.32
<b>Categorized Correctly =</b>	72.4%	
<b>Reduction of Error=</b>	32.4%	
<b>2 x LLR =</b>	-253.43	
<b>Chi-square=</b>	124.74***	
<b>Observations =</b>	469	
<b>Mean of Dep. Variable =</b>	0.59	

Appendix IX

Figure 10:

<p><b>Table 2: Conditional Effects Holding other Variables Constant at Their Means</b></p> <p><b>Independent Variables</b></p>	<p><b>Variable Value = Predicted Probability of Supporting Sex Based Equality</b></p>
<p><b>Martin and Quinn Scores Justice Ginsburg and Justice O'Connor</b></p>	<p>-1.36 = 77.5% +1.08 = 52.0%</p>
<p><b>Gender of Justice 1=Female &amp; 0=Male</b></p>	<p>1 = 78.0% 0 = 47.9%</p>
<p><b>Gender of Individual Party 1=Female &amp; 0=Male</b></p>	<p>1 = 44.8% 0 = 56.5%</p>
<p><b>Title VII Case 1=Yes &amp; 0=No</b></p>	<p>1 = 78.3% 0 = 36.4%</p>
<p><b>Title IX Case 1=Yes &amp; 0=No</b></p>	<p>1 = 71.6% 0 = 47.6%</p>
<p><b>Equal Protection Case 1=Yes &amp; 0=No</b></p>	<p>1 = 60.1% 0 = 41.8%</p>
<p><b>A Woman on US Supreme Court 1=Yes &amp; 0=No</b></p>	<p>1 = 48.2% 0 = 53.6%</p>