

Race, gender and age affect who writes majority opinions for state supreme courts

March 13 2019, by Todd Hollingshead



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A new study provides evidence that the gender, age and race of state supreme court justices may influence whether they are asked to write the majority opinion in a case.

The analysis of three years' worth of cases from the fourteen states where the opinion assignment is discretionary, just like the United States Supreme Court, (rather than being assigned randomly or on a rotation) found the following:

- Female justices are more likely to be assigned to write an opinion in general, but they are less likely to be selected to write the opinion if a case is considered complex.
- Female justices are more likely to be selected to write the [majority opinion](#) if the case raises a "women's issue," such as [sexual harassment](#) or discrimination cases.
- Both female and black justices are less likely to be selected to write the majority opinion as they get older while their non-minority male peers are selected for this task at higher rates with advancing age.

"Majority opinion authors have significant power to shape law and policy," said coauthor Robert K. Christensen, associate professor of public service and ethics at Brigham Young University. "They become the voice of the [court](#). We feel that society needs to understand which voices are chosen from a variety of perspectives, including demographic representation."

Specific to the age finding, researchers also found female justices between 40 and 60 are less likely to be given the majority opinion assignment with each additional year in age relative to their male peers. Meanwhile, black justices become significantly less likely to receive the majority opinion assignment with each year in age starting in their mid-sixties.

The researchers acknowledge that research on gender, age and race effects in state supreme courts needs to continue on a broader and more recent time frame, especially given only 6.5 percent of the judges in the

data set were black (compared to 15 percent who were female). Until recently, the judiciary has generally become more diverse. This study serves as an important baseline to compare how diversity matters in our courts. In related research, the coauthors also found that some of these same demographic characteristics influence the prevalence of dissenting opinions.

BYU Law professor Michalyn Steele, who was not associated with the study but teaches courses on [civil rights](#) and Federal Indian Law, said wherever there is discretion in the justice system there is a potential vulnerability to bias—whether conscious or unconscious.

"This important study shines a light on the previously obscure machinations of discretionary judicial [opinion](#) assignments and suggests that, indeed, there may be some implicit biases infecting those assignments," Steele said. "Gathering and illuminating this data is an important first step toward increased transparency to counteract the potential inherent bias in these cases."

More information: Erin B. Kaheny et al, Status characteristics and their intersectionality: majority opinion assignment in state supreme courts, *Politics, Groups, and Identities* (2019). [DOI: 10.1080/21565503.2019.1569538](#)

Provided by Brigham Young University

Citation: Race, gender and age affect who writes majority opinions for state supreme courts (2019, March 13) retrieved 26 June 2024 from <https://phys.org/news/2019-03-gender-age-affect-majority-opinions.html>

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