Personal Motives and Supreme Court Agenda Setting*

Ryan C. Black
Associate Professor
Department of Political Science
Michigan State University
rcblack@msu.edu

Ryan J. Owens
Lyons Family Faculty Scholar & Professor
Department of Political Science
University of Wisconsin
rjowens@wisc.edu

Justin Wedeking
Associate Professor
Department of Political Science
University of Kentucky
justin.wedeking@uky.edu

Patrick C. Wohlfarth
Assistant Professor
Department of Government and Politics
University of Maryland, College Park
patrickw@umd.edu

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Abstract

We examine how Supreme Court justices' personalities influence their behavior. Borrowing from psychological scholarship on political leaders, we analyze how three personal motives—the need for affiliation, power, and achievement—influence justices' behavior. We develop our argument in the context of Supreme Court agenda setting. After content analyzing more than 450 texts for the personal motives of 13 justices, we find that the affiliation, power, and achievement motives influence how justices set the Court's agenda. Justices who desire affiliation are more likely to cast Join-3 votes. Justices who desire power are more likely to grant review strategically. And, justices who score lower on the achievement motive are more likely to rely on legal cues. Importantly, we retrieve these results even while accounting for standard explanations of agenda setting. These findings suggest scholars should look further into how personality influences justices.

Are policy goals the only goals Supreme Court justices seek? The answer, at least according to most judicial politics studies for the last few decades, is yes. We question that view and argue, instead, that personality serves as an additional feature that explains judicial behavior. Taking our cue from Baum (2006, 2010) and others (Epstein and Knight 2013; Posner 2008), we believe justices are motivated by more than policy alone. Supreme Court justices are human beings. Humans have personal motives that drive them throughout their lives. Personal motives operate on justices, affecting their views of the judicial role, how they perceive cases, and how they vote. Put plainly, the same personal motivations that influence all humans also influence justices and manifest themselves in justices' voting behavior.

We examine three primary human motives—the need for affiliation, power, and achievement (Winter 2005)—and whether those motives influence the behavior of Supreme Court justices. Specifically, in this paper, we examine whether these three motives influence justices' agenda-setting behavior and thus can help explain how justices set the Court's agenda. And, we examine this dynamic while simultaneously accounting for the standard factors that scholars have shown to influence agenda-setting votes.

Our results show that the affiliation, power, and achievement motives influence how justices set the Court's agenda, independent of previous explanations for their certiorari votes. Justices who score high on the need for affiliation—that is, justices whose personalities lead them to try to establish and maintain collegiality—are significantly more likely to cast Join-3 votes. (As we explain below, Join-3 votes are tentative votes to grant cert.) Next, we find that justices who score high on the need for power—that is, those who want to influence others—are more likely to grant cert strategically (i.e., engage in forward-looking behavior) than justices who score lower on the need for power. Lastly, we discover that justices with a greater need for achievement—those who are highly concerned with excellence and have a tendency to only take moderate risks—are less likely to vote to grant cert when a petition is accompanied by weak legal cues. Conversely, justices who score low on the achievement

motive are much more likely to rely on such cues to help them determine whether to grant review.

These findings are important for at least three reasons. First, they begin to chart a new path toward an alternative conceptualization of judicial behavior, one that incorporates justices' personalities. Indeed, that we retrieve the results we do *while accounting for standard agenda setting explanations* suggests that personality motives independently influence justices. Scholars, therefore, ought to incorporate these or similar measures to understand judicial behavior more fully. Second, the findings provide a fuller understanding of agenda setting. Justice Blackmun, for example, voted to Join-3 a substantial amount of time. Our results suggest he did so, at least in part, because of his personal need for affiliation. Prior research would have attributed his behavior largely to either his policy preferences or legal factors. Third, these results offer insight on what would happen if the Court were composed of justices with similar personalities. Imagine a Court composed entirely of affiliation-minded justices. This composition might lead to a Court with a larger docket. Alternatively, a Court composed of power-motivated justices might become hyper-strategic. As presidents and senators consider what kinds of justices to put on the Supreme Court, they might, therefore, consider examining their personalities.

In what follows, we provide a brief overview of the predominant views scholars hold about Supreme Court behavior. We then discuss personality scholarship, with an emphasis on the role of personal motives. We next theorize how these various motives might influence different behaviors in the agenda setting process. We then explain our data and measures, and provide our results. We conclude with a discussion of what these results mean more broadly for our understanding of judicial behavior.

Contemporary Understanding of Judicial Behavior

Supreme Court justices have considerable freedom to decide cases as they wish. The U.S. Constitution provides that justices "shall hold their offices during good behavior," which

has come to mean that they can be removed only for serious violations that rise above mere political or ideological squabbles (Whittington 1999). Justices also enjoy salary protection; congress cannot reduce their salaries while in office. The American public has a much more favorable view toward the Supreme Court than they do toward congress and the president, a feature that allows justices, when necessary, to rule against the majority. And, of course, justices largely choose which cases the Court will decide each year. Taken together, these features allow justices broad freedom to decide cases as they wish.

Most scholarship asserts that justices use their institutional powers to effectuate their policy goals. As Segal and Spaeth (2002) put it, the "Supreme Court decides disputes in light of the facts of the case vis-à-vis the ideological attitudes and values of the justices" (89). Even scholars who advocate a strategic conception of judicial behavior (i.e, that justices decide cases in an interdependent environment where their decisions are calculated toward what they can successfully achieve) focus primarily on policy-seeking behavior. After all, numerous empirical studies have supported the primacy of justices' policy goals (Pritchett 1941; Segal and Cover 1989; Segal and Spaeth 1993, 1996, 2002; Spaeth 1964). Indeed, if there is one belief that has received near universal support among judicial politics scholars over the last few decades, it is that justices pursue policy to the near exclusion of everything else.

Yet, there is reason to question whether policy goals are the exclusive—or perhaps even primary—judicial goals. For years, Baum (1997) has claimed that judicial politics scholars should examine a diversity of theories: "[t]he strong basis for accepting the dominance of legal and policy goals in the Court has deterred scholars from considering directly the impact of other motivations on the justices. Despite all the research that has been done on Supreme Court behavior, this is one set of issues that is understudied and that merits more

concerted research" (56).[1] We agree. We believe justices have other inherent, fundamental motives in addition to policy and legal goals.

There is considerable evidence to suggest that judges and justices seek goals other than policy. Among lower court judges, recent scholarship has shown that judges are motivated by promotion (Black and Owens 2016), collegiality (Epstein, Landes and Posner 2013), and prestige (Corley, Collins and Calvin 2011; Klein and Morrisroe 1999). Supreme Court justices also seem to be motivated by other things. Justices, whether to sustain judicial legitimacy or maximize faithful compliance by elected officials, regularly make decisions and write opinions to protect institutional support (e.g., Black et al. 2016, Forthcoming; Casillas, Enns and Wohlfarth 2011; McGuire and Stimson 2004; Murphy 1964).

Among the Court's agenda-setting practices, different justices have evinced very different behavior as well—perhaps, as we suspect, because of their different personalities. Consider the decision to cast a Join-3 vote, something we examine more fully below. Justice Blackmun was much more likely than other justices to cast Join-3 votes (O'Brien 1997*a*). Other justices, like Souter and O'Connor, also cast a number of Join-3 votes. All three of these justices, of course were known to vacillate, and disliked personal conflict. In contrast, from a legal viewpoint, the role of conflict in the lower courts was something that motivated Justice White more than any other justice (Owens 2010). Surely, White did not value policy any more than his colleagues. So why was resolving conflict so much more important to him than his colleagues? Perhaps his personality—that is, his personal motives—pushed him in that direction.

[1]What is more, even among scholarship that assumes the primacy of policy goals, there is little understanding of how justices formulate those goals. Indeed, until recently, scholars were not even sure whether (and why) preferences changed over time (see, e.g., Epstein, Martin, Quinn and Segal 2007; Owens and Wedeking 2012; Ulmer 1973).

Personal Motives and Judicial Behavior

Before we discuss how justices' personal motives influence them, we must first define what exactly we mean by motives. A motive is a reason for doing something, which may be unobserved, hidden, or subconscious. Motives are the parts of an individual's personality that are concerned with achieving goals and goal-directed actions. Importantly, in this conceptualization, goals are the end-state, or objects, that one desires or is trying to achieve. In particular, we are concerned with the three main personality motives—the affiliation motive (need for affiliation), the power motive (need for power), and the achievement motive (need for achievement) (Winter 2005).

The Affiliation Motive. This motive touches on how interested an individual is to maintain friendly relations with others or among groups. The need for affiliation drives individuals to be cooperative and friendly, focusing on establishing, maintaining, or restoring friendly relations (Winter 2002). That is, people who are affiliation-minded are driven to establish and maintain collegiality. They are more likely to visit friends, to conform, to be empathetic, and to be passive (unless they are put on the defensive). They are less likely to disagree with their colleagues publicly. Individuals who score highest on the need for affiliation are not primarily concerned about personal prestige but, rather, want to ensure harmony where they live and work.

The Power Motive. People motivated to acquire power want to influence other people and the world at large (Winter 2007). Unlike those who value achievement, they are quite interested in prestige and recognition. More specifically, they want to elicit strong emotional reactions in someone else, and they want to argue, persuade, convince, make or prove a point. To accomplish this, they are aggressive and often engage in risky behavior. They tend to be good at working in politics; they form and break coalitions when it suits them.

The Achievement Motive. The need for achievement is a need for excellence. People who are driven by achievement are highly concerned with the quality of performance and

"success in competition, or unique and unprecedented accomplishments" (Winter 2002, 27). They take moderate risks, accept and rely on feedback from others, and tend to value the work of technical experts (as opposed to those who seek power, who value political experts). Individuals motivated by achievement are not interested in things like prestige or recognition. Rather, they are interested in getting the job done—and getting it done correctly. As a consequence, they work hard (and often silently) for their group. Not surprisingly, they tend to cooperate with others and take moderate risks and use information to evaluate and modify their performance.

We believe these three motives, which influence all humans, also motivate justices in their work at the Supreme Court. For our purposes here, we believe these motives will influence how justices set the Court's agenda.

As far as we can tell, only one study (Aliotta 1988) has empirically examined how personal motives influence Supreme Court Justices—and no one has examined how motives influence their behavior at the agenda setting stage.[2] Aliotta (1988) finds that justices who score high on the need for achievement are less likely to author majority opinions, less likely to concur or dissent, but are more likely to author a separate (i.e., concurring or dissenting) opinion than justices who scored low on the need for achievement. Since these justices are more concerned with getting things right with a high standard of excellence than getting attention, they have little need to put themselves into a position to write an opinion. And, again, since high achieving justices have little interest in prestige or arguing to prove a point, they tend to dissent less. But, when they do concur or dissent they are much more likely to author a separate opinion to explain why.

Justices who score high on the need for power are more likely to write majority opinions. These justices put themselves in a position to write the opinion, perhaps because

[2]To be sure, various scholars, Baum in particular, have made calls to focus more attention on motives and aspects of the judicial personality, but little empirical progress has been made thus far.

they value power so much. And they choose not to write separate opinions because publicly splitting with the majority means they have lost, something they do not want to admit (Aliotta 1988). Justices who score high on the need for affiliation are less likely to write separate opinions. Again, these individuals value collegiality, and authoring such opinion imposes considerable costs on relationships and collegiality with their colleagues (Aliotta 1988). Aliotta's (1988) findings, though limited and dated, suggest that justices who are driven by a particular motive orientation will behave differently than other justices with other motive orderings.

A Theory of Personal Motives and Supreme Court Agenda Setting

We believe a justice's personal motives can influence his or her agenda-setting behavior. We focus on three particular theoretical connections and empirical implications. We begin by theorizing how the affiliation motive influences justices' propensity to cast Join-3 votes at the agenda stage. We then argue how the power motive influences justices to behave in a forward-looking way when they set the agenda. Lastly, we explain how the achievement motive influences justices to rely (or not rely) on legal cues at the agenda stage.

Affiliation and Join-3 Votes

Under normal circumstances, the Rule of Four requires at least four votes to bring about review (Leiman 1957). Three Grant votes plus a Join-3, however, will occasion such review. While the precise origins of the Join-3 vote are unknown—the best guess is that they originated during Chief Justice Burger's leadership of the Court (O'Brien 1997*a*, 788-789)—they became firmly established by the mid-1970s. For example, after mining the archival records of Justice Thurgood Marshall, O'Brien (1997*a*) found that justices cast Join-3 votes in over 25 percent of all cases granted plenary review during the 1979-1990 terms. O'Brien

(1997*a*, 798) also found that nearly 12 percent of the cases granted review made the docket as a direct result of a Join-3 vote.

Despite the frequency with which justices cast Join-3 votes—as well as their potential to alter legal doctrine and the Rule of Four—empirical scholarship often glosses over them.[3] To the extent that studies account for Join-3 votes at all, they treat them as votes to grant cert. For example, in their analysis of Supreme Court agenda-setting, Cordray and Cordray (2008, 18) note: "We treated all 'Join-3' votes as votes to grant because they function as such." In an earlier work, the same authors state: "...a Join-3 vote functions in the same manner as a vote to grant review. When a justice votes to grant certiorari (or to note probable jurisdiction over an appeal), this vote is precisely a statement of willingness to join at least three colleagues in setting the case for full review" (Cordray and Cordray 2001, 781). These authors are not alone in pooling Join-3 votes together with those explicitly granting cert. One of the most widely used public data sources—the Expanded Burger Court Database—does the same (Spaeth 2001).

Generally, what little is known about the Join-3 vote comes from the justices themselves.[4] In his seminal book on agenda-setting, Perry (1991) interviewed five sitting justices on a host of topics—including their views and use of Join-3 votes. From these interviews, collegiality emerged as a motivator of Join-3 votes. Indeed, one justice has made clear that Join-3 votes might be the result of a desire to be collegial.

> I'll sometimes say that I join three. It is often on a case that I feel perhaps should be granted cert., but it's also a case where I almost feel like why waste the time. We have so many other important things to do. But if someone else feels more strongly about it, I sometimes will join three (Perry 1991, 167-168).[5]

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[3]O'Brien (1997*a*) is the only published study to examine them specifically.

[4]But see, O'Brien (1997*a*,*b*).

[5]Even though this quote suggests that justices are likely to Join-3 only when three of their colleagues have voted to Grant review, that relationship is not dispositive. Justices

Given the collegial nature of the Join-3 vote, we believe that justices who score high on the need for affiliation will be more likely to cast a Join-3 vote than justices who score low on it. The affiliation motive, after all, leads people to seek collegial relations with others. People who score high on the need for affiliation seek harmony. We therefore suspect that justices who score high on the need for affiliation will cast more collegial votes in the form of Join-3 votes.

Power and Strategic Voting

While justices have suggested that subjective factors largely drive agenda-setting—after 16 years of service, Justice Brennan labeled it as "inherently subjective" (Brennan 1973, 481)[6]—over 40 years of social scientific studies have established a number of factors that strongly predict whether the Court is likely to grant review to a case (see, e.g., Tanenhaus, Schick and Rosen 1963; Ulmer, Hintz and Kirklosky 1972; Brenner 1979; Songer 1979; Caldeira and Wright 1988; Caldeira, Wright and Zorn 1999; Black and Owens 2009). These predictors can be collapsed into a handful of broad theoretical categories. We focus here on one such category—the role of policy considerations.

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can cast a Join-3 vote at any time in the voting queue, whether they are the first to vote or the last to vote. In other words, the decision to cast the Join-3 vote is not conditional on three justices already having voted. Only the *effect* of a Join-3 is conditional. Indeed, if the Join-3 was directed at a particular colleague, we would expect it to be most commonly used after the petition had amassed three votes to Grant, which obviously requires that at least three justices have already voted. In examining the data, however, we find that 14 percent of all Join-3 votes are cast by the *first* justice to vote in the queue. Including the second and third justices in the queue raises this percentage to nearly 40 percent, which suggests that justices frequently decide to cast Join-3 votes *before* their colleagues voice their votes.

[6]Chief Justice Rehnquist called it "rather subjective [...] made up in part of intuition and in part of legal judgment" (Rehnquist 2001, 234).

Policy considerations clearly affect the agenda-setting process. Justices select cases, at least in part, to shape the direction of national legal policy. Choosing the wrong case could have severe negative consequences for a justice's conception of what the law should look like. Evidence from the Court's internal documents suggests that justices and their clerks are well aware of such considerations. In the markup to one pool memo, a Blackmun clerk told the justice: "I am reluctant to recommend granting here because I am uncertain about what the Court as presently constituted would do with this question" (Cert Pool Memo in no. 90-918, 9).

Support for the claim that policy considerations motivate agenda-setting comes from more than anecdotes, however. A host of empirical scholarship has found ample evidence for the systematic role played by policy considerations at the agenda-setting stage. Songer (1979) finds that justices use policy cues to decide which cases to review. Palmer (1982), likewise, finds justices are both reverse-minded and strategic when they set the Court's agenda. Others have argued that affirm-minded justices strategically anticipate the Court's likely merits ruling and vote with that outcome in mind (Benesh, Brenner and Spaeth 2002; Boucher and Segal 1995; Brenner 1979). Of the studies finding that policy considerations influence justices' agenda votes, Caldeira, Wright and Zorn (1999) is perhaps the most sophisticated. The authors find that justices are more likely to vote to grant cert as they increasingly favor the merits outcome and are more likely to deny review as they dislike that policy. That is, the more (less) ideologically proximate a justice is to the Court majority, the more (less) likely she is to grant review (Caldeira, Wright and Zorn 1999).

Perhaps more relevant for our purposes are the findings of Black and Owens (2009). They find that justices are more likely to vote to grant review when they are closer to the expected outcome on the merits than they are to the status quo. On the other hand, justices are more likely to vote to deny review when they are closer to the status quo than to the expected outcome on the merits. Figure 1 illustrates this spatial dynamic. The position of SQ reflects the status quo policy in the space. It is the policy that exists—at least in

the lower court(s)—if the Court does not review the case. The location of θ represents the expected outcome on the merits. This is the policy the Court will make if it hears the case on the merits. Finally, τ represents the cutpoint between the status quo and the expected outcome on the merits. For justices motivated by policy gains, those who are located at, or to the left, of τ in this example should vote to deny review because they prefer the status quo to what the Court will deliver. On the other hand, those to the right of τ will vote to grant review because they can move the status quo closer to their most preferred policy. Stated otherwise, a justice closer to the expected outcome on the merits can be expected to grant review to a lower court decision, whereas a justice closer to the status quo will deny review in order to preserve the status quo.

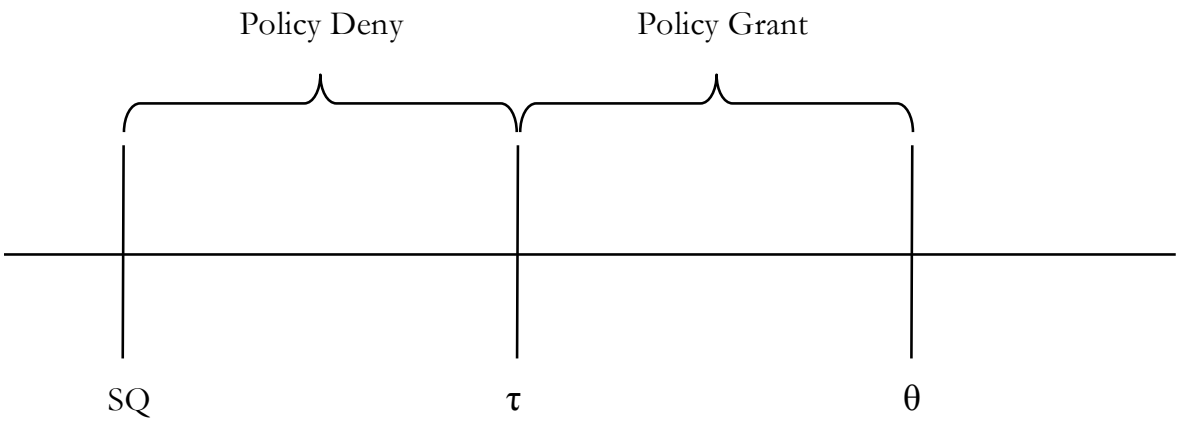

Figure 1: *A Spatial Representation of Strategic Voting Behavior. SQ* is the status quo, τ is the cutpoint between the status quo and the expected outcome on the merits, and θ is the expected outcome on the merits.

We expect justices who score high on the need for power will be more likely to cast forward-looking agenda-setting votes, especially when seeking to grant certiorari. As we discussed above, people with a need for power want to influence other individuals or groups. They are quite interested in prestige and recognition. That is, they are concerned with the appearance of what they do. They tend to be aggressive and good at working in politics. This combination of aggression and desire for tangible influence suggests that justices high in the need for power will tend to be more strategic. That is to say, they engage in forward-

looking behavior. What this means at the agenda stage, then, is that they will be more inclined cast strategic, policy-based agenda votes.

Achievement and Legal Cues

A key obligation of the Supreme Court is to resolve legal conflict. Legal conflict occurs when two or more lower courts diverge over the interpretation or application of the law. Both the Court's own rules (Supreme Court Rule 10) and statements made by the justices themselves reinforce the importance of legal conflict as a predictor of agenda-setting behavior. As Chief Justice Rehnquist once stated:

> "One factor that influences every member of the Court is whether the case sought to be reviewed has been decided differently from a very similar case coming from another lower court" (Rehnquist 2001, 234).

Empirical scholarship shows that lower court conflict is a strong predictor of votes to grant review. For example, when analyzing which cases were granted review during the 1982 term, Caldeira and Wright (1988) found that the presence of conflict in the lower courts resulted in a dramatic increase in the probability that the Court would grant review—a shift from a 0.01 probability of granting cert in cases without conflict to a 0.33 probability in cases with it. Other studies have found similar results. Ulmer (1984), for example, found that conflict, along with other contextual factors, leads to a dramatic increase in the probability of review. Caldeira and Wright (1990) show the presence of conflict predicts both a case's placement on the discuss list, as well as its eventual review.

Following previous scholarship, we conceive of two different kinds of legal conflict: *Weak Conflict* and *Strong Conflict*. Weak conflict exits when, for example, the conflict is relatively new (and might resolve itself) or includes few circuits (in the parlance of the Court, the split is "shallow"). Alternatively, strong conflict exists when there is a clear and deep split among the circuits. We expect that the different kinds of conflict will motivate justices in different ways. For starters, all justices should be motivated to resolve strong legal conflict. That is, regardless of their personalities, all justices can be expected to vote to grant review

when there is strong legal conflict among the circuits. That leaves weak legal conflict as the primary source of variation in justices' behavior. We expect that weak conflict may actually motivate justices who score *low* on the need for achievement. These justices may be more reliant on cues to determine which cases to review. Justices who score high on the need for achievement, on the other hand, likely *know* what kind of cases they are looking for and are better able to identify good vehicles for resolving lower court conflict. Therefore, those high in achievement motivation do not need to rely on cues of *weak conflict*.

Justices who demonstrate a high personal need for achievement harbor a need for excellence. They care first and foremost about getting the job done—and done correctly. Thus, we expect that a justice who scores low on the need for achievement will be more likely to vote to grant review to a case with weak conflict than a justice who scores high on the need for achievement.

A similar logic also applies to the publication status of the opinion in which review is sought. The vast majority of circuit court decisions are issued in the form of so-called unpublished decisions, which, during the terms of our analysis were non-precedential. These decisions are often short and likely present the Court with an incomplete picture of key details involved in the underlying dispute. Most importantly, this is a low-cost cue that is easy to observe. It provides a shortcut for justices who might not be as concerned about correctness than those who are. As a result, we expect that justices who are more achievement-minded to be less influenced by the presence of an unpublished opinion than those who are high in achievement motivation.

Measuring Personal Motives

It is one thing to theorize about personal motives; it is another to measure them. Doing so is no easy task. We use computer-assisted content analysis to measure the personal motives of the 13 justices who cast agenda setting votes during the first eight terms of the Rehnquist Court (i.e., the 1986-1993 terms). We start with the same source material gathered

by Owens and Wedeking (2011), who gathered speeches, writings, and, when available, lower court opinions produced by a justice prior to joining the Court. Taken together, we analyze nearly 450 texts containing just over 1.3 millions words. At the justice level, the median number of texts and total words processed is 26 and roughly 67,000, respectively. Using these materials, we employed a textual analysis approach that produced estimates that are like those that Winters produced in the past.

Of course, previous efforts to apply Winter's personal motives required the laborious hand coding of documents. Today, however, easy-to-use software called ProfilerPlus is freely available for academic researchers. We used this software to process our texts. ProfilerPlus functions like other commonly used dictionary-based approaches to categorizing text. Its output identifies each instance in a given text where a word associated with a given motive appears. It provides the user with the word that generated the hit as well as the entire sentence in which it appears, which greatly aids in post-processing to remove potential false positives.

The application of a dictionary approach in a specialized domain of texts, however, can present a number of potential problems. Words included in the dictionary might, for example, appear as part of a phrase in the target text. When this word is looked at in context, it is clear it is not being used as intended by the dictionary list's creator. To be sure, we are not the first to encounter or address this problem. Black et al. (N.d.), for example, apply the Linguistic Inquiry and Word Count software to show how the use of emotional language in Supreme Court briefs is associated with a reduced likelihood of winning. Emotional language includes, among the 900 items in the list, dozens of expletives. These words are only likely to appear in a Supreme Court brief, one would hope, when recalling specific facts related to the case (e.g., "Fuck the draft" from *Cohen v. California* (1971)). Users of content analysis programs like LIWC and ProfilerPlus, then, must be wary of these issues and take steps to address them.

In our context, the most pressing issue was the inclusion of certain words that have specialized meaning or usage in the judicial context. The word "supreme," for example, is associated with the power motive. Thus, whenever the phrase "Supreme Court" occurs, it is flagged by the program as evidence of the power motive. We identified dozens of other similar phrases and removed those false positives from our results before calculating the motive scores. To wit, the raw output from ProfilerPlus has nearly 29,000 occurrences of motives identified in our texts. After post-processing, that number is reduced to around 24,000.

With these results in hand, we simply calculated the percentage of achievement, affiliation, and power motive language used by each justice across all of the words in their respective texts. (We note the results we report below are also robust to calculating this at the level of each individual document and then taking the median of those results.) Figure 2 shows the distribution of these scores across each justice and the three motives assessed. While groups of justices are commonly clustered at various points on the motive scales, there is demonstrable variation across justices for all three personal motives.

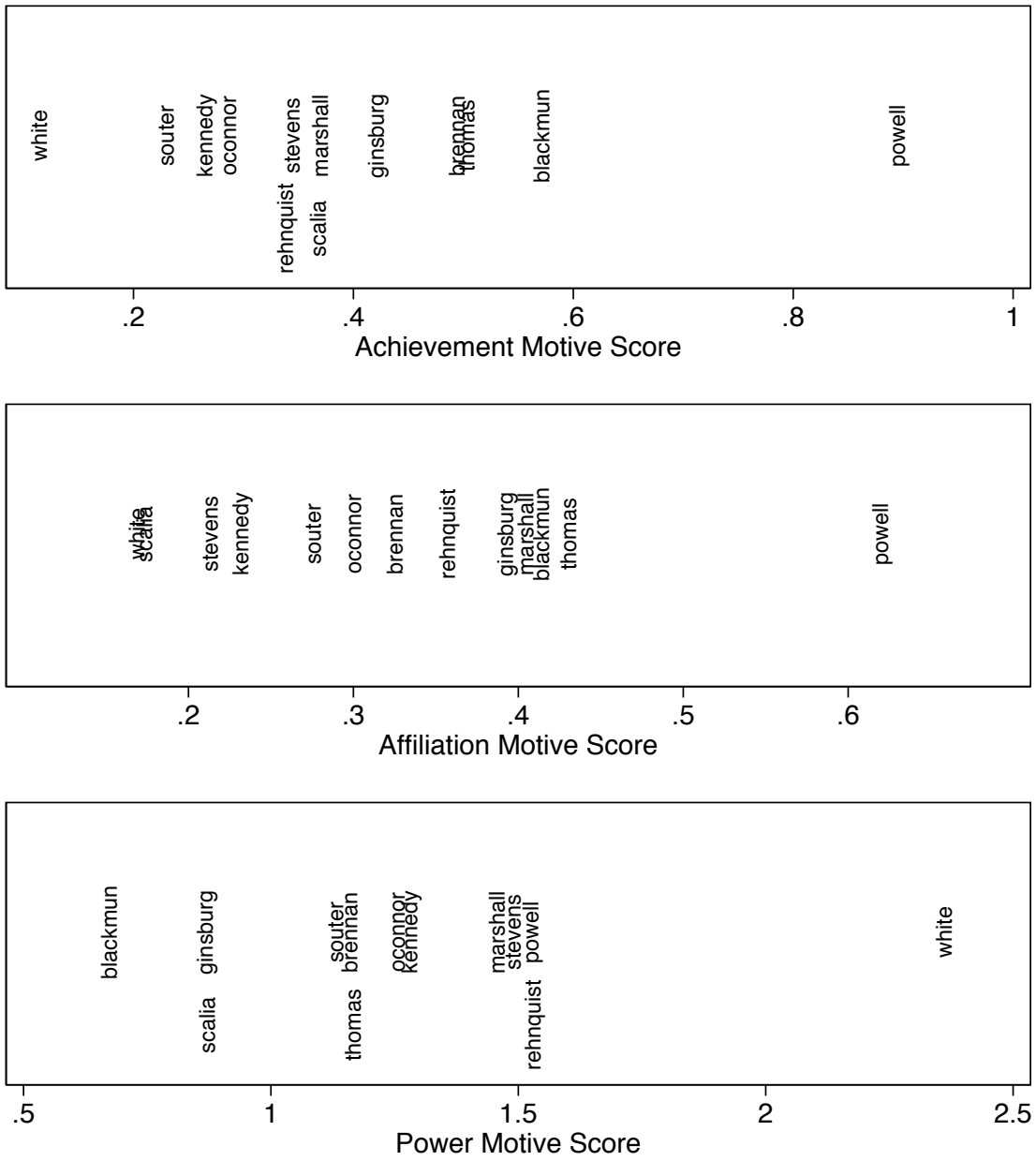

Figure 2: *The Personal Motives of Supreme Court Justices, 1986-1993.* Estimates represent the individual motive scores for each justice, among the achievement, affiliation, and power indicators. The vertical spacing that sometimes exists (e.g., Scalia/Marshall in the top panel) is not meaningful; it is simply there to make the figure more readable when two justices are close together.

Figure 3 presents a scatterplot matrix that shows the bivariate relationships between the three unique pairwise motive combinations. As the figure illustrates, justices' scores on the power motive scale appear to be largely unrelated to their affiliation scores and perhaps

only mildly related (in a negative direction) to their achievement scores. On the other hand, there appears to be a distinct positive relationship between justices' scores on the affiliation and achievement motives.

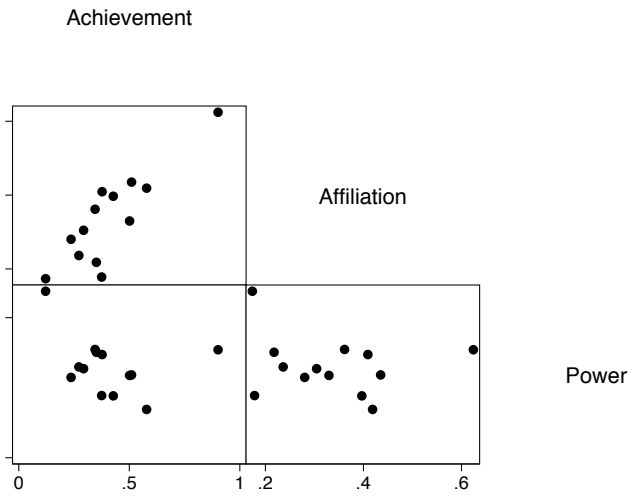

Figure 3: *The Bivariate Relationships Between Supreme Court Justices' Motive Scores*. The matrix displays, for each individual justice, the bivariate relationships between the three unique pairwise motive combinations. The top panel reflects a scatterplot of justices' scores on the achievement and affiliation motives. The bottom-left panel displays the achievement-power relationship. And, the bottom-right panel represents the affiliation-power relationship.

Data and Measures

To test our hypotheses, we randomly sampled 360 paid, non-death penalty petitions that were appealed from a federal court of appeals and made the Supreme Court's discuss list during the 1986-1993 terms.[7] From these 360 petitions, we recovered a total of 3024 justice

[7]We sample petitions from the Court's discuss list because these are petitions that have a non-zero probability of being granted, since at least one justice deemed it worthy of some discussion. We examine only petitions from federal courts of appeals because current data only allows comparisons between Supreme Court justices and federal court of appeals judges. We exclude capital petitions because they were treated differently than their non-capital counterparts during the time period of our study. The Court automatically added capital

votes.[8] We obtained data on the justices' votes from the digital images of Justice Harry A. Blackmun's docket sheets, which we retrieve from Epstein, Segal and Spaeth (2007). We estimate three models to test our theory that personality influences justices' agenda votes.

In model 1, our dependent variable indicates whether each individual justice cast a Join-3 vote. We review each justice's agenda-setting vote recorded on each docket sheet in our sample of cases. We code a 1 if the docket sheet indicates that the justice issued a Join-3 vote and assigned a 0 if not. We expect justices' *Affiliation Motive* scores to be positively related to join-3 voting behavior such that affiliation-minded justices are more likely to cast such votes.

In model 2, we employ two dependent variables of policy-based strategic voting following Black and Owens (2009). Our first indicates whether a justice cast a policy-based strategic vote to grant certiorari. If the justice was closer to the expected merits outcome

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cases to the discuss list. Once there, Justices Brennan and Marshall always voted to grant the petition, vacate the death penalty, and remand the case (Woodward and Armstrong 1979; Lazarus 2005).

[8]Following Spaeth (2001), we code votes to "note probable jurisdiction" (in appeals) as votes to grant. Similarly, we code "dismiss" votes and votes to "dismiss for want of jurisdiction" (also in appeals) as votes to deny. This coding scheme produces our sample of 3024 justice votes, which falls 198 votes short of the theoretical maximum for a nine-member body voting on 358 petitions (i.e., $360 \times 9 = 3240$). These missing values arose because fewer than nine justices sat on the Court (i.e., vacancy or non-participation) or because Justice Blackmun's docket sheets had missing entries. Other missing values were votes to call for the views of the Solicitor General, votes to hold over the petition to a later date, or some other action that is not directly mappable onto our grant/deny framework. Rather than arbitrarily code these votes, we simply counted them as missing data. For similar reasons, we opted to exclude from our analysis petitions where the outcome was to grant, vacate, and remand.

than to the status quo, we code the variable as 1; if he or she was closer to the status quo, we code it as 0. To code this dependent variable, we rely on the Judicial Common Space (JCS) scores (Epstein, Martin, Segal and Westerland 2007), which offers the ideal points of Supreme Court justices (as measured by Martin and Quinn (2002)) on the same ideological scale as federal circuit court judges (where higher (lower) scores reflect more conservative (liberal) policy preferences). We approximate the expected merits outcome (if the Supreme Court were to grant review) with the ideal point of the Court's median justice. To approximate the spatial location of the status quo, we use the JCS scores of the lower appellate court's panel. Given a unanimous three-judge panel decision, we identify the status quo as the JCS score of the median panel judge. When the lower court decision involved a dissent or special concurrence within a three-judge panel, we code the status quo as the midpoint between the two judges in the majority. If the petition is challenging an en banc decision, we code the status quo as the median judge in the en banc majority. And, when district court judges sat by designation on the circuit panel, we follow Giles, Hettinger and Peppers (2001) and code the district court judges ideal point consistent with the norm of senatorial courtesy. In short, for each justice-vote observation, we compare the absolute value of the distance between the individual justice's JCS score and the expected merits outcome to the distance from the status quo.

Our second dependent variable in model 2 reflects whether a justice cast a policy-based strategic vote to deny review. If the justice was closer to the status quo than to the expected outcome on the merits, we code the variable as 1; we assign a 0 if the justice was closer to the expected outcome than to the status quo. And, we rely on the same indicators of the the expected merits outcome and status quo as described above. We expect that the *Power Motive* is positively related to a justice's propensity to cast policy-based strategic votes, especially when seeking grant cert with an aim to move policy closer to his or her preferred policy outcome.

Lastly, in model 3, we use Blackmun's docket sheets to code our dependent variable. it simply indicates whether a justice votes to grant (=1) or deny (=0) review to a case. We examine the impact of the *Achievement Motive* on justices' agenda-setting votes and how its impact might be conditional on certain legal cues—the presence of (weak) legal conflict and an unpublished lower court decision. We generate two interaction terms and expect that a justice who scores low on the need for achievement will be more likely to rely on legal cues—i.e., vote to grant review to a case with weak conflict or a published lower court decision compared to a justice who scores high on the need for achievement.

We also control for multiple factors that previous research has shown to influence the policy and legal motivations behind Supreme Court agenda setting (see, e.g., Black and Owens 2009). In models 1 and 3, we include a number of control predictors. Unless otherwise indicated, the source for these variables is the cert pool memos written for each petition.

Legal Conflict. Looking at legal conflict, we include a series of dummy variables: *Alleged Conflict*, *Weak Conflict*, and *Strong Conflict*. All of these variables are derived from the law clerks' discussions in pool memos. *Alleged Conflict* is coded as 1 if the petitioner in the case alleges a conflict below; 0 otherwise. *Weak Conflict* is coded as 1 if the law clerk, while assessing the alleged conflict, suggests that immediate review is not necessary; 0 otherwise. *Strong Conflict* is coded as 1 when the pool memo writer acknowledges a clear and deep split; 0 otherwise.[9]

U.S. Government Position. Given the notable influence of the U.S. government and solicitor general (SG) on the Court's decision making (e.g., Black and Owens 2012; Wohlfarth

[9]This approach is similar to the utilized by Caldeira and Wright (1988), who used law students to assess the presence of actual conflict in cert. petitions. Our approach has the added advantage of coming directly from the main materials used by justices themselves. Because this variable requires some judgment on the part of the coder, we conducted an intercoder reliability study for these variables. We note that all three measures are reliable by common standards.

2009), we include two dummy variables to account for when the SG has taken a position on a petition. *U.S. Supports Grant* reflects when the SG has requested review of a petition, acting as either the petitioner or amicus curiae. We code a 1 when the SG supports the petitioner, 0 otherwise. And, *U.S. Opposes Grant* reflects when the SG has taken a position against review of the case, acting as either the respondent or amicus curiae. We code a 1 when the SG supports the respondent; 0 otherwise.

Intermediate Reverses Trial. We account for instances where the decision of the U.S. Court of Appeals (being appealed by the petitioner before the Supreme Court) reversed the decision of the lower court (usually a trial court). Justices might be more inclined to review such cases, given the disagreement between the trial and appellate courts. We specify a dummy variable and assign a 1 when the Court of Appeals reversed the lower court; 0 otherwise.

Dissent in Intermediate. Decisions by the Court of Appeals where a panel member recorded a dissent might also signal a greater need for the Supreme Court to review the decision. Thus, we use a dummy variable to control for cases with dissent in the appellate court, coding a 1 for cases with such a dissent and 0 otherwise.

Intermediate Judicial Review. We also account for cases where the appellate court exercised judicial review by striking a federal statute, as justices might perceive a greater need to review such cases. We code a dummy variable—*Intermediate Judicial Review*—by reviewing the pool memo to determine if the author noted the lower court's exercise of judicial review of a federal statute. If the author noted such a decision, the variable takes on a value of 1; 0 otherwise.

Intermediate Unpublished. Judges on federal appellate courts may use a brief, unpublished opinion to dispose of certain easy cases that do not have precedential value. Such decisions are unlikely to be great candidates for Supreme Court review. We include a dummy variable and assign a 1 to *Intermediate Unpublished* when the Court of Appeals' opinion was unpublished; 0 otherwise.

Amicus Briefs. One indicator of legal importance is the number of amicus curiae briefs filed in support, or opposition, of a petition. Greater interest by external interest groups should reflect a petition that is more legally salient and thus a better candidate for review by the Supreme Court. Thus, we code *Amicus Briefs* as the total number of amicus briefs filed at the agenda-setting stage.

U.S. Law Week Article. Another indicator of legal importance is when the legal periodical *U.S. Law Week* publishes a summary of the Court of Appeals decision that a party appealed to the Supreme Court. We include a dummy variable and code a 1 if the periodical included coverage about the appellate court's decision; 0 otherwise. We used LexisNexis to gather data on this variable.

Merits Outcome Closer. We include a dummy variable to control for a justice's potential desire to review a case for strategic, policy-based reasons. Using the same indicators as described in the dependent variable for model 2 (i.e., the spatial location of the expected merits outcome and status quo), we code a 1 if the voting justice's JCS score is closer to the expected merits outcome than to the status quo; 0 otherwise.

In model 2, we include many of the control predictors described above from models 1 and 3—*Weak Conflict*, *Strong Conflict*, *Intermediate Judicial Review*, *Intermediate Unpublished*, *Amicus Briefs*, and *U.S. Law Week Article*. But, following Black and Owens (2009), we also include several additional control predictors that are relevant when predicting a justice's proclivity to cast a policy-based strategic vote:

Freshman Justice. It is possible that freshman justices may be less likely to pursue their policy goals at the expense of non-policy, or legal, motivations. Thus, we include a dummy variable and assign a 1 if the voting justice had served less than two full terms when the Court issued a final decision on the petition; 0 otherwise.

Merits Outcome Uncertainty. It may sometime be more (less) difficult for a justice to form expectations about the anticipated outcome on the merits, which might affect his or her willingness to cast a policy-based strategic vote. Thus, we specify an indicator that

reflects the probability that the median justice is actually the median on the Court (and thus the location of the expected merits outcome), using the probability value that Martin and Quinn (2002) assign to the estimated median justice.

Outcome-Status Quo Difference. We account for the possibility that issuing a policy-based strategic agenda-setting vote may become more difficult for a justice as the distance between the expected merits outcome and the status quo decreases. We capture this potential effect such that *Outcome-Status Quo Difference* represents the absolute value of the distance between the expected merits outcome (i.e., JCS score of the Supreme Court's median justice) and the status quo (described above).

Procedural Complexity. Lastly, it may become more difficult for justices to look forward strategically and anticipate the merits outcome when reviewing a more complex petition. To account for this effect, we measure *Procedural Complexity* as the proportion of the pool memo's pages that a clerk devoted to discussing the petitions procedural history in the lower courts.

Methods and Results

Due to the dichotomous dependent variable in each model specification, we report the results from three logistic regression models. And, we report robust standard errors due to the potential for correlated errors.

The Affiliation Motive & Join-3 Votes

We first consider how justices who exhibit a greater need for affiliation might be more likely to accommodate their colleagues through Join-3 votes. Table 1 reports the logistic regression results predicting when justices cast Join-3 votes. As the results show, affiliation-minded justices are significantly more likely to cast Join-3 votes than justices who score lower on the *Affiliation Motive* scale. Figure 4 displays the magnitude of this effect. It reports the predicted probability that a Supreme Court justice casts a join-3 vote across the range of the *Affiliation Motive* scale (with 95% confidence intervals). A justice that displays

the minimum affiliation motive score in the data exhibits an expected 0.015 [0.008, 0.023] probability of casting a Join-3 vote. A justice at the maximum end of the affiliation scale in the sample is likely to cast a Join-3 vote with an estimated 0.131 [0.064, 0.199] probability. This shift from the minimum to maximum affiliation score yields an expected increase of nearly 0.12 in the probability that a justice casts a Join-3 vote. And, even a more common change in the affiliation motive score exhibits a substantial change. A one standard deviation increase above the mean affiliation motive score leads to an expected 0.018 increase in the probability of a Join-3 vote—a 61% average change. In short, this affiliation motive effect is not only statistically significant, it is substantively meaningful. And, we retrieve these results even after accounting for a number of other legal and policy considerations thought to influence agenda-setting behavior.

Turning to the control predictors, the data suggest that the presence of more amicus briefs also leads justices to be more likely to cast Join-3 votes. Thus there is some evidence that petitions with greater legal salience lead some justices to accommodate their colleagues with Join-3 votes to satisfy the Rule of Four.

Table 1: The Impact of the Affiliation Motive on Join-3 Agenda-Setting Votes, 1986-1993

	Coefficient	Robust S.E.
Affiliation Motive	5.047*	0.695
Alleged Conflict	-0.139	0.285
Weak Conflict	0.030	0.259
Strong Conflict	0.301	0.248
U.S. Supports Grant	-0.020	0.286
U.S. Opposes Grant	-0.157	0.233
Intermediate Reverses Trial	0.286	0.201
Dissent in Intermediate	0.143	0.220
Intermediate Judicial Review	-0.167	0.468
Intermediate Unpublished	-1.205	0.732
Amicus Briefs	0.120*	0.060
U.S. Law Week Article	0.012	0.214
Merits Outcome Closer	0.205	0.197
Constant	-5.083*	0.342
Observations	3024	
Pseudo R^2	0.047	
Log-Likelihood	-477.957	

Note: Table entries are logistic regression coefficients with robust standard errors. $^*p < 0.05$ (one-tailed). The dependent variable indicates whether each individual Supreme Court justice cast a join-3 agenda-setting vote, among a random sample of 360 paid, non-death penalty petitions (during the 1986-1993 terms) that were appealed from a federal court of appeals and made the Supreme Court's discuss list.

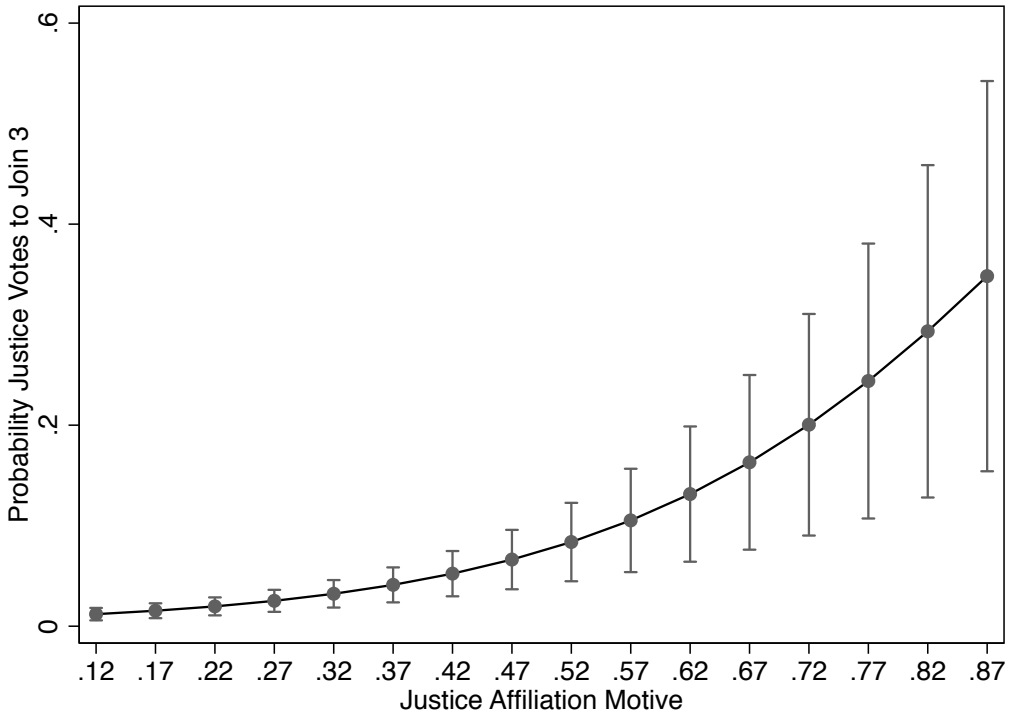

Figure 4: *The Predicted Impact of the Affiliation Motive on Join-3 Votes.* Estimates represent the predicted probability that a Supreme Court justices casts a join-3 vote across the range of the *Affiliation Motive* scale (with 95% confidence intervals).

The Power Motive & Politically Strategic Votes

Next, we examine how power-minded justices might be more likely to pursue a policy-based strategy when issuing agenda-setting votes. Table 2 reports the logistic regression results predicting when justices cast policy-based strategic votes to grant or deny review. As the results show, we do uncover evidence that power-minded justices are significantly more likely to cast policy-based strategic votes to grant cert compared to justices who score lower on the *Power Motive* scale.

Figure 5 displays the magnitude of this effect. It reports the predicted probability that a Supreme Court casts a policy-based strategic vote to grant certiorari across the range of the *Power Motive* scale (with 95% confidence intervals). A justice with the minimum power motive score exhibits an expected 0.084 [0.060, 0.107] probability of casting a policy-based strategic votes to grant cert. A justice at the maximum end of the power scale is likely

to cast a strategic grant vote with an estimated 0.265 [0.211, 0.320] probability. This shift from the minimum to maximum power motive score yields an expected increase of 0.181 in the probability that a justice strategically votes to grant review. And, a one standard deviation increase above the mean power motive score leads to an expected 0.055 increase in the probability of a strategic grant vote—a nearly 40% increase over the effect the mean. In short, while we do not uncover evidence of the power motive's effect on votes to strategically deny certiorari, there is substantively compelling evidence that the power motive plays an important role in Supreme Court agenda setting that is independent to established factors that are likely to shape justices' agenda-setting votes.

Among the control predictors, the data suggest that the presence of strong or weak conflict has the expected effect on justices' certiorari votes. That is, justices are more likely to more likely to cast policy-based strategic grants and less likely to cast strategic deny votes in the presence of lower court conflict. Next, justices are more likely to cast strategic grant votes (and less likely to cast strategic deny votes) when the Court of Appeals exercised judicial review and when external actors filed more amicus briefs. Similarly, justices are likely to pursue strategic grants when *U.S. Law Week* published a summary of the circuit court's decision or when the distance between the expected merits outcome and the status quo decreases. Lastly, the data suggest justices are less likely to cast strategic votes to grant review when the circuit court's decision was unpublished and if the voting justice was in his or her first two terms on the Court.

Table 2: The Impact of the Power Motive on Politically Strategic Agenda-Setting Votes, 1986-1993

	Strategic Grant	Strategic Deny
Power Motive	0.815*	-0.308
	(0.120)	(0.203)
Weak Conflict	0.785*	-0.481*
	(0.142)	(0.191)
Strong Conflict	1.910*	-1.639*
	(0.132)	(0.171)
Intermediate Judicial Review	1.685*	-1.823*
	(0.287)	(0.344)
Intermediate Unpublished	-1.201*	-0.032
	(0.297)	(0.341)
Amicus Briefs	0.266*	-0.155*
	(0.056)	(0.060)
U.S. Law Week Article	0.361*	-0.267
	(0.117)	(0.163)
Freshman Justice	-0.336*	0.402
	(0.158)	(0.260)
Merits Outcome Uncertainty	-0.212	0.060
	(0.234)	(0.316)
Outcome-Status Quo Difference	1.257*	-0.555
	(0.330)	(0.445)
Procedural Complexity	-0.447	0.255
	(0.422)	(0.592)
Constant	-2.868*	2.428*
	(0.344)	(0.496)
Observations	1886	1138
Pseudo R^2	0.164	0.113
Log-Likelihood	-1013.305	-564.028

Note: Table entries are logistic regression coefficients with robust standard errors in parentheses. $*p < 0.05$ (one-tailed). The dependent variable indicates whether each individual Supreme Court justice cast a strategic, policy-based agenda-setting vote, among a random sample of 360 paid, non-death penalty petitions (during the 1986-1993 terms) that were appealed from a federal court of appeals and made the Supreme Court's discuss list.

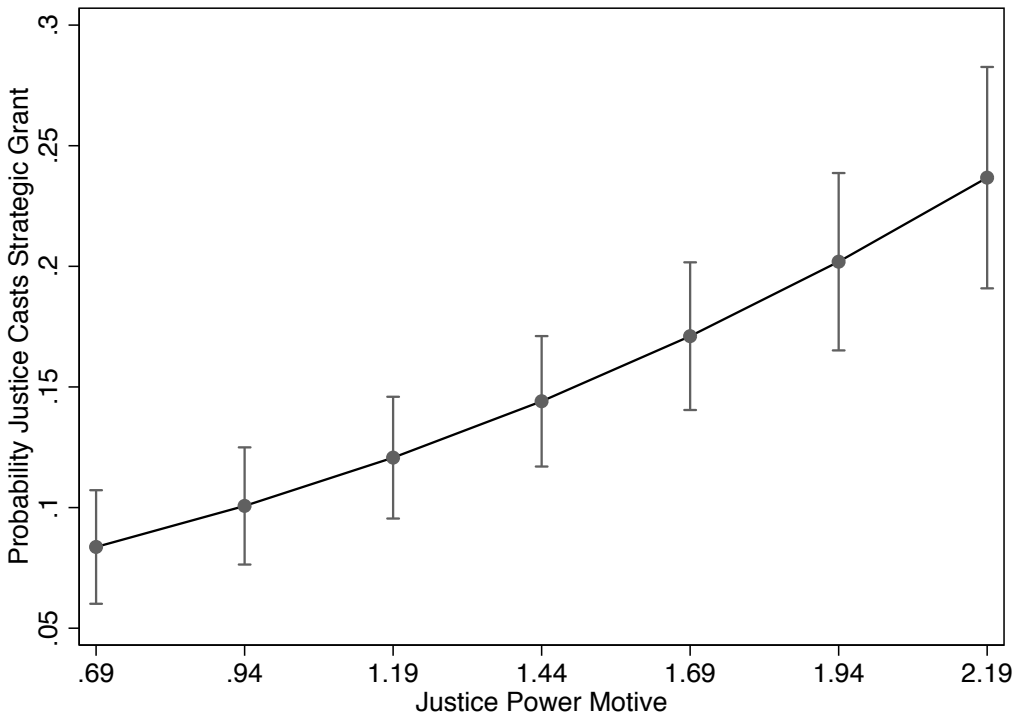

Figure 5: *The Predicted Impact of the Power Motive on Politically Strategic Agenda-Setting Votes.* Estimates represent the predicted probability that a Supreme Court justices casts a policy-based strategic vote to grant certiorari across the range of the *Power Motive* scale (with 95% confidence intervals).

The Achievement Motive & Legal Cues

Our final analysis centers on the achievement motive and its conditional impact on the presence of legal cues. As we argued above, we believe that as a justice's achievement motivation increases, his willingness to grant review in cases that might present problems for the Court on the merits will decrease. This is the case because achievement-minded justices care about getting their work done and, especially, getting it done right. Granting review in a petition where the conflict is tolerable or the specific case might not present the most appropriate vehicle for resolving it is something a justice high in achievement motivation will seek to avoid. Similarly, opinions being petitioned for review that were decided as unpublished opinions in the lower court are equally problematic.

Because our main hypotheses are interactive, we skip the traditional table of parameter estimates and jump right into looking at the substantive relationships. Curious readers can find the full table at the end of this manuscript. Our post-estimation examination of the interaction between opinion publication and achievement motivation failed to recover any significant results. Opinion publication status failed to predict agenda setting votes for all types of justices, including those both high and low on achievement motivation.

By contrast, we do find a statistically and substantively significant interactive effect between our achievement motivation and weak conflict variables. Figure 6 illustrates four hypothetical petitions. The left half of the figure shows the predicted probability that a justice who is low on the achievement motivation votes to grant review. For such a justice it further shows two counterfactuals: one where no weak conflict is present and a second where weak conflict is present (all other variables were held at their median values). As the figure makes clear, the presence of weak conflict, for this type of justice, has a clear positive impact on the probability that she votes to grant review. When there is no weak conflict, the probability is roughly 0.15. But, when weak conflict is present, that probability more than doubles to around 0.34.

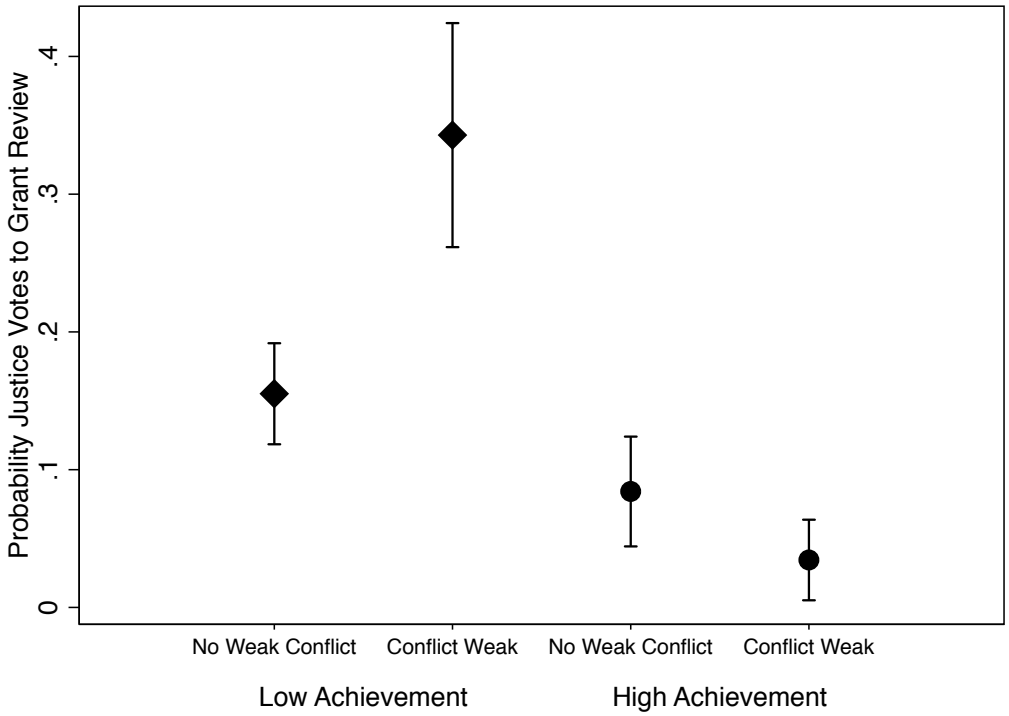

Figure 6: *The Predicted Impact of the Achievement Motive on Votes to Grant certiorari.* Estimates represent the predicted probability that a Supreme Court justices casts a vote to grant certiorari across the range of the *Achievement Motive* scale (with 95% confidence intervals). The difference between the two predicted probabilities associated with high achievement scores is statistically significant despite the presence of some overlap in the confidence intervals.

The right half of the figure, by contrast, shows the same two counterfactuals for a justice who is high on the achievement motive. Whereas a low achievement justice is positively influenced by the presence of weak conflict, we find, consistent with our expectation, that a high achievement justice is significantly less likely to vote to grant review when weak conflict is present. She has just a 0.09 probability of supporting review when it is absent, but this drops by more than half to around 0.04 when weak conflict is present.

Conclusion

The Court's agenda-setting stage is when the Court's first impression of cases occurs. It occurs in private and, with few exceptions (e.g., dissents from the denial of cert), the individual preferences of justices are never made public. This combination of attributes,

plus the availability of unique archival data about agenda setting, have fueled scholarly inquiry. To date, however, these efforts have focused on explicating the policy and legal dimensions of the agenda-setting process. In this paper, we ask whether non-ideological, non-legal factors also affect the justices. In particular, how do differing levels of motivation in the areas of power, affiliation, and achievement influence a number of agenda-setting behaviors justices engage in? Or, more basically, do they even matter at all? Our results provide strong support for the utility of incorporating motives into the study of Supreme Court decision making.

Importantly, while each analysis above illustrates the substantive impact that each motive has on its respective dependent variable, we would be remiss if we did not highlight the larger implication that motives have for the Court's docket. Specifically, if we had a different collection of justices with a different mix of motive orientations, the Court would have a substantially different agenda. For example, if there were two or three more justices that were higher in the need for affiliation, the Court would likely have a larger docket of cases each term. Likewise, if we had more achievement-oriented justices on the Court, we would likely see the Court be more careful in how it used weak legal signals to aide in its quest to resolve lower court conflicts. Conversely, if we had more justices who were low on achievement motivation, we would likely see more cases being granted to resolve conflict. Motives matter for shaping the Court's docket.

To be sure, we have examined only one aspect of judicial behavior. Just like motives are important to all kinds of social situations and decisions, the three motives examined here are undoubtedly important to other aspects of judicial behavior. In future work, we plan to examine how motives influence the behavior of justices at oral argument, and how motives influence the bargaining and negotiation that goes into crafting opinions. There are undoubtedly other areas awaiting future research, but the point of our current efforts were to establish that motives systematically matter.

Importantly, while we have established that motives are an integral part of understanding one aspect of judicial behavior- agenda setting, we also recognize that motives are only one aspect of personality. As other personality scholars have commented before, to have a complete accounting of personality, we would need to bring motives into context with other things, such as personality traits (e.g., the Big 5), as well as cognitive style, emotions, and ideological beliefs. In future work we aim to do more of this. Finally, we think it is important to close by noting that finding empirical support for an alternative approach to understanding judicial behavior—one that moves the field beyond a narrow focus on policy preferences—is now firmly on the horizon and it is imperative that we continue to explore its promise.

Table 3: The Impact of the Achievement Motive on Votes to Grant certiorari, 1986-1993

	Coefficient	Robust S.E.
Achievement Motive	-0.974*	0.411
Weak Conflict	1.355*	0.302
Intermediate Unpublished	-0.854	0.698
Achievement x Weak Conflict	-2.559*	0.827
Achievement x Unpublished	1.440	1.922
Alleged Conflict	0.137	0.145
Strong Conflict	1.541*	0.114
U.S. Supports Grant	0.912*	0.124
U.S. Opposes Grant	-0.188	0.112
Intermediate Reverses Trial	0.397*	0.091
Dissent in Intermediate	0.319*	0.103
Intermediate Judicial Review	1.514*	0.215
Amicus Briefs	0.196*	0.042
U.S. Law Week Article	0.233*	0.096
Merits Outcome Closer	0.437*	0.098
Constant	-2.118*	0.216
Observations	3024	
Pseudo R^2	0.164	
Log-Likelihood	-1559.385	

Note: Table entries are logistic regression coefficients with robust standard errors. $*p < 0.05$ (one-tailed). The dependent variable indicates whether each individual Supreme Court justice cast a vote to grant certiorari, among a random sample of 360 paid, non-death penalty petitions (during the 1986-1993 terms) that were appealed from a federal court of appeals and made the Supreme Court's discuss list.

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