

Abandoning Press Freedom

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ABSTRACT: Among elected officials and the broader public, attitudes toward the press are deeply polarized along ideological lines. Polling shows that most liberals favor the press, while conservatives view it more negatively—a partisan divide that has widened significantly over the past decade. Conventional wisdom suggests that the same ideological split is also at work at the Supreme Court, with liberal Justices championing the work of the press while their conservative colleagues express more skepticism. This perception is reinforced by historical examples of liberal Justices advancing press rights alongside broader democracy-engagement and social-justice issues. Recent calls from some conservative Justices to unwind major protections for journalists amplify it further. But the conventional wisdom is no longer true. Our coded opinion dataset captures the tone of every paragraph mentioning the press or the functions of the press in Supreme Court opinions throughout its history. Analysis of this data reveals that although ideology historically has been highly correlated with a Justice’s press positivity, the Court’s once-vibrant liberal support for the press has disappeared. This Article explores these unexpected trends, demonstrating how ideology has become a poorer predictor of press positivity and how press friendliness has been decoupled from the other progressive principles with which it once was connected, such as civil rights and civil liberties.

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INTRODUCTION

In recent years, views of the press have become increasingly polarized along ideological lines. Among elected officials and the broader public, liberals tend to favor the press while conservatives view it more negatively—a divide that has grown even starker in the past decade. Conventional wisdom suggests that this ideological split extends to the U.S. Supreme Court, with liberal Justices celebrating newsgatherers and championing press freedom while their conservative colleagues criticize journalists and threaten to erode these legal safeguards. The image of liberal Justices as supporters of the press has been seared into public memory, fueled by impassioned pro-press rhetoric in landmark decisions from progressive courts, like *New York Times v. Sullivan* and

the Pentagon Papers case.¹ Conversely, conservative Justices have recently drawn attention for their public disparagement of the news media and their calls to overturn longstanding press protections. These contrasting narratives have reinforced and solidified the widespread perception of a sharp ideological divide on the Court when it comes to attitudes toward the press.

But the conventional wisdom is no longer true.

The United States stands at a key moment that is likely to test the scope of protection for journalists and others who perform press functions. Moreover, the Justices' rhetoric about press freedom has long carried an outsized influence, often setting the tone for lower courts and shaping the broader legal landscape of First Amendment protections for newsgatherers.² For these reasons, we conducted a comprehensive study tracking the tone of every judicial opinion paragraph mentioning the press or press functions written by all 116 Justices in the Court's history.³ Our findings reveal a far more surprising and complex reality than the conventional wisdom suggests. Although our research confirms that historically ideology has been highly correlated with a Justice's press positivity, it also suggests a significant recent shift: The once-vibrant liberal support for the press has largely disappeared.⁴ For the better part of a century, press freedom stood as one of the primary concerns of liberal Justices, occupying a prominent position alongside other core progressive issues like civil rights, democracy preservation, power disparities, and criminal justice. Today, this is no longer the case.

This Article explores these unexpected trends.⁵ We show how the current Court has entered an overall press-unfriendly period, in which even Justices

1. See, e.g., *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (providing constitutional protection to the press and other commentators on public officials in defamation actions because “debate on public issues should be uninhibited, robust, and wide-open”); *id.* at 294 (Black, J., concurring) (discussing the need to protect “an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials”); *N.Y. Times Co. v. United States*, 403 U.S. 713, 713–14 (1971) (declaring a prior restraint on the press unconstitutional); *id.* at 717 (Black, J., concurring) (“The press was protected so that it could bare the secrets of government and inform the people.”); *see also Mills v. Alabama*, 384 U.S. 214, 219 (1966) (“The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs.”); *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967) (“A broadly defined freedom of the press assures the maintenance of our political system and an open society.”).

2. See RonNell Andersen Jones & Sonja R. West, *The U.S. Supreme Court's Characterizations of the Press: An Empirical Study*, 100 N.C. L. REV. 375, 380–86 (2022) [hereinafter Andersen Jones & West, *Empirical Study*] (explaining how “positive characterizations of the press and the press function have often been central to the Court’s expansive conception of these broadly shared rights”).

3. See *infra* Part III.

4. See *infra* Part III.

5. This Article is our fourth piece exploring the Supreme Court’s rhetoric about the press over time. Our 2022 foundational piece, *The U.S. Supreme Court's Characterizations of the Press: An Empirical Study*, established the methodology of our study and provided an overview of our findings, which show the stark deterioration in the Court’s references to the press both in tone and frequency. See generally Andersen Jones & West, *Empirical Study*, *supra* note 2. In our second piece, *The Disappearing Freedom of the Press*, we examined how the constitutional right of press

whose ideology would have predicted press friendliness a generation ago are less likely to speak positively about the press. Our data do confirm that there has been increasing negativity from the Court's conservatives, but the study also reveals a precipitous decline in positive characterizations of the press from even the most liberal Justices—placing them in stark contrast with generations of their co-partisan predecessors who routinely praised the value of newsgathering and the importance of a free press.⁶

We examine how ideology has become a poorer predictor of press positivity and investigate the factors behind this shift. Importantly, our study's structure permits us to explore and test most of the initially appealing and seemingly easy explanations for this decline. But the data do not support any of these potential rationales. Most notably, the analysis reveals this is *not* happening merely because the Roberts Court's liberal Justices are more moderate liberals than their press-friendly predecessors, because today's Justices lack the same opportunities to speak about the value of press freedom, or because of the current Court's conservative supermajority.⁷

freedom has virtually vanished from the Court's lexicon as references to the right have declined sharply from routine acknowledgment in the mid-20th century to a near-total absence in the Roberts Court era. *See generally* RonNell Andersen Jones & Sonja R. West, *The Disappearing Freedom of the Press*, 79 WASH. & LEE L. REV. 1377 (2022) [hereinafter Andersen Jones & West, *Disappearing Freedom*]. In *Presuming Trustworthiness*, we investigated the Justices' abandonment of a once-vibrant presumption of trustworthiness for press speakers and contrasted it with the Court's ongoing willingness to continue to apply, or even expand, that presumption to other speakers. *See generally* RonNell Andersen Jones & Sonja R. West, *Presuming Trustworthiness*, 75 FLA. L. REV. 799 (2023). This Article builds on this prior work by examining the ideological dimensions underlying these trends.

This collaborative empirical investigation draws on our respective bodies of scholarship advocating for robust constitutional press protections. In her prior work, Professor West has developed theoretical frameworks for press exceptionalism and the unique democratic functions that justify special constitutional status for journalists. *See generally* Sonja R. West, *Favoring the Press*, 106 CALIF. L. REV. 91 (2018); Sonja R. West, *The Majoritarian Press Clause*, 2020 U. CHI. LEGAL F. 311; Sonja R. West, *The "Press," Then & Now*, 77 OHIO ST. L.J. 49 (2016); Sonja R. West, *The Stealth Press Clause*, 48 GA. L. REV. 729 (2014); Sonja R. West, *Press Exceptionalism*, 127 HARV. L. REV. 2434 (2014); Sonja R. West, *Awakening the Press Clause*, 58 UCLA L. REV. 1025 (2011). In her scholarship, Professor Andersen Jones has explored the unique marketplace-of-ideas function of the press and the vital proxy role that newsgatherers serve for audiences' First Amendment interests. *See generally* RonNell Andersen Jones, *Press Speakers and the First Amendment Rights of Listeners*, 90 COLO. L. REV. 499 (2019); RonNell Andersen Jones & Lisa Grow Sun, *Enemy Construction and the Press*, 49 ARIZ. ST. L.J. 1301 (2017); RonNell Andersen Jones, *The Dangers of Press Clause Dicta*, 48 GA. L. REV. 705 (2014); RonNell Andersen Jones, *What the Supreme Court Thinks of the Press and Why It Matters*, 66 ALA. L. REV. 253 (2014). We have also examined these theories and explored the threats facing the American press in additional jointly authored works. *See generally* THE FUTURE OF PRESS FREEDOM: DEMOCRACY, LAW, AND THE NEWS IN CHANGING TIMES (RonNell Andersen Jones & Sonja R. West eds., 2025); RonNell Andersen Jones & Sonja R. West, *The Work of the Press Clause, in* THE ELGAR COMPANION TO FREEDOM OF SPEECH AND EXPRESSION (Ashutosh Bhagwat & Alan Chen eds., forthcoming 2026); RonNell Andersen Jones & Sonja R. West, *The Fragility of the Free American Press*, 112 NW. U. L. REV. 567 (2017).

6. *See infra* Part III.

7. *See infra* Part III.

Our findings lead us to conclude that something more radical has occurred. Support for the press is simply no longer a core component of liberalism on the Court.⁸ The decoupling of press positivity from other liberal principles represents a substantial departure from most of the Court's modern history.

The implications of this shift extend far beyond the Court itself. This is a time of intense turmoil for newsgatherers and their audiences, as political, social, technological, and economic upheavals erode the stability of legacy news organizations and as new, emerging performers of the press functions struggle to gain footholds and secure protection.⁹ What is often misunderstood is that much of the positivity once reflected in liberal Justices' impassioned rhetoric was for the vital *role* newsgatherers play in our democracy, not for any specific news medium or format.¹⁰ While traditional news outlets may be disappearing or evolving,¹¹ protecting the essential press functions in our society remains crucial—perhaps more so now than ever before.

A robust and protected press function, regardless of its evolving forms, is fundamental to the health of American self-governance and to the vitality of progressive movements within it. The ability to gather and disseminate news serves as a critical check on power and a catalyst for social change. The liberal Justices of yesteryear recognized and vocalized these essential truths, understanding that without a healthy constitutional and legal ecosystem for trusted news, democracy itself is at risk.¹² They viewed press freedom as key to robust political dialogue rooted in accurate facts. They also saw it as inextricably linked to civil rights, social justice, and the advancement of progressive causes. The silence on press-freedom issues from today's liberal Justices thus not only marks a departure from historical norms but also potentially leaves progressive movements without a tool that past liberal Justices believed was necessary to safeguard and advance these causes.

Part I explores ideological shifts in the public's views of the press. Part II outlines the methodology of our study, designed to compare these public perceptions with the perceptions of the Justices. Part III analyzes the past and current Justices' views of newsgatherers and considers whether the trends among the current liberals might be explainable by something other than an abandonment of press positivity. They cannot be. The data make clear that there has been a tectonic shift in the relationship between judicial liberalism

8. See *infra* Part III.

9. See RonNell Andersen Jones & Sonja R. West, *The Future of Press Freedom*, in THE FUTURE OF PRESS FREEDOM: DEMOCRACY, LAW, AND THE NEWS IN CHANGING TIMES, *supra* note 5, at 3, 3 (exploring how “[a] confluence of economic, cultural, technological, and political shifts has abruptly upended our longstanding sense of how the news media operates,” realigning “the traditional relationships between and among democracy, newsgathering, and press freedom, prompting new questions about what it means to value and support a free press in the United States”).

10. See *id.* at 4 (discussing the importance of identifying and protecting “the press *functions* even as the media landscape in which they are performed evolves”).

11. *Id.*

12. See *infra* Part III.

and attitudes about the press function. We conclude, in Part IV, by launching the important conversation about both the causes and the potential consequences of this phenomenon.

I. IDEOLOGY AND AMERICANS' VIEWS OF THE PRESS

Liberals and conservatives in the United States today have increasingly divergent views of the news media. They get their news from different sources.¹³ They see the role of the press differently. And they disagree strongly about whether the press can be trusted. As a result, ideology is now strongly linked with how Americans receive information and, in turn, how they see the world around them. The severity of this ideological divide, though, is a relatively recent development. The increasingly stark gap between liberals and conservatives in the public on this matter mirrors observable patterns in the political sphere, where anti-press sentiment was an early rallying cry for then-candidate Donald Trump as he sought his first term in the presidency and where it continues to animate the politics of the right.¹⁴

In this Part, we explore these ideological patterns, first as they are found among the public and then as they exist among elected officials. Anecdotal evidence from the Supreme Court, meanwhile, suggests that similar ideological divisions might separate the Justices. Taken together, it all suggests a coherent story—that growing press negativity by the conservative Justices could be driving a widening ideological gap at the Court, just as is happening among members of the public and elected officials. Yet, as we explore in the discussion that follows, our data tell a surprisingly different story.

A. INCREASING IDEOLOGICAL DIVIDE IN PUBLIC VIEWS OF THE PRESS

The most consistent insights we have into the relationship between ideology and the public's views of the press come from polling data by two

13. According to a 2022 Economist/YouGov poll, more Democrats than Republicans get their news from broadcast and cable television stations and national and international newspapers, while Republicans are more likely than Democrats to turn to conservative news websites or podcasts and talk radio for their information. THE ECONOMIST/YOUGOV POLL: MARCH 26 - 29, 2022 - 1500 U.S. ADULT CITIZENS 226 (2022), https://d3nkl3psvxxpe9.cloudfront.net/documents/econTabReport_M07YvJB.pdf [https://perma.cc/W4ER-Q3HV]. The two groups also have very different perceptions of the trustworthiness of individual news organizations. Sixty-five percent of Democrats believe CNN is trustworthy or very trustworthy, but only eleven percent of Republicans trust the network, which President Donald Trump has frequently singled out for attacks. *Id.* at 229. Conversely, more than half of Republicans (fifty-three percent) express faith in Fox News, while only nineteen percent of Democrats do so. *Id.* at 231.

14. Jonathan M. Ladd & Alexander R. Podkul, *Sowing Distrust of the News Media as an Electoral Strategy*, in THE OXFORD HANDBOOK OF ELECTORAL PERSUASION 427, 431 (Elizabeth Suhay, Bernard Grofman & Alexander H. Trechsel eds., 2020); see *infra* note 39.

organizations: Gallup¹⁵ and the General Social Survey (“GSS”).¹⁶ For more than fifty years, these organizations have compiled data on changing public perceptions of the press, including data breaking down the ideological patterns underlying those attitudes.¹⁷ Both datasets show that there has been an overall decline in public trust in the news media and that there has long been an ideological divide in public views of the press.¹⁸ But they also reveal that partisan divergence on the issue has widened dramatically over time.¹⁹

The polling data show that the general public’s perception of the press, already in decline since the 1970s,²⁰ took a serious dive in 2016 during the presidential contest between Donald Trump and Hillary Clinton.²¹ That

15. Gallup began polling the public on its trust in the news media in 1972. Megan Brenan, *Americans’ Trust in Media Dips to Second Lowest on Record*, GALLUP (Oct. 7, 2021), <https://news.gallup.com/poll/355526/americans-trust-media-dips-second-lowest-record.aspx> [https://perma.cc/Z8TX-JPSC]. It asks its respondents: “In general, how much trust and confidence do you have in the mass media—such as newspapers, TV and radio—when it comes to reporting the news fully, accurately and fairly—a great deal, a fair amount, not very much or none at all?” Megan Brenan, *Americans’ Trust in Media Remains Near Record Low*, GALLUP (Oct. 18, 2022) [hereinafter GALLUP Trust 2022], <https://news.gallup.com/poll/403166/americans-trust-media-remains-near-recor-d-low.aspx> [https://perma.cc/Q88B-DHQM].

16. GSS, which has regularly polled on this question for half a century, provides the most extensive data on the public’s attitude toward the press. *Confidence in Press*, GSS DATA EXPLORER [hereinafter GENERAL SOCIETY SURVEY], <https://gssdataexplorer.norc.org/trends?category=Politics&measure=compress> [https://perma.cc/D8VW-K5P3]. Since 1972, GSS has asked respondents whether they “have a great deal of confidence, only some confidence, or hardly any confidence at all” in the “press.” *Id.* This question has been asked in 33 waves of the survey, including the newest results from 2024. *Id.*

17. See GALLUP Trust 2022, *supra* note 15; GENERAL SOCIETY SURVEY, *supra* note 16.

18. See GALLUP Trust 2022, *supra* note 15.

19. Megan Brenan & Lydia Saad, *Five Key Insights into Americans’ Views of the News Media*, GALLUP (Feb. 27, 2025) [hereinafter GALLUP Confidence 2025], <https://news.gallup.com/opinion/657239/five-key-insights-americans-views-news-media.aspx> [https://perma.cc/E6E-R-3WKQ].

20. GSS data, which was collected regularly on this question throughout the 1970s and 1980s, show a high point in public confidence in 1976, when 28% of respondents were highly confident in the press and only 18% had little faith. See GENERAL SOCIETY SURVEY, *supra* note 16. This was the same year the film, *All the President’s Men*, celebrated the work of investigative journalists Bob Woodward and Carl Bernstein in exposing the Watergate scandal that ultimately led to the resignation of President Richard Nixon. See Dan Balz, *Watergate Happened 50 Years Ago. Its Legacies Are Still with Us.*, WASH. POST (June 12, 2022), <https://www.washingtonpost.com/politics/2022/06/12/watergate-trust-government-reforms> (on file with the *Iowa Law Review*) (explaining that Watergate marked a dividing line in American history “from a period in which Americans trusted their government to a period in which that trust was broken and never truly restored”). A steady decline in the public’s view, however, soon followed, with the percentage of people with little trust outnumbering those with a great deal of trust beginning in the early 1980s. See GENERAL SOCIETY SURVEY, *supra* note 16.

21. Some shifts in Gallup’s data are noteworthy. The first time the public’s faith in the media fell below 50% was in 2004. See GALLUP Confidence 2025, *supra* note 19. Since 2004, this number has averaged 38%. *Id.* The lowest point of public confidence in the media was in 2016, when Gallup reported that only 32% of Americans had either a great deal or a fair amount of trust. *Id.*

diminished positivity has persisted. In 1972, 68% of Americans reported having either a great deal or a fair amount of trust in the press.²² Fifty years later, in 2023, that number had fallen to a record low of 32%.²³ The percentage of respondents expressing negative views of the press is now more than six times larger than it was in the 1970s.²⁴ GSS data confirm these attitudinal downturns, showing a severe decline in those expressing a great deal of confidence in the press²⁵ and skyrocketing percentages of those who have “hardly any” confidence in it.²⁶ By 2022, a majority of Americans expressed a negative view of the press, and almost eight times the number of respondents expressed the lowest level of trust in the press as embraced a positive view of it.²⁷

But this public animosity toward the press is not ideologically symmetrical. Polling data show that liberals and conservatives differ significantly in their faith in the press and in their views of both its motivations and its value to democracy. The data also suggest that the primary driver of this growing ideological gap is the dramatic rise in negativity by conservatives. In comparison, liberals’ views of the news media have remained more consistently positive over time.

The Gallup polling has always found Democrats to be more likely than Republicans to have positive attitudes toward the news media.²⁸ But over the past half century, the rift between the two groups has soared from mere single-digit differences to a more than sixty-point gap.²⁹ Most of that movement came from Republicans, whose confidence in the news media plummeted by fifty-eight points to a point at which a bare 10% reported that they had even a fair amount of trust in the media.³⁰ During this same time, Democrats’ faith

The poll that year was taken between September 7 and September 11 of 2016, two months before the presidential election between Donald Trump and Hillary Clinton. *Id.*

22. *See id.*

23. *See id.*

24. In 1972, only 6% of those polled said they had no trust in the press. GALLUP Trust 2022, *supra* note 15. The 2022 polling marked the first time that the number of adults in the United States with no confidence in the press was greater than the number with at least a fair amount of trust. *Id.*

25. In 1973, 23% of respondents expressed a great deal of confidence in the press. *See* GENERAL SOCIETY SURVEY, *supra* note 16. By 2024, that number had fallen to 7%. *Id.*

26. In the initial polling in 1973, only 14% of those polled had the lowest level of faith in the news media, but more than half century later that number has skyrocketed to 54%. *See id.*; *Major Declines in the Public’s Confidence in Science in the Wake of the Pandemic*, AP-NORC CTR. (June 15, 2023), <https://apnorc.org/projects/major-declines-in-the-publics-confidence-in-science-in-the-wake-of-the-pandemic> [https://perma.cc/HQ2R-6328].

27. GENERAL SOCIETY SURVEY, *supra* note 16.

28. *See, e.g.*, GALLUP Trust 2022, *supra* note 15.

29. In 1972, there was a six-point difference between the number of Democrats expressing faith in the press (74%) than the number of Republicans who agreed (68%). *Id.* In 2020, the distance between the two was 63%. *Id.* Updated numbers for 2022 narrowed the gap somewhat. *Id.*

30. *Id.*

in the press fell by only one point, from 74% to 73%.³¹ GSS data reveal similar ideological trends across time.³²

Both Gallup and GSS show a stark divergence of the two political groups during or soon after the 2016 election—the same time that the overall public downturn in positivity occurred.³³ Ongoing polling suggests these ideological divides endure, with negativity from conservatives the strongest theme in all public assessments of attitudes about the press.³⁴

Polling also shows that conservatives and liberals have vastly different views on the roles the news media play in society. A 2018 poll by Quinnipiac University found that 91% of Democrats believed that the press is “an important part of democracy,” while only 36% of Republicans agreed.³⁵ In contrast, a majority of Republicans (51%) described the news media as “the enemy of the people,” compared to only 5% of Democrats.³⁶ Nearly three times as many Republicans as Democrats believe the press is hurting democracy.³⁷ A 2022 survey by Gallup and the Knight Foundation found that Republicans are far more likely than Democrats to believe that the news media affirmatively *intends* to mislead

31. *Id.* The data show a similar gap for negative views of the press, with 57% of Republicans saying they have no confidence in the news media and only 10% of Democrats saying the same. *Id.*

32. In 1973, GSS found only a six-point difference between the number of Democrats and Republicans who had a great deal of confidence in the press (26% to 20%). *See* GENERAL SOCIETY SURVEY, *supra* note 16. By 2024, however, that gap had doubled (15% to 3%). *Id.* Once again, the gap is even wider for negative views of the press. *Id.* In 1973, GSS found that Republicans were only two points more likely to have “hardly any” faith in the news media than Democrats (15% to 13%). *Id.* By 2024, however, the difference was more than twenty times larger, with a 44-point spread between the two groups (77% to 33%). *Id.*

33. *See* GALLUP Trust 2022, *supra* note 15; Phillip Bump, *Republicans and Democrats Have Never Been More Divided on Confidence in the Media*, WASH. POST (Mar. 21, 2019, 9:25 PM), <https://www.washingtonpost.com/politics/2019/03/21/republicans-democrats-have-never-been-more-divided-confidence-media> (on file with the *Iowa Law Review*).

34. Polling by Gallup and the Knight Foundation in 2022, for example, found that 45% of Democrats had a very or somewhat favorable view of the press, compared to a mere 8% of Republicans who did. GALLUP, AMERICAN VIEWS 2022: PART 2: TRUST, MEDIA AND DEMOCRACY 8 (2023) [hereinafter AMERICAN VIEWS 2022: PART 2], <https://knightfoundation.org/wp-content/uploads/2023/02/American-Views-2022-Pt-2-Trust-Media-and-Democracy.pdf> [https://perma.cc/566A-9FH2]. Again, the ideological divergence was even stronger on negative views of the press, where 79% of Republicans expressed a very or somewhat unfavorable opinion, but only 28% of Democrats did so—a 51-point difference. *Id.*

35. Eli Watkins, *Poll: Majority of GOP Agrees News Media Is ‘Enemy of the People’*, CNN (Aug. 15, 2018, 1:17 AM), <https://www.cnn.com/2018/08/14/politics/quinnipiac-media-gop/index.html> [https://perma.cc/BH8A-D8NH].

36. *Id.* (noting that similar polls with alternative phrasing that directly asked respondents if they *agreed or disagreed with Trump* when he stated “that certain news organizations are the enemy of the American people” produced even higher percentages of agreement from Republican respondents, “with 81% . . . saying they agreed with Trump and only 17% saying they disagreed”).

37. *See* David Klepper, *Americans Fault News Media for Dividing Nation: AP-NORC Poll*, ASSOCIATED PRESS (May 1, 2023, 1:23 PM), <https://apnews.com/article/poll-misinformation-polarization-coronavirus-media-d56a25fd8dfdgabe1389b56d7e82b873> [https://perma.cc/ZC25-V28Z] (noting that 61% of Republicans believe that the press “is hurting democracy,” while only 23% of Democrats share this view).

its audiences and that it does not care about the best interests of readers or the potential impact of its reporting on American society and democracy.³⁸ On this question of faith in the motivations of the press—so-called “emotional trust”—conservatives’ attitudes are vastly more negative than those of liberals.³⁹ Polling also finds Republicans far less likely than Democrats to believe that the press is acting in a public-service capacity. While both liberals and conservatives think of the press as a business-motivated industry, more than two-and-a-half times as many liberals as conservatives believe that the news media balance their public-service mission with their business aims.⁴⁰

While the relationship between ideology and feelings about the press is complicated—especially when it comes to the more universally trusted but quickly disappearing local news⁴¹—and while new and important research is helping parse these divides in ways that provide more nuance, the data on press friendliness among the public are clear. Ideology plays a major role. Liberals are more press-positive. Conservatives are press-negative and have become vastly more so in recent years.

B. IDEOLOGICAL DIVIDE ON PRESS POSITIVITY IN THE POLITICAL BRANCHES

These data on intensifying ideological differences in public attitudes toward the press appear to parallel a body of evidence that the political

38. See GALLUP, AMERICAN VIEWS 2022: PART 1: NEWS IN AMERICA: PUBLIC GOOD OR PRIVATE ENTERPRISE? 11 (2022) [hereinafter AMERICAN VIEWS 2022: PART 1], <https://knightfoundation.org/wp-content/uploads/2022/10/American-Views-2022-pt1.pdf> [https://perma.cc/K9CN-GS7Z]; AMERICAN VIEWS 2022: PART 2, *supra* note 34, at 13–14.

39. A mere 6% of Republicans have high levels of emotional trust versus 37% of Democrats. AMERICAN VIEWS 2022: PART 2, *supra* note 34, at 16. Conversely, the study found that 64% of Republicans have low emotional trust, versus 18% of Democrats. *Id.*

40. AMERICAN VIEWS 2022: PART 1, *supra* note 38, at 11.

41. A 2021 poll by the research firm NORC at the University of Chicago found that conservatives and liberals had “nearly identical” views about their local news outlets, with strong majorities in both groups saying their local press did either “very or extremely well” or “somewhat well” reporting on local issues of interest. See Tom Rosenstiel & Mariana Meza Hernandez, *Opinion, Actually, People Don’t Hate the Media as Much as You Think*, WASH. POST (Dec. 5, 2023, 5:45 AM), <https://www.washingtonpost.com/opinions/2023/12/05/americans-media-views-trust> (on file with the *Iowa Law Review*). This finding is in keeping with other polling showing that Americans’ faith in their local institutions is holding up even while trust in national institutions are falling across the board. See Jeffrey M. Jones, *Americans Trust Local Government Most, Congress Least*, GALLUP (Oct. 13, 2023), <https://news.gallup.com/poll/512651/americans-trust-local-government-congress-least.aspx> [https://perma.cc/6RM5-MDGY] (finding greater faith in local government than in Congress). Yet, while not as extreme as the ideological split on the press in general, the partisan divide on local news is still greater than in the past and has been on the rise. A 2021 poll by Pew, for example, found that 84% of Democrats have at least some trust in their local news outlets compared to only 66% of Republicans. See Jeffrey Gottfried & Jacob Liedke, *Partisan Divides in Media Trust Widen, Driven by a Decline Among Republicans*, PEW RSCH. CTR. (Aug. 31, 2021), <https://www.pewresearch.org/short-reads/2021/08/30/partisan-divides-in-media-trust-widen-driven-by-a-decline-among-republicans/?ms=F1facebook> [https://perma.cc/SQV5-TZ96]. This 18-point gap is three times wider than the 6-point spread Pew found on this question in a 2016 poll. *Id.*

branches also have split more deeply along those lines, with conservative lawmakers becoming increasingly critical of the news media. In recent years, there have been several high-profile incidents of Republican elected officials disparaging the press. While there have been signs of Republican politicians disfavoring the press for several decades,⁴² the trend has been amplified and observably accelerated by the rise of President Trump in the Republican party.⁴³ As one scholar observed, “[t]oday, being anti-press is almost an unofficial part of the GOP platform.”⁴⁴

Trump’s attacks on the news media—during his three campaigns and throughout both his first and second terms as president—have been unparalleled in modern American history, in both their substance and their frequency.⁴⁵ He has made a regular practice of vilifying journalists and news outlets, most infamously labeling the press as “the enemy of the people” and declaring that any negative reporting of him was “fake” news.⁴⁶ Media scholars and commentators warned that blaming, criticizing, and threatening the press were “mainstay[s]” of Trump’s political rhetoric as a presidential candidate, and complained that the practice “endured, like a chronic disease, throughout his [first term in the] presidency.”⁴⁷

42. See Larry Light, *How Did Republicans Learn to Hate the News Media?*, COLUM. JOURNALISM REV. (Nov. 14, 2018), https://www.cjr.org/first_person/republicans-media.php [https://perma.cc/44LX-GWZL] (describing the evolution of Republican distrust for the media since the 1950s).

43. See generally LEONARD DOWNIE JR., COMM. TO PROTECT JOURNALISTS, THE TRUMP ADMINISTRATION AND THE MEDIA: ATTACKS ON PRESS CREDIBILITY ENDANGER US DEMOCRACY AND GLOBAL PRESS FREEDOM (2020).

44. Erin C. Carroll, *A Free Press Without Democracy*, 56 U.C. DAVIS L. REV. 289, 323 (2022); see also Meredith Conroy, *Why Being ‘Anti-Media’ Is Now Part of the GOP Identity*, FIVETHIRTYEIGHT (Apr. 5, 2021, 6:00 AM), <https://fivethirtyeight.com/features/why-being-anti-media-is-now-part-of-the-gop-identity> [https://perma.cc/Y5AJ-4NTX] (describing studies finding that Republicans are “more likely to say that being ‘anti-media’ is part of their political identity” and quoting a Georgetown public policy professor as saying that “conservative media’s continued criticism of the press has been ‘kicked into high gear’ by the modern Republican Party”).

45. See Ladd & Podkul, *supra* note 14 at 431 (“Donald Trump has taken public criticism of the national news media to unprecedented levels of prominence and viciousness.”); David Smith, *Fox Host Lambasts Trump over ‘Most Sustained Assault on Press Freedom in US History’*, GUARDIAN (Dec. 11, 2019, 10:22 PM), <https://www.theguardian.com/media/2019/dec/12/fox-host-lambasts-trump-over-most-sustained-assault-on-press-freedom-in-us-history> [https://perma.cc/K7WG-E2Y7] (quoting Fox News anchor Chris Wallace as saying, “I believe that President Trump is engaged in the most direct sustained assault on freedom of the press in our history.”).

46. Roy S. Gutterman, Opinion, *After 4 Damaging Years, Biden Must Restore Press Freedom: Roy S. Gutterman*, SYRACUSE.COM (Dec. 10, 2020, 10:00 AM), https://www.syracuse.com/opinion/2020/12/after-4-damaging-years-biden-must-restore-press-freedom-roy-s-gutterman.html?_ga=2.221130910.729064608.1612977547-1278528241.1612977547 [https://perma.cc/9X9L-4SWP].

47. Margaret Sullivan, Opinion, *Trump’s Attacks on the News Are Accelerating. You Can Expect Three Results.*, WASH. POST (Sept. 3, 2019), https://www.washingtonpost.com/lifestyle/style/trumps-attacks-on-the-news-media-are-accelerating-you-can-expect-three-results/2019/09/03/fedff66-ce3d-11e9-87fa-8501a456c003_story.html (on file with the *Iowa Law Review*); see also USA: *Trump Verbally Attacked the Media More than 100 Times in Run-Up to Election*, REPS. WITHOUT BORDERS (Oct. 25, 2024), <https://rsf.org/en/usa-trump-verbally-attacked-media-more-100-time>

In the run-up to his second term, Trump escalated the attacks, “overtly vowing to weaponize government and seek retribution against the news media.”⁴⁸ Domestic critics and international watchdog groups reported that within a few months into that term, “Donald Trump ha[d] grown into a key figure in a global anti-journalism political movement.”⁴⁹ They pointed to stark upticks in violent words and actions toward newsgatherers;⁵⁰ a pattern of lawfare and economic pressure against the press;⁵¹ the apparent weapon-

s-run-election [<https://perma.cc/B4QP-VLFS>] (warning that such attacks had become so commonplace as features of the candidate’s rallies that “the American media—and in turn, the wider public—may be growing numb” to the serious threat they posed).

48. Oliver Darcy, *Trump and His Allies Are Threatening Retribution Against the Press. Their Menacing Words Should Not Be Ignored*, CNN BUS. (Dec. 7, 2023, 7:11 AM), <https://www.cnn.com/2023/12/07/media/trump-threatens-retribution-against-press/index.html> [<https://perma.cc/5HX9-LVKS>]; see Robin Abcarian, Opinion, *Believe Trump When He Vows Revenge on the Media. MAGA Shock Troops Are Already on the Attack*, L.A. TIMES (Dec. 13, 2023, 3:00 AM), <https://www.latimes.com/opinion/story/2023-12-13/donald-trump-dictator-free-press-fake-news-robert-kagan-jd-vance> (on file with the *Iowa Law Review*); A.G. Sulzberger, Opinion, *How the Quiet War Against Press Freedom Could Come to America*, WASH. POST (Sept. 5, 2024, 6:00 AM), <https://www.washingtonpost.com/opinions/2024/09/05/sulzberger-free-press-new-york-times> (on file with the *Iowa Law Review*) (describing fear amongst news organizations that key players in the second Trump Administration intend to sow distrust of the press, normalize harassment of journalists, weaponize regulatory authority to punish dissenting newsgatherers, exploit the courts, and encourage loyalists in the private sector to mirror and amplify these tactics).

49. *Six Months of Trump’s War on the Press: Importing and Exporting Authoritarian Tendencies*, REPS. WITHOUT BORDERS (July 17, 2025) [hereinafter REPS. WITHOUT BORDERS], <https://rsf.org/en/six-months-trump-s-war-press-importing-and-exporting-authoritarian-tendencies> [<https://perma.cc/8VHD-46QA>]; see Edward Helmore, *Trump Is Waging War Against the Media—and Winning*, GUARDIAN (July 5, 2025, 1:00 AM) [hereinafter Helmore, *Waging War*], <https://www.theguardian.com/us-news/ng-interactive/2025/jul/05/trump-attack-us-media> [<https://perma.cc/WNN3-PKVC>]; Todd Spangler, *Defeat the Press: How Donald Trump’s Attacks on News Outlets Undermine the First Amendment*, VARIETY (July 16, 2025, 8:00 AM) [hereinafter Spangler, *Defeat the Press*], <https://variety.com/2025/biz/news/donald-trump-attacks-news-media-first-amendment-1236460374> [<https://perma.cc/62UG-STNX>]; Jess Bidgood, *Trump Sharpens Attacks on a Favorite Foe: The News Media*, N.Y. TIMES (July 21, 2025) [hereinafter Bidgood, *Favorite Foe*], <https://www.nytimes.com/2025/07/21/us/politics/trump-news-media.html> (on file with the *Iowa Law Review*).

50. REPS. WITHOUT BORDERS, *supra* note 49 (reporting that the nonprofit organization had “tracked at least 60 acts of violence against journalists during recent protests . . . against Trump’s immigration policies” and that this “aggression towards journalists has been a staple of Trumpist politics”); see also Spangler, *Defeat the Press*, *supra* note 49 (reporting that in the ten years since he first declared presidential candidacy in “2015, Trump has written nearly 3,500 social media posts that attack the press,” which amounts to “roughly one per day”).

51. See REPS. WITHOUT BORDERS, *supra* note 49 (reporting that “[o]ne of Donald Trump’s preferred tools for dealing with any problem, the frivolous lawsuit, is a hallmark of his war on the press” and that “[h]e has repeatedly sued media organizations for coverage he dislikes” in acts of “[l]awfare,” “the strategic use of laws to impede an opponent – in this case press freedom”); see also Bidgood, *Favorite Foe*, *supra* note 49 (reporting that “Jeff Bezos, the owner of The Washington Post, instructed the paper’s opinion operation to narrow its purview,” that “ABC settled a defamation case brought by Trump before he even took office, surprising legal observers who believed it would have been difficult for the president to prove his case in court,” and that Paramount “agreed to pay \$16 million to settle a lawsuit Trump brought over a ‘60 Minutes’ interview on CBS — and then the network decided to take one of its most prominent Trump

ization of previously independent bureaucracies against disfavored media;⁵² penalties for refusal to use the executive's preferred words or phrases;⁵³ and sweeping moves to dismantle public media in the U.S. and abroad.⁵⁴ Observers noted that the "muscular and precise attack on the media's pressure

critics, Stephen Colbert, off the air"); Spangler, *Defeat the Press*, *supra* note 49 (calling the CBS and ABC cases "the highest-profile examples of the U.S. president exerting pressure on the news media to submit to his will" and suggesting they "show Trump has found tactical ways to prevail in his nonstop battle to discredit outlets that report critically on him and his activities," "a dangerous precedent that will only embolden Trump and his allies to push even harder against a free press"); Helmore, *Waging War*, *supra* note 49 (describing the ABC, CBS, and AP cases and noting that Trump is also suing a pollster at the Des Moines Register for reporting Trump's opponent in the lead in a state she ultimately did not win and threatening legal action and potential prosecution of CNN "over its reporting on an app that warns users of nearby immigration enforcement agents").

52. See Bidgood, *Favorite Foe*, *supra* note 49 (quoting a prominent media lawyer as saying, "He has learned that he can enlist the Justice Department and an extremely compliant F.C.C. chair to increase the leverage. And that is a big change."); see also Helmore, *Waging War*, *supra* note 49 (discussing the pressure Paramount felt to settle its CBS suit with Trump as it sought approval from Trump Administration regulators for a deal to sell the company, quoting a First Amendment expert as saying the company "may have closed this case, but it opened the door to the idea that the government should be the media's editor-in-chief," and quoting Democratic Senator Bernie Sanders saying the move represents "a 'dark day for independent journalism and freedom of the press'"); Spangler, *Defeat the Press*, *supra* note 49 (quoting the FCC's sole Democratic commissioner as saying that "multiple broadcast executives have told her that, given the threats by Trump and the White House, they have instructed reporters 'to be careful about what they're reporting'" and that "the FCC is being 'weaponized' to retaliate against news outlets for editorial decisions," which she calls a "campaign of censorship and control").

53. REPS. WITHOUT BORDERS, *supra* note 49 (describing how "the White House banned the Associated Press (AP) from access to the Oval Office, Air Force One, and various official events because the administration objected to the press agency's use of 'Gulf of Mexico' to refer to the body of water along the country's southern coast that Trump renamed the 'Gulf of America'" and how White House press staff have "refused to respond to emails from reporters who include pronouns in their email signatures"); see also Bidgood, *Favorite Foe*, *supra* note 49 (noting the ways the Trump Administration has "flexed its power over seemingly parochial matters – like when some reporters at legacy media organizations . . . lost their desks at the Pentagon to friendly right-wing media outlets" or when the Wall Street Journal was removed "from [a] press pool on a . . . trip to Scotland" after it ran an unflattering story that Trump challenged as false).

54. REPS. WITHOUT BORDERS, *supra* note 49 (noting that "Trump has made public media a target of his attacks by attempting to revoke congressionally approved funding for the national public broadcasters *National Public Radio (NPR)* and the *Public Broadcast Service (PBS)*," has "threatened funding for local, independent public radio and television stations," and has "cut off US support for independent media abroad, prompting jubilation from authoritarian regimes who are seizing the opportunity to fill the void left behind"); see also Bidgood, *Favorite Foe*, *supra* note 49 (describing the defunding of public broadcasting and the dismantling of "Voice of America, the federally funded news agency that provides coverage to countries with limited press freedom"); Spangler, *Defeat the Press*, *supra* note 49 (quoting the CEO of PBS as saying the Trump Administration's pressure to defund public media "clearly is an attempt to try to impact and control the kind of programming we do. It pulls on a thread that could unravel our entire system").

points”⁵⁵ represented “a very different moment”⁵⁶ from even the already-hostile first term and that Trump’s “repeated and blistering attacks on the press have been one of the things most worrying those who fear for America’s democratic health.”⁵⁷

Embracing Trump’s model, other Republican political actors are also engaging in forceful attacks on journalists, including calling them “corrupt,”⁵⁸ threatening to have them jailed,⁵⁹ and calling for the repeal of laws that protect their work.⁶⁰ In 2022, conservative pundit Tucker Carlson mocked Republican presidential candidate Nikki Haley for even speaking with a mainstream media outlet, telling an audience of Republicans that they “need to be really wary of candidates who care what *The New York Times* thinks.”⁶¹ Meanwhile, the evidence is mounting that this strong negativity toward the press from party leaders is only continuing to spread and escalate among Republicans.⁶²

This ideological theme appears to be part of a well-documented broader trend throughout the world. Pro-democracy organizations and scholars of authoritarianism have been calling attention to the rising negativity faced by the global press at the hands of right-wing populist leaders in other

55. Bidgood, *Favorite Foe*, *supra* note 49 (discussing the ways that Trump’s verbal vilification of the press has morphed into aggressive behaviors, noting that “[i]f Trump’s complaints about the media feel like a throwback to his first term, his actions toward the industry have gone much further than that”).

56. *Id.*

57. Helmore, *Waging War*, *supra* note 49 (arguing that the “US media is now in a deep crisis of the sort that observers of creeping autocracy in places such as Hungary might find familiar”).

58. Scott L. Hall, *GOP Debate: Vivek Ramaswamy Attacks NBC’s Kristen Welker, Other Moderators*, USA TODAY (Nov. 8, 2023, 10:00 PM), <https://www.usatoday.com/videos/news/politics/2023/11/08/gop-debate-vivek-ramaswamy-attacks-nbcs-kristen-welker-news-media/71511608007> [htts://perma.cc/YRN6-SPZR].

59. Natalie Venegas, *Marjorie Taylor Greene Wants Democrats and Media Figures Jailed*, NEWSWEEK (Dec. 17, 2023, 10:58 AM), <https://www.newsweek.com/marjorie-taylor-green-wants-democrat-s-jailed-over-trump-russia-probe-1853078> [https://perma.cc/65K4-KLC9].

60. Matt Dixon, *DeSantis Wants to Roll Back Press Freedoms — with an Eye Toward Overturning Supreme Court Ruling*, POLITICO (Feb. 23, 2023, 4:30 AM), <https://www.politico.com/news/2023/02/23/florida-gop-desantis-proposal-sue-media-00084023> [https://perma.cc/DTS2-DADN].

61. David Freedlander, *Why Republicans Stopped Talking to the Press “I Just Don’t See the Point,” Said an Adviser to a GOP Presidential Aspirant*, INTELLIGENCER (July 25, 2022), <https://nymag.com/intelligencer/2022/07/why-republicans-stopped-talking-to-the-press.html> (on file with the *Iowa Law Review*).

62. Matthew Sheffield, *Trump’s Attacks on Media Are Influencing Republicans’ Attitudes Toward Press*, HILL (Aug. 3, 2018), <https://thehill.com/hilltv/what-americas-thinking/400322-polls> [tertrump-attacks-on-media-are-rubbing-off-on-fellow] [https://perma.cc/4V3K-W5Vg] (“President Trump’s frequent and vitriolic attacks on the news media are encouraging fellow Republicans to develop drastically more negative opinions of journalists.”); Margaret Sullivan, *Trump Has Sown Hatred of the Press for Years. Now Journalists Are Under Assault from Police and Protesters Alike*, WASH. POST (May 30, 2020, 10:41 PM), https://www.washingtonpost.com/lifestyle/media/trump-has-sown-hatred-of-the-press-for-years-now-journalists-are-under-assault-from-police-and-protesters-alike/2020/05/30/1e6b81ae-a2a3-11ea-81bb-c2f70f01034b_story.html (on file with the *Iowa Law Review*) (observing that Trump’s “disrespect from the top has emboldened politicians at every level to falsely cry ‘fake news’ when they don’t like a story”).

democracies.⁶³ Attacks on the news media increase “in tandem with right-wing populism,” according to a 2019 report by Freedom House.⁶⁴ These ideologically right-leaning lawmakers “present themselves as the defenders of an aggrieved majority . . . and argue that the interests of the nation—as they define it—should override democratic principles like press freedom, transparency, and open debate.”⁶⁵

While Republican politicians have become increasingly negative about the press, there is little evidence that Democratic elected officials’ views of the news media have declined in any significant way.⁶⁶ Over the last fifty years, as “criticism of the institutional news media [became] a staple of national conservative rhetoric,”⁶⁷ the “[r]hetoric from national Democratic Party politicians rarely takes this form: an explicit attack on the mainstream by name.”⁶⁸ While some progressive commentators have criticized the mainstream press for its centralized and corporate ownership, “major Democratic pundits and politicians rarely echo this rhetoric.”⁶⁹ At most, some national Democrats have voiced complaints about the reporting from certain Republican-leaning media outlets like Fox News,⁷⁰ but these actions have not taken the form of press-negative political agendas.

Perhaps most importantly, Democratic office holders largely continue the tradition of publicly praising the constitutional role of the press more generally.⁷¹ During his time in the Oval Office, President Biden issued a statement praising the work of the press every year for World Press Freedom Day, regularly declaring that journalism “is fundamental to a free society” and that “we honor all the journalists, reporters, and media workers who bravely pursue the truth.”⁷² In 2020, as the presumptive Democratic nominee for the

63. See *Journalism Weakened by Democracy’s Erosion*, REPS. WITHOUT BORDERS (Apr. 25, 2018), <https://rsf.org/en/journalism-weakened-democracy-s-erosion-o> [<https://perma.cc/69YR-DE5E>] (discussing the weakening of press freedom in “authoritarian regimes and dictatorships,” and highlighting attacks on the news media by right-wing and conservative lawmakers in the United States, France, Poland, Israel, Hungary, and more); Sulzberger, *supra* note 48.

64. SARAH REPUCCI, *FREEDOM AND THE MEDIA 2019: A DOWNWARD SPIRAL* 2 (2019).

65. *Id.*

66. Ladd & Podkul, *supra* note 14, at 431.

67. *Id.* at 430.

68. *Id.* at 431.

69. *Id.*

70. See, e.g., Brian Stelter, *Fox’s Volley with Obama Intensifying*, N.Y. TIMES (Oct. 11, 2009), <https://www.nytimes.com/2009/10/12/business/media/12fox.html> (on file with the *Iowa Law Review*) (discussing the Obama Administration’s attacks on and “volatile exchange[s]” with the Fox News Channel).

71. See Andersen Jones & West, *The Fragility of the Free American Press*, *supra* note 5, at 569 (discussing the importance of the political tradition “that demands the President of the United States recognize and respect the vital role of the press”).

72. Press Release, White House, Statement from President Joe Biden on the Occasion of World Press Freedom Day 2023 (May 3, 2023), <https://bidenwhitehouse.archives.gov/briefing->

White House, Biden issued a statement celebrating “journalists for upholding free and open democracies, both here at home and around the world.”⁷³ That same day, in contrast, then-President Trump posted a message to social media declaring, “[t]he Fake News doesn’t show real polls. Lamestream Media is totally CORRUPT, the Enemy of the People!”⁷⁴

C. PRESUMED IDEOLOGICAL DIVIDE ON THE PRESS AT THE SUPREME COURT

As the divisions within the public and among elected officials on attitudes toward the press have become apparent and deepened in recent years, anecdotal evidence and conventional wisdom have suggested similar ideological dynamics may exist at the U.S. Supreme Court. Although the premise has never been tested, speculation has mounted that the same left-right divide that punctuates the issue of press friendliness in the public and political spheres must also exist within the judiciary.

Conservative-liberal Supreme Court splits on a variety of issues are top of mind for many. The Court as an institution has been steadily shifting to the right over the past several decades.⁷⁵ When the Senate confirmed Justice Amy Coney Barrett to fill the seat left open by the death of Justice Ruth Bader Ginsburg in 2020, the Court became the most conservative bench in almost a century⁷⁶ and cemented a powerful 6-3 conservative supermajority.

The current Court is also highly partisan—meaning that all the Republican-appointed Justices are conservative, while all the Democratic-appointed Justices are liberal.⁷⁷ This, too, is a new development. The Court became a completely partisan institution for the first time in its history in 2010 when Justice Elena Kagan, a Democratic appointee, filled the seat left open by Justice

room/statements-releases/2023/05/03/statement-from-president-joe-biden-on-the-occasion-of-world-press-freedom-day-2023 [https://perma.cc/GXT4-TZVB].

73. Rishika Dugyala, *Contrasting Messages from Biden and Trump on World Press Freedom Day*, POLITICO (May 3, 2020, 8:40 PM), <https://www.politico.com/news/2020/05/03/biden-trump-world-press-freedom-day-232808> [https://perma.cc/YR2R-EH42].

74. *Id.*

75. See Michael A. Bailey, *Is Today’s Court the Most Conservative in Sixty Years? Challenges and Opportunities in Measuring Judicial Preferences*, 75 J. POL. 821, 829 (2013) (“[T]he Martin and Quinn scores indicate that the contemporary Court is more conservative than any other time since 1937”); Adam Liptak, *Court Under Roberts Is Most Conservative in Decades*, N.Y. TIMES (July 24, 2010), <https://www.nytimes.com/2010/07/25/us/25roberts.html> (on file with the *Iowa Law Review*) (“[S]cholars who look at overall trends rather than individual decisions say that widely accepted political science data tell an unmistakable story about a notably conservative court.”).

76. Nina Totenberg, *The Supreme Court Is the Most Conservative in 90 Years*, NPR (July 5, 2022, 7:04 AM), <https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative> [https://perma.cc/XUC8-JEDT].

77. See Amelia Thomson-DeVeaux & Laura Bronner, *The Supreme Court’s Partisan Divide Hasn’t Been This Sharp in Generations*, FIVETHIRTYEIGHT (July 5, 2022, 1:08 PM), <https://fivethirtyeight.com/features/the-supreme-courts-partisan-divide-hasnt-been-this-sharp-in-generations> [https://perma.cc/E7CC-63D2] (“The data emphasizes that the court is deeply polarized along partisan lines — perhaps more than it’s ever been.”).

John Paul Stevens, a Republican appointee.⁷⁸ At that point, every sitting Republican-nominated Justice sat ideologically to the right of every Democratic-nominated Justice.⁷⁹

The current Court's partisanship is also evident in its decisions. According to one analysis, during the 2021 Term, 21% of the Court's decisions "were polarized by party,"⁸⁰ which was the highest percentage of ideologically divided decisions at the Court in the more than sixty years the analysis considered.⁸¹

Against the backdrop of this historically polarized and conservative Court comes increased speculation of what these circumstances might mean for the Court's approach to the press. Some have noted, for example, an apparent rise in some conservative Justices' negativity toward the press in their opinions in cases involving the landmark First Amendment case, *New York Times v. Sullivan*.⁸² The *Sullivan* Court's announcement of the "actual malice" standard in defamation challenges by public officials is universally held up as one of the most important constitutional protections for the press.⁸³

It thus appeared to be an ominous sign to many scholars and commentators when, in 2019, Justice Thomas called for the Court to revisit the *Sullivan*

78. See Ed Pilkington, *Elena Kagan Appointed to Supreme Court After US Senate Vote*, GUARDIAN (Aug. 5, 2010, 5:58 PM), <https://www.theguardian.com/law/2010/aug/05/elena-kagan-us-supreme-court> [https://perma.cc/38WF-ERAU] (noting that Kagan "replaces John Paul Stevens, who retired in June and who regularly voted with the liberal wing of the court").

79. See Neal Devins & Lawrence Baum, *Split Definitive: How Party Polarization Turned the Supreme Court into a Partisan Court*, 2016 SUP. CT. REV. 301, 322. This is a pattern that has continued since the Devins and Baum article was published, with Justice Neil Gorsuch replacing Justice Antonin Scalia in 2017, Justice Brett Kavanaugh replacing Justice Anthony Kennedy in 2018, and Justice Amy Coney Barrett replacing Justice Ruth Bader Ginsburg in 2020. See Ryan Black & Ryan Owens, *Neil Gorsuch Could Be the Most Conservative Justice on the Supreme Court*, WASH. POST (Mar. 20, 2017), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/15/neil-gorsuch-could-be-the-most-conservative-justice-on-the-supreme-court> (on file with the *Iowa Law Review*); Amelia Thomson-DeVeaux, *How Amy Coney Barrett Could Change the Supreme Court*, FIVETHIRTYEIGHT (Sept. 25, 2020, 6:16 PM), <https://fivethirtyeight.com/features/how-amy-coney-barrett-could-change-the-supreme-court> [https://perma.cc/S4PZ-RCYZ]. The replacement of Justice Stephen Breyer, a liberal, with Justice Ketanji Brown Jackson, also a liberal, in 2022 continued the partisan pattern at the Court. Early data also show Justice Jackson in her first term as slightly more liberal than Justice Breyer over the course of his career. See *Measures*, MARTIN-QUINN SCORES [hereinafter MARTIN-QUINN SCORES], <https://mqscores.wustl.edu/measures.php> [https://perma.cc/4ET2-BFTK].

80. Thomson-DeVeaux & Bronner, *supra* note 77 ("[T]he divide between the court's Republican and Democratic appointees is deeper than it's been in the modern era."); see also Adam Liptak, *The Supreme Court's Mixed Record on Adhering to Precedent*, N.Y. TIMES (Jan. 29, 2024, 5:01 AM), <https://www.nytimes.com/2024/01/29/us/supreme-court-precedent-chevron.html> (on file with the *Iowa Law Review*) (discussing evidence that the Roberts Court is more likely than past Courts to overturn precedents in order to reach conservative results).

81. *Id.*

82. See generally *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964).

83. See *id.* at 279–80; Jonathan Peters, *The Newspaper Ad that Changed Everything*, CNN (Nov. 20, 2017, 7:52 AM), <https://www.cnn.com/2017/11/20/opinions/new-york-times-v-sullivan-im pact-opinion-peters/index.html> [https://perma.cc/V379-A56P].

decision⁸⁴ and described *Sullivan* and its progeny as “policy-driven decisions masquerading as constitutional law.”⁸⁵ He repeated these calls in separate opinions in 2021⁸⁶ and in 2023.⁸⁷ In the most recent of these, he suggested that “the actual-malice standard comes at a heavy cost, allowing media organizations and interest groups ‘to cast false aspersions on public figures with near impunity.’”⁸⁸

Justice Neil Gorsuch joined Justice Thomas in the 2021 case and likewise suggested that the Court take a new look at *Sullivan*.⁸⁹ Writing only for himself, Justice Gorsuch painted a highly negative picture of the changes in “our Nation’s media landscape” since the Court decided *Sullivan* in 1964.⁹⁰ He argued that following the economic downturn in the news media industry, there was a “rise of 24-hour cable news and online media platforms that ‘monetize anything that garners clicks.’”⁹¹ This “new media environment,” he argued, “facilitates the spread of disinformation.”⁹²

Sullivan was a Warren Court decision, authored by the liberal Justice William Brennan at the height of the Civil Rights Movement. Regarded by historians and legal scholars as a watershed moment for the Court’s support of both that movement and the newsgatherers who reported upon it,⁹³ the case ushered in an era in which liberal Justices advocated for additional constitutional press protections, often in other cases moored in wider social-

84. Tony Mauro, *Perspective: Is the Supreme Court Still a Defender of Press Freedom?*, FREEDOM F., <https://www.freedomforum.org/perspective-is-the-supreme-court-still-a-defender-of-press-freed> om [https://perma.cc/N58F-ZWX4] (observing that “[r]ecent mentions of the press in Supreme Court opinions have often been disparaging”).

85. *McKee v. Cosby*, 586 U.S. 1172, 1173 (2019) (Thomas, J., concurring in the denial of certiorari).

86. *Berisha v. Lawson*, 141 S. Ct. 2424, 2425 (2021) (Thomas, J., dissenting from the denial of certiorari).

87. *Blankenship v. NBCUniversal, LLC*, No. 22-1125, slip op. at 1–3 (4th Cir. Oct. 10, 2023) (Thomas, J., concurring in the denial of certiorari).

88. *Id.* at 2.

89. *Berisha*, 141 S. Ct. at 2428–30 (Gorsuch, J., dissenting).

90. *Id.* at 2427.

91. *Id.*

92. *Id.* This was a notable shift in Justice Gorsuch’s tone toward *Sullivan* from his 2017 confirmation hearings. When asked about the case during the hearings, he replied that the Court had declared in *Sullivan* that “the First Amendment has special meaning and protection when we’re talking about the media [and] the press in covering public officials, public actions.” *Confirmation Hearing on the Nomination of Hon. Neil M. Gorsuch to Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. 158 (2017) (statement of Gorsuch, J.); see Adam Liptak, *Clarence Thomas Calls for Reconsideration of Landmark Libel Ruling*, N.Y. TIMES (Oct. 10, 2023), <https://www.nytimes.com/2023/10/10/us/clarence-thomas-libel-supreme-court.html> (on file with the *Iowa Law Review*).

93. See generally SAMANTHA BARBAS, ACTUAL MALICE: CIVIL RIGHTS AND FREEDOM OF THE PRESS IN *NEW YORK TIMES V. SULLIVAN* (2023); AIMEE EDMONDSON, IN SULLIVAN’S SHADOW: THE USE AND ABUSE OF LIBEL LAW DURING THE LONG CIVIL RIGHTS STRUGGLE (2019).

justice and democracy-preservation principles.⁹⁴ The recent calls for *Sullivan*'s reconsideration—coming from two members of the Court's new conservative bloc and on the heels of Trump's own active anti-*Sullivan* advocacy⁹⁵—fueled the sense that the Court's rightward ideological shift could correlate with increased negativity about the press.

Other recent signals from members of the Roberts Court's conservative majority have sparked additional commentary on its potentially terse relationship with the press and added anecdotal evidence that the Court may be experiencing the conservative-driven downturn in press friendliness that exists in the public and political spheres. In various public statements, several of the current conservative Justices have spoken critically of the press in ways not typical of Justices in the past, in particular blaming the press for declines in the public's trust in the Court.

In September of 2021, less than two weeks after the Court handed down its controversial 5-4 emergency docket decision allowing a strict abortion law to go into effect in Texas, Justice Amy Coney Barrett chastised the press for what she suggested were erroneous reports giving the impression that the Court's decisions are "results-oriented."⁹⁶ She identified the problem as "the media, along with hot takes on Twitter," who report the results of cases in ways she suggested were misleading about the institution and its Justices.⁹⁷

The Court's two most conservative Justices, Justice Clarence Thomas⁹⁸ and Justice Samuel Alito,⁹⁹ have been even more vocal in their denunciation of the news media. A few days after Justice Barrett's comments, Justice Thomas echoed her criticisms during a speech at Notre Dame Law School, stating that "the media makes it sound as though you are just always going right to your

94. See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 334-37 (1974); *Branzburg v. Hayes*, 408 U.S. 665, 726 (1972); *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971); *Rosenblatt v. Baer*, 383 U.S. 75, 77 (1966).

95. See *Trump Vows to 'Open Up' Libel Laws if Elected*, REUTERS (Feb. 26, 2016, 2:21 PM), <https://www.reuters.com/article/us-usa-election-trump-libel/trump-vows-to-open-up-libel-laws-if-elected-idUSM7ZSAPEC2Q66IJR5> (on file with the *Iowa Law Review*).

96. Mary Ramsey, *Justice Amy Coney Barrett Argues US Supreme Court Isn't 'A Bunch of Partisan Hacks'*, LOUISVILLE COURIER J. (Sept. 13, 2021, 6:18 AM), <https://www.courier-journal.com/story/news/politics/mitch-mcconnell/2021/09/12/justice-amy-coney-barrett-supreme-court-decisions-arent-political/8310849002> [https://perma.cc/6P54-E2KH]; *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 539 (2021).

97. Ramsey, *supra* note 96; see also Katie Barlow, Opinion, *Amy Coney Barrett Is Right About Problems with the Media. She Has a Chance to Fix It.*, POLITICO (Sept. 17, 2021, 5:05 PM), <https://www.politico.com/news/magazine/2021/09/17/amy-coney-barrett-media-supreme-court-512615> [http://perma.cc/B5LV-3TBA] (reporting that Justice Barrett made these comments at an event at which invite-only attendees were banned from recording or disseminating her remarks).

98. Mauro, *supra* note 84 (observing that Justice Thomas is riding the anti-press wave most aggressively).

99. Adam Serwer, *By Attacking Me, Justice Alito Proved My Point*, ATLANTIC (Oct. 12, 2021), <https://www.theatlantic.com/ideas/archive/2021/10/alito-supreme-court-texas-abortion/620339> (on file with the *Iowa Law Review*) (discussing "Alito's Trumplike broadside against the media").

personal preferences.”¹⁰⁰ He added that if journalists “think you’re anti-abortion or something personally, they think that’s the way you’ll always come out.”¹⁰¹

Soon after, Justice Samuel Alito also spoke at Notre Dame Law School and publicly accused the media—including one individual journalist identified by name—of presenting a warped image of the Justices’ decision-making process.¹⁰² He focused, in particular, on media criticisms of the Court’s use of the so-called “shadow docket,” in which the Court makes decisions without briefing, oral argument, or the typical public explanations.¹⁰³ Justice Alito said that the media had engaged in “unfair and damaging attacks” on the Court.¹⁰⁴ He claimed that the media’s reporting on the shadow docket is “not serious criticism,” and that it “feeds unprecedented efforts to intimidate the court,” adding that “[j]ournalists may think we can dash off an opinion the way they dash off articles.”¹⁰⁵ Justice Alito continued his unconventional attacks on journalists in June of 2023, when he took the highly unusual step of penning an opinion piece for the *Wall Street Journal* challenging ProPublica coverage of his financial disclosures and recusal decisions, calling the news outlet’s reporting “misleading,” “incorrect,” and invalid.¹⁰⁶

Thus, from the outside looking in, it appears that the Justices’ views of the press may have been following a similar path to that of the public and the world of politics. In other words, it may appear that, as a whole, the Justices’ views of news media have declined and that this downturn could have been driven by a significant drop in the conservative Justices’ attitudes toward the press over time.

This Article empirically tests this conventional wisdom.

100. Joan Biskupic, *Dissension at the Supreme Court as Justices Take Their Anger Public*, CNN (Oct. 1, 2021, 9:37 AM), <https://edition.cnn.com/2021/10/01/politics/supreme-court-unhappy-justices/index.html> [https://perma.cc/5MKY-PTEA].

101. *Id.*

102. Josh Gerstein, *Alito Speaks Out on Texas Abortion Case and ‘Shadow Docket’*, POLITICO (Sept. 30, 2021, 3:33 PM), <https://www.politico.com/news/2021/09/30/alito-on-texas-abortion-case-shadow-docket-514828> [https://perma.cc/BHZ8-39F5].

103. *Id.*

104. *Id.*

105. *Id.* This event also banned the media from recording or transcribing Justice Alito’s remarks. *See Justice Samuel Alito: “The Emergency Docket,”* KELLOGG INST. (Sept. 30, 2021, 12:30 PM), https://kellogg.nd.edu/lecture-samuel-alito?utm_content=buffer9bed9&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer [https://perma.cc/NH4B-KNQH].

106. Samuel A. Alito, Jr., Opinion, *Justice Samuel Alito: ProPublica Misleads Its Readers*, WALL ST. J. (June 20, 2023, 6:25 PM), https://www.wsj.com/opinion/propublica-misleads-its-readers-alito-gifts-disclosure-alaska-singer-23b51eda?reflink=desktopwebshare_permalink (on file with the *Iowa Law Review*).

II. METHODOLOGY

We collected the primary data for this study in a major content-analysis project¹⁰⁷ that aimed to find and substantively code every instance of any U.S. Supreme Court Justice referring to the press, press freedom, or the performance of the press function in any judicial opinion or other writing published in the U.S. Reports from its beginning until summer 2023.¹⁰⁸ The dataset, which covered the full 235-year history of the Court, was designed to be as comprehensive as possible.¹⁰⁹ Because the Justices over the course of history have used a variety of terms to identify the press, paragraphs were included in the dataset for analysis if they used any of a variety of words and phrases the Court has used when identifying the press and press functions over time,¹¹⁰ including some that have since fallen out of use and some that refer to modern acts of journalism performed outside of traditional news organizations.¹¹¹ Because Justices routinely characterize newsgathering or the press in cases not directly focused on the substance of press rights—and have taken many opportunities to cast the press in a positive or negative light in

107. For details on the wider project and specifics of the coding methodology, see Andersen Jones & West, *Empirical Study*, *supra* note 2, at 386–90. The database was updated through July 2023, when the October Term 2022 was completed. *Id.* It includes 8,938 total characterizations of the press by 116 Justices over 235 years. *Id.* The ideology analysis conducted for this Article focuses on the data from October Term 1937 onward, for which Martin-Quinn ideology scoring is available.

108. The analyzed text was generated through searches of the “OPINION” database on Westlaw, which includes all majority, concurring, and dissenting opinions and additional materials authored by Justices and published in U.S. Reports, such as statements accompanying recusals, stay applications, and dissents from denial of certiorari. *Id.*

109. See Andersen Jones & West, *Dataset* [hereinafter *ILR Dataset*] (on file with the *Iowa Law Review*).

110. The search syntax used (without the leading and ending quotation marks) was “adv: OPINION(#press or media or newspaper or “fourth estate” or journalist! or reporter or newspaperman or newsman or pressman or (news / 2 (gather! or magazine or outlet or organization or service or coverage or article or story or cycle or broadcast!))).” Coders removed paragraphs as false hits if the paragraphs used these terms only in a non-journalistic sense. See Andersen Jones & West, *Empirical Study*, *supra* note 2, at 386–89.

111. See *id.* at 386 (“The goal was to capture all references to the press in its journalistic role, to commonly understood press functions, and to the constitutional right of press freedom—no matter how those references appeared. Because the press and those performing the press function are referred to by a variety of names, we conducted initial research of opinions across time and assembled a list of the terms and phrases most often used as synonyms for the press or primary press behaviors. In some older cases, these included terms that were unique to particular eras but have since fallen out of use, such as ‘newspaperman’ and ‘newsmen.’ In more recent years, with a changing and at times more decentralized media ecosystem, it included terms that captured the performance of the newsgathering and reporting functions by entities other than traditional media outlets, such as references to a ‘citizen journalist.’ In all instances, we made these determinations by tracking the Justices’ own identifications of when they perceived that the press function was occurring.” (citations omitted)). Depictions of the press in the database “included the Justices’ original characterizations, as well as characterizations made by others that the Justices repeated in their writings.” *Id.* at 387 n.56.

these settings—the dataset includes all references to the press functions regardless of the context or the doctrine at issue.¹¹²

After these selection criteria were applied, a team of trained coders reviewed more than seven thousand total paragraphs. They coded for eight prominent thematic content frames¹¹³ and then coded the selected frame for affective tone, noting whether the frame was conveyed with a positive, negative, or neutral connotation.¹¹⁴ These frames captured the common themes on which the public and political spheres often ideologically divide, including positive and negative characterizations of the press's trustworthiness, motivations, role in society, and value to democracy.¹¹⁵ Some of these references emerge as the Justices describe the facts of a case, some appear as the Justices contrast the press with other entities in situations not involving the press, and some arise in holdings directly affecting the rights of newsgatherers. Attitudes conveyed in all these settings are treated equally.

Because the inclusive search criteria captured many instances in which the press or a press function is referenced but the authoring Justice includes no favorable or unfavorable tone—for example, simply noting that news of a criminal defendant's arrest appeared in a local newspaper—many of the study's press mentions were coded as neutral.¹¹⁶ Although some frames skewed heavily positive or negative, the coding process accounted for the possibility of positivity, negativity, or neutrality for each frame. For example, if a paragraph referenced the press's trustworthiness, professionalism, reliability, or ethics in any way, it was coded as presenting the trustworthiness frame. If the reference directly stated or otherwise suggested that the press behaves in a trustworthy manner, the tone was coded as positive. If the reference stated or suggested that the press behaves in an untrustworthy manner, the tone was coded as negative. If the reference noted the existence of a debate over the

^{112.} See *id.* at 389 (noting the ways that these press characterizations "often convey core assumptions about the press," and citing multiple examples of a positive Justice "offhandedly prais[ing] an act of newsgathering as socially beneficial or casually mention[ing] freedom of the press as a critically important value when listing such values in a case focused on another constitutionally protected liberty" or a negative Justice "describ[ing] the tendency of news coverage to be sensational or invasive of privacy").

^{113.} See *id.* at 387 n.56 (discussing these frames, which include the propriety of regulating the press, the press's effect on government and democracy, the press's historical value to the Founders, the press's use as a public communication mechanism, the press's influence on the judicial system, the press's impact on individuals' reputation and privacy, the press's trustworthiness and ethics, and the constitutional right of freedom of the press).

^{114.} Coders used a detailed codebook, which is on file with the Authors and available upon request. They received twenty-five hours of substantive training on identification of frame and tone. We performed nine rounds of beta testing on practice batches and iteratively revised the codebook in instances in which the initial protocols had been unclear or yielded coding results that were unreliable across the coders. Intercoder agreement was greater than ninety-five percent on the thematic frame content and greater than ninety percent on affective tone.

^{115.} Andersen Jones & West, *Empirical Study*, *supra* note 2, at 387–88.

^{116.} *Id.*

trustworthiness of the press without taking a position, the tone was coded as neutral.¹¹⁷

To test this Article's core questions about the role of ideology and any changes in that role over time, we mapped this comprehensive press-characterization data onto two existing and widely used databases. First, we merged all coded paragraphs with the Supreme Court Database,¹¹⁸ which has compiled both modern¹¹⁹ and legacy¹²⁰ datasets containing more than 240 pieces of information for each case decided by the Court. That data, which includes identification variables, background variables, chronological variables, substantive variables, outcome variables, and voting and opinion variables,¹²¹ enabled us to sort our results by Court Term, by authoring Justice, and by case topic area. These data permit us to parse eras of press positivity and negativity, to compare press-friendliness records of individual Justices and groups of Justices, to assess inter-agreements, and to track changes in Justices' press depictions over time.

Second, each Justice's data in our dataset was paired with that Justice's Term-specific ideology scores from the Martin-Quinn database, a widely used statistical measure for assessing the ideological positions of the members of the Court.¹²² The tool, developed and maintained through the current Court Term by scholars Andrew D. Martin and Kevin M. Quinn, uses a Bayesian Markov Chain Monte Carlo ("MCMC") statistical model.¹²³ It measures the relative location of the Justices on an ideological continuum, with higher scores indicating greater conservatism and lower scores indicating greater liberalism. Martin-Quinn scores have been estimated for every Justice in every Term from October Term 1937 to present.¹²⁴ The historic span of Martin-Quinn scores ranges from a most liberal low score of less than -7, which was Justice William O. Douglas's rating during the period between 1965 to 1975,

117. The coding scheme allowed for each unique paragraph-frame combination to take on any or all of the possible tone values. For example, if the authoring Justice characterized the press's trustworthiness in a positive way and then in a negative way later in the same paragraph, the paragraph would be coded as two characterizations, one with each tone.

118. *The Supreme Court Database*, WASH. U. L. [hereinafter *The Supreme Court Database*], <http://scdb.wustl.edu> [<https://perma.cc/GVK8-MW68>].

119. At the time of our analysis, the modern dataset featured data from 1946 to 2020. See *Previous Versions of the Database*, WASH. U. L., <http://scdb.wustl.edu/data.php?s=2> [<https://perma.cc/LT73-CZEY>] (referencing the 2021 release of the database).

120. The legacy dataset provides data from 1791 to 1945. See *LEGACY Database: SCDB Legacy 07*, WASH. U. L., <http://scdb.wustl.edu/data.php?s=6> [<https://perma.cc/ZBV4-N24R>].

121. *The Genesis of the Database*, WASH. U. L., <http://scdb.wustl.edu/about.php> [<https://perma.cc/F5X5-X83V>].

122. See Andrew D. Martin & Kevin M. Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999*, 10 POL. ANALYSIS 134, 134–35 (2002) [hereinafter Martin & Quinn, *Dynamic Ideal Point*]. For updated information, see MARTIN-QUINN SCORES, *supra* note 79.

123. Martin & Quinn, *Dynamic Ideal Point*, *supra* note 122, at 135.

124. *Id.* at 136.

to a most conservative high score of 4.5, which was then-Associate Justice William H. Rehnquist's rating during the period from 1975 to 1979.¹²⁵

Notably, the Martin-Quinn model is a dynamic item response theory model. It generates patterns of coalition that the Justices produce in all of their votes to affirm or reverse the cases in a specific Term and estimates the ideal points for each Justice, reflecting the spot on a political scale where that Justice would like policy to be made.¹²⁶ Because the Martin-Quinn scores are Term-specific, each Justice has been assigned one for each year the Justice spent on the bench.¹²⁷ While some Justices experience "ideological drift," many occupy a score zone that is relatively stable over their entire tenures at the Court.¹²⁸ For this Article's purposes, we are able to pair the Justices' Term-specific Martin-Quinn scores with the press characterizations from the Terms in which those characterizations were made but also are able to calculate average composite Martin-Quinn scores for Justices' full careers, creating the ability to compare Justices from different eras with similar overall scores. Where helpful to the analysis, we are also able to produce Martin-Quinn scores that are weighted to reflect the scores the Justices had during Terms in which they actually made characterizations of the press.

One particularly useful tool for considering the role of ideology on a Justice's tone and for comparing the tone used by Justices of the same ideology over time is to chart the effect on the probability that a Justice will adopt a particular tone when the Martin-Quinn score is shifted one unit (or one point) toward the more conservative end of the scale. We call this the Marginal Effect of Ideology tool. To put this in perspective, a one-unit difference is approximately equivalent to the difference during the Court's 2007 Term between Chief Justice John Roberts (1.42) and Justice Anthony Kennedy (0.41) or, also during the 2007 Term, between Chief Justice Roberts and Justice Antonin Scalia (2.46).¹²⁹

While we present our data in terms of smaller, one-unit ideological shifts in order to explore the scope and contours of the relationship between ideology and attitudes about the press, it is important to keep in mind that the practical implications of gaps between liberal and conservative Justices are often much larger because the Justices are frequently divided by significantly more than a single Martin-Quinn unit. During the 2021 Term, for example,

125. *Id.* at 145.

126. See Ward Farnsworth, *The Use and Limits of Martin-Quinn Scores to Assess Supreme Court Justices, with Special Attention to the Problem of Ideological Drift*, 101 NW. U. L. REV. COLLOQUY 143, 143–47 (2007).

127. See Martin & Quinn, *Dynamic Ideal Point*, *supra* note 122, at 135.

128. See Lee Epstein, Andrew D. Martin, Kevin M. Quinn & Jeffrey A. Segal, *Ideological Drift Among Supreme Court Justices: Who, When, and How Important?*, 101 NW. U. L. REV. 1483, 1518, 1531 (2007).

129. Comparisons from the liberal side of the Court are possible, too. During the Court's 2013 Term, for example, Justice Elena Kagan had an estimated score of -1.62 compared to an estimate of -2.58 for Justice Sonia Sotomayor. MARTIN-QUINN SCORES, *supra* note 79.

Justices Elena Kagan and Chief Justice John Roberts were the liberal and conservative Justices who fell closest on the ideological scale—yet even they were separated by a distance of 2.56 units.¹³⁰ The most extreme ideological gap in 2021 was between Justice Sonia Sotomayor and Justice Clarence Thomas, who were nearly 7.2 units apart.¹³¹ A seemingly small effect of ideology in our data—say, for example, a three or four percentage point marginal effect—would therefore represent a much larger effect between these two Justices (i.e., roughly 21 to 28 percentage point difference). The Marginal Effect of Ideology tool permits us to consider and visually depict the role of three variables—ideology, judicial attitudinal tone about the press, and time—in a two-dimensional way.

The data summarized below includes 7,173 coder-reviewed paragraphs from 914 unique cases, containing 7,435 total characterizations of the press by 44 Justices from the 1937 to 2021 Terms, for a total of 600 Justice-terms of Martin-Quinn ideology scores.¹³²

III. RELATIONSHIP BETWEEN JUDICIAL IDEOLOGY AND VIEWS OF THE PRESS

Our investigative goals were to chart the previously unexplored territory of judicial ideology and attitudes about the press, with a particular eye toward what this data might tell us about whether the Court has traditionally paralleled or diverged from the liberal-friendly and conservative-unfriendly sentiments we see in the public and political spheres. Most crucially, in this new era of mounting threats to journalism and freedom of the press, we aimed to explore whether ideology has become a stronger predictor of these attitudes at the Court in the way it has in those other spheres. That is, does the conventional wisdom about conservative press negativity and liberal press positivity hold true among the Roberts Court conservatives and liberals?

The question matters, not only because it lends insight into whether the rhetoric the Justices are using on the topic parallels the depictions emerging elsewhere, but also because it sheds light on how those Justices' values might be used in future decision-making by the Court. The Justices are responsible for determining the contours of constitutional rights, resolving questions about the role of newsgathering in our changing information environment, and deciding whether to overturn current protections, like *Sullivan*, that are under attack in the political sphere.¹³³ Moreover, as we have explored in more

^{130.} *Id.*

^{131.} As of late 2025, Martin-Quinn scores for the Court's 2024 term have not yet been released. As of the end of the Court's 2023 term in July 2024, however, the data indicate that for that term Justice Ketanji Brown Jackson and Chief Justice John Roberts were the liberal and conservative Justices who fell closest on the ideological scale and that roughly 2.6 units separated them. MARTIN-QUINN SCORES, *supra* note 79. The most extreme ideological gap in 2022 was between Justice Sonia Sotomayor and Justice Clarence Thomas, who were roughly 7.2 units apart. *Id.*

^{132.} ILR Dataset, *supra* note 109.

^{133.} See *supra* notes 82–83 and accompanying text.

depth elsewhere,¹³⁴ press characterizations by the Court carry a truly unique constitutional weight even when they are not linked to direct holdings on press-freedom doctrine. Because much of the case law that most directly supports newsgatherers comes in the form of broad Speech Clause holdings and because lower courts often look to the Supreme Court's dicta for guidance on press issues, shifts in the Court's rhetoric or attitudinal premises about the role of the press in American society can have ripple effects that influence the legal climate for journalists, shape the contours of press protections, and impact the broader ecosystem of news and information dissemination.

As discussed in more detail below, in the full testable history of the Court, the ideological patterns of press positivity reflect the anticipated liberal-conservative tendencies.¹³⁵ Judicial liberals mostly speak well of the press and its functions, while conservatives characterize it less favorably. But when we analyze the data by time and isolate the Roberts Court, nearly all of the liberal positivity for the press disappears.¹³⁶ Our inspection of the trends on tone usage reveals that, while the conservative Justices do seem to be amping up their negativity, much of the loss of support for the press at the Court is happening at the hands of its liberals.¹³⁷ Even more granular analysis of the behavior of Roberts Court liberals in contrast to their co-partisan predecessors reveals that the press positivity that once was a central feature of Supreme Court liberalism has now receded.¹³⁸ Comparisons of the Roberts Court Justices' attitudes toward the press with the Justices who predated them show that the current Court's liberal Justices do not behave according to their historically expected ideological patterns.¹³⁹ The data indicate that this is not merely because of a change in the Justices, their degree of liberalism, or the overall ideological imbalance of the Court on

¹³⁴. See Andersen Jones & West, *Empirical Study*, *supra* note 2, at 377 (“[M]any of the press’s claims to constitutional importance hinge not on substantive law, but on the Justices’ rhetoric about the significance of the press.”); Andersen Jones & West, *Disappearing Freedom*, *supra* note 5, at 1402–03 (describing the Supreme Court’s approach to press freedom “as a backup expressive freedom—one less likely to be seen as the repository of substantive rights and protections and more likely to be employed as a rhetorical or analytical tool in support of a broader First Amendment holding”); Andersen Jones, *The Dangers of Press Clause Dicta*, *supra* note 5, at 715 (“[T]hese characterizations of the media, its role, and its unique societal contributions are made when the question of press freedom is not squarely before the Court, and the depictions are presented in passing, unconnected to a holding and unmoored in constitutional jurisprudence.”); West, *The Stealth Press Clause*, *supra* note 5, at 731 (discussing how the Supreme Court “implicitly and often in dicta” has “recognized the press as constitutionally unique from nonpress speakers” and “continually and repeatedly treated the press differently”).

¹³⁵. See *infra* Section III.A.

¹³⁶. *ILR Dataset*, *supra* note 109.

¹³⁷. *Id.*

¹³⁸. *Id.*

¹³⁹. *Id.*

which they sit.¹⁴⁰ Rather, it appears there has been a more fundamental change in the relationship between judicial liberalism and the press.

A. OVERALL RELATIONSHIP BETWEEN IDEOLOGY AND VIEWS OF THE PRESS

When we consider the data as a whole, we see a left-right divide on judicial attitudes toward the press that generally reflects the partisan split found in the public and political spheres.¹⁴¹ Analyzing the full dataset with a focus on the overall impact of conservatism or liberalism on tones of characterizations of the press,¹⁴² we find statistically and substantively meaningful relationships between judicial ideology and all three tones—positive, negative, and neutral.¹⁴³ More specifically, we find that, over the course of the full history of the Court, liberal Justices are more likely than conservative Justices to write positively about the press, while conservative Justices are more likely than their liberal colleagues to adopt a negative tone.¹⁴⁴ The effect of conservatism on negativity increases the higher we move along the ideological scale and the effect of liberalism on positivity increases the lower we move along it.¹⁴⁵ This effect of ideology means that at the far ends of the spectrum, the most liberal Justices are also the most press friendly while the most conservative Justices express the least favorable views toward the press. The data on neutral depictions suggest that the relationship between those depictions and ideology, at least in the full dataset, is less dramatic, but behaves generally like negative characterizations, with conservative Justices being somewhat more likely to adopt neutral tones than liberal Justices.¹⁴⁶

Figure 1 shows the relationship in the full dataset between the likelihood of depiction for all three tones (y-axis) and the opinion writer's Martin-Quinn ideology score (x-axis). The most liberal Justices in all of history appear on the far left of the scale and the most conservative appear on the far right.

^{140.} *Id.*

^{141.} *Id.*

^{142.} The underlying statistical model is a multinomial logistic regression where our dependent variable is the tone of the reference (negative, neutral, or positive) and the independent variable is the Martin-Quinn score of the Justice who made the reference. We estimated the model using the mlogit command in Stata 16.1. Our predicted probabilities were generated using the mgen command as implemented in SPost13 by J. SCOTT LONG & JEREMY FREESE, REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA 173–77 (3d ed. 2014).

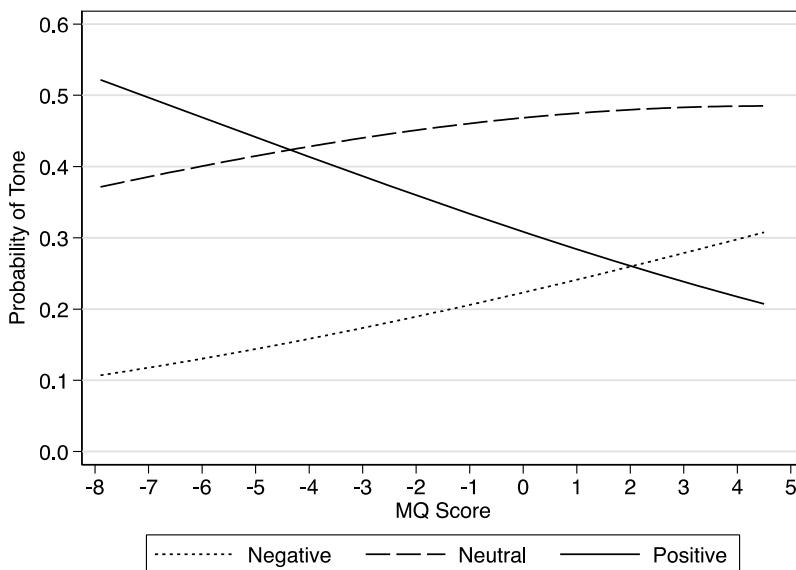
^{143.} *ILR* Dataset, *supra* note 109.

^{144.} *Id.*

^{145.} *Id.*

^{146.} *Id.*

Figure 1. Effect of Justice Ideology on Press Reference Tone



In the full dataset, scores that correspond to the most liberal Justices of all time¹⁴⁷ are much more likely to communicate a positive sentiment about the press than a negative one.¹⁴⁸ These Justices, in fact, are more than five times as likely to make positive references to the press, which they do with a 51% likelihood, than they are to make negative ones, which they do only 10% of the time.¹⁴⁹ In comparison, a more centrist Justice with a Martin-Quinn score near zero¹⁵⁰ has an estimated 31% chance of making a positive reference and a 22% probability of making a negative one.¹⁵¹

The most conservative Justices,¹⁵² by contrast, are the most likely to speak negatively about the press and the least likely to speak positively. The overall data reveal that the most conservative Justices have a 29% likelihood of making a negative reference and just a 21% likelihood of making a positive one.¹⁵³ Most of their references (50%) were neutral, which is only slightly

¹⁴⁷ The most extreme liberal score corresponds to Justice William O. Douglas's score during the latter part of his tenure on the Court, when he had Martin-Quinn scores of less than -7 from the 1965 Term through the 1975 Term. MARTIN-QUINN SCORES, *supra* note 79.

¹⁴⁸ For the underlying data supporting this conclusion, see *ILR* dataset, *supra* note 109.

¹⁴⁹ *Id.*

¹⁵⁰ This corresponds approximately to the score of Justice Anthony M. Kennedy, who had a Martin-Quinn score of -0.04 during the 2016 Term. MARTIN-QUINN SCORES, *supra* note 79.

¹⁵¹ *ILR* dataset, *supra* note 109.

¹⁵² The most conservative score in the full Martin-Quinn history came from then-Associate Justice William H. Rehnquist from 1975 to 1979, when he had a Martin-Quinn score of around 4.5. MARTIN-QUINN SCORES, *supra* note 79.

¹⁵³ *ILR* dataset, *supra* note 109.

larger than the rate at which Justices in the middle of the ideological scale remain neutral.¹⁵⁴ The very most conservative Justices, however, are seven percentage points more likely to make negative remarks and ten percentage points less likely to be press-positive than their colleagues in the center.¹⁵⁵

Thus, when the data are examined in their entirety, without any examination of time, the differences between how the most liberal and the most conservative Justices talk about the press are striking. Justices at the most liberal end of the Martin-Quinn scale are roughly 2.5 times as likely as the most conservative Justices to mention the press in a positive manner.¹⁵⁶ When we consider negative references, the effect is slightly stronger; Justices at the conservative end of the spectrum are about 2.8 times more likely to characterize the press negatively than the most liberal Justices.¹⁵⁷

All told, over the course of history, judicial ideology maps relatively neatly onto the conventional wisdom on the question. Ideology has been highly correlated with a Justice's likelihood of characterizing the press positively or negatively. The full body of data reflects something close to the expected conservative-liberal division that has existed among the public and the political branches.

B. ANALYSIS OF JUDICIAL IDEOLOGY AND VIEWS OF THE PRESS OVER TIME

When we parse the data on judicial ideology and attitudes toward the press into periods of time, however, we expose notable recent changes in these dynamics and discover that the current Court is trending toward press unfriendliness in ways that are driven not only by a recently increased antipathy on the right but also by a new and historically unprecedented lack of positivity from the left.

1. Roberts Court Data

As a first level of investigation of the change in ideology's influence over time, we homed in on the relationship between judicial ideology and the press during the Roberts Court era, which began with the appointment of Chief Justice John Roberts in 2005.¹⁵⁸ This time analysis is important, because it maps onto the most significant ideological developments in public attitudes toward the press—especially the drastic decline in press popularity among American conservatives in the 2010s and 2020s.¹⁵⁹ It is also important because scholars and commentators in nonempirical work have detected an overall

^{154.} Justices with a Martin-Quinn score near zero use neutral tones in 47% of their references. *Id.*

^{155.} *Id.*

^{156.} *Id.*

^{157.} *Id.*

^{158.} See *Current Members*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographies.aspx> [<https://perma.cc/W2FL-YD36>].

^{159.} See *supra* Part I.

substantive shift in the current Court's doctrinal and rhetorical treatment of the press during the Roberts Court,¹⁶⁰ making an inquiry into the role of ideology on these developments especially pertinent. Our own earlier work in this project catalogued a recent stark deterioration in both the quantity and quality of the Court's depictions of the press across a variety of measures, showing that the Court is now less likely to talk about the press than it was in the past, and that, when it does, it is more often in a disapproving light.¹⁶¹

To test whether these downturns are driven by ideology—and to empirically interrogate the conventional wisdom suggesting that the Roberts Court Justices, like their counterparts in the public and political realms, have defended the press if liberal and spoken more poorly of it if conservative—we included a simple dummy variable for whether each coded reference was in either the Roberts Court era or the pre-Roberts Court era. We then interacted this measure with the Martin-Quinn ideology scores, which has the effect of allowing ideology to vary in these two different periods of time.¹⁶²

We found that while the pre-Roberts Court data mirror the overall expected ideological divides on press friendliness, the data on the Roberts Court Justices show very different patterns.¹⁶³

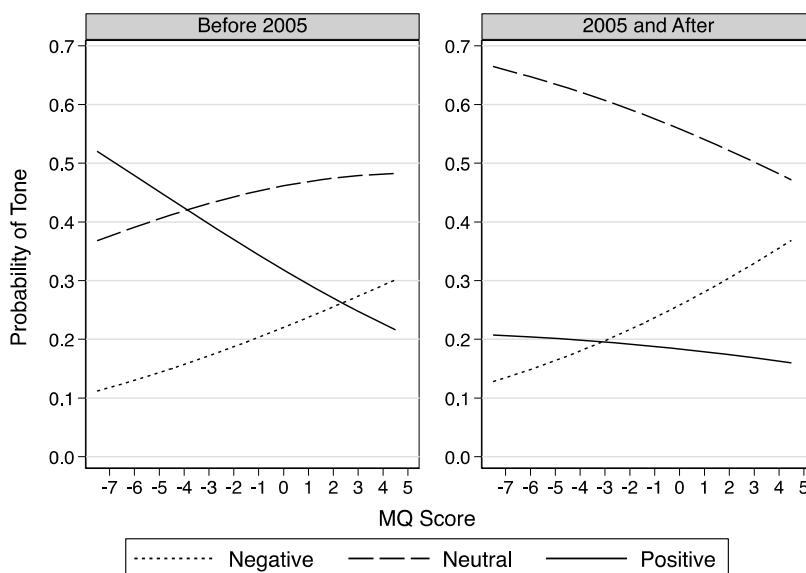
160. See, e.g., Lyrissa Barnett Lidsky, *Not a Free Press Court?*, 2012 BYU L. REV. 1819, 1821; Andersen Jones, *What the Supreme Court Thinks of the Press and Why It Matters*, *supra* note 5 at 255.

161. See generally Andersen Jones & West, *Empirical Study*, *supra* note 2.

162. The underlying model continues to be a multinomial logistic regression model. For the underlying data supporting this conclusion, see *ILR Dataset*, *supra* note 109.

163. *Id.*

Figure 2. Effect of Ideology on Tone Usage in References Before 2005 Versus 2005 and After



As seen in Figure 2, in the pre-Roberts era, increased liberalism is a strong predictor of increased positivity, with the very most liberal Justices more likely to use a positive tone than even a neutral one.¹⁶⁴ More moderate liberals in this pre-Roberts group were also much more likely to characterize the press with positivity than their conservative peers were.¹⁶⁵ During this time, meanwhile, increased conservatism increased negativity, and conservative Justices were also slightly more likely to speak with neutrality.¹⁶⁶

The Roberts Court era, however, shows a significant shift in these patterns. While increased conservatism remains a predictor of negativity, the link between liberalism and positivity disappears.¹⁶⁷ The side-by-side comparison in Figure 2 illustrates the Roberts Court liberals' reordered ideological relationship with the press. The shift on positivity is so stark that, once statistical

164. *Id.*

165. *Id.*

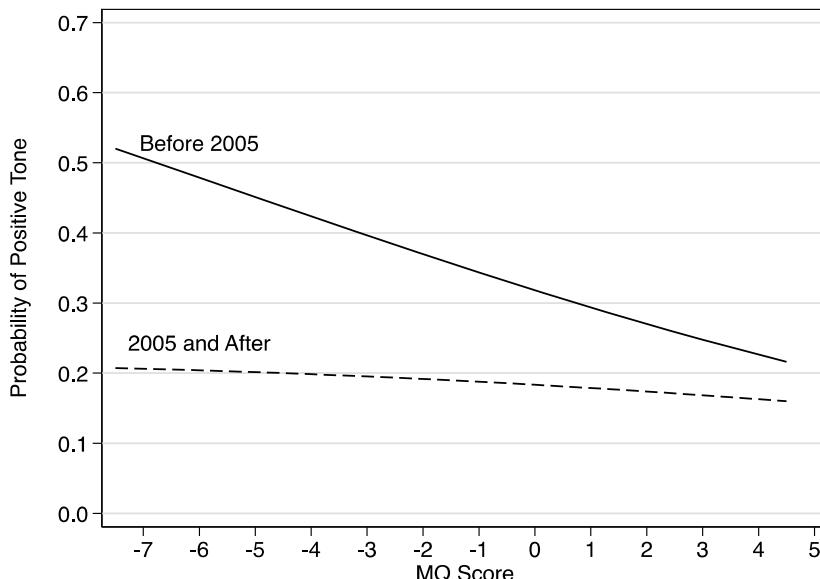
166. In the "Before 2005" panel, the negative and the positive tone slopes depicted here are statistically significant, both overall (i.e., in the comparison of the most liberal and the most conservative scores) and for smaller one-unit increases throughout the entire range of Martin-Quinn scores. *Id.* The neutral tone slope is statistically significant for the comparison of a -7 and a +5, but at the higher values of Martin-Quinn, it is not statistically significant. *Id.* That is, for baseline Martin-Quinn scores of about +3 or higher, a one-unit increase does not yield a significantly higher probability of neutral citation. *Id.*

167. *Id.*

significance is taken into account, all Justices with liberal ideology scores in the Roberts Court era are equally likely to use a negative tone as they are to use a positive one.¹⁶⁸

The divergence in behaviors between the Roberts Court liberals and their pre-Roberts Court peers is even more readily apparent when the tone trend data for the two time-period groups is directly juxtaposed.

Figure 3. Effect of Ideology on Tone Usage in Positive References
Before 2005 Versus 2005 and After



168. In the “2005 and After” panel, the positive tone slope is not statistically significant for either the overall comparison or any one-unit increase at any point along the Martin-Quinn range. *Id.* That is, the slope of this line is not differentiable from zero. The graph depiction suggesting that positive tone is slightly higher than negative tone for very strong liberals is illusory—perhaps in part because the Roberts Court has never had any liberal with a score below -4, which means the outer edges of the graph are extrapolations. The slopes on both the neutral and negative tones are significantly different from zero both in comparing the most liberal and the most conservative values as well as for any individual one-unit change along any point of the Martin-Quinn range. *Id.*

Figure 4. Effect of Ideology on Tone Usage in Neutral References Before 2005 Versus 2005 and After

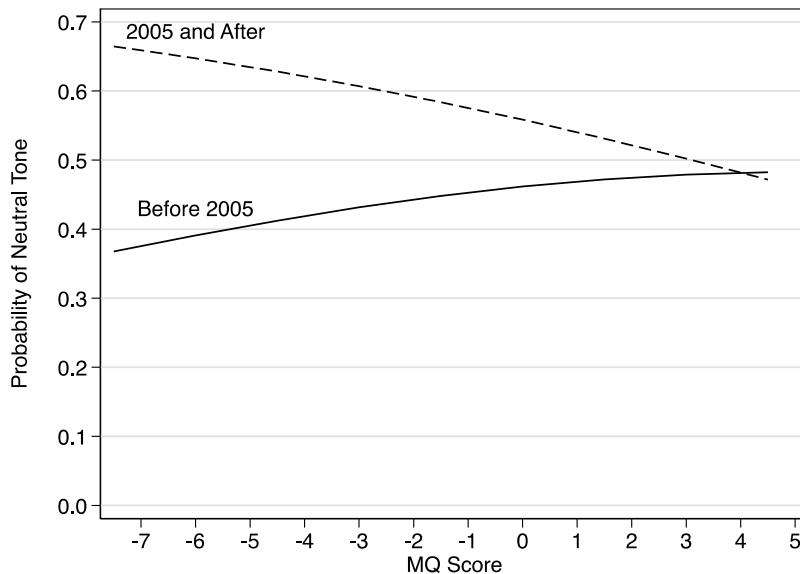


Figure 3, which charts these patterns for positivity, shows the absolute collapse of the left-of-center judicial tendency to speak well of the press and the press functions. In the pre-Roberts Court data, the press-positivity trajectory was a steady one: Progressively more liberal Justices became progressively more favorable toward the press.¹⁶⁹ During the Roberts Court, though, all Justices of all ideological stripes have a nearly equally low likelihood of showing any press positivity.¹⁷⁰ Figure 4, focused on the trends for use of the neutral tone, shows how this dissimilarity between the two groups of data operates in the converse for this tone.¹⁷¹

Meanwhile, the comparative negativity trend data, depicted in Figure 5, suggests a slight overall upward shift in the likelihood of press negativity in the Roberts Court as compared to the pre-Roberts Court era.¹⁷² The near-parallel nature of the two lines means that the effect of ideology has remained

^{169.} *Id.*

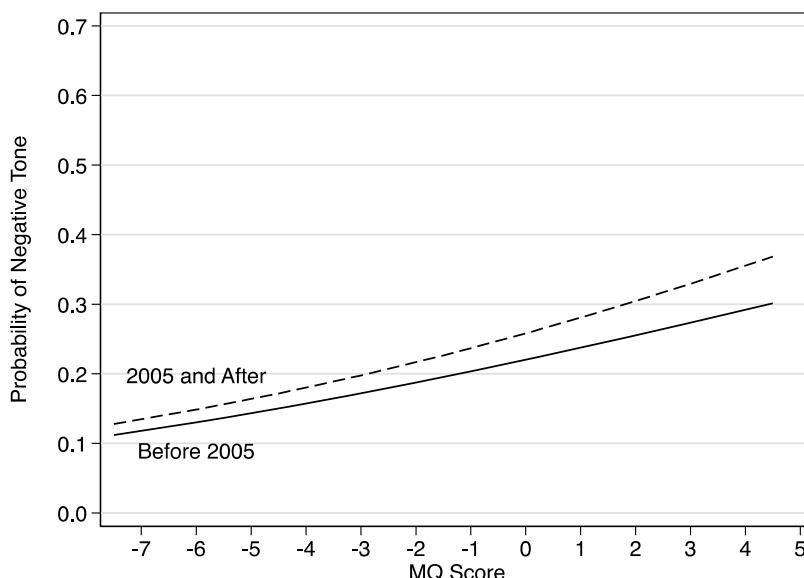
^{170.} In the figure showing positive tone, the slope of the line depicting 2005 and after is not statistically different from zero. *Id.* The slope of the line depicting before 2005 is significantly different from zero. *Id.* The difference in the slopes is, for all values of Martin-Quinn score, statistically significant. *Id.*

^{171.} In the neutral tone figure the slope of both lines is statistically different from zero and the difference in their slopes is also statistically significant. *Id.* We can also say that the “2005 and After” line is significantly higher in terms of probability than the “Before 2005” line from -7 up through (and including) +2 in Martin-Quinn score. *Id.* For values of +3 or greater (i.e., when the lines are very close together), however, there is no significant difference. *Id.*

^{172.} *Id.*

nearly identical between the two eras. The results do suggest, however, that the upward shift is statistically meaningful for only conservative Justices.¹⁷³ That is, a Justice with a liberal Martin-Quinn score in the Roberts Court era is no more or less likely to negatively reference the press than an equally liberal counterpart in the pre-Roberts Court era.¹⁷⁴ Thus, as the Roberts Court liberals abandon the positive framings of the press, the growing conservative population on that Court sees its negativity toward the press expand when its conservatism expands.¹⁷⁵

Figure 5. Effect of Ideology on Tone Usage in Negative References
Before 2005 Versus 2005 and After



2. Trend Data

When we move from a rough division of time blocks to a more sophisticated exploration that tracks tonal trends over time, the analysis further confirms that there have been a set of recent attitudinal drifts with a meaningful movement away from press positivity. One of these swings shows conservative Justices becoming even more stridently negative than their conservative

¹⁷³ *Id.*

¹⁷⁴ For negative tone, this means that the slope of each line is individually differentiable from zero but not significantly different from one another. *Id.* The visual separation between the "Before 2005" and "2005 and After" lines is not statistically significant for Martin-Quinn score values either below 0 or greater than +3. *Id.* The former is true for approximately 46% of our observations and the latter is true for about 6%. *Id.*

¹⁷⁵ *Id.*

predecessors. It parallels the trend that polling data and commentators have noted among the public and the political branches. But, again, the liberal ideological trend at the Court does not mirror the public trend. Instead, the data show the current Court has entered an overall press-unfriendly period in which Justices on the Court's left play a major role.¹⁷⁶

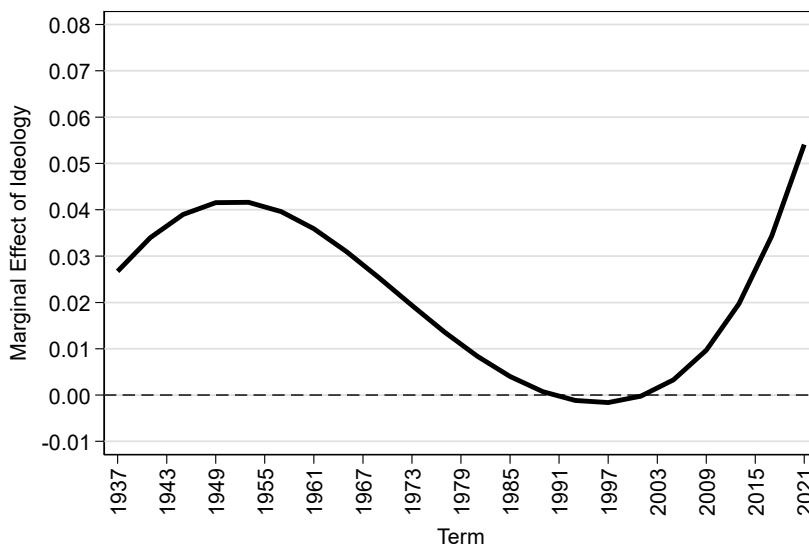
The relationships between ideology and tone that are revealed through this analysis are complex, but they provide important insights into our understanding of how today's less press-friendly Court has, over time, displaced the press-friendly Court of a generation ago.¹⁷⁷ Indeed, the data seem to reveal a gravitational pull toward press unfriendliness that keeps even the Justices on the Court's left—who a half century ago might have gone out of their way to praise the press or the press function—from positively characterizing them today.¹⁷⁸

When we use the Marginal Effect of Ideology tool to chart attitudinal change on the left and the right over time, the interrelated trends reveal a new and starkly different state of affairs in the Court's characterization of the press.

i. Increased Negativity from the Right

The first notable trend is a recent significant uptick in the impact of conservative ideology on the likelihood of negative press characterizations.¹⁷⁹

Figure 6. Marginal Effect of Ideology by Term on Negative Mentions



^{176.} *Id.*

^{177.} Andersen Jones & West, *Empirical Study*, *supra* note 2, at 422–28.

^{178.} *ILR Dataset*, *supra* note 109.

^{179.} *Id.*

As Figure 6 shows, this new stronger relationship between ideology and negative mentions of the press is a return to a dynamic that existed earlier in the Court's history. In the Court's earlier Terms, conservative ideological shifts were significantly correlated to increases in the probability of negative references to the press.¹⁸⁰ In 1937, a one-unit increase in conservatism produced a 3% increase in the likelihood of discussing the press negatively over a more liberal Justice who sat just one Martin-Quinn unit to the left.¹⁸¹ As the figure shows, this effect first slightly increased to a maximum of around 4%, which held from approximately 1946 to 1957.¹⁸² From 1958 onward, however, this effect softened, and by 1984, the impact of ideology on negative tone decreased, making a difference that was both below 1% and not statistically differentiable from zero.¹⁸³ The effect of ideology on negative treatment stayed both small and insignificant up through the Court's 2009 Term.¹⁸⁴ From this point on, however, the gap is widening once again. The impact of conservative ideology on negative references is now ten times what it was when it was last positive and statistically significant in 1983.¹⁸⁵ In the 2021 Term, a one-unit increase in a Justice's Martin-Quinn conservatism corresponded to roughly a 5.5% increase in the chance of a negative press reference.¹⁸⁶ This is almost 30% larger than the previous peak observed from the late 1940s through the mid-1950s.¹⁸⁷ The clear current trend is a growing relationship between ideology and press negativity. The data thus appear to dispel any suggestion that the current Justices are unaffected by the partisan influences that have produced this same political correlation in the public.¹⁸⁸

ii. Decreased Positivity from the Left

The recent conservative-negativity developments are in many respects unsurprising, as they map onto the data related to conservative perception of the press more broadly. What is more surprising is a second trend that compounds the real-world impact of the Court's attitudinal trajectory about the press. The correlation that once existed between ideology and *positive* references to the press—which in past generations resulted in significant numbers of press-praising characterizations from the Court's liberal Justices—

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

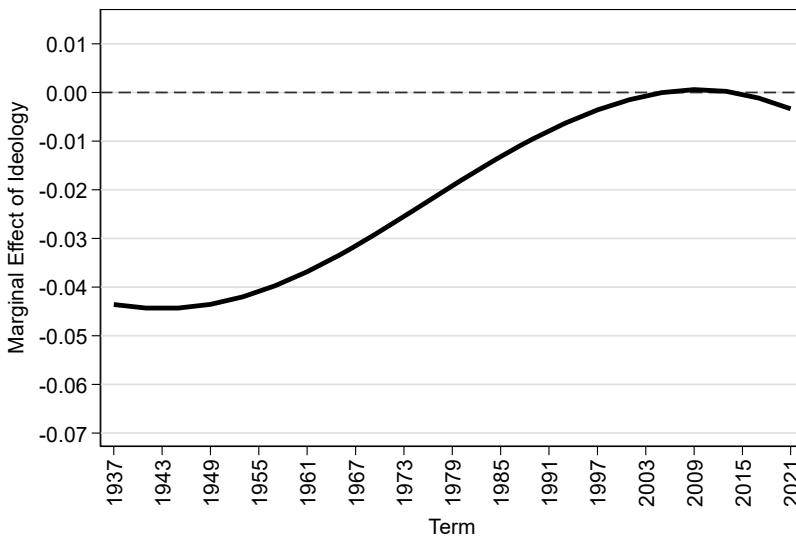
186. *Id.*

187. *Id.*

188. See Devins & Baum, *supra* note 79, at 321 (noting that today's Justices are sharply split along partisan lines in an "unprecedented" way that is "unique in the Court's history").

has now essentially disappeared.¹⁸⁹ Figure 7 depicts these positivity-and-ideology correlations over time.

Figure 7. Marginal Effect of Ideology by Term on Positive Mentions



Judicial ideology was a much larger driver of positive references in the Court's earlier Terms. In 1937, for example, a one-unit shift toward liberalism raised the probability of a positive characterization by nearly 6% (or, stated in the converse, an increase in conservatism decreased the probability of a positive characterization to that same degree).¹⁹⁰

As seen in Figure 7, however, the effect of ideology on press positivity steadily narrows until it becomes statistically insignificant around 2003.¹⁹¹ This attenuating trend continues until, by the late 2010s, ideology exerts essentially no effect on the likelihood that a Justice speaks positively about the press.¹⁹² As we have explored elsewhere, overtly positive characterizations of the press or the press function are starkly waning overall.¹⁹³ The left of the Court, which would once have contributed significantly to this positivity, is no longer doing so. Our ideology data show that liberal Justices are now no more likely to author a positive reference than their conservative colleagues.¹⁹⁴ The

189. *ILR Dataset*, *supra* note 109.

190. *Id.*

191. *Id.*

192. *Id.*

193. See Andersen Jones & West, *Empirical Study*, *supra* note 2, at 393 (noting that "a Supreme Court reference to the press a generation ago was nearly twice as likely to be characterized positively as a reference from today's Court" and reporting data showing "positivity of press characterization peaking sharply in the 1970s and declining in the years since").

194. *ILR Dataset*, *supra* note 109.

press thus seems to be experiencing compounded negativity from the Justices of the Supreme Court. Members of the ideological group at the Court that was historically negative toward the press (the conservative Justices) are now increasingly likely to make negative references. At the same time, the favorable references from the ideological group that was historically positive (the liberal Justices) are disappearing. Ideology is simply no longer predictive of positive treatment.

iii. Neutrality Trends that Shift the Overall Tone of the Court

The story of the interplay of tone and ideology over time is rounded out with a third interesting trend in the data about the impact of Justices' ideology on neutral mentions. This trend, depicted in Figure 8, provides an even richer account of the shifts that have occurred since the press-friendly Court a handful of decades ago and of the ways the press might expect to be treated at the Court in the years to come.

Figure 8. Marginal Effect of Ideology by Term on Neutral Mentions

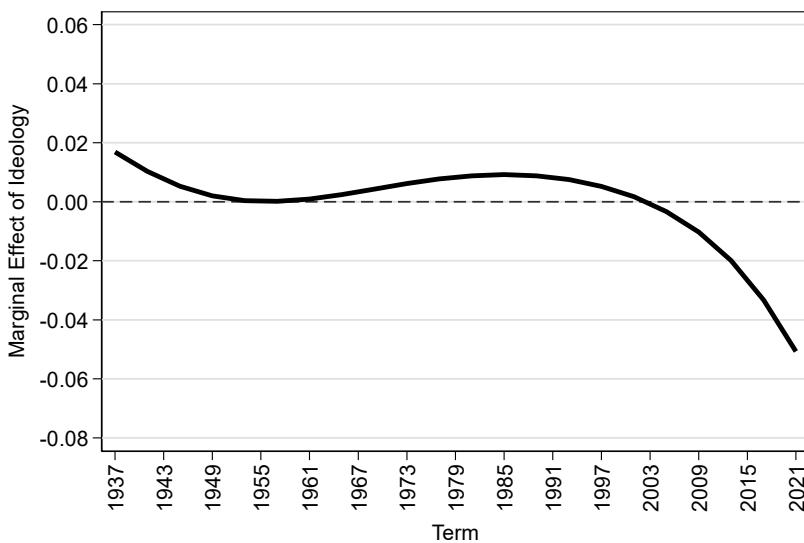


Figure 8 shows that the impact of the Justices' ideology on neutral mentions has been statistically insignificant for much of the Court's history. Two aspects of this timeline, however, stand out: the recent reversal of the effect of ideology on the likelihood of a neutral characterization and the magnitude of ideology's impact. Our data suggest that the effect of ideology was insignificant from 1937 until 1969, at which point it became statistically differentiable from zero. (Even then, the substantive magnitude was quite modest; a one-unit increase in conservatism was associated with just a one-half percent increase in the likelihood of neutral usage.) This period persisted through approximately 1992, at which point it started the steady decline we

see on the right-hand side of the plot. As the plot shows, this reversal picked up speed, and by 2010, increased conservatism was associated with a decrease in neutral mentions. In addition to the direction of the relationship inverting in recent years, the size of its impact is now greater than at any other point in our dataset. At its peak positive effect in 1985, a one-unit change in ideology translated into only a 0.9% increase in the chance of a neutral mention. But by the 2021 Term, each one-unit increase in the Martin-Quinn score *decreased* the likelihood of a Justice speaking neutrally by just over 5%. In other words, while increased conservatism made it more likely that a Justice would make a neutral mention a generation ago, it is now increased *liberalism* that makes it more likely that a Justice will speak with neutrality. When it comes to the impact of ideology on tone, neutral depictions seem to be taking the place of positive depictions, with more liberal Justices moving toward them and more conservative Justices moving away from them.

Altogether, these trends—of conservatives increasing their negativity and of liberals abandoning their positivity for, at best, neutrality—paint a picture of a changed landscape for characterization of the press at the high Court. One collective possible explanation for all of these tonal shifts is that the press-friendly eras at the Court in previous generations created something of a positive gravitational pull, while the current, press-unfriendly Court is creating an opposite, negative pull. In the most press-friendly eras, even the most press-negative ideologues are placed in environments that compel at least a neutral depiction of the press, and those who might otherwise speak negatively find themselves speaking neutrally. In press-negative eras, in contrast, those whom we might expect, based on their ideology, to speak positively about the press either have fewer favorable openings or less inclination to do so, and thus their tone shifts toward neutral.¹⁹⁵

The data suggest that recent and current Justices are making two negative-directional shifts: one from positivity to neutrality and another from neutrality to negativity. Some Justices on the Court's right have stronger negative views of the press, and others on its left are passing up potential moments for press positivity in favor of mere neutrality. The combined result is that positive mentions of the press or press functions are only rarely occurring, negative references are becoming more frequent, and the press is left without champions at the highest Court.¹⁹⁶

C. THE ROBERTS COURT LIBERALS' ABANDONMENT OF PRESS POSITIVITY

While our initial investigations plainly reveal that the press characterizations from the liberal wing of the current U.S. Supreme Court look very different from those on the Court's left in previous eras, these data alone do not indicate that something fundamental has changed in the relationship between judicial

195. *But see* discussion *infra* Section III.C.2.

196. *ILR* Dataset, *supra* note 109.

liberalism and press positivity. A number of less drastic explanations might exist. Court watchers might speculate, for example, that the change in behavior by the Court's liberals is a result of the Roberts Court liberals being more moderate liberals than those of the Warren and Burger Courts. Or perhaps these new Roberts Court liberals, who operate in a distinct minority on a 6-3 conservative Court, lack the opportunities to be press praising that their predecessors in liberal majorities had.

We tested these questions empirically and found that the data belie the initially appealing explanations for the trends. Even controlling for equivalency in Martin-Quinn ideology score and using a study design that accounts for commentary about the press outside of majority settings, we find a massive observable decline in press positivity among the judicially liberal Supreme Court Justices. The data reveal that the changes are not a result of a difference in Justices or a difference in Court composition. Rather, it appears that a larger, more structural shift is occurring in which the traditional liberal connection with positive views of the press is deteriorating, even as the ties to other liberal principles, such as support for civil rights and protections for criminal defendants, remain strong. Current-day liberal Justices appear to have severed support for the press from the broader social-justice themes with which they once were coupled.

1. Controlling for Changing Degree of Liberalism

We interrogated the question of whether the movement we see away from press positivity on the left might merely be a function of the changing caliber of liberalism among the current Supreme Court's liberal faction.

There is an intuitive allure to this explanation. As discussed above,¹⁹⁷ the decline in press positivity has happened alongside a significant overall rightward shift at the Court, marked by an increased Martin-Quinn median. Moreover, scholars considering the arc of press-freedom jurisprudence at the U.S. Supreme Court through both a doctrinal and an empirical lens have noted that the "Glory Days" of press positivity through the 1960s and 70s aligned with some of the most liberal Courts in the history of the institution.¹⁹⁸ Peak press positivity at the Court¹⁹⁹ coincided with the tenures of the two most liberal-

197. See *supra* Part I.

198. See Andersen Jones & West, *Empirical Study*, *supra* note 2, at 383-84; see also Andersen Jones, *What the Supreme Court Thinks of the Press and Why It Matters*, *supra* note 5, at 256 (observing the "Glory Days" in which "the Court went out of its way to speak of the press and then offered effusively complimentary depictions of the media in its opinions"); Erin C. Carroll, *Promoting Journalism as Method*, 12 DREXEL L. REV. 691, 696 (2020) ("To the extent that the Supreme Court has seemed to defer to the press, it did so in the mid-twentieth century—a period that was, relative to today, a golden age."); David L. Hudson, Jr., *Speaking of Firsts... First Amendment Free Speech Cases May Turn into Blockbusters*, ABA J., Oct. 2000, at 30 (quoting University of Minnesota Professor Jane Kirtley as "recall[ing] with fondness 'the glory days of the 1970s and '80s, when the U.S. Supreme Court elevated the press clause of the First Amendment to new levels").

199. Andersen Jones & West, *Empirical Study*, *supra* note 2, at 393.

scoring Justices in the entire Martin-Quinn database—William O. Douglas, who had nineteen terms with scores lower than -5 (eleven of which were lower than -7),²⁰⁰ and Thurgood Marshall, who had multiple terms with scores lower than -4.²⁰¹ The liberal wing of the Court in that era was also home to First Amendment absolutist Hugo Black and famed press-freedom hero and liberal lion William Brennan, who authored the watershed press freedom case of *New York Times v. Sullivan*.²⁰² Black, Douglas, and Brennan were “the most press-friendly Justices of all time”²⁰³ and were, simultaneously, prominent players in a broader set of liberal jurisprudential movements in the late Warren Court and early Burger Court that predated the rise of the judicial right. The perception that, when viewed in the context of all Justices since the 1930s, Democratic appointees from the 2000s are more moderate liberals—coupled with the observation that even the Justices who are the farthest to the left on the Roberts Court do not come anywhere close to the most extreme Martin-Quinn liberalism scores from past eras²⁰⁴—raises the possibility that the change in tone about the press merely reflects this softened liberalism.

We tested this premise in several ways. None support the proposition. First, we made across-time comparisons for strong, moderate, and mild liberal Martin-Quinn scores to examine whether stronger liberals were exclusively responsible for press positivity in the past and whether the downturn in press positivity was a phenomenon only within one strength of liberalism. For purposes of this inquiry, we gathered the full set of Martin-Quinn scores for all Justices and found the scores falling closest to the ninety-fifth, fiftieth, and fifth percentile values of the negative scores.²⁰⁵ The trends over time for the

200. *Id.*

201. *Id.*

202. See generally *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

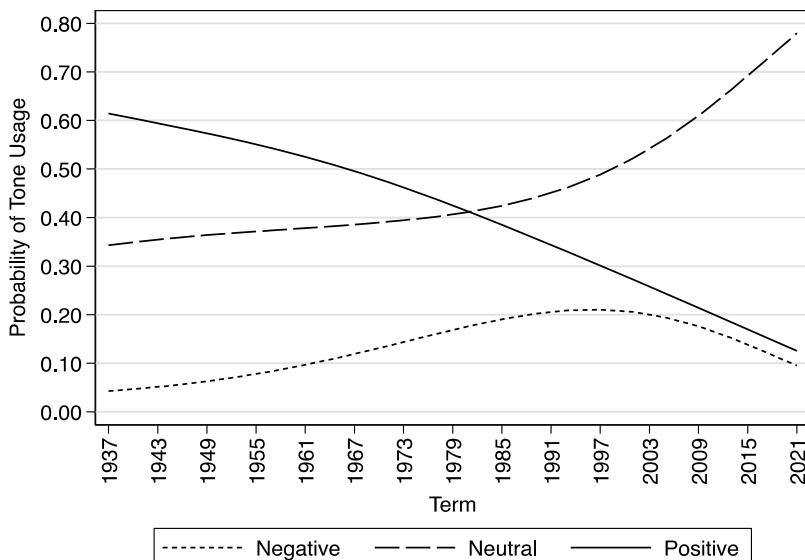
203. Andersen Jones & West, *Empirical Study*, *supra* note 2, at 411 (noting that the three “rise to the top of our press-friendliness rankings” and that “the period during which they served surely played a role,” as they “were all on the bench during at least part of the Court’s press freedom Glory Days in the 1960s, 1970s, and 1980s . . . when the Court decided many press-related cases” and was at “the height of press-positivity”); Andersen Jones & West, *Disappearing Freedom*, *supra* note 5, at 1431–32 (noting that “the data do show that at least some prominent liberal Justices of the previous eras were major promoters of the concept of press freedom” and that Black, Douglas, and Brennan, who made the most mention of the constitutional freedom of the press, “are all Justices with broader records as liberals”).

204. The three most liberal scores of Justice William O. Douglas, in the 1973 to 1975 Terms, were -7.870, -7.923, and -7.929. MARTIN-QUINN SCORES, *supra* note 79. In contrast, the three most liberal scores of the most liberal member of the Roberts Court, Justice Sonia Sotomayor, are -4.137 in 2021, -4.070 in 2020, and -3.947 in 2019. *Id.*

205. The “strong liberal” score, at the ninety-fifth percentile, is -5.46, Justice Douglas’s score in 1958. *ILR Dataset*, *supra* note 109. Justice Douglas’s scores in 1959 (-5.78) and 1957 (-5.5) were the next closest scores. *Id.* The “moderate liberal” score, at the fiftieth percentile, is -1.57, Justice David H. Souter’s score in 2008. *Id.* Justice Kagan’s score from 2015, Justice Ginsburg’s score from 2005, Justice Breyer’s scores from 2016 and 2014, and Justice Black’s scores from 1948 are nearly identical to this. *Id.* The “mild liberal” score, at the fifth percentile, is -.19, which

positive, neutral, and negative tone usage in these percentiles are depicted below in Figures 9, 10, and 11.

Figure 9. Probability of Tone Usage by Term for a Strong Liberal Justice



As seen in Figure 9, our analysis predicts that strong liberal Justices, were they to exist on the contemporary Court, would be sharply less likely to use a positive tone and sharply more likely to use a neutral one. What was once a more than 60% likelihood of positivity has plummeted to about a 10% likelihood.²⁰⁶ The gap between likelihood of positivity and negativity is no longer statistically significant.²⁰⁷

was Justice Byron White's score in 1965. *Id.* For context, similar scores include Justice Ginsburg's 1993 score of -.21 and Justice Stevens's 1976 score of -.18. *Id.*

206. For the underlying data supporting this conclusion, see *id.*

207. *Id.*

Figure 10. Probability of Tone Usage by Term for a Moderate Liberal Justice

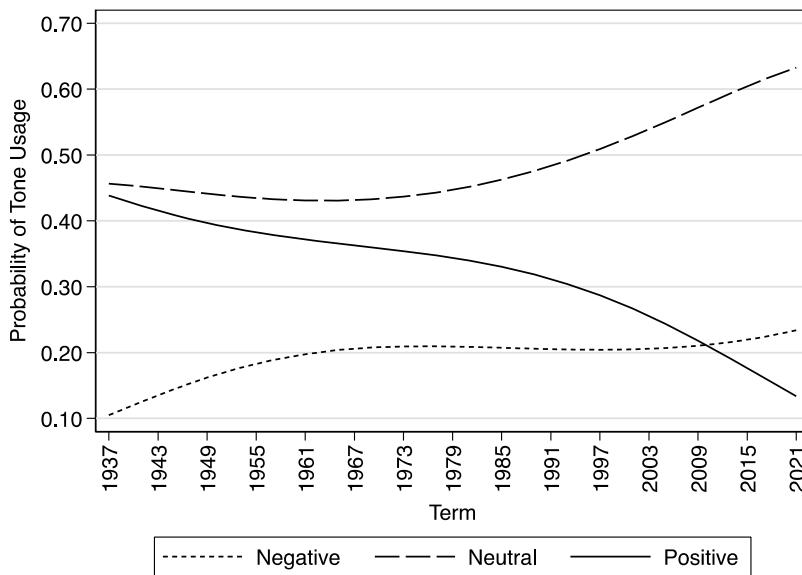
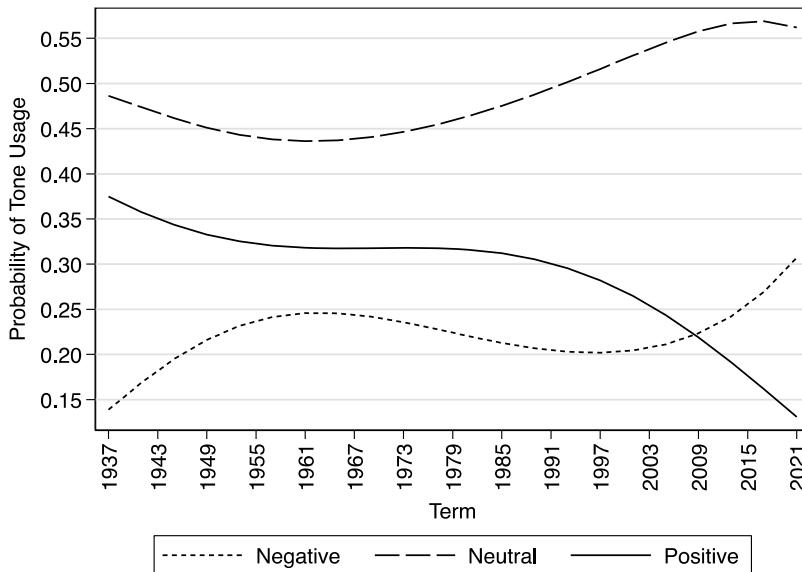


Figure 11. Probability of Tone Usage by Term for a Mild Liberal Justice



Importantly for our inquiry, though, the abandonment of positive press framings, the concomitant increase in neutrality, and the growing divergence

between the two, are all visible for the moderate and mild liberals, as well.²⁰⁸ Although these liberals, like the rest of the Court, have always been more likely to characterize the press neutrally, the rejection of their once much more prominent tendency to speak favorably about the press has become pronounced in recent years. Moreover, these liberal Justices show an uptick in negativity that roughly maps onto the Roberts Court era.²⁰⁹

Thus, the data contradict any notion that the downturn of positive attitudes toward the press in the liberal wing of the Court is happening at the hands of any one variety of liberal or would be meaningfully improved if the Court's current liberals were less moderate.²¹⁰

Second, to more directly confirm these findings, we generated predictions across time for the equivalent Martin-Quinn scores of the current Roberts Court liberals. Justice Sotomayor's composite average Martin-Quinn score—her annual rating divided by the number of years she has spent on the Court—is -3.1.²¹¹ Figure 12 displays the tonal trend patterns for this score. It reflects, as expected, patterns falling somewhere between the moderately liberal Justice and the strong liberal Justice trends discussed above. A Justice with Justice Sotomayor's degree of liberalism in the past would have been less likely to be negative about the press, far more likely to be positive, and far less likely to remain neutral than she is today.

208. *Id.*

209. *Id.*

210. *Id.*

211. Justice Sotomayor's scores range from a -1.62 in 2009 to a -4.14 in 2021 and have become progressively more liberal with each Term. *Id.* Her scores from 2009 to 2021, in chronological order, were as follows:

-1.62

-1.71

-1.90

-2.36

-3.0

-3.25

-3.46

-3.70

-3.83

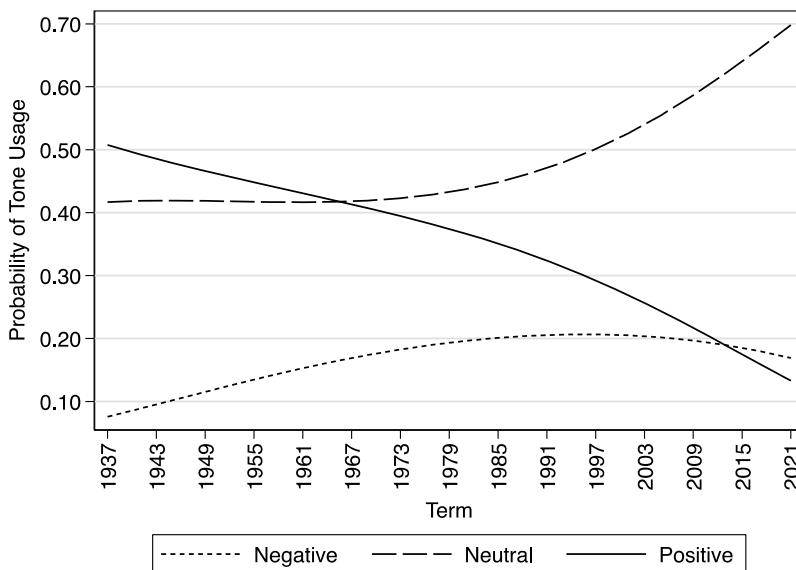
-3.95

-4.07

-4.14

Id.

Figure 12. Probability of Tone Usage by Term for a Justice with Sotomayor-Like Ideology



The tonal trends over time for Justice Kagan's composite average Martin-Quinn score, -1.64,²¹² are depicted in Figure 13. Although Justice Jackson had served on the Court only one of our studied Terms, her preliminary estimated Martin-Quinn score for that Term was -1.70.²¹³ This is depicted in Figure 14. Both Figures mirror the trends we estimated for moderate liberal Justices, and

²¹² Justice Kagan's scores range from a high of -1.43 in 2011 to a low of -1.85 in 2021. *Id.* Her scores from 2011 to 2021, in chronological order, were as follows:

-1.43
-1.44
-1.56
-1.61
-1.63
-1.65
-1.66
-1.67
-1.74
-1.77
-1.85

Id.

²¹³ *Id.*

both demonstrate the exact same tendency away from positivity about the press as we see for the stronger judicial liberals.

Figure 13. Probability of Tone Usage by Term for a Justice with Kagan-Like Ideology

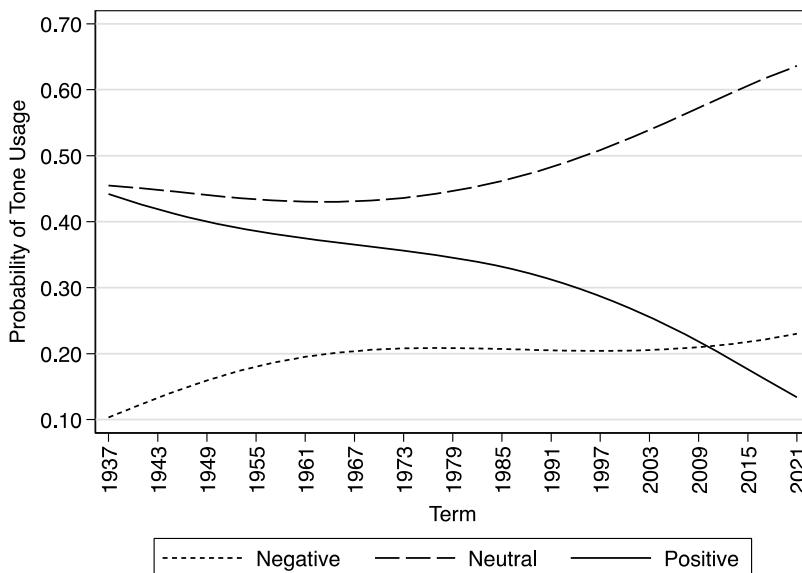
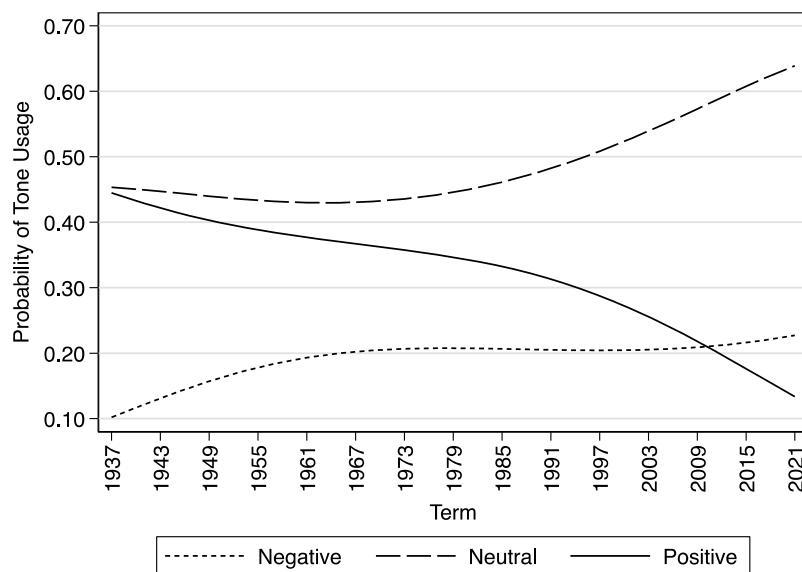


Figure 14. Probability of Tone Usage by Term for a Justice with Jackson-Like Ideology



Third, to provide an even more concrete comparison of the press-characterization decisions of Justices of equivalent degrees of liberalism over time, we examined Roberts Court liberals' records of press depiction alongside those of their co-partisans of earlier eras. The scatterplot graphs in Figures 15, 16, and 17 offer these comparisons, depicting the proportions of liberal Justices' mentions of the press that use a positive, neutral, and negative tone. Comparing proportions allows us to contrast the Justices even when their total numbers of mentions of the press vary.

Taking advantage of the dynamic nature of Martin-Quinn's term-by-term scoring, we are able to produce a Press-Mention Weighted Martin-Quinn Score for use in the x-axis of these charts. That is, rather than merely using a composite average of all of a Justice's Martin-Quinn scores, we created a weighted average in which the weight is the frequency of press mentions made by a Justice in a given Term. If, for example, a Justice completed a Term on the Court in which she referenced the press only once, followed by a Term in which she referenced the press ten times, our Press-Mention Weighted Martin-Quinn Score would weigh the latter Term's Martin-Quinn ranking ten times as heavily as the former's, rather than equivalently, as a composite average would do. This allows us to have even greater confidence that we are properly comparing the press-praising performance of ideologically equivalent Justices and assessing the strength of the Justice's liberalism at the time the Justice made the press depictions. The figures show the records of past and present liberal Justices, sorted from most to least liberal from the left to the right of the grid.

Figure 15. Ideology and Positive Mentions of the Press for Liberal Justices

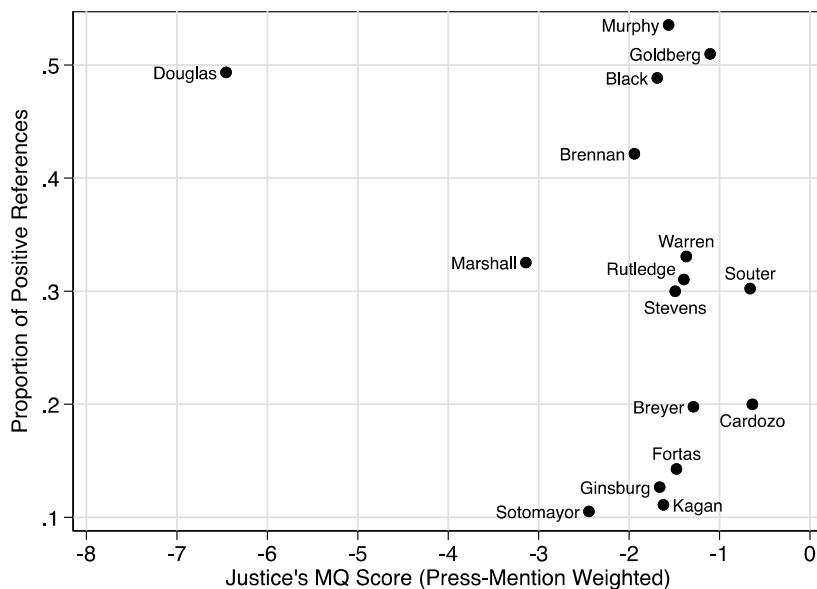


Figure 16. Ideology and Neutral Mentions for Liberal Justices

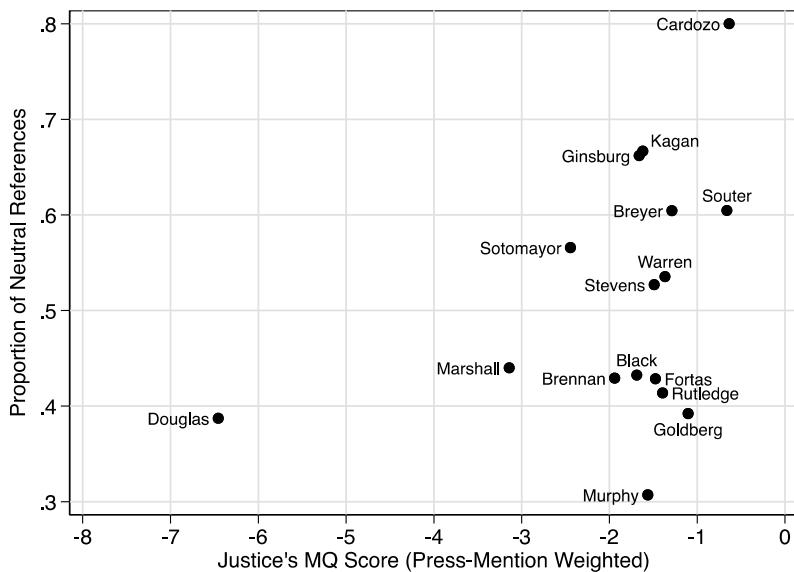
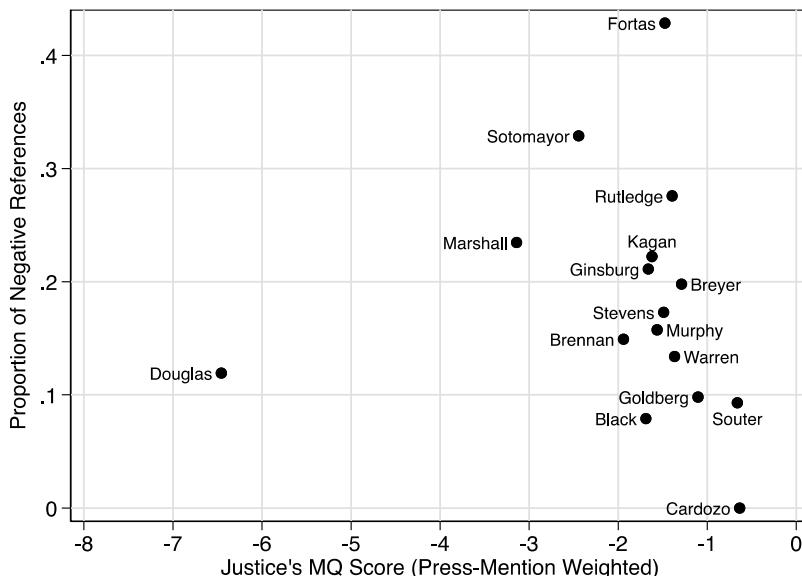


Figure 17. Ideology and Negative Mentions for Liberal Justices



The illustrations show that any perception that the downturn in liberal judicial press attitudes is solely a function of the loss of the Court's more extreme liberals is misplaced. That is, degree of ideology is not a satisfactory

explanation for why the Roberts Court liberals are so much less press friendly than previous Courts' liberals. As a starting matter, the comparisons demonstrate how the "Glory Days" characterizations—of the press as valuable, trustworthy, and democracy-serving—did not come exclusively from the farthest liberal wing of the Supreme Court. It is true that Justice Douglas, the most liberal Justice with a weighted Martin-Quinn score of -6.46, was overwhelmingly press-positive.²¹⁴ He characterized the press favorably in nearly half of all mentions²¹⁵ and was negative in only 12% of them.²¹⁶ But the favorability patterns in Figure 15 show that the "Glory Days" of press positivity in earlier decades would have happened even without Justice Douglas.²¹⁷ Other Justices of much milder liberalism had the same or greater positivity toward the press.

Even more tellingly, when we directly compare the Roberts Court liberals with their historical analogs on Martin-Quinn moderate liberalism, we can see an observable shift in press positivity for that band of liberalism. Figure 15 shows Justices Sotomayor and Kagan (and the earlier Roberts Court liberals, Justices Breyer and Ginsburg²¹⁸) well below the other Justices of equivalent Martin-Quinn rankings on the question of positivity about the press. Figure 16 illustrates how they are far more likely than their co-partisan predecessors to be merely neutral. And Figure 17 shows how much more likely today's liberals are to speak poorly of the press and the press functions than equivalent liberals were in previous generations.

For example, Justice Black, whose weighted Martin-Quinn score is -1.69, and Justice Brennan, whose weighted Martin-Quinn score is -1.94, both register as less liberal on the scale than Justice Sotomayor, whose weighted Martin-Quinn score is -2.44.²¹⁹ Both are only slightly more liberal than Justice Kagan, whose weighted Martin-Quinn score is -1.62.²²⁰ Yet Justices Kagan and Sotomayor place significantly lower on the positivity grid and significantly higher on the negativity grid than these ideological counterparts from the recent past.²²¹ Justices Black and Brennan both used positivity more than

^{214.} *Id.*

^{215.} Justice Douglas's overall press positivity proportion was 0.49. *Id.*

^{216.} *Id.*

^{217.} *Id.*

^{218.} Justices Breyer and Ginsburg had Press Mention Weighted Martin-Quinn scores of -1.29 and -1.66, respectively. MARTIN-QUINN SCORES, *supra* note 79. Ginsburg's overall press positivity proportion was 0.13. *Id.* Her overall press negativity proportion was 0.21. *Id.* Breyer's overall press positivity proportion was 0.20. *Id.* His overall press negativity proportion was 0.20. *Id.*

^{219.} Justice Black's Martin-Quinn score in his all-time most liberal Term, -3.34 (1940) and Justice Brennan's all-time most liberal score, -3.18 (1989), are both less liberal than Justice Sotomayor's most liberal Martin-Quinn Term, -4.14 (2021). *See id.* Justice Sotomayor's score has become more liberal every year since she joined the Court. *Id.*

^{220.} Justice Kagan's Martin-Quinn score in her most liberal Term was -1.85. *Id.* Her scores have become more liberal every year since she joined the Court. *Id.*

^{221.} For the underlying data supporting this conclusion, see *ILR Dataset*, *supra* note 109.

40% of the time.²²² Justice Black was positive more than six times as often as he was negative, and Justice Brennan was positive nearly three times as often as he was negative.²²³ For these Justices' near ideological parallels, Justice Sotomayor and Justice Kagan, the dynamics have flipped. Justice Kagan has depicted the press negatively more than twice as often as she has done so positively, and Justice Sotomayor has been negative three times as often as she has been positive.²²⁴ Indeed, as the negativity trends in Figure 17 illustrate, Justice Sotomayor is more negative toward the press than a number of even less liberal colleagues of earlier eras. Fully a third of her comments about the press have a negative tone.²²⁵ Justice Kagan is negative in 22% of her characterizations of the press.²²⁶

Controlling for Martin-Quinn score and moderateness of liberalism, then, there is still an observable change in behavior by the more modern liberals when it comes to the attitudes they express about the press.

Something more tectonic has happened in the relationship between Supreme Court liberals and the protection of the press. Roberts Court liberals are different in kind and not just in degree from their press-friendly predecessors. The patterns that have emerged are not merely explainable as an ideological shift but instead represent a qualitative difference in the relationship between liberal judicial ideology and attitude about the press. What was once a companion principle, traveling in tandem with social-justice and individual-liberty values and other markers of liberalism, has now been eliminated from that lexicon.

2. Ideology and Frequency of Press Mentions

Our data show that today's liberal Justices are speaking less positively about the press as compared to past Justices with similar ideological leanings. But it is also true that today's liberal Justices are deciding cases in a very different judicial environment than their predecessors. Most notably, today's liberal Justices are minority voices on a Court that is now dominated by a six-Justice conservative supermajority. In contrast, many of the past liberal voices of press positivity sat on benches controlled by liberal majorities, such as the Warren Court.²²⁷ It is thus reasonable to wonder whether the overall rightward shift of the Court and the changing dynamic of Court control is hindering

^{222.} *Id.*

^{223.} Justice Black's overall press positivity proportion was 0.49 and his overall press negativity proportion was 0.08. *Id.* Justice Brennan's overall press positivity proportion was 0.42 and his overall press negativity proportion was 0.15. *Id.*

^{224.} *Id.*

^{225.} *Id.*

^{226.} *Id.*

^{227.} See David Luban, *The Warren Court and the Concept of a Right*, 34 HARV. C.R.-C.L. L. REV. 7, 7 (1999) ("The Warren Court . . . was not just the most liberal Supreme Court in American history, but arguably the *only* liberal Supreme Court in American history.").

today's liberal Justices from making as many positive press references. In other words, is the explanation simply that today's liberal Justices are not in the Court's agenda-setting driver's seat and, therefore, have fewer opportunities to praise the press?

Our study controlled for this factor, and our data show this is not the case. Our data reveal that, instead of lacking the opportunities to mention the press in positive ways, today's liberal Justices *could* be discussing the press more frequently but are choosing to stay quiet more often than their liberal predecessors and their current conservative colleagues.

By design, our study captured every paragraph in which a Supreme Court Justice referenced the press or the newsgathering functions in any published opinion or statement in the U.S. Reports.²²⁸ Thus, in addition to majority opinions, our dataset includes all dissenting and concurring opinions, as well as any other separate writings, such as dissents from denial of certiorari, rulings in emergency petitions, and statements about recusal decisions. As a result, our study captured any instance in which any Justice chose to write about the press or newsgathering in any context. While the ability to author majority opinions does, of course, hinge on control of the Court, these separate writings are entirely at the individual Justices' discretion. All Justices are free to write separately at any time, regardless of the ultimate outcome of the case or whether they have the support of their colleagues.²²⁹ Indeed, during the peak time of press positivity, between 1960 and 1980, well over half of the references to the press came in settings other than majority opinions.²³⁰

The frequency with which a Justice chooses to reference the press is important. Every time a Justice makes the decision to mention the press, the effect is to amplify that view, whether it is positive or negative. Thus, a Justice who frequently describes the press as sensationalist and untrustworthy is reinforcing that characterization with each new mention. Likewise, a Justice who continually praises the role of the press in our democracy can strengthen that message through repetition. Even the frequency of neutral references can be impactful as a means for the Court to continually recognize the ongoing work of the press and the existence of a constitutional right to press freedom.

Our full data show that ideology typically has been a predictor of a Justice's likelihood of choosing to reference the press at all.²³¹ Notably, this

228. See Andersen Jones & West, *Empirical Study*, *supra* note 2, at 386–88.

229. See *id.*

230. Our data show that in the 1960 to 1980 time period, 44% of all references to the press were in majority opinions. *ILR Dataset*, *supra* note 109. The remaining 56% came from dissents, concurrences, and other separate writings. *Id.* In our fuller dataset of all mentions of the press that have been made in the entire history of the Court, 53% of these mentions appear in majority opinions and 47% were generated by Justices who opted to write separately in some other format. *Id.*

231. See Andersen Jones & West, *Disappearing Freedom*, *supra* note 5, at 1432 (“Unsurprisingly, perhaps, when we investigate the overall historical data, we find a link between Justices’ ideology and their likelihood of invoking the concept of freedom of the press.”).

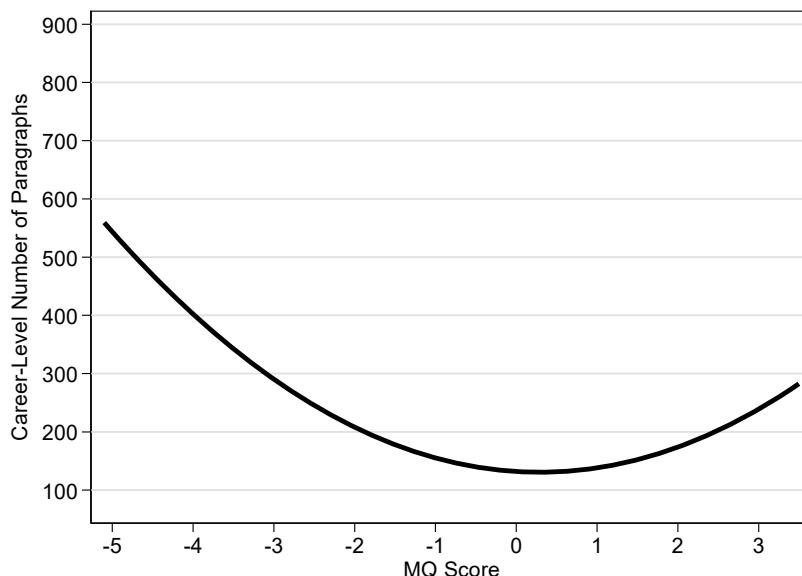
relationship is parabolic, with the most liberal Justices as well as the most conservative Justices traditionally being the most likely to talk about the press, while the Justices closer to the ideological center of the Court are less likely to do so.²³²

Figure 18 shows that as we move from the most liberal Justices toward the ideological center, there is an initial decrease in the total number of references.²³³ Taken in conjunction with the tone-trend data, it seems that, in the broad overall combined data over the course of all history, the most conservative Justices have been more prone to go out of their way to offer up negative characterizations of the press and that the most liberal Justices have found opportunities to present positive ones.

232. The model producing this result examines the total number of press mentions across the entirety of a Justice's career as the dependent variable and the average of all of her Martin-Quinn scores as the main independent variable. *ILR* Dataset, *supra* note 109. To allow for the possibility of a curvilinear effect, we also include the squared value of a Justice's average Martin-Quinn score. *Id.* There are a total of forty-two observations, so we estimate an ordinary least squares linear regression model. *Id.*

233. The most liberal Martin-Quinn score in the data is predicted to have a career-total of about 560 press mentions. This decreases steadily to a minimum value of around 130 mentions for an ideology value just above 0 (i.e., 0.3 to be exact). But when we continue to move toward the most conservative Justices, the frequency with which they discuss the press increases again, albeit not to the same heights we saw for very liberal Martin-Quinn scores. The most conservative Martin-Quinn score in the data is predicted to have around 283 press mentions. The gray shaded area in the plot presents the 95% confidence interval around the point estimate (i.e., the black line). Given the width of this interval, one might wonder whether the slopes are, in fact, appreciably different. If one starts at a Martin-Quinn score of -5 and moves one unit to the right (i.e., to -4), we would predict around a 160-mention decrease. If, by contrast, one stood at +2.5 and moved one unit to the right (i.e., to the sample maximum of around 3.5), then our model tells us to expect an increase of approximately sixty-five mentions. The difference of these two changes is statistically significant. For the underlying data supporting this conclusion, see *id.*

Figure 18. Career Total References to the Press by Justice Ideology



A number of other factors might influence how frequently Justices from different time periods mention the press. During some eras, for example, the Court has decided more First Amendment cases, which might result in more references to the press. Additionally, the total number of cases the Court has decided has dropped dramatically over time, which might affect the frequency of press mentions.²³⁴ To better investigate the frequency of the Justices' press mentions over time, therefore, we adopted a different model than the tone models discussed above. More specifically, to analyze whether any usage occurred, we broadened our scale to include the full universe of written opinions (as opposed to just opinions that included a press mention) and controlled for the number of First Amendment cases.

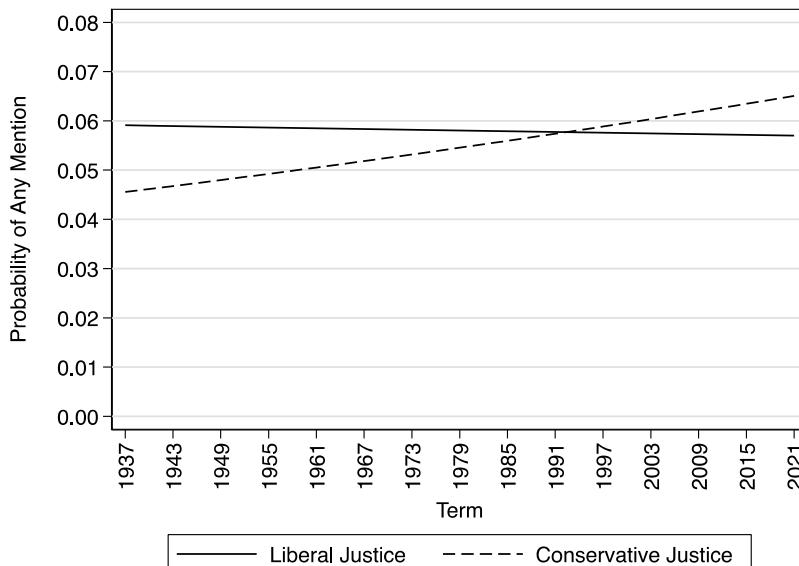
Using this model, we then examined the relationship between ideology and likelihood of mentions over time. Our data show a shift in the frequency pattern. As shown in Figure 19, conservative Justices are becoming increasingly more likely to reference the press, while liberal Justices are becoming slightly less likely. The overall influence of ideology on the likelihood of discussing the press has not changed dramatically over time, but to the extent ideology has influenced press mentions, our data show that conservatives today are more than 40% more likely to mention the press than conservatives were in 1937.²³⁵ For most of the twentieth century, moreover, liberal Justices were

²³⁴ *The Supreme Court Database*, *supra* note 118.

²³⁵ *See id.*

more likely than conservative Justices to reference the press.²³⁶ But this relationship reversed in the late 1990s, and today it is the conservative Justices who are most likely to share their views about the press while the liberal Justices more often stay quiet.²³⁷

Figure 19. Probability of Any Mention of the Press by Ideologically Medium Justices



Once again, a deeper comparison of today's Justices with their ideological predecessors shows that this is not just a matter of today's liberal Justices being more ideologically centrist than their historical counterparts. When we do the more complex comparisons of Justices from similar points along the ideological scale over time, we find that today's liberal Justices are mentioning the press less frequently than similarly liberal-leaning Justices from a prior era.²³⁸ Yet the reverse is true for conservatives. Today's conservative Justices are more likely to reference the press than their ideological counterparts from the past.²³⁹

Figure 20 depicts the effect of a one-unit shift in the Martin-Quinn score on the probability of a press mention during 1937, 1973, and 2021. Although

²³⁶ See *id.*

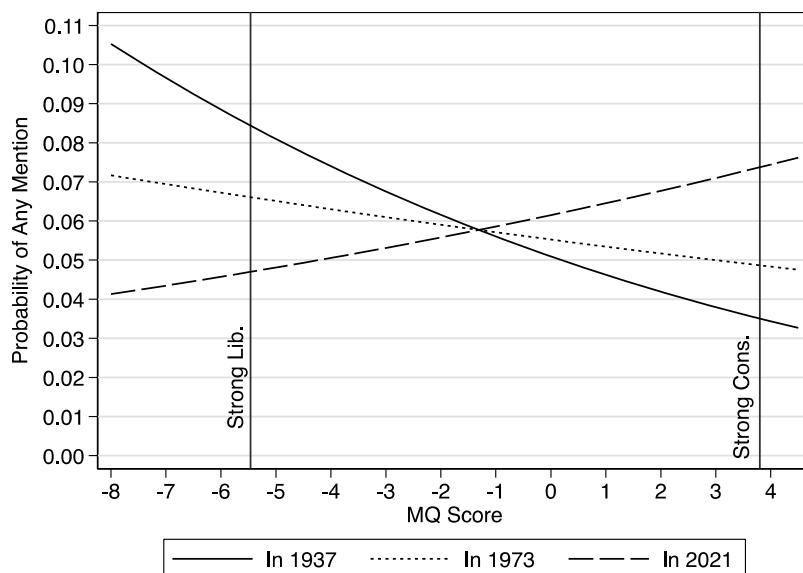
²³⁷ More specifically, a medium-strength liberal Justice had a significantly higher probability of referencing the press compared to her medium-strength conservative counterpart from 1937 to 1982 ($p < 0.10$). The conservative Justice becomes significantly more likely than the liberal Justice to reference the press starting with the 2017 Term. For the underlying data supporting this conclusion, see *ILR Dataset*, *supra* note 109.

²³⁸ See *id.*

²³⁹ See *id.*

mild-to-moderate liberals have remained stable in the frequency of their press references, there has been a significant decline over time in the probability of press mentions by strong liberals.²⁴⁰ In 1937, a Justice with a Martin-Quinn score of -5.46 had an 8.4% likelihood of mentioning the press in a given opinion.²⁴¹ In 1973, this had decreased to a 6.6% likelihood and, by 2021, our estimate is that the Justice would have just a 4.7% likelihood.²⁴² Once again, the reverse is true for strong conservative Justices, who were once less likely to discuss the press and are now more likely to do so. A Justice with a Martin-Quinn score of 3.80 had likelihoods of 3.5% in 1937, 4.9% in 1973, and 7.4% in 2021.²⁴³

Figure 20. Influence of Ideology on Probability of Any Mention of the Press in 1937, 1973, and 2021



As depicted in Figure 20, in 1937, a strong liberal was 140% more likely than a strong conservative to mention the press; but by 2021, strong conservatives became 57% more likely to bring up the press than strong liberals.

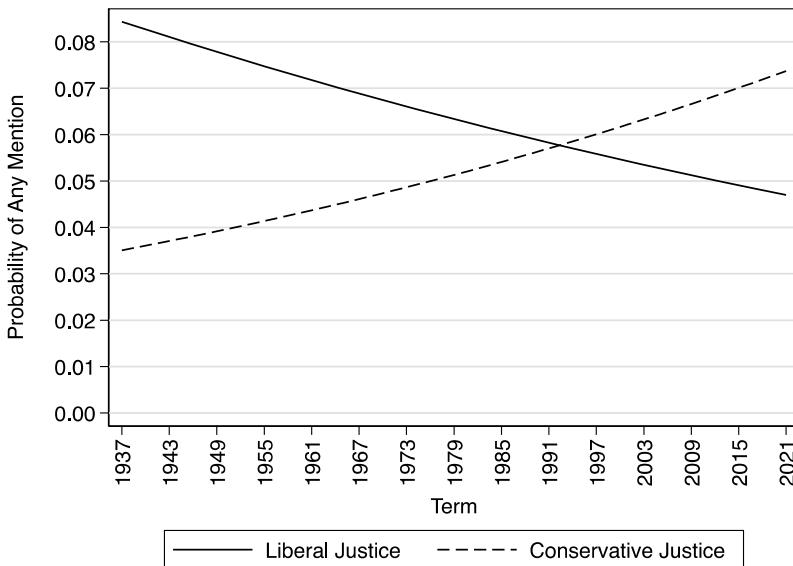
^{240.} See *id.*

^{241.} *Id.*

^{242.} *Id.*

^{243.} *Id.*

Figure 21. Probability of Any Mention of the Press by Ideologically Strong Justices



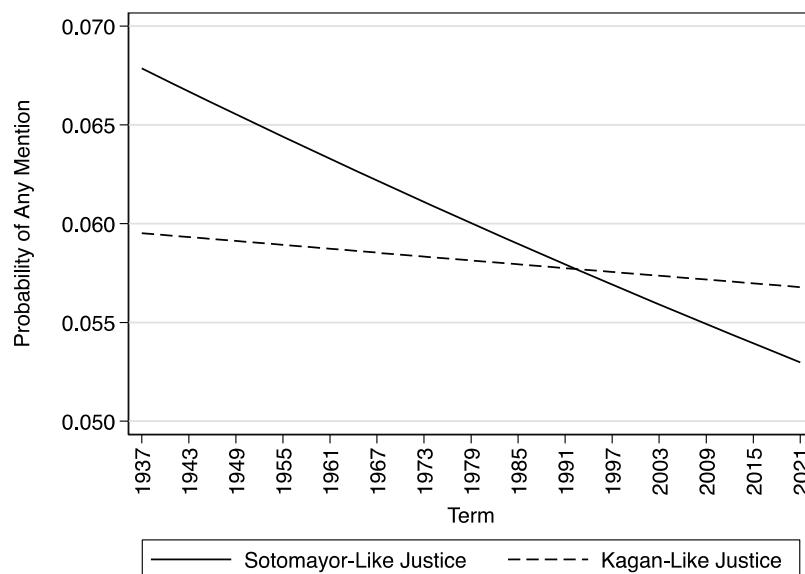
It is, therefore, the more liberal Justices who are increasingly choosing *not* to take opportunities to talk about the press or the value of newsgathering. Figure 22 shows this relationship by comparing over time two hypothetical Justices—one with a Martin-Quinn score of Justice Kagan (a moderate liberal with a composite score of -1.64) and another with a Martin-Quinn score of Justice Sotomayor (a more left-leaning liberal with a composite score of -3.05).²⁴⁴ Throughout the Court's history, the frequency of press mentions by a "Kagan-Like" Justice has remained relatively stable, with only a slight decline in recent years.²⁴⁵ The "Sotomayor-Like" Justice, on the other hand, has had a substantial change in behavior, falling from once being significantly more likely to mention the press than her moderate-liberal colleagues to being less likely to do so today.²⁴⁶

²⁴⁴. *Id.* The Kagan Martin-Quinn score is in roughly the twentieth percentile of all 770+ Martin-Quinn scores (i.e., only 20% of the Justice-term values were more liberal than the Kagan value we use). *Id.* The Sotomayor Martin-Quinn score is in the seventh percentile (i.e., more liberal than 93% of all Martin-Quinn scores). For the underlying data supporting this conclusion, see MARTIN-QUINN SCORES, *supra* note 79.

²⁴⁵. For the underlying data supporting this conclusion, see *ILR Dataset*, *supra* note 109.

²⁴⁶. *See id.* The visual difference in the slope of these two lines is statistically significant. Additionally, the Sotomayor-Like line is significantly higher than the Kagan-Like line from 1937 to 1981. The difference is insignificant from 1982 to 2013. From 2014 to 2021 the Sotomayor-Like line is significantly lower than the Kagan-Like line. For the underlying data supporting this conclusion, see *id.*

Figure 22. Probability of Any Mention of the Press by Kagan-Like and Sotomayor-Like Justices



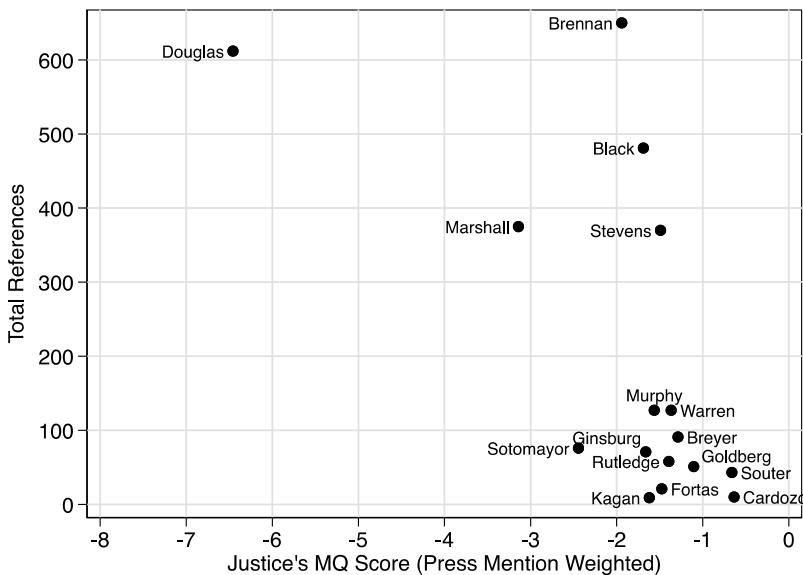
Indeed, comparisons of actual Justices throughout time with similar Press-Mention weighted Martin-Quinn scores, in Figure 23, illustrate that past moderate-liberal and stronger-liberal Justices referenced the press with far more frequency than their successors with similar ideologies. Justice Brennan, for example, was the most prolific commentator on the press in our study.²⁴⁷ Yet his weighted Martin-Quinn score of -1.94 is only slightly to the left of the score of Justice Kagan, who rarely references the press.²⁴⁸ Similarly, Justice Sotomayor sits significantly to the left on the ideological scale of other past Justices who often chose to mention the press, including Justice Brennan and Justice Black, who has a weighted Martin-Quinn score of -1.69.²⁴⁹ These numbers suggest that even if today's Court included one or more extremely liberal Justices akin to a Justice Douglas—whose weighted Martin-Quinn score of -6.46 is more than twice as liberal as any other Justice in our study—those hypothetical very liberal Justices would likely not be frequently bringing attention to the press.

²⁴⁷. See *Empirical Study*, *supra* note 2, at 408 (noting “that Justice Brennan was the most frequent commentator on the press, with 650 mentions” of the press or press functions over the course of his time on the bench).

²⁴⁸. For the underlying data supporting this conclusion, see MARTIN-QUINN SCORES, *supra* note 79.

²⁴⁹. For the underlying data supporting this conclusion, see *id.*

Figure 23. Ideology and Total Mentions for Liberal Justices



Indeed, the dataset reveals concrete examples of some specific ways that today's liberal Justices are *opting not to create* the same opportunities that their liberal predecessors created for reinforcing the notion of press freedom. For instance, prominent liberal Justices once made a regular practice of linking "freedom of the press" in a single phrase with "freedom of speech" whenever discussing the protections of the First Amendment.²⁵⁰ They did so in majority, concurring, and dissenting opinions and routinely included this language about freedom of the press in free-speech cases not directly implicating newsgathering, journalism, or the traditional press.²⁵¹ Even in non-First Amendment cases, they specified the constitutional right of press freedom when constructing larger lists of rights that are fundamental or central to democracy.²⁵² This phenomenon, which was not a function of the Court's makeup, its docket, or its degree of engagement with newsgatherers as litigants, seems to have simply reflected the Justices' desire to elevate the right and to platform the importance of protecting the press functions. These powerful data about the regular practices of earlier Justices, now essentially wholly abandoned by Justices on the Court's left,²⁵³ suggest strongly that the

^{250.} Andersen Jones & West, *Disappearing Freedom*, *supra* note 5, at 1442–45 (discussing this practice and noting that Justices Black and Douglas regularly engaged in it).

^{251.} *Id.* at 1442 n.252.

^{252.} *Id.* at 1395.

^{253.} *Id.* at 1437 ("[T]here are simply no quantitative or qualitative data to suggest that the Court's most recent liberal Justices are press-freedom advocates. Indeed, at the time our study concluded, no sitting liberal Justice had *ever* referenced the freedom of the press in a positive tone.").

trends seen among modern Justices are not the result of lack of opportunity and instead reflect a choice.

Even accepting that the Justices now no longer go out of their way to discuss the role, value, or rights of the press, the question remains whether this tells us anything specific about the relationship between those concepts and judicial liberalism. One potential explanation for the decline in press mentions by stronger liberals like Justice Sotomayor might be that these Justices are simply not in the habit of looking for opportunities to write optional statements that share their views on *any* topic, not just about the press.

Throughout our studied period, Justices have always had the most autonomy in their writing when they decide to author non-majority opinions. This means that all Justices have virtually unlimited opportunities to write concurring and dissenting opinions. They are also free to author separate opinions in non-merits cases, which are the decisions the Court hands down without full briefing and oral argument, such as denials of certiorari, summary reversals, and rulings on requests for emergency orders.²⁵⁴ This ability to write separately is important, because even when an authoring Justice does not represent a majority of the Court, his or her separate opinion can be highly influential in bringing an issue to the attention of both the public and the other Justices, as well as signaling to advocates potential future litigation strategies.²⁵⁵

Looking at the record of the Court's current most liberal Justice, Justice Sotomayor, reveals that she frequently does take advantage of these various opportunities to express her views, even when she is not in the majority. During the 2021 Term, for example, Justice Sotomayor was the most prolific author of concurring and dissenting opinions, penning eighteen separate opinions—six times more than Chief Justice Roberts.²⁵⁶ Supreme Court commentators have likewise observed that Justice Sotomayor's practice of writing separate opinions is likely an intentional effort on her part to bring attention to topics she cares about, such as criminal justice issues.²⁵⁷ *Slate's* Mark Joseph Stern, for example, noted that Justice Sotomayor “continually writes separate opinions to flag cases involving extreme cruelty, lawlessness,

254. See *Opinions*, SUP. CT. U.S., <https://www.supremecourt.gov/opinions/opinions.aspx> [https://perma.cc/9KPL-9A8U].

255. See generally Ruth Bader Ginsburg, *The Role of Dissenting Opinions*, 95 MINN. L. REV. 1 (2010) (exploring modern and historical examples of Justices using dissents to spark awareness of important issues).

256. See ANGIE GOU, ELLENA ERSKINE & JAMES ROMOSER, SCOTUSBLOG, STAT PACK FOR THE SUPREME COURT'S 2021-22 TERM 18 (July 1, 2022), <https://www.scotusblog.com/wp-content/uploads/2022/07/SCOTUSblog-Final-STAT-PACK-OT2021.pdf> [https://perma.cc/ZU93-FHPM].

257. See, e.g., Adam Liptak, *In Dissents, Sonia Sotomayor Takes On the Criminal Justice System*, N.Y. TIMES (July 4, 2016), <https://www.nytimes.com/2016/07/05/us/politics/in-dissents-sonia-sotomayor-takes-on-the-criminal-justice-system.html> (on file with the *Iowa Law Review*) (describing a string of Justice Sotomayor's dissents on criminal issues during the 2015 Term as “a remarkable body of work from an increasingly skeptical student of the criminal justice system, one who has concluded that it is clouded by arrogance and machismo and warped by bad faith and racism”).

and other inequities” with the goal of “urg[ing] the public to pay attention to the injustices that the Supreme Court lets stand.”²⁵⁸ And veteran Court-watcher Linda Greenhouse wrote in the *New York Times* that Justice Sotomayor understands that:

[O]n today’s Supreme Court, she is fated to be on the losing side of many of the issues she cares most about. So her project, it seems to me, is to make legible, for these times and in times to come, the context for the court’s decisions and the consequences likely to flow from them.²⁵⁹

Justice Sotomayor is also the most frequent participant in separate non-merits rulings, according to analysis of the 2014 to 2019 Terms by Adam Feldman at Empirical SCOTUS.²⁶⁰ Non-merits rulings, Feldman noted, are “truly discretionary decisions” where Justices only write or join an opinion “when they feel especially compelled to do so,” thus providing us with unique insights into the Justices’ choices.²⁶¹

Feldman’s study found that Justice Sotomayor either wrote or joined sixty-three of the 157 non-merits opinions that the Court issued during that five-year period, making her the most frequent participant in non-merits opinions.²⁶² Overall, Justice Sotomayor was involved in more than 12.5% more separate opinions than the second most frequent participant, Justice Thomas, who authored or joined 56 opinions during this time.²⁶³

The Empirical SCOTUS data also shed light on what legal issues Justice Sotomayor made the effort to highlight. She was the most frequent participant in opinions involving the death penalty, criminal sentencing, and immigration, as well as one of the most frequent participants in opinions involving election issues.²⁶⁴ Notably, however, during this five-year period, Justice Sotomayor did

258. Mark Joseph Stern, *Sonia Sotomayor’s Lonely Battle to Give the Voiceless a Voice at the Supreme Court*, SLATE (Apr. 19, 2021, 4:10 PM), <https://slate.com/news-and-politics/2021/04/sonia-sotomayor-supreme-court-injustice-body-cavity-dissent.html> [https://perma.cc/EQ28-QE72].

259. Linda Greenhouse, Opinion, *The Truth Teller of the Supreme Court*, N.Y. TIMES (June 17, 2021, 5:00 AM), <https://www.nytimes.com/2021/06/17/opinion/justice-sonia-sotomayor-supreme-court.html> (on file with the *Iowa Law Review*); see also Mackenzie Long, *Sonia Sotomayor’s Dissents and Opinions Speak to the People*, TEEN VOGUE (June 3, 2022), <https://www.teenvogue.com/story/sonia-sotomayor-supreme-court-dissents> [https://perma.cc/DGV5-EW48] (stating that Justice Sotomayor, through her dissenting opinions, is “leaving behind bread crumbs for future advocates and justices in the hope they will use her arguments to right the wrongs of the current court” and is “essentially laying the groundwork for any rights taken away on her watch to be restored down the road”).

260. See Adam Feldman, *Clear Polarization in Second Level Supreme Court Decision Making*, EMPIRICAL SCOTUS (July 23, 2020), <https://empiricalsotus.com/2020/07/23/clear-polarization> [https://perma.cc/6SDX-8B5G].

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

not choose to author or join any separate non-merits rulings involving the First Amendment.²⁶⁵ In fact, none of the then-sitting four liberal Justices were involved in a separate opinion in a First Amendment case.²⁶⁶ In contrast, all five then-sitting conservative Justices took the extra step of weighing in on a First Amendment case, with the Court's two most conservative Justices—Justices Thomas and Alito—doing so most frequently.²⁶⁷ Notably, all of the recent most high-profile examples of the current conservative Justices expressing negative views about the press have come in non-merits opinions, including the calls by Justice Thomas and Justice Gorsuch for the Court to revisit the press-protecting case of *New York Times v. Sullivan*.²⁶⁸ The liberal Justices were just as free to pen separate opinions defending *Sullivan* specifically or the press more broadly, yet they chose not to do so.

It is not the case, therefore, that the Court's current liberals—including significantly left-leaning liberals like Justice Sotomayor—lack or are declining to seize opportunities to share their views on matters that are important to them. Rather, the evidence suggests that the press and freedom of the press are simply not among the issues that inspire them. Meanwhile, however, the current Court's strong conservatives are taking advantage of these opportunities to talk (often negatively) about the press. The key point is that the Justices—just like the officials in the legislative and executive branches—are *making choices* about whether to bring the public's attention to the press, and our study shows that liberals are no longer making that choice.

IV. FUTURE RESEARCH ON IDEOLOGY TRENDS

Our analysis provides new insights into the significant ways the relationship between the Justices' characterizations of the press and their ideology have been changing over time. What it does not do, however, is provide any causal claims about the reasons for these trends or the potential consequences of them. While an in-depth analysis of the possible explanations for these patterns is outside the scope of this initial empirical Article, our findings raise a number of intriguing questions about various factors that might be influencing the Justices' evolving attitudes toward the press. The underlying causes of the trends we have identified likely lie in a complex web of interrelated sociopolitical dynamics, including the relationship between the press and a changing society, the relationship between the public and a changing Court, and the relationship between the Justices and a changing media landscape. These questions define the next steps of an important research agenda.

^{265.} *Id.*

^{266.} *Id.*

^{267.} *Id.*

^{268.} See *Berisha v. Lawson*, 141 S. Ct. 2424, 2425 (2021) (Thomas, J., dissenting from the denial of certiorari); *id.* at 2428–30 (Gorsuch, J., dissenting); *McKee v. Cosby*, 586 U.S. 1172, 1173 (2019) (Thomas, J., concurring in the denial of certiorari).

It is unclear exactly how the tale of conservative judicial ideology and negativity toward the press fits into the story of the deepening anti-press attitudes seen in the conservative political and public spheres.²⁶⁹ The conservative Justices may be responding to the same broader forces affecting other conservatives' views of the press,²⁷⁰ or they may be an independent and perhaps influential source of negativity.²⁷¹ Conservative judicial distrust for the press also may be a response to political narratives decrying liberalism in the media and vilifying the work of journalists or to a combination of these and other factors.

Perhaps even more mysterious are the causes and effects of the more radical changes in the relationship between judicial liberalism and press friendliness. It is uncertain what the consequences will be of no longer having reliable liberal press positivity at the Court. Does the absence of press-praising rhetoric—once a mainstay of liberal Justices— influence the public's view of the press, the press's behavior, or the outcomes of litigation involving the press? More foundationally, the questions of why the left wing of the Court has departed from the longstanding press-positivity practices of judicial liberals and why it has diverged from the consistent public attitudes among liberals are not readily answerable.

The declining performance of the institutional press, particularly as its once robust economic models become unsustainable and its resources for newsgathering dwindle,²⁷² might constitute part of the explanation. Liberals on the Court might be praising the press less often and depicting it as worthy of trust less frequently because the press is simply less praiseworthy and less trustworthy.

269. See *supra* Sections I.A–B.

270. See Danielle Kurtzleben, *Republicans Have Long Feuded with the Media. Now Many Are Shutting Them Out*, NPR (Aug. 7, 2022, 5:00 AM), <https://www.npr.org/2022/08/07/1115949410/republicans-have-long-feuded-with-the-mainstream-media-now-many-are-shutting-the> [https://perma.cc/93N5-4SJH].

271. See generally Christopher J. Casillas, Peter K. Enns & Patrick C. Wohlfarth, *How Public Opinion Constrains the U.S. Supreme Court*, 55 AM. J. POL. SCI. 74 (2011).

272. See PENELOPE MUSE ABERNATHY, CTR. FOR INNOVATION & SUSTAINABILITY LOC. MEDIA, HUSSMAN SCH. JOURNALISM & MEDIA, NEWS DESERTS AND GHOST NEWSPAPERS: WILL LOCAL NEWS SURVIVE? 8 (2020), https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf [https://perma.cc/65SC-YX4B] (noting how “successive technological and economic assaults have destroyed the for-profit business model that sustained local journalism in this country for two centuries”); Elizabeth Grieco, *U.S. Newspapers Have Shed Half of Their Newsroom Employees Since 2008*, ED. & PUBLISHER (Apr. 20, 2020, 3:20 PM), <https://www.editorandpublisher.com/stories/us-newspapers-have-shed-half-of-their-newsroom-employees-since-2008,960> [https://perma.cc/3Q5E-G4KA]; Joe Pompeo, *The Hedge Fund Vampire that Bleeds Newspapers Dry Now Has the Chicago Tribune by the Throat*, VANITY FAIR (Feb. 5, 2020), <https://www.vanityfair.com/news/2020/02/hedge-fund-vampire-alden-global-capital-that-bleeds-newspapers-dry-has-chicago-tribune-by-the-throat> [https://perma.cc/W2ZZ-SLUY] (describing the phenomenon of hedge funds buying and gutting distressed newspapers).

Additionally, future scholarship probing the ways in which our study shows modern Supreme Court liberals breaking from liberals of the past might give closer attention to the media environments that were emerging at the time of these breaks.²⁷³ At least some portions of the data reported here seem to suggest that the early signs of downturn in press-friendliness at the Court roughly coincide with the emergence of conservative talk radio and Fox News in the 1990s.²⁷⁴ Liberal Justices' sense of who constitutes "the press" might shape their sense of whether it, as a whole, warrants praise and protection, as may their sense that it is more difficult to define the press with clear boundaries in an age of changing media technology. Likewise, the modern progressive movement's rising sensitivity to the impacts and potential harms of communication—and, especially, concerns about hate speech and speech that does not reflect values of racial or socioeconomic pluralism—might also influence views of the press and the press function.²⁷⁵

Curiously, though, the public data suggest none of these forces are working so great an influence on liberals within the society more broadly that people of this ideology are as a group meaningfully backing away from their trust in the press or abandoning their positivity about the press function. Why press-positive attitudes seem to remain a component of liberalism more generally but not of judicial liberalism more specifically is a puzzle that we expect that our own future work and the work of others will want to engage.

It is worth noting that all Justices in the modern era, on both the left and the right, may have unease about the press for reasons quite specific to the role they themselves play as more visible public figures. In recent years, press coverage of the Court has taken on a more probing, investigative tone that shines a spotlight on Justices in new and sometimes unflattering ways.²⁷⁶ As discussed above, at least some Justices have taken issue with the political lens through which much press coverage speaks of the Court's major decisions,

273. See, e.g., *The Crisis of the Press and Democracy: Saving the Press Function*, YALE L. SCH. (Mar. 19, 2021), <https://law.yale.edu/isp/initiatives/floyd-abrams-institute-freedom-expression/crisis-press-and-democracy-saving-press-function> [https://perma.cc/WTW4-366B].

274. See generally David Barker & Kathleen Knight, *Political Talk Radio and Public Opinion*, 64 PUB. OP. Q. 149 (2000); David E. Broockman & Joshua L. Kalla, *Consuming Cross-Cutting Media Causes Learning and Moderates Attitudes: A Field Experiment with Fox News Viewers*, 87 J. POL. 246 (2025).

275. See, e.g., Genevieve Lakier, *Imagining an Antisubordinating First Amendment*, 118 COLUM. L. REV. 2117, 2120 (2018) (criticizing the Court's move away from a "context-sensitive, substantive-equality-promoting view of the First Amendment" and its refusal to "take into account inequalities in economic and political power when interpreting the First Amendment command").

276. Adam Liptak, *Supreme Court's New Ethics Code Is Toothless, Experts Say*, N.Y. TIMES (Nov. 14, 2023), <https://www.nytimes.com/2023/11/14/us/politics/supreme-court-ethics-code-clarence-thomas-sotomayor.html> (on file with the *Iowa Law Review*); Josh Gerstein, *Embattled Supreme Court Adopts Code of Conduct*, POLITICO (Nov. 13, 2023, 3:44 PM), <https://www.politico.com/news/2023/11/13/embattled-supreme-court-adopts-code-of-conduct-00126874> [https://perma.cc/XAK8-7SNM]; Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Had a Child in Private School. Harlan Crow Paid Tuition.*, PROPUBLICA (May 4, 2023, 6:00 AM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus> [https://perma.cc/3GGE-M2T9].

particularly those that are high-profile and deeply divisive among the public.²⁷⁷ And, unlike many of their predecessors, all Justices of the current Court came to the bench after widely publicized and increasingly politicized confirmation hearings,²⁷⁸ in which they became direct subjects of journalism and had brushes with the press that may have consciously or subconsciously shaped their attitudes toward it.

Although many more questions must be answered about the intersection between judicial ideology and the press, this study lays the groundwork for those efforts and ensures that they can be performed in a data-focused way. It empirically tests the conventional wisdom that judicial conservatives' and judicial liberals' characterizations of the press map onto the negative–positive divide seen in the public and political realms. While historically, judicial ideology has been highly correlated with positive and negative attitudes about the press, the liberal side of this equation has drastically changed. Even when we control for changes in degrees of liberalism and for shifting majorities at the Court, the data show that support for the press among the Court's left has largely disappeared. Once a reliably stable component of this ideology's jurisprudence, press positivity no longer lives within judicial liberalism.

CONCLUSION

In recent years, the American public's views of the press have been in steady decline, and they are now hitting all-time lows. Polling shows that this public trend has been powered by a sharp and growing ideological divide, in which Republicans have, seemingly en masse, lost their faith in the news media while Democrats have generally maintained their confidence. A similar partisan division can be seen in the political branches, where Republican elected officials—following the antagonistic lead of President Donald Trump—are increasingly lashing out against the press in pointed and escalating attacks.

Conventional wisdom has suggested that U.S. Supreme Court Justices were most likely following the same pattern. The Court, which is currently the most partisan bench in history, is now controlled by a powerful 6-3 conservative supermajority. Against this backdrop, several of the Court's conservative Justices have recently been seizing opportunities, both on and off the bench, to openly criticize the press. This anecdotal evidence implied that the Justices might be mirroring the public's ideological split and that conservative Justices were growing more negative of the press while liberal Justices were remaining supportive.

²⁷⁷. See *supra* text accompanying notes 99–109.

²⁷⁸. See, e.g., Adam Liptak, *Confirming Kavanaugh: A Triumph for Conservatives, but a Blow to the Court's Image*, N.Y. TIMES (Oct. 6, 2018), <https://www.nytimes.com/2018/10/06/us/politics/conservative-supreme-court-kavanaugh.html> (on file with the *Iowa Law Review*); Felicia Sonmez et al., *Supreme Court Nominee Jackson Defends Her Record as Judge, Public Defender in Marathon Hearing*, WASH. POST (Mar. 22, 2022, 7:19 AM), <https://www.washingtonpost.com/politics/2022/03/22/ketanji-brown-jackson-supreme-court-hearing-live-updates> (on file with the *Iowa Law Review*).

Closer empirical study of the Justices' references to the press in the U.S. Reports over the Court's full history, however, reveals that the actual story about judicial ideology and the press is far more complicated and more surprising. Like the public, the Court overall has become more negative about the press. And, like the public, the Justices also have had an ideological divide in their attitudes. Indeed, when considered as a whole, conservative Justices throughout the Court's history have traditionally taken a more negative stance while liberals have been more positive. But when the ideological division is parsed more closely over time, it becomes clear that the patterns of support for newsgatherers leading into and continuing through the Roberts Court era differ from the public trends in significant ways.

For the better part of a century, liberal Justices were the most passionate defenders of the press. They praised the work of journalists as a vital public service and extolled the value of press freedom as a pillar of democracy. Much of the most press-protective jurisprudence in the Court's history came at the hands of its liberal Justices, often as a concomitant to other traditionally liberal social-justice and democracy-enhancement issues.

But our data show that this is no longer the case. While today's conservative Justices have ramped up their negativity toward the press, modern liberal Justices have grown more muted. They speak of the press less often and, when they do so, their commentary is devoid of the press positivity of past eras. Even controlling for the relative degrees of liberalism, the changing Court dynamics, and the changing media landscapes does not explain this dramatic shift in attitude. Unlike their liberal co-partisans of the past, today's most liberal Justices are no more likely to speak positively of the press than their colleagues in the ideological center. Indeed, our data show that the more liberal a Justice is today, the *less* likely they are to speak of the press at all, let alone to advocate on behalf of newsgatherers and their freedom to do their work.

The issues of newsgathering and press freedom—which once were solidly part of left-leaning Justices' canon of liberal concerns—have seemingly been abandoned.