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Dissenting Votes on the Brazilian Supreme Court

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ABSTRACT

We examine dissent on the Brazilian *Supremo Tribunal Federal* (STF) using a novel dataset of 2.23 million individual votes in over 420,000 collegiate decisions issued between 1988 and 2023. After discussing the particularities of the Court's processes and the individual minister characteristics and institutional features potentially influencing incentives to dissent, we examine the effects of several different elements on likelihood of individual dissenting votes. Our findings suggest that jurisdiction type, collegiate body, legal complexity, ideology, case salience and the relationship between case reporter and dissenter all play non-trivial roles. We also find that exposure to the legal academy in common law jurisdictions is correlated with an increased propensity to dissent and that two-thirds of the Court's dissenting votes are attributable to a single member, Minister Marco Aurélio. Finally, we discuss the more nuanced impacts of several additional factors including televised hearings, virtual sessions, and gender.

I. INTRODUCTION

Brazil's 1988 Constitution represented a formal return to democracy after twenty-four years of military dictatorship. Building on a negotiated transition of power, that constitution entrenched a panoply of rights, created a robust set of checks and balances intended to serve as the foundation of a renewed Brazilian democracy, and assigned the judiciary a substantial role in their oversight. At the apex of the judiciary sits the *Supremo Tribunal Federal* (Supreme Federal Court, or "STF"), which fulfills three separate judicial functions: constitutional, appellate, and trial. In its constitutional role, the Court hears abstract challenges to the constitutionality of laws, regulations, and other state actions. In its appellate role, it is Brazil's court of last resort in concrete cases that involve a constitutional issue. Lastly, it acts as a court of original jurisdiction in several situations, for example in criminal proceedings in which the defendant is a member of Congress or of

the President's cabinet, as well as in *Mandados de Segurança* (writs of injunction) filed directly against the President of the Republic, or the President of a House of Congress.[1]

There is a growing empirical literature on multiple dimensions of the STF (see Da Ros, 2017, for a review), and the role of the judiciary in Brazilian politics more generally (Taylor 2007; Ingram 2015). A key takeaway from this work is that, since democratization, the STF has displayed a significant level of unanimity in its decisions. For example, Oliveira (2017) found that 72% of abstract review procedures decided between 1988 and 2014 were unanimously decided by the plenary court (see also, Oliveira (2008, 2012), Desposato et al. (2015), Jaloretto and Mueller (2011); Ferreira, Almeida & Mueller (2014), Silva (2018, 2022)).[2]

Yet, fewer studies so far have focused on explaining dissenting behavior in the STF (Desposato et al, 2015; Lopes, 2019). While some courts do not allow for dissent (Kelemen, 2013; Dyevre, 2010), there are no courts in which dissent is mandatory. Even if the outcome reached by the majority is not ideal to a judge, they always have the option of not expressing disagreement and joining the majority. Judicial behavior scholars have mostly framed dissent as the outcome of a calculus: the judge weighs the costs (such as using time and other resources which could be used for other activities; or undermining collegiality) and benefits (such as signaling to external audiences, or to lower courts; paving the way for jurisprudential change; or building their individual reputation) of not going with the flow instead of expressing disagreement.

These individual calculations are potentially shaped, among other factors, by institutional design and professional culture, which are variables particularly amenable to comparative analyses. The STF presents a specific confluence of those variables that

[1] During the COVID-19 pandemic, for example, the STF had to decide politically sensitive issues involving decrees on isolation measures enacted by the state and federal governments (mostly in abstract constitutional review lawsuits), the deliberate spread of misinformation on vaccines and the coronavirus (in criminal investigations against some government officials), the constitutionality of mandatory vaccination (in both abstract review lawsuits and appeals, acting as a court of last resort in concrete cases), and the legality of procedures and rights-restrictive measures adopted by the Congressional Investigative Committee (*Comissão Parlamentar de Inquérito* or CPI) created to investigate government actions and omissions in fighting the pandemic (concrete cases in which the STF exercised original jurisdiction).

[2] The STF has become a more "divided" court in recent years, as dissent rates have increased since the 2000s (see Silva, 2018, in a study covering abstract review lawsuits in the period between 2012 and 2017).

invites empirical investigation on dissenting behavior: it has a massive docket, deciding dozens of thousands of cases per year; it is a multiple-purpose court, combining vast competences of abstract review, appellate jurisdiction, and original jurisdiction in which it acts as a trial court; it has had televised judicial deliberations in the plenary for over two decades (and, since the COVID-19 pandemic, also in its panels); reporters are randomly assigned cases for which they will be the first to present their opinion, and the other judges follow a largely fixed voting order. Moreover, in all those dimensions, the court has undergone reforms in the last decades.

Thus far, however, empirical work focuses almost exclusively on a single procedure, the *Ação Direta de Inconstitucionalidade* ((ADI),[3] which triggers abstract judicial review of legislation.[4] The ADI is an important procedure, and decisions in those cases have potentially far-reaching effects. It is, however, only one of the fifty-three different kinds of lawsuits that can be heard by the Court, accounting for 1.5% of its collegiate docket. It is a highly specialized procedure, in a court that does much more than abstract review. While there are good theoretical and practical reasons for focusing on abstract review, this exclusive focus is a missed opportunity to explore the full impact, on judicial behavior, of several features of the STF's composition, design, and decision-making procedures.

In this paper, we aim to contribute to the empirical literature on the STF by investigating the drivers of dissenting behavior through an expanded dataset, covering the 35 years from the promulgation of the current (1988) constitution through the first half of 2023 and including all types of court procedures are represented. In so doing, we take no position on whether non-unanimous decisions are "good" or "bad" (cf. Simpson Jr 1922; Sanders 1962; Grementieri & Golden 1973; Peterson 1981; Garoupa & Santos Botelho, 2022). Rather, our focus is on why and when STF judges choose to dissent.

[3] This can be translated as Direct Action of Unconstitutionality.

[4] This is the case for Oliveira (2008, 2012, 2017), Desposato et al. (2015), Jaloretto and Mueller (2011); Ferreira, Almeida & Mueller (2014), Silva (2018, 2022), Martins (2018). Some of these studies include ADPFs and other abstract review procedures in addition to ADIs. Nevertheless, the point remains that the existing literature focuses on abstract review procedures, which account for a small share of the court's docket. While there are notable exceptions, such as Arlota and Garoupa (2014), Araujo (2017), and Arantes and Martins (2022), their scope is limited.

The data analyzed herein represents the universe of collegiate decisions issued by the STF's *Plenario* (plenary bench) or one of its two five-member *turmas* between 7 October 1988 and 5 July 2023. From a comparative perspective, both the volume and unanimity of the Court's decisions are a matter of interest. Out of over 423,000 collegiate decisions, more than 380,000 (90%) were unanimous and another 33,000 (8%) had a single dissent; roughly 8,000 (2%) had more than a single dissenting vote. When only the 70,000 decisions of the plenary bench are considered, 74% were unanimous, 19% had a single dissenting vote, and only 1% were "close" votes in that a single judge changing their position could have resulted in a different outcome. Even by the most expansive definition, less than half of US Supreme Court decisions have been unanimous over the past ten years and 20% have been split 5-4 since 2006 (Gou et al 2022: 13-14). The data also reveal substantial variation in levels of dissent over time. In 1994, the first year the Court's collegiate decisions exceeded 10,000, more than 98% of the STF's collegiate final decisions were unanimous. In 2003, less than 90% were unanimous. Since then, unanimity has been as high as 97% and as low as 74%.

Our focus, however, is not on aggregate patterns of unanimity over time, but on the likelihood that a given minister will dissent. We investigate the influence of a combination of factors on dissenting behavior,: legal complexity;, workload; ideology; case salience; individual characteristics of the case reporter (; exposure to common law education; and, professional trajectory. We also explore how the live broadcasting of deliberations, the implementation of a weak form of binding precedent, and the more recent reliance on an asynchronous decision-making procedure (the *Plenário Virtual*) might affect whether individual judges decide to follow the majority opinion or dissent.

The remainder of this paper is structured as follows. Part II provides an overview of the STF's processes and procedures, surveys existing work on the Court, describes key reforms, and provides an overview of its caseload and rate of unanimity over time. Part III discusses four constellations of factors that have the potential to impact dissenting behavior in reference to existing literature. Part IV presents and discusses the results of several logistic regression models that offer insight into individual dissenting behavior. Part V offers concluding comments and thoughts in relation to future research in this area.

II. DECISION-MAKING ON THE STF AND OUR DATABASE

The STF has served as the country's apex court since the establishment of Brazil as a Republic in 1891. With the democratic transition and the promulgation of a new constitution in 1988, the court's primary role theoretically shifted toward that of a constitutional court. In practice, however, a broad definition of what constitutes a constitutional matter, a variety of institutional factors incentivizing successive appeals, and the limited role of precedent have posed obstacles to the STF's full transformation in a constitutional court (Ríos-Figueroa & Taylor, 2006). The Court's full complement is eleven judges, styled as *Ministros* (Ministers). They are appointed by the President of the Republic, approved by the Federal Senate, and serve to the age of 75; before the mandatory retirement age, they can only be removed due to a criminal conviction or impeachment by a two-thirds majorityvote of the Senate.

One of the Court's most notable characteristics is its caseload, which has risen dramatically since Brazil's return to democracy. The data employed herein is drawn from a database of STF cases filed between 1988 and mid-2023. Basic data for all cases, including every docket entry, was scraped from the court website. This process identified 2.23 million individual matters filed with the Court and 420,000 rulings of a collegiate body of the Court in just over 360,000 distinct cases. For each, the information on whether each minister voted with the majority or was absent from the trial session was extracted using a deterministic algorithm.[5]

Each observation is either a merit or injunction ruling issued by one of the two *turmas* or the plenary court. In relation to existing studies of STF decision-making, the data is novel in two primary respects. First, it encompasses the totality of the Court's docket. While ADIs are conceptually and politically important, the potential impact of other forms

[5] In a minority of rulings, ministers voted separately on two or three different legal issues within the case, resulting in decisions that were unanimous on one issue, but non-unanimous on others. We coded such rulings as non-unanimous. We discarded a small number of rulings for which the algorithm could not accurately identify the votes of each Minister. There are isolated cases where a trial session begins with a few Ministers issuing their votes only to be then suspended and resumed (sometimes years later) after some of these Ministers are already retired. In such rulings, the Ministers who have taken the seats of the retired ones do not vote. This creates difficulties for our algorithm and was the reason for the largest single discard (1,717 rulings). We have reason to believe this group of rulings is likely made of more politically salient cases than average.

of abstract review as well as the Court's substantial appellate and original jurisdiction also warrant investigation. For example, many high-profile political conflicts inside Congress involving legislative procedures, congressional investigative committees (*Comissões Parlamentares de Inquérito*) and proposals to amend the constitution are brought before STF by lawsuits filed by individual members of Congress.[6] In 2021, for example, the court ordered the Senate to open an investigative committee on the federal government's responses to COVID-19. Moreover, in its capacity as Brazil's court of final appeal, the STF is required to adjudicate a wide range of matters from federalism disputes to social policy to pension reform. (see, e.g. Dantas, 2020; Taylor 2008; Kapiszewski 2011, 2012).

Table 1. Majority Rulings and Percentage of Dissenting Votes Cast

	Plenary Court			*Turmas*		
	Total Rulings	Majority Rulings (% of Total)	Dissenting Votes (% of Total)	Total Rulings	Majority Rulings (% of Total)	Dissenting Votes (% of Total)
1988-1992	1,642	18.9%	3.9%	4,246	0.8%	0.2%
1993-1997	2,764	26.8%	5.4%	58,116	1.3%	0.3%
1998-2002	3,139	30.4%	5.5%	56,888	3.6%	0.9%
2003-2007	11,056	61.3%	7.5%	59,067	2.7%	0.7%
2008-2012	13,098	17.6%	3.1%	54,133	4.5%	1.2%
2013-2017	12,874	22.2%	3.2%	61,859	9.9%	2.5%
2018-2022	21,767	18.6%	3.5%	56,436	17.4%	4.2%
2023 (Jan-Jun)	2,765	5.7%	1.3%	3,655	7.1%	2.2%
Total	69,105	26.3%	4.1%	354,400	6.5%	1.6%

Second, existing research has focused almost exclusively on the decisions of the STF's plenary panel to the exclusion of its two five-member *turmas*.[7] The *turmas*, however, account for nearly 85% of the Court's collegiate decisions. By expanding the scope of analysis to include all types of action and all three collegiate bodies, we are able to offer a more comprehensive portrait of the Court's decision-making processes. Table 1 reports the annual average of the number of collegiate decisions issued by the Court. It also shows the proportion of non-unanimous decisions over the same timeframe. In the STF, individual

[6] Most notably, via the *mandado de segurança* and its associated appeals, which account for 2% of the decisions in the database.

[7] The President of the Court does not sit on a *turma*.

ministers have significant discretion to decide matters individually in several contexts (Hartmann and Ferreira, 2016), and, historically, most of the Court's decisions have been "monocratic"—made by an individual judge (Pereira et al, 2020). Even so, the collegiate bodies of the Court produce an extremely high volume of decisions. Since 1988, the average STF Minister has been involved in an average of more than 5,000 collegiate decisions per year in addition to the 6,000 matters they—or, more appropriately, their office—resolves monocratically.

When a case enters the Court's docket, one of the Ministers is randomly assigned as that case's reporter (*relator*). The reporter is responsible for moving the case through the Court's bureaucracy. If they determine the case should be judged by a collegiate body, they must prepare both a summary of the facts, and their written opinion. The former is distributed beforehand but the latter is announced to the rest of the panel during the public session. At least formally, there is no prior or private discussion of pending cases among the judges.[8] All deliberation is theoretically public and, since 2002, all plenary deliberations have been televised; *turma* deliberations have been televised since 2020. The STF employs a system of *seriatim* (individual) opinions and, although ministers can explicitly state that they are following the opinion of a specific colleague, there is no formal aggregation of individual opinions into a collective majority opinion.[9] After the reporter has issued their opinion, the rest of the ministers vote and issue their own opinions (if any) in reverse order of seniority. These subsequent opinions vary from simply indicating agreement with the reporter to extremely detailed treatises on the subject, sometimes longer than the original reporter's opinion. After all votes have been cast, if the reporter's position was defeated, the first opinion to have diverged from the original reporter becomes the "majority opinion."

[8] In interviews with current and former members of the STF under the auspices of FGV Direito Rio's "Oral History of the Supreme Court," Ministers Velloso, Mayer, and Jobim mention episodes in which they met prior to hearings—in an administrative (i.e., non-judicial, non-deliberative) session in the Court's building or, in their own homes—to discuss critical cases or crucial political events. Other Ministers deny that such meetings occur, and even the Ministers mentioned above do not describe these meetings as regular. (Transcripts and video of these interviews are available at http://historiaoraldosupremo.fgv.br/entrevistas).

[9] For an analysis of these and other features of the STF's decision-making practices, see da Silva (2013).

The other panel members have no previous knowledge of the proposed disposition of the case, at least not formally. In most cases, this means that dissenting in any meaningful way would effectively require a *pedido de vista* (a procedure requesting to view the case reporter's files) and additional work on top of an already heavy workload.[10] However, in high profile cases, and generally in the small set of cases decided by the Plenary, STF judges have been known to bring their written opinions to session, and read them to their colleagues when voting (Silva, 2015). This means that, depending on their position in the voting order (and, consequently, of the information they already have in session on the probable outcome of the case), this would give them the opportunity to decide whether to dissent or to adjust their pre-written opinion and follow the majority (Lopes, 2019), thus reducing their cost to dissent.

Since 1988 there have been three changes in the operation of the Court that are potentially relevant to the present discussion. The first occurred in 2002. Since August 11 of that year, the Court's plenary sessions have been broadcast by *TV Justiça,* an official television network maintained by the STF itself. In early 2003 the online streaming began and the STF's YouTube channel was created on November 15, 2005.[11] The second came in 2004, with the passage of the Constitutional Amendment No. 45, the *Judicial Reform Amendment*.[12] This amendment substantially increased powers within the STF vis-à-vis the rest of the Judiciary (Desposato et al, 2015). The Court was given two mechanisms, the *súmula vinculante*—the power to deem a specific understanding or interpretation of the constitution or a statute binding on lower courts—and the *repercussão geral*— the ability to issue guidelines for lower courts to handle a number of appeals, based on the Court's consideration of just one or a set of representative cases.[13] Finally, the STF has recently undergone internal reforms that have already impacted its workload and internal allocation of power and are expected to affect its decision-making patterns as well. The most

[10] For a discussion of the *pedido de vista* procedure and its use as a form of *de facto* agenda-setting mechanism on the Court, see Arguelhes & Hartmann (2017).

[11] https://www.youtube.com/user/STF

[12] *Emenda Constitucional* [Constitutional Amendment] no. 45 (2004)

[13] Oliveira and Garoupa (2012) present a more detailed account of the mechanisms as well as offering a law and economics perspective on the impact on the work of the STF.

significant of those is the expansion of the *Plenário Virtual* (Virtual Plenary or "PV"). This is a digital adjudication platform that does not require (or permit) any real time interaction among the ministers. Rather, they simply vote and upload their opinion (if any) within a specified timeframe and without any specific voting order (i.e., asynchronously). A limited version of the PV has existed since 2006, but in 2016 and again in 2020 the court greatly expanded its scope: the PV now encompasses the same kinds of lawsuits as the "synchronous" Plenary. This expanded role was justified as a mechanism to adjust court proceedings to the Covid-19 pandemic. The decision-making rules we describe in this paper are mostly applicable to the "synchronous," traditional collegiate bodies, in which judges meet in person to issue their opinions and deal with their disagreements in real time. Since we have in our dataset decisions taken both synchronously (in the *Plenário* and *turmas*) and asynchronously (in the PV), we are able to investigate the impact of these different decisional settings on dissenting behavior.

III. FACTORS SHAPING DISSENT

In courts where dissents are allowed and individual opinions are not required (e.g., it is possible to simply sign on to the opinion of another judge), scholars have generally assumed that dissenting is costly for the judge (Posner 1993; Epstein et al. 2011). The key task, then, is explaining why judges dissent at all, when it would be less costly for all involved to simply "go with the flow", even if they do not necessarily agree with the outcome preferred by a majority of their colleagues (Garoupa et al., 2020).

Comparatively speaking, the costs of writing a dissenting opinion should be lower in a high volume court such as the STF than they are in a court like the U.S. Supreme Court. The number of decisions issued by the STF's means that each individual dissent attracts much less public attention and scrutiny. It is also professionally acceptable to simply state that one is in dissent without offering a reasoned justification or rebuttal of the reporter's opinion either verbally or .by indicating that they "follow" a dissent that has already been presented (Muro et al, 2020)). In addition, STF judges have dozens of clerks working with them to prepare opinions, and research has found that that text is often copied and pasted from previous "template" decisions (Hartmann & Chada, 2017).

In contrast to typical European constitutional courts (Dyevre, 2010; Kelemen, 2013) and other courts in the region such as the Supreme Court of Argentina (Muro et al, 2020), there does not appear to be a professional aversion to issuing dissenting opinions on the STF. Although we do not exclude the possibility of collegiality costs internal to the court (Lopes, 2019), a judge who dissents often in Brazilian legal culture is not necessarily perceived as violating professional norms. Dissenting is not seen as a drastic measure that, because it potentially undermines the court's or the decision's legitimacy, should only be employed in case of serious disagreements. In the STF, although most decisions tend to be unanimous (Silva, 2022), judges have expressed the view that dissent is a regular part of their job (Silva, 2015). In fact, scholars have generally criticized the judges for their insufficient commitment to engaging with each other's arguments to build a collective opinion, giving too much weight to their individual views (Silva, 2013).

Nonetheless, "dissent aversion" is still a valid assumption in the STF. We assume that dissents do have *some* added cost for the judge in contrast with simply following the reporter, even if that cost might not be as high as in other countries. We thus expect STF judges to follow the majority at least in some cases where they would have decided differently, if they could form their own majority (Silva, 2022). The question, then, is why and when they choose to express disagreement. In this section, we discuss different factors that might make it more likely that STF judges individually overcome the expected "dissent aversion" (Epstein et al, 2011; Lopes, 2019).

A. Legal Complexity

From a law-centered perspective, disagreement on the disposition of a given case may well be explained by the complexity of the legal issues involved (Songer, 1986; McCormick, 2003; Smyth, 2004; López-Laborda, Rodrigo & Sanz-Arcega, 2019; Muro et al, 2020; Bentsen et al, 2021); the more complex the issue, the more trained lawyers will be able to find incompatible but reasonable positions on the underlying legal questions. Judges may well be doing their utmost to faithfully apply "the law," but the complexity of the matter before them may lead them to disagree as to what it is in that specific circumstance.

Table 2. Non-Unanimous Rulings and Dissenting Votes by Panel Function

		Rulings			*Votes*	
		Total	% Majority	% Majority (excl. Min. Aurelio)	Total Cast	% Dissenting
Plenary						
	Abstract	8,145	31.6%	19.8%	79,005	6.4%
	Appellate	47,149	25.4%	5.9%	448,169	3.5%
	Original	13,811	26.0%	10.2%	127,549	4.5%
Turmas						
	Abstract	35	2.9%	0.0%	161	0.6%
	Appellate	286,522	3.6%	0.6%	1,268,646	0.9%
	Original	67,843	18.9%	5.9%	310,917	4.8%

Case complexity in the STF can be initially approached in terms of types of procedures. As noted above, the Court has three distinct jurisdictions: abstract, appellate, and original. The dissent rates and dissenting vote percentage for the STF's decisions in each type are in line with expectations with respect to legal complexity. As shown in Table 2, majority decisions were most common when adjudicating abstract constitutional issues. The plenary abstract review function can be activated by four different procedures, the most common of which is the ADI. It would be tempting to think that the Court's appellate jurisdiction would be the next most likely to generate disagreement (e.g., Shapiro 1981). However, two key factors suggest otherwise. While the assumption that appellate matters are inherently more complex because of the gatekeeping function of trial courts may well hold true in most common law jurisdictions, the Brazilian legal system incentivizes appeals even where there is no hope of success.[14] Unsurprisingly, then, appellate review makes up the bulk of the Court's collegiate caseload (78% of rulings), tends to be handled by the *turmas* rather than the plenary court, and exhibits the highest levels of unanimity and lowest percentages of dissenting votes, with the exception of the atypical abstract review in the

[14] The relatively low cost of appeals, a highly competitive market for lawyers, weak orientation towards precedents and the length of proceedings have historically made it attractive for large-scale litigants - including public entities and governments, which historically are massive "repeat players" in the STF (see) - to appeal all the way to the Supreme Court (Falcão et al, 2011; see, also Desposato et al, 2015; Ríos-Figueroa and Taylor, 2006).

turmas[15]. The second factor is the nature of the Court's original jurisdiction, which principally relates to matters involving elected officials and other public office holders. As such, these matters are more likely to raise complex issues involving the public administration and the separation of powers, not to mention the involvement of powerful political actors and interests – and the same logic applies to abstract review cases. In our subsequent analysis, we have also employed a measure of "legal complexity" based on expert assessments of the intricacy of issues that tend to arise in particular types of legal action. . Specifically, we asked a panel of Brazilian legal academics with expertise in constitutional law and the STF to rate the complexity of an average case brought under each of the 53 types of procedure that can come before the Court on a scale of 1 (least complex) to 5 (most complex) and used the unweighted average of their ratings as a measure of case complexity.[16]

Table 2 also highlights Minister Marco Aurélio's unique contribution to dissent in the STF between 1990 and 2021. His propensity for dissenting is well known, and a variety of anecdotal and quantitative evidence (using abstract review cases) suggests that his conception of the role of the Court and his approach to dissents are different from that of his counterparts (Desposato et al, 2015; Silva, 2022).[17] Indeed, he has elsewhere been

[15] We use "abstract" here to refer to cases in which the court is most directly involved in interpreting the constitution. Beyond the formal lawsuits of abstract review (ADI, ADPF, ADO, and ADC), following previous work on the field (Falcão et al, 2011) we have considered the Mandados de Injunção (MI) as kind of abstract review lawsuit - in a substantive, if not formal sense. This is why our database includes 3544 abstract cases decided by turmas. In these procedures, a plaintiff asks the court to issue an injunction recognizing a "legislative omission" (i.e., a situation in which the constitution requires enabling legislation to be enacted for a fundamental right to be fully exercised) and perhaps even supplying provisional rules while the gap in the legal system remains. While MIs are technically not an abstract review lawsuit (since they have an individual plaintiff claiming an individual right), the STF has always deal with them a way that goes beyond the individual case - either by denying it could issue provisional rules to fill in the gap (1988-2007), or by issuing rules that are applicable to all plaintiffs in the same situation (2007-). In such decisions, interpreting the constitution and solving a legislative gap with broader effects is more crucial than the specific case brought by the original plaintiff.

[16] This yielded a mean complexity of 2.75, with a minimum value of 1, a maximum value of 4.85 and a standard deviation of 0.686. The experts whose scores compose this variable are Maria Tereza Sadek, Ana Paula de Barcellos, Ingo Wolfgang Sarlet, Carlos Bolonha, Dimitri Dimoulis and Virgílio Afonso da Silva.

[17] Marco Aurélio was appointed to the STF in May 1990, aged 43 years. The appointment was made by his cousin and then Brazilian President Fernando Collor. After receiving his bachelor's degree in law in 1973, he was in private practice from 1973-1975, a public prosecutor from 1975- 1978, a Regional Labor Appeals Court (*Tribunal Regional do Trabalho*) judge from 1978-1981, and a judge of the Superior Labor Court (*Tribunal Superior do Trabalho*) from 1981-1990. He retired in July of 2021 upon reaching the mandatory

described as someone who shows "a pathological and narcissistic attraction to dissent to distinguish themselves from their colleagues" (Garoupa & Santos Botelho 2022:5). By way of illustration, our dataset includes 2.23 million individual votes made by 36 different judges in over 420,000 decisions. Of those votes, just over 52,000 (2.3%) were dissenting votes. Of those 52,000, Minister Aurelio cast 34,384. In other words, he is responsible for two out of every three dissenting votes cast in the Court since the promulgation of the 1988 Constitution. He has been involved in nearly 50,000 more decisions than Celso de Mello, who comes second in total decisions (204,598 and 156,605, respectively). Minister Aurélio's votes were dissents 16.8% of the time while the next highest rate is that of Minister André Mendonça—who has dissented 301 times (2.4%) since his appointment to the STF in December of 2021 — and Minister Edson Fachin — who has dissented 1,588 times (2.2%) since his appointment in June of 2015.

B. Ideology

In addition to an articulation of their understanding of the correct application of the law, a judge may dissent to call attention to and/or undermine the authority of an opinion with which they disagree (Cross & Tiller 1998). A substantial body of scholarship elaborating the attitudinal approach to judicial decision-making suggests that variation in political ideology plays a significant role in dissenting behavior (Pritchett 1948; Segal & Spaeth 1993; Ostberg & Wetstein 2011). To the extent that judges vote according to their sincere preferences, the rate of dissent on the Court can be reasonably expected to increase as a function of the ideological diversity of the judges on the decision-making panel. The less judges serving in the same court have varying political and ideological outlooks that impact on policy outcomes, the less likely it will be for them to find serious faults with the majority opinion (or, in the STF, the reporter's opinion) that justify issuing a dissent;

retirement age having served 31 years on the Court. During his tenure on the STF it was rumoured—a rumour repeated only half in jest—that Minister Aurelio often came to plenary sessions with two opposing opinions on each case; after gauging the direction of the Court in a given matter, he would then put forward the opinion arguing the opposite conclusion. For discussion of explanations for Marco Aurélio's overall dissenting behavior, see Silva (2022).

moreover, if judges have particularly strong political views or partisan commitments, dissenting becomes even more likely (Tiede, 2016).

Partisan affiliation by judges has been used to explain dissenting patterns in courts such as the Chilean Constitutional Court (Tiede, 2016) and Spain (Garoupa et al., 2011). These studies look not only at judicial ideology, but at the intensity of the judge's commitment to or involvement with party politics. Tiede (2016), for example, shows that Chilean Constitutional Court judges who have partisan affiliations (as identified in their pre-court trajectory) tend to dissent more often. In our analysis of the STF, we focus instead on ideology, although we do discuss professional trajectories and their potential impacts on dissenting behavior (see section "D", below).

One standard approach to the identification of judges' ideologies that has been applied with a good deal of success in the US is to use the political affiliation of whomever appointed the judge as a proxy for political ideology (e.g., Pinello 1999; Lindquist 2006). The applicability of this approach to Brazil, however, is questionable given the the dynamics of "coalitional presidentialism" in the country (Arguelhes & Ribeiro 2010; Llanos & Lemos 2013). The identification of ideal points via the analysis of roll call voting is also of limited utility in the present context as existing research on the STF shows inconsistent findings based on a host of different datasets with varying scopes (Medina et al, 2022). Moreover, recent studies have pointed to the existence of multiple different dimensions of ideological variation on the Court (Silva, 2018; Martins, 2018; Medina et al, 2022). The multidimensional nature of STF Minister's ideological preferences is also supported by research using an earlier version of this dataset. (Hudson & Hartmann 2016). While the dataset we use in this paper provides a unique opportunity to uncover ideal points, we leave this approach for future work. Existing studies have highlighted the complexity of such task when it comes to STF judges, and we believe there is still much to be gained by using, in the more comprehensive dataset presented here, approaches that have already been employed by several existing studies on this court. This approach has been adopted in previous studies on the ADIs (e.g., Desposato et al, 2015; Oliveira, 2012; Martins, 2018). Although whether the differences in behavior between judges appointed by different presidents are relevant has been a matter of dispute in the literature (e.g. Ferreira and Mueller, 2014; Jaloretto and Mueller, 2011), findings suggest that at least

some groups of Ministers appointed by the same government display a greater likelihood of voting together. Judges appointed by the PT and the PSDB (who alternated in power between 1995 and 2016) seem to vote differently from judges appointed by other parties (Martins, 2018). Moreover, Oliveira's (2012) study of abstract constitutional review on the STF from 1999-2006 found that ministers appointed by some presidents (or appointed pre-1985, by the dictatorship) were more likely to vote together, although earlier work by the same author did not find such a relationship (Oliveira 2008; finding some judicial coalitions formed by appointing presidents, see also Silva, 2018; Martins, 2018).

Our approach here has been to add other covariates linked to ideology. We rely on classifications of the ideological outlook of the ministers used in previous empirical work on the STF. Oliveira (2008, 2012) has coded almost all STF judges who served on the court between 1988 and 2011 as ideologically "progressive" or "conservative," and her classification has been recently updated by Martins (2018) to include judges appointed until 2015. We complemented their work by coding the additional three ministers who appear in our dataset (Alexandre de Moraes, appointed in 2017; Nunes Marques, appointed in 2020; and André Mendonça, appointed in 2021).[18] While any classification of STF judges by ideology is still disputed (see Martins, 2018, for discussion), Oliveira's work is a relevant resource in understanding ideological variation in the court, with the added advantage of having been used by other scholars in the field. Additionally, we believe variables related to Judicial Characteristics (see below D.) complement our ideology measures.

[18] Martins (2018) did not code judges Oscar Correa, Rafael Mayer, Djaci Falcão, Aldir Passarinho, Célio Borja and Carlos Madeira. Because they were all appointed before 1988 and remained little time at the Court after that year, we have decided to exclude them from our ideology analysis. This resulted in the exclusion of 8,761 Reporter-Minister pairings in Table 3.

Table 3. Dissenting Votes Cast By Reporter-Minister Ideological Pairings

	All		*Plenary*		*Turmas*	
	All	Excl. Min. Aurelio	All	Excl. Min. Aurelio	All	Excl. Min. Aurelio
Progressive-Progressive	1.0%	1.0%	1.6%	1.6%	0.8%	0.8%
Conservative-Conservative	3.0%	0.6%	8.1%	2.5%	1.6%	0.1%
Progressive-Conservative	4.5%	0.7%	6.2%	1.2%	3.8%	0.5%
Conservative-Progressive	1.1%	0.9%	1.7%	1.3%	0.8%	0.5%

Finally, as a further investigation of the impact of ideological diversity in the court, we examined the relationship between the judge's and the case reporter's ideology. Table 3 reports the percent of dissenting votes grouped by the combinations of progressive and conservative case reporter and voting minister. To the extent that ideological similarity is significant, one would expect the likelihood of dissent to be lower when the case reporter is of the same ideological persuasion as the voting minister. There is some evidence to this effect, but the results are mixed. While a conservative-conservative pairing in the *turmas* has the lowest percentage of dissenting votes by far once Minister Aurélio is excluded from consideration (0.14%), the same pairing has the highest level of dissents, regardless of whether Minister Aurélio is considered. Moreover, the proportion of dissenting votes by progressive ministers is lower when the case reporter is conservative and Minister Aurélio in both the plenary court and the *turmas*, and comparable to that of progressive case reporters when he is included.

C. Salience

Cases that attract more public attention – or the attention of particularly powerful or relevant political or social actors – are plausibly expected to affect dissenting behavior (McCall 2003, Brace and Hall 1993, Hanretty 2015). In the STF's case, salience should play a particularly relevant role. Considering the court's vast workload and its limited docket control, case salience is relevant to distinguish routine cases from more complex ones, which might shape how the judge will prepare for that case before session; in more salient cases, judges will more likely prepare substantial opinions beforehand, as discussed in Silva (2015). Relevant cases might also shape the individual benefits of dissent in many ways: it might provide added public visibility or added impact on policies or on the

development of the law (Muro et al, 2020). Furthermore, the STF has shown itself to be very aware of the political context of its decisions, especially those that might affect the government (Kapiszewski, 2011), and salience might signal to the judges that the institutional stakes of a particular decision are high, in terms of compliance and potential reaction by other actors (Ginsburg, 2003).

While in the last decade not a week goes by in Brazilian politics without the STF (or one of its judges) making the news, the sheer volume of cases involved precluded the creation of a measure of case salience based on press mentions. We know, however, that Justices use a prerogative to request to view a case and suspend deliberations much more often in high profile cases, than in less relevant disputes (Arguelhes & Hartmann, 2017). Thus, we believe that one or more *pedidos de vista* (requests to view or "vistas") is a useful proxy for case salience. The data supports this position as 56% of decisions in cases with at least one vista were unanimous as compared to 91% in those without.

D. Judicial Characteristics

Starting from the position that "[a] court consisting of members with similar backgrounds may be expected to produce less internal conflict than one composed of members from different backgrounds" (Patterson & Rathjen 1976:611; Songer 1986), several different characteristics may impact the Court's propensity for unanimity. Herein, we consider professional background, legal education, gender, and "freshman" status.[19]

Professional experience may also systematically impact judges' attitudes toward dissent and/or their propensities to agree with one another. STF judges are appointed by the President after approval by the Senate, and therefore can have very different career paths; formally, the only constitutional requirement beyond age (minimum 35, maximum 70) is that appointees possess "notable legal knowledge" and "spotless reputation". However, many STF appointees were previously judges in lower courts or other high courts, like the STF, and scholarship has investigated whether career paths help explain voting patterns (Oliveira, 2008; Martins, 2018; Arantes & Martins, 2022, focusing on

[19] Race was another obvious choice. However, as there have only been two judges clearly identified as members of a racial minority in the cases covered by our dataset (Joaquim Barbosa and Nunes Marques), a meaningful metric could not be developed.

criminal law adjudication), and whether the presence of career judges affects patterns of unanimity and dissent in the court (see Oliveira, 2012).

There are three paths to the STF: a full judicial career; lateral entry into the judiciary at the appellate level via the *quinto* or "constitutional fifth" procedure; and direct appointment to the Court from outside the judiciary. Career judges are those who have followed the standard path of civil law judges. Shortly after finishing law school, they successfully completed a judicial entrance examination, were assigned a temporary judgeship, achieved life-tenure, were elevated to a State Supreme Court or Federal Appellate Court many years later, and subsequently appointed to the STF.[20] To the extent their professional development influences their decision-making, we would expect them to be more deferential and dissent less than their STF counterparts, for two principal reasons. First, career judges in Brazil are appointed as the result of *concursos públicos* (public examinations) that privilege awareness of and adherence to existing jurisprudence, regardless of personal ideology belief. Second, the culture of consensus based on both a formalistic understanding of law that admits of "correct interpretations," and, at least in the case of the generation of career judges that made it to the STF since 1988, a judicial norm of deference in the face of an authoritarian regime.[21]

Quinto or "constitutional-fifth" judges are an interesting product of Brazilian judicial selection at the appellate level. Continuing a practice first instituted by the 1934 Constitution (Nalini 1995), the 1988 Constitution requires that one-fifth of appellate judge appointees "shall be members with over ten years of service in the Public Ministry and be lawyers of widely acknowledged juridical understanding and unblemished reputations, with over ten years of actual professional activity" (art. 94). The career paths of these STF Ministers are somewhat varied and may involve time spent as a federal prosecutor (e.g., Ellen Gracie), government attorneys (e.g., Teori Zavascki), or political appointees (e.g.,

[20] Minister Peluso, for example, graduated from law school in 1966, passed the public examination for entry into the São Paulo State Judiciary in 1968, became a permanent judge later that year, was elevated to the State Supreme Court in 1982 and appointed to the STF in 2003.

[21] For career judges who made it to the STF after 1988, it is certainly the case that they decided cases during the military dictatorship (1964-1985). This typology of career paths focuses on the STF Ministers and specifically on judicial trajectories, and our considerations on the "career " type are not meant to represent the experience of Brazilian judges in general.

Menezes Direito), or in other occupations of varying relevance to the practice of law. As such, we do not expect that, as a group, the *Quinto* judges will show any specific patterns with respect to propensity to dissent or agree with one another.[22] We differentiate this group in our data simply not to confuse them with career judges; although they have been judges before joining the STF, their previous judicial positions were obtained through external political connections.

Judges who have arrived at the Court via direct appointment probably have some practice experience, typically as public attorneys at the local or state level, and often have experience in academia as well. They also tend to have held positions in government, many of them at the federal level.[23] We expect that, on balance, these judges would not display as a group a specific concern with maintaining the logical integrity and unity of the law as compared to career judges as Oliveira (2008) has suggested is the case on the STF. While we have no specific measure of partisan attachment or affiliation in each judge's trajectory (cf. Tiede, 2016), the distinction between career judges and non-career judges at least allows us to establish that the former group generally has *non-partisan* professional trajectories—they spent most of their professional life within the judicial structure, and – at least until their appointment to the STF—did not formally depend on political or partisan connections to climb up the judicial career ladder.

[22] It should also be noted that Minister Marco Aurélio came to be appointed to the STF via the *quinto* pathway.
[23] Minister Jobim, for example, had more than 20 years of experience in private practice and had taught at the judicial training institution run by the Rio Grande do Sul Judges' Association from 1980-86. However, he was a member of Congress for the 10 years immediately preceding his appointment to the STF, the last two of which he served as the Minister of Justice.

Table 4. Percentage of Votes Cast in Dissent and Judicial Characteristics

	Total			Excl. Min Aurélio		
	Plenary	*Turma*	Total	Plenary	*Turma*	Total
Career Path						
Career Judge	2.9%	0.3%	0.9%	2.9%	0.3%	0.9%
Quinto	10.5%	5.7%	7.3%	1.1%	0.5%	0.7%
Direct Appointment	1.6%	0.7%	0.9%	1.6%	0.7%	0.9%
Minister Aurélio				29.1%	12.3%	16.8%
Common Law Exposure						
No	4.9%	1.8%	2.7%	1.9%	0.4%	0.8%
Yes	1.5%	0.9%	1.1%	1.5%	0.9%	1.1%
Female						
No	4.7%	1.8%	2.6%	1.9%	0.5%	0.9%
Yes	1.1%	0.6%	0.8%	1.1%	0.6%	0.8%
Time on Court						
0-6 Months	1.6%	0.6%	0.9%	1.5%	0.6%	0.8%
6-12 Months	1.4%	0.6%	0.9%	1.4%	0.6%	0.9%
1-2 Years	1.7%	0.6%	0.9%	1.6%	0.6%	0.8%
>2 Years	4.4%	1.8%	2.6%	1.8%	0.5%	0.9%

Table 4, which presents the percentage of dissents cast by ministers exhibiting a specific characteristic, including career path, does not offer any direct support for these expectations. Overall, career judges and direct appointees dissent at roughly the same rate (0.9% of the time). Interestingly, though, career judges are nearly twice as likely to dissent in plenary judgments as their directly appointed colleagues while the reverse is true in *turma* decisions. Further, once the influence of Minister Aurélio is accounted for, *quinto* judges are actually the least likely to dissent overall.

A judges' legal education is also likely to systematically impact their willingness to dissent and/or the degree to which they are likely to agree with their colleagues. All else being equal, judges in a common law system should be more willing to *publicly* dissent from their colleagues as the result of internalized norms of as well as a different understanding of the role and function of a judge in the broader political community. In contrast, judges trained in the civil law tradition are expected to be more hesitant in approaching public divergence. Disagreement and debate may well occur behind the scenes, but civil law benches seem to have a greater propensity to produce unanimous decisions than their common law counterparts (Hahm 1969; Kirby 2007; Lasser 2009).

While the situation in constitutional courts in civil law jurisdictions is more nuanced, the professional norms and mentality remain nonetheless more reluctant to dissent, as constitutional judges in those countries still "attach a higher value to institutional loyalty than common law judges," so that "the classic division between civil law and common law carries some weight" in comparisons regarding this issue (Kelemen, 2013, p. 1371). There seems to be an "institutional bias against personalized judicial opinions [that] has tended to minimize published dissents" in constitutional courts in civil law jurisdictions (Kommers & Miller 2012, p. 29; Voßkuhle 2016, p. 12). A comparison of unanimity in the US and German apex courts is illustrative. In its October 2015 Term, the U.S. Supreme Court, a common law court, was completely unanimous in 29% of its merit decisions and unanimous in case disposition in 44%.[24] Between 1971 and 2015, the two Senates of the German Federal Constitutional Court were unanimous in 93% of their decisions, issuing only 158 separate opinions. Before 1971, separate opinions were not permitted.

Historically and culturally, Brazil is a civil law jurisdiction, although elements of its judicial system were directly imported from the U.S. and have had a lasting influence on the Brazilian judiciary, particularly the STF (Eder 1960:580; Dolinger 1990). As such, we consider the possibility that judges who were exposed to legal thought or practice in common law systems in their trajectories (for example, through the completion of a graduate degree or as a visiting researcher in the U.S. or the United Kingdom) have a higher propensity to dissent than those whose legal education and experience occurred solely in civil law jurisdictions. The straightforward comparison reported in Table 4 supports this characterization, at least in the aggregate. Although ministers without any formal exposure to common law legal education are slightly more likely to dissent in the plenary court (once Minister Aurélio is excluded from the calculations), those with some common law exposure are twice as likely to dissent in *turma* decisions and half again as likely to do so overall.

[24] The former value includes only decisions in which all judges joined the majority opinion in full, with no reservations or additions. The latter value includes decisions in which all judges supported the same disposition of the case, including decisions in which there were reservations and/or concurring, potentially conflicting, opinions. (Bhatia 2016:19–20)

A minister's gender may also be relevant. Research on the Canadian Supreme Court, for example, has suggested that women may well be more likely to dissent because their perspectives and experiences lead them to conceptualize disputes differently than their male counterparts (Belleau & Johnson, 2008; Johnson & Reid, 2020). Gender may also play a role in mitigating an incentive not to dissent associated with norms of collegiality or mutual respect. A recent study of the STF suggested that the likelihood of dissent increases in the plenary court when the case reporter is female. One plausible explanation for which would be that gender stereotypes influence the behavior of the reporter's colleagues, as they (un)consciously assume that their female colleagues are less competent(and therefore less reliable as reporters), less able to retaliate in the collegial game (and therefore the collegiality costs for dissenting against them are smaller), or both (Gomes et al, 2018). Arguelhes et al (2024) also found that that female STF Ministers are more likely to be interrupted by their colleagues during sessions than their male counterparts, further suggesting that (actual or perceived) power dynamics involving gender might shape interactions between STF judges. In contrast to the Canadian findings, female STF ministers appear to be less likely to dissent than their male colleagues, even after Minster Aurélio is excluded from consideration. Although only a 0.1% difference overall, male ministers are about 80% more likely to dissent in plenary decisions.

The so-called "freshman" or "rookie effect" may also play a role in the propensity of a given judge to dissent. According to this theory, judges newly appointed to a court, particularly a prominent appellate court will "'keep their heads down' for the first few years" (McCormick 2003:104), before gradually becoming more willing to assert themselves and express disagreement with their more senior colleagues. One previous study estimating ideal points of the STF judges in abstract review cases has found that the most recently appointed members of the court "tend to always hold more central ideal points" along the two dimensions they identify, "possibly migrating to more extreme positions as they gather more experience" (Ferreira and Muller, 2014), which the authors interpret as a "rookie effect."

An alternative theory relating to judicial "freshman" is that they may be more likely to dissent initially, motivated by a desire to demonstrate that they have something to contribute, a propensity that will gradually diminish as a result of either or both

socialization and pragmatism (McCormick 2003). The former theory is supported by research on the U.S. Supreme Court and Courts of Appeals (Bowen & Scheb II 1993; Maltzman 2000; Hettinger et al. 2003), the Supreme Court of Canada (McCormick 2003), and the High Court of Australia (Smyth 2004). There does not appear to be any evidence supporting the latter theory. As Table 4 shows, there is no obvious support for an overall freshman effect on the STF. However, the data do suggest that there is a tendency to dissent more in plenary decisions and less in *turma* decisions after one's first two years on the court.

E. Institutional Considerations

Accepting that dissent is costly, variation in caseload should have an impact on dissent rates. As the number of matters for which they are responsible increases, one can reasonably expect the likelihood of a minister dissenting in any given matter to decrease (Epstein et al, 2011; Alarie and Greene, 2017). Although intuitively appealing, the evidence for this relationship is mixed. Research by Hettinger et al. (2003) on the US Courts of Appeals found support for this theory, but Lindquist (2006) failed to find a statistically significant relationship. In looking at the decisions of the Australian High Court, Pierce (2008) found marginal evidence to support the theory, but Smyth (2004), employing a larger dataset, found none. Narayan and Smyth (2007) did find a significant relationship but measured caseload in relation to population (cases per 100,000 people). Somewhat surprisingly, McCormick (2003), found a weak but significant association between lower caseloads and lower levels of dissent between 1990 and 2000 on the Canadian Supreme Court.

To measure variations in the workload of the judges, we adopt the number of new cases assigned to each minister in the month before the ruling.[25] The number of new cases in each period was chosen over participation in collegiate decisions to account for the fact that each individual judge, with the support of their clerks, is responsible for disposing of a substantial number of filings monocratically. Thus, the number of collegiate decisions

[25] In contrast to the US Supreme Court, the Brazilian judicial year is divided into two semesters of equal length which run from roughly February to June and August to December. There is also no requirement that all cases on the Court's docket be decided within a given term. During the period of study, this ranged from a low of 2,415 to a high of 76,947 with a median value of 34,304.

issued is not necessarily an accurate reflection of the workload of individual judges. Table 5, which reports the percentage point (pp) difference in the likelihood of a dissenting vote for several variables of interest,[26] indicates that ministers who have been assigned an above average number of cases in a given month are marginally less likely to dissent.

The start of televised plenary proceedings in the early 2000s is also a potential explanatory factor of dissent (Lopes, 2018). A representative sample of collegiate rulings in all types of cases between 1988 and 2013 indicates that the size of opinions and the length of debates between the Ministers during trial sessions both increased after plenary sessions started being televised (Hartmann et al. 2017). In the Brazilian context, Silva (2013), argues that ministers will avoid appearing as insecure or not fully knowledgeable on *TV Justiça*, which will make them more prone to (i) bring a fully written opinion from their chambers, without waiting to hear their colleague's considerations, and, once they've issued their opinion, (ii) sticking to their own ideas and arguments, even when a subsequent opinion by another minister could have given them reasons to change their minds. Although there are no systematic studies of the matter, there is supportive anecdotal evidence (Fontainha et al. 2015:104). Alternatively, Ministers might be concerned about being perceived as too passive, resulting in increased division and arguments as they strive to be seen as "earning their keep" or, perhaps, to develop a positive public image by taking strong, principled stands on issues of popular interest.[27]

[26] The reported values are the percentage point change in the likelihood of a given vote being a dissent when the relevant variable is coded as "1" in comparison to "0". For example, it indicates that in plenary sessions, judges are 1.8 percentage points more likely to dissent when the session is televised.

[27] The frequency of changes of heart in the televised sessions is still a matter of debate. A more recent study of "close" rulings in ADIs (decisions in which the outcome would be altered if a single judge changed their position) has shown judges backtracking in many such cases (Oliveira, 2017).

Table 5. Difference in Likelihood of a Dissenting Vote

	Total		Excl. Min Aurelio	
	Plenary	*Turmas*	*Plenary*	*Turmas*
Above Average Caseload	1.1pp	-0.5pp	-0.9pp	-0.3pp
Televised Session	1.8pp	15.5pp	-0.4pp	15.1pp
Post-Amendment 45*	-3.9pp	0.9pp	-3.6pp	0.1pp
Online Session	9.6pp	14.9pp	9.9pp	13.8pp
Asynchronous Voting	-2.3pp	2.6pp	-0.4pp	1.1pp
Voted After Majority Formed	3.9pp	2.2pp	-0.3pp	0.4pp
Reversal of Lower Court	7.8pp	-0.3pp	1.3pp	0.0pp
Reporter Characteristic				
Panel President	22.0pp	4.2pp	4.4pp	1.3pp
Female	-2.0pp	0.8pp	-1.3pp	0.2pp
Different Ideology	-0.9pp	1.1pp	-0.4pp	0.2pp
Same Appointer	-1.6pp	-1.1pp	0.6pp	-0.3pp

* Amendment 45 only impacted matters decided under the Court's appellate jurisdiction. As such, only appellate matters are included in the comparison, resulting in a significantly lower overall N.

For a variety of reasons, then, we might expect to see an increase in the number of non-unanimous decisions and the overall number of dissenting votes in rulings which took place in televised sessions. Conversely, if Ministers are concerned about the image of the institution as a whole—particularly with respect to a reputation for doing "law" rather than "politics"—the television cameras might have resulted in a closing of the judicial ranks in order to present a unified, more compelling and legitimate front.[28] Table 5 suggests that although the slight increase in plenary dissents in the televised era is attributable to Minister Aurélio, there has been a substantial increase in the propensity to dissent in *turma* decisions since they began to be televised in 2022 that is not. However, the relative novelty of the latter should be borne in mind. Notably, online sessions (which are synchronous forms of deliberation by the Plenary and *turmas,* adopted only during the COVID-19 pandemic) are correlated with a substantial increase in the likelihood of dissent across the board.

[28] In analyzing the effects of the transparency created by TV Justiça on the length of opinions in the STF, Lopes (2018) presents a related contrast in his research design: if Ministers behave as "politicians," they would tend to show off and maximize their individual exposure on TV; if, instead, they behave as members of a "specialized committee," they would instead stick to "reading of votes prepared beforehand – or even by establishing informal pre-meetings.

Building on the positive relationship between dissent and "hard" cases, two institutional features have been found to increase the likelihood of dissent on U.S. state supreme courts by filtering out at least some of the more routine or "easy" cases: the existence of intermediate courts and a discretionary docket (Canon & Jaros 1970; Hall & Brace 1989; Brace & Hall 1990). Along similar lines, Skiple, Bentsen & McKenzie (2021) find that a discretionary docket – under which the Norwegian Supreme Court and, to some extent, the Danish Supreme Court operate – is associated with higher dissent.[29] In this sense, as discussed above, *repercussão geral* and, in a way, *súmula vinculante* gave the Court some formal powers to limit the influx of "easy" or repetitive cases. All else being equal, this suggests that dissent should increase once these measures come into effect as the proportion of "hard" cases dealt with by the collegiate bodies should increase - and the impact of each decision is likely to be greater. Indeed, one study has already found evidence of such an effect on abstract constitutional review decisions by the plenary court (Desposato et al, 2015).[30] Our plenary data, however, presents a slightly different picture: the plenary court exhibits a 3.9pp lower likelihood of dissent after the implementation of Amendment 45 which is only marginally attenuated by the exclusion of Minister Aurélio. For the *turmas*, it is a 0.9pp increase, all else being equal. A similar patternis evident in relation to the asynchronous hearings.

The reporter's role and gender may also influence the likelihood of dissent. There may be a degree of deference to the president of the court and, perhaps, to the presiding minister of one of the *turmas*. Gender dynamics and stereotypes might also shape the degree of deference to one's colleagues within the court; as we mentioned, for example, a recent study has found that female judges tend to be interrupted more often than male ones in debates in STF sessions (Arguelhes et al, 2024). As Table 5 shows, when the Minister President is the case reporter, there is a 22.0pp increase in the likelihood of dissent although this drops to 4.4pp when Minister Aurélio is excluded. But, instead of deference, this could

[29] The theory does not appear to hold for the High Court of Australia (Smyth 2004; Narayan & Smyth 2007; Pierce 2008)

[30] Desposato et al.'s (2015) use of 1 January 2005 as the dividing line is potentially problematic, as the full range of changes brought about by Amendment 45, passed in late 2004, did not come into effect until 1 January 2007.

also be explained by the Chief Justice's or *turma* president's perfect control over agenda-setting in the court if they are also reporters: they can clear a case for judgment, as reporter, and immediately place it in the collegiate agenda, as presidents. They are in the singular position of single-handedly choosing when a case will be discussed by the plenary or *turmas* and can therefore seize on the ideal opportunity and court composition to secure a certain outcome. Chances of dissent are also increased, by 4.2pp, when the *turma* president is the case reporter in a *turma* ruling.

Interestingly, female case reporters are correlated with a 2.0pp decrease in the likelihood of dissent in plenary decisions. This seems counterintuitive considering gender bias found in oral arguments at the US Supreme Court (Feldman & Gill 2019). However, the relationship reverses in the *turmas*, where female case reporters are correlated with a 0.8pp drop in the likelihood of a dissenting vote.

Panel size has also been identified as impacting the likelihood of dissent. The standard theory is that the greater the number of judges, the less likely a unanimous decision becomes (Lindquist 2006). What is not entirely clear is whether this is the result of increased coordination problems stemming from diluted collegiality costs in a larger body of judges who need to interact with each other, or the simple fact that, probabilistically, dissenting opinions should be more common in courts with more judges. Moreover, it is not clear that this theory holds once appropriate controls are introduced (Hall & Brace 1989). We do, however, include reflecting the number of votes above or below average (for the relevant collegiate body) cast in a particular matter in the regression analysis below.

Finally, following previous work, we consider the possibility that voting order might shape incentives to dissent. Lopes (2019) shows that, ministers voting after a majority is already formed (for example, the 7th judge to vote, after six judges have already voted towards the same outcome) are less likely to dissent. Surprisingly, to the extent the data show a pattern the reverse appears to be true, at least in *turma* decisions. We have also included variables indicating whether the court decided to a reverse a decision of a lower court as well as whether the reporter and the voting minister had a shared ideology or were appointed by the same president..

IV. EXPLAINING VARIATION IN DISSENT

We investigate what factors explain changes in the likelihood of dissenting votes by STF judges in collegiate rulings, utilizing logistic regression, with standard errors clustered by ruling.[31] The dependent variable was coded as 0 for an individual vote with the majority and 1 for a dissenting vote. The coefficients in Table 6 are reported as odds ratios. The first model includes all rulings in our dataset. Model (2) uses only plenary rulings and Model (3) uses only *turma* rulings. Models (4), (5), and (6), respectively, consider the abstract, appellate, and original jurisdiction rulings.

The regression results are, in many dimensions, convergent with theoretical expectations and previous empirical findings on the STF. First, the public broadcasting of sessions seems to have a positive impact on the likelihood of dissent. Even before *TV Justiça,* the STF had always deliberated in public sessions that, in principle, anyone could attend. But the specific element of broadcasting deliberations live— either on the court's official channel, or on YouTube—has long been expected by scholars to change judicial behavior. Consistent with previous findings (Hartmann et al, 2017; Lopes, 2018), our results show that broadcasting sessions makes judges overall more likely to dissent. This is the case not just in the Plenary, but in the more recent televised *turma* sessions as well, where the effect is much stronger.[32] One possible explanation for this strong effect is that televising *turma* deliberations is an institutional change made in 2020 that covers only the last few years in our dataset, so that judges might be still adjusting themselves to this novel factor. However, when we look at the models accounting for the STF's different judicial functions, we notice that the effect is much stronger when judges are deciding appeals, and is not statistically significant in abstract review cases.

Second, consistent with the findings of Lopes (2019), judges who vote when a majority is already formed in the plenary court are less likely to dissent, lending further

[31] Robustness checks using multilevel models treating votes as nested within cases yielded larger standard errors and some fluctuation in the magnitude but not direction of coefficients but no meaningful differences with respect to the interpretation offered herein. Unsurprisingly, these models also indicated that a substantial portion of variance can be attributed to between case differences.

[32] There are relatively few instances of televised *turma* rulings (423 decisions totaling 1,999 votes), whereas all the other comparisons are in the tens of thousands or more in each group. While the results here are statistically significant, they ought to be viewed with some caution.

support to "dissent aversion" in the STF. Third, as expected, case-related factors matter: as complexity of the questions or procedures involved increases, so does the likelihood of dissent. Fourth, consistent with previous studies showing that the variable "appointing president" might have some explanatory power regarding how judges form different voting groups or coalitions (Oliveira, 2012; Silva, 2018; Martins, 2018), we found that the likelihood of dissent falls 15% overall (and 25% in the plenary) when the voting judge and the case reporter were appointed by the same president. Surprisingly, however, if the voting judge and the reporter were coded as ideologically different, there is a lower likelihood of dissent. Finally, in line with studies of other apex courts, the implementation of the Judicial Reform Amendment of 2004 (EC 45/2004), allowing the STF to exercise some docket control, almost doubles the likelihood of a dissenting vote in the *turmas*, where the majority of appeals are tried.

Table 6. Logistic Regression Models (Odds Ratios)

	(1) All	(2) Plenary	(3) Turma	(4) Abstract	(5) Appellate	(6) Original
Televised Session	2.18 *	1.74 *	15.47 *	0.87	7.48 *	1.47 *
Post-Amendment 45	1.67 *	0.91	2.03 *	1.21	1.89 *	1.34 *
Online Session	2.64 *	1.78 *	0.56 *	1.71 *	2.70 *	2.22 *
Asynchronous Voting	1.35 *	0.48 *	1.76 *	0.73	2.43 *	0.98
Vista(s)	5.60 *	3.65 *	8.55 *	2.46 *	9.24 *	4.06 *
Female	0.56 *	0.51 *	0.83 *	0.63 *	0.36 *	0.82 *
Common Law Exposure	1.29 *	1.27 *	1.42 *	1.23 *	1.34 *	1.24 *
Conservative	0.61 *	0.83 *	0.36 *	0.52 *	0.74 *	0.51 *
First Year	1.04	0.96	1.43 *	0.99	0.71 *	1.52 *
Years on Court†	0.99 *	1.02 *	1.01 *	1.05 *	0.95 *	1.02 *
Monthly Caseload (00s) †	1.01 *	0.99 *	1.01 *	1.05 *	1.01 *	1.00
Career Path						
Quinto	0.70 *	0.52 *	1.53 *	0.82 *	0.43 *	1.16 *
Non-Judicial	0.47 *	0.31 *	1.05	0.67 *	0.19 *	1.07
Min. Aurelio	24.30 *	13.06 *	57.79 *	7.95 *	29.20 *	28.05 *
Reporter Characteristics						
Same Appointer	0.84 *	0.76 *	0.89 *	0.88	0.90 *	0.85 *
Different Ideology	0.87 *	0.84 *	0.86 *	0.99	0.79 *	1.03
Panel President	7.07 *	11.95 *	3.53 *	9.91 *	8.79 *	4.31 *
Female	0.79 *	0.81 *	0.81 *	0.87	0.77 *	1.06
Action Complexity†	1.56 *	1.74 *	1.10 *	1.10	1.34 *	1.71 *
Votes Cast†	1.17 *	1.20 *	0.97	1.26 *	1.28 *	1.21 *
Voted After Majority Formed	0.91 *	0.65 *	1.44 *	0.50 *	1.29 *	0.88 *
Reversal	0.94	2.11 *	0.94		1.38 *	
Plenary	1.89 *					
Constant	0.003 *	0.015 *	0.002 *	0.046 *	0.001 *	0.009 *
Observations (000s)	2,222	648	1,574	77	1712	434
Clusters (000s)	423	69	354	8	333	81
Pseudo R-Squared	0.352	0.388	0.339	0.179	0.43	0.297
Percent Correct	98.0	97.2	98.3	94.0	98.8	95.5
Sensitivity	19.9	39.1	1.2	11.6	25.6	28.0
Specificity	99.9	99.6	100.0	99.7	99.9	98.8

Exponentiated coefficients
* $p < 0.001$
† Mean centred variable

Our results differ in some ways from theoretical expectations and previous findings in studies on dissent using only abstract review procedures. We find no statistically

significant "freshman effect" - i.e., the most recently appointed member of the court is not less likely to dissent. More importantly, contrary to expectations, caseload does not seem relevant to explain dissenting behavior. This finding must be read into the broader context of the STF as a mass court, with thousands of cases being assigned to each of the chambers each year and the corresponding body of staff and clerks that work with the judges to follow cases and draft opinions. It is likely that these clerks, and not the judges themselves, feel the effects of increases in case load. Theories of judicial behavior must account for how the output of courts is, in certain contexts, not just the result of the behavior of judges, but of their staff as well (Arguelhes and Hartmann, 2023). The counter-intuitive finding that case load had a small effect on dissenting behavior suggests the need for different measures of workload (and conceptualizations of its effect on judicial output) in this and other courts with massive dockets. Another possible takeaway is that, in apex courts that already needed to adapt to mass litigation, workload might not affect individual judicial behavior precisely because it has already shaped institutional design and procedures to account for a massive number of cases.

Results also show that dissent likelihood is affected by the function the STF is playing in each ruling. Deciding appeals makes dissent much more likely. Abstract review cases, however, display no effect. This might be due to the fact these cases involve a mix of political questions with different expected effects on judicial behavior. They include both controversies on federal law, perhaps pitting the court against the current congress and government, and on state laws, which are traditionally considered “easier” cases - and scholars have derived different, sometimes conflicting expectations on how judges would behave depending on whether they are reviewing federal laws or state laws (see Arlota and Garoupa (2014) for discussion; see also Oliveira, 2012). Further investigation of the impact of different court roles in dissenting behavior would require a more granular classification of the kind of laws being challenged, as well as the kind of legal question involved.

We find that individual judicial characteristics also matter - both the voting judge's, and the case reporter's, beyond the variables of ideology (conservative judges are overall almost 40% less likely to issue a dissenting opinion) and presidential appointment discussed above. Previous studies have found that professional trajectories and its impact on the court's composition matter for several dimensions of behavior in the STF, from the

likelihood to suspend a law in judicial review cases (Oliveira, 2012) to propensity to convict in high profile criminal rulings (Arantes and Martins, 2022). Our results show that, in the plenary, STF judges who had a strictly judicial career are significantly more likely to dissent than judges who never held a judicial office, and judges that were politically appointed to a court of appeals of high court but had never been trial judges.

Even though this is reversed in the *turmas*, this is a counter-intuitive finding for the plenary, in two senses. First, studies on other courts have found judges with stronger political-partisan ties (Tiede, 2016; Garoupa et al, 2011). While we are interested in whether STF judges are "career judges", not in whether they have partisan or political ties, all things considered being a career judge means that, for most of their career, (i) they were prohibited from having a formal party affiliation, according to Brazilian laws governing the duties of judges; and (ii) they were able to become court of appeal judges without necessarily relying on political connections. In this sense, the fact that STF career judges tend to dissent more might point to a different direction than these findings in other courts. Second, the fact that career judges are more likely to dissent challenges consider traditional expectations regarding judicial training and professional norms in civil law countries (Garoupa and Botelho, 2022; on how the STF judges' behavior might challenge these assumptions, see also Desposato et al, 2015). But it can also be read as an expression of Brazil's hybrid judicial tradition, since the federal structure of the judiciary, the tradition of individual opinion-writing, and the long history of judicial review in the country are more similar to the U.S. than to European civil law jurisdictions. Furthermore, our results show that STF judges who had some formal exposure to legal training in common law jurisdiction display a greater likelihood of dissent. The effect is consistent across all models.

Female judges are significantly less likely to dissent. This is consistent with recent findings that women are more interrupted than men in STF deliberations (Arguelhes et 2024). However, our results differ from Gomes et al (2018), as judges in Plenary rulings are somewhat less likely to dissent when the reporter is female. This might also be the result of gender dynamics, since judges might be somehow adjusting their behavior when they need to disagree with a female reporter - or female judges expect to find more resistance to their opinions, and therefore adjust them *ex ante* before session. It should be

noted, however, that, considering only three women were appointed to the court so far, results considering gender as a variable in the STF decision-making procedure should be read with caution, since a more diverse composition would be needed to further investigate and differentiate gender effects, personal effects, or effects from other, omitted variables those specific female judge might share (Arguelhes et al, 2024).

We also found that the institutional setting in which judges decide affects dissenting behavior, beyond *TV Justiça.* Dissent is more likely in plenary online decisions, which might be explained in terms of a lower collegiality cost of disagreeing in a remote meeting, as compared to an in-person deliberation. However, plenary dissents are half as likely in the Virtual Plenary. This is a counter-intuitive result, since we would expect the costs associated with dissent in that context - with no real time interaction and overall shorter opinions - to be lower than in the online synchronous decisions. Indeed, *turma* rulings in the Virtual Plenary show higher likelihood of a dissenting vote. However, we should keep in mind that reporters select which cases will be sent for deliberation in the Virtual Plenary. Lower levels of dissent here might be explained by selection effects, due to the agenda setting power of the reporter; if reporters tend to send to the PV cases they expect to be less controversial, or if they select the timing to ensure that their preferred outcome will be better received by their colleagues, this might explain our results.

Additionally, it is possible that the lower dissent likelihood in the Virtual Plenary is explained by the fact that, here, judges do not need to bring to session their own opinions. They see the reporter's opinion and have at least a week to react, perhaps informally reaching out to other colleagues. This is a very different context from the plenary and *turmas,* where all court members must come to the session prepared to vote without knowing what the reporter's opinion looks like. Further studies will be necessary to investigate the extent to which lower dissent probability in the PV is due to agenda-setting and selection effects, or to informal interactions and deliberations between judges *before* they have to decide how they will vote. The PV is an especially relevant research focus given that the STF has used it for 82% of its collegiate rulings since 2016. .

The case of judge Marco Aurélio is worth noting. He is by far the STF judge who dissents more often - so clearly and outlier that several studies on the court have considered the question of if and how to include him in the data (e.g., Desposato et al, 2015). The

theories that generated our hypotheses in this paper all assume both that judges care about which outcome will prevail, that dissent has some costs for STF judges - costs will not often be trumped by potential benefits. While these are reasonable assumptions, they might not be true of all members of the STF. Perhaps the behavior of judges like Marco Aurélio can be better explained by the audiences they have in mind, and for which they may adopt behaviors that would seem irrational if their goal was to make their preferred outcomes more likely to prevail in court (e.g, Baum, 2006; Garoupa & Ginsburg, 2015; see also Silva 2022, on Aurélio's dissent patterns in abstract review cases). In any event, we have included Judge Marco Aurélio in the regression models.[33] As shown in Table 7, below, there is an 18.9 percentage point increase in the likelihood of dissent if Minister Marco Aurélio is the voting judge. The "Marco Aurélio" effect is the strongest one to appear in our results, confirming his status as an outlier, and the challenge he presents to rational choice models of dissenting behavior.

In order to facilitate interpretation, the average marginal effects of Model 2 (Plenary) are presented in Table 7. The first column shows the average predicted percentage point change on the likelihood of a vote being a dissent of a one unit change in the variable in question. A positive value means a higher likelihood of dissent whereas a negative value reveals a lower likelihood. Interpretation is straightforward for dummy variables: on average, a vote in a televised session will be 1.48 percentage points (pp) more likely to be a dissent than a vote not in a televised session. With respect to continuous variables, a one unit increase in the complexity score (1 to 5) of the type of procedure means a 1.45 pp increase in the likelihood of a dissent.

[33] Tables 6 and 7 excluding all votes cast by Minister Aurélio are replicated in Appendices A2 and A3, respectively. The coefficients, significance and marginal effects of the remaining independent variables are largely comparable but explained variance and model sensitivity drop drastically across all models. To some degree, this should be expected as eliminating his votes reduced the number of total observations by 9% and, more importantly, the number of dissenting votes observed by 65%. In addition to suggesting a degree of tentativeness to our findings, this points strongly to the disproportionate influence of Minister Aurélio on the prevalence of dissent on the Court and warrants further research.

Table 7. Average Marginal Effects, Plenary Decisions (Model 2)

	dy/dx	std. err.	z	P>|z|	[95% conf.	interval]
Televised Session	0.015	0.001	10.0	0.000	0.012	0.018
Post-Amendment 45	-0.002	0.001	-2.0	0.048	-0.005	0.000
Online Session	0.018	0.004	4.1	0.000	0.009	0.027
Asynchronous Voting	-0.005	0.002	-2.9	0.003	-0.008	-0.002
Vista(s)	0.049	0.002	22.7	0.000	0.045	0.053
Female	-0.015	0.001	-21.8	0.000	-0.017	-0.014
Common Law Exposure	0.007	0.001	7.4	0.000	0.005	0.008
Conservative	-0.005	0.001	-6.5	0.000	-0.006	-0.003
First Year	-0.001	0.001	-0.9	0.366	-0.003	0.001
Years on Court†	0.000	0.000	8.0	0.000	0.000	0.000
Monthly Caseload (00s) †	0.000	0.000	-4.0	0.000	0.000	0.000
Career Path						
Quinto	-0.014	0.001	-20.7	0.000	-0.015	-0.013
Non-Judicial	-0.021	0.001	-27.1	0.000	-0.022	-0.019
Min. Aurelio	0.189	0.003	57.6	0.000	0.183	0.195
Reporter Characteristics						
Same Appointer	-0.007	0.001	-11.4	0.000	-0.008	-0.006
Different Ideology	-0.005	0.000	-10.2	0.000	-0.005	-0.004
Panel President	0.130	0.002	85.7	0.000	0.127	0.133
Female	-0.005	0.001	-7.6	0.000	-0.007	-0.004
Action Complexity†	0.014	0.000	32.4	0.000	0.014	0.015
Votes Cast†	0.005	0.000	15.4	0.000	0.004	0.005
Voted After Majority Formed	-0.011	0.001	-15.6	0.000	-0.013	-0.010
Reversal	0.024	0.002	12.9	0.000	0.020	0.028

† Mean centred variable

Dissent is more likely, above all, when the vote is issued by Minister Marco Aurélio. It is 13 pp higher when the case reporter presides over the collegiate body, perhaps revealing the more sensible nature of cases the presiding minister is able to draw from their own docket and schedule for trial. A vista in the case increases the likelihood of a dissenting vote by 4.9 pp, as expected given that it operates as a proxy for case salience. In a more visible trial session, such as those televised, a dissenting vote is 1.5 pp more likely. Online synchronous sessions seem to weaken a bond of collegiality with dissent probability 1.8 pp higher.

Probability of a dissenting vote is reduced especially when the minister had a non-judicial career before joining the court - minus 2.1 pp - and when they had a significant

portion of their career outside of the Judiciary - decrease in 1.4 pp. As discussed previously, this contradicts the civil law apex court judge stereotype. Female ministers are 1.5 pp less likely to dissent than their male colleagues at the STF. Lastly, a minister voting after a majority has already been formed is 1.1 pp less likely to dissent. Other factors had very small or insignificant effects on individual dissent.

V. CONCLUSIONS

Our novel dataset, possibly the largest with individual voting data for any apex court in the world, allows the testing of several theories about individual judicial behavior while also enabling replication of empirical findings from other supreme and constitutional courts. Our contribution to comparative works on high courts is separated in six dimensions.

First, the implications of different judicial culture elements. While theoretically Brazil is considered a "civil law" system, individual judicial behavior in the STF does not follow the patterns associated with judging in prototypical civil law countries when it comes to dissent. STF judges who had "judicial careers" before joining the Court are not dissent-averse - quite the contrary. Moreover, the court has counted with some judges with formal exposure to legal education in common law systems, who dissent more often than their counterparts.

In addition, while our results showing the positive impact of case complexity on the probability of dissent were in line with our theoretical expectations, they raise further questions regarding judicial culture against the backdrop of studies on other, comparable courts in the region. In the Supreme Court of Argentina, for example, Muro et al (2020) have shown that dissenting is overall *less* likely in "complex and important cases". While such contrasts on legal complexity and its effects should be explored in other, more focused studies, they lend further support to the idea that not all apex courts in "civil law" jurisdiction are alike in terms of professional norms and expectations shaping judicial behavior.

Second, publicity. In addition to enjoying frequent and profound media exposure, especially in the last 12 years, the STF, like very few other apex courts, broadcasts its open

sessions on national TV and live on its YouTube channel. We demonstrate that, all else equal, this specific feature of institutional design – broadcasting judicial deliberations, beyond simply making them accessible to the public *in loco* - increases the likelihood of dissenting votes.

Third, fixed voting order. As STF ministers vote in reverse order of seniority after the case reporter, they are less likely to dissent once a majority has been established. The "rookie effect" on dissenting behavior, however, is negligible.

Fourth, the different jurisdictions of a multipurpose court. Our findings show that ministers are more likely to dissent as they rule on concrete constitutional review cases than on abstract review, contrary to the expectations of theoretical frameworks. More importantly, we are able to show that individual characteristics of the voting minister, the case reporter and institutional design elements do not necessarily affect the chances of dissent in a similar fashion in all three types of STF jurisdiction. For many covariates, the effects were statistically significant in rulings of one or two types of jurisdiction, but not all. Conversely, the length of the minister's tenure at the time of the ruling increased the likelihood of them dissenting in abstract review, but decreased in concrete review. Voting after a majority was settled decreased dissent in abstract review and increased in the appellate jurisdiction. This highlights the limitations of judicial behavior theories tested solely on one type of jurisdiction and the value of studying multipurpose courts.

Fifth, ideology measures, especially when consolidated into binary variables, do not reveal simple panel dynamics in all high courts. While conservative judges in the STF tend to dissent less, and while judges and reporters appointed by the same president tend to diverge less, the court is an example of more complexity at play: progressive ministers disagree more often with progressive case reporters than with conservative case reporters. However, as we noted, we use available coding and proxies for "ideology" of STF judges that, while employed in previous studies, can still be improved in many ways (for example, by investigating the effect of "partisan ties" on judicial behavior, as in Tiede (2016)). More context on a judge's career prior to appointment may help disentangle ideology effects and uncover more nuanced explanations of dissenting behavior.

Sixth, gender dynamics. Even as female ministers are less likely to dissent, such behavior can manifest itself in substantially different intensities according to the type of

collegiate body or court jurisdiction. Female reporters cause less dissent by their peers, a phenomenon not yet adequately explained by the literature.

Finally, the effects of workload. The STF is notoriously one of the most massive apex courts in terms of the number of merit rulings published annually and thus constitutes a prime scenario for assessing the effects of workload on dissent. Contrary to expectations for a court with such a massive docket, we have found such effect to be objectively small and comparatively much lighter than most other potential predictors of individual dissent.

This last point deserves further attention for comparative studies on judicial behavior. The results might show the impact of variations in the court's workload on judicial behavior is contingent on the internal bureaucratic structure of the STF. Variations in the size and organization of the clerk body (which has consistently expanded since the 70s) shape how individual judges allocate their time to deal with incoming cases, with potential impact on dissent rates (see, e.g., Grendstad et al 2020); and there is also huge variation, in the STF, in how each judge organizes and allocates the human resources made available to their chambers. Changes in these dimensions in each period can make the Ministers more or less inclined to rely on the reporter's opinion to issue their own during deliberations, instead of investing their time in bringing their opinion from their chambers. Studies of judicial behavior on courts with massive dockets should try to account for the bureaucratic structure that mediates the relationship between the individual judge and the cases they decide.

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APPENDICES

Table A1: Descriptive Statistics

Variable	Obs	Mean	Std. dev.	Min	Max
Dissenting Vote	2,234,447	0.023	0.151	0	1
Televised Session	2,234,447	0.136	0.343	0	1
Post-Amendment 45	2,234,447	0.618	0.486	0	1
Online Session	2,234,447	0.002	0.044	0	1
Asynchronous Voting	2,234,447	0.270	0.444	0	1
Vista	2,234,447	0.019	0.138	0	1
Female	2,234,447	0.130	0.336	0	1
Common Law Exposure	2,234,447	0.197	0.398	0	1
Conservative	2,234,447	0.502	0.500	0	1
First Year on Court	2,234,447	0.063	0.244	0	1
Years on Court	2,234,447	9.494	7.368	0.00	33.08
Monthly Caseload (00s)	2,231,081	5.290	5.482	0.01	106.1
Career Path					
Judicial	2,234,447	0.237	0.425	0	1
Quinto	2,234,447	0.225	0.418	0	1
Non-Judicial	2,234,447	0.538	0.499	0	1
Reporter Characteristic					
Same Appointer	2,234,447	0.378	0.485	0	1
Different Ideology	2,225,686	0.416	0.493	0	1
Panel President	2,234,447	0.147	0.354	0	1
Female	2,234,447	0.138	0.345	0	1
Case Complexity	2,234,447	2.807	0.697	1	4.85
Reversal of Lower Court	2,234,447	0.158	0.365	0	1
Votes Cast	2,234,447	6.083	2.526	2	11
Voted After Majority Formed	2,234,447	0.369	0.482	0	1

Table A2: Logistic Regression Models (Odds Ratios) Excluding Minister Aurélio

	(1A) All	(2A) Plenary	(3A) Turma	(4A) Abstract	(5A) Appellate	(6A) Original
Televised Session	3.18*	1.86*	25.77*	0.77	16.48*	1.65*
Post-Amendment 45	1.04	0.84	1.09	1.24	0.63*	1.10
Online Session	2.71*	1.70*	0.63	1.69	2.30*	2.81*
Asynchronous Voting	2.09*	0.83	4.42*	0.68	5.80*	1.28*
Vista(s)	7.01*	4.12*	12.68*	2.58*	11.14*	5.84*
Female	0.64*	0.52*	0.99	0.67*	0.43*	0.91
Common Law Exposure	1.24*	1.13*	1.53*	1.22*	1.17*	1.28*
Conservative	0.75*	0.87*	0.40*	0.55*	1.03	0.61*
First Year	1.08	1.10	1.42*	0.99	0.82	1.47*
Years on Court+	0.97*	1.00	0.97*	1.04*	0.93*	1.00
Monthly Caseload (00s) †	0.98*	0.93*	1.01*	1.05*	0.94*	1.01
Career Path						
Quinto	0.78*	0.54*	1.80*	0.87	0.55*	1.28*
Non-Judicial	0.57*	0.38*	1.48*	0.79*	0.26*	1.20*
Reporter Characteristics						
Same Appointer	0.97	1.19*	0.74*	1.01	1.48*	0.79*
Different Ideology	1.03	0.90*	1.21*	1.02	0.90*	1.09*
Panel President	5.00*	3.17*	8.49*	10.98*	3.95*	5.13*
Female	0.72*	0.59*	1.14	0.78	0.47*	1.18*
Action Complexity†	1.73*	1.85*	1.14*	1.58*	1.81*	1.33*
Votes Cast†	1.46*	1.61*	0.99	1.40*	1.99*	1.37*
Voted After Majority Formed	1.05	0.80*	1.27*	0.40*	1.48*	0.95
Reversal	0.64*	1.62*	0.98		1.01	
Plenary	1.32*					
Constant	0.00*	0.01*	0.00*	0.02*	0.00*	0.01*
Observations (000s)	2,018	594	1,424	71	1,553	394
Clusters (000s)	423	69	354	8	333	81
Pseudo R-Squared	0.154	0.15	0.19	0.113	0.2	0.099
Percent Correct	99.1	98.2	99.5	95.3	99.6	98
Sensitivity	0.9	0.3	2	0.9	0.9	0.2
Specificity	100	100	100	99.9	100	100

Exponentiated coefficients

* $p<0.001$

† mean centred variable

Table A3: Average Marginal Effects, Plenary Decisions (Model 2A) Excluding Minister Aurélio

	dy/dx	std. err.	z	P>|z|	[95% conf.	interval]
Televised Session	0.011	0.001	7.8	0.000	0.008	0.014
Post-Amendment 45	-0.003	0.001	-2.5	0.011	-0.005	-0.001
Online Session	0.011	0.003	3.6	0.000	0.005	0.017
Asynchronous Voting	-0.003	0.001	-2.3	0.023	-0.006	0.000
Vista(s)	0.039	0.002	20.9	0.000	0.036	0.043
Female	-0.009	0.000	-22.4	0.000	-0.010	-0.008
Common Law Exposure	0.002	0.000	4.1	0.000	0.001	0.003
Conservative	-0.002	0.000	-5.2	0.000	-0.003	-0.001
First Year	0.002	0.001	1.9	0.052	0.000	0.003
Years on Court†	0.000	0.000	0.6	0.547	0.000	0.000
Monthly Caseload (00s) †	-0.001	0.000	-15.0	0.000	-0.001	-0.001
Career Path						
Quinto	-0.012	0.001	-19.5	0.000	-0.013	-0.011
Non-Judicial	-0.017	0.001	-23.7	0.000	-0.018	-0.015
Reporter Characteristics						
Same Appointer	0.003	0.000	6.5	0.000	0.002	0.004
Different Ideology	-0.002	0.000	-4.7	0.000	-0.003	-0.001
Panel President	0.028	0.001	24.3	0.000	0.026	0.030
Female	-0.007	0.001	-11.7	0.000	-0.009	-0.006
Action Complexity†	0.010	0.000	25.8	0.000	0.009	0.011
Votes Cast†	0.008	0.000	22.4	0.000	0.007	0.008
Voted After Majority Formed	-0.004	0.000	-7.3	0.000	-0.005	-0.003
Reversal	0.009	0.002	5.9	0.000	0.006	0.013

† Mean centred variable