**APPENDIX**

**PART 1 – METHODS**

**Judicial Career Data**

The European Court of Human Rights has one judge nominated by each state member of the Council of Europe. There are currently forty-seven member states, all of which are signatories of the European Convention of Human Rights. Judges are elected in a vote of the Council of Europe’s Parliamentary Assembly, which chooses from three candidates submitted by the state.

The judicial career dataset includes all judges elected to the European Court of Human Rights from 1959 to the end of 2016 (N = 185). The analysis in this article refers to the subset of those judges who had votes in the Article 10 dissents dataset, described below (N = 160). As noted in the main text, one judge (Gaukur Jörundsson of Iceland) was coded but excluded from our analysis because of concerns about the accuracy of the biographical information that formed the basis for our coding. In particular, the biographical notice issued upon Jörundsson’s election in 1998 referred back to a 1973 notice published on his appointment to the European Commission on Human Rights without updating that information. Because Internet searches identified relevant career changes between 1973 and 1998, we decided to exclude Judge Jörundsson from our analysis.

***Evidence Base for Coding***

To code judges’ career backgrounds, we relied on three types of documents made available by the Council of Europe:

1. CVs submitted by member states to inform the election process. These documents contain the fullest and clearest biographical information available from the Council of Europe, but they are not available for all judges.
2. Biographical notices published in the Yearbook of the European Convention on Human Rights. Across the whole life of the Court, each Yearbook (except for an apparent omission in the 2015 edition) contains notices regarding any judges appointed in that year.
3. Biographies published on the European Court of Human Rights Web site for current and recently appointed judges.

Where role descriptions in these documents do not make clear which professional category is involved, we reviewed publicly available information about the institution or role concerned. For example, to inform coding of judges René Cassin and Jean-Paul Costa, whose pre-ECtHR careers included roles within the French Conseil D’Etat (as Auditeur, Rapporteur, Assessor, and Vice President), we reviewed information from the Conseil’s official Web site to understand its structure and functions, and the judges’ roles within it.

***Prior Approaches to Coding Judge Professions***

Bruinsma (2006) relies on the official CVs to code the formative career paths of judges serving between 1998 and 2007 as “bench,” “constitutional court,” “academic,” “administration,” “bar,” or “omni.” He uses the omni category for judges who had followed multiple career paths, where that background “implies experience in switching from case peculiarities to policy arguments and vice versa” (2006, 19n24).[[1]](#endnote-1) Twenty-two percent of the judges in Bruinsma’s sample fall into this category (212–13), but he largely ignores them in his analysis. For most of his analysis, he also collapses bench and constitutional court, leaving him with four key categories of interest—judge, academic, administration, and bar.

Voeten indicates that he supplemented Bruinsma’s data to develop codings for ninety-seven judges who had participated in fifteen or more judgments with divided votes. He describes his coding process as consistent with that used by Bruinsma, assigning judges to a single category “based on the date and prominence of the former position” (2008, 423). However, Voeten’s approach seems to differ, both in the language used to describe the rationale for coding (i.e., “date and prominence” may not align with “formative years”) and in the professional categories adopted. Voeten uses no equivalent of the “omni” category, does not code ordinary and constitutional court judges separately, and treats elected politicians as a distinct category. As a result, Voeten’s data includes five career categories: “academic,” “judge,” “politician,” “bar,” and “diplomat.”

***Profession Categories***

We use a set of career categories that mirrors those used by Voeten, with the exception that we distinguish between diplomats and administrators and rename his “Bar” category as “Attorney.” We define our career categories as follows.

* POLITICIAN – Any person holding or actively seeking elected office. Note: if a person is concurrently an elected member of a legislature and holder of ministerial office, they are coded as both politician and administrator.
* ATTORNEY– Any practicing lawyer working outside domestic government, including those in private practice, within NGOs, or employed by international organizations.
* ACADEMIC– Any person employed in a research or teaching role within an academic institution, including those who list university teaching alongside other professional roles.
* ADMINISTRATOR– Any government employee or appointee holding a role in domestic government departments, including civil servants, government lawyers, ministers in justice, health, or education departments, prosecutors, and court employees other than judges.
* JUDGE– Any judge at any level within the domestic judicial hierarchy or international courts.
* DIPLOMAT – Any government employee or appointee holding a role in foreign relations, including civil servants, government lawyers, ministers within departments responsible for foreign affairs, and diplomats.

***Coding***

We coded each judge 1 or 0 in each professional category. We coded 1 for professions in which the judge had been employed during a minimum of five calendar years, counting any year in which the judge spent any part of the calendar year employed in the relevant profession. For example, a judge would be coded 1 in the “academic” category if their biography indicated employment in that capacity from 2001 to 2005, even if that means employment from December 20, 2001, to January 10, 2005. If the judge had noncontinuous employment in the profession, we calculated the number of years in which the person was employed. For example, a judge would be coded as academic if her biography contained periods of relevant employment in 2000, 2002 to 2003, 2005, and 2008. We coded 0 for professions in which the judge was never employed, or where they were employed during one to four years.

Approximately 15 percent of the judges in the sample were independently coded by two coauthors. All coauthors discussed resulting inconsistencies and borderline cases. One coauthor then coded the remainder of the sample based on guidelines established by the full team.

**Article 10 Dissents Data**

The Global Free Speech Repository (GFSR) includes data on each final European Court of Human Rights judgment[[2]](#endnote-2) regarding complaints that a signatory state violated the right to free expression set out in Article 10 of the European Convention on Human Rights.[[3]](#endnote-3) The GFSR dataset captures key characteristics of each case, including whether the free expression holding was unanimous or divided and whether it protected or restricted speech (i.e., whether it ruled in favor of or against an Article 10 claim). Its data focus on case outcomes and do not include individual judicial votes.

To create the Article 10 dissents dataset, we supplemented GFSR data for all cases where one or more judges had dissented from the Court’s judgment on the Article 10 complaint. For these cases, we recorded individual judicial votes.

**PART 2 – SUPPLEMENTARY REGRESSION RESULTS**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Table A1.** Logistic Models Estimating the Likelihood of Voting to Uphold Freedom of Expression by Finding an Article 10 Violation in Divided Judgments | | | | | |
|  | (1) | (2) | (3) | (4) | (5) |
| Politician | 0.704\*\*\* | 0.566\*\* | 0.777\*\*\* | 0.882\*\*\* | 0.854\*\* |
|  | (0.234) | (0.223) | (0.259) | (0.328) | (0.381) |
| Attorney | 0.208 | 0.145 | 0.338\*\* | 0.093 | 0.224 |
|  | (0.170) | (0.164) | (0.161) | (0.175) | (0.153) |
| Academic | 0.144 | 0.134 | 0.292\* | -0.065 | 0.086 |
|  | (0.164) | (0.160) | (0.154) | (0.189) | (0.176) |
| Administrator | 0.018 | -0.008 | 0.177 | -0.546\*\*\* | -0.358\* |
|  | (0.160) | (0.158) | (0.162) | (0.206) | (0.202) |
| Judge | -0.011 | -0.049 | 0.121 | -0.204 | -0.059 |
|  | (0.174) | (0.171) | (0.178) | (0.172) | (0.163) |
| Diplomat | -0.896\*\*\* | -0.773\*\* | -0.842\*\*\* | -0.864\*\*\* | -0.752\*\*\* |
|  | (0.338) | (0.320) | (0.293) | (0.210) | (0.186) |
| Judge same country as case |  | -1.112\*\*\* |  |  | -1.003\*\*\* |
|  | (0.198) |  |  | (0.195) |
| Multiple Professions Controls | N | N | Y | N | Y |
| Judge Country Controls | N | N | N | Y | Y |
| Constant | 0.070 | 0.214 | -0.086 | -0.290 | -0.197 |
|  | (0.218) | (0.211) | (0.195) | (0.442) | (0.409) |
| Observations | 1,851 | 1,851 | 1,851 | 1,851 | 1,851 |
| Note: Robust standard errors in parentheses; \*\*\* p < 0.01, \*\* p < 0.05, \* p < 0.1 | | | | | |

**Table A2.** Likelihood of Voting to Uphold Freedom of Expression by Finding an Article 10 Violation in Divided Judgments, OLS Regression with Single Profession Control

|  |  |
| --- | --- |
|  | (1) |
| Politician | 0.155\*\* |
|  | (0.065) |
| Attorney | 0.040 |
|  | (0.053) |
| Academic | 0.025 |
|  | (0.049) |
| Administrator | -0.007 |
|  | (0.044) |
| Judge | -0.016 |
|  | (0.057) |
| Diplomat | -0.224\*\*\* |
|  | (0.071) |
| Only one profession | -0.022 |
|  | (0.073) |
| Constant | 0.547\*\*\* |
|  | (0.096) |
|  |  |
| Observations | 1,851 |
| R-squared | 0.021 |
| Note: Robust standard errors in parentheses; | |
| \*\*\* p < 0.01, \*\* p < 0.05, \* p < 0.1 | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Table A3.** Likelihood of Voting to Uphold Freedom of Expression by Finding an Article 10 Violation in Divided Judgments, Long-Form OLS Regressions with All Controls | | | | | |
|  | (1) | (2) | (3) | (4) | (5) |
| Politician | 0.164\*\*\* | 0.128\*\*\* | 0.181\*\*\* | 0.189\*\*\* | 0.171\*\* |
|  | (0.052) | (0.049) | (0.055) | (0.069) | (0.076) |
| Attorney | 0.051 | 0.034 | 0.081\*\* | 0.018 | 0.040 |
|  | (0.041) | (0.039) | (0.038) | (0.039) | (0.032) |
| Academic | 0.035 | 0.031 | 0.069\* | -0.013 | 0.013 |
|  | (0.040) | (0.038) | (0.037) | (0.040) | (0.039) |
| Administrator | 0.004 | -0.002 | 0.042 | -0.118\*\* | -0.081\* |
|  | (0.039) | (0.038) | (0.038) | (0.046) | (0.046) |
| Judge | -0.003 | -0.013 | 0.028 | -0.046 | -0.022 |
|  | (0.042) | (0.041) | (0.042) | (0.039) | (0.036) |
| Diplomat | -0.215\*\*\* | -0.177\*\* | -0.202\*\*\* | -0.181\*\*\* | -0.151\*\*\* |
|  | (0.076) | (0.070) | (0.064) | (0.041) | (0.037) |
| Judge same country as case |  | -0.257\*\*\* |  |  | -0.215\*\*\* |
|  | (0.041) |  |  | (0.041) |
| Judge has two professions |  |  | -0.016 |  | -0.021 |
|  |  | (0.049) |  | (0.037) |
| Judge has three professions |  |  | -0.086 |  | -0.078 |
|  |  | (0.057) |  | (0.056) |
| Judge has four professions |  |  | 0.116\*\* |  | 0.143 |
|  |  | (0.049) |  | (0.144) |
| Judge has five professions |  |  | - |  | - |
| Albania |  |  |  | -0.183 | -0.186 |
|  |  |  |  | (0.187) | (0.202) |
| Andorra |  |  |  | -0.028 | -0.023 |
|  |  |  |  | (0.178) | (0.191) |
| Armenia |  |  |  | 0.084 | 0.075 |
|  |  |  |  | (0.242) | (0.250) |
| Austria |  |  |  | -0.540\*\*\* | -0.494\*\* |
|  |  |  |  | (0.184) | (0.194) |
| Azerbaijan |  |  |  | -0.224 | -0.209 |
|  |  |  |  | (0.176) | (0.189) |
| Belgium |  |  |  | -0.012 | -0.011 |
|  |  |  |  | (0.181) | (0.193) |
| Bosnia and Herzegovina |  |  |  | - | - |
|  |  |  |  |  |  |
| Bulgaria |  |  |  | -0.213 | -0.289 |
|  |  |  |  | (0.200) | (0.215) |
| Croatia |  |  |  | -0.083 | -0.087 |
|  |  |  |  | (0.168) | (0.181) |
| Cyprus |  |  |  | -0.343\* | -0.359\* |
|  |  |  |  | (0.179) | (0.192) |
| Czech Republic |  |  |  | -0.318\* | -0.327 |
|  |  |  |  | (0.187) | (0.198) |
| Denmark |  |  |  | -0.136 | -0.130 |
|  |  |  |  | (0.196) | (0.212) |
| Estonia |  |  |  | 0.028 | 0.030 |
|  |  |  |  | (0.187) | (0.195) |
| Finland |  |  |  | -0.116 | -0.101 |
|  |  |  |  | (0.209) | (0.218) |
| France |  |  |  | -0.054 | -0.012 |
|  |  |  |  | (0.180) | (0.194) |
| Georgia |  |  |  | -0.105 | -0.100 |
|  |  |  |  | (0.224) | (0.236) |
| Germany |  |  |  | -0.337\* | -0.317\* |
|  |  |  |  | (0.181) | (0.190) |
| Greece |  |  |  | -0.198 | -0.187 |
|  |  |  |  | (0.204) | (0.208) |
| Hungary |  |  |  | -0.197 | -0.193 |
|  |  |  |  | (0.221) | (0.239) |
| Iceland |  |  |  | -0.337 | -0.344 |
|  |  |  |  | (0.221) | (0.230) |
| Ireland |  |  |  | -0.176 | -0.166 |
|  |  |  |  | (0.190) | (0.199) |
| Italy |  |  |  | -0.129 | -0.097 |
|  |  |  |  | (0.194) | (0.203) |
| Latvia |  |  |  | -0.180 | -0.180 |
|  |  |  |  | (0.193) | (0.202) |
| Liechtenstein |  |  |  | -0.330 | -0.340 |
|  |  |  |  | (0.209) | (0.221) |
| Lithuania |  |  |  | -0.156 | -0.180 |
|  |  |  |  | (0.173) | (0.187) |
| Luxembourg |  |  |  | 0.013 | -0.009 |
|  |  |  |  | (0.186) | (0.199) |
| Macedonia |  |  |  | -0.241 | -0.265 |
|  |  |  |  | (0.174) | (0.188) |
| Malta |  |  |  | -0.174 | -0.189 |
|  |  |  |  | (0.190) | (0.203) |
| Moldova |  |  |  | -0.324\* | -0.298 |
|  |  |  |  | (0.193) | (0.205) |
| Monaco |  |  |  | -0.553\*\*\* | -0.565\*\*\* |
|  |  |  |  | (0.184) | (0.196) |
| Montenegro |  |  |  | -0.175 | -0.189 |
|  |  |  |  | (0.168) | (0.181) |
| Netherlands |  |  |  | -0.138 | -0.142 |
|  |  |  |  | (0.215) | (0.225) |
| Norway |  |  |  | -0.205 | -0.192 |
|  |  |  |  | (0.190) | (0.205) |
| Poland |  |  |  | -0.333 | -0.301 |
|  |  |  |  | (0.242) | (0.238) |
| Portugal |  |  |  | -0.074 | -0.100 |
|  |  |  |  | (0.180) | (0.192) |
| Romania |  |  |  | -0.235 | -0.225 |
|  |  |  |  | (0.174) | (0.189) |
| Russian Federation |  |  |  | -0.378\*\* | -0.356\* |
|  |  |  |  | (0.174) | (0.185) |
| San Marino |  |  |  | -0.356\* | -0.337 |
|  |  |  |  | (0.193) | (0.210) |
| Serbia |  |  |  | 0.001 | -0.002 |
|  |  |  |  | (0.174) | (0.187) |
| Slovenia |  |  |  | -0.270 | -0.285 |
|  |  |  |  | (0.174) | (0.187) |
| Slovakia |  |  |  | -0.001 | 0.021 |
|  |  |  |  | (0.178) | (0.190) |
| Spain |  |  |  | -0.066 | -0.053 |
|  |  |  |  | (0.176) | (0.191) |
| Sweden |  |  |  | 0.035 | 0.010 |
|  |  |  |  | (0.183) | (0.197) |
| Switzerland |  |  |  | -0.272 | -0.241 |
|  |  |  |  | (0.197) | (0.207) |
| Turkey |  |  |  | -0.425\*\* | -0.361\* |
|  |  |  |  | (0.181) | (0.194) |
| Ukraine |  |  |  | -0.197 | -0.182 |
|  |  |  |  | (0.179) | (0.191) |
| United Kingdom |  |  |  | -0.388\* | -0.345\* |
|  |  |  |  | (0.198) | (0.207) |
| Constant | 0.518\*\*\* | 0.555\*\*\* | 0.482\*\*\* | 0.813\*\*\* | 0.801\*\*\* |
|  | (0.053) | (0.051) | (0.047) | (0.172) | (0.184) |
|  |  |  |  |  |  |
| Observations | 1,851 | 1,851 | 1,851 | 1,851 | 1,851 |
| R-squared | 0.021 | 0.042 | 0.023 | 0.091 | 0.105 |
| Note: Robust standard errors in parentheses; \*\*\* p < 0.01, \*\* p < 0.05, \* p < 0.1 | | | | | |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) | (2) | (3) |
| Politician | 0.115\* | 0.252\*\*\* | 0.164\*\* |
|  | (0.067) | (0.094) | (0.074) |
| Attorney | 0.063\* | 0.121\*\* | 0.113\*\* |
|  | (0.034) | (0.060) | (0.046) |
| Academic | 0.032 | 0.094\* | 0.082\* |
|  | (0.042) | (0.052) | (0.043) |
| Administrator | -0.050 | - | - |
|  | (0.042) | - | - |
| Judge | 0.007 | 0.059 | 0.057 |
|  | (0.044) | (0.063) | (0.056) |
| Diplomat | -0.190\*\*\* | -0.070 | -0.140\*\*\* |
|  | (0.041) | (0.057) | (0.050) |
| Judge same country as case | -0.209\*\*\* | -0.215\*\*\* | -0.209\*\*\* |
| (0.044) | (0.041) | (0.044) |
| Multiple Professions Controls | Y | Y | Y |
| Judge Country Controls | Y | Y | Y |
| Case Fixed Effects | Y | N | Y |
| Constant | 0.415\* | 0.720\*\*\* | 0.366 |
|  | (0.243) | (0.186) | (0.246) |
| Observations | 1,851 | 1,851 | 1,851 |
| R-squared | 0.404 | 0.105 | 0.404 |

**Table A4.** OLS Models Estimating the Likelihood of Voting to Uphold Freedom of Expression by Finding an Article 10 Violation in Divided Judgments with (1) Case Fixed Effects, (2) Administrator as the Reference Profession, and (3) Both Case Fixed Effects and Administrator as the Reference Profession

Note: Robust standard errors in parentheses; \*\*\* p < 0.01, \*\* p < 0.05, \* p < 0.1

1. Bruinsma’s language here suggests that some judges with multiple professional roles were assigned to single categories, where their career did not involve the type of switches required to qualify as omni. [↑](#endnote-ref-1)
2. Since GFSR includes only final judgments, cases decided by both a Chamber and (on appeal) a Grand Chamber are included only once. For such cases, the Grand Chamber judgment is included and the Chamber judgment excluded. [↑](#endnote-ref-2)
3. GFSR includes cases where an applicant made a complaint under Article 10, but the Court decided the complaint under the more specific provisions of Article 9 (freedom of religion) or Article 11 (freedom of assembly and association) without reaching a formal holding on Article 10. Such cases involve speech where the protection of Article 10 overlaps with these other rights, for example with respect to proselytism or group protests. The application of the *lex specialis* doctrine in these cases means that the Court will focus on the more specific provision (e.g., the Article 9 protection of religious speech, rather than Article 10 protection of all speech), and once it has reached a judgment on those grounds, it finds it unnecessary to make a separate decision on Article 10. For these cases, the GFSR dataset codes the Court’s holding under Article 9 or Article 11 as the outcome of the free expression dispute. [↑](#endnote-ref-3)