

Statutory Influences on the U.S. Supreme Court: The Effect of Constraint and Discretion

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Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first spoke or wrote them.¹

The above quotation raises an important question about the development of law in the United States: from where does the law emerge? As Corwin (1957, 171) observed, the Constitution creates an “invitation to struggle” among the branches of government, with each vying to expand its sphere of influence. Following Corwin’s lead, many scholars focused on one particular struggle: between Congress and the President. Yet, the constitutional struggle between Congress and the courts is of equal importance, particularly if we are interested in determining who makes the law – the Congress that writes statutes, or the courts that interpret them?

Consequently, an inherent tension exists between the legislative and judicial branches – Congress initially passes statutes defining particular areas of the law, but the Supreme Court (as the highest judicial authority) has the opportunity to interpret those statutes. Given this relationship, the above quote suggests that the Supreme Court therefore possesses the ultimate legal authority. To this end, advocates of the attitudinal model of judicial decision making would readily agree; the Court has the final say in matters of legal policy and the justices can make decisions according to their personal ideological preferences. Yet, the struggle between Congress and the judiciary leads advocates of the legal model to argue that justices are influenced by legal considerations which constrain purely ideological decision-making because of “a sense of duty or obligation to follow particular legal principles, rights, and norms” (Hansford and Spriggs 2006, 9). In other words, the statutes passed by Congress may constrain judicial behavior. Therefore, understanding how Supreme Court justices reconcile their ideological preferences for

¹ Benjamin Hoadly, quoted in Carter and Burke (2002, 68).

legal policy with their obligation to follow the laws enacted by Congress becomes a paramount concern for students of the judiciary.

Unfortunately, many political science studies of the Supreme Court have yet to fully integrate both Congress and the courts into a single model of judicial behavior. “While many (if not most) scholars recognize that the justices probably respond to both of these concerns [attitudes and the law], the literature nonetheless tends to present them as competing explanations” (Hansford and Spriggs 2006, 9-10). Though scholars possess viable measures of judicial ideology (e.g. Segal and Cover 1989; Martin and Quinn 2002) to support theories of attitudinal voting, similar empirical measures of legal concepts have been less forthcoming. We argue that a more continuous measure of legal influence is essential to accurately test the impact of law on judicial behavior.

Our paper fills this gap by employing a measure of statutory constraint that we initially tested on the federal courts of appeals (see Randazzo, Waterman, and Fine 2006). This measure, which we discuss in more detail below, represents a measure of the plain meaning of legislation. In general it examines how much discretion Congress provides in the statutes it enacts into law. Our basic argument is that the greater the level of discretion incorporated into a statute by Congress, the less constraint will be encountered by federal judges when they decide cases; consequently the more likely those judges will be to vote according to their individual ideologies. Conversely, more detailed statutes will reduce the level of discretion afforded to judges, and consequently they will be constrained from voting attitudinally.

LEGISLATIVE-JUDICIAL INTERACTIONS

The literature on legislative-judicial interactions contains numerous examples of empirical studies focused on the nomination process (Segal, Cameron and Cover 1992; Allison 1996; Barrow, Zuk and Gryski 1996; Goldman 1997; Moraski and Shipan 1999) or congressional overrides of judicial decisions (Stumpf 1965; Henschen 1983; Eskridge 1991a, 1991b; Segal 1997, 1998; Hettinger and Zorn 1999). Yet, these studies ignore an important area where the Constitution creates the “invitation to struggle” between Congress and the courts; the realm of statutory creation and interpretation.

Among the empirical studies which examine this area are those that rely on separation-of-powers (SOP) models (Eskridge 1991a, 1991b; Ferejohn and Weingast 1992; Shepsle 1992; Spiller and Gely 1992; McNollgast 1995; Spiller and Tiller 1997). Though the SOP models generate powerful insights into legislative-judicial behavior based on preferences over policy outcomes, they neglect the specific language through which legislative policy is dictated. Yet, while “Congress enacts statutes and the courts interpret them, Congress is not always silent on how its actions are to be interpreted” (Ferejohn and Weingast 1992, 567). Consequently, SOP models overlook the range of options available to Congress to specifically describe policy outcomes. “These details may describe policy outcomes in vague terms, leaving the courts with large amounts of discretion to interpret statutes according to their ideal points; or, the policy outcomes may be the result of extremely specific statutory language which constrains the abilities of judges to alter the status quo points based on their individual ideological preferences” (Randazzo, Waterman and Fine 2006, 1004). It therefore becomes incumbent upon students of the judiciary to examine Congress’s ability to limit judicial discretion (whether intentional or not) or provide courts with wide leeway to interpret congressional statutes.

This is especially important because scholars often examine legislative-judicial interactions in terms of a tradeoff between judicial attitudes and legal constraints (Rowland and Carp 1980; Segal 1997, 1998; Spaeth and Segal 1999; Segal and Spaeth 2002). Yet, “few studies have been undertaken by empirically oriented scholars to examine the effects of traditional legal concepts on case outcomes or judicial votes” (Songer and Haire 1992, 979). In part, this lack of empirical analysis on legal influences arises because of the difficulty inherent in measuring concepts such as plain meaning, legislative intent and precedent. Some scholars rely on strategies which examine progeny cases from landmark decisions (Songer and Sheehan 1990; Knight and Epstein 1996; Segal and Spaeth 1996; Songer and Lindquist 1996). Other scholars employ a series of dummy variables to capture the presence or absence of specific case facts or legal doctrine (Segal 1984; George and Epstein 1992; Songer and Haire 1992; Songer, Segal and Cameron 1994). We argue that a more continuous measure, grounded within an applicable theoretical framework, is essential to understanding the potential legal constraints judges encounter when adjudicating disputes. This paper builds off of our previous research that borrows a measure from the bureaucratic politics literature and adapts it to the judicial environment; an easily constructed measure of constraint that is based on details included within congressional statutes.

STATUTORY CONSTRAINT

In a recent study of the bureaucracy, Huber and Shipan (2002, 31) argue, “...legislation is potentially the most definitive set of instructions that can be given to bureaucrats with respect to the actions they must take during policy implementation.” In their examination of the implementation of Medicaid laws, they discover the impact of statutes on the discretion of

bureaucrats. “Legislative statutes are blueprints for policymaking. In some cases, legislatures provide very detailed blueprints that allow little room for other actors... to create policy on their own. In other cases, legislatures take a different approach and write statutes that provide only the broad outlines of policy, which gives bureaucrats the opportunity to design and implement policy” (2002, 76). Clearly, judges are not the same as bureaucrats, whose role is to administer or implement the law. Bureaucrats do not have the authority to determine which laws are constitutional, nor can they strike down specific provisions within statutes. Yet, the key concept captured by Huber and Shipan is the level of discretion provided by congressional legislation. Our previous research demonstrates that levels of discretion within statutes significantly affects the behavior of federal appellate judges (Randazzo, Waterman, and Fine 2006). Laws with more specific language provide less direction, and thereby constrain appellate judges from rendering decisions according to their individual ideological preferences. The question we address in this paper is whether a similar effect occurs for the justices of the Supreme Court. If the justices rely on the plain meaning of the statute to influence their votes, then we expect similar patterns of constraint to occur. However, it is possible that the justices are not influenced by this aspect of the legal model, or rely on their docket control to avoid (i.e. deny *certiorari*) cases in which substantial statutory constraint exists.

To measure this influence, and examine the effects of statutory constraint on judicial behavior, we borrow directly from the research of Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002). In their analyses of statutory constraint on bureaucratic behavior they rely on a proxy measure based on the length of the statute. As they indicate,

Our qualitative and quantitative investigation of a huge number of statutes suggests that the more words a legislature puts into legislation on the same issue, the more it constrains other actors who will implement policy on that issue.

Similarly, the fewer words it writes, the more discretion it gives to other actors (2002, 73).

After conducting a series of validity tests on this measure for Medicaid statutes, their analyses reveal that the length of statutes successfully accounts for variation caused by fairly meaningless generalizations, situations where legislators deliberately pass vague consensus statutes, and instances where legislators move beyond mere platitudes to enact statutes containing specific details designed to affect implementation and interpretation.

In a similar vein, we conducted a series of validity tests to determine whether longer statutes contained more detailed language that might limit the discretion of judges. For each issue area we content analyzed a sample of statutes: some with shorter word lengths, some with lengths near the overall mean for that issue, and some with longer word lengths. We discovered that statutes with higher word counts contained more references to previous legislation or court decisions, along with more detailed descriptions of how these statutes and decisions relate to particular intended outcomes or interpretations.²

For example, the statutes 21 USC 846 and 18 USC 2510 describe particular criminal activities, but do so with different degrees of specificity. The former contains 246 sections and over 300,000 words, while the latter contains 26 sections with approximately 26,000 words. This variation in overall length and number of sections directly affects the degree of detail included in the statute. Each contains references to other statutes and previous court cases (to help provide contextual information to the interpreter), though the number of references is vastly different between the two statutes. While 18 USC 2510 includes 346 references to court cases, 21 USC

² We also recognize that judges may be called upon to examine only a specific section of a statute, rather than the entire law. However, in these situations we contend that judges will also reference the remaining portions of the bill in order to obtain contextual information on the intended effect or purpose of the legislation passed by Congress. Therefore, relying on the overall word count of the statute as a measure of constraint does not systematically bias our analysis of judicial behavior.

846 contains approximately 2,500 references to court cases. Additionally, both statutes provide descriptions of the various activities deemed criminal by Congress and definitions of various technical terms; yet, the descriptions and definitions included in 21 USC 846 are substantially more complete and thorough than those in 18 USC 2510. Consequently, the reader has a better understanding of the intent of Congress (including the desired outcomes of the legislators) in the former statute than the latter.

If the Supreme Court justices are affected by the language of congressional statutes, we expect more ambiguous laws to provide more discretion to alter policy according to their individual ideological preferences. Conversely, statutes containing more detailed language will constrain the justices from casting ideological votes. Yet, it would be too simplistic to claim that statutory constraint should affect all justices in a similar fashion across all issue areas. We should not expect a conservative congress to pass conservative legislation that effectively constrains conservative justices. Instead, if an effect exists we should observe conservative legislation constraining liberal justices (and vice versa for liberal legislation constraining conservative justices).

While precisely measuring the policy motivations of Congress is beyond the scope of this particular paper, we can deduce general hypotheses about statutory constraint for specific issue areas, and based on conventional wisdom we offer three. First, criminal statutes tend to prescribe conservative outcomes by specifying the authority of the state over individuals and outlining the various options of punishment for individual transgressions. Consequently, if federal criminal statutes affect levels of judicial discretion, it is reasonable to expect that liberal judges (who tend to rule in favor of the individual and against state authority, and also impose more lenient punishments) would be most constrained. This is particularly evident in the debate over the

federal sentencing guidelines, which explicitly limit judicial discretion by prescribing mandatory minimum sentences for convicted felons. Therefore, our first hypothesis states:

H₁: In the area of criminal law, if federal statutes affect levels of judicial discretion, as statutory constraint increases we expect liberal justices to have less discretion to vote ideologically.

Second, civil liberties law operates in a different manner than criminal law. In this area, congressional statutes tend to prescribe more liberal outcomes by specifying the rights of individuals that cannot be usurped by state authority. One needs to look no further than the Civil Rights Act of 1964 or the Voting Rights Act of 1965 for examples of these statutes.

Consequently, if federal civil liberties statutes affect judicial discretion, it is plausible to argue that the constraint would be felt more by conservative justices (who tend to rule in favor of state authority over individual rights). Therefore, our second hypothesis states:

H₂: In the area of civil liberties, if federal statutes affect levels of judicial discretion, as statutory constraint increases we expect conservative justices to have less discretion to vote ideologically.

Finally, with regard to economic legislation we argue that statutory constraint over the Supreme Court will be minimal, and possibly non-existent; primarily because of the influence exerted by the bureaucracy on areas of economic policy. When the Court reviews economic disputes, not only must it consider the policy prescriptions implied by the federal statutes, but it must also interpret subsequent rules and regulations drafted by bureaucratic agencies involved with the implementation of these statutes and any quasi-judicial rulings enacted by these agencies. Consequently, the regulatory imprint may be more pronounced during adjudication, which in turn mitigates the potential effects of any statutory constraint. Therefore, because

bureaucratic agencies operate more visibly in the economic policy arena – instead of the criminal or civil liberties arena where the judiciary is more visible – we expect the effects of statutory constraint on judicial discretion to be less evident. Thus, our third hypothesis states:

H₃: In economic cases we do not expect a relationship to exist between statutory constraint and judicial discretion.

RESEARCH DESIGN AND METHODOLOGY

Data for this study come from the three justice-centered Supreme Court databases compiled by Harold J. Spaeth.³ Though the original datasets contain the universe of formally decided cases,⁴ we limit our analysis to those cases in which the Supreme Court interprets a congressional statute. Consequently, we analyze approximately 28,000 justice-votes from 1953 to 1998.⁵

The dependent variable for the analysis is whether a justice voted in an unconstrained or sincere manner.⁶ We code the variable ‘1’ if a liberal justice casts a liberal vote and ‘0’ if that justice votes conservatively.⁷ Similarly, the variable is coded ‘1’ if a conservative justice votes conservatively and ‘0’ if that judge casts a liberal vote. We should also note that in the construction of the dataset we eliminate those cases where a clear ideological decision does not

³ The original Supreme Court database was coded by Harold J. Spaeth. Each of the justice-centered databases (Warren Court, 1953-1969; Burger Court, 1969-1985; and Rehnquist Court, 1986-1998) was transformed by Sara C. Benesh. These data are archived at the University of Kentucky’s S. Sidney Ulmer Project for Research on Law and Judicial Politics www.as.uky.edu/polisci/ulmerproject.

⁴ This is accomplished by setting the variable ANALU = 0 and DEC_TYPE = 1, 6 or 7.

⁵ Additionally, because we expect the effects of statutory constraint to exist only among those justices in the majority coalition, justice votes in dissent are excluded from the analysis.

⁶ Since we are not testing a strategic model, we hesitate to use the term sincere. However, this is the most straightforward connotation to determine the influence of ideology and constraint.

⁷ We rely on the Martin and Quinn (2002) measure of Supreme Court ideology to determine whether a justice is considered ‘liberal’ or ‘conservative’.

exist. Thus, the 28,000 justice-vote observations all include an identifiable ideological directionality.

Theoretically, our independent variable of primary interest is *Statutory Constraint*. Following the Huber and Shipan methodology, we examine the length of congressional statutes. To measure the length we rely on information in the Spaeth database to identify the statute in question,⁸ and subsequently employed Lexis-Nexis and the ‘word count’ feature in the web browser Firefox. While this strategy provides a raw count of the number of words per statute, there is an important reason why the raw number is not useful in an empirical model. From a methodological standpoint using the raw number of words is problematic both because of the inherent noise associated with a raw count and the considerable skewness in the measure.⁹ Consequently, since we are interested in constraint brought by substantial differences among statutes, it is reasonable to take the natural log of each statute as our operationalization of the variable *Statutory Constraint*. Taking the natural log allows us to minimize the noise associated with raw counts and reduce the variable’s skewness, while preserving the expected theoretical relationship.

While the concept of statutory constraint is related to the legal model, the attitudinal model indicates that judicial decision making is also the result of individual ideological preferences (Segal and Spaeth 2002). To measure the individual ideological preferences of Supreme Court justices, we rely on the ideology scores developed by Martin and Quinn (2002). We employ these measures (rather than the scores generated by Segal and Cover 1989) because

⁸ To identify the relevant statute, we relied on the LAW variable in the Spaeth dataset. This provides information about the sections of the U.S. Code interpreted by the Supreme Court. In some instances, Spaeth lists frequently litigated statutes by acronym (for example, NLRA refers to the National Labor Relations Act). For all cases in which an acronym occurs we recoded the specific statute in question.

⁹ Examination of the descriptive statistics associated with the word count reveals that the mean number of words per statute equals 240,180 with a standard deviation of 518,834.

they are a more dynamic measure. Using a Bayesian analysis, Martin and Quinn develop annual ideology scores for each individual justice. Rather than a static measure of general ideology, we use a measure that changes over time and better captures the potential dynamics of ideological influences. Thus, we rely on their empirical measure of ideological preferences in our variable *Individual Ideology*. Since our theory argues that statutory constraint will limit ideological influences over judicial behavior, we ‘fold’ the Martin and Quinn measure into a continuum from the most moderate justices to the most extreme ideologues.¹⁰ Consequently, we hypothesize that justices with strong ideological preferences will be more likely to render unconstrained or sincere decisions. A positive relationship should therefore exist between our variable *Individual Ideology* and the dependent variable.

In addition to the two primary variables of interest, our model includes three other variables to control for various relevant factors. The first measures whether the Supreme Court is requested to review the constitutionality of the statute. If the Court exercises its power of *Judicial Review*, we expect the justices to be more likely to cast sincere votes (i.e., we do not expect substantial constraint to exist when the constitutionality of the statute is questioned). Therefore, a positive relationship should exist between this variable and the dependent variable. The second control variable *Lower Court Congruence* measures the case disposition by the lower court (most often a Court of Appeals). The variable is coded ‘1’ if the lower court rendered a decision in opposition to the justice’s ideological preferences, ‘2’ if the lower court rendered a mixed decision, and ‘3’ if the directionality of the lower court decision is congruent with the justice’s ideological preferences. Since the Supreme Court has a tendency to reverse decisions of the lower courts (see Epstein et. al. 1996) we expect this variable to be negatively related to the

¹⁰ The folding is accomplished simply by taking the absolute value of the Martin and Quinn score for each individual justice.

likelihood of casting a sincere vote. Finally, we control for the presence of a *Minimum Winning Coalition*, positing that these situations are likely to encounter sincere voting from all justices; therefore generating a positive expected relationship between this variable and the dependent variable.

EMPIRICAL RESULTS

Since our dependent variable is dichotomous, we employ a series of probit models – across specific issue areas – to evaluate the empirical relationships. The first table examines statutory constraint in criminal cases. Since our theory indicates that Supreme Court justices will respond differently to statutory constraint, based on issue area, we examine liberal and conservative justices separately. The results are reported in Table 1.

Insert Table 1 here

Examining the results in Table 1 reveals that liberal justices (reported in Model 1) respond differently to statutory influences than their conservative colleagues (reported in Model 2). For instance, the variable *Statutory Constraint* is statistically significant for both liberal and conservative justices, however, the coefficients possess opposite signs. Since the coefficient is negative in Model 1, this indicates that as the level of constraint increases (holding other influences constant) the likelihood of liberal justices casting sincere, or unconstrained, votes (i.e. liberal votes) decreases significantly. Thus, the data confirm our first hypothesis; more detailed statutory language provides a significant constraint on liberal justices. Yet, the positive coefficient for conservatives indicates that the ideological voting of these justices is enhanced as congressional statutes contain more explicit details. It therefore appears that the same

phenomenon which constrains liberal justices in criminal cases also facilitates the ideological influences of conservative justices.

The other independent variables in Table 1 influence liberal and conservative justices equivalently. The variable *Individual Ideology* is statistically significant and positive in Model 1 and Model 2, indicating that individuals possessing stronger ideological attitudes are significantly more likely to cast sincere, or unconstrained, votes in criminal cases, regardless of whether the justice is liberal or conservative. Additionally, the variable *Lower Court Congruence* is significant and negative for both liberals and conservatives indicating that all justices are likely to cast sincere votes in order to reverse lower court decisions which diverge from the justices' ideological preferences. Finally, the variable *Minimum Winning Coalition* is significant and positive in both Model 1 and Model 2. This finding supports our general expectation that the justices are more likely to cast sincere votes when the majority coalition is small (i.e. minimum winning).

The remarkable finding concerning the effects of *Statutory Constraint* suggests a potentially new way to conceptualize legal influences. Conventional wisdom supports the notion that legal influences operate in contrast to ideological influences. That is, justices either vote according to their ideological preferences or they are constrained by the law. Yet, our data indicate that even when the justices are influenced by their ideological preferences, the law can facilitate the expression of ideological voting among some justices while also constraining ideological voting among others. If this pattern holds across other issue areas, then it suggests that aspects of the legal model and the attitudinal model may represent a more dynamic and interdependent influence on judicial behavior than previously demonstrated; rather than operate in stark competition as portrayed by conventional wisdom.

With this in mind, we next examine the voting behavior of justices in civil liberties cases; the results of which are reported in Table 2. Model 3 and Model 4 examine the votes of liberal and conservative justices, respectively, across all civil liberties cases. The data indicate that the variable *Statutory Constraint* is not statistically significant for liberal justices, but is significant and positive for conservative justices. Initially, we hypothesized that conservative justices would be constrained by detailed statutory language in civil liberties cases, and the data do not support this hypothesis. Instead, Model 4 reveals that conservatives are more likely to cast sincere votes as statutory language becomes more detailed.

Insert Table 2 Here

The results reported in Model 3 and Model 4 also reveal that liberal and conservative justices are significantly influenced by their *Individual Ideology*; the coefficient is significant and positive. As the ideological preferences of liberals and conservatives increase (i.e. become stronger) these justices are more likely to cast sincere votes. The variable *Judicial Review* is significant in both models, although it is negative in Model 3 and positive in Model 4. Consequently, liberal justices are more likely to cast constrained votes (i.e. conservative votes) when examining the constitutionality of congressional civil liberties statutes; whereas conservative justices are more likely to cast sincere votes when exercising *Judicial Review*. Additionally, the variable *Lower Court Congruence* is significant and negative for liberals and conservatives (similar to criminal cases), indicating that the justices are more likely to cast sincere votes in order to reverse lower court decisions. Finally, the variable *Minimum Winning Coalition* is significant and positive in Model 3 and Model 4, supporting our expectation that justices cast sincere votes when the majority coalition is narrow.

Initially, the results from Models 3 and 4 refute our hypothesis that conservative justices will be affected significantly by statutory constraints. However, these models examine *all civil liberties* cases; our work on federal appellate judges demonstrates that the effects of statutory constraint appear in cases involving racial discrimination (Randazzo, Waterman, and Fine 2006). Consequently, we re-estimate the analysis using only civil rights cases. These results are reported in Model 5 (for liberal justices) and Model 6 (for conservative justices). According to these models, the likelihood of liberal justices casting sincere votes is facilitated by the presence of more detailed statutes; the variable *Statutory Constraint* is significant and positive. However, this variable does not exert a significant influence on conservative justices. The remaining independent variables retain the same levels of significance and coefficient directionality for civil rights cases as for all civil liberties cases.

Since we examined the discrimination cases separately, we analyze the remaining civil liberties cases (First Amendment, due process, and privacy cases). These results are reported in Model 7 (liberal justices) and Model 8 (conservative justices). In these final two civil liberties models, we encounter some counter-intuitive results. We hypothesized that conservative justices would encounter significant statutory constraints in civil liberties cases. Yet, for the remaining non-discrimination civil liberties cases Model 8 indicates that conservatives are significantly more likely to cast sincere votes as statutory language becomes more detailed. Conversely, it is the liberal justices (Model 7) that are significantly constrained by statutory language. Upon further speculation, this empirical finding makes sense since many congressional statutes pertaining to First Amendment, due process or privacy rights proscribe conservative outcomes (for example, the Defense of Marriage Act banning homosexual marriage; the “Hyde Amendment” to the Medicaid statute limiting federal funding for abortions; or the Bipartisan

Campaign Finance Reform Act (McCain-Feingold Act) placing new limits on campaign contributions). Therefore, it is plausible to expect liberal justices to experience constraining effects from these statutes and conservative justices to rely on the detailed language to facilitate voting according to their ideological preferences. Though we did not expect this result to occur *a priori*, this finding is consistent with our general hypothesis regarding the effects of statutory constraint. It is therefore apparent that our hypothesis concerning civil liberties statutes receives mixed empirical support; no constraining effects for conservative justices, but rather facilitating effects for their ideological voting and significant constraint for liberal justices in non-discrimination civil liberties cases.

Insert Table 3 Here

Table 3 contains the results of our analysis of economic cases. Model 9 and Model 10 examine the votes of liberal and conservative justices, respectively, for all economic cases. We hypothesize that the effects of *Statutory Constraint* will be non-existent in economic cases because of the increased regulation brought by bureaucratic agencies. Initially, the data provide mixed support for this hypothesis; the variable is not significant for liberal justices, but is significant and positive for conservative justices. This indicates that more detailed statutory language facilitates the ideological voting behavior of conservative justices rather than constraining their votes.

Models 9 and 10 also reveal that liberal and conservative justices are influenced by their ideological preferences. As *Individual Ideology* becomes more pronounced the justices are significantly more likely to cast sincere votes. Additionally, the variable *Lower Court Congruence* is statistically significant and negative indicating that liberal and conservative justices are more likely to cast sincere votes in order to reverse decisions of the lower courts.

Finally, the presence of a *Minimum Winning Coalition* is significant only for conservative justices, supporting the notion that conservatives are more likely to cast sincere votes when the majority coalition is narrow.

While these results are interesting, we decided to examine specific areas of economic case law similar to our analysis of specific areas of civil liberties case law. Model 11 and Model 12 examine the voting behavior of liberal and conservative justices in cases involving unions (i.e. labor disputes). The results here stand in remarkable contrast to the previous findings for all economic cases. The variable *Statutory Constraint* is significant and positive for liberal justices (Model 11) and significant and negative for conservatives (Model 12). It is therefore apparent that the language of congressional statutes facilitates the ideological voting of liberal justices while also serving to constrain the ideological voting of their conservative colleagues. If we examine some of the statutes involved in these disputes (such as the National Labor Relations Act), this result is not surprising. Many federal labor statutes outline aspects of the employer-employee relationship in an attempt to protect workers from exploitation. Consequently, the liberal outcomes proscribed by Congress should serve to constrain conservative justices while at the same time enhancing the ideological preferences of liberals.

The empirical results also reveal that liberal justices are not influenced by their ideological preferences; the variable *Individual Ideology* is not significant. However, conservative justices are significantly more likely to cast sincere votes as their ideological attitudes become stronger. Additionally, Model 12 displays a significant and negative coefficient for the variable *Judicial Review*.¹¹ This indicates that cases which challenge the constitutionality of congressional statutes significantly constrain conservative justices. Models 11 and 12 also reveal significant and negative coefficients for the variable *Lower Court Congruence*. As with

¹¹ This variable is dropped from Model 11 because it perfectly predicted the dependent variable.

the previous issue areas, liberal and conservative justices are significantly more likely to cast sincere votes in order to reverse the decisions of lower courts. Finally, the variable *Minimum Winning Coalition* is significant and positive for both liberals and conservatives; the justices are more likely to cast sincere votes when the majority coalition is narrow.

The final issue area we examine involves federalism cases. Models 13 and 14 reveal the opposite effects of *Statutory Constraint* from that observed for labor disputes (union cases). In federalism cases, liberal justices are significantly constrained by the presence of detailed statutory language; whereas the ideological voting behavior of conservative justices is enhanced. This is a somewhat counter-intuitive result since one might initially believe congressional statutes would proscribe liberal outcomes by detailing the power of the federal government in relation to the states. However, further inspection of federalism statutes reveals that many spell out areas of state authority in detail, thereby dictating conservative outcomes (i.e. in favor of states). Consequently, it is plausible that liberal justices would experience the constraining effects of these statutes while conservatives view the statutory language as supporting their ideological preferences.

The empirical data for federalism cases also reveal that the likelihood of casting a sincere vote by liberal justices is not affected by their *Individual Ideology*; however, conservatives are significantly more likely to cast sincere votes as their ideological preferences become stronger. Both groups of justices are significantly more likely to cast sincere votes when engaging in *Judicial Review*. Additionally the variable *Lower Court Congruence* is significant and negative for liberals and conservatives indicating that the justices are more likely to cast sincere votes in order to reverse decisions of the lower courts. Finally, the variable *Minimum Winning Coalition*

is only significant for conservative justices, and the positive coefficient indicates that conservatives are more likely to cast sincere votes when the majority coalition is narrow.

The combined findings for *Statutory Constraint* and *Individual Ideology* suggest a theoretically important way of thinking about judicial behavior. Rather than conceptualizing the legal model and the attitudinal model as competitors (i.e., that there is a tradeoff between constraint and ideology), the strong empirical evidence suggests that legal influences and ideological influences also work in tandem in the Supreme Court. Occasionally, the traditional tension exists and statutory language constrains the justices from voting ideologically. However, in other instances these two influences operate in a more dynamic and interdependent manner, and we observe statutory language facilitating the expression of ideological voting among the justices.

CONCLUSIONS

The potential tension between Congress and the Supreme Court caused by the constitutional “invitation to struggle” over the meaning of the rule of law has profound implications for democratic theory and the separation of powers. Though scholars have examined whether the Supreme Court issues decisions against the preferences of Congress, there has been little focus on whether legislators can constrain the Court. Our findings demonstrate that members of Congress can constrain Supreme Court decision making over the long term by enacting detailed legislation. Whether this result occurs because of an intentional congressional objective or is an unintended outcome, the final product is that Congress possesses an ability to limit judicial discretion in the Supreme Court through statutory language.

This general conclusion is extremely important because many previous studies of the legal model have not been able to provide empirical support for legal influences. As we argued earlier, continuous and more dynamic measures of legal factors are required to test accurately and rigorously the precise relationship between these aspects and ideological preferences. Our analysis builds upon our previous work at the federal appellate court level and depicts a more vibrant relationship between constraint and discretion.

In sum, we first answer the question whether Congress can constrain the Supreme Court and discover that the influence is significant. The measure of statutory constraint reveals that more detailed language (resulting in statutes with higher word counts) significantly limits the discretion afforded to Supreme Court justices to rule ideologically.

More importantly, however, our analysis provides empirical evidence to support a new theoretical conceptualization of judicial behavior. If everything else is held equal, the justices will render decisions according to their ideological preferences. Yet, all things are not equal and the presence of legal factors, such as statutory constraint, limits the ability of some justices to rule ideologically. However, the story does not end here. The presence of detailed statutory language can also facilitate the expression of ideological voting among other justices. Thus, while some justices experience significant constraint from the presence of detailed statutory language, others experience an enhancement of their ideological preferences and are more likely to vote according to those preferences. Based on this dynamic interaction between political attitudes and statutory influences, one should not think of the legal model only as a set of forces that operates in contrast to ideological attitudes. Consequently, a more complete model of judicial decision making should include measures of both political preferences and statutory influences, and account for the differential impact of these measures.

While our results here suggest an important new theoretical direction for conceptualizing the attitudinal and legal models, as well as empirically demonstrating the effects of statutory constraint and discretion on the Supreme Court, the research also raises additional questions for future studies to address. First, do these effects remain consistent over time? It is possible that Congress drafts more detailed legislation in response to periods of “judicial activism” by the justices. If this occurs, then one should expect substantial fluctuations over time in the levels of statutory constraint and discretion. Second, does Congress intentionally write statutes in anticipation of Court behavior? If so, then one should expect the preferences of congressional members to interact with the measure of constraint in order to specifically target select groups of justices. Empirically examining these questions in future research is important to determine additional aspects of the dynamic and interdependent relationship between statutory influences and ideological preferences.

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TABLE 1: PROBIT ANALYSIS OF CRIMINAL CASES

	Model 1 Liberal Justices	Model 2 Conservative Justices
Statutory Constraint	-.045 (.025)*	.055 (.019)**
Individual Ideology	.128 (.026)***	.089 (.033)**
Judicial Review	-.080 (.092)	.115 (.075)
Lower Court Congruence	-.655 (.086)***	-.605 (.072)***
Minimum Winning Coalition	.817 (.139)***	.445 (.098)***
Constant	.485 (.290)	.022 (.234)
N	992	1531
Log-Likelihood	-619.433	-894.426
Wald χ^2	130.25	109.51
Prob > χ^2	.000	.000
Pseudo R ²	.098	.061
Null Model	51.8%	65.5%
Correctly Predicted	64.5%	67.5%
Reduction of Error	26.3%	5.7%

Dependent Variable: unconstrained or sincere vote (1), constrained vote (0)

Values represent parameter estimates with robust standard errors in parentheses

* p < .10 ** p < .05 *** p < .01 (two-tailed tests)

TABLE 2: PROBIT ANALYSIS OF CIVIL LIBERTIES CASES

	<i>All Civil Liberties Cases</i>		<i>Civil Rights Cases Only</i>		<i>Other Civil Liberties Cases</i>	
	Model 3 Liberal Justices	Model 4 Conservative Justices	Model 5 Liberal Justices	Model 6 Conservative Justices	Model 7 Liberal Justices	Model 8 Conservative Justices
Statutory Constraint	.007 (.015)	.024 (.012)**	.031 (.018)*	.010 (.013)	-.106 (.031)**	.085 (.025)**
Individual Ideology	.139 (.020)***	.105 (.023)***	.149 (.025)***	.121 (.027)***	.122 (.039)**	.078 (.043)*
Judicial Review	-.285 (.081)***	.378 (.063)***	-.439(.126)***	.601 (.099)***	.123 (.127)	-.021 (.103)
Lower Court Congruence	-.703 (.064)***	-.683 (.051)***	-.805(.079)***	-.755(.060)***	-.456(.121)***	-.434(.097)***
Min. Winning Coalition	.596 (.101)***	.862 (.078)***	.774 (.144)***	.854 (.098)***	.410 (.155)***	.868 (.133)***
Constant	.476 (.172)	-.129 (.140)	.381 (.211)	-.057 (.160)	1.033 (.349)	-.449 (.293)
N	1795	2720	1295	1918	500	802
Log-Likelihood	-1037.684	-1638.745	-675.972	-1153.782	-319.538	-453.864
Wald χ^2	204.15	363.34	175.45	293.63	54.12	71.70
Prob > χ^2	.000	.000	.000	.000	.000	.000
Pseudo R ²	.095	.119	.122	.131	.077	.087
Null Model	66.3%	56.9%	66.5%	51.9%	52.2%	62.9%
Correctly Predicted	68.4%	68.5%	73.5%	67.8%	61.0%	70.0%
Reduction of Error	6.2%	26.9%	20.9%	33.1%	18.4%	19.1%

Dependent Variable: unconstrained or sincere vote (1), constrained vote (0)

Values represent parameter estimates with robust standard errors in parentheses

* p < .10 ** p < .05 *** p < .01 (two-tailed tests)

TABLE 3: PROBIT ANALYSIS OF ECONOMIC CASES

	<i>All Economic Cases</i>		<i>Union Cases Only</i>		<i>Federalism Cases Only</i>	
	Model 9 Liberal Justices	Model 10 Conservative Justices	Model 11 Liberal Justices	Model 12 Conservative Justices	Model 13 Liberal Justices	Model 14 Conservative Justices
Statutory Constraint	-.007 (.010)	.028 (.009)***	.092 (.023)***	-.087(.021)***	-.062 (.027)**	.143 (.025)***
Individual Ideology	.035 (.013)**	.108 (.017)***	.026 (.029)	.105 (.042)**	.058 (.039)	.109 (.052)**
Judicial Review	.022 (.126)	-.044 (.090)	--	-.567 (.282)**	1.003(.403)**	.425 (.202)**
Lower Court Congruence	-.615(.041)***	-.626(.037)***	-.377(.099)***	-.421(.088)***	-1.004(.122)**	-1.007(.108)**
Min. Winning Coalition	.098 (.074)	.801 (.059)***	.484 (.177)***	.755 (.123)***	.071 (.215)	.408 (.172)**
Constant	.755 (.115)	-.374 (.106)	-.639 (.304)	.895 (.271)	1.173 (.313)	-1.197 (.272)
N	4073	4971	729	884	519	663
Log-Likelihood	-2424.703	-3147.107	-443.318	-562.921	-304.690	-385.764
Wald χ^2	223.66	509.96	36.15	87.52	78.28	127.97
Prob > χ^2	.000	.000	.000	.000	.000	.000
Pseudo R ²	.045	.076	.043	.071	.117	.154
Null Model	68.4%	43.7%	63.1%	43.7%	61.8%	44.6%
Correctly Predicted	68.5%	62.7%	68.9%	63.9%	70.3%	71.3%
Reduction of Error	0.3%	14.6%	15.7%	17.4%	22.3%	35.7%

Dependent Variable: unconstrained or sincere vote (1), constrained vote (0)

Values represent parameter estimates with robust standard errors in parentheses

* p < .10 ** p < .05 *** p < .01 (two-tailed tests)