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Jurisdiction-Granting: Legislative Capacity and Ideological Distance

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This paper examines the conditions under which Congress passes jurisdiction-granting legislation, legislation that expands the discretion of the federal district courts by designating them as venues in which policy questions are to be heard. This project extends existing research that has demonstrated that Congress manipulates the parameters of jurisdiction by examining the manner in which Congress routinely engages in this activity. I construct and evaluate a comprehensive dataset of laws in which Congress grants jurisdiction to the district courts for the period between 1949 and 2000 with the goal of explaining conditions under which Congress grants jurisdiction Two explanations are considered: higher levels of legislative capacity of Congress and the ideological distance between Congress, the district courts, administrative agencies. The results demonstrate that both legislative capacity and ideological distance are important to understanding the passage of jurisdiction-granting legislation.

Introduction

On June 22, 2010, Judge Martin L. C. Feldman of the United States District Court for the Eastern District of Louisiana issued a preliminary injunction that lifted the Obama Administration's six-month moratorium on off-shore drilling, a moratorium spurred by the BP Deepwater Horizon oil spill. Injecting the courts into the "largest accidental oil spill in history," the judge reasoned that Secretary of the Interior Kenneth Salazar had acted in an "arbitrary and capricious" manner when creating the moratorium, words that are often the death knell for government action under review by a federal court.[1] Commentators and news accounts focused their attention on the impact of the court's decision and the quick-to-follow revelation that Judge Feldman owned stock in "several energy-related firms," at least through 2008, often with only passing reference to the legal basis for the court's reasoning.[2] Readers of ABC News were informed only that "the Administrative Procedure Act" authorized the kind of review undertaken in this case.[3] Missing from this coverage was an account of *why* the federal district court was in a position to make a decision that could so frustrate the Obama Administration's response to the Gulf spill and disaster.

The present study places questions of why federal courts are in a position to make policy decisions in the center of analysis. My focus is somewhat unusual in that I emphasize the manner in which Congress creates opportunities for judicial policy-making and the frequency with which this takes place. In contrast, many scholars focus on what courts do with cases once they get them. The fact that courts are able to decide those cases is usually taken for granted as a fixed feature of the institutional environment. In reality, however, the power of courts to hear cases is the result of a complex and ongoing process through which actors outside the courts, particularly members of Congress, shape and reshape the power of different courts to hear

particular types of disputes. That process involves, among other things, efforts by Congress to limit or protect the discretion of regulatory officials, to alter which people or groups of people have standing to bring cases to court, and to assign particular types of disputes to particular courts.

In the case discussed above, laws such as the Administrative Procedure Act of 1946 (the APA) create opportunities for federal courts to participate in the public policy process. Courts are designated through the APA as venues in which individuals and groups may bring suit to challenge administrative agency action. The APA represents just one mechanism through which Congress creates policy-making authority for the federal courts. Constitutionally, Congress has a host of powers with respect to the federal courts including the power to create courts, staff courts, fund their operations, and define their jurisdiction. Indeed, the Constitution is relatively silent regarding the federal judiciary as it does not establish any federal courts besides the Supreme Court, and includes very little detail about how even that court is structured. The Constitution instead specifically delegates the power to establish the federal judiciary, including federal judicial procedure, to Congress. Courts do not appear fully formed and do not come armed with jurisdiction to hear all types of cases but rather depend on Congress to establish the conditions under which they will operate.

Recognizing the manner in which Congress exercises its constitutional power with respect to the courts is important for understanding how courts operate in American politics. In one view, how courts operate can be understood by examining the judges who staff the courts and exploring the factors that explain their behavior. These accounts of judicial behavior often focus on the "backgrounds, attitudes, and ideological preferences of individual justices" to explain judicial decision making – hence preoccupation with Judge Feldman's investing

practices.[4] In contrast, this article adopts an institutionally focused approach in which "[s]cholars seeking to explore the broader cultural and political contexts of judicial decision making … examin[e] how judicial attitudes are themselves constituted and structured by the Court *as an institution* and by its relationship to other institutions in the political system at particular points in history."[5] In contrast to court-centered or behavioralist approaches, the theory presented here argues that Congress has played an integral role in influencing the creation of opportunities for judicial decision making. Congress's influence is felt when it designates courts as policy venues leading individuals and groups to turn to the courts to address their concerns.

In focusing on institutional factors that influence whether courts become involved in the policy process, this work builds upon a small but growing body of scholarship that investigates the conditions under which courts gain policy-making responsibility and authority. Whether and how courts will participate in the policy process is not a fixed notion, but one open to manipulation by other actors. Judicial participation in the policy process is routinely structured through the language of statutes as members of Congress work to create opportunities for judges to exercise discretion.[6] This scholarship focuses on the "relationships between justices and elected officials," searching out ways in which elected officials "encourage or tacitly support judicial policymaking."[7] The result is a way of studying and explaining judicial policy-making in which scholars investigate the numerous mechanisms through which legislators share power, responsibility, and blame with judges.[8] This scholarship has also been attentive to reasons why Congress may create opportunities for judicial policy-making, which includes advancing political and policy goals.[9] Legislators may wish to shift decision-making responsibility from the legislature to the courts[10] or to lock-in and advance policy goals,[11] some of which may be

difficult for legislators to achieve on their own.[12] Legislators may additionally look to courts as institutions that can provide an oversight function for the executive branch.[13]

The present study adds to our understanding by focusing on an additional mechanism through which Congress empowers the judiciary. Congress makes choices about the jurisdiction of the federal courts by passing *jurisdiction-granting legislation.* As defined here, jurisdiction-granting legislation is legislation that explicitly expands judicial discretion by designating courts as venues through which certain specified categories of people or organizations may work to address their claims. As a policy venue, or an "institutional location where authoritative decisions are made concerning a given issue," courts are established as institutions where certain policy questions are to be answered.[14]

This project shares with existing research an interest in the "conditions that make it possible for judges to rule"[15] of which the manipulation of jurisdiction is one mechanism through which courts are empowered.[16] These studies show that there are deliberate efforts to expand jurisdiction, and that those expansions add to judicial power. They have also begun to identify some background political conditions that might lead legislators to expand jurisdiction. The existing studies often do this by examining a few particularly dramatic or historically consequential efforts to expand jurisdiction, an effort that has helped to show that manipulation of jurisdiction is important and worth studying. My study builds on these findings by attempting to provide an understanding of jurisdiction-granting as a routine occurrence. I do this by surveying laws passed over a fixed period of time and identifying ones that alter jurisdiction. I find that the number of such laws is surprisingly large, and that these laws cannot easily be fit into conditions identified by earlier studies. Having this broader sample of the routine practice of jurisdiction-granting makes it possible to step away from looking at only major cases, and

looking only at realignment and regime change, and thus to see a broader variety of ways that construction of judicial power is part of the give and take of ordinary politics. This project focuses as well on the relationship between manipulation of jurisdiction and the agendas of the federal courts. Existing scholarship has hinted at the implications of the manipulation of jurisdiction on the agendas of the federal courts. That is, it is evident that when legislators work to foist cross-cutting issues onto courts or write ambiguous language in statutes or otherwise create opportunities for a court to control its agenda, new issues may appear on the agendas of the courts. However, scholarship in this vein has focused on the underlying conditions that lead to expansions of judicial power and has not explored the implications for agenda-setting and agenda change. My study builds on these findings by focusing on the relationship between the manipulation of jurisdiction and the agenda dynamics of the federal courts.

The present study addresses a gap in our understanding of the relationship between congressional action and judicial decision making by investigating the conditions under which Congress passes jurisdiction-granting legislation. It evaluates the passage of a comprehensive set of laws that grant jurisdiction to the federal district courts for the 81st – 106th Congresses (1949 – 2000). Using HeinOnline, 726 laws that explicitly grant jurisdiction to the federal district courts were identified.[17] As can be seen from Figure 1, jurisdiction-granting laws are consistently and routinely passed. The number of laws passed ranges as high as 51 in the 93rd Congress and at least 10 laws are passed per Congress.

[Figure 1 about here]

These data support the argument that Congress exercises its constitutional power to determine the jurisdiction of the federal courts. Given the frequency with which it occurs, it illustrates the importance of focusing on the conditions leading to the passage of jurisdiction-

granting legislation. As Congress routinely grants jurisdiction to the federal courts it is an active participant in deciding whether and how the courts will participate in the policy process. In the pages that follow, I build upon these initial empirical findings in an attempt to demonstrate the importance of studying congressional efforts to empower the courts. I first discuss existing literature on why courts become involved in the policy process. Then, two explanations that might explain the passage of jurisdiction-granting are considered. First, I explore whether *legislative capacity,* conceptualized as the ability of Congress to produce a policy itself, is associated with the passage of jurisdiction-granting legislation. I focus on legislative capacity to determine whether internal, institutional characteristics of Congress are related to decisions on how to structure the federal judiciary. Second, I examine whether the *ideological distance* between Congress, the federal district courts, and administrative agencies is associated with the passage of jurisdiction-granting legislation. The purpose of focusing on ideological distance is to investigate the relationship between institutional characteristics between Congress, the courts, and administrative agencies. Along with a new dataset of jurisdiction-granting laws introduced above, a new measure of district judge ideology is constructed and employed for this analysis. The results show that for the United States Senate, both legislative capacity and ideological distance are important for understanding under what conditions Congress will grant jurisdiction to the federal district courts.

Courts in the policy process

Motivating scholarship on the federal judiciary is the question of how courts come to decide certain public policy questions. In one view, understanding which issues the Supreme Court chooses to focus on is as simple as noting the Court's discretionary control over its docket. Given this discretionary control "the justices are free to accept or reject cases brought to their

attention as they see fit."[18] The Court decides the policy questions it does because justices choose to focus on those questions. Of three major works that examine trends in the Supreme Court's agenda over time, each ascribes to the justices themselves the lion's share of responsibility for the Court's agenda. Describing decreasing attention to economic issues in the Warren, Burger, and Rehnquist Courts, Segal and Spaeth link transformations in the Supreme Court's agenda to judicial preferences, asserting that "a likely explanation for these trends may be the justices' perceptions that business, labor, and tax matters have relatively little *salience.*"[19] Pacelle writes that the "Court *chose*, in part because of external pressure, to limit its consideration of some issues and to become a forum for others" after 1937.[20] Lanier agrees, and states that the Court "began to turn away from [economic regulation] and refocused its priorities on questions of civil liberties-civil rights."[21] It is the justices, freed from outside influence, who set the agenda and determine its direction.

In a second view, scholars investigate how opportunities for courts to review the constitutionality of statutes or to interpret the meaning of legislative language arise, and conclude that members of Congress work actively to create such opportunities.[22] Graber, for example, examines the ways in which judicial decision-making may be invited by policymakers regarding policies that create "cross-cutting" pressures on legislative coalitions – policies such as slavery, antitrust regulation, and abortion. Desiring to take a stand on the issue of slavery in federal territories after the Mexican War, for example, elected officials went so far as to pass legislation "that would facilitate federal judicial review of any complaint or habeas corpus petition that raised the constitutional status of human bondage" and followed up by repeating the assertion that slavery was an issue for the courts.[23] In doing so, members of Congress took specific rhetorical and legislative action to include the courts in the policy-making process. Shipan

describes the existence of judicial review as the result of purposive legislative deliberation in which participants in the legislative process both have the capacity to design judicial review and may benefit from these designs. Shipan suggests that members of Congress may choose specific types of judicial review in order to achieve certain policy goals. In granting a sympathetic judiciary the power to review the decisions of an unsympathetic agency, for example, members of Congress may do so with the idea that courts will protect their policy preferences against the maneuverings of a hostile agency. Or, by granting broad discretion to a sympathetic agency and denying judicial review over certain types of agency decisions, members of Congress may, in this scenario, be depending on an agency to protect Congress' policy preferences against the maneuverings of a hostile judiciary.[24]

Constitutionally, Congress has a host of powers with respect to the federal courts covering their creation, staffing, funding, and jurisdiction. Each has implications for the judiciary from whether courts will exist and in what form (creation), who will occupy the judges' chair (staffing), what resources they will have to complete their tasks (funding), and what issues they will attend to (jurisdiction). Following the tradition of examining how courts are placed in the position to make policy decisions, the present study focuses on jurisdiction-granting legislation as one tool that Congress may use to involve the courts in the policy process. Much like the drafting of ambiguous statutes[25] or political party efforts to institutionalize policy gains through the creation and staffing of courts,[26] jurisdiction-granting legislation represents choices made by members of Congress regarding whether to empower the judiciary. These decisions are part of the legislative process.[27] In the process of drafting legislation, members of Congress decide whether the courts are to be granted jurisdiction and in what form such grants will take. These decision are frequent and routine. Congressional attention to the courts is not reserved

only for issues of major importance, but instead is an integral part of the legislative process on a range of issues. As the examples in the next section make clear, congressional choice regarding the courts takes a variety of forms, meaning courts may have a peripheral or central role to play in the public policy process depending in part on how Congress envisions their role.

What emerges is a more complex picture of the reasons why courts are involved in deciding public policy questions. In this conception, judicial forays into the policy thicket are not the result of desire on the part of judges alone, but a function as well of legislatively-created opportunities. Courts are able to review the language of statutes because Congress explicitly includes provisions granting them the authority to do so. Complexity arises from the process of tracing judicial decisions back to decisions made by other institutional actors to involve the courts in the policy process. Court decisions are not the product of judicial deliberation alone, but represent numerous influences, some external to the courts.

Building on this theoretical background, the next section explores in detail the reasons why Congress might grant jurisdiction to the federal district courts. It examines the passage of jurisdiction-granting legislation as a function of legislative capacity and ideological distance between Congress, the district courts, and administrative agencies.

The decision to grant jurisdiction

Under what conditions will Congress grant policy-making authority to the federal courts? Expansions of judicial power have been studied elsewhere as "the sort of familiar partisan or programmatic entrenchment that we frequently associate with legislative delegations to executive or quasi-executive agencies."[28] In treating the decision to grant policy-making authority to courts as analogous to the decision to delegate to administrative agencies, this article draws on parallels between the two situations. In both situations, Congress determines the costs and

benefits of producing policy "in-house" versus the costs and benefits of allowing another entity to produce the policy.[29] Congress must overcome time, resource, and expertise challenges that would otherwise prevent the legislative body from writing complex, detailed legislation itself. Producing public policy is a time-consuming enterprise and Congress's attention is split between numerous activities. Institutional features such as the committee system provide members with tools needed overcome cognitive limitations; nonetheless, Congress cannot attend to all issues equally and producing legislation is a costly enterprise. Congress must also take into account the relative ideological positions of administrative agencies and the courts themselves as part of an effort to protect its policy preferences.

Research design

Jurisdiction-granting legislation

Public laws with provisions that grant jurisdiction to the federal district courts have been identified for the time period between 1949 and 2000. Laws were identified using the advanced search feature of HeinOnline's U.S. Statutes at Large database to search for the following combination of terms: "district court," "district courts," "court," or "courts." Through this method, a set of 726 laws that grant jurisdiction to the federal district courts were identified. The dependent variable *Laws* is a count of the number of jurisdiction-granting laws passed per session of Congress.

Laws granted jurisdiction in one of six general categories. As the following examples demonstrate, laws were considered to grant jurisdiction if provisions expanded the discretion of the federal district courts. Through these provisions, courts become policy venues through which individuals and groups may work to address their claims. First, laws granted jurisdiction by *authorizing civil actions*. For example, the Federal Crop Insurance Act states that "[i]n the

event that any claims for indemnity under the provisions of this title is denied by the Corporation, an action on such claim may be brought against the Corporation in the United States district court … and jurisdiction is hereby conferred upon such district courts to determine such controversies without regard to the amount in controversy."[30] Second, laws granted jurisdiction to the federal district courts by *authorizing civil actions* by the United States Attorney General or by a federal agency. For example, the Housing Act of 1954 states that "[w]henever he finds a violation of any provision of this section has occurred or is about to occur, the Attorney General shall petition the district court of the United States or the district court of any territory," which are granted jurisdiction to "hear, try, and determine such matter[s]."[31]

Third, federal district courts were at times designated as venues in which persons affected by agency regulations could obtain *judicial review* of agency rules, regulations, or other agency decisions. According to the Marine Mammal Protection Act of 1972, for example, "[a]ny applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides."[32] Fourth, in instances in which parties needed to figure out the value of goods and services, the courts were granted jurisdiction to *judicially determine* those values. Thus, for example, the Special Health Revenue Sharing Act of 1975 states that the "United States shall be entitled to recover … an amount bearing the same ratio to the … value (as determined by the agreement of the parties by action brought in the United

States district court for the district in which the center is situation)" as an amount of the project in question that constituted the federal share.[33]

Fifth, a law could authorize a district judge to issue warrants or to seize goods for libel such that, for example, "[a] fishing vessel … used in the commission of act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof."[34] And sixth, the district courts could be tasked with enforcing *subpoenas* issued by a federal agency as that agency works to enforce its rules and regulations. The Fisheries Act of 1995, for example, states that "[i]n case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found … shall have jurisdiction to issue an order requiring such person to appear and give testimony … or to appear and produce documents."[35]

Legislative capacity

Legislative capacity, also known as legislative professionalism, is a concept that captures the resources available to a legislative institution. Often focused on state legislatures, studies of legislative capacity are interested in examining the process by which legislatures gain the tools necessary to perform essential legislative functions[36] and in comparing the development of legislative capacity in the states over time.[37] Others examine the presence or absence or legislative capacity, defining a "professionalized legislature as one with abundant resources."[38]

The absence of legislative capacity may encourage delegation to administrative agencies. This is because a legislative body may not possess the resources necessary to produce detailed public policy itself and therefore needs to contract with another entity to help produce the policy. Inability to write detailed legislation may stem from lack of time and other resources to write

specific requirements or may stem from lack of knowledge on how to decide certain policy questions. Delegation to agencies may help members of Congress overcome internal informational disadvantages by empowering experts outside of the legislative branch.[39] The result may be a general statute that provides direction for administrative agencies to "fill in the blanks." What action the agency will take is something Congress cannot foresee perfectly and their goal, as a result, is to structure administrative processes to ensure the policy unfolds as desired and in accordance with congressional preferences.

If present, however, legislative capacity mitigates against the need to delegate to an administrative agency as a legislature possesses the resources needed to produce detailed public policy itself.[40] Furthermore, legislative capacity may be related to the decision to grant policy-making authority to a court versus delegate to an administrative agency. As hypothesized by Fiorina, Congress can either produce a detailed policy itself, enforced in the courts, or allow an agency to fill in the details and enforce the legislation.[41] Fiorina suggests that laws differ if they grant policy-making authority to courts versus agencies, and that characteristics of Congress – including capacity to write a detailed law – are related to whether authority is granted.[42]

The legislative capacity literature suggests the following hypothesis:

H1: Increased legislative capacity will lead Congress to grant policy-making authority to courts, as Congress has the resources necessary to produce detailed, court-enforced legislation.

Ideological distance

Legislative capacity captures characteristics of Congress as an institution and seeks to explain the decision to grant policy-making authority to the federal district courts as a function of congressional capacity to write detailed legislation. Alternatively but not exclusively, Congress might consider the relative ideological positions of Congress, the federal district courts, and

administrative agencies. Legislative capacity and ideological distance, discussed in more detail below, should be viewed as alternative explanations for the same phenomenon, focusing on different aspects of the relationship between Congress and the courts. Both provide information on the processes involved in deciding to grant authority to the courts.

The ideological relationship between Congress, courts, and administrative agencies might explain the decision to grant policy-making authority. With respect to the question of whether to delegate to an administrative agency, increased ideological distance does not necessarily mean that delegation will not take place. Congress may turn to courts depending on the relative ideological positions of Congress, courts, agencies, and the President. Epstein and O'Halloran explain the decision to delegate to a federal court, or to other "non-executive" agencies, as a function of ideological distance between the legislative branch and the executive branch.[43] In his examination of the potential oversight role of federal courts with respect to administrative agencies, Shipan argues that members of Congress may work to increase or decrease the participation of the courts in the policy-making process depending on their evaluation of the relative policy positions of Congress, courts, and agencies.[44]

What is of interest is the ideological distance between Congress, the federal district courts, and administrative agencies. Consider first the effect of increased ideological distance between Congress and the federal courts. As this distance increases, the likelihood of congressional grants of authority to the courts decreases given the growing gap between the likely policy positions of the two institutional actors. At the same time, an increase in the distance between Congress and administrative agencies may lead Congress to grant more policy-making authority to the federal courts given the growing gap between Congress and agencies.

The delegation literature suggests the following hypothesis:

H2: As the ideological distance between Congress and the federal district courts increases taking into account the ideological distance between Congress and the administrative agencies, Congress will be less likely to pass jurisdiction-granting legislation as the courts' policy outputs would diverge from those preferred by Congress.

Data and measures

Legislative capacity. Definitions of legislative capacity are variations on a theme. Indexes based on "space, salary, session length, staff, and structure,"[45] "member pay, staff member per legislator, and total days in session,"[46] and "legislative pay, staff, and session length" [47] have been used to measure legislative capacity. I focus on staff and session length for two reasons. First, given the ability and propensity of members of Congress to raise (or lower) their salaries, legislator pay did not seem to be a good measure of legislative capacity. Second, staff and session length do capture two aspects of the legislative capacity concept: a resource available to assist legislators in drafting legislation (staff) and a resource available to assist legislators in completing their work (time). The variable *Staff* is a count of the number of staff members employed by the United States Congress per session, in thousands.[48] The variable *Days* is a count of the number of days Congress is in session per congressional session.[49] For both *Staff* and *Days*, higher levels are conceptualized as associated with increased legislative capacity.

Ideological distance. Ideological distance is computed using the median member of the Congress, courts, and agencies.[50] For the variables *House median* and *Senate median*, scores were measured using Poole and Rosenthal's DW Chamber median scores. Common Space Scores were used for the *President* variable with the President standing in as a proxy for administrative agencies.[51]

For *Judge median*, a new measure was computed following the methodology of Giles, Hettinger, and Peppers.[52] Taking account of the norm of senatorial courtesy, a judge is assigned a score based on the ideology of his home state senator when senatorial courtesy is active and is assigned a score corresponding to the President's when it is inactive. As noted by Giles et al, who compute an ideological score for court of appeals judges using this approach, this method is an advantage over measures that depend solely on the appointing party of the president and additionally allows for comparisons across branches.[53] Averaging across the judges serving on the district courts per session produces the variable *Judge Median*. Figure 2 displays *Judge Median* for the 81st through 106th Congress.

I focus on the federal district courts and do not account for the ideology of circuit court judges or Supreme Court justices, both of whom oversee decisions made by the district courts. It could be argued that the courts of appeals and the Supreme Court are participants on appeal in cases that stem from jurisdiction-granting legislation, meaning that Congress might take into consideration the ideology of the courts of appeals and the Supreme Court when designing this legislation. Congress might take into account where they stand on the ideological spectrum along with the ideology of the district courts, knowing that these courts might be involved in deciding certain policy questions. I argue, however, that a category of decisions are being made primarily by the federal district courts with little oversight from higher courts, justifying focusing on the ideology of federal district judges only. That is not to argue that the federal district courts always operate free from appellate review, but rather that it is more likely than not for their decisions *not* to be reviewed by a higher court.[54] Congress, according to this argument, considers the ideology of the district courts when passing jurisdiction-granting legislation

because it is aware that it is these courts that will be making the bulk of policy decisions in these cases.

[Figure 2 about here]

Calculating distance. If ideology matters, Congress will grant jurisdiction when the ideological position of the median chamber member is closer to the median Judge taking into account the distance between Congress and administrative agencies. As the ideological distance between Congress and the district judges increase, taking in account the distance between Congress and administrative agencies, Congress will be less likely to grant jurisdiction to the district courts. As Congress moves closer to administrative agencies and farther away from the district courts, the likelihood of jurisdiction-granting legislation passing should decrease. Thus, what is of interest is the distance between Congress, the district courts, and administrative agencies. The variable *Senate Distance* is calculated as the absolute value of |*Senate median – President*| - |*Senate median – Judge median*| and the variable *House Distance* is the absolute value of |*House median – President*| - |*House median – Judge median*|. For both variables this calculation produces a value between 0 and 1 and as the value approaches 1 the likelihood of jurisdiction-granting legislation passing should decrease.

Controls. There are a number of factors that may attenuate the ideological and institutional effects described above. Congress may be less likely to grant new policy-making authority to the courts if they perceive the courts as already dealing with a high number of cases. The model controls for the number of federal district court civil cases, denoted as *Cases*, filed annually, in thousands of cases. The model also controls for the effect of "unified" government across chambers and between Congress and the Presidency. When Congress and the President are of the same party, Congress perhaps is more willing to grant policy-making authority to the

federal district courts, staffed under the direction of the President, than when the President and Congress are under the control of differing parties. According to Epstein and O'Halloran, in the realm of administrative agencies, "Congress will delegate more power to agencies under unified government than under divided government," balancing the need to delegate to administrative agencies against the likelihood that the President exercises too much influence on the direction of agency policy-making.[55] Similar dynamics might be at work with respect to granting policy-making authority to the federal district courts. By similar logic, when the two chambers are divided across party control, it may be less likely that jurisdiction-granting legislation will pass. House members might be hesitant to create new discretion for judges when those judges are to be chosen with the participation of Senators of a different party. When the House and Senate are of the same party (*House-Senate Unified*), Congress is perhaps more likely to grant policy-making authority to the district courts as both House and Senate members will conceivably benefit in terms of policy outputs from increased participation of the courts as opposed when party control is divided and one branch is ideologically aligned with the district courts. *House-Senate Unified* is a dummy variable that takes on a value of 1 when the same political party controls the House and the Senate. For situations when the President and Congress are unified, the variable *Congress –President Unified* takes on a value of 1 when the House, Senate, and Presidency are controlled by the same party and 0 otherwise. As described by De Figueiredo and Tiller, expansions of judicial power may take place in periods of alignment between the branches – the passage of jurisdiction granting legislation should be more likely when the branches are of the same party.[56]

Additionally, the model controls for the total numbers of laws passed per congressional session (*Total Laws*) to account for the possible effects of otherwise increasing congressional

activity on the number of jurisdiction-granting laws passed. Finally, the model includes a dummy control variable for the 81st through 86th Congresses to account for periods in which attitudes towards administrative agencies perhaps made them more attractive policy-making venues than court (*Agency trust*). I theorize that attitudes towards administrative agencies and courts during the late 1940s and 1950s mitigate against granting policy-making authority to the federal district courts. During this time period, administrative agencies were viewed as necessary to address problems faced by government and society. Administrative agencies became responsible for activities normally associated with the executive, legislative, and judicial branch with the judiciary losing the most in terms of power and responsibility to newly created agencies. A culture of distrust regarding the willingness or ability of courts to address public policy problems pervaded government.[57] In contrast, it was thought that administrative agencies would be staffed by expert individuals who were dedicated both to the idea of governance and to doing the best for industry.[58] It is likely that because of these prevailing attitudes during this time period, Congress was more likely to delegate authority to administrative agencies than to grant policy-making authority to the courts.

Results

Grants of jurisdiction are evaluated in light of legislative capacity and ideological distance. Table 1 provides summary statistics for the variables employed in this analysis. Table 2 shows the regression results for the United States Senate while Table 3 shows the regression results for the United States House of Representatives. Although these are times series data, Ordinary Least Squares (OLS) may be employed with time series data in the absence of serial correlation.[59] In the presence of serial correlation, OLS standard errors will be biased. The Durbin-Watson test for serial correlation was used to determine if the results of an OLS

regression were serially correlated and is reported below along with the OLS results. No evidence of serial correlation was found according to this test.

[Table 1, Table 2, and Table 3 about here]

For the United States Senate model, the variable *Senate Distance* is negatively correlated with *Laws* at the $p < 0.01$ level. As hypothesized, as the ideological distance between the median Senate member and the median judge of the federal district courts increases, taking into account the administrative agencies, it is less likely for Congress to pass jurisdiction-granting legislation. For each unit change in the ideological distance, there is an associated decrease of approximately thirty laws in the number of laws passed. *Staff* is positively correlated with *Laws* at the $p < 0.001$ level, as hypothesized. Each additional 1000 staff members, which corresponds to increasing legislative capacity, is associated with the passage of approximately two more jurisdiction-granting laws. While *House-Senate Unified* fails to meet statistical significance, *Congress-President Unified* is just shy of significance at the $p<0.05$ level. Contrary to expectations, the presence of unified government is associated with the passage of fewer, not more, jurisdiction-granting laws. The reason for this finding may be the fact that when all three branches of government are unified, delegation of policy-making authority to administrative agencies is more likely given the partisan alignment between branches. Members of the Senate may be more willing in such circumstances to delegate to the executive branch compared to granting policy-making authority to the judicial branch as they have no reason to be jealous of executive implementation of their policies. *Cases* is negatively and statistically significant at the $p<0.05$ level. For each additional 1000 cases filed in the federal district courts, Congress passes approximately 0.05 fewer jurisdiction-granting laws – in other words, for every 20,000 additional cases filed, Congress enacts one fewer jurisdiction-granting law. Finally, *Agency trust*

is negatively correlated with *Laws* at the $p<0.05$ level. The presence of *Agency trust* is associated with approximately fourteen fewer jurisdiction-granting laws passed. Consistent with expectations, the Senate is less likely to grant policy-making authority to the district courts in times when administrative agencies provide meaningful and trustworthy alternatives.

For the U.S. House of Representatives *House Distance* failed to reach conventional levels of statistical significance, suggesting no relationship between the relative distance between the House median, the judge median, and the administrative agencies. Members of the House do not participate in the process of staffing either courts or agencies and their lack of participation may explain this result. Without a stake in the make-up of the third and fourth branches, members of the House may not take ideological proximity into consideration when deciding whether to grant policy-making authority to the district courts. *Staff* – a measure of legislative capacity – is positively correlated with the passage of jurisdiction-granting laws at the $p<0.001$ level. For the House, each additional 1000 staff members is associated with approximately one additional jurisdiction-granting law. Legislative capacity for both the House and the Senate proves to be an important indicator of whether Congress will grant policy-making authority to the courts. *Cases* is negatively correlated with the number of jurisdiction-granting laws passed at the $p<0.05$ level in that for every 1000 additional cases filed, there is an associated 0.04 fewer laws. Finally, *Agency trust* is statistically significant at the $p<0.05$ level. When *Agency trust* is active, as expected, the House passes approximately twelve fewer jurisdiction-granting cases per congressional session.

Figure 3 and Figure 4 demonstrate the effect on the dependent variable of select values of *Senate Distance* and *Staff* for the U.S. Senate. When holding all other variables at their mean and when *Agency trust* takes a value of 1 – denoting time periods in which administrative

agencies were perhaps more trusted than courts – the number of jurisdiction-granting laws passed decreases from 42 to 27 laws passed. This is in accordance with expectations: as *Senate Distance* increases from its minimum to its maximum, the number of jurisdiction-granting laws passed should decrease as the ideological distance between the Senate and the district courts is increasing. Again holding all other variables as their mean and assigning a value of 1 to *Agency trust*, Figure 5 shows that as levels of *Staff* increase, the number of jurisdiction-granting laws passed ranges from 21 to 45. In Figure 6, *Agency trust* takes on a value of 0 and *Senate Distance* varies while other variables are held at their means. In this scenario, the number of jurisdiction-laws passed ranges from 28 to 13 as *Senate Distance* approaches its maximum denoting increasing ideological distance between the Senate and the district courts. For *Staff*, the number of laws passed increases from 7 laws to 31 laws, reflecting the idea that additional legislative capacity should translate into more jurisdiction-granting laws.[60]

[Figure 3 and Figure 4 about here]

Conclusion

Congress grants jurisdiction to the federal district courts, through the mechanism of jurisdiction-granting legislation. As discussed above, Congress is more likely to pass such legislation when it has the staffing needed to grant authority to the courts. Congress is less likely to do so under conditions in which the ideological distance between the Senate, the administrative agencies, and the courts increases. These results suggest a number of conclusions regarding the relationship between Congress and the federal district courts.

First, Congress routinely grants jurisdiction to the federal district courts. This suggests an active role for Congress in determining the boundaries of what courts are able to accomplish. The district courts are not self-organizing but rather depend on Congress to make choices

regarding their jurisdiction. Congress frequently makes such choices, granting jurisdiction to the federal district courts in at least 10 laws per congressional session. Coupled with the frequency with which Congress strips jurisdiction from the federal courts, the data collected for this study speak to the consistent attention given to the courts by Congress.[61]

Second, by granting jurisdiction, Congress is taking action that empowers the federal district courts to participate in the policy process. Congress makes choices to establish courts as venues through which certain questions are to be asked and answered, either by establishing courts as primary venues to which individuals and groups originally turn or by creating an oversight role for courts as part of the regulatory process. Recognizing these causes of judicial participation in the policy-making process is important to understanding trends in courts' involvement in the policy process. It has long been recognized that federal courts at all levels are increasingly involved in deciding important policy questions. Compared to earlier periods in United States history, courts today are involved in multiple aspects of Americans' lives and even have taken up issues heretofore considered the sole provenance of the legislative and executive branches.

Known as the "judicialization of politics," [62] this process has resulted in the involvement of the federal courts in the "administration and operation of schools, prisons and jails, mental health centers, public housing authorities, and juvenile detention facilities"[63] and involved courts in numerous policy areas such as environmental law and abortion policy.[64] The present study argues that trends associated with the judicialization of politics might be attributed to decisions made by Congress regarding how courts participate in the policy process. If Congress plays an active role in granting courts jurisdiction, understanding what issues courts consider becomes more complicated than under a model in which courts are solely responsible for setting their

agendas. The results here suggest an antecedent stage to the judicial agenda-setting process in which Congress's choices influence who may sue, when they may sue, and which issues they may raise.

Third, decisions of whether to grant jurisdiction to the courts are part of the legislative process.[65] Congress therefore serves as an important link between the public, their elected representatives, and the courts. When courts participate in the policy process, they are doing so in part because of decisions made by elected officials. Congress has opportunities throughout the legislative process to consider the implications of its decisions regarding the participation of the courts in the policy process. While many scholars bemoan the lack of meaningful checks on the judiciary, the frequency with which Congress grants (and removes) jurisdiction demonstrates that Congress is not powerless when it comes to the federal courts.

A more comprehensive picture of the judicial agenda-setting process emerges when scholars take into consideration Congress's role in establishing the jurisdiction of the federal courts. Judges set their agendas in response to a number of influences, which includes the jurisdiction granted to them by Congress. Without these congressional grants, courts would have no power or authority. With these grants, litigants, acting as individuals or as part of groups, take advantage of legislatively-created opportunities and bring their cases to court with an understanding of what courts are able to do under the law.

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[1] "Gulf of Mexico Oil Spill (2010)," *The New York Times* 2010, *Hornbeck Offshore Services, L.L.C. Et Al. Versus Kenneth Lee "Ken" Salazar Et Al.*, 1 (2010).

[2] Charlie Savage, "Drilling Ban Blocked; U.S. Will Issue New Order," *The New York Times*, June 22, 2010 2010, Bryan Walsh, "Obama's Drilling Moratorium Is Moratoriumed," *Time* 2010.

[3] Ariane de Vogue and Jake Tapper, "Judge Drills Hole in Deepwater Ban; Obama Promises Immediate Appeal," *ABC News* 2010.

[4] Howard Gillman and Cornell W. Clayton, *The Supreme Court in American Politics: New Institutionalist Interpretations* (Lawrence, Kan.: University Press of Kansas, 1999), 1.

[5] Gillman and Clayton, *The Supreme Court in American Politics*, 2.

[6] Mark Graber, "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7, no. Spring (1993), Howard Gillman, "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *The American Political Science Review* 96, no. 3 (2002), ———, "Party Politics and Constitutional Change: The Political Origins of Liberal Judicial Activism," in *The Supreme Court and American Political Development*, ed. Ronald Kahn and Ken I. Kersch (Lawrence, KS: University Press of Kansas, 2006), Paul Frymer, "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935-85," *The American Political Science Review* 97, no. 3 (2003), George I. Lovell, *Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy* (Cambridge: Cambridge University Press, 2003), Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," *Journal of Politics* 69, no. 1 (2007).

[7] Graber, “The Nonmajoritarian Difficulty,” 36-7.

[8] Graber, “The Nonmajoritarian Difficulty,” 37, Lovell, *Legislative Deferrals*, 20.

[9] Graber, “The Nonmajoritarian Difficulty,” Gillman, “How Political Parties Can Use the Courts,” Lovell, *Legislative Deferrals*, Joseph L. Smith, "Congress Opens the Courthouse Doors: Statutory Changes to Judicial Review under the Clean Air Act," *Political Research Quarterly* 58, no. 1 (2005).

[10] Graber, “The Nonmajoritarian Difficulty.”

[11] Gillman, “How Political Parties Can Use the Courts.”

[12] Graber, “The Nonmajoritarian Difficulty,” Lovell, *Legislative Deferrals*.

[13] Charles R. Shipan, "The Legislative Design of Judicial Review: A Formal Analysis," *Journal of Theoretical Politics* 12, no. 3 (2000)., Smith, “Congress Opens the Courthouse Doors.”

[14] Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993), 32.

[15] Crowe, “Forging of Judicial Autonomy,” 7.

[16] Gillman, “How Political Parties Can Use the Courts,” Mark Graber, "Legal, Strategic, or Legal Strategy: Deciding to Decide During the Civil War and Reconstruction," in *The Supreme Court and American Political Development*, ed. Ronald Kahn and Kenneth I. Kersch (Lawrence, KS: University Press of Kansas, 2006).

[17] This measure does not capture a number of equally important court-empowering mechanisms employed by Congress including authorization of class action suits, new causes of legal action, and contingency fees. See, e.g., Sean Farhang, "Public Regulation and Private Lawsuits in the American Separation of Powers System," *American Journal of Political Science* 52, no. 4 (2008), Jeb Barnes, "Bringing the Courts Back In: Interbranch Perspectives on the Role of Courts in American Politics and Policy Making," *Annual Review of Political Science* 10 (2007)..

[18] Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge, UK: Cambridge University Press, 2002), 240.

[19] Segal and Spaeth, *Attitudinal Model Revisited*, 250 emphasis added.

[20] Richard Pacelle, *The Transformation of the Supreme Court's Agenda: From the New Deal to the Reagan Administration* (Boulder, CO.: Westview Press, 1991), 15 emphasis added.

[21] Drew Noble Lanier, *Of Time and Judicial Behavior: United States Supreme Court Agenda-Setting and Decision-Making, 1888-1997* (Selinsgrove [Pa.]: Susquehanna University Press, 2003), 212.

[22] Graber, “The Nonmajoritarian Difficulty,” Shipan, “Legislative Design.”

[23] Graber, “The Nonmajoritarian Difficulty,” 47-8.

[24] Shipan, “Legislative Design,” 277.

[25] Lovell, *Legislative Deferrals.*

[26] Gillman, “How Political Parties Can Use the Courts,” Gillman, “Party Politics and Constitutional Change.”

[27] Lovell, *Legislative Deferrals*; Smith, “Congress Opens the Courthouse Doors.”

[28] Gillman, “How Political Parties Can Use the Courts,” 512.

[29] Initially, delegation could be justified as acceptable as Congress would be delegating to experts with the knowledge and drive to produce sound public policy. However, in the time period after World War II questions arose concerning assumptions motivating earlier visions of delegation, especially that barriers against participation were low and that those wishing to participate in the agency process were able to participate. Administrative agencies were increasingly seen as beholden to the interests of industry and as no longer serving the interest of the public. Decision-making was increasingly regarded as taking place behind closed doors, or behind the aegis of

agency discretion. In the 1960s and 1970s, members of Congress were motivated by a desire to provide more direction to agencies to prevent agencies from straying too far from the stated purpose of legislation, and to control generally the executive branch. Delegation takes place in present times against this historical backdrop of looking to benefit from agency expertise while at the same time mitigating against agency capture. See, e.g., James M. Landis, *The Administrative Process* (New Haven: Yale University Press, 1938), Martin M. Shapiro, *Who Guards the Guardians?: Judicial Control of Administration* (Athens, GA.: University of Georgia Press, 1988), Richard B. Stewart, "The Reformation of American Administrative Law," *Harvard Law Review* 88, no. 8 (1975), R. Shep Melnick, *Between the Lines: Interpreting Welfare Rights* (Washington, D.C.: Brookings Institution, 1994).

[30] *The Federal Crop Insurance Act* 81-268.

[31] *Housing Act of 1954*., 83-560.

[32] *Marine Mammal Protection Act of 1972*, 92-522.

[33] *Special Health Revenue Sharing Act of 1975*.

[34] *Fisheries and Conservation Management*, 99-659.

[35] *Fisheries Act of 1995*, 104-43.

[36] Christopher Z. Mooney, "Measuring U.S. State Legislative Professionalism: An Evaluation of Five Indices," *State & Local Government Review* 26, no. 2 (1994)..

[37] James D. King, "Changes in Professionalism in U. S. State Legislatures," *Legislative Studies Quarterly* 25, no. 2 (2000).

[38] William D. Berry, Michael B. Berkman, and Stuart Schneiderman, "Legislative Professionalism and Incumbent Reelection: The Development of Institutional Boundaries," *The American Political Science Review* 94, no. 4 (2000): 859.

[39] Peter H. Aranson, Ernest Gellhorn, and Glen O. Robinson, "A Theory of Legislative Delegation," *Cornell Law Review* 68 (1982): 21, David Epstein and Sharyn O'Halloran, "Administrative Procedures, Information, and Agency Discretion," *American Journal of Political Science* 38, no. 3 (1994): 698, Kathleen Bawn, "Political Control Versus Expertise: Congressional Choices About Administrative Procedures," *The American Political Science Review* 89, no. 1 (1995): 62, David Epstein and Sharyn O'Halloran, *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*, Political Economy of Institutions and Decisions. (Cambridge, U.K. ; New York: Cambridge University Press, 1999), 48.

[40] John D. Huber, Charles R. Shipan, and Madelaine Pfahler, "Legislatures and Statutory Control of Bureaucracy," *American Journal of Political Science* 45, no. 2 (2001), Matthew Potoski, "Designing Bureaucratic Responsiveness: Administrative Procedures and Agency Choice in State Environmental Policy," *State Politics and Policy Quarterly* 2, no. 1 (2002). Despite possessing legislative capacity, Congress may still decide to include some safeguards in its delegation to administrative agencies.

[41] Morris P. Fiorina, "Legislative Choice of Regulatory Forms: Legal Process or Administrative Process?," *Public Choice* 39, no. 1 (1982), ———, "Legislator Uncertainty, Legislative Control, and the Delegation of Legislative Power," *Journal of Law, Economics, & Organization* 2, no. 1 (1986).

[42] Fiorina calls the "dichotomization of the administrative and legal systems an … over-simplification" one that glosses over processes in which agencies participate in legal proceedings and courts are always present "in the background" with respect to agency enforcement of statutes in Fiorina, "Legislator Uncertainty", 36.

[43] Epstein and O'Halloran, *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*, 77-81, 129-38.

[44] Shipan, "Legislative Design."

[45] Berry et al., "Legislative Professionalism and Incumbent Reelection," 859

[46] Peverill Squire, "Legislative Professionalization and Membership Diversity in State Legislatures," *Legislative Studies Quarterly* 17, no. 1 (1992): 71.

[47] Mooney," Measuring U.S. State Legislative Professionalism," 73.

[48] Susan B. Carter et al., *Historical Statistics of the United States Millennial Edition Online* (New York: Cambridge University Press, 2006).

[49] United States Congress, "Congressional Directory," ed. Government Printing Office (Washington, D.C.: U.S. Government Printing Office, 2009), 534-9.

[50]Dawn M. Chutkow, "Jurisdiction Stripping: Litigation, Ideology, and Congressional Control of the Courts," *The Journal of Politics* 70, no. 04 (2008): 1057.

[51] These data were downloaded from http://www.voteview.com/index.asp, last accessed August 1, 2010.

[52] Micheal W. Giles, Virginia A. Hettinger, and Todd Peppers, "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas," *Political Research Quarterly* 54, no. 3 (2001).

[53] Giles et al., "Picking Federal Judges," 630-1.

[54] C. K. Rowland and Robert A. Carp, *Politics and Judgment in Federal District Courts* (Lawrence: University Press of Kansas, 1996), 8.

[55] Epstein and O'Halloran, "Divided Government," 382-3.

[56] John M. De Figueiredo and Emerson H. Tiller, "Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion of the Federal Judiciary," *Journal of Law and Economics* 39, no. 2 (1996).

[57] Landis, *Administrative Process*, 30-40, 124-6, Shapiro *Who Guards?*

[58] Landis, *Administrative Process*, 26.

[59] John Fox, *Applied Regression Analysis, Linear Models, and Related Models* (Thousand Oaks, CA: Sage Publications, Inc., 1997), 381, Jeffrey M. Wooldridge, *Introductory Econometrics: A Modern Approach*, 2nd ed. (Mason, OH: Thomson Learning, 2003).

[60] In all these calculations, *House-Senate Unified* and *Congress-President Unified* take on a value of 0.

[61] See, e.g., Chutkow, "Jurisdiction-Stripping."

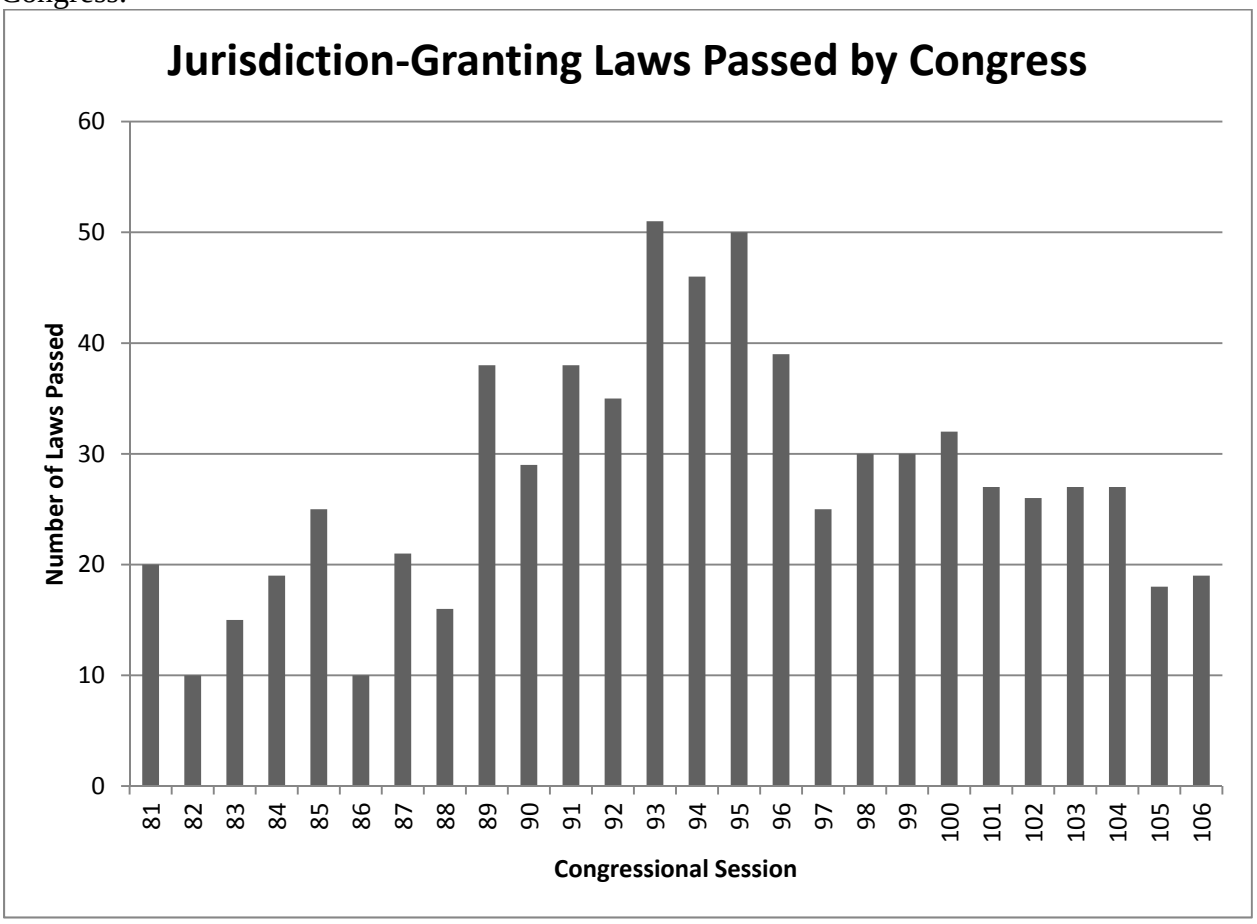
[62] Torbjorn Vallinder, "When the Courts Go Marching In," in *The Global Expansion of Judicial Power*, ed. C. Neal Tate and Torbjorn Vallinder (New York: New York University Press, 1995), Cornell W. Clayton, "The Supply and Demand Sides of Judicial Policy-Making (or, Why Be So Positive About the Judicialization of Politics?)," *Law & Contemporary Problems* 65, no. 3 (2002), John Ferejohn, "Judicializing Politics, Politicizing Law," *Law & Contemporary Problems* 65, no. 41 (2002).

[63] William A. Taggart, "Redefining the Power of the Federal Judiciary: The Impact of Court-Ordered Prison Reform on State Expenditures for Corrections," *Law & Society Review* 23, no. 2 (1989): 242.

[64] Rowland and Carp, *Politics and Judgment*, 6-10.

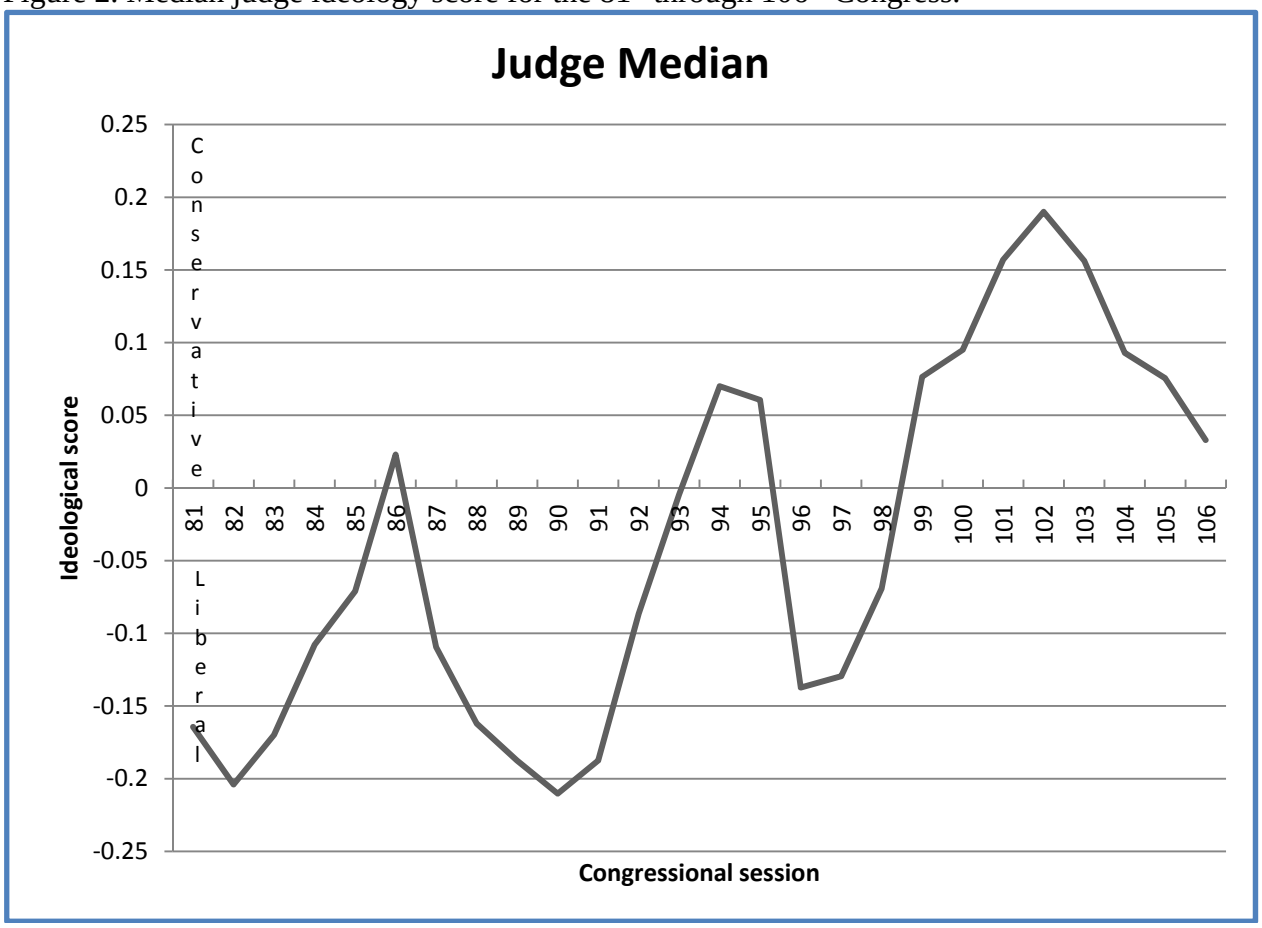
[65] Lovell, *Legislative Deferrals*; Smith, "Congress Opens the Courthouse Doors."

Figure 1. Number of Jurisdiction-Granting Laws Passed by the U.S. Congress, 81st – 106th Congress.



Source: Data on file with author.

Figure 2. Median judge ideology score for the 81st through 106th Congress.



Note: Negative scores correspond with liberalism, positive scores with conservatism. Source:

Data on file with the author.

Table 1. Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Laws	29	11	10	51
Senate Distance	0.31	0.17	0.01	0.53
House Distance	0.31	0.18	0.00075	0.646
Staff (per 1000)	31.25	6.81	22	40
Days	601.5	73.65	417	704
Cases (per 1000)	287	167.6	108.043	528.8
Total Laws	652	153	333	992
House-Senate Unified	--	--	0	1
Congress-President Unified	--	--	0	1
Agency trust	--	--	0	1

Table 2. U.S. Senate: Number of Jurisdiction- Granting Laws Passed, 81st – 106th Congress

	United States Senate
Senate Distance	-29.7896* (13.1683)
Staff (per 1000)	1.375*** (0.3415)
Days	0.0412 (0.0282)
House-Senate Unified	0.6093 (3.8301)
Congress-President Unified	-7.012 (3.4529)
Cases (per 1000)	-0.0459** (0.0135)
Total Laws	0.0163 (0.0116)
Agency trust	-13.9828* (5.4011)

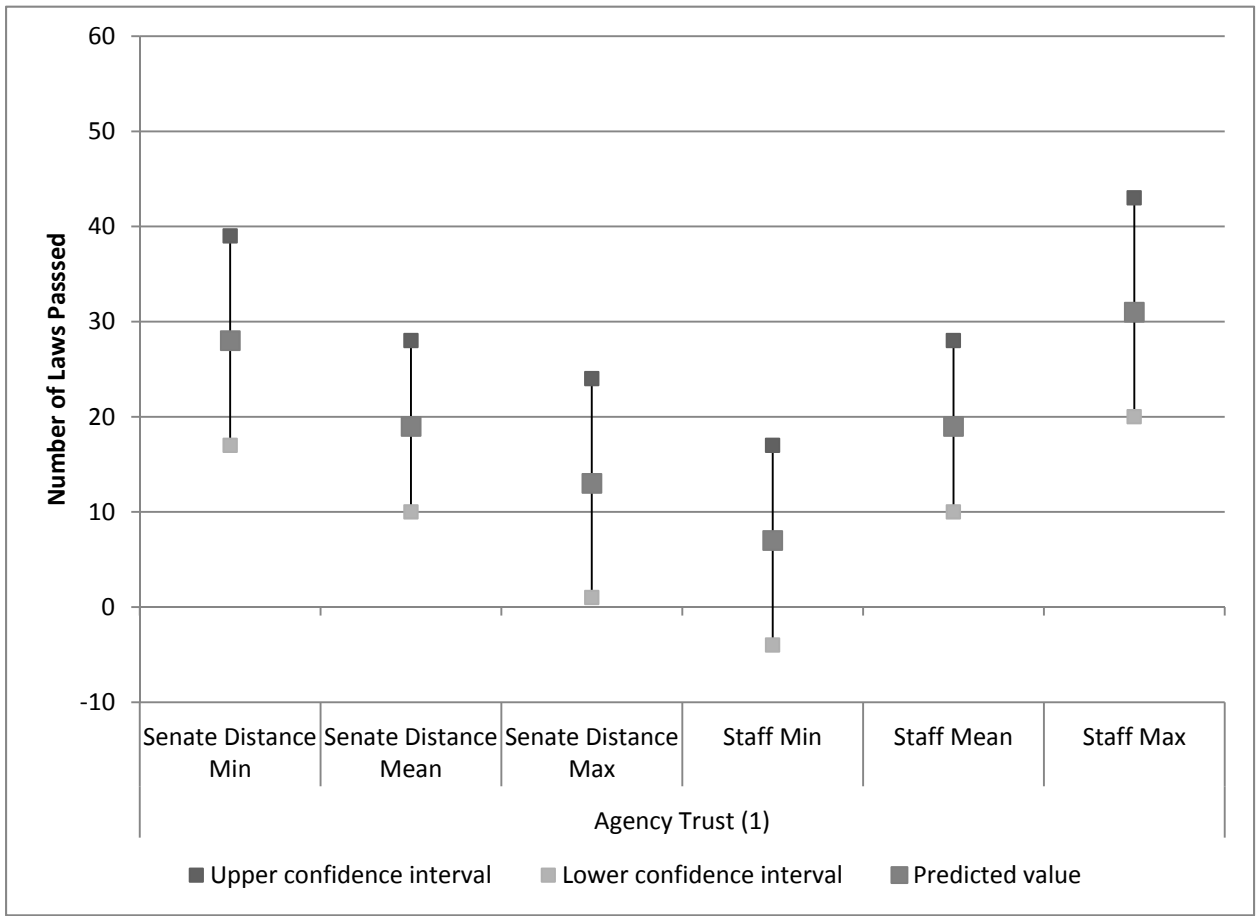
Notes: p<0.05*, p<0.01**, p<0.001***. Cell entries are OLS coefficients with standard errors in parenthesis. Durbin-Watson d-statistic (9, 26) = 1.924108.

Table 3. U.S. House: Number of Jurisdiction-Granting Laws Passed, 81st – 106 Congress

	U.S. House of Representatives
House Distance	-20.3048 (12.04)
Staff (per 1000)	1.42*** (0.3588
Days	0.0276 (0.0283)
House-Senate Unified	-0.31101 (4.2011)
Congress-President Unified	-5.0492 (3.3467)
Cases (per 1000)	-0.0446** (0.0144)
Total Laws	0.0131 (0.01223)
Agency trust	-11.9562* (5.4937)

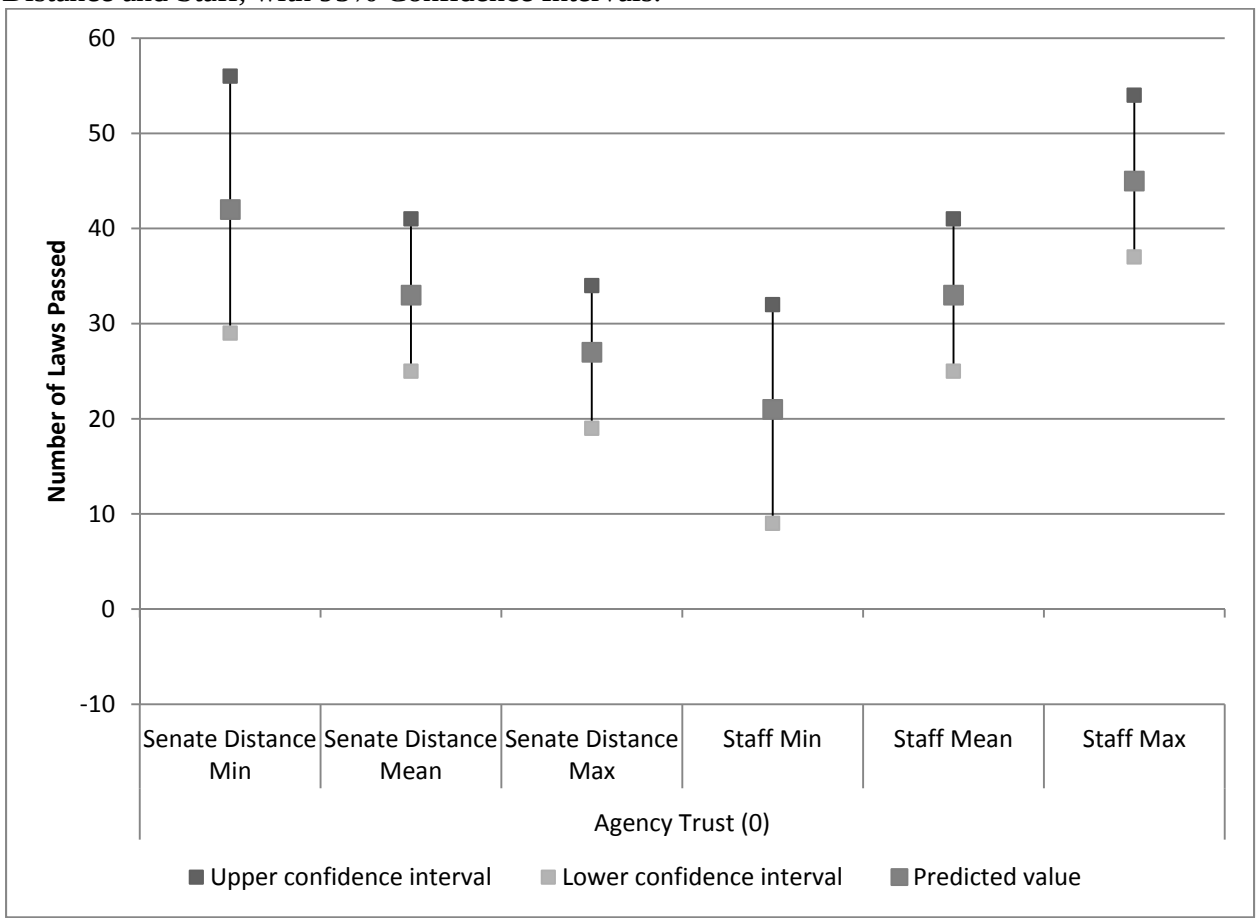
Notes: p<0.05*, p<0.01**, p<0.001***. Cell entries are OLS coefficients with standard errors in parenthesis. Durbin-Watson d-statistic (9, 26) = 1.950534

Figure 3. U.S. Senate: Number of Jurisdiction-Laws Passed for Select Values of Senate Distance and Staff with 95% Confidence Intervals.



Notes: *Agency trust* takes on a value 1, all other variables held at their mean.

Figure 4. U.S. Senate: Number of Jurisdiction-Granting Laws Passed for Select Values of Senate Distance and Staff, with 95% Confidence Intervals.



Notes: *Agency trust* takes on a value of 0, all other variables held at their mean.