

The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection

Adam Bonica *Stanford University*

Maya Sen *Harvard University*

Abstract

Using a data set capturing the ideological positioning of nearly half a million US judges and lawyers, we present evidence showing how ideology affects the selection of judges across federal and state judiciaries. We document that the higher the court, the more it deviates ideologically from the ideology of attorneys, which suggests that ideology plays a strong role in judicial selection. We also show that ideology plays stronger roles in jurisdictions where judges are selected via political appointments or partisan elections. Our findings suggest that ideology is an important component of judicial selection primarily when using ideology leads to expected benefits to politicians, when the jurisdiction's selection process allows ideology to be used, and when it concerns the most important courts. This study is the first to provide a direct ideological comparison across judicial tiers and between judges and lawyers and to explain how and why American courts become politicized.

1. Introduction

The implications of a politicized judiciary in a polarized era of American politics have been a matter of considerable interest. Researchers find that the courts take on an expanded policy-making role during periods of intense legislative gridlock (McNollgast 1995; de Figueiredo, Jacobi, and Weingast 2008; Bailey and Maltzman 2011), and recent years have seen US courts determine state and national policy on some of the most politically charged controversies of the day, includ-

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ing affirmative action, health-care reform, and same-sex marriage. The business of selecting judges has also become ideologically contentious at both the state and federal levels. The American Bar Association (ABA), for example, has long maintained that judges should be chosen strictly on merit-oriented criteria, while many on the right have challenged whether the ABA is truly nonpartisan and emphasize the need to correct for political imbalances in the legal community. These battles have gone all the way to the White House. In 2001, for example, the administration of George W. Bush announced that it would no longer rely on what it perceived to be liberally biased ABA judicial ratings, while Democrats sided with the ABA and accused the White House of interjecting politics into judicial selection. More recently, the administration of Donald Trump has followed the example set by the Bush administration in declaring that the ABA would not be consulted in the selection of federal judges.

However, despite the possible role of politics in the selection of judges, our knowledge of how and why American courts develop ideological leanings or become politicized is limited. Indeed, although important scholarship has looked closely at ideology, particularly at the US Supreme Court (Martin and Quinn 2002; Bailey 2007; Clark and Lauderdale 2010; Lauderdale and Clark 2014) and other federal courts (Epstein et al. 2007), and its strong relationship with decision making (for example, Epstein, Landes, and Posner 2013), studying ideologically based judicial selection across the tiers of both federal and state courts has proved challenging from an empirical standpoint. In addition, although it is clear that ideology is important in the selection of judges, it has been difficult to develop a consistent theory that also takes into account different judicial selection systems and variation in the ideological composition of the candidate pool. Nonetheless, as the examples of same-sex marriage and health-care reform show, understanding how ideology comes to play a role in the selection of judges is of fundamental importance and provides the necessary context for the more well-studied relationship between ideology and judicial decision making (see, for example, Epstein, Landes, and Posner 2013; Sunstein et al. 2006).

In this paper, we develop both a theory and the first comprehensive exploration of how ideology influences the selection of judges in the United States. We gain traction on the question by starting with the important fact that all judges in the United States are drawn from the legal community—that is, attorneys. Our theory of ideologically based judicial selection then posits that the ideological composition of the judiciary is a function of, among other things, two key inputs: the ideological distribution of attorneys who serve as the pool from which judges are drawn and political forces (for example, politicians) attempting to shape the judiciary. Left to a judicial selection process devoid of ideological considerations, America's courts should, after controlling for relevant demographic characteristics, closely resemble the population of attorneys in the jurisdiction from which they are drawn. However, as ideology becomes an increasingly important consideration in judicial selection, the ideological profile of the courts will deviate from that of attorneys and start to look more like that of the relevant political actors.

We use this intuition to explore how, why, and to what extent political actors draw on ideology in judicial selection across jurisdictions. We do so by linking two sources of data. The first is a data set that includes nearly all of the nation's attorneys and is gathered from the Martindale-Hubbell legal directory. The second is the Database on Ideology, Money in Politics, and Elections (DIME) (Bonica 2016). Combined, these data allow us to identify the campaign contributions—and corresponding ideological common-space campaign finance scores—for 395,234 US lawyers and judges. These data represent the first comprehensive, consistently measured set of ideological estimates for judges across the judicial hierarchy (Bonica and Sen 2016). The data allow us not only to compare the ideologies of various tiers of the American judicial system but also to compare judges to attorneys at the state and national levels.

We use these data to make several contributions. First, as an empirical matter, we show that lawyers are more liberal than the US population but that judges as a whole are more conservative than attorneys. This is particularly likely to be true for judges who sit in higher, more politically important courts—such as state high courts and the US courts of appeals—and among judges who are appointed via gubernatorial or legislative appointments. Moreover, we find that some states show signs of politicization while others do not. We explain this by showing that, after controlling for attorney ideology, judicial ideology is highly sensitive to the preferences of politicians when judges are selected via gubernatorial appointments or partisan elections but insensitive to the preferences of politicians when selected via merit commissions or nonpartisan elections. This in turn suggests that not only do political actors (and voters) rely on ideology in the selection of judges onto courts but that they do so in a manner consistent with our theory of strategic selection. In particular, parties move to increase the use of ideology in judicial selection (that is, to politicize) when there exist expected ideological benefits to their party, when the jurisdiction's selection process affords them the opportunity to do so, and when it concerns the most important courts.

2. The Role of Ideology in Judicial Selection

We start the inquiry with a broad question: to what extent, if at all, does ideology matter in the selection of judges? Many thinkers and lawyers' organizations have expressed the belief that, while Congress and other elected bodies are and should be political in nature, the judiciary is distinctive. For example, the ABA rates candidates to the federal bench not according to their ideology or likely rulings but "strictly on professional qualifications: integrity, professional competence and judicial temperament" (American Bar Association 2009, p. 1). The claim that judges should be chosen on the basis of qualifications, as opposed to ideology or political beliefs, has also been made by numerous legal commentators and political actors (for example, Carter 1994).¹

¹ In addition, judicial candidates routinely refuse to answer questions pertaining to political or policy positions, which supports the notion that selections should be made on the basis of qualifi-

Despite the widely held view that judges should be selected on the basis of qualifications, studies have shown that ideology strongly predicts how judges decide cases. The literature here is long-standing, dating back to seminal work such as Pritchett (1948). More recent studies on federal courts show that ideology is strongly predictive of decision making on the US Supreme Court (for example, Segal and Spaeth 2002), the US courts of appeals (for example, Sunstein et al. 2006; Epstein, Landes, and Posner 2013), and the US district courts (for example, Epstein, Landes, and Posner 2013). At the state level, other studies have shown that ideology (measured in various ways) is predictive of how judges rule (for example, Brace, Langer, and Hall 2000).²

Given the widely accepted belief that judges can have a significant impact on policy implementation and that ideology is an important component of judicial decision making, political actors—and their respective parties—have strong incentives to seat judges who share their preferences (Ferejohn 2002; Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000). However, there are two complications that serve to constrain political actors from seating judges who reflect their preferences perfectly. The first is that nearly all judges are former lawyers. The practice is historical, dating back to Anglo-American common law, and the United States has never deviated from this norm. Today, all state supreme court justices are former lawyers, and 48 states explicitly require that their high-court justices be former lawyers. All judges currently serving on the federal courts are former lawyers, as are all nine justices sitting on the US Supreme Court. The result, some argue, is that the judiciary has essentially evolved to reflect the interests of the legal profession (Barton 2011). And the legal profession, in turn, exercises influence over the composition of the judiciary across many jurisdictions by way of merit-oriented commissions (Fitzpatrick 2009), bar association qualifications ratings (Stratmann and Garner 2004; Sen 2014), and judicial codes of conduct. Indeed, selecting the bench from a narrowly defined population, comprising just .4 percent of the voting-age population, has broad implications for the politics of the judiciary that have yet to be fully explored.

The bar's influential role is further complicated by the fact that lawyers appear to have their own ideological leanings and policy priorities. For example, McGinnis, Schwartz, and Tisdell (2004) examine campaign contributions made by law professors at elite institutions and find that they overwhelmingly tend to be made to extremely liberal political actors, a finding consistent with Bonica et al. (2017). More broadly, Bonica, Chilton, and Sen (2016) use data from

cations as opposed to ideology or political beliefs. This is a point that has been confirmed—and critiqued—by a number of legal scholars (see, for example, Kagan 1995; Post and Siegel 2006).

² This includes studies on the predictive value of ideology in the context of incumbent challenges (Bonneau and Hall 2003), the constitutional protections for criminal defendants (Howard, Graves, and Flowers 2006), the connection between retention rules and the ideological direction of justices' votes (Savchak and Barghothi 2007), the influence of attorneys' contributions on judges' voting patterns in Wisconsin and Georgia (Williams and Ditslear 2007; Cann 2007), and courts' adoption of rules on expert testimony (Kritzer and Beckstrom 2007). In sum, the political leanings of judges are highly important in determining the nature of judicial rulings.

DIME and the Martindale-Hubbell legal directory and find evidence that lawyers are more liberal than other similarly educated professionals, although just how liberal varies across jurisdiction, educational background, and practice area. However, although several studies examine the leanings of lawyers, what these ideological leanings mean for the ideology of the judiciary has received far less attention (for important exceptions, see Fitzpatrick 2009; Barton 2011).

The second constraint is that political actors do not have an unfettered ability to select the judges they want. Judicial selection in the United States is a mix of systems—some appointment based (such as the federal courts), others election based, and others reliant on merit commissions composed of lawyers who make recommendations. Studies have shown that how judges are selected influences the judges produced (for a good overview, see Choi, Gulati, and Posner 2010). For example, one focus has been on whether judges who are appointed are more independent than judges who are elected. Several studies conclude that they are (Cann 2007; Shepherd 2009; La Porta et al. 2004), but one prominent study finds that they may not be (Choi, Gulati, and Posner 2010). With regard to jurisdictions with retention elections, at least one study, Canes-Wrone, Clark, and Park (2012), finds that they lessen judicial independence.

Studies have also linked variation in formal judicial selection mechanisms with differences in quality, but these findings are mixed. Some studies document that elected judges are more productive than appointed judges (Choi, Gulati, and Posner 2010), while others find no relationship (Landes and Posner 1980). In a long-term analysis, Berkowitz and Clay (2006) show that states settled initially by civil-law countries are more likely to have partisan elections, which result in lower-quality judges. Furthermore, in work examining public perceptions of judges, Gibson (2012) suggests that citizens have comparably strong feelings of legitimacy toward judges who are elected (and therefore must campaign) and judges who are appointed.³

Although no study provides a systematic investigation, previous studies have also provided evidence that formal selection mechanisms influence the ultimate ideology of judges. These papers have mostly focused on specific policy issues. For example, Canes-Wrone, Clark, and Kelly (2014) find that nonpartisan elections lead justices to pander to high-salience issues such as death-penalty cases, while Gordon and Huber (2007) find that judges reelected via partisan elections issue sentences that are more punitive than judges facing retention via merit commissions. Helland and Tabarrok (2002) and Tabarrok and Helland (1999) find that damages are larger in states with elections versus appointments. Hansen (1999) finds that there is less litigation in states with elections versus appointments, consistent with the argument of increased independence in jurisdictions where judges are appointed. Perhaps most broadly, Choi, Gulati, and Posner (2010) do not find any clear differences in terms of overall performance or in-

³ For consideration of a number of other normatively important issues—for example, how engaged voters are in judicial elections or how susceptible elected judges are to special interests—see Bonneau and Hall (2009).

dependence between elected and appointed judges, but they do find that elected judges focus their efforts on productivity whereas appointed judges issue fewer but higher-quality opinions. The authors interpret this as evidence that elected judges behave more like politicians while appointed judges behave more like professionals seeking to enhance their reputation in the legal community. Taken together, these papers suggest that different formal selection processes not only create different incentives for judicial behavior but could also result in judges with different policy (or ideological) proclivities and professional interests.

Bringing the two threads together, we consider another, mostly unexplored issue, which is that different selection mechanisms afford the legal profession more (or less) input in judicial selection, therefore affording the bar varying degrees of ideological influence. This is particularly likely in jurisdictions that rely on merit commissions. For example, as Fitzpatrick (2009, p. 679) notes, “[M]erit systems transfer power to the bar through the composition of the commission that selects the nominees from which the governor must make the appointment.” In these states, political actors are especially constrained with regard to the bar, which wields substantial discretion over the potential pool of nominees for a judicial position. Even so, with a few exceptions (most notably Fitzpatrick [2009], which looks at two merit-commission states, Tennessee and Missouri), no study has addressed both the ideology of the bar and the bar’s ideological influence via the different formal selection systems.

3. A Framework for the Role of Ideology in Judicial Selection

In this section, we present our theoretical framework, which incorporates these two important constraints on the preferences of political actors. We characterize the incentives faced by politicians to interject ideology into judicial selection as a function of the ideology of the pertinent political actors and the ideology of attorneys in that jurisdiction. We use the framework to generate several testable predictions regarding efforts to interject ideology into judicial selection and the eventual ideological distribution of judges in a given jurisdiction. Moreover, formal judicial selection mechanisms are not exogenous to these forces; thus, we discuss not only how our theory may predict changes in judicial ideology across selection mechanisms (elections, appointments, and so on) but also how our theory might predict attempts at judicial reform.

Ideology of Political Actors. We start with the proposition that political actors have ideological preferences that vary from jurisdiction to jurisdiction (Poole and Rosenthal 1985). Given the political importance of the courts in furthering and upholding policy, we assume that political actors want to seat judges who reflect these preferences (Ferejohn 2002). Thus, political actors in Massachusetts (where the average politician is liberal) will prefer more liberal judges who are more likely to uphold liberal laws, while political actors in Kansas (where the average politician is conservative) will prefer more conservative judges who will strike down more liberal laws.

Ideology of Lawyers. As judges are drawn exclusively from the nation's pool of lawyers, the ideological distributions of lawyers also inform the eventual ideological distributions of judges. That is, political actors are constrained in choosing judges from the pool of people who currently are, or who formerly were, attorneys. Moreover, research (McGinnis, Schwartz, and Tisdell 2004; Bonica, Chilton, and Sen 2016) suggests that lawyers as a group lean to the left even conditional on education, which in turn establishes an ideological mismatch between the bar and political actors in some jurisdictions.⁴ For example, the average political actor in Kansas, who is likely to be conservative, may be frustrated by the fact that lawyers in Kansas are more left leaning, which makes it challenging to find suitable conservative candidates for judicial office. In such situations, the average politician would be better off with an increased reliance on ideology in judicial selection. On the other hand, the average political actor in Massachusetts, who is likely to be liberal, will likely be satisfied with the fact that lawyers in Massachusetts are left leaning, since choosing from this pool more or less randomly would result in a judiciary that is ideologically compatible.⁵

3.1. *How Ideology Can Factor into Judicial Selection*

How do the ideological interests of political actors and lawyers shape the resulting judiciary? To explain, we consider the role that ideology plays in how judges are selected.⁶ (We address formal selection mechanisms—such as elections, appointments, merit commissions, and so on—below.) One possibility, which we call ideologically neutral (or random) selection, involves judges being selected on the basis of nonideological factors. Indeed, if judges are somehow selected on a basis unrelated (or orthogonal) to ideology, or are randomly selected from the population of attorneys, we would expect the judiciary to resemble the overall ideological distribution of lawyers in that jurisdiction. In other words, if judges are selected (elected, appointed, or some combination) for reasons uncorrelated with ideology, then the overall population of judges should tilt to the left, resembling the ideological leanings of lawyers.⁷

Note that this kind of ideologically neutral selection is distinct from selecting judges to achieve a judiciary that has partisan balance or is broadly representative of the electorate (for example, one that is moderate or unimodal in its dis-

⁴ Studies on the bar's leftward ideological leanings examine the legal profession in contemporary periods. Lawyers in past eras were, however, more conservative. This was especially notable during the New Deal era, during which the legal profession (both the bench and the bar) opposed Franklin Roosevelt's progressive agenda.

⁵ In a few other states, for example, Connecticut (as we show later), attorneys might be more ideologically moderate than politicians. There the average political actor (who is more liberal than the average attorney) will want to use more ideological selection to move the judiciary leftward. This would be an instance in which interjecting ideology would make conservatives worse off, since the use of ideology would have the effect of making the judiciary more liberal (not more conservative).

⁶ We focus primarily on ideology as opposed to partisanship; however, the two closely track one another in our data and more broadly in the American political landscape. Indeed, a comparison of our measures and data on partisanship shows a close relationship.

⁷ It could be the case that judges are selected on the basis of attributes that correlate closely with ideology; we find no evidence of this, however.

tribution). For example, the selection process for several independent agencies, such as the Federal Election Commission, requires that an equal number of seats be filled by Republicans and Democrats. This results in bipartisan outcomes that may be more nationally representative and more likely to engender greater public trust and perceptions of legitimacy. Even so, such balance is achieved by directly incorporating ideology (or partisanship) into the selection process. In other words, this kind of process—in which political actors have certain goals in mind in terms of ideological balance—necessarily involves selecting on the basis of ideology, which distinguishes it from what we refer to here as ideologically neutral selection.

Indeed, the fact that judges do not resemble the ideological distribution of lawyers suggests a more likely possibility, which is that judges are subject to ideologically based judicial selection. That is, ideology is an active consideration in evaluating which candidates are named to the judicial bench. The observable implication is that if judges are selected on the basis of ideology, then the overall ideological distribution of judges will not resemble the overall leftward-leaning distribution of lawyers. The distribution could more closely resemble a bimodal distribution, with some judges being ideologically conservative and others liberal, or a unimodal distribution, with most judges being ideologically moderate. Both would suggest that ideology is somehow playing a role in judicial selection.

To see these possibilities more crisply, consider a hypothetical configuration of preferences across attorneys and political parties, shown in Figure 1. The parties' ideologies follow a bimodal distribution, with Republicans on the right and Democrats on the left. In terms of the bar's preferences, we consider as a starting prior belief that lawyers are to the left of the general population (supported by studies such as McGinnis, Schwartz, and Tisdell [2004], Bonica, Chilton, and Sen [2016], and by our analyses here). Under a scenario in which judges are selected for reasons unrelated to ideology, they would be drawn roughly randomly from the population of attorneys shown in Figure 1. In such a scenario, the liberal skew in the preferences of attorneys would result in a judiciary that more closely resembles the preferences of Democrats. That is, any extant liberal bent in the attorney pool serves to advantage Democrats and disadvantage Republicans. As we show below, this captures what we see across many jurisdictions.

This, in turn, is likely to shape the parties' incentives and strategies regarding judicial selection. To see this, we first assume that a party most prefers a judiciary with an ideological distribution identical to its own. Second, we assume that the degree to which ideology can be interjected into judicial selection, ω , can vary. Under an ideologically neutral judicial selection system, $\omega = 0$, and judges are sampled randomly from the distribution of attorneys, which results in the ideological distribution of judges mirroring the distribution of lawyers. Under the scenario of complete ideologically based judicial selection, $\omega = 1$, the distribution of judges mirrors the distribution of the relevant political actors, while a scenario in which $0 < \omega < 1$ suggests some intermediate level of ideological selection.⁸

⁸ We take ω to be distinct from the formal selection mechanism in place (for example, elections, appointments, and so on), although the nature of the formal selection mechanism informs the value that ω can take.

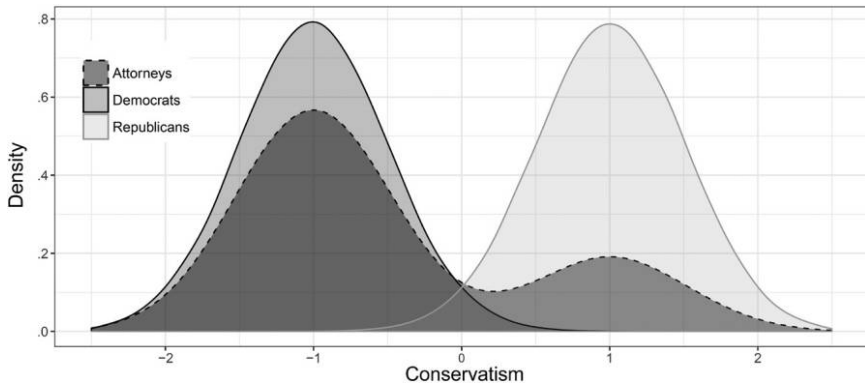


Figure 1. Hypothetical ideological distributions of attorneys and politicians

Figure 2 shows three representations of the distribution of judges at different levels of politicization ($\omega = \{0, .5, 1\}$), assuming the same configuration of politicians' and attorneys' ideologies as in Figure 1. As evidenced by the higher overlap at $\omega = 0$ between Democrats and judges, an ideologically neutral selection process yields better outcomes for Democrats than for Republicans. That is, Democrats are better off when ideology is kept entirely out of the judicial selection process and judges are sampled randomly (or for reasons orthogonal to ideology) from attorneys. Republicans, on the other hand, have incentives to interject ideology into the selection of judges: they are better off with some degree of politicization ($\omega = .5$) but are best off with complete politicization ($\omega = 1$). In this example, Republicans are best off when they can select judges as much as possible on the basis of ideology.

The observed distributions of lawyers and political actors roughly correspond to the stylized distributions in Figures 1 and 2.⁹ This illustrates the incentives for the introduction of ideology in judicial selection: insofar as attorneys are more liberal than politicians, efforts to move toward ideologically based judicial selection will result in a rightward shift in the distribution of judges. In other words, with a liberal bar and comparatively more conservative politicians, increased reliance on ideology in judicial selection will result in a rightward shift in the judiciary. As the use of ideology in judicial selection becomes more pronounced, the distribution of judges will look less like the underlying population of attorneys and more like the population of politicians.

3.2. Judicial Selection Mechanisms

As noted above, jurisdictions in the United States employ a variety of formal judicial selection mechanisms, with some allotting more control to politicians.

⁹ As we later show, in a handful of states the average attorney is to the left of the average Democratic politician, which creates incentives for both parties to move toward ideologically based judicial selection.

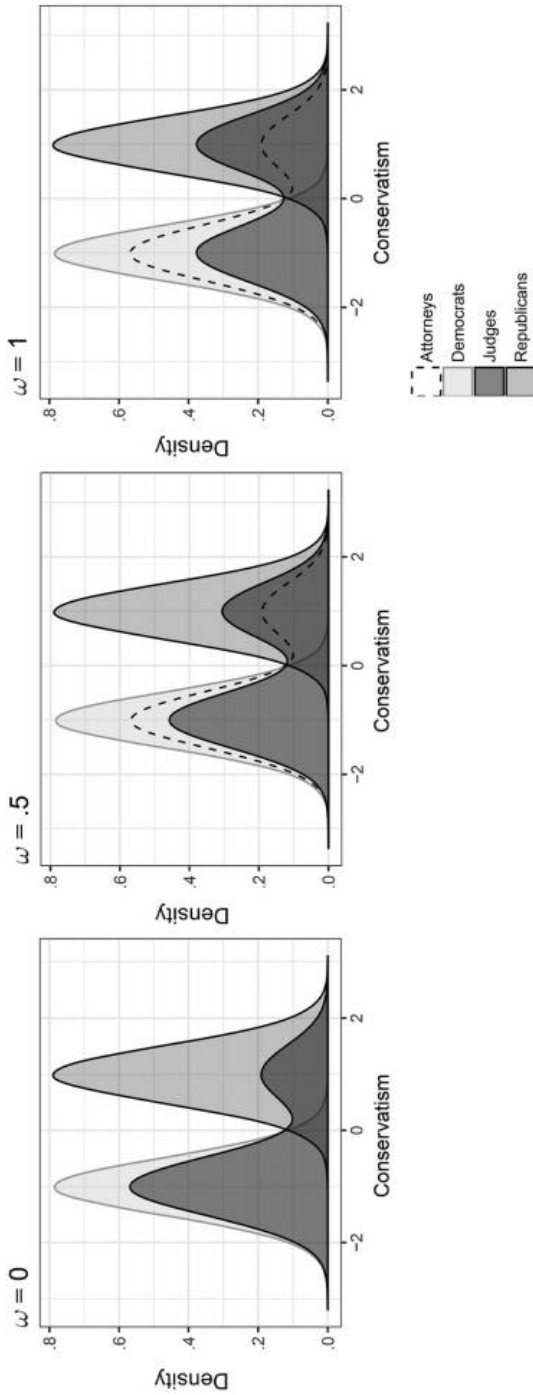


Figure 2. Distributions of judges

The federal system and some states rely on appointments, in which the executive names a candidate and the candidate is then confirmed by a legislative body. However, a large number of states rely on merit commissions, which tend to be composed of lawyers who review judicial candidates and recommend a slate to the executive; the executive can then choose from the slate. Other states rely on elections for their judges, some of which are partisan while others are nonpartisan.

We expect that these judicial selection mechanisms have different implications for Republicans and Democrats and that they serve to differentially constrain the role of ideology in the selection of judges. Gubernatorial and legislative appointment systems—which place political actors at the center of the selection process—afford the most opportunities to interject ideology into the selection of judges. On the other side of the spectrum, merit appointments, which rely on bipartisan or nonpartisan commissions composed of members of the state or local bar (Fitzpatrick 2009), remove political actors from the forefront of judicial selection and instead put more power in the hands of the bar and legal profession. Likewise, nonpartisan elections, which are not only devoid of ideological signals but also rely on electoral processes, also afford fewer opportunities for political actors to interject ideology into the selection of judges.

For this reason, the overall ideological landscape of the judiciary—and the degree to which ideology plays a role in the selection of judges—will vary not just according to the ideologies of attorneys and of political actors but also in relation to the existing mechanisms of judicial selection. First, Republicans, who might stand to benefit from increased politicization (in most circumstances, assuming a left-leaning professional bar), benefit from appointments and partisan election systems; Democrats, who stand to lose from increased politicization (again, assuming a left-leaning bar), benefit from merit-oriented and nonpartisan elections. This informs our analysis below, where we examine how ideology shapes judiciaries across jurisdictions using appointments, elections, and merit-oriented systems.

These incentives also inform how the parties might be expected to approach or initiate attempts at judicial reform. Given a left-leaning bar, we would expect Republicans to agitate for selection systems that allow more ideological influence, including appointments and partisan elections; we would expect Democrats to oppose these and to support merit-oriented criteria and merit commissions.

3.3. *Supply-Side Constraints and Strategic Ideologically Based Judicial Selection*

We have so far focused on how the ideological landscape of the bar and of political actors influences the demand for certain kinds of judges, but our framework also has implications for how Republicans and Democrats approach the supply of judicial candidates. If the overall ideological distribution of lawyers skews leftward, then conservatives may have to exert more effort in the selection and recruitment of (conservative) judges than their liberal counterparts. We refer

to this as strategic ideologically based judicial selection because of the fact that it incorporates and responds to relative ideological scarcity in judicial candidates.

These considerations lead to two observable implications. The first is that if there is indeed a smaller pool of right-leaning lawyers from which conservative elites can draw potential judicial candidates, then we would expect that these conservative efforts would be strategically directed toward courts higher in the judicial hierarchy—where ideology matters most for decision making (Sunstein et al. 2006). Note that this implies that the effects of ideologically based judicial selection will be felt first by the upper tiers of the judiciary and will extend down the judicial hierarchy only as resources allow. That is, the distributional shifts will be greatest at the higher courts and diminish moving down the judicial hierarchy.¹⁰

The second implication is that, conditional on pedigree and quality, conservatives should be more likely to become judges, especially among graduates of the most prestigious law schools. In other words, ideologically based judicial selection improves the prospects of joining the bench for attorneys in areas along the ideological spectrum that are underpopulated relative to politicians—that is, on the conservative end of the spectrum. This suggests that ideologically based judicial selection could translate into a career advantage for attorneys with political views that are underrepresented among members of the bar who aspire to judicial careers.

4. Data on Lawyers and Campaign Contributions

We conduct our empirical analysis using two sources of data: DIME and the Martindale-Hubbell legal directory. Robustness checks and details of record linkage are provided in Bonica and Sen (2016) and in the online appendix. The online appendix also includes additional findings on the nature of possible selection bias, the contribution patterns of lawyers by location and conditional on party, and the contributions and partisanship of judges from different tiers of state and federal judiciaries.

4.1. Database on Ideology, Money in Politics, and Elections

Our first step was to collect data on the ideologies of lawyers and judges, which is necessary to address the theoretical questions above. For this we turn to DIME, which includes ideological scores (also known as common-space campaign finance scores) for all individuals and organizations making campaign contributions to state and federal candidates from 1979 to 2014.

The primary advantage of DIME is that it provides consistently estimated ideo-

¹⁰ Our theory of ideologically based judicial selection accommodates the fact that higher-court judges may be drawn from the lower courts rather than from the pool of attorneys overall (and that the sample space of potential candidates is conditioned accordingly). Below we present evidence showing that, for example, federal appeals judges differ ideologically not just from attorneys overall but also from district judges, which suggests strong evidence that ideologically based strategic selection holds regardless of how the pool of potential candidates is conditioned.

logical scores for politicians, lawyers, and judges, all of which are necessary for our analysis. Indeed, good ideological measures for the US Supreme Court justices exist, and these include measures that account for preconfirmation information (Segal and Cover 1989) and ideological shifts across time (see, for example, Martin and Quinn 2002). However, measuring judicial ideology has been challenging at the lower-court or state-court level owing to the fact that judges from various jurisdictions rarely sit together, which makes relative measurements difficult. Instead, estimates of lower-court ideology have most often involved looking at the identity of the appointing president or, when senatorial courtesy applies, the ideology of the senior home-state senator or some combination of the two senators (see, for example, Boyd 2011; Epstein et al. 2007; Giles, Hettinger, and Peppers 2001). In the state-courts literature, the most widely cited measure has been the party-adjusted justice ideology scores of Brace, Langer, and Hall (2000), a measure imputed from the ideological scores of the state's elites and citizens developed by Berry et al. (1998). Thus, even though ideological measures for federal and state judges exist, they are not consistently measured; moreover, no ideological measures exist that capture the ideologies of individual lawyers.

Because it leverages federally reported campaign contributions, DIME provides the necessary data. These data leverage the fact that a person contributing to a liberal (conservative) candidate is more likely to be liberal (conservative) herself. The final campaign finance scores are ideological estimates for individual donors placed in a common space with other candidates and organizations spanning state and federal politics. These scores range continuously from +2 (most conservative) to -2 (most liberal) and are normalized with respect to the weighted mean and standard deviation of recipients' scores weighted by total amounts raised. Thus, for the purposes of interpreting the scale, a 1-unit change on the scale is roughly equivalent to a standard deviation in recipients' scores. The technical details behind the construction of the scores are provided in Bonica (2014). A simplified account of how the scores are estimated for lawyers follows: A lawyer who contributes equal amounts to Elizabeth Warren (D-MA, DIME score of -1.57) and Barack Obama (D-IL, DIME score of -1.28) would be assigned a score that is the average of the two, -1.425. Meanwhile, a lawyer who contributes equal amounts to Max Baucus (D-MT, DIME score of -.33) and Joe Manchin (D-WV, DIME score of -.02) would be assigned a score of -.175. An advantage of this approach is that it differentiates between more moderate and more extreme members of the same party. (Most lawyers and judges donate exclusively to one party; in our example, even though both lawyers donated exclusively to liberal politicians, their scores take into account the ideology of the candidates they support.) We provide illustrations of these data when we discuss which of these contributors are judges and lawyers.¹¹

¹¹ Data from the Database on Ideology, Money in Politics, and Elections (DIME) are also used in studies of Supreme Court law clerks (Bonica, Chilton, Goldin et al. 2017a), appeals court law clerks (Bonica, Chilton, Goldin et al. 2017b, 2017c), and law professors (Bonica, Chilton, Rozema et al. 2017).

The DIME scores have been shown to be a valid measure of judicial ideology for state supreme court justices (Bonica and Woodruff 2015). There are no extant ideological measures for lawyers against which we could validate. We were able to cross validate the lawyers' DIME scores against party-identification data in voter registrations using one state that provides these data, Florida. We were able to match 47,601 lawyers in our data set to their records in the Florida voters file, 21,359 of whom have corresponding DIME scores. The results confirm that the DIME scores are a reliable indicator of partisanship for attorneys.

However, there are two additional concerns with using the DIME data. The first is that donors may differ from nondonors (Tausanovitch and Warshaw 2013), and, despite the high participation rates, this self-selection into the population of donors could bias results. For example, we have evidence that law-firm partners and graduates of top law schools are more likely to be in the DIME data, and women, government lawyers, and graduates of law schools outside the top 100 are less likely. To address these concerns, we employ a Heckman correction, which under certain conditions can estimate model parameters even in the face of nonrandom selection into the donor population (Heckman 1979). The results without correcting for self-selection are substantively identical to those we present here.

Another concern stems from speculation that lawyers might donate for strategic reasons, which would lead them to support candidates with whom they disagree. There is little empirical support for the prevalence of such behavior among individual donors. Instead, the primacy of ideological considerations for individual donors has been corroborated by observational data (McCarty, Poole, and Rosenthal 2006; Ensley 2009; Bonica 2014) and by surveying donors about their contribution decisions (Barber 2016). When we reestimate the DIME scores for lawyers with contributions to judicial candidates excluded, the resulting scores correlate with the original scores at .99. This leads us to conclude that the special relationship between lawyers and judges has little bearing on the estimated ideal points. We also find no evidence that lawyers behave differently than other donors; indeed, most lawyers and judges donate exclusively to one party.¹²

4.2. *Martindale-Hubbell Legal Directory*

Our next task is to identify individual lawyers and judges in the DIME data. To identify individual lawyers, we turn to the Martindale-Hubbell legal directory, a comprehensive database of attorneys that has been published continuously since 1931. The Martindale-Hubbell database draws on state bar directories, law-firm listings, professional organizations, and other publicly available data sources. The directory is widely viewed as among the most authoritative and comprehensive

¹² The substantial within-party variation observed in Figure 4 largely reflects partisans giving to moderate versus extreme party members. Partisanship does not crowd out ideological considerations in contribution patterns in the same way it can for roll-call voting. Donors must still decide which of the thousands of candidates and organizations from their party to support, and they frequently decide between candidates competing against each other in primaries.

sources of information about the nation's attorneys (Whisner 2014). While the amount of information available varies by attorney, a minimal entry includes name, professional address, date of bar admission, law school attended, and employer type. Although historical data are available, the database used here represents a snapshot of the population of active legal professionals as of 2012.

The Martindale-Hubbell directory contains entries for 974,448 individuals. This includes 42,548 serving as in-house counsel at corporations and other private institutions, 34,734 government attorneys, 24,681 judges, and 5,444 law professors.¹³

To link records between DIME and the Martindale-Hubbell directory, we developed a customized probabilistic record-linkage algorithm. We linked 422,362 attorneys in the Martindale-Hubbell database to their contribution records, corresponding to a coverage rate of 43.3 percent, about 10 times higher than the overall national rate (Bonica, Chilton, and Sen 2016). Summary statistics are provided in Table 1.

5. Ideology of Attorneys

Figure 3 displays the distribution of DIME scores for the nation's attorneys and the estimated ideal points of several political figures. (Larger DIME scores indicate a more conservative ideology.) It shows that attorneys are generally to the left of other mainstream political actors; substantively, the median attorney is ideologically proximate to political actors such as Democrats Andrew Cuomo or Bill Clinton. Additional descriptive information is provided in Table 2, in which ideology is the outcome variable. (Table 2 presents results from models corrected for selection bias. Uncorrected estimates are substantively similar.)¹⁴ In our analyses, a negative coefficient indicates increased liberalism, while a positive

¹³ Although the Martindale-Hubbell directory is relatively comprehensive, a small but unknown fraction of lawyers appear to be missing.

¹⁴ To aid with the identification of the Heckman correction model, we rely on an exclusion-restriction assumption involving a single variable, the number of top state executive offices (attorney general, lieutenant governor, secretary of state, state treasurer, and auditor) that are elected in the individual's state. The logic is as follows. When selected via elections, these state executive offices typically have high-profile races fueled by intense fundraising efforts that often attract a sizable number of new donors. However, whether a state holds elections for executive offices is an institutional feature typically determined closer to the state's founding and does not appear to be related to variation in contemporary partisan leanings across states. Whereas increased campaign activity is likely to slightly increase the probability that an individual donates, there is no obvious mechanism whereby holding competitive elections for state executives would bias the latent ideological preferences of donors in the state. Fifteen states have appointed secretaries of state (Alaska, Delaware, Florida, Hawaii, Maine, Maryland, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Virginia), six states have appointed attorneys general (Arkansas, Hawaii, Maine, New Jersey, Tennessee, and Wyoming), 12 states have appointed treasurers (Arkansas, Georgia, Hawaii, Maine, Maryland, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, Tennessee, and Virginia), 25 states have no elected auditors or comptrollers (Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Michigan, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin), and seven states have no elected lieutenant governors (Arizona, Maine, New Hampshire, Oregon, Tennessee, West Virginia, and Wyoming).

Table 1
Summary Statistics

	Proportion Donors	Campaign Finance Score		N
		Mean	Median	
All lawyers	.433	-.311	-.520	974,448
Female	.313	-.612	-.844	305,811
Male	.492	-.229	-.410	680,696
State lower-court judge	.467	-.119	-.263	20,512
State high-court judge	.675	.067	.172	345
Federal district court judge	.527	.010	.006	1,193
Federal circuit court judge	.628	.110	.467	218
Federal magistrate judge	.305	-.173	-.316	1,681
State administrative judge	.400	-.091	-.061	510
US administrative judge	.374	-.350	-.590	222
Government lawyer	.312	-.568	-.857	34,734
In-house counsel	.340	-.379	-.640	42,548
Law professor	.515	-.828	-1.091	5,444
Partner	.670	-.375	-.612	37,560
Top-100 law firm	.515	-.475	-.721	66,232
Prosecutor or district attorney	.337	-.317	-.540	18,886
Public defender	.286	-.767	-.979	4,855
Top-14 law school	.565	-.551	-.790	119,748
Top-15-100 law school	.428	-.301	-.506	518,240
>100-Ranked law school	.396	-.205	-.359	336,460
Years since admittance <10	.203	-.537	-.804	166,191
Years since admittance 11-20	.352	-.372	-.606	244,202
Years since admittance 21-30	.483	-.320	-.531	230,549
Years since admittance 31-40	.575	-.301	-.505	206,065
Years since admittance >40	.572	-.144	-.299	127,557

Note. Values are based on the donors identified in the Database on Ideology, Money, and Elections and their common-space campaign finance ideological scores. Admittance is to the bar.

coefficient indicates increased conservatism. Model 2 controls for district-level two-party presidential vote shares in the 2008 elections to account for geographic variation in preferences.

As Table 2 shows, the distribution of attorneys varies in meaningful ways across areas of employment, demographic characteristics, and location. For example, female lawyers are more likely to be liberal, as are law professors, public defenders, and government lawyers. On the other side, those who work in top-100 firms and those who are identified as partners are more conservative. We also see increased conservatism associated with time since bar admission, which suggests that older lawyers are more conservative. Lawyers' ideology meaningfully varies by location, an important point for our discussion of ideologically based judicial selection in Section 7.

Model 2 includes the Democratic share of two-party votes in the 2012 presidential election by congressional district to capture the partisan leanings of vot-

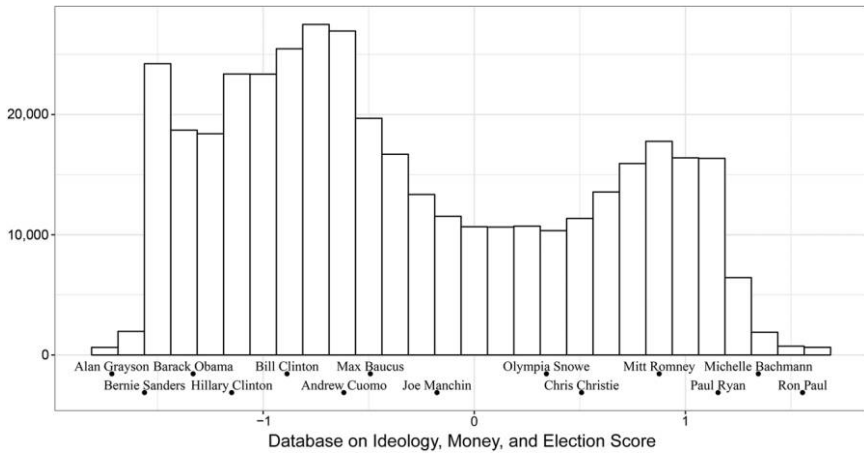


Figure 3. Ideal point distributions for attorneys and politicians

ers. We see that, like the rest of the population, attorneys tend to live in areas that share their politics. But, even after accounting for location effects, the patterns are largely consistent between the two models.

6. Ideology of Judges Compared with Attorneys

We now address our key question of how attorneys' preferences compare to the ideological distribution of judges. The DIME scores for the various tiers of the judiciary (state lower courts, state high courts, federal district, and federal courts of appeals) are presented in Figure 4, along with the ideological distribution of attorneys. (The box-and-whisker plots beneath each graph represent the median, interquartile range, and the 9th and 91st percentiles for each distribution.) Each group of judges differs meaningfully from the overall distribution of lawyers, with the judicial distributions being more conservative overall.¹⁵ This result is confirmed when we compare the ideological distribution of lawyers with all judges (combined) using a nonparametric two-sample Kolmogorov-Smirnov test (K-S test), which yields a *D*-statistic of .122 with a *p*-value of .00.¹⁶ We therefore reject the null hypothesis that lawyers and judges are sampled from an identical underlying distribution.

In addition, the overall distribution of judges varies meaningfully across courts. Indeed, the higher a court is in the judicial hierarchy, the less the overall distribution resembles the distribution of attorneys. The most conservative courts (and thus the least representative of the overall distribution of lawyers) are federal appeals courts, followed by the state high courts, the federal district courts, and state

¹⁵ Federal administrative judges are more liberal than lawyers.

¹⁶ The Kolmogorov-Smirnov test has the advantage of making no assumptions about the underlying data distribution, as opposed to the *t*-test, which assumes normality. Repeating these comparisons using *t*-tests yields similar substantive conclusions.

Table 2
Ideological Distribution of Attorneys

	Model 1	Model 2
Female	-.460** (.010)	-.545** (.012)
Years since admitted	.032** (.002)	.055** (.002)
Years since admitted ²	-.0003** (.00003)	-.001** (.00003)
Government lawyer	-.333** (.014)	-.367** (.017)
In-house counsel	-.098** (.012)	-.127** (.012)
Top-100 law firm	.020* (.008)	.218** (.009)
Solo practice	-.026** (.003)	-.048** (.004)
Law professor	-.366** (.014)	-.335** (.016)
Partner	.090** (.010)	.226** (.012)
Prosecutor or district attorney	-.079** (.013)	-.169** (.014)
Public defender	-.543** (.025)	-.637** (.028)
Top-14 law school	-.146** (.009)	.025** (.009)
>100-Ranked law school	.062** (.004)	.006 (.004)
Democratic presidential vote share (congressional district)		-1.085** (.014)
Constant	-1.325** (.072)	-1.466** (.089)
<i>N</i>	395,237	395,128
<i>R</i> ²	.063	.119
ρ	.626	.923
Inverse Mills ratio	.596** (.043)	1.098** (.050)
<i>F</i> -statistic	770.8	566.9

Note. Results are from second-stage ordinary least squares regressions with the contributor's Database on Ideology, Money, and Elections score as the outcome variable. A small percentage of observations could not be mapped onto a congressional district and thus are excluded from model 2. The *F*-statistics are for the exclusion restriction from the first-stage selection model. Admittance is to the bar.

* $p < .05$.

** $p < .01$.

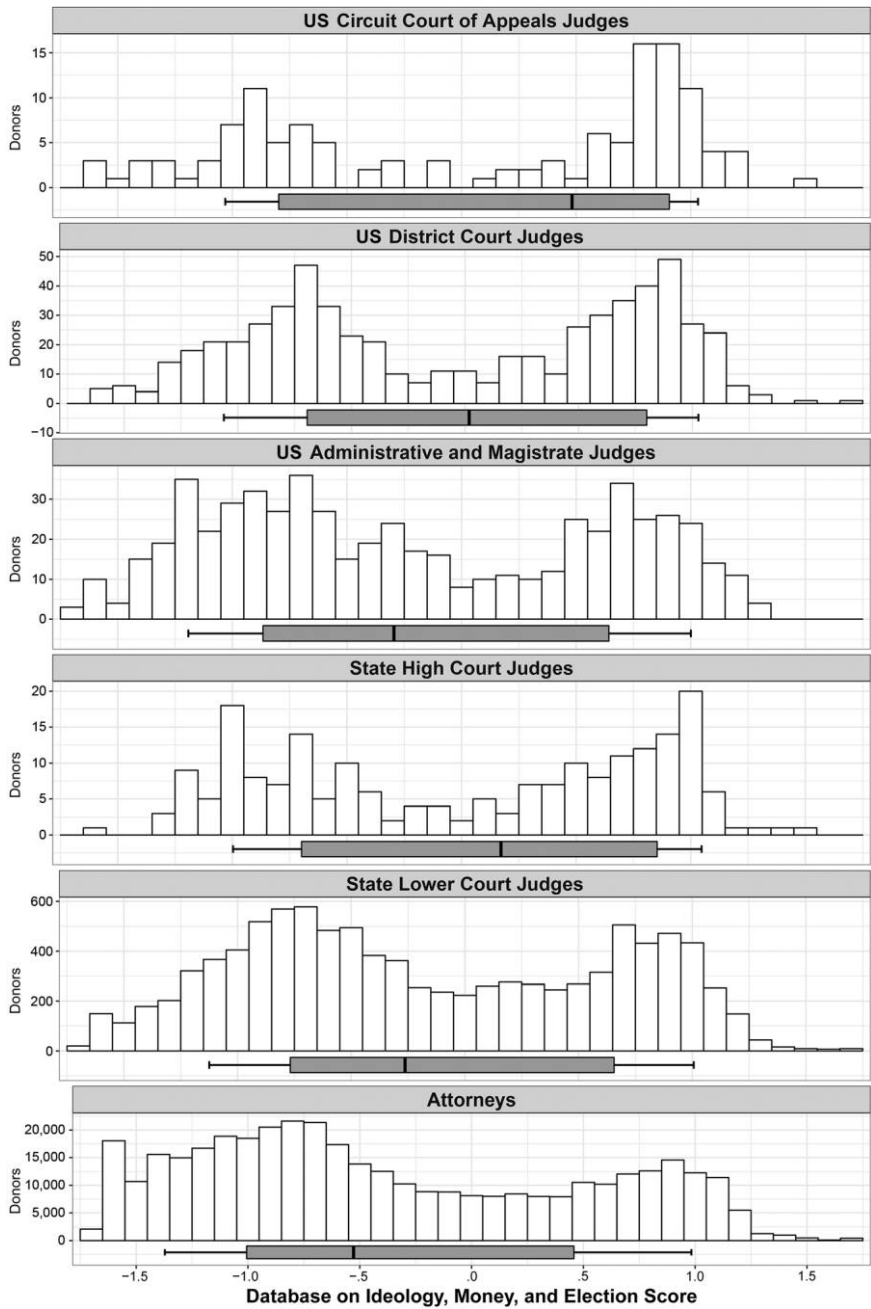


Figure 4. Ideal point distributions for attorneys and judges

trial courts. These differences are significant at conventional levels, confirmed via a series of K-S tests comparing the overall distribution of lawyers to the distribution of state lower courts, where the null hypothesis is rejected (D -statistic = .112 and p -value = .00); state high courts (D -statistic = .154 and p -value = .00); federal district courts (D -statistic = .158 and p -value = .00); and federal appeals courts (D -statistic = .222 and p -value = .00). If anything, the higher the level of the court, the more pronounced the difference in distribution. (Comparisons among the distributions for different tiers of the judicial hierarchy also lead to rejections of the null hypothesis at the .01 level.) Thus, the higher or more politically important the court, the more conservative it is, especially when compared with the overall population of attorneys. To place these results in context, we see that while the median US attorney is in the vicinity of center-left politicians such as Andrew Cuomo or Bill Clinton, the median US Court of Appeals judge approximates center-right politicians such as Chris Christie or Olympia Snowe.

Table 3 provides further evidence of the conservative nature of the higher courts. Here, as in Tables 1 and 2, the outcome variable is the individual's DIME score. The model includes indicator variables for several categories of judges, ranging from state trial courts to the federal circuit courts, and covariates associated with merit-based qualifications. Models 1 and 2 include a single indicator variable for judges and indicators for administrative judges. Models 3 and 4 include indicators for the various levels of the judicial hierarchy. Models 1 and 3 include the exclusion restriction used in Table 2; models 2 and 4 instead include state fixed effects.

The results confirm both hypotheses formulated in Section 3. First, they confirm that judges are more conservative than lawyers, with significant differences even after including state fixed effects.¹⁷ Second, the conservatism is increasing with the court's level; the higher the court, the more conservative the corresponding DIME score.¹⁸ Moreover, the conservative skew of the federal courts is not simply the result of a disproportionate number of judges in our sample having been appointed during Republican administrations. Among US court of appeals judges included in the sample, there are 74 Democratic appointees and 76 Republican appointees. Among US district court judges, 326 are Republican appointees and 328 are Democratic appointees.

7. Where and How Does Ideologically Based Judicial Selection Benefit Parties?

The results in Table 3 provide affirmative evidence of ideologically based selection. However, Table 3 does not clarify if and how ideologically based judicial

¹⁷ A possibility that we consider is whether judges are selected on the basis of characteristics that covary with partisanship—for example, age, race, or gender. We find no support for this contention, however, and our results hold when we include controls for many of these factors.

¹⁸ We obtain substantively similar results when we exclude lawyers who were admitted to the bar within the last 15 years (who are less likely to be judges) and when we dichotomize the outcome variable as liberals (DIME score < 0) versus conservatives (DIME score > 0).

Table 3
Ideological Distribution by Court

	Model 1	Model 2	Model 3	Model 4
Judge	.119** (.009)	.187** (.011)		
Federal court of appeals			.387** (.80)	.385** (.84)
Federal district court			.208** (.039)	.284** (.041)
State high court			.269** (.066)	.193** (.069)
State lower court			.075** (.011)	.145** (.012)
Federal magistrate	-.011 (.039)	.324** (.044)	-.010 (.039)	.329** (.044)
Federal administrative judge	.084 (.094)	.362** (.097)	.085 (.094)	.365** (.097)
State administrative judge	-.176** (.063)	.115 (.065)	-.175** (.063)	.117 (.065)
Female	-.443** (.009)	-.134** (.016)	-.440** (.009)	-.128** (.016)
Years since admitted	.023** (.002)	-.033** (.003)	.023** (.002)	-.034** (.003)
Years since admitted ²	-.0002** (.00002)	.0005** (.00004)	-.0002** (.00002)	.0005** (.00004)
Top-14 law school	-.179** (.008)	.106** (.015)	.073** (.008)	.107** (.015)
>100-Ranked law school	.072** (.004)	.106** (.005)	.073** (.004)	.107** (.005)
Constant	-1.086** (.063)	.611** (.107)	-1.072** (.063)	.642** (.108)
State fixed effects	No	Yes	No	Yes
ρ	.499	-.758	.491	-.773
Inverse Mills ratio	.450** (.039)	-.746** (.069)	.440** (.039)	-.769** (.069)
<i>F</i> -statistic	705.5		1,092.1	
<i>R</i> ²	.060	.156	.060	.156

Note. Results are from second-stage ordinary least squares regressions with the contributor's Database on Ideology, Money, and Elections score as the outcome variable. The *F*-statistics are for the exclusion restriction from the first-stage selection model. Values in both models far exceed the *F*-statistic > 10 rule-of-thumb test for weak instruments. Admittance is to the bar. *N* = 974,419.

** $p < .01$.

selection varies across jurisdictions. The fact that lawyers appear to be unevenly distributed with respect to location (with liberals concentrated in certain states) leaves open the possibility that politicians face very different incentives across jurisdictions because of variation in the ideological composition of the pool of attorneys.

7.1. Partisan Incentives

To explore this, we turn to a cross-jurisdictional analysis. We begin by examining incentives for state parties to move toward ideologically based judicial selection (and away from merit-oriented or nonpartisan systems), conditional on the distribution of attorneys from the DIME data. (We consider related questions of how judicial selection mechanisms may interact with incentives in Section 8.) Here our theoretical framework in Section 3 provides expectations regarding the incentives for introducing ideology into judicial selection across jurisdictions. Recall that we represent the degree of ideologically based judicial selection as ω . High values of ω (close to 1) suggest a selection process whereby parties select judges who reflect their own ideologies, while low values (close to 0) are consistent with judges being chosen for reasons orthogonal to ideology. We compare values of ω in terms of their effect on the overlap coefficient, which is the degree to which the composition of the judiciary would resemble (or not) the composition of Republican and Democratic officeholders from the same state. Note that the ideology of politicians elected in a state proxies for the preferences of the electorate; thus, these analyses also function to roughly compare the judiciary with voters.

We estimate the overlap coefficient using a nonparametric estimator proposed by Schmid and Schmidt (2006). This estimator is also used by Hare et al. (2015) to measure partisan overlap in ideal points for survey respondents.¹⁹ Figure 5 displays how the overlap coefficient by party varies according to values of ω by jurisdiction (including federal district courts, denoted US), conditional on the distribution of attorneys in that jurisdiction. The panels are ordered by the predicted increase in the overlap coefficient for Republicans moving from $\omega = 0$ to $\omega = 1$. Substantively, a positive relationship between the overlap coefficient and ω indicates that the party stands to benefit from the increased use of ideology in judicial selection; a negative relationship suggests that the use of ideology in judicial selection is disadvantageous to the party. Figure 5 reveals two general patterns. The first is that, conditional on the ideology of attorneys, Republicans stand to gain (often substantially) from increased ideological selection in nearly every state and in the federal system. In only two strongly Democratic states, Massachusetts and Rhode Island, are Republicans worse off from increased ideological selection. We note that Kansas and Florida, which rank second and third, respectively, in terms of Republican incentives, stand out as being recent hot spots for conservative judicial reform efforts (see, for example, Simon 2013; Ward 2011).

The second relates to the differing incentives for Democrats. In many states the Republicans' gain would be the Democrats' loss, similar to what is observed at the federal level. In others, both parties would share in the gains from ideologically based judicial selection. One state where this holds is Tennessee. This is notable

¹⁹ Given two densities, $f(\cdot)$ and $g(\cdot)$, the overlap coefficient is calculated as the ratio of the shared area between them such that $\Delta(f, g) = \int \min\{f(x), g(x)\}dx$.

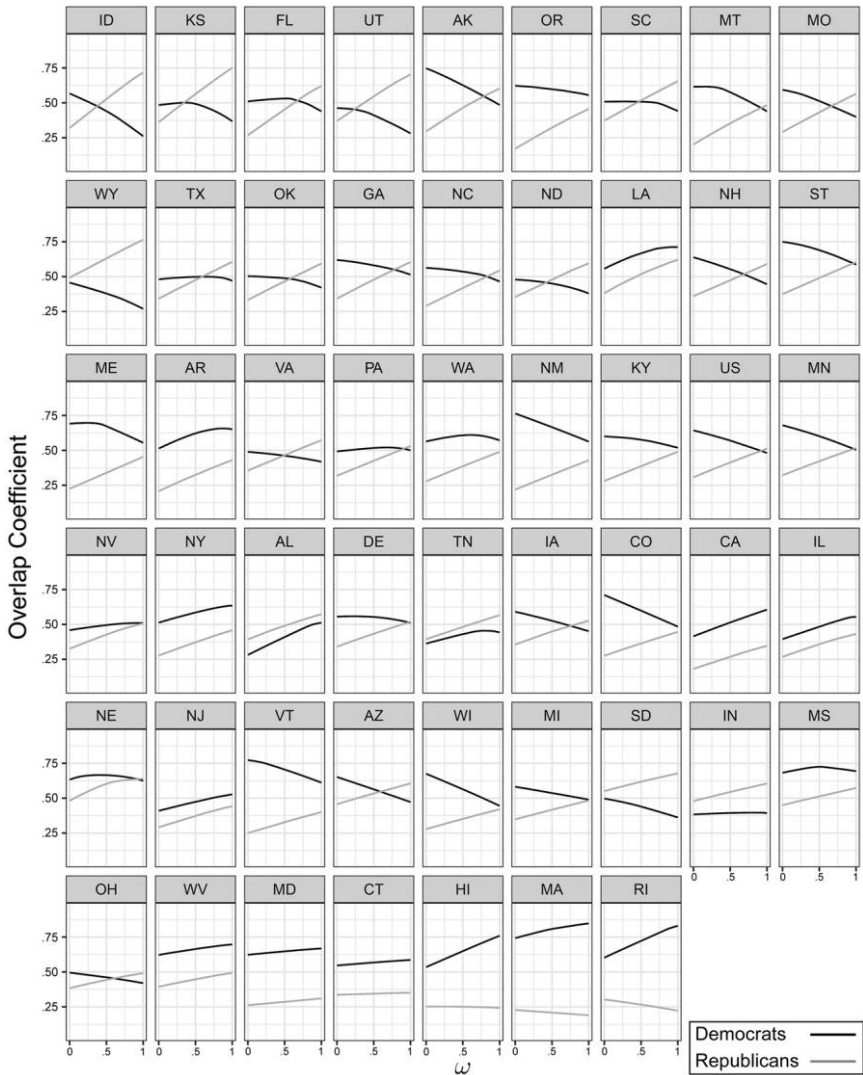


Figure 5. Predicted overlap coefficient for judges and politicians

because of the recent success of a 2014 ballot measure that sought to dismantle the state’s judicial nominating commission in a move away from merit selection. The legislatively referred ballot measure enjoyed strong bipartisan support in the state legislature, with substantial crossover by Democratic officeholders. This example fits well with our theoretical expectations.

7.2. Empirical Evidence

Figure 5 serves to highlight the various ways in which the configuration of attorneys can shape the parties' incentives. Given these incentives, how many jurisdictions exhibit evidence of ideologically based judicial selection?

We test for ideologically based judicial selection by examining whether the ideology of judges is statistically distinguishable from attorneys practicing in the jurisdiction. We restrict the sample to attorneys who have been members of the bar for at least 5 years, which reflects the law (or custom) in many jurisdictions that requires attorneys to practice law for some years before becoming judges. As before, we use two-sample K-S tests to test for distributional differences among the judges and attorneys in each jurisdiction. We then group jurisdictions into two categories: strong evidence of ideological selection, or those with a statistically significant difference (p -value $\leq .05$), and weak or no evidence of ideological selection, or those for which we cannot reject the null hypothesis that judges and attorneys are drawn from the same underlying ideological distribution. We reject the null hypothesis in 24 states but fail to reject it in the remaining 26 states.

To place these results in context, Figure 6 plots the mean position for attorneys (A), judges (J), and elected politicians (P) for each state and for the federal and state courts.²⁰ The top panel in Figure 6 includes states with statistically significant differences between judges and attorneys. The bottom panel includes states for which a K-S test was unable to reject the null hypothesis. Within groups, states are ordered by the average attorney ideal point.

The analysis reveals that while ideologies of attorneys vary greatly across states, judges are for the most part more conservative than are the attorneys in a state, as evidenced by the number of states where there is evidence of ideologically based judicial selection. (This includes the federal courts as well.) We note that this is the case for four key states identified as having strong incentives to increase the reliance of ideology in judicial selection (on the conservative side) in Figure 5: Florida, Missouri, Texas, and Georgia. We note also that, with the exceptions of Connecticut and Rhode Island, attorneys are, on average, more liberal than politicians, consistent with the empirical assumptions in our theoretical discussion. Thus, we have strong evidence of ideologically based judicial selection in a number of jurisdictions, with the move toward incorporating ideology in selection mostly working to Republicans' advantage.

Surprisingly, Figure 6 also reveals that, even among states that exhibit evidence of ideologically based judicial selection, judges are generally closer to attorneys

²⁰ The positions for politicians are averaged over the DIME scores for all politicians elected in the jurisdiction between 2004 and 2012. This provides a measure of state policy centrality based on the revealed preferences of voters in the state by leveraging information on the types of candidates they have elected in the past. This measurement strategy is similar to the one used by Berry et al. (2013) to construct measures of citizens' and institutional ideology. Berry et al. (2013) make use of Americans for Democratic Action ratings or roll-call scores of congressional delegates from a state to infer overall measures of ideology for the state. By comparison, our measures of state-level ideology are derived from the DIME scores for a much larger set of officeholders in the state. We note that our measures strongly correlate with alternative measures of a state's ideology, including the aforementioned measures of citizens' and governmental ideology and two-party presidential vote shares.

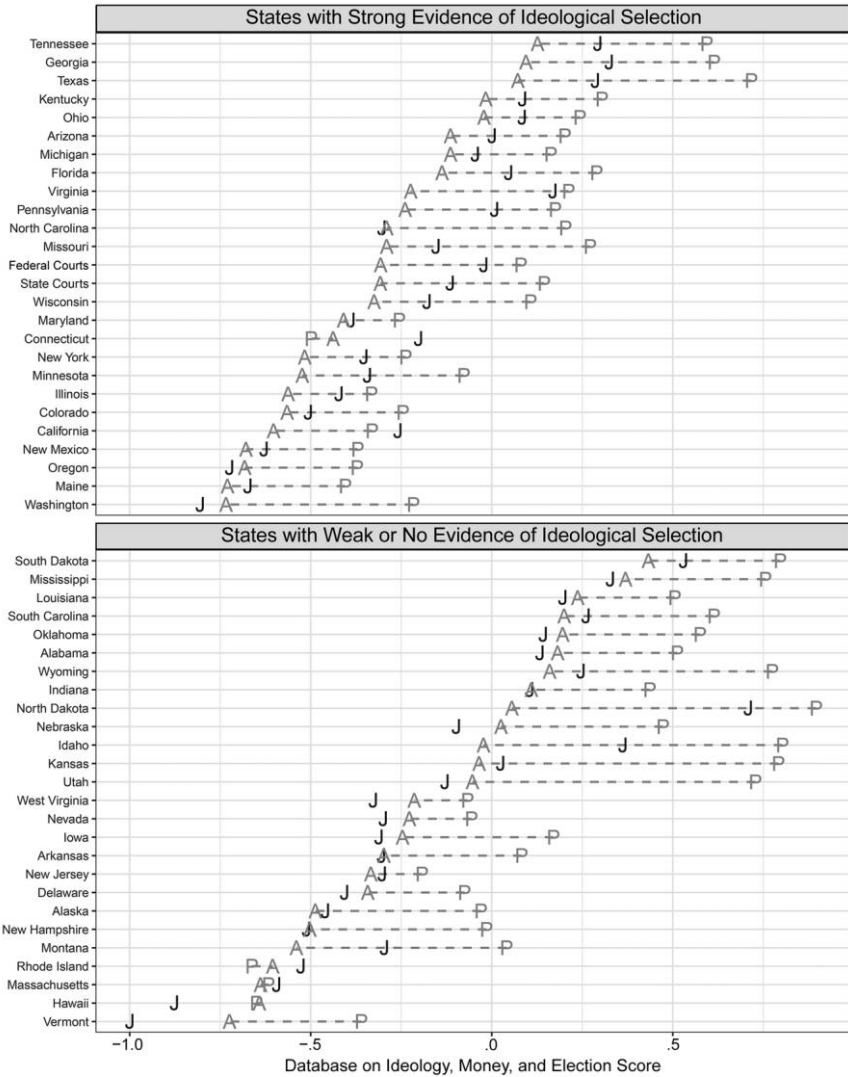


Figure 6. Average ideologies of judges, politicians, and attorneys

than to politicians. This suggests that most judiciaries are only partially ideologically based in terms of their selection. There are two exceptions. The first is Virginia, the only state to select judges exclusively via legislative election. In fact, it is the only state where judges are statistically distinguishable from attorneys (D -statistic = .26 and p -value = .00) but not from politicians (D -statistic = .11 and p -value = .28). The other is the federal judiciary (US district courts and US courts of appeals). In federal courts, judges are significantly closer to federal political ac-

tors than to the underlying pool of national attorneys, consistent with heightened levels of ideologically based judicial selection in more important courts.

Also intriguing is the lack of evidence of ideologically based judicial selection in roughly half of the states, including some states we identify as having an incentive to increase the reliance on ideology in judicial selection in Figure 5. The failure to reject the null hypothesis in some less populous states such as Alaska, Idaho, North Dakota, South Dakota, and Wyoming may be due to small sample sizes. Judges in the remaining states appear to be genuinely indistinguishable from the populations of attorneys. For example, Republicans in Utah and Nebraska have strong incentives to increase the reliance on ideology in judicial selection (Figure 5); however, judges in those states are, if anything, to the left of attorneys (although the differences are not significant). In Section 8, we consider possible explanations for this, including judicial selection methods.

8. Ideologically Based Judicial Selection and Judicial Selection Methods

These analyses raise questions about how the rules and procedures for selecting judges may facilitate (or present obstacles to) ideologically based judicial selection. For example, partisan elections likely lead voters to weigh partisanship and ideology more than nonpartisan elections, where such information is less readily available. Consistent with this, Gordon and Huber (2007) find that trial court judges who stand for reelection in partisan contests issue sentences that are more punitive than do those facing merit retention, while Canes-Wrone, Clark, and Kelly (2014) find that judges elected in nonpartisan elections are more responsive to public opinion on the death penalty than those elected in partisan elections. Contrariwise, there is some evidence that merit commissions, especially those dominated by members of the bar, limit the ability of governors to make politically motivated appointments. Fitzpatrick (2009) finds evidence that merit commissions favor the selection of more Democratic judges in Missouri and Tennessee but lacked measures needed to test the claims more broadly. Our analysis departs from earlier studies in two important ways. First, we incorporate the preferences of attorneys. Second, we note that past studies are concerned primarily with the reselection of sitting judges. Here we are primarily concerned with the initial selection process.

As in the literature, we group judicial selection methods into four general categories: gubernatorial or legislative appointment (Appointed), merit selection systems that combine appointment with nominating commissions (Merit), popular elections with the party affiliation of judicial candidates listed on the ballot (Partisan Election), and popular elections without party affiliation on the ballot (Nonpartisan Election). To obtain more granular data on methods of initial selection, we link records from the Martindale-Hubbell directory with profiles collected from Judgepedia,²¹ which provide detailed information about state and federal judges. This also allows for inclusion of states that employ combinations of selec-

²¹ Ballotpedia, Judgepedia (<http://ballotpedia.org/Judgepedia>).

tion mechanisms in different courts—for example, the state trial courts in Kansas or Missouri. Categorizing judges by judicial selection method is further complicated by interim replacements. Most states—including those with competitive judicial elections—use gubernatorial appointments to fill interim vacancies. More than 30 percent of judges in elected seats in some states were initially appointed to fill interim vacancies.²² As a result, we reestimate the model with interim replacements recoded by their initial method of selection. The results are reported in model 2 of Table 4.

We model judicial ideology as a function of selection method interacted with the preferences of attorneys and politicians in the state, while controlling for individual-level characteristics:

$$J_{si} \sim (P_s + A_s) \times (\text{Appointed}_{si} + \text{Merit}_{si} + \text{Partisan Election}_{si} + \text{Nonpartisan Election}_{si}) + \mathbf{X}_{si},$$

where J_{si} is the ideal point of judge i in state s , P_s and A_s are the average ideal points for politicians and attorneys in that state, and \mathbf{X}_{si} is a vector of individual-level controls for gender, age, and law school attended. Interacting selection methods with A_s and P_s captures how responsive judicial ideology is to attorneys and politicians in the state. Results are reported in Table 4.

Figures 7 and 8 illustrate how judicial ideology changes in response to lawyers and politicians, respectively. The X-axes represent lawyers' ideologies (Figure 7) and political actors' ideologies (Figure 8). Movement across the Y-axis in judges' ideology would suggest that the selection mechanism aids in reflecting lawyers' or political actors' ideologies. For example, consider gubernatorial or legislative appointments. The figures show that when judges are appointed in this manner, judicial ideology is unresponsive to changes in attorneys' ideology but is highly sensitive to changes in the ideology of political actors. (This relationship is also seen with respect to the interaction effects in Table 4.) The results are similar for partisan elections. Partisan elections produce judiciaries that closely resemble politicians in a state. This suggests that when judges are selected via gubernatorial or legislative appointment or partisan elections, ideology informs decisions about who should serve on the bench in much the same way as it does for other political offices.²³

The results for the two other judicial selection systems offer a stark contrast. Under merit selection, the more conservative the underlying ideology of attorneys, the more conservative judges become; however, the relationship is both weak and inverted for the ideology of politicians. The same is true for selection systems that rely on nonpartisan elections. Under nonpartisan elections, judicial

²² Judgepedia allows us to identify judges' initial method of selection for interim replacements.

²³ Simulated first differences associated with moving A_s from $-.5$ to $.5$ are .34 [-.11, .81] for Appointed, 1.25 [.96, 1.56] for Merit, .05 [-.31, .38] for Partisan Election, and 1.10 [.89, 1.31] for Nonpartisan Election. Simulated first differences associated with moving P_s from $-.5$ to $.5$ are .55 [.20, .92] for Appointed, $-.24$ [-.45, $-.06$] for Merit, .59 [.35, .84] for Partisan Election, and $-.25$ [-.46, $-.05$] for Nonpartisan Election.

Table 4
Analysis of Judicial Selection Methods

	Model 1	Model 2
Appointed	.187 (.128)	.310** (.106)
Merit	.392** (.092)	.461** (.090)
Partisan Election	.132 (.093)	.134 (.094)
Nonpartisan Election	.501** (.079)	.469** (.081)
Average Lawyer × Partisan Election	.044 (.171)	.047 (.174)
Average Lawyer × Nonpartisan Election	1.152** (.107)	1.097** (.112)
Average Lawyer × Merit	1.108** (.173)	1.255** (.164)
Average Lawyer × Appointed	.070 (.353)	.347 (.241)
Average Politician × Partisan Election	.627** (.117)	.594** (.119)
Average Politician × Nonpartisan Election	-.297** (.097)	-.246** (.104)
Average Politician × Merit	-.230* (.107)	-.246* (.105)
Average Politician × Appointed	.675** (.247)	.558** (.180)
Years since Admitted	-.013** (.003)	-.013** (.004)
Years since Admitted ²	.0001** (.00004)	.0001** (.00004)
Female	-.256** (.019)	-.256** (.019)
Top-14 law school	-.127** (.027)	-.129** (.027)
>100-Ranked law school	.039* (.016)	.036* (.016)
In-state law school	.033* (.016)	.031 (.016)

Note. The outcome variable is contributors' Database on Ideology, Money, and Elections scores. Model 1 categorizes the selection method on the basis of the procedure used under normal circumstances. Model 2 allows the selection method to vary within courts on the basis of whether a judge was initially selected as interim replacement via a method different from that typically used. Admittance is to the bar. $N = 9,768$; $R^2 = .166$.

* $p < .05$.

** $p < .01$.

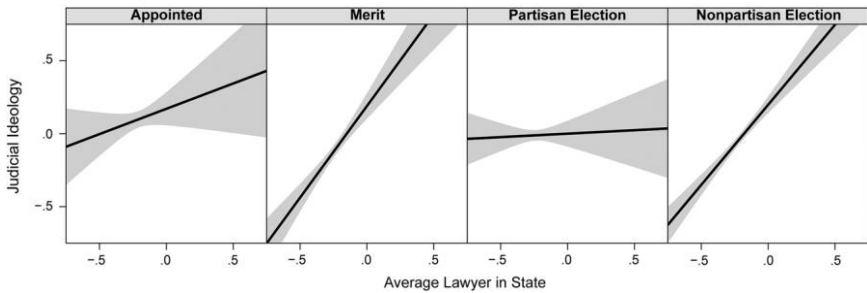


Figure 7. Predicted judicial ideology and lawyers' ideologies

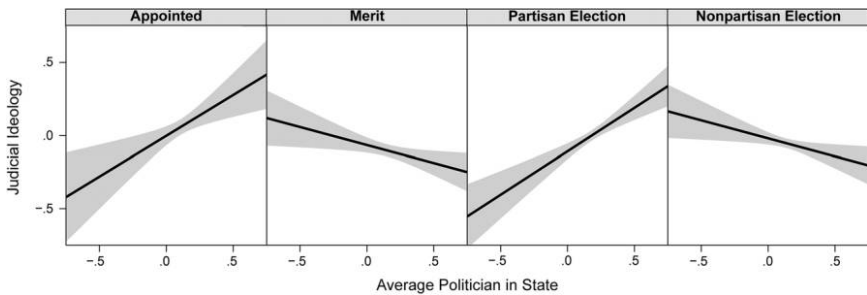


Figure 8. Predicted judicial ideology and politicians' ideologies

ideal points covary closely with attorneys' ideology; however, they are less sensitive to the ideology of politicians, and the relationship is inverted.

In summary, the evidence strongly supports the claim that selection methods are central to understanding ideologically based judicial selection. Selection systems that rely on merit commissions or nonpartisan elections exhibit lower levels of ideologically based judicial selection, under our definition, than gubernatorial or legislative systems or partisan elections. Among other conclusions, this suggests that the decision to elect or appoint judges is far less consequential than the rules that govern the two approaches. In addition, the importance of judicial selection methods in shaping the judiciary is reflected in partisan politics. Conservative-leaning groups and politicians have led reform attempts oriented at reducing the power of merit commissions, which they contend give undue influence to the bar; given a general rightward shift in state politics across some states (Kansas, Iowa, North Carolina), we might see increased reform attempts in these directions. On the other hand, state bar associations and left-leaning groups generally advocate in favor of merit-based selection and oppose judicial reform efforts aimed at weakening judicial nomination commissions. However, this raises the point that support for merit selection is, given the distribution of attorneys'

ideology, a much easier position for those on the left to take. If the distribution of lawyers were reversed, so too might be the parties' positions on judicial selection methods.

9. Strategic Ideologically Based Judicial Selection in Higher Courts

The analyses provide some explanation for the opposing stances the parties have taken on attempts at judicial reform. Partisan battles over judicial nominations have worked in the Republicans' favor by shifting federal courts to the right, as shown in Figure 6. On the other hand, there is evidence that the effects of ideologically based judicial selection have not been felt uniformly throughout the judicial hierarchy, as shown in Figure 4. To explain this, we consider that qualified nominees to the courts are a scarce resource. Given that the supply of attorneys on the right is comparatively more limited (as evidenced in Section 5 and Figure 3), conservative political actors are better off prioritizing resources for the higher courts (including federal courts), where decision making may be more likely to be predicted by ideology and have greater consequences (Sunstein et al. 2006).²⁴

In terms of our analyses, if conservative elites are actively seeking out and recruiting potential conservative candidates from a smaller pool, this should be empirically demonstrable in examining the population of lawyers conditional on education. That is, conditional on elite legal training, conservatives should be more likely to head toward the judiciary. We provide support for this by modeling career outcomes as a function of ideology for graduates of elite law schools. We further restrict the sample to graduates who are at least 15 years into their careers (as measured by the time since first being admitted to the bar). We estimate separate models for each of the four categories of judges, where the outcome variable is status as a judge for a given tier of the judiciary. Given that only a small fraction of lawyers become judges, we adopt a rare-events logit specification (King and Zeng 2001).

Figure 9 plots the predicted probability of serving on each type of court according to ideology, conditional on being a graduate of an elite law school (see Table 5). Substantively, Figure 8 shows that conservative graduates of elite law schools are significantly more likely to be judges than their more liberal peers. This is particularly notable for federal courts of appeals and state high courts. The predicted probability of serving on the federal circuit courts is nine times greater

²⁴ An implication of this is that conservative elites may have to work harder to produce comparable numbers of qualified conservative candidates. Attracting and recruiting conservative candidates from the elite cadre of schools thus becomes, for conservatives, quite important given the small shares of conservatives at those schools. Perhaps the best illustration of how conservatives have addressed this difficulty is in the creation of the Federalist Society, the conservative-leaning intellectual organization that was founded in 1982 and has members at nearly 200 US law schools. The society was founded with the explicit aim of retaining and fostering conservative talent at law schools, with an eye toward grooming younger members for seats on important courts and in important policy-making positions. Members of the Federalist Society include Justices Antonin Scalia, Clarence Thomas, Samuel Alito, and Neil Gorsuch.

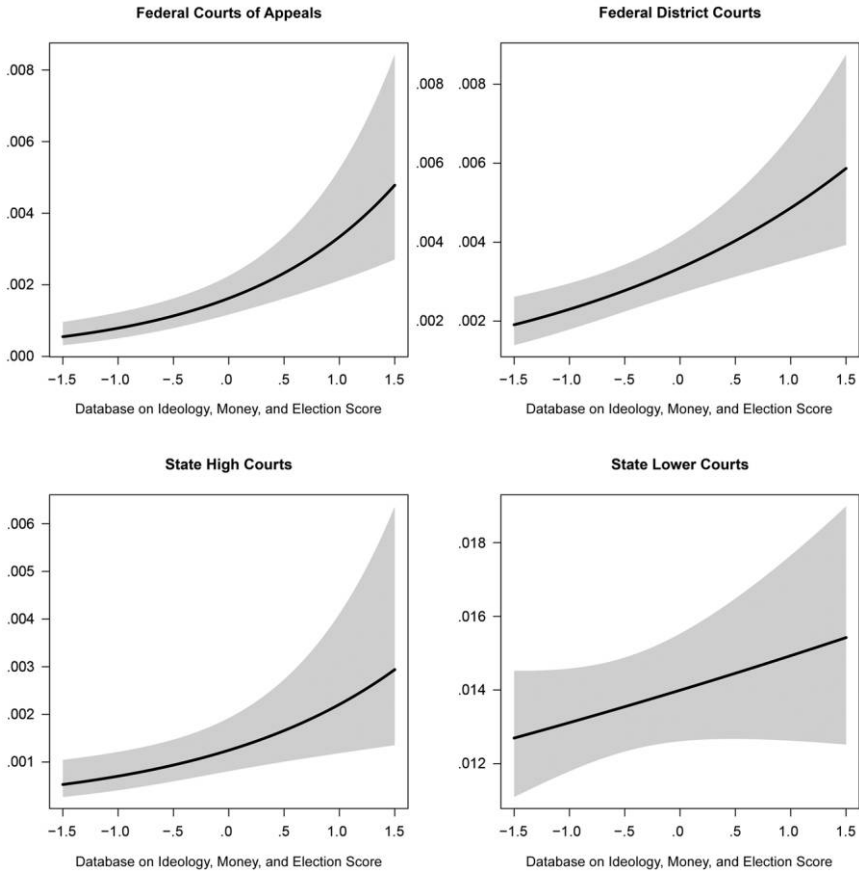


Figure 9. Predicted probability of judgeship for top graduates

for a conservative with an ideal point of 1.5 than for a liberal with an ideal point of -1.5 . (To provide some context, this is about the distance between Ted Cruz [R-TX] and Elizabeth Warren [D-MA].) The corresponding likelihoods for federal district judges and state high court judges are three times and nearly six times greater, respectively, for conservatives. (In line with results presented above, conservative graduates of elite law schools are not significantly more likely to serve as state lower-court judges.) The disparity further intensifies when subsetting more narrowly on alumni of Harvard, Yale, and the University of Chicago. For that group, conservatives are 12 times more likely than their liberal counterparts to serve on the federal circuit courts and 4.5 times more likely to be a federal district judge.

Expanding the sample to include all lawyers with at least 15 years of experience without regard to educational background still shows conservatives to be favored in the judicial selection process, with conservatives slightly more than twice as

Table 5
Probability of Judgeship for Graduates of Top-14 Law Schools

	Federal Court of Appeals	Federal District Court	State High Court	State Lower Court
Database on Ideology, Money, and Elections score	.653** (.152)	.372** (.098)	.573** (.200)	.066 (.049)
Years since admitted	.192* (.077)	.062 (.039)	.295* (.135)	.138* (.020)
Years since admitted ²	-.002* (.001)	-.001 (.0005)	-.004* (.002)	-.001** (.0002)
Constant	-10.372** (1.471)	-7.051** (.724)	-11.606** (2.262)	-7.466** (.398)
Log likelihood	-445.164	-990.040	-267.622	-3,536.762

Note. Admittance is to the bar. $N = 52,988$.

* $p < .05$.

** $p < .01$.

likely as their liberal counterparts to be selected to serve on the federal bench.²⁵ These findings are consistent with our theoretical predictions, which are that efforts to more strongly incorporate ideology into judicial selection are strategically directed toward the most politically important courts. Given the relatively fewer numbers of conservative attorneys (particularly those who attended the top end of ranked law schools), conservatives can minimize costs and get more satisfaction by funneling those potential candidates toward more politically important judicial positions. This is more broadly consistent with a theory of strategic recruitment, one in which pedigree interacts with ideology to introduce a greater degree of ideological selection at higher courts.

10. Concluding Remarks

In this paper, we analyze the most comprehensive data available on the political preferences of the legal community. We use these data to make several contributions. The first is that partisan efforts to shape the judiciary cannot be understood without accounting for the ideological preferences of attorneys. As we show, attorneys as a whole lean to the left of the ideological spectrum. Under a judicial selection method devoid of ideological considerations, our argument is that the judiciary will resemble the liberal-leaning population of lawyers rather than the more bimodal population of political actors. This poses a dilemma for those on the right seeking to push the courts in a more conservative direction and for those trying to interject more ideological diversity into the courts.

²⁵ Moreover, sorting into career outcomes on the basis of political ideology cuts both ways. The relationship is reversed for highly sought after positions in academia. A liberal graduate of an elite law school with an ideal point of -1.5 is more than 10 times as likely to be a law professor as a conservative with an ideal point of 1.5 . For additional findings on law professors, see Bonica et al. (2017), which shows that the legal academy is more left leaning than lawyers overall but that this varies by subject area and university.

Second, we show that judicial ideology often departs from the preferences of attorneys. The higher the court, the more it deviates from the overall population of attorneys. The most compelling explanation for this is that politicians prioritize seating like-minded judges higher in the judiciary, especially when the selection mechanism affords the opportunity to do so. As evidence of this, we demonstrate that higher courts exhibit heightened levels of ideologically based judicial selection and that conservative graduates of top law schools are much more likely to become judges.

Third, although we see strong evidence of ideologically based judicial selection in the federal courts, many state courts exhibit little to no signs of ideologically based judicial selection. We find that the configuration of preferences of lawyers and politicians in a jurisdiction and judicial selection methods are both critical to the process. Of course, it would be unwise to assume that the institutions and rules for selecting judges are exogenous to political preferences and incentives. As the example of the Bush White House's refusal to rely on allegedly liberal ABA ratings illustrates, the battles over judicial selection (and its reform) being waged across the nation serve as a direct reminder that selection methods are endogenous to the preferences of politicians and voters. On the other hand, what we show in this paper generates predictions about which party is the most likely to call for judicial reform in a given state, its motivations for doing so, and, most important, the anticipated effects on the judiciary. As we demonstrate, even seemingly small changes to the ways in which judges are selected, such as transitioning from partisan to nonpartisan elections or incorporating a judicial nomination commission into the appointment process, have the potential to completely reshape a state's judiciary in ways that are largely predictable given knowledge of the configuration of preferences of the state's politicians and attorneys.

We conclude with two additional thoughts regarding these data. First, we believe they provide a valuable new resource for legal and judicial politics scholars. Several other empirical patterns are of interest in their own right, including the high percentage of lawyers donating to campaigns, variation in the ideology of lawyers and judges across states, ideological divisions in the profession based on career choice (for example, prosecutors versus law professors), and the relationship between law school rank and ideology. Future researchers stand to benefit from the breadth of these data. Second, although we examine lawyers and judges using the same measures, we analyze them separately. However, the judiciary functions primarily to rule on cases presented and argued by lawyers. We would therefore expect to see interactions between lawyers' ideology and judicial ideology, perhaps with more conservative judges being more likely to rule in favor of conservative lawyers (and the opposite being true for liberal judges). To date, these questions are unexplored. The data that we present here will enable these inquiries.

References

- American Bar Association. 2009. *ABA Standing Committee on the Federal Judiciary: What It Is and How It Works*. Chicago: American Bar Association.
- Bailey, Michael A. 2007. Comparable Preference Estimates across Time and Institutions for the Court, Congress, and Presidency. *American Journal of Political Science* 51:433–48.
- Bailey, Michael A., and Forrest Maltzman. 2011. *The Constrained Court: Law, Politics, and the Decisions Justices Make*. Princeton, NJ: Princeton University Press.
- Barber, Michael. 2016. Donation Motivations: Testing Theories of Access and Ideology. *Political Research Quarterly* 69:148–59.
- Barton, Benjamin H. 2011. *The Lawyer-Judge Bias in the American Legal System*. New York: Cambridge University Press.
- Berkowitz, Daniel, and Karen Clay. 2006. The Effect of Judicial Independence on Courts: Evidence from the American States. *Journal of Legal Studies* 35:399–440.
- Berry, William D., Richard C. Fording, Evan J. Ringquist, Russell L. Hanson, and Carl Klarner. 2013. A New Measure of State Government Ideology, and Evidence That Both the New Measure and an Old Measure Are Valid. *State Politics and Policy Quarterly* 13:164–82.
- Berry, William D., Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson. 1998. Measuring Citizen and Government Ideology in the American States, 1960–93. *American Journal of Political Science* 42:327–48.
- Bonica, Adam. 2014. Mapping the Ideological Marketplace. *American Journal of Political Science* 58:367–86.
- . 2016. Database on Ideology, Money in Politics, and Elections (computer file). Public version 2.0. Stanford University, Department of Political Science, Stanford, CA. <https://data.stanford.edu/dime>.
- Bonica, Adam, Adam S. Chilton, Jacob Goldin, Kyle Rozema, and Maya Sen. 2017a. Influence and Ideology in the American Judiciary: Evidence from Supreme Court Law Clerks. Working paper. Stanford University, Department of Political Science Stanford, CA.
- . 2017b. Measuring Judicial Ideology Using Law Clerk Hiring. *American Law and Economics Review* 19:129–61.
- . 2017c. The Political Ideologies of Law Clerks. *American Law and Economics Review* 19:96–128.
- Bonica, Adam, Adam S. Chilton, Kyle Rozema, and Maya Sen. 2017. The Legal Academy's Ideological Uniformity. Working paper. Stanford University, Department of Political Science, Stanford, CA.
- Bonica, Adam, Adam S. Chilton, and Maya Sen. 2016. The Political Ideologies of American Lawyers. *Journal of Legal Analysis* 8:277–335.
- Bonica, Adam, and Maya Sen. 2016. A Common-Space Scaling of the American Judiciary and Legal Profession. *Political Analysis* 25:114–21.
- Bonica, Adam, and Michael J. Woodruff. 2015. A Common-Space Measure of State Supreme Court Ideology. *Journal of Law, Economics, and Organization* 31:472–98.
- Bonneau, Chris W., and Melinda Gann Hall. 2003. Predicting Challengers in State Supreme Court Elections: Context and the Politics of Institutional Design. *Political Research Quarterly* 56:337–49.
- . 2009. *In Defense of Judicial Elections*. New York: Routledge.

- Boyd, Christina L. 2011. Federal District Court Judge Ideology Data (computer file). University of Georgia, Department of Political Science, Athens. <http://clboyd.net/ideology.html>.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. Measuring the Preferences of State Supreme Court Judges. *Journal of Politics* 62:387–413.
- Canes-Wrone, Brandice, Tom S. Clark, and Jason P. Kelly. 2014. Judicial Selection and Death Penalty Decisions. *American Political Science Review* 108:23–39.
- Canes-Wrone, Brandice, Tom S. Clark, and Jee-Kwang Park. 2012. Judicial Independence and Retention Elections. *Journal of Law, Economics, and Organization* 28:211–34.
- Cann, Damon M. 2007. Justice for Sale? Campaign Contributions and Judicial Decision-making. *State Politics and Policy Quarterly* 7:281–97.
- Carter, Stephen L. 1994. *The Confirmation Mess: Cleaning up the Federal Appointments Process*. New York: Basic Books.
- Choi, Stephen J., G. Mitu Gulati, and Eric A. Posner. 2010. Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather than Appointed Judiciary. *Journal of Law, Economics, and Organization* 26:290–336.
- Clark, Tom S., and Benjamin Lauderdale. 2010. Locating Supreme Court Opinions in Doctrine Space. *American Journal of Political Science* 54:871–90.
- de Figueiredo, Rui J. P., Tonja Jacobi, and Barry R. Weingast. 2008. The New Separation-of-Powers Approach to American Politics. Pp. 199–221 in *The Oxford Handbook of Political Economy*, edited by Barry R. Weingast and Donald A. Wittman. New York: Oxford University Press.
- Ensley, Michael J. 2009. Individual Campaign Contributions and Candidate Ideology. *Public Choice* 138:221–38.
- Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.
- Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Cambridge, MA: Harvard University Press.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. The Judicial Common Space. *Journal of Law, Economics, and Organization* 23:303–25.
- Ferejohn, John. 2002. Judicializing Politics, Politicizing Law. *Law and Contemporary Problems* 65(3):41–68.
- Fitzpatrick, Brian T. 2009. The Politics of Merit Selection. *Missouri Law Review* 74:675–709.
- Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: University of Chicago Press.
- Giles, Micheal W., Virginia A. Hettinger, and Todd Peppers. 2001. Picking Federal Judges: A Note on Policy and Partisan Selection Agendas. *Political Research Quarterly* 54:623–41.
- Gordon, Sanford C., and Gregory A. Huber. 2007. The Effect of Electoral Competitiveness on Incumbent Behavior. *Quarterly Journal of Political Science* 2:107–38.
- Hanssen, F. Andrew. 1999. The Effect of Judicial Institutions on Uncertainty and the Rate of Litigation: The Election versus Appointment of State Judges. *Journal of Legal Studies* 28:205–32.
- Hare, Christopher, David A. Armstrong II, Ryan Bakker, Royce Carroll, and Keith T. Poole. 2015. Using Bayesian Aldrich-McKelvey Scaling to Study Citizens' Ideological Preferences and Perceptions. *American Journal of Political Science* 59:759–74.

- Heckman, James J. 1979. Sample Selection Bias as a Specification Error. *Econometrica* 47:153–61.
- Helland, Eric, and Alexander Tabarrok. 2002. The Effect of Electoral Institutions on Tort Awards. *American Law and Economics Review* 4:341–70.
- Howard, Robert M., Scott E. Graves, and Julianne Flowers. 2006. State Courts, the U.S. Supreme Court, and the Protection of Civil Liberties. *Law and Society Review* 40:845–70.
- Kagan, Elena. 1995. Confirmation Messes, Old and New. *University of Chicago Law Review* 62:919–42.
- King, Gary, and Langche Zeng. 2001. Logistic Regression in Rare Events Data. *Political Analysis* 9:137–63.
- Kritzer, Herbert M., and Darryn C. Beckstrom. 2007. *Daubert* in the States: Diffusion of a New Approach to Expert Evidence in the Courts. *Journal of Empirical Legal Studies* 4:983–1006.
- Landes, William M., and Richard A. Posner. 1980. Legal Change, Judicial Behavior, and the Diversity Jurisdiction. *Journal of Legal Studies* 9:367–86.
- La Porta, Rafael, Florencio López-de-Silanes, Cristian Pop-Eleches, and Andrei Shleifer. 2004. Judicial Checks and Balances. *Journal of Political Economy* 112:445–70.
- Lauderdale, Benjamin E., and Tom S. Clark. 2014. Scaling Politically Meaningful Dimensions Using Texts and Votes. *American Journal of Political Science* 58:754–71.
- Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. Cambridge, MA: Cambridge University Press.
- Martin, Andrew D., and Kevin M. Quinn. 2002. Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999. *Political Analysis* 10:134–53.
- McCarty, Nolan, Keith T. Poole, and Howard Rosenthal. 2006. *Polarized America: The Dance of Ideology and Unequal Riches*. Cambridge, MA: MIT Press.
- McGinnis, John O., Matthew A. Schwartz, and Benjamin Tisdell. 2004. The Patterns and Implications of Political Contributions by Elite Law School Faculty. *Georgetown Law Journal* 93:1167–1212.
- McNollgast. 1995. Politics and Courts: A Positive Theory of Judicial Doctrine and the Rule of Law. *Southern California Law Review* 68:1631–83.
- Poole, Keith T., and Howard Rosenthal. 1985. A Spatial Model for Legislative Roll Call Analysis. *American Journal of Political Science* 29:357–84.
- Post, Robert, and Reva Siegel. 2006. Questioning Justice: Law and Politics in Judicial Confirmation Hearings. *Yale Law Journal Pocket Part* 115:38–51.
- Pritchett, C. Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values, 1937–1947*. New York: Macmillan.
- Savchak, Elisha Carol, and A. J. Barghothi. 2007. The Influence of Appointment and Retention Constituencies: Testing Strategies of Judicial Decisionmaking. *State Politics and Policy Quarterly* 7:394–415.
- Schmid, Friedrich, and Axel Schmidt. 2006. Nonparametric Estimation of the Coefficient of Overlapping: Theory and Empirical Application. *Computational Statistics and Data Analysis* 50:1583–96.
- Segal, Jeffrey A., and Albert D. Cover. 1989. Ideological Values and the Votes of U.S. Supreme Court Justices. *American Political Science Review* 83:557–65.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
- Sen, Maya. 2014. How Judicial Qualification Ratings May Disadvantage Minority and Fe-

- male Candidates. *Journal of Law and Courts* 2:33–65.
- Shepherd, Joanna M. 2009. The Influence of Retention Politics on Judges' Voting. *Journal of Legal Studies* 38:169–206.
- Simon, Ammon. 2013. The Battle for Judicial Selection Reform in Kansas. *National Review Online*, January 4. <http://www.nationalreview.com/bench-memos/336925/battle-judicial-selection-reform-kansas-ammon-simon>.
- Stratmann, Thomas, and Jared Garner. 2004. Judicial Selection: Politics, Biases, and Constituency Demands. *Public Choice* 118:251–70.
- Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. 2006. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, DC: Brookings Institution Press.
- Tabarrok, Alexander, and Eric Helland. 1999. Court Politics: The Political Economy of Tort Awards. *Journal of Law and Economics* 42:157–88.
- Tausanovitch, Chris, and Christopher Warshaw. 2013. Measuring Constituent Policy Preferences in Congress, State Legislatures, and Cities. *Journal of Politics* 75:330–42.
- Ward, Kenric. 2011. Florida Lawyers, GOP Gird for Judicial Reform Battle. *Sunshine State News*, March 20. <http://www.sunshinestateneews.com/story/florida-lawyers-gop-gird-judicial-reform-battle>.
- Whisner, Mary. 2014. The 4-1-1 on Lawyer Directories. *Law Library Journal* 106:257–66.
- Williams, Margaret S., and Corey A. Ditslear. 2007. Bidding for Justice: The Influence of Attorneys' Contributions on State Supreme Courts. *Justice System Journal* 28:135–56.