Routledge
Taylor & Francis Group

Justice System Journal

ISSN: 0098-261X (Print) 2327-7556 (Online) Journal homepage: http://www.tandfonline.com/loi/ujsj20

Political Opportunism, Position Taking, and Court-curbing Legislation

Laura P. Moyer & Ellen M. Key

To cite this article: Laura P. Moyer & Ellen M. Key (2018): Political Opportunism, Position Taking, and Court-curbing Legislation, Justice System Journal, DOI: 10.1080/0098261X.2017.1420503

To link to this article: https://doi.org/10.1080/0098261X.2017.1420503

JUSTICE SYSTEM JOURNAL
2018, VOL. 0, NO. 0, 1–16
https://doi.org/10.1080/0098261X.2017.1420503

Routledge
Taylor & Francis Group

Political Opportunism, Position Taking, and Court-curbing Legislation

Laura P. Moyer[a] and Ellen M. Key[b]

[a]Department of Political Science, University of Louisville, Louisville, KY, USA; [b]Department of Government and Justice Studies, Appalachian State University, Boone, NC, USA

ABSTRACT

Although there is extensive scholarship on court-curbing efforts directed at the U.S. Supreme Court, much less is known about bills targeting the lower federal courts. This article argues that members of Congress also engage in position taking with respect to the U.S. Courts of Appeals, by proposing legislation to divide up the Ninth Circuit. Over seven decades, no other circuit has attracted as much court-curbing legislation as the Ninth Circuit, and yet no bill has succeeded. What accounts for this persistent focus on one court? We argue that bill sponsors are motivated primarily by electoral considerations and capitalize on the perception of the Ninth Circuit as an extremely liberal court. Using an original dataset of all bills to split the Ninth Circuit, we find that sponsorship of splitting bills is linked to legislator party, ideology, and state public mood relative to California, and that only conservative, Republican members of Congress are responsive to performance-related indicators, such as caseload increases and Supreme Court oversight. The results suggest that our current understanding of court curbing as it applies to the Supreme Court can be extended to new judicial contexts.

KEYWORDS

U.S. Courts of Appeals; separation of powers; public opinion; representation

If judicial independence is a central and defining feature of the American political system (Rosenberg 1992, 369), then measures intended to dilute the power of courts undermine the separation of powers and impair the judiciary's ability to resolve contentious political and legal disputes. But the line between judicial reform and political interference can sometimes to be difficult to discern. Clark (2010, 26) contends that attempts to constrain, or curb, the judiciary should be thought of as "electoral posturing in response to public opinion (or efforts to galvanize public opinion)" or as a way "to create an issue constituency and politicize the judiciary." Thus studying the interactions between Congress and the courts sheds light on the electoral connection (Mayhew 1974), telling us how bills that nominally deal with restructuring the judiciary also serve as a vehicle for communicating to constituents and organized interests.

To date, the court-curbing literature has focused on the Supreme Court (Nichols, Bridge, and Carrington 2014; Clark 2010; Handberg and Hill 1979; Nagel 1965) and, to a lesser degree, state supreme courts (Leonard 2016). This literature has helped scholars to identify the incentives behind such proposals, regardless of their success or failure, and also has provided a window into inter-branch relations between legislative and judicial institutions (Bridge and Nichols 2016).

Yet relatively little work has focused on Congressional attempts to engage in court curbing with respect to the lower federal courts.[1] These courts are the workhorses of the federal judiciary, resolving tens of thousands of cases each year. In particular, the U.S. Courts of Appeals play a prominent role in

CONTACT Laura Moyer laura.moyer@louisville.edu 205 Ford Hall, University of Louisville, Louisville, KY 40292, USA.
[1]For an overview of various court reform proposals, see Hellman (1990 2000), Tobias (1996), Kline (1998), and Posner (2000).

developing legal policy (Bowie, Songer, and Szmer 2014; Songer, Sheehan, and Haire 2000), as well as correcting legal errors made below. Out of all the federal appellate courts, only one circuit has been consistently targeted by Congress in court-curbing bills over an extensive period of time: the Ninth Circuit. From 1955 to 2011, legislators in both chambers introduced a total of 42 bills that would split the Ninth Circuit in some fashion.[2] In comparison, there has been a total of only eleven splitting bills introduced that targeted other circuits, which were ultimately successful in splitting the Eighth and the Fifth Circuits, respectively.

Against this backdrop, we argue that circuit-splitting attempts against the Ninth Circuit in particular should be understood as a form of court curbing and that, like court-curbing bills directed at the Supreme Court, they are primarily a form of position taking (Mayhew 1974) by members of Congress. Although the Ninth Circuit is a federal court with a regional jurisdiction, it has developed a national reputation unlike any other of the U.S. Courts of Appeals, as evidenced by national attention from conservative pundits and politicians outside the states covered in the Ninth Circuit. For instance, conservative talk radio personality Rush Limbaugh frequently refers to the court as the "Ninth Circus" and the "Nutty Ninth" on his show (e.g., 2003, 2006, 2013), where he highlights liberal decisions that he believes to be wrongly decided. Similarly, former Fox News commentator Glenn Beck (n.d.) observed, "If the Ninth Circuit Court of Appeals says it's one way, it must be the other" (www.glennbeck.com). The popular conservative columnist George Will has singled out the Ninth Circuit for attention in his columns, calling it "incorrigible," "a slow learner," and a "stimulus package for the Supreme Court," all in reference to the court's reversal rate (Will 2010; see also Will 2006). In 2006, World Net Daily, a conservative website, praised a children's book by Katharine DeBrecht called *Help! Mom! The Ninth Circuit Nabbed the Nativity! or How the Liberals Stole Christmas* (www.wnd.com).

Conservative critiques have not been limited to members of the media. In 2011, during a primary debate, Republican presidential candidate Newt Gingrich told moderator Megyn Kelly that he would abolish federal judges for "anti-American" rulings: "I've been working on this project since 2002 when the Ninth Circuit court said that 'one nation under God' is unconstitutional in the Pledge of Allegiance. And I decided that if you had judges that were so radically anti-American that they thought 'one nation under God' was wrong, they shouldn't be on the court" (Edwards 2011).

In this article, we argue that the symbolic politics related to California and the "ultra-liberal Ninth" (www.saf.org) have made this particular court an attractive target for position taking by conservative members of Congress.[3] Using an original dataset of all sponsors and co-sponsors of bills to split the Ninth Circuit, we find that (co)sponsorship of splitting legislation is driven by legislator ideology, party, and state public mood, but not by ideological distance between the legislator and the Ninth Circuit. While members of Congress do sponsor more splitting bills in conjunction with increases in caseload and Supreme Court oversight, our results suggest that conservative, Republican legislators sponsor legislation to capitalize on the public's perceptions of the Ninth Circuit as an extremely liberal court.

Our findings contribute to the literature on court curbing and Congressional behavior and have implications for how we understand Congressional oversight of the judiciary. By extending existing research focused on the Supreme Court to a new institutional context, this article helps to build a more nuanced understanding of the dynamics at work in multiple levels of the judicial system.

Court Curbing as Position Taking

To understand why members of Congress would introduce legislation that would curtail the powers of courts, it is essential to go back to the insights of Mayhew (1974, 5), who famously described legislators as "single minded seekers of re-election." In Mayhew's account, members of Congress prioritize three

[2]Though this is beyond the scope of our data, it is worth noting that at least seven additional bills were introduced between 2011 and 2017. For reasons we discuss later in the article, we are unable to carry the analysis through to the present day.

[3]To be clear, we do not take the position that the Ninth Circuit is a liberal outlier among the other circuits, as this is not supported by the data. An examination of the median Judicial Common Space scores for the time period of our study finds that the Ninth Circuit comes in as the third most liberal court, behind the Second Circuit and the Third Circuit. We discuss the reasons for the Ninth Circuit's reputation later in the article.

types of activities that serve this ultimate goal: advertising, credit claiming, and position taking. The last of these, position taking, refers to "a public enunciation of a judgmental statement on anything likely to be of interest to political actors" and includes a range of symbolic actions, including bill sponsorship and co-sponsorship (Mayhew 1974, 61–64).

Subsequent scholarship has found empirical support for Mayhew's characterization of bill (co)sponsorship as position taking, linked with electoral incentives (Meinke 2008; Harward and Moffett 2010). For instance, Lazarus (2013) argues that the majority of bills introduced in Congress reflect position taking by members. Compared to roll call votes (another form of position taking), sponsoring bills is attractive because it is less risky than a vote and can appear to constituents to be a credible step in the electoral process (Lazarus 2013) even though a very small percentage of bills actually make it to a vote (Krutz 2005). In an examination of several policy areas, Lazarus finds that sponsorship of bills closely tracks the salience of local issues within a member's district or state. Similarly, Rocca and Gordon (2010) characterize bill sponsorship as position taking that is undertaken to signal support for issues of concern to "members of an attentive public" (i.e., interest groups); such groups, in turn, reward legislators with campaign contributions. Surveys of constituents also find that individuals' ability to identify a reason for liking their House member is positively related to the number of bills introduced by the member of Congress (Box-Steffensmeier et al. 2003; Parker and Goodman 2009). Taken as a whole, this research suggests that members of Congress will sponsor or co-sponsor court-curbing bills when it suits their electoral needs.

In the most comprehensive studies of court-curbing attempts to date, Clark (2009, 2010) has argued that members of Congress introduce court-curbing legislation targeting the Supreme Court primarily as a response to public opinion and thus are engaging in position taking. The (co)sponsorship of bills is intended to "signal public discontent, politicize the Court, and erode public confidence in the judiciary" (Clark 2010, 49).[4] Clark argues that these bills also serve as a "credible signal" to the Supreme Court about its judicial legitimacy and standing with the public (2009, 972). Empirically, this argument receives some support, as both public opposition to the Supreme Court and the ideological distance between the Court and the member of Congress predict the (co)sponsorship of court-curbing bills (Clark 2010, 144). This is also consistent with other work on early periods of court curbing (1802–1954), which concluded that both public opinion and party dynamics historically have been important factors in understanding the occurrence of such bills targeting the Supreme Court (Nagel 1965).[5]

Although most court-curbing scholarship focuses on the interactions between Congress and the Supreme Court (Hansford and Damore 2000; Handberg and Hill 1979; Nagel 1965; Rosenberg 1992), there are a few examples of court-curbing research that consider other courts. Bell and Scott (2006) analyze bills that would alter the jurisdiction of the federal courts and find that House sponsors of such bills in the contemporary era (1973–2000) have tended to be conservative Republicans. At the state level, Leonard (2016) also finds an ideological dimension to court curbing, with more conservative legislatures introducing more court-curbing bills and greater ideological distance between the legislative and judicial branches driving more bills.

Circuit-splitting Bills as Court Curbing

Building on the extant court-curbing literature, we argue that circuit-splitting proposals can be understood as part of broader trends in inter-branch relations and serve similar electoral purposes as bills intended to curb the Supreme Court. We contend that circuit-splitting bills can be considered a type of court curbing because they fundamentally represent attempts to limit a court's power (Clark 2010; Rosenberg 1992). Indeed, proposals to make changes to a court's jurisdiction are routinely counted as court curbing in studies focused on Congress and the Supreme Court (Nagel 1965; Rosenberg 1992;

[4] Because court curbing is position taking, Clark argues that it is immaterial how far a bill actually makes it through the legislative process, as the mere presence of the bill itself serves the intended purpose. Indeed, most of the bills in Clark's study fail to move out of committee.

[5] Along these lines, recent work argues that court-curbing attacks on the Supreme Court are best understood as a way to achieve and maintain party dominance, and they can be useful signals for coalition building (Bridge and Nichols 2016).

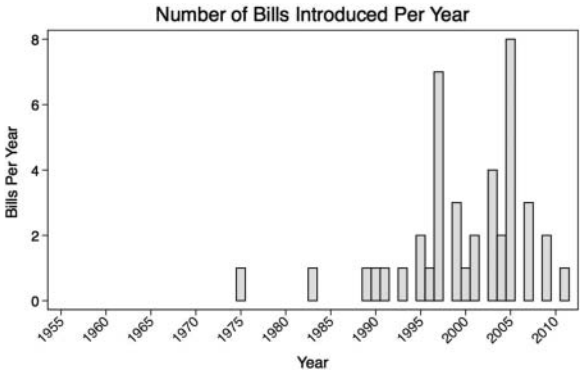

Figure 1. Bills Introduced to Split the Ninth Circuit, 1955–2011.

Bell and Scott 2006; Clark 2009, 2010).[6] A circuit-splitting bill, by definition, seeks to change the geographic jurisdiction of a court (by carving a new circuit out of an old one) and thereby redistributes power to decide cases over multiple courts.[7] In reference to the Fifth and Ninth Circuit split proposals, Hellman (1990, 353) argues that "[a]lmost any change in the structure of judicial institutions… ultimately help[s] to determine *who decides* [emphasis in the original]. And politicians know that who decides will often affect the substance of that decision."

To be sure, the Ninth Circuit is by no means the only circuit that has been the target of circuit-splitting bills, as both the Eighth and the Fifth Circuits were targets of several splitting attempts in the twentieth century (Stanley and Russell 1982; Barrow and Walker 1998). However, the Ninth Circuit stands apart from these historical examples for several reasons. First, no other circuit has been the focus of such a sustained effort over a lengthy period of time. Efforts to split the Ninth Circuit date back to 1941. As shown in Figure 1, there was a lull in efforts during the 1950s and 1960s, but attempts picked up again in the mid-1970s and continued into the first decade of the 2000s. In contrast, to the best of our knowledge, there were only three bills that attempted to divide the Eighth Circuit, beginning in 1925 and concluding in 1929 when a bill creating the Tenth Circuit was signed into law (Stanley and Russell 1982). The movement to split the Fifth Circuit extended for a longer period of time, beginning in 1963 and concluding in 1980 with the creation of the new Eleventh Circuit, after a total of eight bills.

There are two other distinguishing features of Ninth Circuit bills as well. Hellman (1996, 296) notes that the splitting of the Fifth and Eighth Circuits came only after there was "unanimity of professional opinion" of the lawyers and judges in the region, which has not been the case in the Ninth Circuit (Goodwin 1989; Hug 1996). Finally, and perhaps most importantly, the Ninth Circuit is distinguished by virtue of the fact that none of the many splitting proposals have succeeded, unlike in both the Eighth and the Fifth Circuits.[8] Given the sheer persistence of bill sponsors over such a long period of time, there may be more electoral utility in proposing legislation for a split than for actually passing legislation for a split, a point we return to in our concluding remarks.

The duration and persistence of legislative efforts to split the Ninth suggests that there have long been electoral incentives for legislators to sponsor what amounts to symbolic legislation to split up the Ninth Circuit. And while many proponents of splitting the Ninth Circuit have pointed to administrative concerns related to addressing the court's size and efficiency (Tjoflat 1993, 70; Burns 1996, 251),[9] prior work

[6]Clark (2010, 19) defines court curbing as "the introduction of legislation that threatens to restrict, remove, or otherwise limit the Court's power." Similarly, Rosenberg (1992, 377) defines it as "legislation introduced in Congress having as its purpose or effect, either explicit or implicit, Court reversal of a decision or line of decisions, or Court abstention from future decisions of a given kind, or alteration in the structure or functioning of the Court to produce a particular substantive outcome."

[7]The geographic change may also be accompanied by a de facto change in subject matter jurisdiction, if the reorganization removes states with certain types of cases.

[8]Over its history, the jurisdiction of the Ninth Circuit has been enlarged several times to account for the addition of then-territories Hawaii and Alaska, as well as Guam and the Northern Mariana Islands. None of these changes has ever reduced its jurisdiction.

[9]November 23, 2004. "Take Our Ninth Circuit Court—Please!" (Archival material on file with the author.)

on circuit splitting suggests that members of Congress generally have few electoral incentives to take up court reform on its own terms and, as such, are more likely to take up the cause when it also satisfies political objectives (Barrow and Walker 1998). To wit, one Senate aide observed that court reform issues "certainly don't have a landed constituency that can make campaign contributions. The public doesn't view courts issues as something that is important for them" (Barrow and Walker 1998, 252–53). But if the general public is not clamoring for court reform, the literature suggests that legislators will engage in position taking that seeks to limit the court in order to signal their sympathy with members of the attentive public (Rocca and Gordon 2010) and the re-election constituency (Fenno 1978) who are dissatisfied with the court's decisions.

In sum, we argue that the Ninth Circuit presents a unique opportunity for members of Congress to engage in position taking (Mayhew 1974) because of what the court has come to symbolize nationally: liberal rulings and judicial activism.

The Ninth Circuit and Symbolic Politics

In 2002, a panel of Ninth Circuit judges held that schools could not require students to recite the Pledge with the words "under God" in *Newdow v. Elk Grove Unified School District*.[10] This controversial decision was appealed to the U.S. Supreme Court, which reversed the ruling on a technicality without deciding on the merits of the case. In response to what has come to be known as the "Pledge of Allegiance" case, members of Congress introduced numerous resolutions affirming their commitment to the Pledge—and they also have repeatedly referenced this case when sponsoring legislation to divide up the Ninth Circuit.[11] As mentioned previously, Republican presidential candidate Newt Gingrich identified the *Newdow* decision as the motivation for his proposal to abolish federal judges responsible for "anti-American" rulings (Edwards 2011). Other high-profile cases from the Ninth Circuit that attracted criticism from conservatives include a series of environmental decisions related to the protection of the spotted owl in the 1980s and 1990s (Wasby 2014), death penalty decisions, and a 2011 ruling against the "Don't Ask, Don't Tell" policy banning gays and lesbians from serving openly in the military. Referencing the court's reputation for liberal decisions, one sponsor of a splitting bill, Rep. Rick Renzi (R-AZ) described the Ninth Circuit as producing "contemptuous judgments" that "tear at the moral fabric of our nation" (Bonforte 2009, 46).

In addition to a few controversial, high-profile decisions, the reputation as an "ultra-liberal court" may also be tied to the ratio of Democratic to Republican appointees on the court. Since the Carter administration, the Ninth Circuit has had more Democratic appointees than Republicans (Haire 2006), although with the appointments of subsequent Republican presidents, the circuit has grown more ideologically diverse (Schwartz 2010).

Thus because of the Ninth Circuit's association with liberal politics and with California (Banks 2000; Kline 1998), position taking on the Ninth Circuit can be beneficial for legislators who are seeking to show their conservative constituents that they are taking a stand. In response to public opinion on the judiciary, splitting bills can also send a message to a "regional outlier" to get back in line (e.g., Powe 2000; Klarman 1996; but see Hall and Black 2013).

The Ninth Circuit bills can also be understood as part of a broader political strategy by conservative lawmakers seeking to rein in the federal judiciary and restrain "liberal activist judges" (Keele and Malmsheimer 2016). Indeed, in his interviews with Congressional staffers, Clark (2010, 88) finds that members of Congress frequently respond to Ninth Circuit decisions by proposing court-curbing bills directed at the Supreme Court. Even members of Congress who represent states *outside* the Ninth Circuit have reported hearing complaints from their constituents about the Ninth Circuit, with demands that they "rein in these activist judges" (Clark 2010, 83).

[10] Ironically, this decision was authored by neither a liberal nor a Californian. Judge Alfred Goodwin was nominated to the bench by President Nixon to fill an Oregon seat on the Ninth Circuit.

[11] For instance, H.Res. 459 (sponsored by Wisconsin Republican Representative James Sensenbrenner) was titled "Expressing the Sense of the House of Representatives That Newdow v. U.S. Congress Was Erroneously Decided." A total of 182 co-sponsors signed on to the resolution.

Remaking the federal judiciary in a conservative image was a key part of the Reagan revolution and allowed lawmakers to push back against what they perceived as liberal excesses by the federal courts (Clark 2010, 58). In the mid-1990s, there were concerted Republican efforts to limit President Clinton's impact on the composition of the federal courts, facilitated by the leadership of Orrin Hatch (R-Utah) on the Senate Judiciary Committee and Henry Hyde (R-Iowa) on the House Judiciary Committee (Banks 2000). Bell and Scott (2006) find that conservatism is a key predictor of introducing court-curbing bills, and court-curbing efforts directed at the Supreme Court in the post-war period were dominated by conservatives, in spite of the increasing conservatism of the Court in the latter part of the twentieth century (Clark 2010). However, liberal members of Congress began pushing back against the Rehnquist and Roberts courts in the 2001 to 2008 period (Clark 2010), highlighting that ideological incongruence is an important driver of court-curbing behavior on both sides of the political spectrum.

Of course, there are other reasons why a member of Congress would sponsor legislation aimed at dividing up the Ninth Circuit. It is undisputed that the Ninth Circuit covers the largest geographic area of any circuit, including the states and territories of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Northern Mariana Islands, and Guam. It also sees a far greater number of case filings than its peers and has the largest number of authorized judgeships of any circuit to date (www.fjc.gov).[12] In a law review symposium about judicial structure, Ninth Circuit Judge Proctor Hug noted: "Some commentators assert that the circuit is simply too big, the geographical expanse is too extensive, and the population is too large" (2000–2001, 322).[13]

Another reason for reform offered by proponents of a circuit split has to do with the number of Supreme Court reversals of the court. For instance, a group of state and federal lawmakers calling for the split asserted that, in 2010, the Ninth Circuit had "three times as many reversals as most circuits had cases before the Supreme Court" (www.azgovernor.gov). Along similar lines, Justice Antonin Scalia testified before the 1998 Commission on Structural Alternatives for the Federal Courts for Appeals that the high reversal rate is a function of the Ninth Circuit's use of the limited en banc procedure (whereby a subset of judges are randomly chosen for the en banc panel).[14] However, this contention has been disputed by both Ninth Circuit judges (Farris 1997) and scholars (Wasby 2001; Hellman 2000; but see Scott 2006).

Lastly, supporters of a split sometimes have emphasized the desire of other states to be free of a circuit dominated by California. Barrow and Walker (1998, 8) observe that early attempts to split the Ninth in the 1960s were motivated by "the desire of the Pacific Northwestern states to have a circuit of their own, independent of the growing presence of the state of California." Historically, California has been more liberal in its politics compared to a number of the other states in the Ninth Circuit, such as Alaska, Montana, and Idaho (Wheeler 2017). Indeed, political references to California made by Republican officials and conservative pundits often use the state's name as shorthand for liberal politics run amok. For instance, the Republican governor Texas, Greg Abbott, bemoaned in 2015 how the policies of cities such as Austin were turning the "Texas miracle" into a "California nightmare" (Wright 2017). Apart from politics, California also contributes the most to the high caseload of the Ninth Circuit (www.fjc.gov) because, as one judge from the circuit put it: "there are 33 million people in California, and … they love to sue each other" (Moyer 2008). Thus Congressional proposals to split the circuit may be as much about targeting California as they are about targeting the court as a whole.

In his seminal study of court-curbing attempts, Nagel (1965) noted that regionalism was an important factor in understanding where court-curbing attacks originate. In the context of changes to circuit

[12] High travel expenses for attorneys in the circuit have been a recurring theme in splitting proposals, dating as far back as 1937 (Banks 2000).

[13] In a 1996 letter to Sen. Charles Grassley, Ninth Circuit Judge Alfred Goodwin rejected the size argument: "In my experience, size is irrelevant… I have visited large courts that enjoyed amiable and friendly relations regardless of different political backgrounds, and I have visited small courts where some judges would wait for another elevator rather than ride with each other" (Letter on file with the author).

[14] This testimony is available from the University of North Texas library at: http://www.library.unt.edu/gpo/csafca/hearings/submitted/pdf/Scalia1.pdf.

jurisdiction, however, regionalism is often hard to disentangle from dissatisfaction with policy outcomes.[15] Along these lines, proponents of splitting the Ninth Circuit have often made reference to irreconcilable regional differences, usually between California and the states in the Pacific Northwest (Banks 2000; Kline 1998). A frequent sponsor of splitting bills, Senator Slade Gorton (R-Washington) referenced this sentiment in a 1989 speech on the Senate floor, saying, "We in the Northwest have developed our own interests in every aspect of the law from natural resources to international trade. Our interest cannot be fully addressed from a California perspective."[16] A federal district judge from Oregon, Judge Owen Panner, observed that the "problems and the concerns of the Northwest and the Southwest are just about as far apart as you might imagine" (Albert 1993).

However, some Ninth Circuit judges have taken issue with the notion that purely regional concerns are behind splitting attempts and criticisms of the court. Former Chief Judge Alfred Goodwin, author of a controversial decision about the protection of the spotted owl, characterized Senator Gorton's references to Northwest interests as "simply catchphrases used to describe the powerful timber industry's bitterness over recent Ninth Circuit decisions on environmental law" (Trigoboff 1989, 1). This sentiment was echoed by another chief judge of the Ninth Circuit, who asserted that sponsors of splitting bills "generally couched [their bills] in terms of effective judicial administration," but that the "principal motivation" was "their dissatisfaction with some of the decisions of our court dealing with the environment, endangered species, Native Americans, civil rights, and death penalty cases" (Hug 2000–2001, 322). These comments suggest that at least some of the judges on the Ninth Circuit suspect that political, rather than administrative, concerns are the central motivation for proposals to split up the circuit.

Hypotheses

Based on the existing literature, we posit that the (co)sponsorship of circuit-splitting bills is a kind of court-curbing exercise "to restrict, remove, or otherwise limit the Court's power" (Clark 2010, 19), and that these bills represent position-taking behavior by members of Congress. The introduction of legislation to split the Ninth Circuit sends an ideological signal that a legislator is taking a stance against liberal politics and judicial activism as embodied by the court. As such, it should be the case that conservative members have more reason to seek electoral gain by sponsoring splitting bills targeting the Ninth Circuit. Relatedly, bill sponsorship may be a response to the perception that the perspectives of "California judges" (Kline 1998, 779) in the Ninth Circuit are out of step with the preferences of a Congress member's home state. We also expect (co)sponsorship to be more likely for legislators who are more ideologically distant from the Ninth Circuit. This suggests the following three hypotheses.

H_1: Conservative legislators will be more likely to (co)sponsor splitting bills than liberal legislators.

H_2: A legislator will be more likely to (co)sponsor splitting bills as policy views diverge between their state and California.

H_3: A legislator will be more likely to (co)sponsor splitting bills if they are ideologically distant from the Ninth Circuit.

However, the literature also shows that bill sponsors express concerns about judicial performance and ineffective management of caseload as a motivation for filing splitting bills. Concerns about high caseload were also expressed in early proposals about splitting the Eighth Circuit (Stanley and Russell 1982) and the Fifth Circuit (Banks 2000; Barrow and Walker 1998). Reversals by the Supreme Court have also been frequently referenced by supporters of a split (Ducey 2016; Scalia 1998).

H4: As caseloads in the Ninth Circuit increase, legislators will be more likely to sponsor or co-sponsor splitting bills.

H5: With more Supreme Court oversight of the Ninth Circuit, legislators will sponsor or co-sponsor more splitting bills.

[15] For instance, a number of the sources interviewed by Barrow and Walker (1998) about the Fifth Circuit split assert that Senator James Eastland of Mississippi supported the split because he was upset with the desegregation decisions of judges in the western part of the circuit.

[16] Senator Slade Gorton (R-Washington). 135 *Congressional Record* S 5026, 101st Congress, Ist Sess. (daily ed., May 9, 1989).

Data and Variables

Using the Congressional record, we collected data on each bill, noting the chamber, sponsor, sponsor's state and party, committee, and co-sponsors for bills introduced in the 84th–111th Congresses (1955–2011).[17] Legislator ideology is measured using the Poole and Rosenthal Common Space scores, which range from −1 (most conservative) to +1 (most liberal). We also control for party effects using a dichotomous indicator of party membership, coded 1 if the legislator is a Democrat and 0 otherwise. Because those on the ideological fringes may behave differently from moderate legislators in their sponsorship and co-sponsorship behavior (Harward and Moffett 2010; Lazarus 2013), we follow convention (e.g., Lebo and Koger 2017) and include the absolute value of the legislators' first dimension Common Space Score, with higher values indicating more extreme legislators. We also account for whether a legislator was a member of the Judiciary Committee in their chamber, as such members should be more attuned to the needs and performance of the courts than other legislators. If splitting bills are a result of institutional performance factors, this should lead Judiciary Committee members to be more active in (co) sponsoring bills.

Just as there may be differences in legislative activity according to party and committee membership, differences also may be due to chamber or majority party status. Indicators of both are included as controls. Similarly, members up for reelection may behave differently than those not campaigning, and some work suggests that they may sponsor more constituency bills immediately before re-election (Meinke 2008). To account for this, we include a dummy variable that is equal to 1 if it is an election year and 0 otherwise.[18]

Greater ideological distance between the judges of the Ninth Circuit and a member of Congress is likely to result in more legislative activity.[19] To measure the ideological distance between a legislator and the Ninth Circuit, we use the Judicial Common Space scores (Epstein et al. 2007), which allow researchers to place judicial and legislative actors in the same ideological space. The ideological distance measure takes the absolute value of the difference of a legislator's Common Space score and the Ninth Circuit median, with higher values indicating more ideological divergence. The greater the divergence, the less satisfaction there should be with judicial outputs.

As discussed above, much of the public statements made criticizing the Ninth Circuit for its liberal politics reference California as an ideological cue. The greater the policy divergence between a member's state and California, the more likely the legislator should be to (co)sponsor legislation. To measure state preferences, we draw from state-level policy mood data made available by Enns and Koch (2013a, 2013b). These data are available from 1956 to 2010 and extend the Stimson (1991) measures of policy mood (a measure for more or less government) to the state level using multilevel regression and post-stratification techniques. We create a variable that is the absolute value of the difference between policy mood in California and the MC's state, and average it over the two years of the Congress.[20] In addition, we control for electoral pressures that may incentivize legislators from states within the Ninth Circuit to sponsor splitting bills by including a dummy variable that is equal to 1 if a member of Congress was from a state in the Ninth Circuit and 0 otherwise.

[17] Like Clark (2010), we use the legislator in a given Congress as the unit of analysis. In addition to being in keeping with the existing literature on Congressional attempts at court curbing, this modeling strategy has the statistical benefit of making estimation computationally easier by reducing the number of zeros (non-sponsorships) in our data.

[18] Because our unit of analysis is the legislator in a given Congress, the election year variable is always 1 for members of the House. While we believe this is theoretically appropriate given House members' near-constant state of campaigning, our results remain substantively and statistically unchanged if the election variable is omitted.

[19] Although we would like to include the congruence between constituent opinion and the Ninth Circuit outputs, unfortunately no measure exists to put state public opinion and judicial preferences on the same scale.

[20] For the 84th and 111th Congresses, only a single year—1956 and 2010, respectively—is used to calculate average mood in California and the member of Congress's home state.

Table 1. Characteristics of Bill Sponsors and Co-Sponsors.

Variable	Descriptive Statistics
Region	Ninth Circuit state (excluding CA) 76.8% (126) California 3.7% (6) Non-Ninth Circuit state 19.51% (32)
Number of co-sponsors	Min – Max: 0 – 10 Mean: 2.0 (SD: 2.9)
Party of sponsor or co-sponsor (House)	Republican 91.5% (54) Democratic 8.5% (5)
Party of sponsor or co-sponsor (Senate)	Republican 85.8% (89) Democratic 15.2% (16)

Lastly, we include variables that tap into performance-based reasons why legislators would sponsor bills to split the Ninth Circuit. As a measure of caseload, we used federal court management statistics gathered by the Administrative Office of the Courts. We then created a measure of total filings per authorized judgeship for the entire time period under study. Information on Supreme Court oversight of the Ninth Circuit was taken from the Spaeth Supreme Court database; the variable includes decisions to reverse, reverse and remand, and vacate and remand for all orally argued cases. We standardize this measure by dividing it by the number of cases from the Ninth Circuit accepted for review in that year, creating a percentage. Both of these measures are averaged over the two years of the Congress.

Trends in Circuit-splitting Bills

To get a broader sense of how circuit-splitting bills originate, Table 1 shows some key characteristics of bill sponsors. In terms of region, about 76 percent of all bill sponsors or co-sponsors are from states in the Ninth Circuit (excluding California). Idaho led the way with 32 (co)sponsors, followed by Alaska, Oregon, and Washington with 27, 19, and 19 (co)sponsors, respectively. Outside the circuit, bills were filed from members of Congress from a wide variety of states, including Alabama, New Hampshire, North Carolina, North Dakota, and Wisconsin. While ten bills had no co-sponsors, the average number of co-sponsors was two; co-sponsorship reflects a mix of Ninth Circuit and outside state participation. In the House, Rep. Mike Simpson (R-ID) sponsored the most bills of any of his colleagues (11), while there were three senators tied for first, sponsoring five bills apiece (John Ensign of Nevada, Frank Murkowski of Alaska, and Slade Gorton of Washington).

With respect to partisanship, Republicans dominate the ranks of sponsors of circuit-splitting bills. In the House, just over 91 percent of all (co)sponsors were Republicans, while in the Senate, Republicans made up 85 percent of all sponsors and co-sponsors.[21] To see how bill sponsorship relates to ideology, Figure 2 plots the Common Space scores of bill sponsors and co-sponsors over time, by chamber. The top panel shows that bills from the House have tended to come mostly from moderate Republicans (the modal common space score is 0.273), but there has been an uptick of interest from more conservative Republicans since the mid-1990s, including twelve representatives whose ideology is at least a standard deviation more conservative than the median member of the House. The five Democratic (co)sponsors in the postwar era all come from states covered by the Ninth Circuit, suggesting that regional concerns were likely the driving force behind their actions. On the Senate side

[21] The data show that while efforts to rein in the Supreme Court and the Ninth Circuit may coincide on occasion, the two appear to be distinct processes on the whole. When we include a control for Supreme Court curbing bills in the model, it fails to reach statistical significance in all specifications, so we omit it from the models shown here.

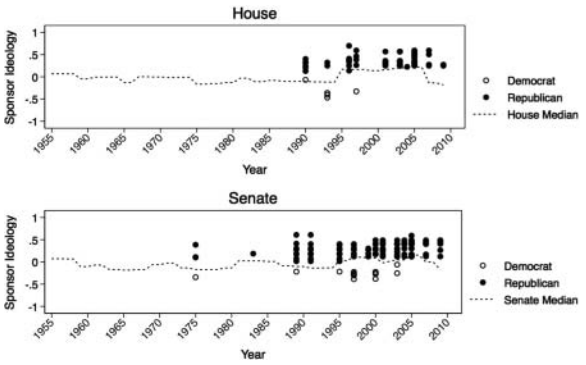

Figure 2. Ideology of Bill Sponsors, 1955–2011.

(Figure 2, bottom panel), the few Democratic bill sponsors have been ideological moderates, while bills from Republicans have increasingly come from more conservative senators. In the 2000–2009 period, seven Republican senators whose ideology puts them at least one standard deviation from the chamber median sponsored circuit-splitting legislation. For example, a 2009 sponsor, Senator Ensign, is 1.7 standard deviations more conservative than the median senator in the 111th Congress. All together, these findings are consistent with previous work that finds court curbing in the postwar period has come primarily from conservatives (Clark 2010; Bell and Scott 2006).[22]

As has been well established in the literature and in the Congressional record, concerns about ineffective management of caseloads often accompany circuit-splitting bills. Over the period of our study, there is steady growth in both filings and caseload per judge, with a much sharper increase after 2000. However, this tells us nothing about how "well" the Ninth Circuit managed this caseload—only that it increased. Both sponsors and supporters of circuit-splitting bills have also pointed to Supreme Court oversight of the Ninth Circuit as evidence of ineffective management of caseloads. Based on the percentage of Ninth Circuit cases that the Supreme Court reversed, reversed and remanded, and vacated and remanded per year, there is some facial validity to claims about efficiency, as this oversight increases over the time period of our study. Of course, increased Supreme Court oversight of a particular circuit may not reflect poor performance at all, but rather ideological divergence between the two courts (Scott 2006). Using the Judicial Common Space scores for the Ninth Circuit and the Supreme Court, the correlation between Supreme Court–Ninth Circuit ideological distance and Supreme Court oversight is a modest .30, which suggests ideological conflict among levels of the judicial hierarchy is probably at least a partial driver of oversight, consistent with Scott (2006).

In sum, the descriptive results suggest that both political and performance-related concerns may be behind the emergence of circuit-splitting legislation. Next, we turn to a multivariate model that allows us to control for competing explanations.

Explaining Bill Sponsorship and Co-sponsorship

To test our hypotheses about the predictors of bill (co)sponsorship, we use a negative binomial regression model (NBRM) to account for the discrete nature of the outcome of interest and to correct for overdispersion in the data, leading to unbiased point estimates and standard errors.[23] We also specified

[22] At the level of the institution, the court-curbing literature suggests that bills should arise when the Ninth Circuit is more liberal than Congress, because of the conservative nature of court curbing in the twentieth century. In the Appendix, we graph each chamber and the Ninth Circuit by their median Judicial Common Space score over time. In the House, the Ninth Circuit was more liberal than that chamber in 11 of the 13 years when a splitting bill was filed; in the Senate, it was 12 out of 15 years.

[23] Because our dependent variable is a count, ordinary least squares regression is inappropriate. Likelihood ratio tests show significant evidence of overdispersion, making the NBRM preferable to the Poisson regression model. We use a gamma distribution for the cluster-specific (legislator) mean, providing a closed-form likelihood approximating a random-intercept NBRM (Rabe-Hesketh and Skrondal 2012).

Table 2. Negative Binomial Model of Bill Sponsorship per Congress, 1955–2011.*

	Ideology		Party		Combined	
	Coef. (Std. Err.)	*p* value	Coef. (Std. Err.)	*p* value	Coef. (Std. Err.)	*p* value
Political variables						
Ideology (+)	4.339 (0.549)	0.000	—	—	1.851 (0.981)	0.059
Ideological Extremity (+/−)	−3.964 (0.803)	0.000	—	—	−1.595 (0.886)	0.072
Democrat (−)	—	—	−2.584 (0.269)	0.000	−1.540 (0.565)	0.006
CA – State Public Mood (+)	0.114 (0.023)	0.000	0.119 (0.023)	0.000	0.119 (0.023)	0.000
9th Circuit – Legislator Ideology (+)	−0.152 (0.620)	0.806	−0.354 (0.411)	0.389	−0.413 (0.591)	0.485
Judiciary committee (+)	0.201 (0.207)	0.331	0.234 (0.205)	0.254	0.223 (0.206)	0.279
Senate (+)	1.890 (0.201)	0.000	1.842 (0.198)	0.000	1.957 (0.205)	0.000
Majority Party (+)	0.812 (0.167)	0.000	0.901 (0.166)	0.000	0.572 (0.254)	0.024
State in 9th Circuit (+)	3.667 (0.212)	0.000	3.610 (0.21)	0.000	3.623 (0.210)	0.000
Election year (+)	0.110 (0.181)	0.545	0.107 (0.181)	0.555	0.104 (0.181)	0.566
Performance variables						
Caseload/Judge (+)	0.023 (0.008)	0.004	0.021 (0.008)	0.008	0.022 (0.008)	0.008
Supreme Court Reversals (+)	0.004 (0.001)	0.000	0.004 (0.001)	0.000	0.004 (0.001)	0.000
Constant	−9.991 (0.571)	0.000	−9.650 (0.567)	0.000	−9.584 (0.598)	0.000
N = 15,147	LL = −574.54		LL = −573.11		LL = −570.94	

*Model covers 84th−111th Congresses.

the model as a zero-inflated negative binomial regression model (not shown) and achieved substantively similar results.[24]

Due to the high correlation between party and ideology in the modern era ($r = .84$), we estimate three separate models: one including ideology, one including party, and one combined model with both variables.

Table 2 displays the results of NBRM estimating the number of sponsors and co-sponsors of circuit-splitting bills per Congress. Hypothesis 1 predicted that increased conservatism would lead to increased bill (co)sponsorship, which is borne out in our data. Starting with the ideology-only model, consistent with Mayhew's argument, circuit-splitting bills provide conservative legislators with a vehicle for position taking against a court with a national reputation for liberal politics. Additionally, bill sponsors are not ideological outliers. Rather, splitting bills are more likely to come from legislators who are more ideologically in step with others in their chamber. Taken together, these findings indicate circuit-splitting bills are more likely to be introduced by mainstream conservative members looking to use symbolic legislation to establish their conservative bona fides.

Moving next to the party-only model, Democratic members of Congress are less likely to propose circuit-splitting legislation. In the combined model presented in the right-hand side of Table 2, a similar pattern emerges. But given the increase in political polarization and party-line voting since 1980 (Rhode 1991; Aldrich 2011; Lebo and Koger 2017), have incentives for legislators changed in recent decades? To evaluate this possibility, we estimated a truncated model using only the 96th–111th Congresses (1979–2011).[25] Here, we see the increased role of partisanship in bill sponsorship. Democrats are significantly less likely to propose or co-sponsor legislation to split the Ninth Circuit, while ideology is no longer a significant predictor. This is unsurprising given the increased ideological homogeneity within parties (Lebo and Koger 2017) and greater party unity in recent decades. Nevertheless, whether

[24] Excessive zeros can be problematic by causing the data to be overdispersed and therefore inappropriate for Poisson models, but they do not necessarily require researchers to employ a zero-inflated model. Rather, zero-inflated models should be used when there is a theoretical expectation that the data-generating process for the zeros is different from the non-zero counts (Long and Freese 2006; Allison 2012). We do not have reason to believe there are different processes at work in our data. However, we believe that if there were two different processes, it would be the political factors, rather than performance factors, that make a legislator always a zero (never sponsoring or cosponsoring). We tested this using a zero-inflated negative binomial regression model and found the results to be substantively similar to the negative binomial model presented in the text. Given the robustness of the findings and the lack of a priori theoretical justification for a zero-inflated model, we are confident that our results are not biased by the number of zeros in our data.

[25] Full results are presented in Appendix A. Additional alternative specifications are also presented in Appendices B and C. The findings are robust and mirror the analyses presented in the text.

political motivations are conceptualized in terms of ideology or party, circuit-splitting bills are more likely to emerge from those on the political right.

Hypotheses 2 and 3 also relate to the role of preferences in generating splitting bills, consistent with Clark (2009; 2010). The results show that as the public mood in California grows more distant from the public mood in the legislator's state, more splitting bills are sponsored, in support of H2. However, we do not find any evidence in support of H3; as ideological distance increases between the Ninth Circuit and the member of Congress, there is no significant effect on (co)sponsorship. Together, this suggests that it is not ideological disagreement between the legislator and the Ninth Circuit (as a whole) fueling the rise in bill sponsorship, but rather that bill (co)sponsorship is driven by the policy divergence between a legislator's state and California. The association with California and liberal politics allows for effective position taking by members who come from ideologically distant states. As discussed earlier, California has served as an enduring symbol of liberal politics, and, as such, the rhetoric and proposals focused on the Ninth Circuit make good use of this heuristic for electoral benefit.

Looking at the control variables, bill (co)sponsors are not more likely to be members on the Judiciary Committee, adding further support to the notion that bills are a function of political rather than institutional or performance factors. However, bill sponsors are more likely to be senators, majority party members, and represent states in the Ninth Circuit. Members are not more likely to (co)sponsor legislation when they are up for reelection.

The remaining two hypotheses address "apolitical" rationales for dividing the Ninth Circuit: caseload and Supreme Court oversight. Here, we do find support for these explanations for splitting bills, as both the change in caseload and Supreme Court oversight are associated with increases in splitting bills. In order to ascertain how the political and performance-based factors work together, we estimated the changes in predicted probabilities for several quantities of interest.

In the interest of parsimony, we focus our discussion about substantive effects on the results from the combined model with both party and ideology. For liberal Democrats, with all other variables held constant, we find that increasing caseload per judge from its lowest to highest value does not increase the expected number of sponsorships. Likewise, increasing caseload does not affect bill sponsorship for moderate Democrats. In contrast, for moderate Republicans, the same increase in caseload produces an increase of 0.01 in the expected number of sponsorships; the expected count increases by 0.04 for conservative Republicans. While these increases may seem modest, a standard deviation increase in caseload per judge (160 cases) results in 1.6 bills proposed by moderate Republicans and 6.4 bills by conservative Republicans. These gains are more impressive when one considers the modal number of (co)sponsorships is zero.

Supreme Court oversight also has an effect on the expected number of circuit-splitting bills proposed per Congress, and the magnitude of the change again depends on ideology and partisanship. As with caseload, liberal and moderate Democrats are not expected to sponsor any legislation regardless of the number of times the Ninth Circuit is reversed by the Supreme Court. As the percentage of reversals increases, only conservative Republicans respond by sponsoring more circuit-splitting bills. A standard deviation increase in reversals increases the likely number of bills sponsored by conservative Republicans by 0.12.

Why do we observe such stark differences in behavior? The answer to this (as well as many other questions about Congress) lies in electoral incentives. Members of Congress pursue legislation when it concerns issues salient to their constituents (Lazarus 2013), thus benefiting the legislator electorally by increasing their support among members of the attentive public and potentially improving their campaign fundraising prospects (Box-Steffensmeier et al. 2003; Rocca and Gorden 2010). Opposing an "activist" court that is linked with liberal California politics appears to be an advantageous position for conservative Republicans to take, but not Democrats. Thus the presence of performance-related reasons for dividing the Ninth Circuit (e.g., increases in caseload and Supreme Court reversals) serves only to motivate those legislators with other electoral incentives to act. Below we speculate on what this means for the prospects for real judicial reform and interbranch relations.

Discussion

Compared to past studies of circuit-splitting bills directed at the Ninth Circuit, this article uses the most extensive dataset ever compiled to test the proposition that electoral incentives are the primary motivators for judicial reform proposals that would divide the Ninth Circuit. We find strong evidence that conservative, Republican members of Congress are more likely to sponsor or co-sponsor splitting bills, and that they are even more likely to do so in response to performance-related factors such as rising caseloads and more Supreme Court reversals. Liberal members and Democrats are not similarly moved when such performance-related factors exist. Legislators also sponsor or join onto bills when the policy preferences of their home state are distant from those of California.

Taken together, our results are consistent with the Congressional literature on how the electoral connection structures the incentives and priorities for members of Congress. Even purely symbolic measures can serve an important electoral purpose, and sponsoring or co-sponsoring bills is a relatively safe way to for a member to communicate their position to key constituencies (Lazarus 2013; Fenno 1978; Mayhew 1974). By highlighting their opposition to a liberal court linked with California, a member of Congress can demonstrate his or her conservative bona fides and potentially receive more support from ideologically aligned groups (Box-Steffensmeier et al. 2003). As others have observed (Fish 1973; Thompson and Roper 1980), judicial administration is typically not a high priority for members of Congress. Writing almost 30 years ago about the splitting of the Fifth Circuit, Barrow and Walker contend that "rarely are matters pertaining to the court system considered so urgent as to outweigh political considerations" (1998, 256). Thus even objectively reasonable arguments for dividing a circuit are unlikely to go far unless there is support from the "attentive public" and key organized interests. Even then, the logistical challenges and financial costs associated with reorganizing the federal judiciary may dissuade members of either party from casting a vote to make a split a reality.

Our findings also highlight the distinctive nature of the legislative attacks on the Ninth Circuit relative to what other circuits experience; indeed, the Ninth Circuit appears to be viewed in a similar manner to the Supreme Court, in terms of its potential for position taking via court-curbing bills. This is consistent with a broader electoral strategy to engage in position taking by taking a stance against an "activist" judiciary (Clark 2009; Keele and Malmsheimer 2016). We should note that while court-curbing here takes the form of circuit-splitting bills, there might very well be electoral incentives for Democrats to sponsor other forms of court-curbing bills directed at "conservative" circuits in the future, and for Republicans to target other "liberal" circuits as well. Such bills would similarly provide electoral benefits by creating an issue constituency and politicizing the judiciary (Clark 2010).

Although none of the Ninth Circuit splitting bills have succeeded in becoming law (to date), they have had an impact on the court in other ways. For instance, judges in the Ninth Circuit have openly acknowledged that it was a drain on the work of the court to defend or respond to repeated split attempts (e.g., Goodwin 1989). Unlike the Supreme Court's reactions to court curbing (Clark 2009), active judges in the Ninth Circuit have responded directly to legislative proposals by engaging in Congressional testimony, lobbying, and engagement with the press—all of which take time away from the responsibilities of judging.[26] This type of scrutiny is not dissimilar to the scrutiny that unpopular federal agencies can face from Congress, but it is distinct from what other courts within the lower federal judiciary must contend with as they go about their business.

There are, of course, limitations to our findings. Due to data constraints, we are not able to estimate models that include bills sponsored through the present day. Given the increases in party unity and polarization during the last six years of the Obama presidency, it seems likely that partisanship and ideology would continue to be strong predictors of bills to split the Ninth Circuit, but other dynamics related to the federal judiciary (e.g., the death of Justice Scalia in 2016) might differ from the time period under study. In addition, we recognize that we lack a direct measure of public opinion specifically about the

[26] In the archival documents of former Chief Judge Alfred Goodwin (housed at the Oregon Historical Society library), there are a number of memos that reference how the hearings and split proposals were a source of distraction that, on occasion, slowed the work of the court on pending cases.

Ninth Circuit over time, which would be a better way to gauge whether circuit-splitting attempts are a response to constituent opinion and issue salience. Unfortunately, no such survey data exists, requiring us to rely on proxy measures such as the Enns and Koch public mood variable. While we can only speculate about the effect of including a more direct measure of opinion about the Ninth Circuit, it seems likely that there would be differences in awareness and affect toward the court based on partisanship and perhaps exposure to "sensationalist" media outlets, which has been found to undermine public support for the Supreme Court (Johnston and Bartels 2010). We also would expect that those constituents who follow conservative talk radio and cable news to be more aware of the Ninth Circuit than any other court of appeals, given the frequency with which the Ninth appears to be mentioned by those outlets. Lastly, there is some historical evidence that suggests that bill sponsors are responding to concerns expressed by particular industries (e.g., timber), and because we lack systematic data on these types of economic concerns, we cannot account for variation in interest group pressure connected to regional politics. But in spite of these limitations, we believe that this article represents an important step in expanding our understanding of court curbing and inter-branch dynamics.

While the Supreme Court is said to enjoy a "reservoir of goodwill" (Gibson 2015), it is less clear what impact the sustained efforts to split the Ninth Circuit have had on that court's legitimacy. In the wake of the Trump presidency, the Ninth Circuit has again received attention and criticism from conservative circles, including the president, in response to specific decisions. It seems likely that the direct criticisms from the president will serve to only strengthen the linkage between the court and liberal politics, and possibly bolster the electoral incentives for Republican legislators to continue sponsoring circuit-splitting bills in the future.

Acknowledgments

We would like to thank Patrick Brandt, Arthur Hellman, Jeffrey Lazarus, Jamie Monogan, and Stephen Wasby for their assistance with this project. All errors that remain are our own.

References

Albert, Steve. "A Splitting Headache: The Likely Addition of 10 Judges to the Ninth Circuit Could Revive a Contentious 20-Year Debate over Dividing the Nation's Largest Appeals Court." *The Recorder*, January, 8, 1993.

Aldrich, John H. 2011. *Why Parties? A Second Look*. Chicago: University of Chicago Press.

Allison, Paul D. 2012. *Logistic Regression Using SAS: Theory and Application*, 2nd edition. Cary, NC: SAS Institute.

Banks, Christopher P. 2000. "Politics of Court Reform in the U.S. Courts of Appeals." *Judicature* 84: 34–43.

Barrow, Deborah, and Thomas Walker. 1998. *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform*. New Haven: Yale University Press.

Beck, Glenn. n.d. "Glenn Beck: Fannie and Freddie Mess." http://www.glennbeck.com/content/articles/article/198/12333/.

Bell, Lauren C., and Kevin M. Scott. 2006. "Policy Statements or Symbolic Politics: Explaining Congressional Court-limiting Attempts." *Judicature* 89: 196–201.

Bonforte, Philip S. 2009. "Pushing Boundaries: The Role of Politics in Districting the Federal Circuit System." *Seton Hall Circuit Review* 6: 29–53.

Bowie, Jennifer B., Donald R. Songer, and Szmer J. John J 2014. *The View from the Bench and Chambers: Examining Judicial Process and Decision Making on the U.S. Courts of Appeals*. Charlottesville: University of Virginia Press.

Box-Steffensmeier, Janet M., David C. Kimball, and Scott R. Meinke, and Katherine Tate. 2003. "The Effects of Political Representation on the Electoral Advantages of House Incumbents." *Political Research Quarterly* 56: 259–70. doi:10.1177/106591290305600302.

Bridge, Dave, and Curt Nichols. 2016. "Congressional Attacks on the Supreme Court: A Mechanism to Maintain, Build, and Consolidate." *Law and Social Inquiry* 41(1): 100–125. doi:10.1111/lsi.12155.

Burns, Conrad. 1996. "Dividing the Ninth Circuit Court of Appeals: A Proposition Long Overdue." *Montana Law Review* 57(2): 245–260.

Clark, Tom S. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." *American Journal of Political Science* 53(4): 971–989. doi:10.1111/j.1540-5907.2009.00411.x.

———. 2010. *The Limits of Judicial Independence*. Cambridge: Cambridge University Press.

Edwards, David. "Gingrich: Abolish 'Anti-American' Ninth Circuit Judges." December 15, 2011. http://www.rawstory.com/2011/12/gingrich-abolish-anti-american-ninth-circuit-judges/.

Enns, Peter K., and Julianna Koch. 2013a. "Public Opinion in the U.S. States, 1956 to 2010." *State Politics and Policy Quarterly* 13(3): 349–372. doi:10.1177/1532440013496439.
Enns, Peter K., and Julianna Koch. 2013b. "Replication Data for Public Opinion in the U.S. States: 1956 to 2010." http://hdl.handle.net/1902.1/21655.
Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, and Organization* 23(2): 303–325. doi:10.1093/jleo/ewm024.
Farris, Jerome. 1997. "The Ninth Circuit–Most Maligned Circuit in the Country–Fact or Fiction." *Ohio State Law Journal* 58(4): 1465–1472.
Fenno, Richard F. 1978. *Home Style: Representatives in their Districts*. Boston: Little, Brown.
Fish, Peter G. 1973. *The Politics of Federal Judicial Administration*. Princeton, NJ: Princeton University Press.
Gibson, James L. 2015. "Legitimacy Is for Losers: The Interconnections of Institutional Legitimacy, Performance Evaluations, and the Symbols of Judicial Authority." In *Motivating Cooperation and Compliance with Authority: The Role of Institutional Trust*. [Nebraska Symposium on Motivation, Volume 62.] Ed. Brian H. Bornstein and Alan J. Tomkins, 81–116. New York: Springer.
Hall, Matthew EK, and Ryan C. Black. 2013. "Keeping the Outliers in Line? Judicial Review of State Laws by the US Supreme Court." *Social Science Quarterly* 94(2): 395–409.
Haire, Susan B. 2006. "Judicial Selection and Decision Making in the Ninth Circuit." *Arizona Law Review* 48: 266–285.
Handberg, Roger, and Harold F. Hill Jr. 1979. "Court Curbing, Court Reversals, and Judicial Review: The Supreme Court versus Congress." *Law & Society Review* 14: 309–322. doi:10.2307/3053315.
Hansford, Thomas G., and David F. Damore. 2000. "Congressional Preferences, Perceptions of Threat, and Supreme Court Decision Making." *American Politics Quarterly* 28(4): 490–510. doi:10.1177/1532673X00028004003.
Harward, Brian M., and Kenneth W. Moffett. 2010. "The Calculus of Cosponsorship in the US Senate." *Legislative Studies Quarterly* 35(1): 117–143.
Hellman, Arthur D. 1990. *Restructuring Justice: The Innovations of the Ninth Circuit and the Future of the Federal Courts*. Cornell, NY: Cornell University Press.
———. 1996. "Dividing the Ninth Circuit: An Idea Whose Time Has Not Yet Come." *Montana Law Review* 57(2): 261–290.
———. 2000. "Getting It Right: Panel Error and the En Banc Process in the Ninth Circuit Court of Appeals." *UC Davis Law Review* 34: 425.
"Help! Mom! The 9th Circuit Nabbed the Nativity! Hilarious, Illustrated Children's Story Skewers Wacky, Wicked Politicians, Judges." http://www.wnd.com/2006/12/39123/.
Hug, Procter Jr. 1996. "The Ninth Circuit Should Not Be Split." Montana Law Review 57(2): 291–312.
Proctor Jr., Hug. 2000–2001. "Introduction to the Symposium." *University of California Davis Law Review* 34: 319–323.
Johnston, Christopher D., and Brandon L. Bartels. 2010. "Sensationalism and Sobriety: Differential Media Exposure and Attitudes toward American Courts." *Public Opinion Quarterly* 74(2): 260–285. doi:10.1093/poq/nfp096.
Keele, Denise M., and Robert W. Malmsheimer. 2016. "Is the Ninth Circuit a Liberal Environmental Activist Court?" *Justice System Journal* 37(2): 115–134. doi:10.1080/0098261X.2015.1111782.
Klarman, Michael J. 1996. "Rethinking the Civil Rights and Civil Liberties Revolutions." *Virginia Law Review* 82: 1–67.
Kline, Stephan O. 1998. "Judicial Independence: Rebuffing Congressional Attacks on the Third Branch." *Kentucky Law Journal* 87(3): 679–792.
Krutz, Glen S. 2005. "Issues and Institutions: 'Winnowing' in the U.S. Congress." *American Journal of Political Science* 49 (2): 313–326. doi:10.1111/j.0092-5853.2005.00125.x.
Lazarus, Jeffrey. 2013. "Issue Salience and Bill Introduction in the House and Senate." *Congress & the Presidency* 40(3): 215–229. doi:10.1080/07343469.2013.822944.
Lebo, Matthew J., and Gregory Koger. 2017. *Strategic Party Government: Why Winning Trumps Ideology*. Chicago: University of Chicago Press.
Leonard, Meaghan E. 2016. "State Legislatures, State High Courts, and Judicial Independence: An Examination of Court-Curbing Legislation in the States." *Justice System Journal* 37(1): 53–62. doi:10.1080/0098261X.2015.1024568.
Letter from Justice Antonin Scalia to Hon. Byron R. White, Chair, White Commission (Sep. 9, 1998), available at http://www.library.unt.edu/gpo/csafca/hearings/submitted/pdf/Scalia2.pdf
Letter from Judge Alfred Goodwin to Senator Slade Gorton. June 28, 1989. On file with authors.
Limbaugh, Rush. "9th Circus Court Saves Democrats Again." September 15, 2003. https://www.rushlimbaugh.com/daily/2003/09/15/9th_circus_court_saves_democrats_again/.
———. "9th Circus Rules in Favor of 'The Offended.'" April 21, 2006. https://www.rushlimbaugh.com/daily/2006/04/21/9th_circus_rules_in_favor_of_the_offended2.
———. "No Standing at the Ninth Circus?" March 26, 2013. https://www.rushlimbaugh.com/daily/2013/03/26/no_standing_at_the_ninth_circus/.
Long, J. Scott, and Jeremy Freese. 2006. *Regression Models for Categorical Dependent Variables Using Stata*. 2nd ed. College Station, TX: Stata Press.
Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven: Yale University Press.
Meinke, Scott R. 2008. "Institutional change and the electoral connection in the Senate: Revisiting the effects of direct election." *Political Research Quarterly* 61(3): 445–457.

Moyer, Laura P. 2008. "Organizations, Complexity, and Decision Making in the U.S. Courts of Appeals." Ph.D. Dissertation. https://getd.libs.uga.edu/pdfs/moyer_laura_p_200805_phd.pdf.
Nagel, Stuart S. 1965. "Court-curbing Periods in American History." *Vanderbilt Law Review* 18: 925–944.
Nichols, Curt, Dave Bridge, and Adam M. Carrington. 2014. "Court Curbing via Attempt to Amend the Constitution: An Update of Congressional Attacks on the Supreme Court from 1955–1984." *Justice System Journal* 35(4): 331–343. doi:10.1080/0098261X.2013.875863.
Parker, David C. W., and Craig T. Goodman. 2009. "Making a Good Impression: Resource Allocation, Home Styles, and Washington Work." *Legislative Studies Quarterly* 34: 493–524. doi:10.3162/036298009789869709.
Posner, Richard A. 2000. "Is the Ninth Circuit Too Large? A Statistical Study of Judicial Quality." *Journal of Legal Studies* 29(2): 711–719.
Powe, Lucas A. 2000. *The Warren Court in American Politics*. Cambridge, MA: Belknap Press of Harvard University Press.
Rabe-Hesketh, Sophia, and Anders Skronda. 2012. *Multilevel and Longitudinal Modeling Using Stata Volume II: Categorical Responses, Counts, and Survival*. 3rd ed. College Station: Stata Press.
Rhode, David W. 1991. *Parties and Leaders in the Post-reform House*. Chicago: University of Chicago Press.
Rocca, Michael S., and Stacy B. Gordon. 2010. "The Position- Taking Value of Bill Sponsorship in Congress." *Political Research Quarterly* 63(2): 387–397.
Rosenberg, Gerald N. 1992. "Judicial Independence and the Reality of Political Power." *Review of Politics* 54(3): 369–398. doi:10.1017/S0034670500018222.
Schwartz, John. "'Liberal' Reputation Precedes Ninth Circuit Court." *New York Times*, April 23, 2010.
Scott, Kevin M. 2006. "Supreme Court Reversals of the Ninth Circuit." *Arizona Law Review* 48: 341.
Second Amendment Foundation. "Gun Ruling 'Typically Preposterous,' Say Gun Rights Leaders." https://www.saf.org/ninth-circuit-court-ruling-typically-preposterous-say-gun-rights-leaders/.
Songer, Donald R., Reginald S. Sheehan, and Susan B. Haire. 2000. *Continuity and Change on the United States Courts of Appeals*. Ann Arbor: University of Michigan Press.
Stanley, Arthur J., and Irma Russell. 1982. "The Political and Administrative History of the U.S. Court of Appeals for the Tenth Circuit." *Denver Law Journal* 60: 119–147.
Stimson, James A. 1991. *Public Opinion in America: Moods, Cycles, and Swings.* Boulder: Westview Press.
Thompson, Joel A., and Robert T. Roper. 1980. "The Determinants of Legislators' Support for Judicial Reorganization." *American Politics Quarterly* 8: 221–236. doi:10.1177/1532673X8000800205.
Tjoflat, Gerald B. 1993. "More Judges, Less Justice: The Case Against Expansion of the Federal Judiciary." *ABA Journal* 79 (7): 70–73.
Tobias, Carl. 1996. "Proposal to Split the Ninth Circuit." *Harvard Environmental Law Review* 20: 547.
The Office of the Governor of Arizona. "Governor Doug Ducey, Arizona congressional leaders call for removal of Arizona from the Ninth Circuit." [Press release]. January 28, 2016. http://azgovernor.gov/governor/governor-doug-ducey-arizona-congressional-leaders-call-removal-arizona-ninth-circuit.
Trigoboff, Dan. June 12, 1989. "Northwest Favors Splitting 'California' Circuit." Legal Times (Am-Law News Service).
Wasby, Stephen L. 2001. "Supreme Court and Courts of Appeals En Bancs," *McGeorge Law Review* 33: 17.
———. 2014. "How Federal Appellate Judges Affect State Law: Judge Goodwin and Oregon." *Willamette Law Review* 50: 195–257.
Washington Times. September 10, 2010. "Editorial: Judicial Assault on 'Don't Ask, Don't Tell.'" https://www.washingtontimes.com/news/2010/sep/10/judicial-assault-on-dont-ask-dont-tell/.
Wheeler, Stephen M. 2017. "A Carbon-Neutral California: Social Ecology and Prospects for 2050 GHG Reduction." *Urban Planning* 2(4): 5–18.
Will, George. "Circuit Breaker." *Washington Post*. November 16, 2006. http://www.washingtonpost.com/wpdyn/content/article/2006/11/15/AR2006111501335.html.
———. "Slow Learners at the Ninth Circuit." May 19, 2010. *Washington Post*. http://www.washingtonpost.com/wp-dyn/content/article/2010/05/18/AR2010051803989.html.
Wright, Lawrence. "America's Future Is Texas." *New Yorker Magazine*. July 10 and 17, 2017.