Introduction

In 2002, Chief Justice William H. Rehnquist used his Year-End Report on the Federal Judiciary to ask Congress for additional appropriations, judicial pay raises, and funds to modernize the Supreme Court Building and other courthouses. During that term, the Court decided two controversial cases: *Lawrence v. Texas,*[1] which overturned anti-sodomy laws, and *Gratz v. Bollinger*,[2] which reaffirmed narrowly-tailored affirmative action programs in higher education. In response to these rulings, several House Republicans including Majority Leader Tom Delay (R-TX) organized the House Working Group on Judicial Accountability to reassert congressional authority over the judiciary. Representative John Hostettler (R-IN) argued that "The Constitution only requires that when a justice is appointed to the court we do not reduce their salary" and "doesn't say anything about giving them a chair to sit in, or a pencil and paper to write their decisions" (Dinan 2003). The funds allocated to the judiciary for the 2003-2004 fiscal year were $237 million below the requested level.[3]

This episode was part of an ongoing interbranch dialogue. The federal courts depend on Congress for resources and institutional reforms, but legislators are not obligated to fulfill the requests of judges or judicial administrators. The incentives for Congress to enable the judiciary are likely to vary in response to dynamic political conditions (Hughes et al. 2017). Overall, approximately one-third of requests for reform issued by chief justices are granted within a year (Vining and Wilhelm 2012). Why does Congress consent to some requests and not others? Scholars have examined the chief justices' agendas and success in narrow issue areas, but explanations of successful judicial administration efforts are limited (cf. Fish 1973).

Effective courts are needed to adjudicate cases, resolve legal controversies, and enforce the rights of citizens. When judicial decline is ignored, the results can include excessive workloads, congestion and delay in case dispositions, low institutional morale, judicial resignations and retirements, poor working

[1] 539 U.S. 538
[2] 539 U.S. 244
[3] Judges did receive modest cost-of-living salary increases and funding to improve some facilities.

conditions, and popular dissatisfaction with American courts (Posner 1996). These conditions are problematic for a judiciary dependent on public and elite confidence in its legitimacy (Clark 2011).

Scholars have found that chief justices are strategic in their requests for institutional reform (Hughes et al. 2017). We extend previous analyses of reform requests and consider the likelihood that legislators move upon those requests. We focus primarily on incentives related to political agreement as well as the cost and permanence of reforms. We argue that changes desired by chief justices are more likely to become law when interbranch relations are soothed by ideological agreement and when the requests are limited in scope. We develop and test a parsimonious model explaining the success or failure of judicial reforms requested in Year-End Reports on the Federal Judiciary outlined by the head of the court system—the Chief Justice of the United States. Our results show that the judiciary's ideological congruity with Congress is an important factor in the success of its agenda for reform. We also find that this success is conditioned upon the scope of the policy request. Ideologically incongruent courts are unlikely to achieve their goals in Congress, especially when the scope of that reform is broad.

The Separation of Powers and Courts Reforms

Senator Joseph Biden (D-DE) explained the importance of the relationship between Congress and the machinery of justice, noting that "[t]he federal judiciary cannot adequately solve systemic problems affecting congestion, delay, and costs in the courts without appropriate legislative reform instituted by Congress" (Biden, 1994). He argued that the judiciary and Congress share an obligation to assure that justice is provided "within a reasonable time and at reasonable expense" (Biden 1994, 1285). For that to be possible, the elected branches must repair or improve the federal judiciary so it can provide justice fairly and efficiently.

Both judges and members of Congress have preferences and incentives relevant to the adoption of judicial reform. Judges' preferences straddle the administrative and the ideological. When courts are crippled by excessive caseloads, judicial vacancies, stagnant pay, inadequate facilities, or insufficient

resources, it is difficult to achieve efficiency or maintain job satisfaction (Posner 1996).[4] In cases such as these, judges, like bureaucrats, are likely to behave like budget-maximizers, always seeking more resources from Congress (Hughes et al. 2017, Niskanen 1968). Nevertheless, judges also have political preferences over courts reforms (de Figueiredo et al. 2000, de Figueiredo and Tiller 1996, Toma 1996). Jurisdictional changes, caseload management, additional judgeships, and other administrative issues have important policy implications. Hughes et al. (2017) find that courts strategically request congressional reform when the two institutions share similar political preferences. Judges express their preferences over these reforms to relevant policymakers (Resnik and Dilg 2006, Smith 1995, Walker and Barrow 1985, Yarwood and Canon 1979).

Members of Congress have concerns about the fairness and efficiency of the judiciary, but they are also interested in the advancement of their preferred policies (Arnold 1990). Legislators have incentives to assist courts when they advance the goals of members of Congress. Political relations between Congress and the federal courts may either be combative or cooperative (Resnik 2000). The likelihood that policymakers will support the needs of the judiciary may be based on their political satisfaction with that branch. Legislators have greater incentives to empower the courts when they behave in accord with the desires of lawmakers and their constituents. Alternatively, there are few incentives to reward a judiciary out of step with lawmakers' policy priorities. Thus, when relations between the courts and Congress are congenial, improvements requested by the Third Branch are likely to be enacted. Indeed, Hughes et al. (2017) use game theory to show how political congruence is an important condition for favorable courts reform.

There is substantial evidence that satisfaction with judicial behavior affects how the elected branches respond to courts. For example, legislative overrides sometimes follow rulings that disappoint Congress (Barnes 2004), and lawmakers occasionally react to judicial activity by proposing changes to

[4] For an illustrative example, see the decades-long struggle over the splitting up of the Fifth Circuit Court of Appeals (and the debated split of the Ninth Circuit) that played out among the House and Senate Judiciary Committees, the Judicial Conference of the United States, and the judges of these respective circuits (Barrow and Walker 1988).

courts' jurisdictions (Clark 2009). On the other hand, satisfaction with judicial outputs is correlated with budget increases (Toma 1996). Indeed, courts are even aware of the fact that ideologically congruent legislatures are more likely to grant them favorable reforms and attempt to cash in on these alliances. Research by Hughes et al. (2017) finds that chief justices structure their reform agendas based upon the ideological proximity between Congress and the federal courts. However, they do not examine the conditions under which Congress enacts the changes requested by the judicial branch.

We anticipate that the political congruity between Congress and the judiciary affects how elected policymakers maintain the courts. When the judicial and the elected branches share similar preferences, we hypothesize it is easier for the judiciary to achieve favorable reforms. As such,

> *Hypothesis 1*: Congress is more likely to enact judicial reforms when it is ideologically similar to the judiciary.

We recognize, however, that not all types of requests for institutional reform are created equal. Requests to authorize studies, for example, are arguably easier for Congress to authorize than requests to reorganize federal circuits, create new judgeships, or increase the salaries of existing judges (de Figueiredo et al., 2000, de Figueiredo and Tiller 1996). More routine proposals are less difficult because they do not directly implicate the policy-making of the Third Branch and are unlikely to attract constituent attention. Expensive or relatively permanent reforms are more political because they create opportunities for legislators to advance their policy interests. Consequently, we posit the following:

> *Hypothesis 2*: Congress is more likely to enact routine judicial proposals than important or expansive ones.

Finally, we suspect that Congress will be more favorable toward broad or expansive policy proposals when their preferences are aligned with those of the judiciary. Put differently, we would expect Congress to be unlikely to pass expansive or permanent courts reforms generally, but Congress should be even less likely to pass a substantively expansive agenda that advances the ends of an ideologically incongruent judiciary. As such, we hypothesize the following conditional relationship:

Hypothesis 3: Congress is more likely to enact judicial reforms when it is ideologically similar to the judiciary *and* when the scope of such reform is less important or expansive.

In the next section, we test these empirical predictions.

Data and Methods

For our analysis of congressional response to federal judicial policy requests, we examine congressional approval of the chief justice's requests contained in his Year-End Reports on the Federal Judiciary. Our empirical analysis estimates the likelihood that Congress approves specific requests for institutional reforms as outlined by the chief justice.

Dependent Variable

Congress learns about the needs of the judiciary from sources including federal judges and the Judicial Conference of the United States. An important, but not exhaustive, subset of these needs is emphasized each year in the Year-End Report on the Federal Judiciary.[5] It is released at the end of each calendar year and is analogous to the State of the Union Address. Both include retrospective commentary about the prior year and explain legislative goals for the year ahead (Resnik and Dilg 2006, 1608). While the State of the Union Address is the subject of several empirical studies (Cohen 1995, Peake and Eshbaugh-Soha 2008, Young and Perkins 2005), the Year-End Report on the Federal Judiciary is virtually unexamined.[6] These reports are a salient source of information released by the administrative head of the federal judiciary and—more so than other communications from the Third Branch—are highly visible to political elites and the media.

[5] The judiciary also expresses its priorities via private communications, the yearly National Conference on the Judiciary, and the Annual Report of the Judicial Conference. The Judicial Conference is required by statute to report its work and views on legislation (28 U.S.C. 331). However, the chief justice has substantial influence over the Judicial Conference because he appoints the members of its committees and steers its activities (Nixon, 2003). As a result, the content of the Annual Report of the Judicial Conference is similar to the information provided in year-end reports, with the two perceived as virtually ``inseparable'' (McDonough 2005). More than 26 percent of agenda items in the Year-End Reports on the Federal Judiciary are attributed explicitly to the Judicial Conference by the chief justice.

[6] See Hughes et al. (2017), Resnik (2006) and Vining and Wilhelm (2012) for more background on the Year-End Report.

Our dependent variable measures whether Congress enacted a request contained in the Year-End Report on the Federal Judiciary within one year of its issuance ("1" if yes, "0" otherwise). Our data include agenda items from every Year-End Report from 1970 to 2013 and contain only those that can be enacted by Congress rather than other institutions or individuals (e.g., the American Bar Association or individual judges), which total 202 requests for reform.[7] Following the standard employed by recent research on presidential success in Congress (Eshbaugh-Soha 2010), we determined whether each request was granted in the calendar year following the Year-End Report by searching the Congressional Record and retrospective commentary in the next Year-End Report. Overall, 62 of 202 agenda items we identify (31 percent) were enacted within one year.[8]

Explanatory Variables

We examine factors that influence the success of judicial reforms requested by the chief justice. Our hypothesis is that when the courts and Congress are ideologically aligned, the probability a chief justice's proposals are enacted into law will increase. To measure the preferences of the federal courts, two individuals stand out over others. First, the median justice on the Supreme Court plays an outsize role in directing the policy-making of that institution (Hammond et al. 2005). Second, the chief justice, both as a high-profile administrator and a player with unique powers to shape judicial policy, can also be said to represent the judiciary (Nixon 2003). We therefore include separate models treating each of these individuals as salient representatives of the federal judiciary.

A few pivotal actors stand out when measuring the ideological preferences of Congress. First, the median voter in each chamber is essential to the chief justice's agenda as she must offer her assent before

[7] The historical Year-End Reports are reprinted in an edited volume compiled by the former Librarian of the Supreme Court (Dowling 2010), and the remainder are published on the website for the Supreme Court. Each Year-End Report on the Federal Judiciary since 2000 is archived at goo.gl/xRUXNF. Scholars use similar means to identify the policy agendas of presidents in specialized speeches and State of the Union addresses (Cohen, 1995; Eshbaugh-Soha, 2010). For a more detailed discussion of the content of this agenda, see Vining and Wilhelm (2012).

[8] We expected that measuring the enactment or denial of requests for judgeships would be challenging given our use of a binary dependent variable. However, no such request in our data set was granted partially. Every request for circuit or district judgeships was either denied altogether or enacted by a statute meeting or exceeding the requested number of new judgeships.

any bill can receive final passage. We therefore determine the ideological congruity of the courts and the median voter in each legislative chamber. However, some agenda items never make it to the floor of a given chamber, even if they have the support of its median voter. This can result in part because of partisan control of the chamber's agenda. Before a bill can make it to the floor, the leadership must lend it support by scheduling it for debate or by guiding it through the committee process (Gailmard and Jenkins 2007, Rhode 1991). Therefore, we also examine the ideological congruity of the courts and the median member of the majority party in each chamber. Finally, committee politics also dictate that before a bill can reach the floor, committee chairs must open the gates and report the bill to the full chamber. Sophisticated chairs tailor legislation in ways that influence the likelihood of its final passage (Gilligan and Krehbiel 1989). Therefore, we also examine the ideological congruity of the courts and the chairmen of the judiciary committees in both the House and Senate.

We use Judicial Common Space Scores estimated by Epstein et al. (2007) to measure the political preferences of the players specified above and their ideological proximity to one another. Common Space Scores are appropriate in this context because every political actor's ideal point is measured within the same space, which facilitates interbranch comparisons (Poole 1998). We measure the ideological congruity of any given pair of political actors as the absolute difference in their common space scores such that values closer to zero denote greater congruity, and values greater than zero denote greater incongruity.

Our theory argues that the policy scope of the chief justice's agenda influences the likelihood it is enacted into law. We follow Eshbaugh-Soha (2010) and define agenda items as "important" if their effects are long term and they require substantial government spending, in comparison to "routine" requests that are more procedural and overtly administrative in nature. Substantively, "important" proposals primarily include those related to new judgeships, jurisdiction changes, structural reform, and judicial vacancies. We expect that important agenda items are less likely to receive final passage, especially when the courts are incongruent with pivotal members of Congress.

Finally, we control for other factors that are likely to affect the success of the chief justice's agenda. First, we include a dichotomous variable that indicates whether partisan control of the elected branches of

government is politically divided for each year. Policymaking is more difficult when the two chambers of Congress and the Executive are controlled by opposite parties. From 1970 to 2013, divided government was typical; it coincided with approximately 80 percent of the chief justices' requests. Second, we recognize that chief justices individually influence the success or failure of their own agenda (Hughes et al. 2017, Vining and Wilhelm 2016). Chief justices' agendas expand as their tenures in office increase, which can make it harder for any given request in a Year-End Report to prevail (Vining and Wilhelm 2016). We therefore include a measure of the number of years each chief justice has been in office at the time of his request. We present descriptive statistics for the variables used in the quantitative analysis in Table 1.

[TABLE 1 ABOUT HERE]

Estimation Technique

Because our dependent variable is dichotomous, we use a probit regression model to estimate the likelihood that a reform request is enacted. We identify 202 specific, non-symbolic requests in the chief justice's Year-End Report agenda from 1970 to 2013 upon which Congress can feasibly act. To account for heterogeneity among panels, we calculate robust standard errors that are clustered upon the three chief justices in our data.[9] Formally, we estimate probit models that take the following form:

$$\Pr(Enacted = 1) = \Phi(\beta_0 + \beta_1 Important_i + \boldsymbol{\zeta} Distance_i + \boldsymbol{\psi} Distance_{\boldsymbol{i}} \times Important_{\boldsymbol{i}} + \boldsymbol{\gamma} Controls + \epsilon_i^{cj}),$$

where Φ denotes the standard normal cumulative probability distribution, $\boldsymbol{\zeta}$ represents a vector of coefficients on various ideological distance variables, $\boldsymbol{\psi}$ represents a vector of coefficients for interaction

[9] Doing so is important as each chief justice in our dataset utilized the Year-End Reports to unique ends (Vining and Wilhelm 2012). Chief Justice Burger regularly peppered Congress with laundry lists of requests, only about 25 percent of which were ever enacted. Chief Justice Rehnquist, by contrast, was more judicious with his requests and consequently enjoyed a higher rate of success (about 37 percent). Chief Justice Roberts, perhaps recognizing the gridlock in Congress and the difficulty any given request would have in receiving passage, averaged only one or two requests per year.

effects between important requests and various ideological distance measures, $\boldsymbol{\gamma}$ represents a vector of coefficients for the various control variables in the model, and ϵ_i^{cj} denotes the error term.

Results

We present the main results from the statistical analyses, which examine the likelihood the chief justice's agenda is enacted across 202 agenda requests, in Table 2. Each column represents a unique model specification for the preferences of the judiciary, the House, and the Senate. The first three columns of results in Table 2 are with respect to the distances between relevant members of Congress and the median justice on the Supreme Court. The final three columns of results are with respect to the distances between the chief justice and relevant members of Congress. For each set of judicial preferences, we further estimate models with respect to the distance between the judiciary and key members of Congress, including the median voter, the median of the majority parties, and the chairmen of the Judiciary Committee in both the House and Senate. Table entries are probit coefficient estimates, and values in parentheses are robust standard errors, clustered upon each chief justice.

[TABLE 2 ABOUT HERE]

Hypothesis 1 posited that the likelihood Congress enacts a chief justice's agenda item is dependent upon its ideological congruity with the federal courts, while Hypothesis 2 stressed the importance of the policy scope of that proposal. We present the "main" effects of ideological congruence and policy in the first three rows of Table 2. Note that because we interact ideological proximity with policy scope, we interpret the "main" effects of these variables as when they are held constant at zero. Because there is no actual occasion when two political actors are perfectly aligned, these coefficient estimates are not easily interpretable. Instead, we turn to the interaction effects to evaluate our hypotheses.

We find strong support for our hypotheses in the interaction effects presented in Table 2. Congress is more apt to enact a chief justice's agenda when it is politically aligned with his preferences and when his requests are narrowly tailored. Partisans in the House of Representatives in particular are sensitive to the ideological proclivities of their judicial counterparts when evaluating the chief justice's agenda. Our models

demonstrate that the House conditions its policy response based upon the ideology of the chief justice, as each interaction effect involving the House and the chief justice is negative and statistically significant. As the House and judiciary become more ideologically incongruent, and as requests take on a broader policy scope, the likelihood a given request is granted is decreasing. We find that this is the case for the chamber median, the median of the majority party, and for the committee chairmen. Hence, pivotal members of the House behave highly ideologically toward the chief justice's agenda—a result consistent with previous findings on the position-taking phenomenon House members display toward the courts (Clark 2009). While the Senate does not appear to behave as ideologically toward the courts as does the House, we nevertheless find that the distance between the Supreme Court and Senate median significantly predicts the likelihood of an agenda item's final passage, consistent with our theoretical presentation. These findings are consistent with Hypothesis 3.

Finally, even though our key explanatory variables largely behaved as anticipated, control variables present some mixed results. First, divided government is associated with lower probabilities the chief justice's agenda is enacted into law. This is as expected. When federal branches of government are controlled by members of the opposite party—especially in the modern era of party polarization—gridlock is typical, making changes to the status quo difficult. Unlike Vining and Wilhelm (2016), however, we find little evidence a chief justice's experience in office better prepares him to propose winning agenda requests. Only in one model, which measures the ideological distance between the chief justice and chairmen of the Judiciary Committees, does this variable reach conventional levels of statistical significance, which is not strong support for this claim.

Conclusion

We have considered the success of judicial reforms as a function of interbranch politics and policy scope. Following research on presidential success, we hypothesized that reforms to the judiciary were largely conditioned upon the ideological alliances between Congress and the courts as well as the cost and durability of the proposed reform. We found that ideological congruence with Congress, especially the

House, explains a significant degree of agenda success, across numerous model specifications. We also found that this effect is conditioned by the scope of the request the chief justice makes. Our results dovetail nicely with other works such as Barrow and Walker (1988), who find that that judicial administration is inherently political, along with Hughes et al. (2017) and Nixon (2003), who find that the chief justice views judicial administration from a similarly strategic perspective. Moreover, the significance of important requests fits a common narrative with regard to policymaking. It is harder to accomplish bigger changes than smaller, incremental initiatives.

This article speaks to important limitations faced by a judiciary that result from dependence upon Congress. While scholars typically consider congressional action such as jurisdiction change or nullification as attempting to constrain the federal judiciary, this research suggests that Congress may inhibit the federal judiciary by ignoring requests for judicial maintenance. By ignoring the needs of the Third Branch, Congress may signal its disapproval of specific policies or the judiciary's waning legitimacy. These are novel findings and merit additional scrutiny. For example, do individual legislators vote to deprive the judiciary of additional resources in response to constituent displeasure with the courts? Or are legislators more apt to support such legislation in direct response to expressions of judicial review that upset the legislative process? We hope that additional research will further explore judges' and legislators' efforts to achieve their administrative goals in light of their political environments.

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Tables

Table 1: Variables Used in Quantitative Analysis (1970 to 2013)		
Variable	Description	Mean (Std. Dev.)
Enacted (Dependent Variable)	Dichotomous: "1" if Congress enacted a chief justice's agenda item within one year of its request, "0" otherwise.	0.31 (0.46)
Court Median & Senate Median Distance	Continuous: Absolute distance between the median Supreme Court justice and the median senator's ideal point.	0.16 (0.10)
Court Median & Senate Majority Party Median Distance	Continuous: Absolute distance between the median Supreme Court justice and the median senator's ideal point in the majority party.	0.31 (0.11)
Court Median & Senate Judiciary Chairman Distance	Continuous: Absolute distance between the median Supreme Court justice and the Senate Judiciary Chairman's ideal point.	0.22 (0.15)
Chief Justice & Senate Median Distance	Continuous: Absolute distance between the chief justice and the median senator's ideal point.	0.42 (0.14)
Chief Justice & Senate Majority Party Median Distance	Continuous: Absolute distance between the chief justice and the median senator's ideal point in the majority party.	0.09 (0.07)
Chief Justice & Senate Judiciary Chairman Distance	Continuous: Absolute distance between the chief justice and the Senate Judiciary Chairman's ideal point.	0.31 (0.27)
Court Median & House Median Distance	Continuous: Absolute distance between the median Supreme Court justice and the median House member's ideal point.	0.17 (0.10)
Court Median & House Majority Party Median Distance	Continuous: Absolute distance between the median Supreme Court justice and the median House member's ideal point in the majority party.	0.34 (0.09)
Court Median and House Judiciary Chairman Distance	Continuous: Absolute distance between the median Supreme Court justice and the House Judiciary Chairman's ideal point.	0.44 (0.16)

Chief Justice & House Median Distance	Continuous: Absolute distance between the chief justice and the median House member's ideal point in the majority party.	0.40 (0.17)
Chief Justice & House Majority Party Median Distance	Continuous: Absolute distance between the chief justice and the median House member's ideal point in the majority party.	0.49 (0.30)
Chief Justice & House Judiciary Chairman Distance	Continuous: Absolute distance between the chief justice and the House Judiciary Chairman's ideal point.	0.61 (0.30)
Important Request	Dichotomous: Measure of scope of policy area in requested agenda item. Coded "1" if important, "0" otherwise.	0.48 (0.50)
Divided Government	Dichotomous: Measure of whether elected branches of federal government are controlled by a single party, "1" if yes, "0" otherwise.	0.81 (0.40)
Chief Justice Tenure	Continuous: Number of years a chief justice has held his position as chief justice.	9.35 (5.03)
Notes: For each "distance" variable, we use Epstein et al.'s (2007) common space scores.		

Table 2: Chief Justice's Success as Judicial Administrator

	Supreme Court Median			Supreme Court Chief Justice		
Variable	Chamber Medians	Party Medians	Judiciary Chairmen	Chamber Medians	Party Medians	Judiciary Chairmen
Senate Distance	-0.48	-1.77*	1.46	0.69	4.09*	0.59
	(4.15)	(0.93)	(1.59)	(1.88)	(0.95)	(0.84)
House Distance	3.12	2.66*	0.81	1.13*	0.42	0.70*
	(2.13)	(0.68)	(0.61)	(0.60)	(0.49)	(0.29)
Important	-0.12	-0.13	-0.40*	0.15	0.02	-0.16
	(0.11)	(0.31)	(0.18)	(0.42)	(0.22)	(0.24)
Senate Distance × Important	-2.20*	0.05	0.87	-0.90	-1.85	0.67
	(0.80)	(1.16)	(1.78)	(1.07)	(2.79)	(0.46)
House Distance × Important	0.42	-1.39*	-0.66*	-0.46*	-0.53*	-0.80*
	(0.69)	(0.21)	(0.20)	(0.27)	(0.27)	(0.26)
Divided Government	-0.24*	-0.43*	-0.35*	-0.43*	-0.58*	-0.28*
	(0.06)	(0.15)	(0.09)	(0.06)	(0.09)	(0.10)
CJ Tenure	0.01	-0.01	0.01	0.03	-0.01	0.04*
	(0.05)	(0.03)	(0.03)	(0.03)	(0.02)	(0.02)
Intercept	-0.65	-0.27	-0.79*	-0.98	-0.31	-1.12*
	(0.80)	(0.84)	(0.37)	(0.86)	(0.53)	(0.39)
Log Pseudo-Likelihood	-117.81	-119.06	-116.50	-119.49	-118.27	-117.45

Notes: The dependent variable is whether Congress enacted a chief justice's agenda item in the following year (N=202). Table entries are probit coefficients, and values in parentheses are robust standard errors, clustered upon chief justices. Asterisks (*) indicate that coefficient estimates are statistically distinguishable from zero ($p < 0.05$), using one-tailed tests for significance.