# Partisan Legislative Leakage Into The Judiciary

*All Contributions By: Douglas Williams*

**Background**

For this project, I wanted to explore the relationship between political polarization in the legislative and judicial branches of the United States federal government. Political polarization refers to how ideologically far apart different groups are in civic society and government. Recent discourse in political science has focused on the widening ideological gap between Democrats and Republicans and the voters' disdain for those of the other party[1].

This abstract idea does have real impacts. Barber and McCarty do an excellent exploration and summation of how political scientists have explained the increase and effects of legislative (congressional) polarization[2]. Among their findings was that polarization, measured as the difference in mean ideological points, hit an all-time high around 2006, so it motivates further exploration into modern polarization levels. In the Senate, most policies require 60 or 67 votes to overcome filibuster and veto override and pass. When politically extreme representatives come together in congress, they find it more difficult to get the supermajorities required but are not willing to shift their policies in the other direction to acquire votes. As such, McCarty estimates that the highest polarized pre-2007 legislatures were 66% less productive than the lowest polarization legislatures,[2] as measured by the quantity of substantial legislature passed by congress.

Discussions of polarization have historically overlooked the judiciary. The judicial branch is the wing of government made up of courts, judges, and attorneys. In the design of government, they play an integral role in checking the political decisions of the executive (president) and legislative branches of government. To help balance and justify this power, judges are assessed and appointed based on their track record with law, a deep literature constrained by core doctrines and prior decisions that are supposed to be far removed from the public political discourse. But recently, the courts have been under increasing scrutiny for an array of controversial decisions that feel reminiscent of the partisan policy fighting in the legislature. From decisions on mask mandates and reproductive rights to an evermore diverse landscape of financial and policing regulations, decisions made by the supposedly impartial branch of government are starting to mirror the opinions of the political party in control.

These trends beg the question, is polarization growing in the legislature and, if so, is it trickling into the judiciary? To answer this, I investigated the political ideology distributions of politicians and judges to see if polarization in the former begets polarization in the latter. I focused on polarization among the Senate and Article III federal judges. Article III federal judges are the highest in the nation, appointed to life positions in the district, appeals, and supreme courts. Uniquely, they are nominated by the president and approved by majority vote in the Senate before taking up their posts. This appointment process is ripe for investigation because it means a vote in the legislature determines the appointment of the most powerful judicial positions. If there is partisan leakage, this is the perfect place to see it.

**Data**

To explore polarization, I needed to know how ideology is distributed among the Senate and Article III judges as well as when the senators and judges served to incorporate a time scale. Luckily, there are two datasets and a website that contain this critical information.

The DW-Nominate Scores dataset[3] is the golden standard in political ideology mapping. It uses the politicians' voting history and weights their position relative to the other politicians to position them all on a scale of -1 to 1, with negative values being more liberal and positive more conservative. These scores are continually updated with each new federal politician elected and have been by far the most cited data in modern political science.

For a distribution of judge ideologies, I turned to a Stanford research team's Database on Ideology, Money in Politics, and Elections[4]. Using similar weighted decision ideology mapping processes and political campaign contributions they calculated ideology scores for politicians, judges, and attorneys. The data attaches CF Ideology Scores, which have a scale from -2 to 2, again with negative and positive values representing liberal and conservative ideologies respectively.

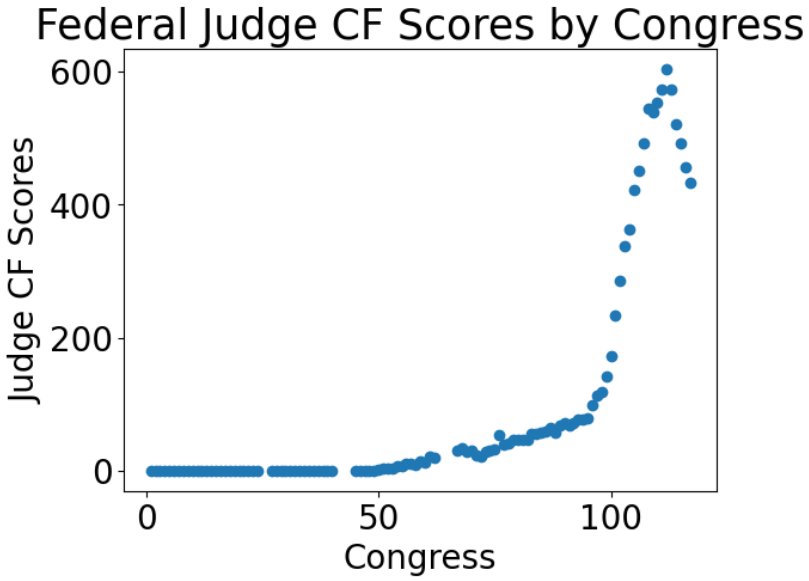



*Figure 1*

The data contains information on thousands of judges, but not every federal judge in US history is represented. Figure 1 shows the number of federal judges with CF scores in the data by congress. For clarity, the 50th congress represents 1887 and the 100th is 1987. My analysis will target the modern political era from around congress 78 onward, which also guarantees a minimum sample size of 100 federal judge CF scores judges per congress.

In order to understand these trends in polarization, I also needed a time scale so I could compare all the Article III judges at a given time with the relevant Senate. For this, I turned to Ballotpedia.org[5], which contains a record of judges appointed by each president, their appointment date, and their retirement date. I used the pandas python library html scraping capacity to convert president appointment page tables into pandas dataframes to perform analysis.

**Methods**

After some data cleaning and manipulation, I could pull up the senators and judges serving within the term of each. I could then generate the ideology distributions of the two governmental bodies for specific Senate timeframes, but I needed a way to numerically compare the qualitative concept of polarization.

Below are two such ideology distributions for the 85th and 115th Senates. The red curve is Republican senators and the blue is Democrats. The dotted lines show the median party ideological point.

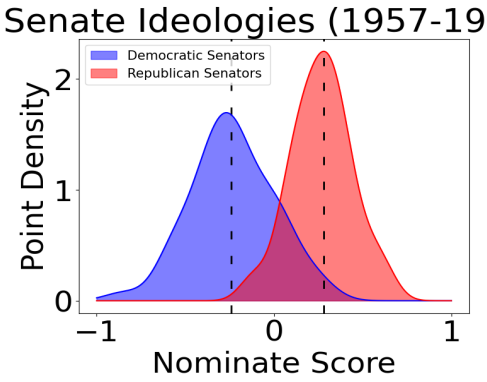



*Figure 2*

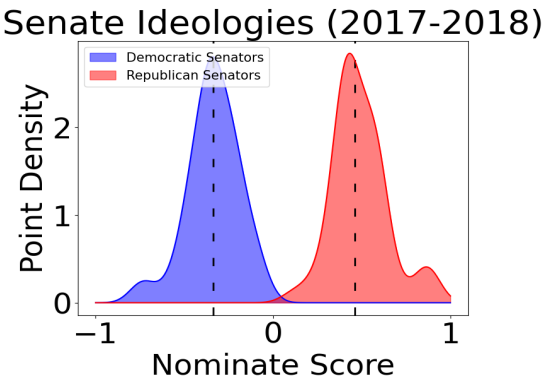



*Figure 3*

Visually, it is clear that figure 2 represents a less polarized Senate than that depicted in figure 3. The visual characteristics we judge this on can be translated into the language of descriptive statistics. We look at the gap between curves as an indication of the difference in ideologies and the width of the curves as an indicator of how spread out and diverse in-party ideologies are. A unitless metric of polarization could be described as follows, given D and R denote the Democrat and Republican distributions respectively: $\frac{Median_R - Median_D}{mean(SD_R, SD_D)}$. It reflects the characteristics described above, as standard deviations rise, polarization shrinks, and as the midpoint ideologies of each party grow farther apart, polarization increases. This measurement eliminates units and creates a useful standard measurement that can be calculated for the ideological distributions of judges and senators alike for each congressional term.

**Analysis**

I have included the judge and senator ideology distributions for the 95th, 105th, and 115th congresses below with date ranges for time scale clarity. The left column figures (4-a, 4-c, 4-e) show Senate ideologies over the last 50 years, with blue representing Senate Democrats and red for Senate Republicans. The right column figures (4-b, 4-d, 4-f) show ideology distributions for Republican and Democratic judges which are colored yellow and purple respectively.

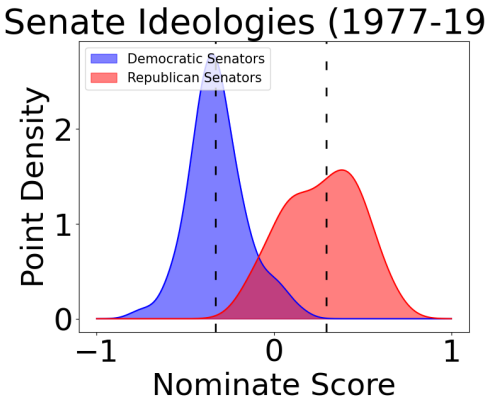



*Figure 4-a*

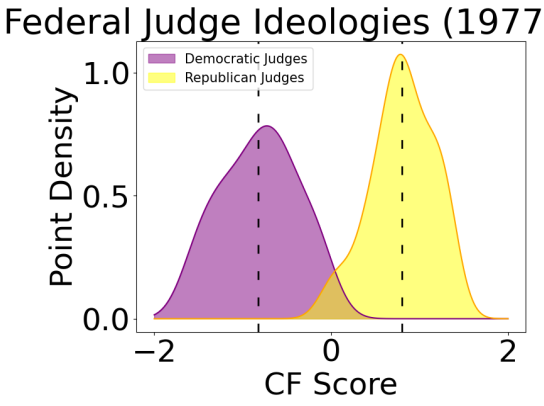



*Figure 4-b*

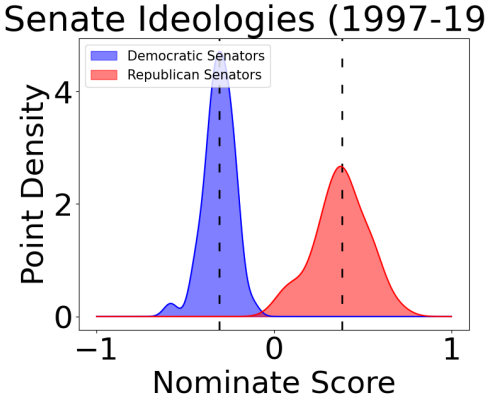



*Figure 4-c*

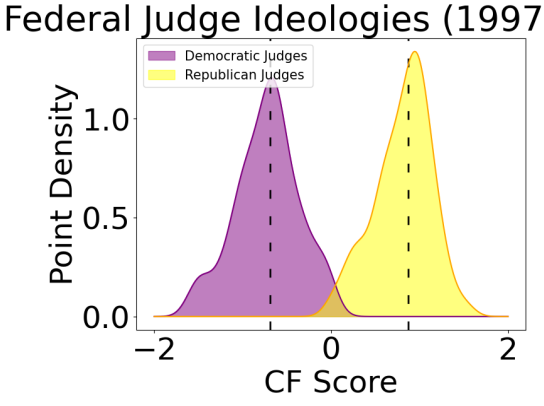
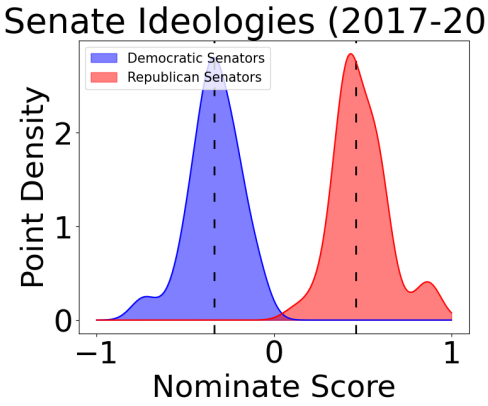



*Figure 4-d*

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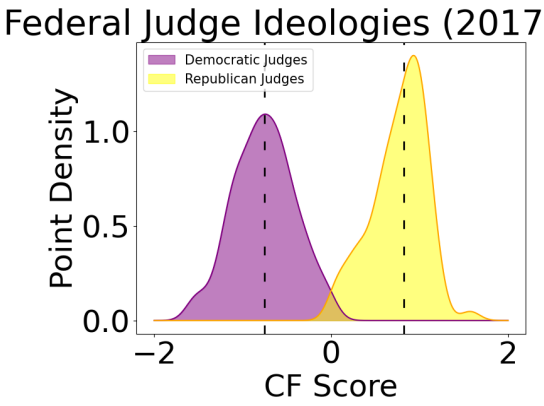


*Figure 4-f*

We can visually assess that polarization in these two bodies has increased over the last 50 years, although it appears significantly more stark in the Senate compared to the federal judge pool. Next, I've included a plot of polarization scores by congress. Note that each congressional term is two years, with the 110th congress starting in 2007, the 100th in 1987, the 90th in 1967, and the 80th in 1947.

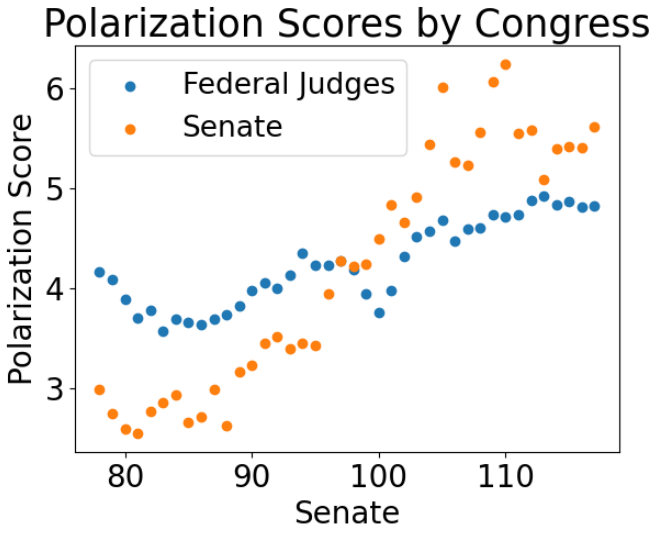


*Figure 5*

The trends in the polarization of federal judges appear to be more muted forms of Senate polarization. This behavior makes sense qualitatively as the makeup of the Senate changes every cycle and is a pool of 100 while our judge CF scores represent federal judge pool samples ranging from 100 to 600 in size. Newly appointed judges have a much smaller effect on the distribution. Furthermore, the number of judges has grown dramatically over the last 50 years[6], further reducing the effect of each new federal judge.

Figure 6 shows the results of linear regression on federal judge and Senate polarization scores from congress 78 onward (again to ensure a minimum sample size of 100 ideological points for judges). Our least squares regression slope comes out to 0.311. As in, for every increase by 1 in Senate polarization score, we expect a corresponding federal judge polarization score increase of 0.3.

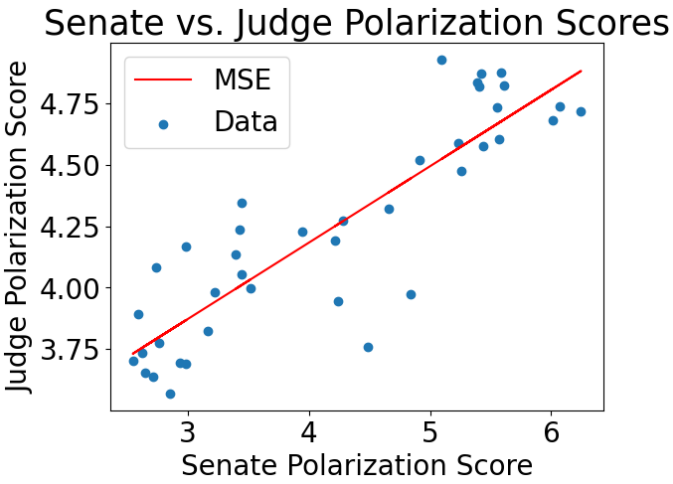


*Figure 6*

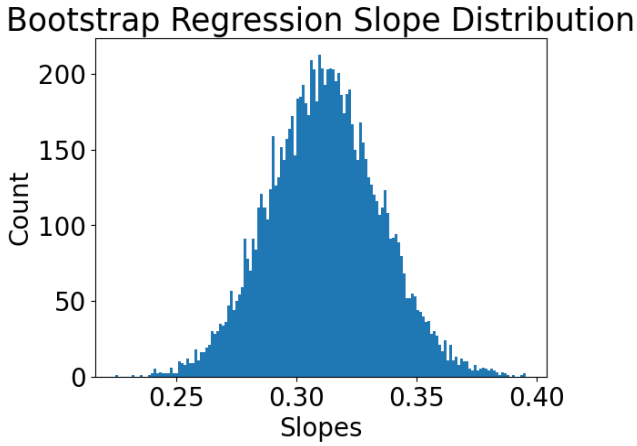


*Figure 7*

The regression slope has a 95% confidence interval of [0.265, 0.357] calculated via 10,000 bootstrap sample slopes which can be seen in figure 7. The bootstrap distribution does not contain zero at all which gives us incredibly strong statistical significance. This is bolstered by the linear relationship evident in figure 6.

**Findings**

There is certainly a positive linear relationship between ideological polarization in the Senate and among Article III federal judges. As one would expect, judicial polarization is more muted compared to legislative polarization, but a clear trend exists nonetheless that shows a slow and steady climb in judicial polarization.

Interestingly, polarization growth seems to have plateaued a bit in around the last 40 years. A simple, if only partial, explanation for this trend in the courts is that in the last 50 years, the number of court of appeals judges has doubled and the number of district court judges has nearly tripled[6]. This decreases the impact of each new judge added. As for polarization in the Senate, which we've learned contributes to polarization in the federal judge pool, this can be explored via our distributions.

Recent electoral history shows the Republican party shifting further right while Democrats respond by expanding their ideological tent to encompass more moderates and a growing hardline left. This is seen in the data as the Republican Senate median ideology of 0.3 in the 100th congress goes to 0.5 in the 117th. In the same period, the Republican distribution standard deviation has remained around 0.165 while the Democrats show standard deviation growth from 0.1 to 0.133. This expansion of the Democrats encapsulates more Democratic moderates and hardline liberals, as shown in the Democrat ideology distribution widening from figures 4-c and 4-e. Reviewing figures 4-d and 4-f, Republican senators have shifted dramatically right both on average and at the extremes. These two moves have balanced out the polarization score because the Democrats drive up the mean standard deviation while Republicans drive up the difference in medians. We have seen this in recent electoral history, with more extreme national candidates like Donald Trump representing the Republican party vs. a starkly moderate Joe Biden. All this suggests the near political future will continue the recent trends with the growth of a more conservative Republican base contrasted by a massive-tented Democratic party with a less defined policy space.

**Bibliography**

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