Shaping the Bench: The Effect of Ideology, Impact, and Information Relevance on Judicial Reappointments

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Abstract

Courts' institutional design has significant implications for judicial independence and accountability, particularly when terms are renewable. Policy-seeking selectors often consider judges' past service to predict their future policy impact. However, the same judicial record may carry more or less weight in the assessment, depending on the court's case-management process. Drawing on original data on reappointments to the Court of Justice of the European Union, we show that reappointments are made based on both ideology and impact. Transparent, selective allocation of influential positions in the court favors the retention of high-impact judges, while non-selective allo-

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cations do not. Secret voting – conventionally seen as safeguarding judicial independence – also does not shield judges against ideological deselection. Our analysis unveils new insights into when judicial accountability incentivizes effort. It also challenges the prevailing belief that renewable terms decrease judicial independence, instead suggesting that selectors partially rely on evaluations by court members for reappointment decisions.

Introduction

Democracy and the rule of law require a judiciary that is independent, but also responsive to society (Ferejohn et al., 1999; North and Weingast, 1989). Rules regarding judicial appointments seek to reconcile these competing values (Larsson, Squatrito, et al., 2022; Tiede, 2022; Gibson and Nelson, 2022; Kritzer, 2020; Melton and Ginsburg, 2014; Garoupa and Ginsburg, 2009; Hayo and Voigt, 2007). However, courts' internal organization can fundamentally alter that balance, even when the rules governing selection remain unchanged. This article studies the moderating role of information provided by courts when judicial (re)selections are made.

Information is crucial because it helps selectors navigate the uncertain relationship between judges' qualities and their influence over case law. When terms are renewable, selectors may consider judges' past service to predict their future policy impact. The transparency of judicial (voting) records is therefore pivotal for judges' independence and accountability (Dunoff and

Pollack, 2017). A court may withhold information altogether, leading selectors to maintain their old beliefs about incumbent candidates. However, even when information is given, its relevance matters. For example, if judges' past positions of influence do not spill over to future impact, this information is discounted. We advance the research agenda by asking: *To what extent does the presence and relevance of information provided by courts determine judicial (re)selections?*

We argue that policy-seeking selectors prefer candidates who are willing and able to move case law in the desired direction. In so doing, we qualify current research on courts with renewable terms by demonstrating that secret voting does not shield judges from ideological deselection. We further advance the field by showing how peer selection within courts informs judicial recruitment because selectors seek influence. As a result, candidates with sub-optimal policy preferences in the eyes of their selectors may compensate with promises of higher impact.

Renewable terms are common in two contexts: among U.S. state supreme courts (Geyh, 2019, p. 47) and international judiciaries (Dunoff and Pollack, 2017). In 2014, 17 out of 24 active international courts allowed their judges to seek reappointment (Squatrito, 2018). Yet research on judicial selection is sparse, compared to the extensive scholarship on judicial behavior. Moreover, the literature is divided. Students of judicial selection focus on candidates' immutable qualities, such as ideology and legal expertise (i.e., adverse selection) (Cameron, Cover, and Segal, 1990; Epstein and Segal, 2005; Elsig and

Pollack, 2014; Cameron, Kastellec, and Mattioli, 2023). In contrast, studies of judicial accountability have demonstrated how judges adjust decisions from fear of deselection (i.e., moral hazard) (Gray, 2017; Gray, 2019; Shepherd, 2009a; Shepherd, 2009b; Canes-Wrone, Clark, and Kelly, 2014; Dunoff and Pollack, 2017; Stiansen, 2022).

This article breaks with the dominant view that renewable terms are mainly a sanctioning tool to induce desired behaviors (Ferejohn et al., 1999). Instead, we assume that decisions to reselect judges are explicitly forward-looking and target political impact, possibly based on information provided by the court (Fearon, 1999). Thus, while prior research examines the behavioral incentives for judges, we study the institutional incentives for governments to either use or disregard information about judges' record of service.

Our study unites current insights in a single framework and illustrates how new predictions can be derived. First, studying retention decisions can teach us about how expectations about judges' influence inform the initial selection. If reselection is driven by future gains, then – all else equal – ideologically motivated selectors would replace any incumbent judge if a potential new candidate has preferences closer to their own. Yet judges often retain office even when the selector's preferences change (e.g., after an election). One reason is that judges adapt to their selector when subject to extensive monitoring. More surprisingly, as we will show, retention levels are also high in courts that withold information on judges' votes to safeguard their independence. This is because ideological deselection entails an opportunity

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cost. From the selector's perspective, judges' willingness to steer case law in a specific direction is necessary but insufficient. Judges must also acquire influence. Personal standing is instrumental to judges' influence in collective courts. This may be due to strong seniority norms or peer recognition. A selector may thus be willing to accept some policy drift to hit the sweet spot between ideology and impact.

Second, our focus on the selector's need for new information generates new predictions about the institutional features that lead to accountability. We term information "relevant" if a judicial record is indicative of a judge's future service, rather than simply describing their past behavior. As we will show, judges' records of case assignments and leadership positions are therefore valuable cues for reselection when such positions are acquired in a selective process – due to the judges' personal qualities. By contrast, the same information is "irrelevant" if assignments are random or administrative, since any new judge is as likely to acquire such roles. Similar judicial records may therefore lead to reselection in some instances but give little traction in others, depending on the case-management procedure.

To test our theory, we leverage a well-known conundrum in the study of judicial accountability; the Court of Justice of the European Union (hereafter, CJEU or the Court). CJEU judges are appointed by Member State governments for six-year renewable terms, yet the Court stands as an exceptionally independent international judiciary, sometimes portrayed as a "runaway agent" (Pollack, 2003; Alter, 2009). One explanation is that the

Court protects judges' political independence by issuing judgments *per curiam*; without revealing judges' votes (Dunoff and Pollack, 2017). However, the CJEU potentially reintroduces accountability by disclosing the positions of influence that judges held during the decision making (Hermansen, 2020).

The CJEU is an apt testing ground for several reasons. First, as the high court of the European Union (EU), it is at the top of the judicial hierarchy in a political and legal system that regulates the world's third-largest economy, with 450 million people. It guides domestic courts in the interpretation of EU law, including market regulations, trade, competition, monetary policy, environment, energy, migration, agriculture, and more. Over the years, it has earned a reputation as a 'political court' by striking down government policies and shaping the Union's constitutional development (Weiler, 1994; Stone Sweet, 2004). Yet, authors have argued that – even though member states have jealously held on to their prerogative to unilaterally nominate an equal number of judges (Dehousse, 2016) – the appointment of a single judge yields insufficient influence for governments to care (Alter 2008, p. 46, see also Kelemen 2012).

Second, insights from the CJEU can teach us about how expectations about judges' future influence inform judicial selection to other courts. To address its heavy case load, each judgment is prepared by a single judge (the 'reporting judge') acting as an agenda setter. This is a common institutional feature in many European and American courts. The CJEU has furthermore served as a model for international judiciaries. By 2011, some 11 international

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courts were operational copies of the CJEU (Alter, 2014b; Alter, 2014a).

Third, the CJEU offers institutional variation in how positions of influence are allocated, allowing for a stringent test of when information on such positions matters. The CJEU encompasses a higher- and lower-level court – the Court of Justice (CJ) and the General Court (GC) – with different procedures for how cases are allocated to individual judges. It has also changed how leaders are selected from a rotational principle to peer election. Thus, although judges' records of service might appear similar, the extent of peer selection differs.

Our findings hold significant implications for how governmental preferences interact with courts' institutional design to shape the bench. Analyzing all 248 potential reappointments in the Court's 70-year history (1952-2020), our findings suggest that judicial (re)selection lays the ground for responsiveness in two ways. The Court's ideological make-up is regularly renewed to reflect the successive ruling majorities in the EU. By deriving governmental parties' economic left-right ideology from their party programs (Lehmann et al., 2023), we find that a shift in government preferences during a judge's term significantly reduces the incumbent's chances of reappointment. Thus, while extant studies tend to assume that governments' interactions with the CJEU are structured around questions of national sovereignty (Larsson and Naurin, 2019), we show that governments themselves have emphasized the Court's role in interpreting their economic policies.

Judges are furthermore held accountable for their service in office; al-

though only intermittently so depending on the Court's internal organization. Incumbents who have accrued many selective positions of influence are more likely to return to office, while a similar record of non-selective positions has no bearing on the judge's career. Counter-intuitively, governments' quest for impact thus means that renewable terms combined with transparency on who the influential judges are, render selectors reliant on the court itself for their assessment of incumbent candidates (see also, Krenn, 2022, p. 202).

Importantly, we find no evidence that the effect of expected influence is conditional on ideological difference. This would have been the case if our measure of ideology was in reality picking up selections based on political spoils. This is consistent with our assumption that selectors are policy-seekers who realize that retaining a low-performing party loyalist is futile. It also helps explain the high reappointment rate (73%) at the CJEU: There is an opportunity cost to replacing an experienced judge with a newcomer who may need years to build a similar standing.

Our study sheds light on how policy-seekers' expectations about judges' influence guide recruitment to courts; both domestic and international (Staton and Moore, 2011). In the US, scholars have theorized that the Supreme Court's reliance on a majority opinion writer means that "that even 'lesser' judicial appointments can affect legal policy" (Lax and Rader, 2015, p. 661). Expectations about the qualities that lead to such positions should in turn influence judicial selection (Cameron, Kastellec, and Mattioli, 2023), but evidence for the link has remained elusive. To mend the gap, we show that

expectations about the European equivalent – the reporting judge – indeed shapes retention decisions.

A fruitful path forward is to reorient research from the frequently asked question of *whether* expertise matters for judicial nominations to *how* judges sway their peers. While US scholars have linked legal experience to ideology as a form of "policy reliability" (Cameron, Kastellec, and Mattioli, 2023), students of international courts have debated whether governments perceive judges as policy agents or expert trustees (Elsig and Pollack, 2014; Alter, 2008). Our argument implies that governments might seek to pair ideology with expertise. However, it depends on whether legal qualifications yield political rewards.

In the next section, we review the gaps in the literature on judicial (re)selection. After contextualizing our hypotheses in the case of the EU, we explain our research design and present our findings.

Selecting judges to international and domestic high courts

Judicial nominations are a crucial opportunity for the political branch to influence judicial policies (Dahl, 1957; Segal and Spaeth, 2002). Yet little scholarly attention has been given to judges' future impact compared to their ideology.

Most of the literature focuses on the United States, where political preferences are seen as the main driver of judicial recruitment. This can come in the form of accountable decision making, as when state-court judges al-

ter their decisions to align with their future selector's preferences with the aim of retaining or obtaining higher office (Gray, 2017; Gray, 2019; Shepherd, 2009a; Shepherd, 2009b; Canes-Wrone, Clark, and Kelly, 2014; Black and Owens, 2016). However, ideology is also a strong predictor of (federal) supreme court nominations where judges have life tenure (Epstein and Segal, 2005; Cameron, Cover, and Segal, 1990; Binder and Maltzman, 2009; Bonica and Sen, 2020).

The singular emphasis on candidate ideology has been further reinforced by the focus on majority voting as pivotal for the Supreme Court's decision making. Proponents of the move-the-median theory have inferred that – to be successful – candidate judges would simultaneously move the court median closer to the President while remaining moderate enough to gain support in the Senate (Krehbiel, 2007; Moraski and Shipan, 1999).

Recent empirical studies nevertheless show that appointees are occasionally more (or less) extreme than what the theory would predict, indicating that support for their candidacy can be bought through other criteria (Cottrell, Shipan, and Anderson 2019, see also Bailey and Spitzer 2018). Authors have also highlighted that the delegation of cases to a majority opinion writer within the court means that other members than the median judge might wield a disproportionate influence over its policies (Lax and Rader, 2015). How do expectations about who will be the next majority opinion writer impact judicial selection?

If candidates can compensate for their ideological distance with the promise

of impact, this may explain anomalies in the choice of Supreme Court judges. What are the qualities that judges should exhibit to persuade the President about their future influence? Cameron, Kastellec, and Mattioli (2023, p. 209-236, 446) introduce "policy reliability" as an additional criterion. They argue that candidates with a legal career leave a paper trail that reduces the variance in the outcome of their rulings. The emphasis on reliability emerges endogenously from the President's policy seeking, just as ideology does: "presidents value nominee ideology to the extent, and only to the extent, it has an impact on the policies the court creates" (p. 214). The authors further distinguish a candidate's reliability from their legal expertise, which the President and/or senators simply see as an intrinsic quality (Epstein and Segal, 2005; Cameron, Cover, and Segal, 1990).

Why would not expertise also be theorized as a strategic asset when judges are nominated? The case-space model explicitly hypothesizes that the legal quality of a proposed judgment may induce other judges to vote for outcomes they would otherwise not support (Lax and Cameron, 2007). Yet, evidence that legal expertise leads to selection to other courts than the US Supreme Court remains mixed (Epstein, Knight, and Martin, 2003; Choi, Gulati, and Posner, 2015; Cameron, Kastellec, and Mattioli, 2023). Authors have argued that this may be because selectors discount expertise if information is either costly or the political rewards are too low (Cameron, Kastellec, and Mattioli 2019, pp. 471–472; Choi, Gulati, and Posner 2015, pp. 129–130).[1] This article

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[1]To lower the informational cost, legal academics have suggested tournaments among

does not study expertise, but we suggest that variations in the way judges obtain influence on the court determine the selection criteria used during judicial nominations.

The literature on international courts – while less developed – mirrors the American debate. Legal academics have forwarded merit selection committees as a means to lower the cost of screening for competence (Bobek, 2015). However, observers have questioned whether states are willing to commit to a selection purely based on expertise if it entails policy drift (Pérez, 2015). Surprisingly, the two are seen as mutually exclusive rather than two means to a single end.

The "principal–agent model" proposes that candidate selection is infused with strategic considerations concerning candidates' preferences (Pollack, 2003; Elsig and Pollack, 2014). Empirical support for that view was found in a study of states' appointments of judges to the World Trade Organization's Appellate Body. The authors concluded that the process, 'far from representing a pure search for expertise, is deeply politicized' (Elsig and Pollack, 2014, p. 3). Evidence that international judges indeed follow the preferences of those who appointed them was found in a study of the International Court of Justice (ICJ) (Posner and de Figueiredo, 2005).

A central question has related to judges' political independence when terms are renewable. One study of the European Court of Human Rights

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judges as an alternative selection method (Choi and Gulati, 2004), while civil society organizations (e.g. the Institute for the Advancement of the American Legal System) already provide low-cost information on judges' legal qualifications.

(ECtHR) demonstrated that judges' deference to their home states decreased significantly after a shift from renewable to non-renewable terms (Stiansen 2022; see also Voeten 2008, p. 417). The CJEU has instead opted for secret voting to protect judges' independence (Dunoff and Pollack, 2017). Yet extant studies have little to say about the effect of other means of monitoring, nor how states balance ideology with beliefs about future influence.

The "trustee model", by contrast, emphasizes that decision making unfolds differently in courts compared to political institutions. International judges draw legitimacy from their rational-legal expertise and the normative ideal of impartial dispute resolution. Influence is obtained through legal arguments, which makes legal skills a key asset. The model expects governments to focus less on political criteria, and more on professional legal merits and personal reputation in the legal community (Alter, 2008; Stone Sweet and Brunell, 2013). Accountability is considered minimal. According to Alter (2008, p. 34), tools like 'not reappointing the Agent' are 'less politically relevant in shaping Trustee behavior'.

Authors have further underscored that the decentralized nature of the process – where no single state controls the ideological composition of the court – would render a politically motivated selection futile. As a result, 'international judges are institutionally less subject to appointment politics than their domestic counterparts' (Alter 2008, p. 46, see also Kelemen 2012).

In contrast to current scholarship, we derive both our selection criteria from the same assumption: Selectors are policy seekers. The ideal candidate

is both ideologically committed to the selector's agenda and possesses the authority to persuade other judges. Along the lines of the principal–agent model, we assume that selectors take an instrumental view on judicial appointments. The trustee model may be correct that influence in court is determined by legal expertise. However, the two are not inherently contradictory. Leaving *how* judges acquire influence to future research, we instead measure incumbent judges' impact directly. We suspect that governments do the same.

Theory and empirical expectations

Judicial reappointments aim to influence case law by selecting judges based on their ideology ("preferences") and predicted impact on the court's decisions ("performance"). At the core of the selector's problem is their limited information about judges' qualities. Building on canonical insights from theories of Bayesian updating, we anticipate that selectors start with a prior belief about candidate qualities that they can update in light of judges' records of service. The choice to replace a judge thus hinges on the presence and precision ("relevance") of new information (Ashworth, 2012).

Candidate judges differ in their ideological leanings. Moreover, moral hazard is a design feature of courts where votes are kept secret to protect judges' independence. Without the possibility to observe and correct judges' behavior through threats of deselection, governments have strong incentives

to reduce the policy drift induced by the judge by minimizing the ideological distance between their nominee and themselves. Absent information about judicial votes, successive governments have access to the same information about judges' ideology. At the reappointment stage, the new government may even save resources by cuing in on the initially appointing government's ideology. As a result, we expect that different governments hold different preferences over the same judge.

Hypothesis 1 *The probability that a judge will be replaced increases with the distance in preferences between the appointing and the reappointing governments.*

Candidate judges also vary in their ability to wield influence on the bench. In contrast to judicial votes, the CJEU is transparent about the roles that judges hold during their term.

The degree to which governments update their beliefs hinges on the relevance of the information provided. Specifically, the rules of procedure determine whether the roles judges have held in the past is indicative of their future influence. Thus, we expect that when positions of influence – such as leadership roles or assignments to important cases – are distributed *selectively*, high performance will reduce the likelihood that governments replace the sitting judge. Reversely, many influential positions acquired through a predetermined procedure have no bearing on the replacement decision. This leads to two interlinked expectations.

Hypothesis 2a *The probability that a judge is reappointed increases with their past performance on the bench, in terms of being trusted with positions of influence.*

Hypothesis 2b *The effect of performance on reappointment only holds when the information provided by the court is relevant for judges' future performance.*

Our focus on adverse selection means that we model governments' decisions directly as a function of qualities that are entirely or partially beyond judges' control – their ideology and impact. Thus, while prior research on renewable terms examines the behavioral incentives for judges – we instead study the incentives for governments to select judges that are co-opted by their peers.

The theoretical framework allows for inferences about judges' behavior under accountability, however. For example, if hard work leads to visible and lasting influence among judges' peers, we may expect judges to exert more effort in office. Reversely, in courts with strong seniority norms, we might expect high retention rates with limited behavioral adaptations; including with respect to their voting. Lastly, if positions of influence are allocated in a non-discriminatory way – through lottery, administrative quotas or other – then a new judge with preferences closer to the current government will perform as well, but yield higher political rewards for governments. Stated differently, governments cannot credibly commit to retaining judges unless the information contained in their record of service is relevant for the next

term (Fearon, 1999). In these instances, we may therefore expect lower investment from judges, but also a high turnover in the Court's membership in parallel with the turnover in governments. As we will see, this has been a problem at the lower-level EU court where case allocations follow a rota (Zhang, Liu, and Garoupa, 2018, p. 13).

The Court of Justice of the European Union

Despite its status as the motor of the much-debated judicialization of politics in Europe (Pollack, 2003; Alter, 2009; Kelemen, 2011; Schmidt, 2018), 'there is shockingly little written on the process through which ECJ [CJEU] justices are appointed' (Kelemen, 2012, p. 50; see also Kenney, 1998, p. 104). Here, we link your hypothesized effects of ideology and performance to the institutional features of the CJEU.

Ideology (H_1)

Each government enjoys a wide discretion in their choice of judge with few strategic incentives to deviate from their ideal candidate beyond what we have already theorized. The appointment of judges to the CJEU is based on the unilateral nomination of a single government. Each Member State sends an equal number of judges to the Court where they serve for a six-year renewable term. Today, each of the 27 Member States nominates one judge to the higher-level Court of Justice (CJ) and two judges to the lower-level

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General Court (GC). Although the formal appointment of judges is made collectively by the Member States ("by common accord"), this latter stage has thus far been a formality (Dunoff and Pollack, 2017). [2]

We assume that the economic left–right dimension determines the selection of CJEU judges, bringing EU judicial politics closer to the rest of the comparative EU literature (M. Gabel and Hix, 2002). Earlier research has instead assumed Court-government relations to be structured around questions of European integration (Weiler, 1994, p. 523-24). One of the few articles that have addressed the selection of CJEU judges posits that 'some anecdotal evidence suggests Member States sought candidates who were perhaps less of a Euro-enthusiast in a general sense than their predecessors' (Kenney, 1998, p. 128). However, large-N studies of judges' decision making have found mixed evidence for any impact of judges' attitudes towards European integration, instead pointing to a left-right orientation (Malecki, 2012; Frankenreiter, 2017; Wijtvliet and Dyevre, 2021).

Not only is the left–right dimension historically the central distinguishing feature of European national party systems, it is also highly relevant for EU policy. The role of the state in the economy, and individuals' rights towards the state, is at the center of the creation of the single European mar-

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[2]We could argue that governments temper their emphasis on ideology to consider how their nominee's preferences will be received at the Court. However, this is unlikely to be the case. Terms are staggered: Judges are appointed simultaneously in batches every third year. Furthermore, while the President of the Court is central in the distribution of tasks in office, their election takes place after the Court's renewal. Information about alternative candidates is kept under wraps.

ket. The CJEU's case law has often raised controversy along the left–right dimension. For example, while some observers have perceived the Court's strengthening of individual citizenship rights as a progressive step towards embedded liberalism and social rights at the international level (Caporaso and Tarrow, 2009), others have lamented the 'Hayekian' bias inherent in the Court's case law (Scharpf, 2010; Höpner and Schäfer, 2012; Schmidt, 2018). Scholars have further shown that the economic left–right dimension structures divisions among Member States in amici briefs (Larsson and Naurin, 2019), which in turn spill over to the leadership's decisions when cases are allocated (Hermansen, 2020).

Performance (H_2)

In contrast to judges' votes, the Court is transparent about their positions of influence. However, the allocation procedure determines the relevance of that information. We begin by discussing the influence that these positions imply, then present how they are acquired.

Influential positions on the Court (H_{2a})

We consider two sets of positions commonly found in courts: the agenda setter in each case (the 'reporting judge') and the Court's leadership (Pollack, 2018).

The reporting judge – just as the American majority opinion writer – wields a disproportional influence over court outcomes. As the case manager,

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they draw influence from the asymmetry of information between them and the other judges. The reporting judge collects information and presents the case to their peers. They write up the preliminary report that summarizes the case, its key questions and previous case law for all the members of the Court. The reporting judge later takes a lead role in oral hearings and frames the debate to their peers when they reconvene. Their draft judgment forms the basis of the deliberations in the chamber, but they also pen the final text. The name of the reporting judge is public. By comparison, in the European Court of Human Rights, their identity is considered sufficiently sensitive that it is kept secret, even when votes are public.

A second set of influential roles are the Court's top- and mid-level leadership positions. The top-level leaders – the Presidents and Vice-Presidents – manage the Court's day-to-day life, preside over Grand Chamber cases and represent the Court to the outside world. They monitor the rank-and-file judges and distribute key positions on the bench. Specifically, the President assigns judges to the chambers and, in each proceeding, they play a role in matching cases with judges. In the CJ, the President has full discretion in appointing the reporting judge. In the GC, the President assigns the case to a chamber, while the Vice President reads and authorizes the final judgment before it is rendered.

The mid-level leadership includes the Presidents of the chambers of five judges. They also have enhanced influence over case outcomes. They preside over chamber deliberations, decide when the debate is over and whether to

call a vote. They further have a responsibility to ensure consistency in the Court's case law. Thus, the Chamber President, in principle, participates in all panel deliberations under their purview, while rank-and-file judges often rotate. The presence of Chamber Presidents is also guaranteed in all important cases (i.e. Grand Chamber deliberations). Finally, in the GC, the middle-management also selects the reporting judge.

How positions are acquired (H_{2b})

The amount of peer selection to the same positions of influence has varied over time and institutions. We use this variation to test the intuition that how positions are obtained affects governments' selection of judges.

First, delegations to the reporting judge are done differently in the two formations of the Court. Specifically, a judge's personal qualities are more important for case allocations in the upper-level CJ than in the lower-level GC. Although there is more variation in judges' records of service in the GC compared to the CJ, observers have lamented the high turnover among members, whereby hard-working judges have frequently been replaced at the whim of new governments (Dehousse, 2011, 7-8 and 16-17). When considering judges' past impact, we consequently analyze the two formations of the Court separately, expecting only an effect in the CJ.

Allocations in the CJ follow a logic of selection, in which the reporting judge enjoys considerable autonomy. After appointing the reporting judge, the President leaves all monitoring to the checks and balances of the General

Meeting and the chamber deliberations (RoP of CJ, 2012 art. 15). The competences judges bring to the CJ are highly relevant for the cases they acquire (Cheruvu, 2019). In office, a case-by-case policy specialization authorized by the President effectively leads some judges to capture a disproportional influence over certain issue areas (Hermansen, 2020). By appointing judges perceived as competent, governments thus seize a political opportunity. Past allocations in the CJ hence provide governments with relevant information about whether incumbent judges will have influence in the future.

In contrast, case allocations in the GC follow a logic of monitoring. Cases are allocated to chambers on a rotational basis. The reporting judge is then appointed by the Chamber President (RoP of GC, 2015 art. 26). The top leadership is instead kept informed throughout the deliberation. Once the reporting judge has a final draft of the judgment, it is communicated to the Vice-President. Their assessment is then returned to the author, with the rest of the chamber's judges in copy. In short, reporting judges in the GC are – to some extent – treated as interchangeable, with less autonomy than their counterparts in the CJ. Their assignment to cases is less selective, thus less indicative of future influence. To conclude, while judicial records from the two courts may appear similar, we only expect that past case allocations have a bearing on reselections to the CJ.

Second, acquisition of leadership positions has varied over time. The President of the Court has always been formally elected by his peers in a secret ballot, for a three-year renewable period. This was however a formality in

the first decades of the Court's history where his appointment resulted from an intergovernmental bargain. Since 2003, the Presidents of the Chambers of five judges are elected in the same way: for a three-year term, renewable once . Conversely, before 2003, these positions were distributed on a rotational basis (RoP of CJ, 1991art. 10(1)). Important for our analysis, the elected positions signal an endorsement by the judge's peers, in contrast to the non-elected positions in the old system. We thus expect that only selective leadership positions carry weight in governments' assessment.

Empirical strategy

Our empirical analyses rely on original data listing all 422 appointment decisions to the CJEU since its inception (1952–2019). Judges exit the Court for several reasons. Many appointments (51%) coincided with the end of a mandate and may therefore result in reappointment, but a large number of judges (37%) also resigned before the end of their term. Early departures sometimes occur because the judge died (4%) or was promoted to other positions at the CJEU (6%).

Our main analysis considers potential reappointments, meaning we only retain the 248 potential exit decisions that follow the expiration of a mandate. There are two reasons for this choice. First, we are interested in governments' selection criteria, but have no data on the alternative candidates. For each decision, we measure the difference in preferences between the initially ap-

pointing and the reappointing governments. In this way, we test whether two governments from the same Member State have different preferences over the same judge.

Second, we isolate governments' replacement decisions from the judges' own choice to leave the Court. For the same reason, we also control for the judges' career stage. We further verify the findings in a placebo test comparing judges' resignations during their term with governments' reappointment decisions at the end of a term. We expect that our explanatory variables – government preferences and judges' impact – will have no bearing on decisions when governments are not involved (the placebo).

	Min.	1st Qu.	Median	Mean	3rd Qu.	Max.
Replacement	0	0	0	0.27	1	1
Preference distance (economic issues)	0	0.08	0.24	0.35	0.47	2.52
Preference distance (integration issues)	0	0.05	0.13	0.2	0.24	1.69
Preference distance (general left-right issues)	0	3.77	10.85	13.13	20.32	58.58
Performance (cases in larger panels)	-1	-0.08	-0.01	-0.03	0.05	0.74
Performance (cases of interest to the legal community)	-5.61	-0.8	-0.15	-0.21	0.29	4.54
Performance (selective leadership positions)	0	0	0	0.25	0.25	1
Non-selective leadership positions	0	0	0	0.28	1	1
Change of prime minister	0	0	1	0.51	1	1
Age	37.72	54.52	59.93	59.99	65.64	83.75
Length of tenure	1	3.67	6	7.23	9.44	26.1
Change in attendance	-49	-8	5	6.53	19	72

Table 1: Descriptive statistics

Variables

Our dependent variable, *Replacement*, captures all government decisions that could lead to a judge's retention and flags those resulting in a replacement. From the descriptive statistics in Table 1, we see that – given the opportunity – governments most often retain their judge (73%).

To test the expectation that the probability of replacement increases

with the distance between successive governments (H_1), we place governments in a single policy space using party manifestos (Döring and Manow, 2018; Lehmann et al., 2023). *Preference distance - economic left-right issues* measures the distance between the initially appointing and the reappointing governments on economic left–right issues. It is calculated as the absolute difference between the factor scores estimated from governmental parties' electoral manifestos. The bivariate statistics already indicate that economic policy preferences matter for replacements. While the median distance between governments that prefer the same judge is 0.17, it increases to 0.38 when the incumbent is replaced. In the Appendix, we report two alternative operationalizations of policy preferences: divisions along a general left–right axis and preferences regarding EU integration.

We then test our hypothesis that judges' performance decreases their probability of a replacement (H_{2a}) through three different operationalizations of influential positions. For each measure, we let the effect of selective positions mirror that of non-selective positions (H_{2b}).

Performance - selective leadership positions identifies the Court's President, Vice President and Presidents of Chambers of five judges post 2003. The variable is included in a separate analysis, together with an indicator of the judges who had held such a position prior to the reform (*non-elective leadership positions*).

The reporting judge is the most important member of the Court in each case. We approximate the impact of judges' case portfolio in two ways. *Per-*

formance – cases of interest to the Court reflects the proportion of cases in a judge's portfolio that were decided by a chamber of more than three judges. *Performance – cases of interest to the legal community* reports the mean number of annotations (i.e., academic journal articles) that a judge's case portfolio has attracted since their last appointment. The defining judgments for the Court's case law are regularly debated in the legal community (Hermansen, Pavone, and Boulaziz, 2023). The annotations are thus reflective of the academic salience of a judge's portfolio.

The general level of these two measures has changed over time and may vary according to the length of each judge's term in office. Both variables are therefore included in the analysis as ratios of similar cases handled by the Court during the judge's term. In other words, by comparing the impact of each judge with their peers, we approximate the benchmarking that governments can reasonably do themselves.

Controls

Other factors might affect either judges' decisions to exit the CJEU or governments' assessments of the incumbent.

First and foremost, there are instances when judges might complete their term, but do not wish to continue. There are few positions more appealing to European judges than serving at the CJEU. Very few alumni have pursued high-ranking, work-intensive jobs upon their exit. Except for government de-selection, therefore, the most likely reason for a judge to leave the Court

is retirement. We therefore control for the judge's career stage and judicial behavior immediately prior to the reappointment decision. *Length of tenure* approximates the judge's career stage. The average tenure upon exit was 10 years, with the median judge sitting for two 6-year periods. Similarly, we control for a judge's *Age* at the time of the reappointment decision. The average age of judges exiting the court was 65 years. At the end of the next term, the judge would be 71 years of age: well beyond the retirement age in most Member States.

We furthermore control for changes in a judge's investment in their mandate. A judge who plans on an exit may decrease their participation in Court activities. *Change in attendance* therefore measures the change in the number of deliberations in which a judge has participated in the year immediately preceding the official exit decision (as compared to the previous year).

The models also contain an indicator of whether there has been a change in the prime minister's party between appointments (*Change in PM*). This variable controls for the possibility that the ruling party uses appointments to distribute spoils to political friends or coalition partners (patronage appointments). A spoils system might affect both the preference distance between successive governments and the decision to replace an incumbent judge. The logic behind the control is that new spoils are unlikely to be distributed unless there is a change in the prime minister's office.

Finally, the models include an indicator of whether the judge held the position as President or Vice-President at the time of the reappointment (*(Vice-*

)President), since these positions clearly come with influence, although the division of labor implies that they handle few cases themselves.

Given that our dependent variable is binary, we use a binomial logistic model. The results are obtained from Bayesian models with Markov chain Monte Carlo (MCMC) estimation (Plummer, 2003). Some observations lack information on governments' preferences, as well as judges' birth or entry dates. These are imputed in parallel with the estimation of the main model. In the Appendix, we verify that the results are robust to a range of alternative modelling strategies.

Results

The results reported in Tables 2 and 3 support our expectations.

The probability that a judge will be replaced increases as the political distance between successive governments grows (H_1). Table 2 shows that this holds in both courts. The effect is illustrated for the CJ in Figure 1, and its size is non-trivial. Even a median change in a government's preferences implies a 40% increase in the odds of a replacement. A typical shift from a conservative to a social democratic prime minister would more than double the odds of a replacement[3].

In the Appendix, we explore alternative operationalizations of govern-

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[3]There are 35 instances in the data in which the prime minister's party has shifted from social democratic to conservative (or vice versa) between appointments. The median distance in their estimated economic preferences is 0.51.

**Effect of PREFERENCE DIVERGENCE
on governments' decision
to REPLACE a JUDGE**

Probability of a replacement

Preference distance between appointing governments
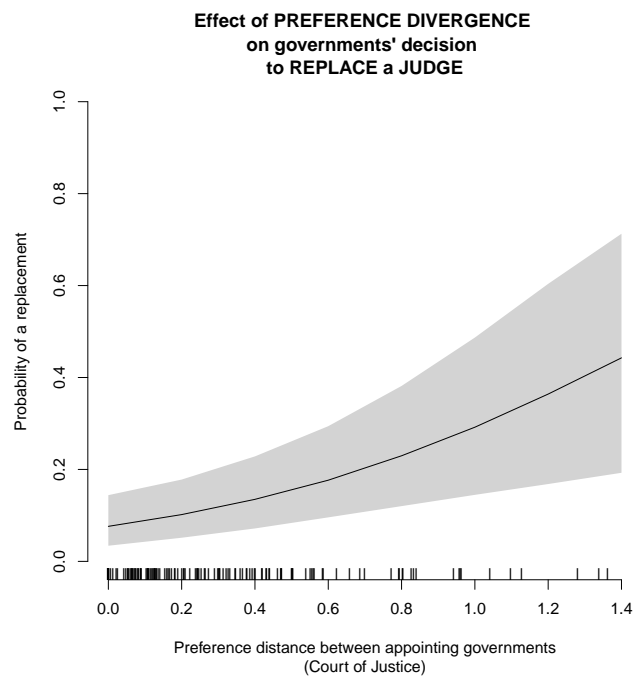(Court of Justice)

Figure 1: Predicted probability of replacement when there is a change in the appointing government's economic preferences in the Court of Justice.

ment preferences. Divisions on a general left–right dimension yield similar, but more moderate effects compared to economic left–right issues. However, we find no support for earlier suggestions that governments select judges based on their presumed preferences with regards to national sovereignty.

Dependent variable: 'Replacement'	Court of Justice (H_{2b})		General Court (H_{2b})	
H_1: Preference distance (economic issues)	1.63	1.68	1.53	1.64
	(0.48,2.82)	(0.52,2.9)	(0.06,3.13)	(0.11,3.25)
H_{2a}: Performance (cases of court interest)	-2.08		-0.1	
	(-4,-0.24)		(-0.83,0.6)	
H_{2a}: Performance (cases of interest to legal community)		-1.37		-0.4
		(-2.55,-0.35)		(-1.61,0.63)
Change of PM party	0.37	0.39	0.77	0.8
	(-0.63,1.39)	(-0.64,1.44)	(-0.3,1.98)	(-0.35,1.98)
(Vice-)President	1.07	1.5	-3.62	-3.66
	(-0.73,2.86)	(-0.3,3.42)	(-8.18,-0.58)	(-8.34,-0.66)
Length of tenure	0.05	0.06	0.14	0.14
	(-0.08,0.17)	(-0.06,0.19)	(-0.02,0.3)	(-0.01,0.31)
Age	0.19	0.19	0.09	0.09
	(0.11,0.28)	(0.11,0.28)	(0,0.17)	(0.01,0.17)
Change in attendance	-0.02	-0.02	-0.01	-0.01
	(-0.04,0)	(-0.05,-0.01)	(-0.05,0.02)	(-0.05,0.02)
Intercept	-0.41	-1.24	-2.06	-1.82
	(-2.19,1.33)	(-2.33,-0.16)	(-3.34,-0.94)	(-3.3,-0.42)
Number of observations	151	151	97	97
Proportion of correct predictions	0.78	0.78	0.76	0.75
... correct positive predictions	0.76	0.8	0.85	0.81
... correct negative predictions	0.79	0.77	0.73	0.73

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 2: Replacement of judge as a function of CASE ALLOCATIONS. The models explore different operationalizations in the two courts.

We have argued that governments favor judges who are likely to translate preferences into influence (H_{2a}). In doing so, governments will base their decision on the relevance of the judges' past performance (H_{2b}). We find support for both statements.

First, handling high-impact cases as a reporting judge in the CJ – where such positions are selective – significantly reduces a judges' odds of a replacement. This relationship holds regardless of how we measure the importance of their portfolios (Models 1 and 2). Conversely, we find no indication of a

Dependent variable: 'Replacement'	Both courts
Preference distance (economic issues)	0.87
	(-0.23,1.92)
H_2: Elected leadership	-0.72
	(-1.73,0.16)
H_2: Non-elected leadership	0.31
	(-1.18,1.7)
Change of PM party	0.84
	(0.03,1.66)
Length of tenure	0.09
	(-0.01,0.18)
Age	0.09
	(0.04,0.15)
Change in attendance	-0.01
	(-0.03,0.01)
Intercept	-2.03
	(-2.84,-1.31)
Number of observations	197
Proportion of correct predictions	0.68
... correct positive predictions	0.66
... correct negative predictions	0.69

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 3: Replacement of judge as a function of LEADERSHIP positions. The models explore different operationalizations in the two courts.

similar effect in the GC, where reporting judges are treated as interchangeable (Models 3 and 4).

Model 1 shows that, all else equal, if a judge's portfolio contains 10 percentage points more large-chamber cases than the overall distribution in the Court, their odds of replacement decrease by 87%. Model 2 then reports the effect of academic articles discussing case law spearheaded by the judge. If we consider the difference between a typical under-performing (20th percentile) and a typical over-performing judge (80th percentile), the higher-performing judge has a 54% higher probability of retaining their seat.

Second, Table 3 and Figure 3 report the effect of being trusted with a leadership position in either of the two formations of the Court. Once again, the effect of past influence is sizable, although less precise ($p < 0.06$). The odds of replacing an elected leader is 50% lower than that of a rank-and-file
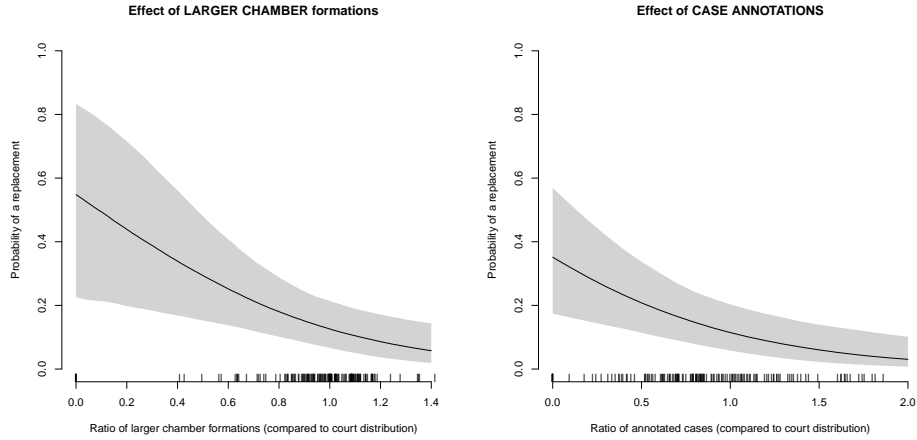
Figure 2: Predicted probability of replacement as a function of case portfolio among judges in the Court of Justice.

judge. Conversely, the effect is indistinguishable from zero for non-elected leaders.

There are several immediate takeaways from these findings. Left-right economic ideology is a clear predictor of replacements in both courts, while preferences on European integration are not. This brings nuance to the debate about whether the CJEU is a runaway agent of EU governments (Stone Sweet and Sandholtz, 1998; Carrubba, M. J. Gabel, and Hankla, 2008). Judging by their selection of judges, national parties in power care more about the contents of policies than the level of government at which they are made.

Furthermore, the presence of easy-to-access, relevant indicators about judges' performance makes accountability possible. However, the effect is conditional on how influence was obtained. Only judicial records that reflect

peer selection – and thus potential future influence – inform governments’ choice.

A final takeaway is that selectors balance ideology and impact. We have argued that both criteria are important, and there are few indications that the effect of one influences the effect of the other. We show in the Appendix that including an interaction effect between the two yields a negative but statistically insignificant effect.[4] The results thus mean that governments may be willing to forego some ideological congruence to retain influence on the Court. Conditional on positions being selective, high-performing judges are partly shielded against politically motivated deselection. If we consider the same scenario as before, in which there has a been a change in government preferences from a social democratic to a conservative prime minister, a judge who can signal high performance by achieving a selective leadership position would have about the same probability of being replaced (17%) as a low-performer when no change in government has taken place (19%).

Our results thus speak to the opportunity cost that governments incur when replacing an experienced judge with a newcomer. The Court tends to reserve the most influential positions for senior judges. For example, in our data, most of the high-performing judges were in their second term. Furthermore, case allocations allows judges to specialize, letting members gain

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[4]Following a reasoning that governments discount performance for ideologically distant judges, we might have expected a positive interaction. However, if anything, we find the opposite: Past positions of influence are more important in the cases where successive governments are far apart.
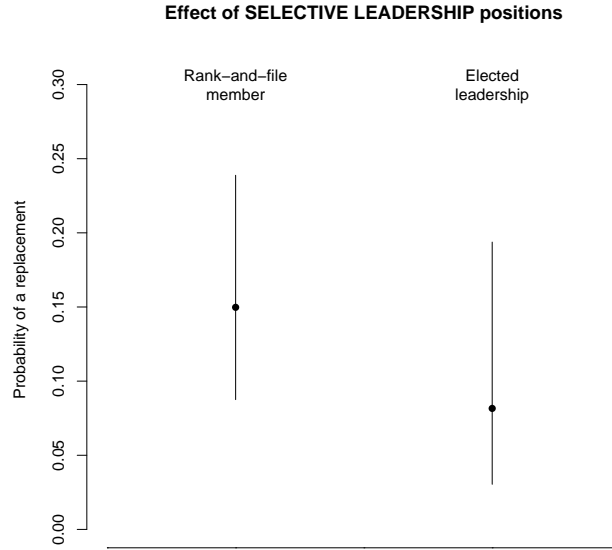
Effect of SELECTIVE LEADERSHIP positions

Figure 3: The effect of elected and non-elected leadership positions on governments' choice to replace their incumbent judge.

a disproportionate influence over certain policy areas, which governments would lose if the judge is replaced. The importance of seniority for gaining influential positions in the Court helps to explain why replacing a judge is a relatively rare event. The reappointing government would need to trade the gains from selecting a new judge with more congruent preferences against the probability that it may take several years before their investment pays off.

Robustness tests

The models provide a fair description of the data, with an in-sample correct prediction rate of 77%. They are also robust to several alternative specifications, relating to variation over time and between Member States (reported in the Appendix). There are nevertheless three potential challenges to our claims that we address here.

It could be that our findings are not related to governments' deselection of judges but are instead driven by the incumbent members themselves. Table 4 reports results from a placebo test, where we substitute occasions when a judge was replaced at the end of a term with instances when a judge exited for other reasons. In line with our expectations, we only find an effect of ideology and impact in the CJ when governments were involved in the exit decision. Also as expected, career-related predictors have a bearing on both types of exits: Older judges, judges with long tenure, and judges whose attendance levels have decreased are more likely to leave the Court.

A second challenge is the possibility that governments use appointments to distribute political spoils. This would be compatible with the effect of ideology, but is contradicted by our findings on judges' impact. We could, potentially, imagine that two alternative rationales dominate judicial appointments, whereby governments either distribute spoils (explaining the effect of ideology) or select judges based on their competencies (potentially linked to impact). If this was true, we would find a negative interaction effect between preferences and impact. However, as already mentioned, the results do not

Dependent variable: 'Replacement'	Mandate expired (test group)	Resignation (placebo)
Intercept	-0.41	-0.94
	(-2.19,1.33)	(-3.05,1.01)
H_1: Preference distance (economic issues)	1.63	-0.41
	(0.48,2.82)	(-2.13,0.99)
H_2: Performance (cases of interest of court interest)	-2.08	-0.88
	(-4,-0.24)	(-2.83,1.16)
Change of PM	0.37	-0.18
	(-0.63,1.39)	(-1.27,0.88)
(Vice-)President	1.07	0.3
	(-0.73,2.86)	(-1.72,2.1)
Length of tenure	0.05	0.15
	(-0.08,0.17)	(0.03,0.27)
Age	0.19	0.17
	(0.11,0.28)	(0.07,0.27)
Change in attendance	-0.02	-0.03
	(-0.04,0)	(-0.06,-0.01)
Number of observations	151	140
Proportion of correct predictions	0.78	0.76
... correct positive predictions	0.76	0.73
... correct negative predictions	0.79	0.77

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 4: Placebo test on appointments to the Court of Justice: Reference level for both is instances where the term is expired and the judge is reappointed. Results from two logistic regressions.

support such a division. In particular, both predictors retain their hypothesized direction across the range of the moderating variable. While there may be a subset of judges who have acquired their position on such grounds, it does not dominate judicial reselection in the EU.

A final challenge to the claim that deselection is the prerogative of governments comes from a recent reform of the Court. Since 2010, the appointment procedure also includes an intermediate stage by which new and incumbent nominees are screened by an advisory merit selection committee (the Article 255 Committee). Although the committee has warned that it can ad-

vise governments to deselect incumbent candidates, it has not yet done so (Panel, 2022, p. 10). The reform spurred some commentators to hope that the committee would provide a check on governments' political influence (Pérez, 2015). However, governments retained the prerogative to deselect any incumbent judge. Others hoped for increased performance accountability (Dehousse, 2011). To flag manifest shirking, the committee has devised several quantifiable measures of judges' case-management expediency, but has stayed clear of any assessment that could be construed as political (7th Activity Report, 2022 pp. 12–14). Interestingly, there are indications that judges have reacted by increasing their efforts in office and that the shift only took place in the GC (Cheruvu et al., 2022) where – as we have shown – government-enforced accountability is minimal. We show in the Appendix that the emphasis on ideology and impact did not change following the reform.

Conclusion

We have explored the argument that policy-seekers select judges for their ideology and influence by studying governments' retention decisions in the CJEU. Our study illustrates that transparency about judicial behavior is not enough to obtain accountability. Selectors must also perceive the information as relevant for future performance.

Secret voting may protect judicial autonomy, but it does not shield them

against ideologically motivated deselection. In the context of the CJEU, we have shown that a shift between a social democratic and conservative prime minister more than doubled the probability of a replacement. From the judges' perspective, the possibility to curtail deselection by pandering to the selectors' policy preferences is limited.

However, there is also an opportunity cost to ideological deselection that may play to their advantage. Specifically, we have demonstrated that policy-seekers value impact. The ability to affect case law sometimes hinges on judges' personal standing or seniority. If so, selectors may forego some ideological congruence to retain influence. In our study, we found that judges may survive a fundamental left-right overturn in government if they hold a leadership position on the Court. The weight that governments put on influence thus helps to explain the high retention rate in the CJEU despite the ruling parties' prerogative to nominate congruent judges.

The result is 'performance accountability', a concept long neglected in the literature on judicial accountability. However, performance accountability – accountability based on perceived ability to have an impact on case law – is a double-edged sword for judges' personal independence. While judges do not control the trust they earn from their peers, they may work to acquire it, thus mitigating the effect of governments' ideology. Nonetheless, given that many positions of influence are controlled by the leadership, from the judges' standpoint, the potential increase in independence from governments also implies a new dependence on the hierarchy within the court. Judges

are consequently agents of two principals: their leaders within the court and their political selectors to the court.

Importantly, we find that the way in which positions of influence are obtained determines the political rewards to consider more than judges' ideological congruence. This insight carries important implications for academic studies of judicial selection, but also for courts' institutional design.

First, our study is the first to establish that a court's procedure for case allocation shapes selectors' beliefs about candidate judges. Delegating the preparation of cases to a single judge ("judge rapporteur") is a common feature in many collective courts (Pollack, 2018). In particular, American scholars have pointed out that, if the majority opinion writer has a disproportional influence on court policies, then expectations about the qualities that lead to such positions should inform the selection of Supreme Court judges (Lax and Rader, 2015). Yet we have lacked empirical evidence to this effect.

Second, we encourage scholars of judicial selection to look beyond features in the selection procedure to consider the incentive structure entailed in courts' institutional arrangements. Judges persuade each other (Sunstein et al., 2006). In international courts, it means that fielding a judge with the right qualities may give governments an edge in the competition for influence over court policies.

This article contributes with new insights to the long-standing research on how to balance judicial independence, accountability, and transparency.

We argue that judicial selection aims to impact case law through judges' ideology and influence, and we have shown how courts' internal organization can both constrain and empower judges. Judicial selection shapes the bench, but while renewable terms are often perceived as a constraint on judicial independence, we demonstrate that the selector's need for information also makes governments responsive to the court's priorities. We leave to future research further exploration of the strategic interactions between courts and governments.

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Appendix

Description of variables

The manifest name of each variable, as used in the main text of this paper, is reported in bold. The variable name, as used in the data set, is reported in parentheses. The unit of observation is individual terms in office.

Replacement (`exit`) is a binary variable reporting whether a judge remains in office for another term (0) or exits the Court (1). We consider cases where the `ExitCause` is set to "Mandate expired". The information is collected from the announcement published in the *Official Journal of the European Union* that member states have appointed a new judge.

Preference distance - economic issues (|`FreeEconomy` - `FreeEconomy_ren`|) is a continuous variable reporting the absolute difference between the economic preferences of a judge's appointing and reappointing governments respectively. The government's economic preferences are calculated in the following way:

In the first step, we identify the government in power (`DecisionCabinet` and `DecisionCabinetExit`) at the time of the appointment decision (`DecisionDate` and `DecisionDateExit`) using the "Cabinet" data provided by the ParlGov Project (Döring and Manow, 2018).

In the second step, we identify the parties in government using the "Parties" data (Döring and Manow, 2018) and link these to the manifesto data provided by the Manifesto Project (Volkens et al., 2017).

In the third step, we estimate the economic preferences expressed in all party manifestoes using the vanilla method (M. J. Gabel and Huber, 2000). The indicators we rely on are questions related to the economic preferences of parties ("per401", "per402", "per403", "per404", "per405", "per406", "per409", "per410", "per412", "per413", "per414",

"per415" and "per416").

- "per401": Favourable mentions of the free market and free market capitalism as an economic model.

- "per402": Favourable mentions of supply side oriented economic policies (assistance to businesses rather than consumers).

- "per403": Support for policies designed to create a fair and open economic market.

- "per404": Favourable mentions of long-standing economic planning by the government.

- "per405": Favourable mentions of cooperation of government, employers, and trade unions simultaneously. The collaboration of employers and employee organisations in overall economic planning supervised by the state.

- "per406": Favourable mentions of extending or maintaining the protection of internal markets (by the manifesto or other countries).

- "per409": Favourable mentions of demand side oriented economic policies (assistance to consumers rather than businesses).

- "per410": The paradigm of economic growth.

- "per412": Support for direct government control of economy.

- "per413": Favourable mentions of government ownership of industries, either partial or complete; calls for keeping nationalised industries in state hand or nationalising currently private industries. May also include favourable mentions of government ownership of land.

- "per414": Need for economically healthy government policy making.

In the fourth step, we average the estimated preferences over all parties in government and link this to the appointing and reappointing governments in the main data frame. In the main text these preferences are weighted by the party size of each government coalition partner in parliament. To check the robustness of these results we also caclulate an alternative variable where preferences are not weighted.

Last, the preference distance between successive governments is calculated during the estimation of models as the absolute difference between two ideal-points.

When information is lacking, we impute the variable with two variables drawn from the Chapel Hill Expert Survey trend file (Bakker et al., 2015; Polk et al., 2017).

- *Economic left-right preferences* (`lrecon`) ranges from 0 (extreme left) to 10 (extreme right) and classifies parties in terms of their ideological stance on economic issues. Parties on the economic left

want government to play an active role in the economy. Parties on the economic right emphasize a reduced economic role for government: privatization, lower taxes, less regulation, less government spending, and a leaner welfare state.

- *Economic deregulation* (`deregulation`) ranges from 0 (strongly favors deregulation) to 10 (strongly opposes deregulation) and classifies parties in terms of their position on deregulation.

Preference distance - integration issues (|`Integration - Integration_ren`|) is a continuous variable calculated in a similar way as the previous measure. We rely on four indicators relating to international and European integration from the manifesto data: "per107", "per108", "per109" and "per110".

- "per107": Need for international co-operation.
- "per108": Favourable mentions of European Community/Union in general.
- "per109": Negative references to international co-operation.
- "per110": Negative references to the European Community/Union.

When information is lacking, we impute the variable with two variables drawn from the Chapel Hill Expert Survey trend file (Bakker et al., 2015; Polk et al., 2017).

- *European integration* (`position`) ranges from 0 (strongly opposes) to 7 (strongly favors) and reports the overall orientation of the party leadership towards European integration

- *European Parliament powers* (`eu_ep`) ranges from 0 (strongly opposes) to 7 (strongly favors) and reports the overall orientation of the position of the party leadership on the powers of the European Parliament.

Preference distance - general left-right issues (|`rile` - `rile_ren`|) is drawn from the same data (Volkens et al., 2017) and reports the absolute distance on the standard right-left scale provided by the Manifesto Project. The rile score ranges from 0 to 100. When information is lacking, we impute the variable with two variables drawn from the Chapel Hill Expert Survey trend file (Bakker et al., 2015; Polk et al., 2017).

- *General left-right* (`lrgen`) ranges from 0 (extreme left) to 10 (extreme right) and reports the overall ideological stance of the party leadership.

- *Redistribution preferences* (`redistribution`) ranges from 0 (strongly favors redistribution) to 10 (strongly opposes redistribution) and classifies parties in terms of their position on redistribution of wealth from the rich to the poor.

Performance - managing cases of legal interest (`Annotations.mean` -

`Annotations.court.mean`) is a continuous measure of the mean number of legal annotations that cases generated in which the judge acted as a Reporting Judge during their mandate. It is centered on the mean number of annotations generated by cases delivered by the Court in the same period. The variable thereby reports the difference between the actual performance of the judge and what the government could reasonably expect. Information is collected and provided by the CJEU itself.

Performance - leadership positions (`Chamber5President`) reports whether the judge had presided over deliberations in chambers with five or more judges during their mandate. The information is collected from the text of the judgments. In the analysis, the variable is contrasted with a subset of observations reporting all instances that have occurred after the reform in 2003, labelled (*Performance - selective leadership positions*).

Length of tenure (`Tenure`) is a continuous variable. It reports the cumulated sum of all the judge's mandates (`TermLength`). In the multivariate analysis, the variable is mean-centered.

Age (`AgeExit`) is a continuous variable reporting the difference between the judge's birth date (`Birth`) and the date of the member states' reappointment decision (`DecisionDateExit`). Information is collected from the judge's CVs, their profile at the Court's website (www.curia.eu) and the announcement of the next judge's appointment published in the *Of-*

ficial Journal of the European Union. In the multivariate analysis, the variable is mean-centered.

Change in attendance (`Attendance_diff - Attendance_diff.median`). is a continuous variable. It reports the difference in the count number of deliberations a judge has attended in the year preceding the government's reappointment decision. For comparability, we normalize the measure by substracting the median change in attendance in the same period. In the multivariate analysis, the variable is mean-centered.

Description of the statistical model

All models are Bayesian, estimated using MCMC in JAGS (Plummer, 2003). The Bayesian approach has two compelling features: First, unobserved information can be estimated in parallel to the main regression, possibly by inserting information from other sources (Gill, 2002, p. 43). Second, Bayesian models also provide a more robust approach to multilevel non-linear regressions (such as our logistic regressions), in particular when the number of countries (or time periods) is low (Stegmueller, 2013). While the results reported in the article are produced by a pooled model, we verify the results in this appendix using random intercepts.

In the following, we examplify with the estimation of the model using economic left-right preferences and performance measured as portfolio of cases

of interest to the academic community. It is a binomial logistic regression:

$$Pr(Replacement_i = 1) \sim Bernouilli(\pi_i)$$

$$logit(\pi_i) = \alpha +$$

$$\beta_1 \times |Preferences\ gvt\ 1_i - Preferences\ gvt\ 2_i| +$$

$$\beta_2 \times (Annotations_i - Avg.\ Annotations_i) +$$

$$\beta_3 \times Change\ in\ Prime\ Minister_i +$$

$$\beta_4 \times (Vice-)President +$$

$$\beta_5 \times Tenure_i - mean(Tenure) +$$

$$\beta_6 \times Age_i - mean(Age) +$$

$$\beta_7 \times Change\ in\ Attendance_i$$

$$(1)$$

The regression parameters have relatively vague prior distributions:

$$\alpha \sim N(0, 10)$$

$$\beta_k \sim N(0, 10)$$

$$\gamma_k \sim N(0, 10)$$

$$\delta_k \sim N(0, 10)$$

$$(2)$$

We let the model run through 500 iterations in adaptation mode to set the Monte Carlo step size and another 5 000 iterations of burn-in before starting the sampling. We then sample every 10th iteration for the next 10 000 simulations. The final sample shows no signs of no-convergence.

Imputation of missing information

Most variables contain no or few missing observations. They are therefore treated as randomly missing and imputed through priors informed by the mean and standard deviation among the observed units:

$$Economic\ left-right_i \sim N(\mu^{Economic\ left-right}, \tau^{Economic\ left-right})$$

$$Economic\ deregulation_i \sim N(\mu^{Economic\ deregulation}, \tau^{Economic\ deregulation})$$

$$Annotations_i \sim N(\mu^{Annotations}, \tau^{Annotations})$$

$$Avg.\ Annotations_i \sim N(\mu^{Avg.\ Annotations}, \tau^{Avg.\ Annotations}) \tag{3}$$

$$Tenure_i \sim N(\mu^{Tenure}, \tau^{Tenure})$$

$$Age_i \sim N(\mu^{Age}, \tau^{Age})$$

Most of the missing observations come from our estimation of political preferences. Thus, we sometimes lack information on the party positions of the appointing (7 observations, 3%) and the reappointing governments on economic issues (9 observations, 4%). In these cases, we impute values relying on information provided by the Chapel Hill expert survey trend file (Bakker et al., 2015; Polk et al., 2017). While only available from 1998, this supplementary data source nevertheless covers a substantial part of the missing observations (43% and 56% respectively). Missing information on

government preferences is thus imputed through an ordinary linear model:

$$Preferences\ gvt\ 1_i \sim N(\mu 1_i, \tau_i)$$

$$\mu 1_i = \gamma 1_1 +$$

$$\gamma 1_1 \times Economic\ left - right1_i +$$

$$\gamma 1_2 \times Economic\ deregulation1_i$$

(4)

$$Preferences\ gvt\ 2_i \sim N(\mu 2_i, \tau_i)$$

$$\mu 2_i = \gamma 2_1 +$$

$$\gamma 2_1 \times Economic\ left - right2_i +$$

$$\gamma 2_2 \times Economic\ deregulation2_i$$

(5)

Results from these secondary regression models are reported in table 5, while the two columns in table 6 compare results from the main model when preferences are imputed to using listwise exclusion. In comparison to a listwise exclusion, the imputation allows us to estimate all remaining variables on the universe of cases. It also avoids making the assumption that missingness is independent of values on other covariates in the model. Results remain largely similar across models.

Predictors	Model 1
Intercept (appointing gvt)	2.13
	(-0.59,3.51)
Economic left-right preferences (appointing gvt)	-0.13
	(-0.19,-0.05)
Economic deregulation (appointing gvt)	0.23
	(0.18,0.28)
Intercept (reappoiting gvt)	1.43
	(-1.06,3.52)
Economic left-right preferences (reappointing gvt)	-0.12
	(-0.2,0)
Economic deregulation (reappointing gvt)	0.18
	(0.12,0.24)
Number of observations	151

Median effects with 90% symmetric posterior density interval in parenthesis.

Table 5: Results from secondary models imputing values of preferences.

Predictors	w/imputations	listwise exclusion
Intercept	-0.41	-0.2
	(-2.19,1.33)	(-2.03,1.64)
Preference distance (economic issues)	1.63	1.43
	(0.48,2.82)	(0.33,2.61)
Performance (court interest)	-2.08	-1.97
	(-4,-0.24)	(-3.85,-0.1)
Change of PM	0.37	-0.02
	(-0.63,1.39)	(-1,1)
(Vice-)President	1.07	0.57
	(-0.73,2.86)	(-1.37,2.33)
Length of tenure	0.05	0.11
	(-0.08,0.17)	(-0.02,0.26)
Age	0.19	0.17
	(0.11,0.28)	(0.09,0.26)
Change in attendance	-0.02	-0.02
	(-0.04,0)	(-0.05,0)
Number of observations	151	146
Proportion of correct predictions	0.78	0.77
... correct positive predictions	0.76	0.75
... correct negative predictions	0.79	0.78

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 6: Results from a logistic regression with imputations of preferences and with listwise exclusion respectively.

Alternative operationalizations of political preferences

In this subsection, we verify whether the effects reported in the main article hold for different operationalizations of preferences. For brevity, we focus on the results relating to the Court of Justice.

We measure preferences along three different dimensions; economic left-right, general left-right and support for European integration. The results are reported in Table 7. Figure 4 furthermore illustrates the standardized coefficients for an explicit comparison of effects across preference dimensions.

The first model supports the proposition that a shift in economic preferences between the initial and the present appointer increases the chances of replacing a judge. The second model can be considered as a robustness check. It reports the effect of changes along the broader left-right cleavage present in European politics. As is apparent from the comparison in Figure 4, the direction is similar to that of economic left-right, although the effect is more moderate. This is unsurprising, as the measure includes a number of issues less relevant to CJEU case law. This might evolve in the future. The broader the scope of issues solved at the supranational level, the larger the overlap between the domestic debate and the Court's output.

In contrast, the third model gives no support for a similar logic in questions of European integration. The previous academic debate has focused extensively on the cleavage between the institutional interests of the Court and the member states (Pollack, 2012/2013). Yet, these results indicate that governments prioritize substantive economic left-right issues rather than na-

tional sovereignty in their selection of judges to the CJEU.

Dependent variable: 'Replacement'	model 1a	model 1a	model 1a
Intercept	-0.41	-0.51	-0.35
	(-1.88,1.04)	(-1.99,0.96)	(-1.8,1.15)
Preference distance (economic left-right)	1.63		
	(0.65,2.6)		
Preference distance (general left-right)		0.02	
		(-0.01,0.06)	
Preference distance (European integration)			0.51
			(-1.21,2.14)
Performance (cases of court interest)	-2.08	-1.71	-1.65
	(-3.67,-0.54)	(-3.29,-0.19)	(-3.28,-0.2)
Change of PM party	0.37	0.56	0.66
	(-0.48,1.25)	(-0.28,1.39)	(-0.13,1.5)
(Vice-)President	1.07	0.94	0.69
	(-0.44,2.55)	(-0.56,2.37)	(-0.79,2.12)
Length of tenure	0.05	0.04	0.05
	(-0.06,0.15)	(-0.06,0.14)	(-0.05,0.16)
Age	0.19	0.18	0.17
	(0.13,0.27)	(0.11,0.24)	(0.11,0.24)
Change in attendance	-0.02	-0.02	-0.02
	(-0.04,-0.01)	(-0.03,0)	(-0.04,0)
Number of observations	151	151	151
Proportion of correct predictions	0.78	0.77	0.75
... correct positive predictions	0.76	0.8	0.78
... correct negative predictions	0.79	0.76	0.75

Median effects with 90% symmetric posterior density interval in parenthesis.

Table 7: The models explore DIFFERENT OPERATIONALIZATIONS of PREFERENCES.

Are the effects constant over time?

The results reported in the main article are estimated on a pooled data set. However, the dynamic of reappointments may vary over time and institutions; both national and supranational. We start by exploring different ways of treating the data as time-series cross-sectional, before we explore whether the selection criteria changed after the introduction of the expert advisory panel in 2010 (the Article 255 committee).
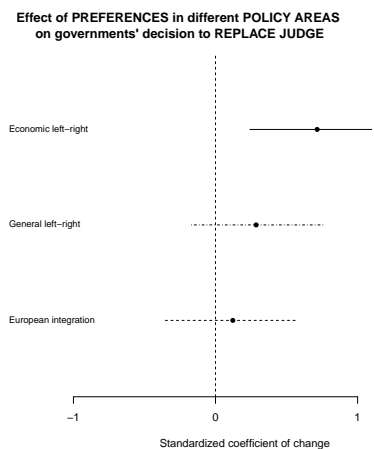
**Effect of PREFERENCES in different POLICY AREAS
on governments' decision to REPLACE JUDGE**

Figure 4: Different operationalizations of government preferences.

Has there been a trend over time?

Figure 5 illustrates the proportion of replacement decisions following the expiration of mandate over time. Although we can distinguish a certain drop from the earliest period, the overall propensity to replace incumbents has remained low. Due to increases in the membership following successive EU enlargements, most of the observations were made in the period after 1990 (79%). The results will therefore be driven by selection in the last three decades.

To verify that the selection criteria have not changed substantially over time, we divide the data into three separate time periods and estimate separate models. As is clear from the results reported in Table 8, the effects remain essentially the same over the seven decades.
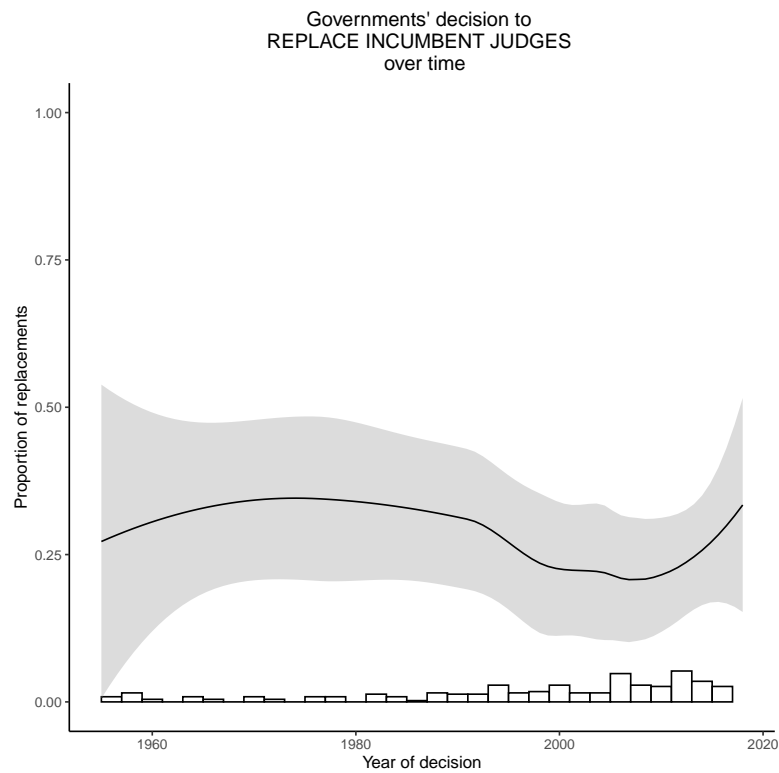
66

Figure 5: Governments' decision to replace an incumbent judge has remained relatively low (Locally estimated scatter plot smoothing overlaid by a histogram showing the number of observations over time).

Dependent variable: 'Replacement'	1952-1980	1980-2000	2000-2020
Intercept	-0.46	-0.27	-0.95
	(-2.75,1.97)	(-3.62,2.81)	(-3.2,1.22)
Preference distance (economic issues)	2.94	2.32	0.38
	(1.29,4.88)	(0.75,4.2)	(-1.38,2.06)
Performance (cases of court interest)	-1.43	-1.92	-2.58
	(-3.89,0.92)	(-5.06,1.31)	(-5,-0.31)
Change of PM party	-1	-0.37	2
	(-2.73,0.49)	(-2.32,1.41)	(0.55,3.59)
(Vice-)President	0.3	-0.84	0.42
	(-2.3,2.97)	(-3.91,2.03)	(-2.29,2.9)
Length of tenure	0.14	0.28	0.1
	(-0.04,0.34)	(0.03,0.63)	(-0.08,0.28)
Age	0.3	0.18	0.13
	(0.16,0.48)	(0.06,0.33)	(0.02,0.24)
Change in attendance	-0.06	-0.03	-0.04
	(-0.13,0.01)	(-0.08,0.02)	(-0.06,-0.01)
Number of observations	51	38	78
Proportion of correct predictions	0.86	0.82	0.81
... correct positive predictions	0.78	0.77	0.83
... correct negative predictions	0.91	0.84	0.8

Median effects with 90% symmetric posterior density interval in parenthesis.

Table 8: Replacement of judge in the Court of Justice where DIFFERENT TIME PERIODS are analyzed separately.

Did the introduction of an advisory panel change the selection criteria?

In 2010, an advisory selection panel was set up at the supranational level to help member states screen nominees for the position as a judge. The panel has been impressively active and has advised to reject a number of candidacies at each round of nominations. The introduction of the panel is part of a broader movement towards opening the highly politicized process of judicial appointments to scrutiny, but has profiled itself mainly as an additional guarantee for the appointees' independence, legal expertise and professional experience. While its activism has caused scholars to warn against judicial self-government, it remains unclear to what extent it can constrain governments' retention choices (Dumbrovsky, Petkova, and Van der Sluis, 2014). The panel has been particularly critical towards first-time nominations as

well as to appointments suggested for the General Court.

Here, we test whether the selection criteria identified in the main article have changed substantially following the panel's introduction through a set of interaction effects. Table 9 reports the change in the effect of governments' preferences after 2010. As is evident from both the direction and the precision of these interactions, there is no consistent evidence of any alteration in governments' retention choices that affect the generality of our argument.

Dependent variable: 'Replacement'	CJ	GC
Intercept	0.06	-3.28
	(-1.93,2.09)	(-5.4,-1.37)
Preference distance (economic issues)	1.21	1.53
	(-0.04,2.46)	(-0.33,3.45)
255 Panel * preference distance	0.68	1.48
	(-2.33,3.96)	(-1.69,4.65)
255 Panel	-1.34	0.97
	(-4.58,1.92)	(-1.13,3.21)
Performance (court interest)	-1.92	0.57
	(-4.09,0.07)	(-1.05,2.11)
255 Panel * performance	-0.31	-0.67
	(-3.76,2.82)	(-2.39,1.03)
Change of PM	0.25	0.86
	(-0.81,1.32)	(-0.34,2.13)
(Vice-)President	0.44	-3.68
	(-1.34,2.19)	(-7.96,-0.51)
Length of tenure	0.17	0.11
	(0.04,0.32)	(-0.04,0.26)
Age	0.19	0.1
	(0.11,0.28)	(0.02,0.19)
Change in attendance	-0.01	0.03
	(-0.04,0.01)	(-0.01,0.07)
Number of observations	151	97
Proportion of correct predictions	0.77	0.77
... correct positive predictions	0.71	0.77
... correct negative predictions	0.8	0.77

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 9: Selection criteria before and after the introduction of an ADVISORY SELECTION COMMITTEE in 2010.

One explanation may be that the committee is an additional informational tool for governments to gauge judges' competence and efforts in office, but not their impact. It decreases the cost of screening, but does not run counter to governments' policy seeking. Central to our argument about po-

litical deselection, governments also retain the possibility to deselect any incumbent judge, since only their nominees are screened by the committee.

The committee is well-informed about the requirements of office and remains in close contact with the Court throughout its work. It is composed of seven high-ranking national judges and former CJEU judges.

All new judicial nominees are screened on the basis of their legal and linguistic competences, including via an in-person interview (Dumbrovsky, Petkova, and Van der Sluis, 2014). Incumbent candidates are in turn evaluated primarily on their productivity, as reflected in their judicial record. To flag manifest shirking, the committee has – in collaboration with the Court – devised several quantifiable measures of judges' case-management expediency (7th Activity Report, 2022 pp. 12–14). Important for the current study, while judges' competence and behavior may eventually lead to influence in office, the committee does not discriminate between the relative importance of tasks.

Although the committee has warned that it can advise governments to deselect incumbent candidates, it has not yet done so. As of 2022, all 28 unfavorable opinions (out of 214) have related to new nominees (Panel, 2022, p. 10). Important for the current study, while judges' behavior may eventually lead to influence in office, the committee does not discriminate between the relative importance of tasks. If anything, the closer monitoring of judges' effort post 2010 would increase the quality of the information that we expect governments seek: judges' ability to garner recognition by their peers. In an

environment where judges exert similar effort, it is easier for governments to distinguish and compare impact attributable to personal qualities.

Governments reaffirmed their intent to hold on to their prerogative five years later, when the GC was reformed to address its growing caseload. The Court and the European Commission suggested increasing the number of judges by 12 and supplementing any further needs with legal clerks. This suggestion was summarily rejected by the Member States, who instead insisted on the more costly option to double the number of judges (from 27 to 54) and thus retain their right to an equal number of seats (Commission of the European Union, 2011; Council of Ministers, 2015).

To conclude, there are few indications that the merit selection committee was set up to supplant government nominations. As our results indicate, there are no indications that the committee has impeded on the selection criteria of ideology and impact.

Are there cross-national differences in governments' selection criteria?

We argue that governments seek to satisfy two selection criteria: political preferences and impact on court decision making. We further provide evidence that both criteria guide judicial reappointments. A relevant question is whether these findings are descriptive for judicial selection within all member states or whether our findings are driven by cross-national differences.

This subsection provides descriptive statistics that decomposes the selection criteria by judges' nationality. We find that our results reflect variation in appointment decisions within as well as between member states.

Table 10 reports the average left-right political preferences of governments and the share of overperformers (share of large chamber decisions higher than the court average) in the group of retained and replaced judges, respectively. For comparability, we only consider potential retention decisions when the incumbent judge is below retirement age (< 65 years) and is not the current president of the Court. The statistics on performance also only includes. as per our argument, the Court of Justice.

Table 10: Bivariate statistics: Appointment decisions in each member state

	Nationality	Avg. political distance			Avg. overperformers			N observations	
		Retention	Replacement	Difference	Retention	Replacement	Difference	Retention	Replacement
1	Austria	0.48	0.26	-0.22	1.00	1.0	0.00	5	1
2	Romania	0.25	0.04	-0.22	0.50			2	1
3	Netherlands	0.39	0.25	-0.14	0.14	0.0	-0.14	10	2
4	Greece	0.25	0.31	0.06	0.00			3	3
5	Slovakia	0.30	0.37	0.06	1.00	1.0	0.00	2	1
6	Germany	0.16	0.23	0.07	0.33	0.5	0.17	9	4
7	Spain	0.33	0.45	0.12	0.25			6	4
8	Poland	0.28	0.44	0.16				1	1
9	Lithuania	0.03	0.27	0.24	1.00			2	1
10	Portugal	0.22	0.48	0.26	0.50	0.0	-0.50	5	2
11	Belgium	0.18	0.48	0.29	0.62	0.0	-0.62	11	2
12	Sweden	0.14	0.50	0.36	1.00	1.0	0.00	4	1
13	France	0.50	1.45	0.95	0.17	1.0	0.83	7	6
14	Bulgaria	0.11			1.00			4	
15	Croatia	0.06			1.00			2	
16	Cyprus	0.22			1.00			4	
17	Czech Republic	0.48			0.50			5	
18	Denmark	0.51			0.20			8	
19	Estonia	0.07			1.00			4	
20	Finland	0.58			0.33			6	
21	Hungary	0.66						1	
22	Ireland	0.52			0.67			7	
23	Italy	0.26			0.50			5	
24	Latvia	0.10			0.67			6	
25	Luxembourg	0.19			0.70			13	
26	Malta				1.00			2	
27	Slovenia	0.22			1.00			2	
28	United Kingdom	0.34			0.75			7	

There are two main takeaways from these statistics. First, replacement decisions are a rare event. Yet 13 out of 28 member states have opted to replace at least one judge who could have remained in office, given his/her age. Out of these – and in accordance with our hypothesis – 10 member states had a higher average political distance between successive governments when the judges were replaced compared when they were retained (column 4). Figure 6 illustrates these effects by member states.

Second, 15 member states have yet to replace a judge who could have remained in office. However, their group of incumbent judges also contains a higher share of overperformers. While 65% of the retained judges from these member states were handling more high-impact cases than the court average, the similar statistics for the remainder of the member states was 45%. The direction of the causality goes, in our argument, both ways. On the one hand, we argue that – all else equal – governments prefer to retain a high-performing judge. These governments may simply have appointed judges with higher potential to begin with, and therefore have not seen the need to replace them. However, given the role of experience in the allocation of influence within the CJEU, the choice of retaining an incumbent judge also means that the government may expect the reappointed judge to perform better than a freshman with an equal skill set. Over time, these governments will find themselves represented by higher-performing judges.

The findings we report in our multivariable analysis, are therefore driven by variation both within and between member states.

The effect of preferences on replacement decisions within member states

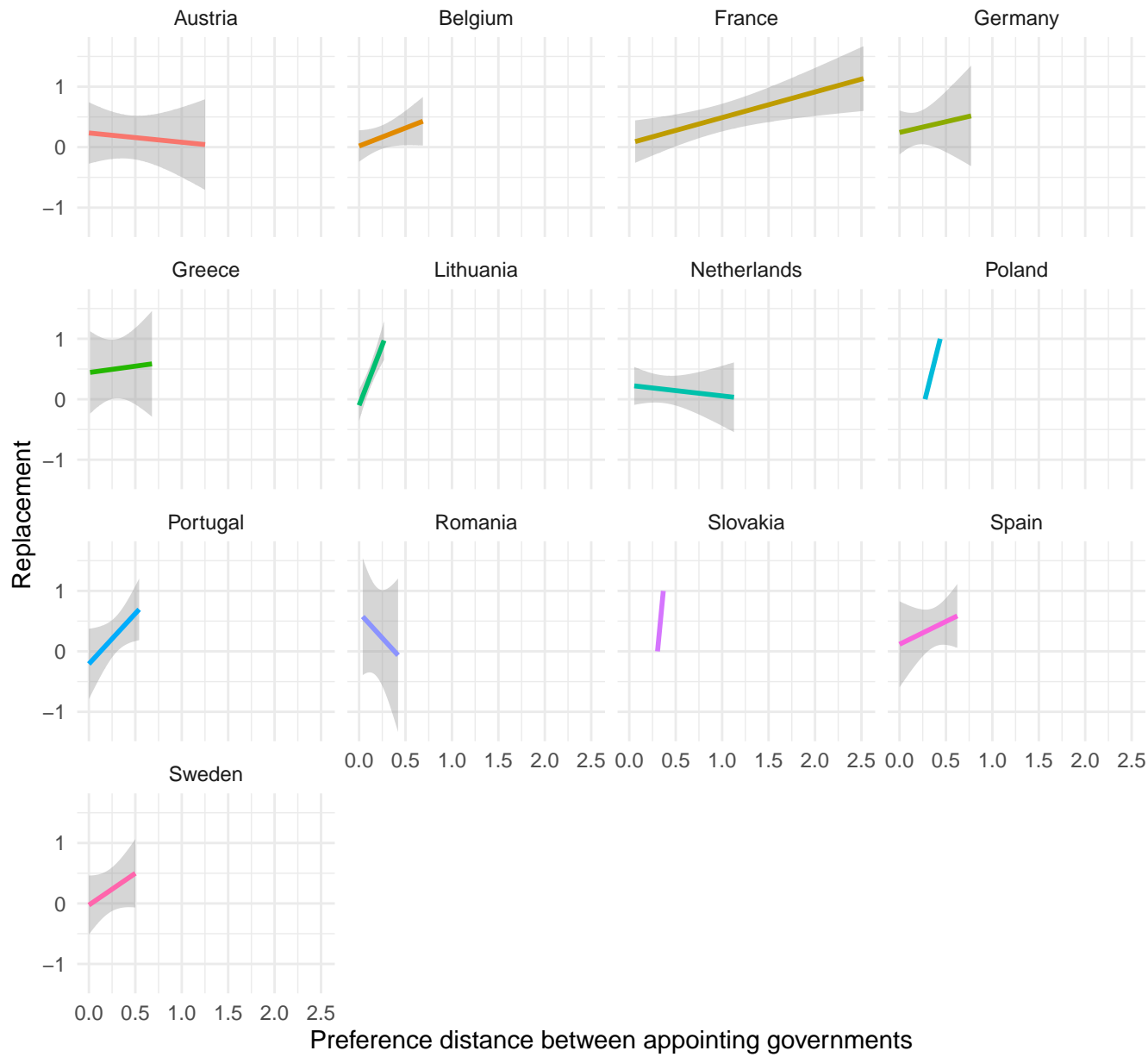Bivariate statistics among judges below retirement age

Figure 6: Effect of preferences on governments' retention decision by member state.

Is there a difference in emphasis between large- and small/medium-sized member states?

It could be that smaller member states see judicial appointments to the CJEU as an opportunity to "punch above their waist" compared to the political negotiations in the Council where all government votes are weighted according to their size. Table 11 therefore explores whether the selection criteria are substantially different between larger member states (France, Germany, Italy, Spain, Poland and United Kingdom) and the rest. As is clear, we find no indication to that effect.

Dependent variable: 'Replacement'	Court of Justice
Intercept	-2.84
	(-4.12,-1.73)
Preference distance (economic issues)	1.39
	(-0.6,3.43)
Preference distance (economic issues) * Large member state	0.37
	(-1.99,2.82)
Performance (cases of court interest)	-1.6
	(-4.87,1.97)
Performance (cases of court interest) * Large member state	-4.1
	(-11.07,1.96)
Change of PM party	0.5
	(-0.59,1.59)
(Vice-)President	0.85
	(-1.05,2.74)
Length of tenure	0.07
	(-0.07,0.2)
Age	0.2
	(0.12,0.29)
Change in attendance	-0.03
	(-0.05,-0.01)
Large member state	0.65
	(-0.83,2.12)
Number of observations	151
Proportion of correct predictions	0.79
... correct positive predictions	0.78
... correct negative predictions	0.79

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 11: Is there a difference of emphasis between large and medium/small member states?

Is there an interaction effect between ideology and impact?

Our theorization is parsimonious, but yields a set of testable predictions that distinguishes it from other, competing explanations for judicial selection. Each of these explanations can inform parts of our findings, but not all.

The effect of performance could be explained by reputational concerns but reputation cannot explain the effect of ideology. Following the trustee model of international judges, we may believe that denying a high-performing judge a renewed mandate may generate reputational costs if the electorate interprets it as an act of politicization of the judiciary. Reputation could explain the effect of performance, but would predict a moderate to no effect of preferences.

Furthermore, we believe this mechanism is weaker at the international level, where appointment processes are less visible to the broader public, compared to domestic appointments (Elsig and Pollack, 2014). In the main text, we draw on the differences between the selection procedures within the Court to bolster our claim that the effect of performance stems from governments' expectation about future influence and not for reputational reasons. If reputation is a primary motivator, we would expect governments to retain high-performing judges even in the event that it doesn't speak to the judge's future performance.

The effect of ideology could be explained by political spoils, but a spoils system cannot explain the effect of performance. We could potentially conceive of a system in which member states consistently either care about performance or distribute spoils; possibly due to national culture or national rules for the initial nomination of judges. If so, we might expect an interaction effect between ideology and preferences: When governments emphasize ideology, the effect of performance is minimal and vice versa.

We may further ask whether there is a trade-off between preferences and performance observable through an interaction effect between the two selection criteria. Governments frequently choose between retaining the experienced and potentially influential incumbent judge that the domestic party opponent put in office, or replacing them with a more ideologically aligned newcomer.

An intuitive expectation could be that governments see high-performing judges appointed by the opposition as a worst-case scenario such that performance is valued less (or negatively) when preference distance is high. This would also imply an interaction effect between the two selection criteria. However, this also means that a – relatively speaking – underperforming judge appointed by a party opponent is more desirable. From the government's perspective, it would in any case be better to replace the incumbent with a skilled newcomer.

Table 12 reports the findings from a model that includes an interaction

between ideology and performance. As is clear, we find no trace of any such effect. Building on our theory, we thus argue that the two selection criteria to have a linear effect, without any interaction.

Dependent variable: 'Replacement'	Court of Justice
Intercept	-2.2
	(-2.96,-1.5)
Preference distance (economic issues)	1.51
	(0.47,2.49)
Preference distance * Performance	-3.9
	(-12.41,4.21)
Performance (cases of court interest)	-1.45
	(-4.38,1.14)
Change of PM party	0
	(-0.87,0.84)
(Vice-)President	0.77
	(-0.67,2.3)
Length of tenure	0.13
	(0.02,0.25)
Age	0.18
	(0.11,0.25)
Change in attendance	-0.02
	(-0.04,0)
Number of observations	151
Proportion of correct predictions	0.77
... correct positive predictions	0.71
... correct negative predictions	0.8

Median effects with 90% symmetric posterior density interval in parenthesis.

Table 12: Is there an interaction effect between governments' preferences and judges' performance?