The Motivating and Constraining Factors of Congressional Court-Curbing

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Abstract

One of the ways the U.S. Congress attempts to constrain the Supreme Court’s decision-making is through the introduction of Court-curbing legislation, or bills that seek to limit judicial power. Since the bills are rarely enacted, they are typically considered position-taking endeavors that members point to as evidence of their responsiveness to constituent concerns and public opinion. However, there is a link between the introduction of Court-curbing bills and ideological disagreement with the Court. An underexplored research question in Court-Congress relations is why Congress responds to ideologically adverse decisions with Court-curbing legislation instead of other types of responses, such as override legislation. Of further interest is when the bills are position-taking endeavors or strategic attempts to shape public policy and influence the ideological content of judicial decisions.

Accordingly, this study analyzes the introduction of Court-curbing legislation by Congress at both the institutional and individual member levels from 1975-2008 (94th-110th Congresses). Using Poisson and logistic regression analysis, the study first tests if ideological disagreement with judicial decisions and institutional conditions restricting the legislature’s ability to override decisions—specifically legislative gridlock—influence if and how many Court-curbing bills are introduced by Congress and individual members to pursue policy preferences. Second, the models are re-estimated to test the conclusions of recent case studies that the content of Court-curbing legislation changes based on whether members are position-taking or pursuing policy preferences.
Following the United States Supreme Court’s decision to uphold tax credit provisions of the Affordable Care Act in *King v. Burwell* (2015) and legalize same-sex marriage in *Obergefell v. Hodges* (2015), Senator Ted Cruz (R-TX) announced he would introduce a constitutional amendment that would establish retention elections for Supreme Court Justices (e.g., Zezima 2015). Cruz’s initiative to establish electoral accountability in the judiciary is a recent example of Court-curbing legislation. These proposals can have many objectives such as altering the composition of the bench (e.g., mandatory retirement), stripping the Court of jurisdiction over specific pieces of legislation or policy areas (e.g., cases involving gay marriage\(^1\) or school prayer), or placing restrictions or limitations on the exercise of judicial review (e.g., congressional override procedures\(^2\)).\(^3\) Despite the apparent differences among the specific purpose of these Court-curbing bills, each proposal is similar as it is an attempt to influence judicial decision-making and restrict judicial power and authority.

The interaction between the U.S. Congress and Supreme Court spurred by the introduction of Court-curbing legislation is a part of the broader separation of powers literature that examines how the branches of government collaborate to pass and implement public policy. However, most studies focus on how Congress constrains judicial decision-making (e.g., Bergara, Richman, and Spiller 2003; Epstein, Knight, and Martin 2001; Hansford and Damore 2000; Sala and Spriggs 2004; Segal 1997; Segal, Westerland, and Lindquist 2011) and/or the conditions under which Congress can override Supreme Court decisions (e.g., Blackstone 2013; Eskridge 1991; Ignagni and Meernik 1994; Uribe, Spriggs, and Hansford 2014). An important but underexplored issue is the motivations behind the introduction of Court-curbing

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1 An example of a Court-curbing bill that sought to strip the Court of jurisdiction over a specific piece of legislation is the Marriage Protection Act (MPA). Introduced by Representative John Hostettler (R-IN) in 2003 and 2005 and Representative Dan Burton (R-IN) in 2007, 2009, and 2011, the MPA would eliminate the Court (or other federal courts) from hearing constitutional challenges pertaining to the Defense of Marriage Act (DOMA) of 1996.

2 The Congressional Accountability for Judicial Activism Act of 2005 sponsored by Representative Ron Lewis (R-KY) is an example of Court-curbing bills that would restrict the Court’s power of judicial review. The proposal would allow Congress to override judicial decisions pertaining to the constitutionality of an Act of Congress with a two-thirds majority.

3 The different types of Court-curbing bills are discussed later in the paper, but see Clark (2011) for a thorough discussion of each type.
legislation and how the bills influence judicial behavior. Although the literature has demonstrated that sponsorship of the bills is linked to policy preferences, passage is not because the legislation is rarely enacted (e.g., Bell and Scott 2006; Clark 2011; Nagel 1965). As a result, the bills are generally explained as position-taking endeavors that members point to as evidence of their responsiveness to constituents and public opinion in their pursuit for re-election (Clark 2009, 2011).

As such, an important research question in the study of congressional-judicial relations is when members of Congress introduce Court-curbing legislation to pursue policy preferences. Thus, this research is juxtaposed against prior studies that treat all Court-curbing proposals similarly, and do not explain why Congress chooses to respond to ideologically adverse decisions with Court-curbing legislation rather than alternative types of responses, such as override legislation (Bell and Scott 2006; Clark 2009, 2011; Engel 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992). Furthermore, and of particular interest, is determining when Court-curbing is a position-taking endeavor and when the bills are strategic attempts to shape public policy and the Supreme Court’s behavior.

Accordingly, this study analyzes the introduction of Court-curbing legislation by Congress at both the institutional and individual member levels for 1975-2008 (94th-110th Congresses). First, it is explored whether ideological disagreement with the Supreme Court and its decisions and institutional conditions restricting Congress’s ability to override decisions—specifically legislative gridlock—influence if and how many Court-curbing bills are sponsored by Congress and individual members to pursue policy preferences. It is likely that these factors influence the legislature’s decision to introduce Court-curbing legislation for policy purposes when a change is not anticipated in the ideological content of judicial decision-making. Second, the models are re-estimated to determine if legislative preferences and institutional constraints limiting override attempts leads Congress and individual members to sponsor different types of Court-curbing legislation. This model empirically tests the conclusions of recent case studies that Congress tends
to use general Court-curbing proposals when position-taking and more specific jurisdiction stripping measures when pursuing policy preferences (see Engel 2011). Thus, the analysis contributes to the existing literature by providing a better understanding of congressional behavior within Court-Congress relations, which can also be applied to interpreting the Court’s choice to respond to Court-curbing proposals.

**Legislative Preferences and Court-Curbing Bill Sponsorship**

**Re-Election: Responsiveness to Constituents and Public Opinion**

Legislative behavior is typically driven by re-election concerns and ideological policy preferences (Fenno 1973; Mayhew 1974). The existing literature has used both as a basis to explain the introduction of Court-curbing legislation. Beginning with re-election concerns, Clark (2009, 2011) argues that Court-curbing is a position-taking endeavor that signals waning institutional legitimacy and public support for the Court. Position-taking endeavors, such as Court-curbing bills, are specific actions that are visible to constituents and can also be used by members while campaigning to demonstrate that they have actively represented constituent interests while in office, and will continue to do so to avoid electoral punishment (Arnold 1990; Canes-Wrone, Brady, and Cogan 2002; Mayhew 1974). Court-curbing legislation is then a way to show voters that the member voiced constituent disagreement with judicial behavior or a specific decision. Although Court-curbing legislation rarely receives a committee hearing (and let alone passes), this is not viewed as problematic by Clark because studies have found that members are not held electorally accountable for failed policy initiatives, instead constituents blame the institution as a whole (e.g., Fenno 1975; Hibbing and Theiss-Morse 1995; Parker and Davidson 1979).

Clark (2009, 2011) and others (Bell and Scot 2006; Handberg and Hill 1980; Ignagni and Meernik 1994; Nagel 1965) have found empirical support for increased Court-curbing bill sponsorship activity when public opinion is negative towards the Court. While these findings substantiate theoretical claims that members are concerned about re-election and can be held electorally accountable for not representing
constituent preferences (Fenno 1973; Mayhew 1974), how much public opinion changes after unpopular judicial decisions is debatable. Other research suggests that the public is unaware of judicial decisions (unless the case is highly salient in the media); thus it is generally supportive of the Court (Caldeira 1986; Caldeira and Gibson 1992; Delli Carpini and Keeter 1996; Durr, Martin, and Wolbrecht 2000; Engel 2011; Gibson, Caldeira, and Baird 1998). As a result, it is unlikely that public opinion is the primary motivation behind the introduction of Court-curbing legislation. Although Clark argues that members will not be held electorally accountable if Court-curbing legislation is not enacted, position-taking endeavors are much more useful during campaigns when combined with credit claiming, or when members point to instances in which they played an integral role in enacting legislation that benefited constituents (Mayhew 1974; Martin 2001). Consequently, it is plausible that Court-curbing may also signal legislative responses, such as overrides and constitutional amendments, if judicial behavior does not change.

**Ideological Policy Preferences: Shaping Public Policy within the Judiciary**

Policy preferences are the second factor that drives legislative behavior in Congress. The policy preferences of members primarily revolve around the ideological content of policy. It is well established in the legislative behavior literature that members care about public policy outcomes and judicial decisions (e.g., Fenno 1973). Member behavior is largely driven by ideology in which various activities such as, roll call votes, bill sponsorship, and responses to judicial decisions, are consistent with their ideological preferences (e.g., Aldrich and Rohde 2000; Cox and McCubbins 2005, 2007; Eskridge 1991; Hettinger and Zorn 2005; Ignagni and Meernik 1994; Krehbiel 1991, 1998; Poole and Rosenthal 1997; Uribe, Spriggs, and Hansford 2014). Consequently, Court-curbing is generally explained as a method for expressing congressional disagreement with the ideological content of judicial decisions that usually occurs during periods of ideological divergence—which there is a substantial difference between the preferences of
Congress and the Court (Bell and Scott 2006; Clark 2009, 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992).

When the sponsorship of Court-curbing legislation is driven by policy preferences, members are most often responding to the ideological content of judicial decisions; however, members also have preferences about the balance of power within the separation of powers—specifically the legislature’s role and judicial independence—that can influence the decision to introduce a Court-curbing bill (Landes and Posner 1975; Rogers 2001; Whittington 2005, 2007). For example, ideologically adverse decisions in conjunction with legislative preferences restricting judicial independence can incite Court-curbing behavior. Conversely, preferences favoring judicial independence may attenuate the effect of an ideologically adverse decision and lead to fewer Court-curbing bills (Clark 2011). Interestingly, preferences for judicial independence tend to divide along the traditional liberal-conservative dimension in which conservative members are less supportive of judicial independence than liberal members (Clark 2011; Miller 2009).

Although policy preferences—especially those registering an ideological disagreement with judicial decisions—play a role in the introduction of Court-curbing legislation, the scholarly literature tends to focus on whether the Court responds to these signals of disagreement with judicial decisions. More recently, literature exploring the motivations behind the sponsorship of Court-curbing legislation argues that because the legislation is rarely seriously considered or enacted into law, the bills are more position-taking endeavors rather than serious policy proposals (Clark 2011). However, Engel (2011) diverges from the previous literature by stating that only some Court-curbing initiatives, particularly constitutional amendments and broad proposals that attack the Court’s legitimacy (e.g., altering decision rules and decreasing the budget), are position-taking endeavors. Since these bills are more general, and amendments require a two-thirds majority to pass, it is less likely these Court-curbing initiatives will succeed. This allows members to benefit electorally from proposing and supporting the initiatives without damaging their long term interest of a
strong judiciary. Other bills that threaten to limit the Court’s independence—most often those that manipulate the Court’s jurisdiction—are said to harness judicial power for political purposes because Congress is attempting to influence the Court’s behavior and decision-making and pursue policy goals within the judiciary. For example, following school busing decisions in the 1970s, Congress proposed a bill to strip the Court of jurisdiction over such cases in an effort to end busing.

Descriptive and case study analyses support Engel’s (2011) argument; and, furthermore, show that proposals seeking to harness the Court’s power comprise the majority of Court-curbing legislation introduced during the twentieth century. However, these results do not accord fully with those of Clark (2009, 2011) whose findings indicate that Congress introduces Court-curbing legislation primarily for position-taking purposes. These differing explanations of the motivations behind Court-curbing legislation and the purpose of these bills underscores why more research is warranted on the topic. Consequently, in addition to empirically testing Engel’s argument, the research is directed at determining the factors that encourage Congress to introduce Court-curbing legislation to pursue policy preferences. It is posited that Court-curbing bill sponsorship activity increases when there is ideological disagreement with the Supreme Court and its decisions. Court-curbing should also be evidenced when institutional conditions, such as legislative gridlock, impede the legislature from overriding judicial decisions. These expectations, and the theories of Court-Congress relations that underlie them, are discussed in more detail in the next section.

The Dynamics of Harnessing Judicial Power

Explaining Court-Congress Interactions

In general—the attitudinal model, coordinate construction model, and conditional self-restraint model—theories of Court-Congress relations do not postulate that judicial behavior is constrained by legislative policy preferences (see Clark 2009, 2011; Devins 1996; Fisher 1985; Segal and Spaeth 1993, 2002). However, the separation of powers (SOP) model suggests that the threat of a congressional override

4 See Engel (2011, 36-39), particularly Figures 1.3 and 1.4, for a full discussion of these findings.
discourages the justices from making decisions that accord with their personal policy preferences (e.g., Ferejohn and Shipan 1990; Gely and Spiller 1990; Marks 1989). The SOP model’s distinct focus on ideological policy preferences to explain legislative and judicial behavior and Court-Congress interactions provides the ideal theoretical framework for explaining how Congress uses Court-curbing legislation to strategically shape public policy and why these bills are chosen instead of override proposals.

**Congressional Behavior and Overrides in the Separation of Powers Model**

A wealth of literature has established that ideological policy preferences play an integral role in legislative decision-making, particularly in roll call voting (e.g., Aldrich and Rohde 2000; Clausen 1973; Cox and McCubbins 2005, 2007; Fenno 1973; Krehbiel 1991, 1998; Mayhew 1974; Poole and Rosenthal 1997). As a result, the separation of powers (SOP) model safely assumes that preferences over policy—the status quo and any alternatives—drives the legislature’s policy-making behavior; therefore, the decision to override a Supreme Court decision should be linked to congressional policy preferences. When studying Court-Congress relations, most studies either assume that Congress overrides judicial decisions it disagrees with to examine if this possibility constrains judicial decision-making (e.g., Gely and Spiller 1990; Segal 1997), or posit that overrides occur during periods of ideological disagreement with the Court (e.g., Eskridge 1991; Hettinger and Zorn 2005; Ignagni and Meernik 1994; Ignagni, Meernik, and King 1998). Thus, prior to the findings of Uribe, Spriggs, and Hansford (2014) that Congress passes legislative overrides because it disagrees with the ideological content of judicial decisions, the literature lacked empirical evidence confirming the core assumption of the SOP model.5

5 Of primary importance in this study is that Congress will override judicial decisions; however, it is important to note that Uribe, Spriggs, and Hansford (2014) also have two additional findings relating to assumptions of congressional behavior within the SOP model. First, it is confirmed that Congress does not avoid passing override legislation when the Court is expected to strike the statute down. Second, another assumption of the SOP model is that Congress overrides judicial decisions in statutory, not constitutional, cases because the power to interpret the Constitution is vested in the Court and a constitutional amendment requires more agreement among members (two-thirds) (e.g., Epstein, Segal, and Victor 2002; Eskridge 1991; Hettinger and Zorn 2005; King 2007; Segal 1997; Spiller and Gely 1992). However, and in accordance with others (e.g., Blackstone 2013; Dahl 1957; Epstein, Knight, and Martin 2001; Meernik and Ignagni 1997; Segal, Westerland, and Lindquist 2011), Uribe, Spriggs, and
The behavior of Congress within the SOP model that was substantiated by Uribe, Spriggs, and Hansford (2014) can be summed up in Figure 1, which shows a standard SOP model. The figure shows a single-dimensional liberal-conservative spatial model with the ideal points for both chambers of Congress and the Supreme Court (see Marks 1989; Ferejohn and Shipan 1990; Gely and Spiller 1990). In the first case, the Court’s ideal point is in between the ideal points of the House and the Senate, so if a judicial decision sets policy at the Court’s ideal point, Congress would be unable to override the decision. This is because neither the House nor the Senate would favor a proposal that would move policy closer to the ideal point of the other chamber. In the second case, the Supreme Court’s ideal point is more conservative than the ideal points of both the House and the Senate. If the Court made a decision that sets policy at its ideal point, both chambers would prefer a more liberal alternative policy located at the override point. This policy allows the House to move policy closer to its ideal point without the Senate objecting because the Senate has not been made worse off since the override point is the same distance away from the Senate’s ideal point as the Supreme Court’s decision.

As seen in Figure 1, the ability of Congress to pass override legislation is contingent upon the preferences of both chambers. In the first example, a gridlock interval occurs between the ideal points of each chamber, which impedes any policy change, including overrides, because both chambers would veto proposals to move policy closer to the other’s ideal point (Krehbiel 1998). The exact location of the gridlock interval depends upon the preferences of pivotal members within each chamber who dictate if policy change will occur. Three different approaches can be used to identify the pivotal actors in each chamber: the chamber median model, the party gatekeeping model, and the veto filibuster model. This research follows Uribe, Spriggs, and Hansford (2014) and utilizes the veto filibuster model in which the gridlock interval is

Hansford (2014) invalidate this assumption of the SOP model by finding that legislative preferences drive members of Congress to override both constitutional and statutory judicial decisions.
located between the ideal points of the Senator who can end a filibuster and the Representative who can vote to overturn a presidential veto (Krehbiel 1998).  

The veto filibuster model is ideal for a few reasons; first, the congressional politics literature has demonstrated that partisanship is an important factor in policymaking and finds that partisan models (the party gatekeeping model or the veto filibuster model) are better at explaining policy outputs than the chamber median model (e.g., Johnson and Roberts 2005; Krehbiel 1998; Lawrence, Maltzman, and Smith 2006). Second, the veto filibuster model takes into account the role of presidential preferences and vetoes; thus, as shown in Figure 2, the location of the gridlock interval differs based on whether the president is liberal or conservative. Finally, this model is preferred because it uses the preferences of the most extreme actors in Congress and results in the largest gridlock interval of the three options. This is desirable because this model would predict fewer overrides to occur, which accords well with the relatively low frequency in which Congress reverses Supreme Court decisions (Uribe, Spriggs, and Hansford 2014).

[Insert Figure 2 about here.]

The connection between policy preferences—specifically ideological disagreement with judicial decisions—and congressional overrides has been established by the empirical literature (e.g., Blackstone 2013; Eskridge 1991; Segal, Westerland, and Lindquist 2011; Uribe, Spriggs, and Hansford 2014). However, relatively little research has been conducted on how ideological disagreement with judicial decisions leads to Court-curbing bill sponsorship or how these initiatives help members of Congress pursue policy preferences. The findings from relevant studies suggest that more Court-curbing legislation is introduced by Congress during periods of ideological divergence with the Court, but the bills are generally considered position-taking endeavors because they are rarely seriously considered or enacted (e.g., Bell and

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6 In contrast, the chamber median model posits that the gridlock interval exists between the ideal points of the median member of the House and the Senate (Krehbiel 1991, 1995; Riker 1962). The gridlock interval is located in the party gatekeeping model between the most liberal and conservative policymakers among the majority party medians, chamber medians, and the president (Aldrich and Rohde 2000; Cox and McCubbins 2005, 2007).
Scott 2006; Clark 2009, 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992). Additionally, all Court-curbing proposals are treated as having the same purpose. Still, Engel (2011) argues that only general proposals and those introduced as constitutional amendments are position-taking endeavors while others that typically seek to strip the Court’s jurisdiction attempt to harness judicial power for political purposes. If Congress uses Court-curbing legislation as Engel suggests (2011), the question becomes: why would Congress sponsor Court-curbing legislation instead of override legislation following judicial decisions it ideologically disagrees with?

**Court-Curbing Legislation as a Signal of Ideological Policy Preferences**

The link between the introduction of Court-curbing legislation and override legislation posited here is the feasibility of passing override legislation—both in the time it takes and whether the legislation has the support to be enacted. Expressing disagreement with judicial decision-making by introducing Court-curbing legislation is fairly un-time consuming in comparison to proposing and pursuing override legislation (e.g., Blackstone 2013). This assessment accords well with previous studies finding that Congress introduces more Court-curbing bills when there is ideological disagreement with the Court (e.g., Bell and Scott 2006; Clark 2009, 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992), and therefore, should be expected to use Court-curbing legislation before override legislation in an attempt to influence judicial decision-making. This leads to the following hypothesis:

*H1a: An increase in ideological divergence with the Supreme Court leads to an increase in the number of Court-curbing bills introduced by Congress.*

Although Court-curbing bill sponsorship is expected to increase during periods of ideological divergence with the Court, this does not necessarily indicate that this form of congressional behavior is motivated by ideological policy preferences; the bills could still be position-taking endeavors. However, while this may be the case in some instances, position-taking is most effective when combined with policy
change (Martin 2001; Mayhew 1974). One way to add credence to the proposition that Court-curbing legislation is driven by ideological policy preferences is to demonstrate that it coincides with the introduction of override legislation. This was evidenced by Blackstone (2013, 210). There, she finds that between 1995 and 2000 Congress averaged roughly 17 Court-curbing bills and 14 override attempts per year. It appears that Congress does attempt to influence judicial decision-making through Court-curbing legislation before moving to the more time-consuming process of reversing judicial decisions through override legislation when the Court has not altered the ideological content of its decisions. Since Court-curbing legislation precedes override legislation, another way to determine if Congress introduces Court-curbing to pursue ideological policy preferences after judicial decisions it disagrees with is to empirically test Engel’s (2011) argument. Here, Congress should be more likely to use specific, typically jurisdiction stripping, measures to encourage judicial deference to congressional preferences. In short, this suggests the following hypothesis:

**H1b:** An increase in ideological divergence with the Supreme Court leads to an increase in the number of Court-curbing bills introduced by Congress that attempt to harness judicial power and encourage judicial deference.

Previous studies finding increased Court-curbing bill sponsorship during periods of ideological divergence assume the bills are in response to the judicial decisions handed down by the Court (e.g., Bell and Scott 2006; Clark 2009, 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992). However, ideological divergence only measures the general ideological orientation of each branch and is unable to capture the ideological content of each institution’s behavior, especially that of judicial decisions. As a result, the introduction of Court-curbing legislation during periods of ideological divergence is more of an indication that Congress anticipates judicial decisions that reflect the Court’s ideological policy preferences. Since ideological divergence does not provide insight into the ideological content of judicial decisions, it is
unable to test the primary assumption relating to judicial behavior in the SOP model that the Court engages in strategic decision-making if there is a threat of a legislative override (e.g., Epstein and Knight 1998; Epstein, Knight, and Martin 2001). For a variety of reasons judicial decisions may not always accord with congressional preferences whether that be because preferences are unknown, an override is unlikely, or there are other constraints on the Court, such as following precedent or the Constitution. Thus, if Court-curbing bills—especially those that harness judicial power—are evidenced during ideological divergence or in anticipation of judicial decisions Congress disagrees with, the legislation should also be evidenced when the Court has actually handed down these decisions in an effort to encourage judicial deference in future decisions. It is also expected that the effect of ideologically adverse decisions on Court-curbing bill sponsorship intensifies during periods of ideological divergence because Congress is less likely to expect a change in judicial behavior. Overall, these expectations lead to the following hypotheses:

\[ H2a: \text{The more decisions handed down that Congress disagrees with, the more Court-curbing bills introduced by Congress.} \]

\[ H2b: \text{The more decisions handed down that Congress disagrees with, the more Court-curbing bills introduced by Congress that attempt to harness judicial power and encourage judicial deference.} \]

\[ H2c: \text{The intensifying effect of ideologically adverse judicial decisions on congressional Court-curbing bill sponsorship increases as ideological divergence increases.} \]

Up until now, it has been posited that Congress introduces Court-curbing legislation in an attempt to influence the Court to practice judicial deference before resorting to the more time consuming endeavor of overriding decisions, but this assumes that Congress can override decisions it disagrees with. However, as was shown in Figure 1 and 2, Congress may not always be able to reverse decisions because of legislative gridlock. Court-curbing is then the remaining option for members wanting to express ideological disagreement with decisions and encourage the Court to make decisions that accord with congressional
preferences. Whittington (2005) argues that when politicians are impeded from pursuing their policy agenda, they favor judicial review by an ideologically sympathetic judiciary. Thus, it is plausible to expect that Congress attempts to influence the decision-making of the Court when policymaking is deadlocked. It is expected that during legislative gridlock, Congress introduces more Court-curbing legislation, especially proposals associated with attempts to harness judicial power, such as jurisdiction stripping bills.

Additionally, these relationships should intensify during periods of ideological divergence and when the Court is handing down decisions that do not accord with congressional preferences because there is more legislative disagreement with the Court and a lesser likelihood of Congress being able to override decisions. Therefore, additional hypotheses to explore are:

H3a: The more legislative gridlock, the more Court-curbing bills introduced by Congress.

H3b: The more legislative gridlock, the more Court-curbing bills introduced by Congress that attempt to harness judicial power and encourage judicial deference.

H3c: The intensifying effect of legislative gridlock on the introduction of Court-curbing bills increases as ideological divergence increases between Congress and the Court.

H3d: The intensifying effect of ideologically adverse judicial decisions on Court-curbing bill sponsorship increases as there is more legislative gridlock.

Data and Methods

When studying the patterns of Court-curbing, scholars are most interested in explaining the number of bills introduced and whether a member chooses to sponsor the legislation. As a result, the aforementioned hypotheses are empirically tested in two stages; first, by examining Court-curbing bill sponsorship by year for all of Congress from 1975-2008, and second, by congressional session for members of the House of Representatives from the 94-110th Congresses. This time period is ideal as it spans two documented time periods.

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7 Future iterations of this research will also examine the Court-cubing bill sponsorship behavior of members in the Senate. It is not expected that there are substantive difference between Representatives and Senators.
periods of Court-curbing—1975-1982 and 2001-2008—(see Clark 2011) in which both parties have controlled Congress after the reforms in the early 1970s that increased the power of majority party leadership (Aldrich and Rohde 2001). Each analysis begins by examining how each factor influences the introduction of all types of Court-curbing legislation. Next, the bills are separated based on those Engel (2011) identifies as attempting to harness the Court’s power for ideological policy purposes and those that attack the Court’s institutional legitimacy. These models show how Congress and its individual members use different types of Court-curbing bills when pursuing policy preferences and representing constituent disagreement with judicial decisions. This section proceeds by discussing the data and methods employed in the empirical analyses.

**Dependent Variables**

Since Court-curbing bill sponsorship behavior is examined at both the Congress and individual member levels, the empirical analyses require two different sets of dependent variables. In accordance with previous research, models for Congress utilize the number of Court-curbing bills introduced while individual member behavior is studied employing a dichotomous indicator measuring whether the Representative sponsored a Court-curbing bill (Bell and Scott 2006; Clark 2011; Nagel 1965). Data on Court-curbing proposals is obtained from Clark (2011). The first two dependent variables constructed are

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8 Choosing this time period after the reforms within Congress also ensures that additional considerations do not have to be taken into account because there is continuity in the institutional organization of Congress.

9 It is worth mentioning that the empirical models are based primarily off those used by Clark (2011) as his research is the most recent to systematically analyze patterns of Court-curbing bill sponsorship at the institutional and individual member levels.

10 Prior to the work of Clark (2008, 2009, 2011), data on Court-curbing proposals was inaccessible to researchers studying Court-Congress relations as the data used by both Nagel (1965) and Rosenberg 1992) is no longer available. Clark’s dataset improves upon Nagel and Rosenberg’s data—by including Court-curbing initiatives proposed as constitutional amendments and resolutions—and consists of all Court-curbing bills introduced since the Reconstruction. See Clark (2011, 36) for a detailed discussion of his data collection techniques that consisted of consulting the indices of the House and Senate Journals, the *Digest of Public General Bills and Resolutions*, and the THOMAS search engine.
a measure of the number of Court-curbing bills sponsored each year and a dichotomous indicator coded as
one if a member introduced a Court-curbing initiative during the congressional session and zero otherwise.\footnote{Members serving in each congressional session is obtained from Poole’s (1998; Poole and Rosenthal 1997) Common Space scores dataset. Members switching parties while in office are included twice for that congressional session within the dataset. For the purposes of this study, the observation indicating the member’s previous partisan affiliation is dropped. For example, in the 108th Congress Representative Ralph Hall (TX) switched from being a Democrat to a Republican so the observation indicating he was a Democrat is dropped from the dataset. It is also important to note that starting in the 102nd Congress the majority leader is included in the Common Space scores dataset. It is at this point that the majority leader is included in calculations of ideological divergence and legislative gridlock.}

The next two dependent variables for both models assess whether the legislation attempts to harness
the Court’s power for ideological policy purposes or serves as an attack on the judiciary’s institutional
legitimacy. Engel (2011, 33-42) groups Court-curbing legislation into these two categories by giving
common examples of what these bills specifically seek to accomplish. For example, proposals that seek to
manipulate the Court’s jurisdiction or composition are attempts to harness judicial power while bills that
propose decision rules, like supermajorities, are considered legislative attacks on the Court. The categories
Clark (2011) uses to classify the purpose of Court-curbing bills—judicial review, composition, procedure,
jurisdiction, remedy, and other\footnote{The following are examples of the types of bills included in each category developed by Clark (2011, 37-42). Judicial review: bills that aim to limit or remove the Court’s power of judicial review (e.g., banning the Court from declaring Acts of Congress unconstitutional, providing Congress with an override over laws deemed unconstitutional, or requiring a supermajority voting bloc when invalidating legislation). Composition: bills designed to alter the number of justices on the bench (e.g., mandatory retirement). Procedure: bills that attempt to alter judicial procedures (e.g., changing administrative appeals procedures, setting requirements for recusal, and specifying conditions under which the Court must follow \textit{stare decisis}). Jurisdiction: bills that seek to limit or eliminate the Court’s jurisdiction over certain areas of the law or types of cases (e.g., prohibiting the Court from hearing cases relating to specific Acts of Congress or on controversial issues, such as flag burning). Remedy: bills intending to restrict how the Court resolves disputes (e.g., proscribing conditions for the issuance of injunctions in labor-business disputes or forbidding forced busing in cases regarding school desegregation). Other: bills that do not target judicial power but voice displeasure with a specific decision or behavior displayed by the Court (e.g., citing foreign law and forbidding cameras in the courtroom).}—can be condensed into Engel’s two categories. As a result, Court-curbing
bills that attempt to alter the Court’s composition, jurisdiction, and remedies are coded as those that harness
judicial power; and, other proposals and those that try to limit the Court’s procedures or exercise of judicial
review are coded as legislative attacks. See Appendix A for a full discussion of how Clark’s Court-curbing
bills are coded into Engel’s two categories. The models analyzing Congress utilize measures of the number
of Court-curbing bills introduced each year that either harness judicial power or attack the Court. Similarly, dichotomous variables are constructed for the analyses of individual members in which Representatives introducing a Court-curbing bill that harnesses judicial power or attacks the Court in the congressional session is coded as one and all others as zero.

**Independent Variables**

**Ideological Divergence.** There are various ways to assess the extent of ideological divergence between Congress and the Court in which some measures are more complex than others. This study opts for a more sophisticated measure because continuous estimates of ideological preferences for both branches are available for the entire time period under analysis. The ideological preferences of both branches are determined by the Common Space scores developed by Poole (1998; Poole and Rosenthal 1997) for each Congressman and by Epstein et al. (2007) for each justice. The scores range from a minimum value of -1 (most liberal position) to a maximum value of +1 (most conservative position) and are ideal measures of ideological preferences because they are comparable across time and institutions. In accordance with Clark (2009, 2011), ideological divergence is measured as the absolute difference between the median Supreme Court Justice and the closest of the two chamber medians, or the member for models examining individual Court-curbing behavior. When the Court’s median is in between the House and Senate medians, ideological divergence is coded as zero.

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13 The first dimension scores are utilized for Congress because of their accuracy in explaining most roll-call votes (Poole and Rosenthal 1997), but also because they correspond to the traditional liberal-conservative dimension that accurately describes Supreme Court preferences (Grofman and Brazil 2002; Martin and Quinn 2002; Segal, Westerland, and Lindquist 2011). An alternative to Common Space scores are the ideological ideal point estimates developed by Bailey (2007). Generally, the measures differ with respect to how member preferences are estimated over time and compared—or bridged—across institutions. See Bailey (2007) for a complete discussion of the differences between the two measures. According to Segal, Westerland, and Lindquist (2010), Bailey scores are inappropriate for studies, such as this one, attempting to determine if the Court strikes down legislation based on ideological preferences because Bailey scores assume what is being tested—that votes by the Justices to uphold or strike down the legislation are comparable to yea and nay votes in Congress to pass the legislation.

14 Since Judicial Common Space (JCS) scores are calculated for each year, ideological divergence between each member and the median justice is calculated using an average of the median justice’s JCS scores for the two years included in the congressional session.
Legislative Gridlock. As previously mentioned, this study utilizes Krehbiel’s (1998) veto filibuster model because it provides a general estimate of how often gridlock occurs by taking into account partisanship and presidential preferences and vetoes.\textsuperscript{15} Additionally, this model produces the largest gridlock interval among the chamber median and party gatekeeping models, which is preferred because it indicates fewer legislative reversals of Supreme Court decisions, and accords with the theoretical expectation that Congress opts for Court-curbing legislation before pursuing overrides.\textsuperscript{16} The pivotal players in the veto filibuster model are the members whose preferences determine whether Congress overrides a presidential veto or invokes cloture (Krehbiel 1996, 1998).\textsuperscript{17} It is these veto and filibuster pivots that also prevent centrist policies from becoming law, so gridlock occurs whenever the ideological content of a given policy is in between the ideal points of these two members, or located within the gridlock interval (see Figure 2).\textsuperscript{18} Consequently, legislative gridlock is measured as the absolute difference between the Common Space scores of the filibuster pivot and the most extreme of the House and Senate veto pivots.\textsuperscript{19}

Adverse Decisions. In order to determine whether the ideological content of decisions influence the introduction of Court-curbing legislation, data is obtained from the Supreme Court Database. For models examining congressional behavior, this variable is measured as the percentage of cases decided that year in

\textsuperscript{15} In addition to measuring legislative gridlock using the preferences of pivotal actors within Congress (e.g., Aldrich and Rohde 2000; Cox and McCubbins 2005, 2007), others use measures based on how many pieces of significant legislation are enacted by Congress (e.g., Binder 1999; Edwards, Barrett, and Peake 1997; Grant and Kelly 2008; Kelly 1993; Mayhew 1991). Many of these measures are proportional in which significant pieces of legislation that did pass are compared to those that did not or the relative size of the agenda (e.g., Binder 1999; Edwards, Barrett, and Peake 1997; Grant and Kelly 2008). Although this approach provides a more precise measure of legislative gridlock, the data is not publically accessible, available for more recent sessions of Congress, and/or are easily replicable (e.g., Binder 1999; Edwards Barret, and Peake 1997; Grant and Kelly 2008).

\textsuperscript{16} See Uribe, Spriggs, and Hansford (2014) for a full discussion of how gridlock intervals correspond to the likelihood of legislative reversals of Supreme Court decisions.

\textsuperscript{17} Krehbiel (1996, 1998) assumes that the policy space is unidimensional, or that policies can be arranged on a liberal-conservative continuum. It is also assumed that all legislators have an ideal, single-peaked policy preference. In other words, legislators always prefer the policy that is closest to their ideal point because policies that are further away are viewed as undesirable and less beneficial. Furthermore, Krehbiel’s (1996, 1998) model is constructed for a unicameral legislature. See Chiou and Rothenberg (2003) for an extension of the model that incorporates bicameralism, party preferences, and presidential leadership.

\textsuperscript{18} It is important to note that the location of the veto and filibuster pivots depends on the location of the President’s ideal point in relation to the median voter.

\textsuperscript{19} Since Common Space scores are available by Congress instead of by year, this variable takes the same value for both of the years included in that congressional session.
the opposite ideological direction of the party that controls Congress.\textsuperscript{20} For example, in the 105\textsuperscript{th} Congress (1997-1998) the House and the Senate was controlled by the Republicans so this variable indicates the percentage of cases with liberal decisions. When control of the House and Senate is split between the two parties, this variable denotes the percentage of cases decided against the party with the most members in Congress.\textsuperscript{21} A similar method is used for analyses of individual members in which this variable designates the percentage of decisions decided in opposition to the member’s party during the congressional session.\textsuperscript{22}

**Control Variables**

**Public Support.** The primary explanation behind the introduction of Court-curbing legislation, particularly bills that attack the Court’s institutional legitimacy, is public opinion (Clark 2011; Engel 2011). Findings also indicate that the effect of public opinion is greater during periods of ideological divergence when members also disagree with the Court (Clark 2011). In order to assess how Court-curbing bill sponsorship is influenced by ideological policy preferences, these two possibilities are controlled for by measuring public support for the Court and constructing an interaction term between that variable and ideological divergence.

There is relatively little data available on public opinion towards the Court (Caldeira 1987; Durr, Martin, and Wolbrecht 2000). Most recently, Clark (2009, 2011) measures national public support using the General Social Survey (GSS) and state level public support using public opinion polls that ask how much

\textsuperscript{20} Constructing this variable is accomplished using the “decisionDirection” variable in the SCDB_2013_01 Case Centered Data Release.

\textsuperscript{21} It is whichever party that controls the House that dictates how this variable is coded because this is the chamber with the most members. For instance, in the 97\textsuperscript{th} Congress (1981-1982), the Democrats controlled the House and the Republicans controlled the Senate. Since the Democrats had the most members elected to Congress, this variable takes the value of the percentage of conservative decisions.

\textsuperscript{22} For example, this variable is coded as the percentage of conservative decisions for Grace Napolitano (D-CA) throughout her service during the 106\textsuperscript{th}-110\textsuperscript{th} Congresses. This variable is coded for members identifying as independents based on the sign of their Common Space score. Consequently, members with positive scores are considered conservatives and members with negative scores are considered liberals. For example, Bernie Sanders (I-VT) has a Common Space score of \textasciitilde .541, which indicates liberal roll call voting behavior, so throughout his service during the 102\textsuperscript{nd}-109\textsuperscript{th} Congresses this variable is coded as the percentage of conservative decisions decided by the Court.
confidence respondents have in the Supreme Court. However, the GSS data is not available every year and the state level data is not easily replicable or publically available. As a result, this study utilizes the measure developed by Durr, Martin, and Wolbrecht (2000) that recognizes that public support for the Court is dictated most often by the Court’s decisions. This measure is an index of the difference between the ideology of the public and the ideological content of judicial decisions. This variable is created by multiplying the percentage of Supreme Court decisions identified as conservative in the Supreme Court Database with public mood measures of how liberal the public is that were developed at the national level by Stimson (1999) and the state level by Enns and Koch (2013). Thus, this variable becomes increasingly large as the public becomes more liberal and the judicial decisions are more conservative or vice versa.

Invalidated Federal and State Laws. Another reason for the introduction of Court-curbing legislation is that these bills are sponsored in response to judicial power (Clark 2011). Judicial review is a fundamental power of the Supreme Court, so under this explanation, Court-curbing activity should increase as more federal and state laws are invalidated by the justices. This possibility is controlled for by obtaining lists of the laws that were struck down from the Congressional Research Service (CRS). In accordance with Clark (2011), these variables are measured as the number of federal and state laws invalidated by the Court in the previous year for models analyzing Court-curbing behavior for all of Congress. In analyses of individual members these variables are adjusted to measure the number of laws struck down during the previous congressional session. Since it is unlikely that members are concerned about the total number of invalidated state laws, this

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23 For years when the GSS did not ask respondents how much confidence they have in the Supreme Court, Clark uses the average of the preceding and following years.
24 Another benefit of using this measure is that it allows for an expansion of the time frame under analysis. This cannot be accomplished using the measure derived from the GSS data because the question relating to how much confidence respondents have in the Supreme Court was not asked regularly until 1973.
25 In accordance with the operationalization of variables previously discussed, the percentage of conservative decisions is at the year level in the models examining Congress and at the congressional session level for analyses of individual members. Since both measures of public mood are available by year, an average of the two years included in each congressional session is used to construct this variable at the state level. It is important to note that Clark (2009, 2011) employs this method to expand the time frame of his study that examines the effect of Court-curbing on the Court’s exercise of judicial review. This only requires the creation of this variable for the federal level. Nevertheless, this study follows the procedures used by Clark to construct these variables at both the federal and state levels.
measure now corresponds to the number of laws struck down from the member’s state.\textsuperscript{26} It is important to note that these variables are lagged to account for the potential endogeneity problem that exists between the exercise of judicial review and the introduction of Court-curbing bills because these proposals are also predicted to be the result of judicial decisions. Since it is unlikely that Supreme Court decisions in a given year (or congressional session) factors into the possibility of Court-curbing legislation being introduced in the following year, the lag allows for a possible causal link between judicial power and the sponsorship of Court-curbing legislation.\textsuperscript{27}

**Legislative Activism.** An alternative explanation for the introduction of Court-curbing legislation is that it is introduced when Congress is legislatively active; consequently, there is a higher likelihood of the bills being enacted (Clark 2011). Thus, the bills are introduced with the intention of being enacted rather than sponsored as strategic attempts to manipulate the Court’s decision-making or position-taking endeavors that attack the Court’s institutional legitimacy. In order to control for whether Court-curbing bill sponsorship increases when more laws are sponsored, data is obtained from the THOMAS search engine and Adler and Wilkerson’s Congressional Bills Project. For models analyzing Congress, legislative activism is measured as the number of laws enacted per year using the data from THOMAS. Since individual members cannot directly control whether laws they introduce are enacted, a more accurate measure of the legislative activity of an individual member is based on bill sponsorship activity. Using the data from Adler and Wilkerson’s Congressional Bills Project, legislative activism for individual members is measured as the number of public law bills introduced during each congressional session.

**Majority Party.** Parties are an important part of policymaking and because the majority party exerts a strong influence on which laws are enacted, majority party members are more successful at turning bills into law.

\textsuperscript{26} For example, in the 104\textsuperscript{th} Congress, this variable takes a value of one for John Boehner (R-OH) because the Court struck down one Ohio state law.

\textsuperscript{27} This is the same rationale and method used by Clark (2011) to deal with this potential endogeneity problem. As noted previously, Clark’s models only require variables to be lagged a year as his models examining the behavior of individual members do not include these variables.
(e.g., Anzia and Berry 2011; Volden, Wiseman, and Wittmer 2013). Although it is anticipated that members introduce Court-curbing bills for reasons other than enacting the legislation, it is important to control for the possibility that majority party members are more likely to sponsor these bills—especially those that harness judicial power—before pursuing override legislation. This is because the Court should be more responsive because the bill is a credible signal of legislative preferences. In contrast, minority party members should avoid introducing Court-curbing bills unless they are attacks that can be used as position-taking endeavors because it is unlikely the Court responds as the bills do not represent majority preferences. In order to control for this possibility, a dichotomous indicator is constructed with data obtained from the History, Art, and Archives webpage for the U.S. House of Representatives in which majority party members are coded as one and minority party members as zero.28

**Seniority.** Seniority is also chosen as a control variable because legislative behavior changes the longer a member has been in office. Incumbents introduce more bills because they have built a legislative reputation and have honed their legislative skills (e.g., Anzia and Berry 2011; Jeydel and Taylor 2003; Schiller 1995). With respect to Court-curbing legislation, seniority has been found to increase the likelihood of a member sponsoring these types of bills (Bell and Scott 2006). This is likely because senior members are more active in legislative development and efforts to signal legislative policy preferences to the Court (Hall 1996; 21)

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28 The partisan identification of each member was obtained from the Common Space scores dataset. Since conservatives are less supportive of judicial independence and have become much more hostile towards the Court, a variable was considered that would control for partisan affiliation (Clark 2011; Miller 2009). This variable was highly correlated with the variable measuring the percentage of decisions decided by the Court in opposition to the member’s ideological preferences (Pearson’s r of -.93). Additional tests for multicollinearity resulted in tolerance levels of .12 for the partisanship variable (coded as one if the member is a Republican and zero otherwise) and .13 for the adverse decisions variable, which is below the .2 minimum threshold recommend by Menard (1995). These results indicate that the model needs to be modified because these two variables are linear opposites of one another. In other words, partisanship appears to be measured twice because when a member is a Republican, the adverse decisions variable measures the percentage of liberal decisions (the indication of being a Democrat) and vice versa. Since the introduction of Court-curbing bill sponsorship, in general and, for ideological policy purposes is expected to be influenced more by Supreme Court decision-making than partisan affiliation, the partisanship variable was excluded from the empirical model. This eliminates the issue with multicollinearity and results in tolerance levels well above the recommended .2 cutoff value. Comparisons of how Court-curbing legislation differs for Republicans and Democrats can be accomplished by running each model for each party.
Furthermore, senior members should be more apt to sponsor bills that attempt to harness the Court’s power as a way to encourage a shift in the ideological content of decisions before introducing override legislation. Freshmen and more junior members of Congress tend to cosponsor legislation and engage in behavior that communicates their general position on various issue areas (Campbell 1982; Kessler and Krehbiel 1996; Krehbiel 1995; Spill Solberg and Heberlig 2004). As a result, these members should be more likely to introduce Court-curbing bills that attack the Court’s institutional legitimacy and serve as position-taking endeavors. Using Poole and Rosenthal’s Corrected ICPSR Member Identification Number data and the Biographical Directory of the United States, seniority is measured as the number of terms the member has served in Congress.

Judiciary Committee Membership. It is important to control for whether a member serves on the Judiciary Committee because these members, especially lawyers, tend to view the Supreme Court differently than non-members (Bell and Scott 2006; Miller 1993). Lawyers typically view the Court more favorably—by not perceiving judicial decision-making as motivated by political preferences—and are less supportive of efforts to manipulate the Court’s jurisdiction (Miller 1993). However, according to Miller (1993), these viewpoints are common of all lawyers in Congress, not just those serving on the Judiciary Committee (Miller 1993). Despite these favorable views towards the Court, Judiciary Committee members have not been found to be less likely to sponsor Court-curbing legislation than their counterparts serving on other committees (Bell and Scott 2006). Regardless, it is important to rule out this potential explanation behind Court-curbing bill sponsorship (or the lack thereof) and account for the possibility that Judiciary Committee members may be less likely to sponsor one of the two types of Court-curbing bills recognized by Engel (2011). Judiciary Committee members may be less likely to attempt to harness judicial power because the Court is not seen as a political institution that defers to legislative preferences when making decisions. Due

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29 Bell and Scott (2006) cite Spill Solberg and Heberlig’s (2004) study as justification for including a variable measuring seniority. Spill Solberg and Heberlig’s study examines the amicus curiae participation of members of Congress so there are likely parallels between this behavior and the sponsorship of Court-curbing legislation.
to this respect for the Court, it is also unlikely these members would introduce legislation that would attack the Court’s institutional legitimacy. As a result, a dichotomous variable is created from Stewart and Woon’s committee assignment data in which Judiciary Committee members are coded as one and all other members as zero.

**Methods**

Since the dependent variable for the first set of models examining Court-curbing bill sponsorship for all of Congress is the number of bills introduced, a count model is required to test the aforementioned hypothesized relationships.\(^{30}\) The standard count model is the Poisson regression model (PRM), and several diagnostics (see Table 1) verify that this is the correct method for analyzing the data as it is not overdispersed and does not exhibit time-series dynamics (Brandt, et al. 2000; Cameron and Trivedi 1998).\(^{31}\)

The second set of models examine factors that influence if members of Congress introduce a Court-curbing bill, and if so, whether it attempts to harness judicial power or attacks the Court’s institutional legitimacy. Since these dependent variables are dichotomous indicators, logistic regression analysis is used to test this study’s research expectations (Menard 1995).\(^{32}\)

For both sets of models, standards errors are clustered on the Supreme Court Chief Justice because observations across many of the variables—ideological divergence and adverse decisions—are similar.

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\(^{30}\) Interactive relationships hypothesizing that the effect of adverse decisions and legislative gridlock on Court-curbing bill sponsorship intensifies as ideological divergence increases is tested by constructing a variable that multiplies the ideological divergence variable with the adverse decisions and legislative gridlock variables, respectively. This same approach is utilized to test the interactive relationship predicting that the effect of adverse decisions is greater during periods of legislative gridlock; that is, the adverse decisions variable is multiplied with the legislative gridlock variable.

\(^{31}\) First, the likelihood-ratio test indicates that the data is not overdispersed. Since serially correlated data is usually overdispersed, it is unlikely that the data exhibits time-series dynamics (Johansson 1995). The results in Table 1 confirm this expectation as the current and lagged residuals are not correlated (Cameron and Trivedi 1998). Second, the results of the augmented Dickey-Fuller test verify the lack of time-series dynamics by confirming that the dependent variable is not a unit root, or has a mean and variance that changes over time (Chatfield 2003). It is also important to note that diagnostic tests for multicollinearity are performed to ensure that there is not an excessive amount of overlap between any of the variables. The results demonstrate that multicollinearity is not an issue as the tolerance level for each variable is well above .2 (Menard 1995). See Appendix B for descriptive statistics.

\(^{32}\) Diagnostic tests indicate that this model does not have any issues with multicollinearity (see n31). Descriptive statistics for this model are also available in Appendix B.
because the ideological orientation of the Court is relatively static during the tenure of each chief justice (e.g., Smith and Hensley 1993).\textsuperscript{33} The next section begins by discussing the effect that ideological policy preferences, judicial decisions, and the feasibility of overriding decisions have on the introduction of Court-curbing legislation, particularly bills that harness judicial power, for Congress and individual members of Congress.

\textbf{Results}

\textbf{The Dynamics of Court-Curing Bill Sponsorship}

The results presented in Table 1 indicate that Congress introduces Court-curbing legislation for reasons associated with ideological policy preferences.\textsuperscript{34} However, since these models include interactions, the constitutive terms provide limited information about the effect ideological divergence, decisions decided in opposition to congressional preferences, and legislative gridlock have on Court-curbing bill sponsorship. These results indicate that each of these three factors have a statistically significant effect on increasing the number of Court-curbing bills introduced when each of the other variables are zero. Zero is outside the range of values for the variables measuring legislative gridlock and adverse decisions so these findings are

\textsuperscript{33} It is important to note that Clark (2011) also utilizes this approach in similar models examining Court-curbing bill sponsorship behavior. For the time span covered by this study, the Court is regarded as conservative. The Burger Court (1969-1986) and Rehnquist Court (1987-2005) are substantially more conservative than the liberal Warren Court (1958-1969); however, the Burger Court did hand down liberal decisions on cases regarding civil rights and liberties (e.g., abortion, gender equality, and affirmative action) (e.g., Smith and Hensley 1993). Although the Roberts Court (2006-present) is also considered conservative, Court watchers have observed that the Roberts Court is less conservative than the Rehnquist Court and has issued more liberal decisions as of late (e.g., Nyhan 2015; Parlapiano, Liptak, and Bowers 2015).

\textsuperscript{34} These results are based on a relatively small number of observations, which limits the conclusions that can be drawn from these models. This is because the Poisson model is fitted using maximum likelihood estimators (MLE) and small sample properties of these types of models is unknown (e.g., Hart and Clark 1999). In accordance with Clark (2011), the model is also fitted as a linear model using ordinary least squares (OLS) regression analysis. The results are similar and provide support that the findings discussed in this section are valid. Additionally, the chi-squares reported for each model indicate that the independent variables accurately predict the number of Court-curbing bills sponsored each year (see Table 1). These results are further supported by the Nagelkerke $r$-square statistics that reveal that nearly all of the variance in Court-curbing bill sponsorship is explained by the models (Nagelkerke 1991). Stata will not provide these last two statistics for Poisson models with clustered standard errors, so these statistics are obtained by running the models without this specification.
substantively meaningless. In order to assess whether these statistically significant positive relationships persist at values other than zero, predicted probabilities are calculated and graphed for each variable across the three models (see Figure 3).

Before discussing the effect each variable has on Court-curbing bill sponsorship shown in Figure 3, it is important to note that the confidence intervals for each predicted probability does not contain zero so these relationships are statistically significant. As can be seen in Figure 3, it appears that Congress uses Court-curbing bills in an effort to manipulate judicial decision-making prior to resorting to override legislation because an increase in ideological divergence and the number of decisions decided in opposition to congressional preferences are associated with a rise in Court-curbing legislation, especially those that attempt to harness judicial power (supports H1a, H1b, H2a, & H2b). However, the results provide mixed support for the hypotheses expecting Congress to use Court-curbing as a tactic to pursue legislative policy preferences within the judiciary during periods of legislative gridlock. An examination of all Court-curbing bills confirms this expectation (supports H3a); but, Congress is less likely to sponsor bills that seek to harness judicial power during legislative gridlock (rejects H3b). Another interesting finding is that each of these three factors have a substantial impact on increasing the number of Court-curbing bills that attack the Court’s institutional legitimacy. Furthermore, the results for this model follow that for all Court-curbing

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35 See Brambor, Clark, and Golder (2006) for a full discussion of the interpretation of constitutive terms in interaction models.

36 Predicted probabilities are calculated using SPost in Stata 14 (Long and Freese 2005). Since all the variables in the model are continuous, constitutive variables not of interest when calculating a given predicted probability are set at the mean. Interaction terms not involving the constitutive term of interest are set by multiplying the means of the two variables together. For example, when calculating predicted probabilities for ideological divergence, the interaction between adverse decisions (mean of 50.197) and legislative gridlock (mean of .486) is set at: 24.395742 (.486 * 50.197). Interaction terms involving the constitutive term of interest are set by multiplying the value of interest for that variable with the mean of the variable not of interest. For example, when calculating the predicted probability when ideological divergence is .25, the interaction between ideological divergence and adverse decisions is set at .1215 (.25 * 50.197). The remaining continuous control variables not included in interaction terms are set at the mean when calculating predicted probabilities.
legislation in which Congress also introduces more bills that attack the Court during periods of legislative gridlock.

[Insert Figure 3 about here.]

The results for the interactions included in the models indicate that the effect of adverse decisions decided against Congress on Court-curbing bill sponsorship does differ based on the amount of ideological divergence with the Court and legislative gridlock. However, the number of Court-curbing bills introduced during periods of legislative gridlock does not differ based on the amount of ideological divergence with the Court (rejects H3c). It is worth noting that this research expectation is supported in the model for proposals that attack the Court, but the substantive impact of this relationship is relatively low. Under average levels of legislative gridlock and low levels of ideological divergence, Congress is not expected to introduce a Court-curbing bill that attacks the Court; however, at relatively large levels of ideological divergence, Congress is predicted to introduce one of these bills.

Figure 4 shows the effect of adverse decisions on Court-curbing bill sponsorship across various values of ideological divergence and legislative gridlock. As expected, the increase in the introduction of Court-curbing legislation caused by decisions that do not accord with congressional preferences is intensified as there is more disagreement between Congress and the Supreme Court (supports H2c). As can be seen in Figure 4, when Congress disagrees with roughly half of the judicial decisions handed down, 3-5 Court-curbing bills are predicted to be introduced at low levels of ideological divergence, but at much higher levels this jumps to 7-9 bills. A similar pattern is evidenced for bills that harness judicial power in which Congress is expected to introduce 2-3 bills but as many as 4-6 bills. Although a positive relationship is shown for bills that attack the Court’s institutional legitimacy, the substantive effects are small as only one of these bills is predicted to be introduced. Thus, supporting the general research expectation that Congress

37 See n36 for a discussion of how predicted probabilities are calculated using Stata. It is worth noting that the confidence intervals for these predicted probabilities do not contain zero, so the relationships are significant at all values of ideological divergence or legislative gridlock.
does not use this type of Court-curbing bill to pursue ideological policy preferences and encourage a change in judicial decision-making before pursuing override legislation.

[Insert Figure 4 about here.]

Although the effect of adverse decisions on Court-curbing bill sponsorship becomes more pronounced as ideological divergence increases, this is not always the case across values of legislative gridlock. As shown in Figure 4, legislative gridlock leads to an increase in the total number of Court-curbing bills Congress would introduce after judicial decisions are handed down that do not reflect legislative preferences. When Congress disagrees with roughly half of the Supreme Court’s decisions in a year, 4 Court-curbing bills are predicted to be introduced if there is little legislative gridlock and 5 if policymaking is at a standstill. The predictions for Court-curbing legislation that attacks the Court follows the same pattern; but, as expected—given the purpose of these bills are not policy related—only one bill is sponsored and that does not occur until high levels of legislative gridlock. Court-curbing bills that harness judicial power are introduced for policy reasons; however, the effect of adverse decisions on the introduction of these bills is lessened as legislative gridlock increases within Congress (rejects H3d). Specifically, Congress introduces roughly 4 of these bills at low levels of legislative gridlock while this decreases to 2 bills as Congress becomes more deadlocked.

Before moving on to a discussion of the results for individual members, it is important to note that some of the control variables are associated with the introduction of Court-curbing legislation. Beginning with public opinion, the results show that this relationship is in the expected direction when ideological divergence is zero; however, this relationship fails to achieve standard levels of statistical significance except in the model explaining the introduction of bills that attempt to attack the Court. This is to be expected as these bills are position-taking endeavors that members use for re-election purposes (Clark 2011; Engel 2011). There are few years in which there is no ideological divergence between Congress and the Court.
Calculating predicted probabilities for various values of public support and under average levels of ideological divergence indicate that this relationship runs in the opposite direction predicted in which fewer bills that attack the Court’s institutional legitimacy are introduced as there is less public support for the Court. Despite these results, public support does lead to increased Court-curbing bill sponsorship activity as increases are evidenced in ideological divergence. This relationship is seen in each of the three models; albeit, it is only statistically significant in models examining all Court-curbing bills and those that attack the Court. Again, this is to be expected given the purpose of these bills as compared to those that harness judicial power for ideological policy purposes.

There are mixed results for the variables measuring the number of invalidated federal and state laws so it does not appear that Court-curbing is a response to the exercise of judicial power. An increase in the number of federal laws that are invalidated is consistently associated with the introduction of fewer Court-curbing bills, and this relationship is statistically significant in models explaining all the bills and those that harness judicial power. Judicial power directed at the states does appear to increase Court-curbing bill sponsorship as expected, especially those that attempt to harness judicial power. In contrast, Congress is less likely to introduce legislation that attacks the Court as more state laws are struck down. Rather than using these instances as opportunities to convey policy stances to constituents, Congress is more willing to attempt to harness judicial power or focus on national policy change.

The final alternative explanation for the introduction of Court-curbing that was controlled for by this study is that of legislative activism or that the bills are introduced with the intention of being enacted into law. Throughout each of the models, the results consistently indicate that legislative productivity decreases the number of Court-curbing bills that are introduced. As a result, it can be concluded that Court-curbing (depending on the type of bill) is an attempt to manipulate the Court’s behavior.
Court-Curbing Bill Sponsorship in the House of Representatives

Table 2 shows the results for models examining whether individual members of Congress introduce Court-curbing bills; and if so, whether those harness the Court’s power or attack the Court’s institutional legitimacy. Again, the findings reported for variables measuring ideological divergence, decisions decided against the preferences of the member, and legislative gridlock indicate if these variables are associated with Court-curbing bill sponsorship when the other two are set at zero (see Brambor, Clark, and Golder 2006). Predicted probabilities are calculated to determine whether these variables are statistically significant when the other two variables are set at meaningful values contained within the dataset. Beginning with ideological divergence, an inverse, instead of a positive, relationship is evidenced that is only statistically significant when there no ideological divergence between the member and the Court (rejects H1a & H1b). These findings are consistent across each of the three models and the substantive effects are minimal in which the likelihood of a member introducing a Court-curbing bill is 1.5% and this drops to roughly 1% for bills that harness judicial power and less than 1% for bills that attack the Court. Similar results are not evidenced for decisions handed down by the Court against the ideological preferences of the member and legislative gridlock as neither of these variables are associated with increasing Court-curbing bill sponsorship (rejects H2a, H2b, H3a, & H3b).

The lack of support for this study’s hypotheses continues when evaluating the results for the interactive terms. The effect of adverse decisions on the introduction of Court-curbing legislation does not increase as ideological divergence also increases between the member and the Supreme Court. When

38 The chi-square statistics reveal that the independent variables adequately explain whether a member introduces a Court-curbing bill, regardless of type (see n34 for a discussion of how Stata calculates this statistic). However, the reduction in error and Nagelkerke r-square statistics reveal that these models have marginal explanatory power (Nagelkerke 1991).
39 See n36 for a discussion of how predicted probabilities are calculated using Stata. The only exception is that the additional dichotomous control variables measuring majority party membership and service on the Judiciary Committee are set at the mode. As a result, the predicted probabilities are for majority party and non-Judiciary Committee members.
40 As mentioned previously, statistical significance is based on whether the confidence intervals for the predicted probabilities contain zero.
roughly 50% of decisions are decided against the member, the likelihood of introducing a Court-curbing bill is 1.5% when there is no ideological divergence. This likelihood is roughly 1% when it comes to introducing Court-curbing legislation that attempts to harness judicial power and less than 1% for proposals that attack the Court. Across all three models, this relationship fails to remain statistically significant at higher levels of ideological divergence, and the predicted probabilities indicate that more adverse decisions lead to fewer Court-curbing bills at higher levels of ideological divergence (rejects H2c). The results are relatively similar at lower percentages of adverse decisions. Fewer adverse decisions result in a less than 1% likelihood of introducing either type of Court-curbing bill when there is no ideological divergence; however, this relationship is not statistically significant when examining Court-curbing bill sponsorship in general. However, at higher percentages of adverse decisions when member preferences are aligned with those of the Court, these likelihoods increase to 7.3% for any Court-curbing bill and proposals that harness the Court’s power. Although these relationships remain statistically significant at smaller levels of ideological divergence, the predicted probabilities drop to under 1%. Additionally, it is worth noting that these results at higher levels of adverse decisions do not persist for bills that attack the Court as the relationship fails to remain statistically significant. This is to be expected because these bills are not entirely motivated by policy preferences.

Rather than ideological divergence making members more likely to introduce Court-curbing bills during legislative gridlock, the results indicate that members are actually less likely to introduce these bills (rejects H3c). Average levels of legislative gridlock leads to a roughly 1.5% likelihood of introducing a Court-curbing bill and this drops to 1% for bills that harness judicial power and less than 1% for bills that attack the Court when the member’s preferences are aligned with those of the Court. At higher levels of ideological divergence, this relationship fails to remain statistically significant. These results are relatively consistent when examining Court-curbing bill sponsorship behavior at high levels of legislative gridlock. In
the absence of ideological divergence, the likelihood of introducing a Court-curbing bill—regardless of type—is less than 1%. The one exception is that the effect of high levels of legislative gridlock on Court-curbing bill sponsorship does not differ across values of ideological divergence for bills that harness judicial power. However, this relationship is much more pronounced at low levels of legislative gridlock in which the likelihood of introducing a Court-curbing bill is much higher at 4.6% and 5.2% for bills that attempt to harness judicial power before dropping to less than 1% as differences begin to occur between the preferences of the member and the Supreme Court. The only exception is that the likelihood of a Court-curbing bill being introduced does not differ as ideological divergence increases at low levels of legislative gridlock.

The results also indicate the effect of adverse decisions on the introduction of Court-curbing legislation does not differ based on how much legislative gridlock is present in Congress (rejects H3d). Although this relationship is denoted as statistically significant in Table 2 for the models explaining all Court-curbing bills and those that harness judicial power, this is not the case after calculating predicted probabilities for a variety of meaningful values for the variable measuring adverse decisions. Before moving onto a discussion of these findings in light of the literature on Court-curbing legislation and Court-Congress relations, it is important to mention how the control variables performed in each of the models.

The first alternative explanation controlled for is members introducing Court-curbing legislation in response to waning public opinion towards the Court. Although Table 2 shows that public opinion is not associated with Court-curbing bill sponsorship behavior when there is no ideological divergence between the member and the Court, predicted probabilities reveal otherwise. Across each of the three models, higher

41 It is important to note that this result is significant at the .1 level. There is debate as to whether coefficients significant at the .1 level should be reported as statistically significant because the conventional cutoff in the social sciences is .05. However, coefficients with p values between .05 and .1 can be considered “approaching” significance (e.g., Samprit, Hadi, and Prince 2000) and are increasingly being reported as statistically significant results in political science research (e.g., Goldstein 2010).
42 Predicted probabilities are first calculated at minimum (49.759), maximum (37.113%), average (49.759%), moderately low (42%) and moderately high (55%) values of adverse decisions.
levels of public support for the Court are associated with Court-curbing bill sponsorship; but, the likelihood of these bills being introduced does not increase when the public disagrees with the Court. These likelihoods are still relatively low with the highest among the three models being 2.5% for all types of Court-curbing bills. Additionally, this relationship is in the opposite direction as expected and indicates that Court-curbing bills are more a reflection of ideological policy preferences than public opinion.

The effect of public support for the Court on the introduction of Court-curbing legislation does increase across levels of ideological divergence but this only occurs when there is moderate to high levels of disagreement between the member and the Court. Additionally, in each of the three models this relationship is only statistically significant at high, rather than low, levels of public support. The substantive effects are also relatively low in which the likelihood of a member introducing any Court-curbing bill ranges between as low as 1% to as high as roughly 10%. These likelihoods drop markedly when examining each type of Court-curbing bill. The likelihood of a proposal that harnesses judicial power ranges from less than 1% to roughly 4% while these likelihoods are slightly smaller for initiatives that attack the Court: less than 1% to as high as almost 3%. Public opinion having less of an impact on the introduction of Court-curbing bills that attack the Court is not as expected because these are considered opportunities to convey stances on a variety of issues to constituents. However, since public discontent is not associated with higher levels of Court-curbing legislation, these results appear to be driven more so by ideological policy preferences than concerns relating to re-election and representing constituent opinions.

Two other explanations for the introduction of Court-curbing legislation is that the bills are in response to the exercise of judicial power or because actual change is sought in the Court’s jurisdiction, composition, procedures, etc. The results rule out these possibilities as an increase in the number of invalidated state and federal laws leads to a decrease in the likelihood of a member introducing a Court-
curbing bill regardless of type. Additionally, the more bills introduced by a member, the less likely one of those is a Court-curbing bill.

Control variables added to the models examining individual members of Congress generally perform as expected with the exception of the variable measuring the effect of membership on the Judiciary Committee. First, a positive, albeit statistically insignificant relationship, is evidenced for majority party members in which they are no more likely to introduce any type of Court-curbing bill than minority party members. Second, and as expected, senior members of Congress are more likely to introduce Court-curbing legislation, especially bills that harness judicial power. However, the results do not indicate that freshmen and junior members of Congress are more apt to sponsor Court-curbing bills that attack the Court’s institutional legitimacy in an effort to convey stances on policy issues to constituents. Lastly, the results demonstrate that Judiciary Committee membership increases, rather than decreases, Court-curbing bill sponsorship. This relationship is only statistically significant when it comes to the introduction of proposals that attack the Court’s institutional legitimacy. These results are in contrast to others who see Judiciary Committee members as having more respect for the Court and not being more likely to introduce Court-curbing legislation (Bell and Scott 2006; Miller 1993).

Discussion and Conclusions

Outside of findings that Congress tends to introduce Court-curbing bills during periods of ideological divergence with the Supreme Court, very little is known about how these bills are used to pursue policy preferences. Since Court-curbing bills are rarely enacted, Clark (2009, 2011) contends that these proposals are position-taking endeavors used by members to respond to waning public support for the Court. However, recent case studies indicate that only some bills, those that attack the Court’s institutional legitimacy, are responses to constituent concerns with judicial decision-making; the rest are attempts to harness judicial power for ideological policy purposes (Engel 2011). This proposition is empirically tested
and posits that Congress introduces Court-curbing legislation in an attempt to manipulate judicial behavior before resorting to the more time-consuming process of pursing legislative overrides. Recent findings in the judicial behavior literature support this possibility as upswings in Court-curbing bills occur at the same time as legislative overrides (Blackstone 2013), and Congress does override judicial decisions (Uribe, Spriggs, and Hansford 2014).

The results of the model analyzing patterns of Court-curbing bill sponsorship by year, indicate that Congress introduces these bills as a response to ideological disagreement with the Court and judicial decisions handed down in opposition to legislative preferences. Additionally, the effect of adverse decisions on Court-curbing bill sponsorship increased as ideological divergence also increased. These relationships are evidenced across all three models examining all Court-curbing bills sponsored and then those attempting to harness judicial power or attack the Court’s institutional legitimacy. Thus, providing more support for previous findings and observations that Court-curbing legislation is motivated by legislative policy preferences (e.g., Bell and Scot 2006; Engel 2011; Handberg and Hill 1980; Nagel 1965; Rosenberg 1992) and are attempts to manipulate judicial decision-making if changes are not expected before pursuing override legislation.

Mixed results are evidenced with respect to legislative gridlock in which the inability to pass legislation did lead to more Court-curbing legislation in general and those that attack the Court’s institutional legitimacy. However, gridlock decreases the number of bills introduced that harness judicial power. These findings are not found to be influenced by more ideological divergence between Congress and the Court; but, the effect of adverse decisions on Court-curbing bill sponsorship did follow this same pattern of more Court-curbing—especially proposals that attack the Court—as Congress becomes more deadlocked but fewer proposals that harness judicial power. Overall, it appears as if Congress does not attempt to encourage judicial deference to legislative preferences during periods of legislative gridlock. Although this finding is
not as predicted, it is possible that because Congress cannot override decisions if the Court does not respond to these types of Court-curbing bills, members instead focus on re-election concerns. Gridlock decreases public approval of Congress (e.g., Binder 2004) and eliminates the ability of members to take credit for legislation that benefits constituents (Mayhew 1974), so it is possible that members seek to counteract these effects by resorting to position-taking measures that convey issue stances to constituents, such as Court-curbing bills that attack the Court.

The conclusion that Court-curbing is primarily an attempt to encourage judicial deference to legislative policy preferences is further supported by two key results. First, even Court-curbing bills that attack the Court and are sponsored with the intent of conveying issue stances to constituents or responding to waning public support for the Court (e.g., Clark 2009, 2011; Engel 2011), are influenced much more so by factors relating to ideological policy preferences and the content of judicial decisions. Second, public support and other alternative explanations for Court-curbing bill sponsorship are not found to consistently explain this type of congressional behavior. In contrast to previous findings (e.g., Clark 2009, 2011; Nagel 1965; Ignagni and Meernik 1994), more, rather than less, support for the Court is associated with more bills that attack the Court’s institutional legitimacy. This is not entirely surprising given that others have found that the public is unaware of most judicial decisions and support for the Court is relatively high and stable (e.g., Caldeira 1986; Caldeira and Gibson 1992; Delli Carpini and Keeter 1996; Durr, Martin, and Wolbrecht 2000; Engel 2011; Gibson, Caldeira, and Baird 1998).

The models examining the Court-curbing behavior of Congress provides insight into how these proposals are used to manipulate judicial decision-making for ideological policy purposes; however, many of these findings do not persist in models for members in the House of Representatives. None of the hypothesized relationships are supported, and in general, very few of the factors explain whether a member introduces a Court-curbing bill or whether the bill is one that attempts to harness judicial power or attack the
Court’s institutional legitimacy. Ideological divergence, legislative gridlock, and decisions decided in opposition to the member’s ideological policy preferences are not associated with Court-curbing bill sponsorship. Court-curbing legislation is only found to be introduced under average conditions when ideological divergence is zero. Furthermore, the effect of adverse decisions and legislative gridlock on whether a member introduces a Court-curbing bill does not increase as the member disagrees more with the Court. The relationships are in the opposite direction as predicted in which more ideological divergence leads to fewer Court-curbing bills; albeit, these findings are only statistically significant when there is very little, if any, disagreement with the Court. Lastly, the likelihood of a member introducing a Court-curbing bill because of adverse decisions handed down by the Court does not increase as there is more legislative gridlock.

These models also rule out alternative explanations of Court-curbing bill sponsorship because the bills do not appear to be a reaction to judicial power or an attempt to realize tangible change in the composition, procedures, jurisdiction, etc. of the Court. The most consistent findings between these two sets of models is that public support for the Court increases, rather than decreases, the likelihood of a member introducing a Court-curbing bill, both those that harness judicial power and attack the Court’s institutional legitimacy. This effect does differ as ideological divergence increases between the member and the Court, but only at high levels of public support for the Court. Again, these results do not support Clark’s recent findings that Court-curbing is motivated by waning public support.

Additional factors that may influence Court-curbing bill sponsorship for the individual member—majority party membership, seniority, and assignment to the Judiciary Committee—did not consistently impact members in the House of Representatives. First, majority party members are no more likely than minority party members to introduce a Court-curbing bill. This result is likely because majority party efforts are focused on bills that are introduced with the intention of being passed into law, not those considered
symbolic politics, such as Court-curbing legislation. Although Court-curbing legislation introduced by majority party members is more apt to elicit a response from the Court because the bill would appear to signal dominant legislative policy preferences and the likelihood of an override, it is possible that the majority party is focused more so on other areas of public policy and less so on judicial decisions.

Second, more senior members of Congress are found to be more likely to introduce Court-curbing legislation, especially bills that harness judicial power. This supports previous findings that incumbents are more active in legislative development and engage in efforts to influence judicial decisions (Hall 1996; Hibbing 1991; Schiller 1995; Spill Solberg and Heberlig 2004). Freshmen and more junior members of Congress who tend to be more concerned about being re-elected are not more likely to introduce bills that attack the Court’s institutional legitimacy in an effort to convey general policy stances to constituents. Again, underscoring that Court-curbing bill sponsorship is driven more so by ideological policy preferences and judicial decisions than public opinion.

Third, membership on the Judiciary Committee was found to increase the likelihood of a member introducing a Court-curbing bill; albeit, only at a rate statistically different than non-members for bills that attack the Court. Judiciary Committee members, especially lawyers, have not been found to introduce Court-curbing legislation and are considered more supportive of the Court (Bell and Scott 2006; Miller 1993). However, it is possible that Judiciary Committee members are more likely to sponsor these bills because they are more attuned to judicial decisions and public opinion towards the Court. Although this study finds that these bills as sponsored during periods of high public support for the Court, it is possible that these members do use them as suggested by Clark (2011). Conversely, because ideological policy preferences also influence the introduction of bills that attack the Court, Judiciary Committee members may be attempting to influence judicial decision-making for ideological policy purposes.
Overall, the empirical analysis sheds some light on the ideological policy motivations behind Court-curbing legislation, but there are still many avenues for future research. First, more research is needed on what drives the Court-curbing bill sponsorship behavior of individual members of Congress. For example, other elite actors, such as interest groups and campaign donors, may encourage members to introduce Court-curbing legislation. More insight may also be gleaned into this form of congressional behavior by examining the content of the legislation. Although Clark’s categories of Court-curbing bills could be condensed straightforwardly into Engel’s categories of harnessing judicial power and attacking the Court’s institutional legitimacy, the language of the bills—in addition to the general purpose—may help better determine the effect the bills are expected to have on the Supreme Court. A second promising area of research worth exploring is the Court-curbing bill sponsorship behavior for each party and how it differs when each is the majority party in Congress. Republicans are typically less supportive of judicial independence and have become more hostile towards the Court (e.g., Clark 2011; Miller 2009), so it is possible that the findings reported here differ based on party or which party is in the majority. Third and finally, more research is needed on whether Court-curbing bills influence the Court. Prior research suggests that the Court responds because the bills threaten the Court’s institutional legitimacy (e.g., Clark 2009, 2011; Rosenberg 1992). However, given the results of this study that Court-curbing is motivated by ideological policy preferences, it is probable that the Court responds to avoid legislative overrides.
Appendix A: Categorizing Court-Curbing Bills as Harnessing Judicial Power or Attacking the Court’s Institutional Legitimacy

Initially, it is important to note that Engel (2011, 35) states that his categories of Court-curbing proposals are not definitive and illustrates this point by placing initiatives on a spectrum ranging from those attacking institutional legitimacy to harnessing judicial power. For example, restricting judicial review undermines judicial legitimacy and altering the Court’s jurisdiction harnesses judicial power, but lowering the judiciary’s budget is somewhere in between these two extremes. However, most of the categories used by Clark (2011) can be classified as either attacks on the Court or efforts to harness judicial power. With respect to attacks on the Court, Engel provides examples of proposals that Clark categorizes as judicial review and procedure bills, such as those that allow for congressional overrides of judicial decisions or alter decision rules. Although Engel does not mention bills that Clark classifies as “other,” proposals criticizing judicial decisions or practices of the Court, such as citing foreign law, are commonly considered attacks on the Court’s institutional legitimacy. As a result, all bills classified by Clark as procedure, judicial review, and other can be coded as proposals that attack the Court.

The types of Court-curbing bills that Engel states harness judicial power are those that manipulate the Court’s jurisdiction and attempt to limit the Court’s influence in a particular policy area. It is apparent that bills classified by Clark as jurisdiction stripping proposals can be coded as those that harness judicial power, but it is unclear whether “remedy” bills constitute bills seeking to restrict judicial power in cases pertaining to public policy. Although Engel does not discuss bills that would be considered examples of “remedy” bills, Clark states that these bills are commonly introduced in tandem with jurisdiction stripping legislation. Therefore, “remedy” bills can be coded as legislation that attempts to harness judicial power. Engel also categorizes bills that alter the number of judges on the bench or institute mandatory retirement as those that harness judicial power; yet, bills designed to impeach justices are considered proposals that attack the Court. Since most bills relating to the size of the Court are considered proposals that harness judicial
power, all bills classified as “composition” by Clark are coded in this category. This allows for continuity in how the Court-curbing bills are coded into the two categories proposed by Engel and makes replicating this method straightforward.

In addition to classifying Court-curbing bills as either attacking the Court or harnessing judicial power based on what the proposal specifically seeks to accomplish, Engel states that whether the initiative is introduced as a statute or an amendment can also be used to categorize the proposal. Since Court-curbing initiatives introduced as amendments require a supermajority to be enacted, they have a lesser likelihood of being enacted than measures introduced as ordinary legislation. As a result, Court-curbing amendments can be considered attacks on the Court because members use them as position-taking endeavors to voice opinions relating to judicial behavior to gain short-term electoral benefits without the possibility of damaging a long-term interest in an independent judiciary.

Coding all amendments as proposals attacking the Court was considered; however, 88% of the “composition” proposals, 1.2% of “jurisdiction” proposals, and 24% of the “remedy” proposals are introduced as amendments and would eliminate the majority of the proposals coded as harnessing judicial power. Furthermore, coding the bulk of the Court-curbing proposals as attacking the Court contradicts Engel’s observations that legislators began focusing more on harnessing judicial power during the mid-twentieth century and these proposals were introduced at a higher rate than those that attempt to undermine the Court’s institutional legitimacy. As a result, this study codes Court-curbing bills as those that harness judicial power or attack the Court based on the purpose of the bill, not whether it was introduced as an amendment or ordinary legislation. This decision is also supported by Clark’s discussion of “composition” Court-curbing bills in which it is noted that most of these bills are introduced as amendments. This is because most of these bills attempt to alter judicial tenure, which is constitutionally protected, and can only be accomplished with an amendment.
### Appendix B: Summary Statistics

#### Congress

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<th>Standard Deviation</th>
<th>Minimum</th>
<th>Maximum</th>
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**N** 34

#### Individual Members: House of Representatives

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<th>Standard Deviation</th>
<th>Minimum</th>
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**N** 7,459
References


### Table 1: Poisson Regression Results for Congressional Court-Curbing Bill Sponsorship, 1975-2008

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<td>Robust SE</td>
<td>Coefficient</td>
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*p < .05, **p < .01 (two tailed tests)

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<th>N</th>
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Table 2: Logistic Regression Results for Court-Curbing Bills Sponsorship by Representatives, 94th – 110th Congresses

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† p < .1, *p < .05, **p<.01 (two tailed tests)

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Figure 1: Court-Congress Relations in the Separation of Powers

Liberal: House, Supreme Court, Senate, Conservative

Liberal: House, Override, Senate, Supreme Court, Conservative
Figure 2: Gridlock Intervals: Veto Filibuster Model

Liberal  <1/3  ≥2/3  ≥3/5  <2/5  Conservative

President   Median Voter   Fiilibuster Pivot

Veto Pivot  <2/5  ≥3/5  ≥2/3  <1/3  Veto Pivot

Filibuster Pivot

Median Voter

President
Figure 3: The Effect of Ideological Divergence, Adverse Decisions, and Legislative Gridlock on Congressional Court-Curbing Bill Sponsorship (1975-2008)
Figure 4: Effect of Adverse Decisions on Congressional Court-Curbing Bill Sponsorship

- Court-Curbing: Total
- Court-Curbing: Harnesses Judicial Power
- Court-Curbing: Attacks the Court