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Bridging Judicial and Political Arenas: The Political Dynamics of Abstract Judicial Review in Spain

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Bridging Judicial and Political Arenas: The Political Dynamics of Abstract Judicial Review in Spain

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Abstract

This dissertation examines the role of abstract constitutional review, focusing on how the political context and the dynamics it generates transform the role of constitutional courts and their influence on the legislative process. Through three interconnected empirical studies, it analyzes the bidirectional relationship between judicial behavior and the legislative strategies of political parties, offering new empirical and theoretical perspectives on the judicialization of politics, the dynamics of the separation of powers, and the mutual influence between the political and judicial spheres.

The first article demonstrates that judicial polarization in Spain's Constitutional Court mirrors societal and party-system polarization, with judges' ideological preferences increasingly influencing rulings. Using an original dataset of judicial decisions (1996–2023) and a methodology grounded in Item Response Theory (IRT), the study reveals that judicial interventions in constitutional disputes are shaped by the court's ideological alignment with governing or opposition parties—a dynamic that fluctuates with the political context. These findings refine theories of judicial behavior and the judicialization of politics by offering a dynamic, context-sensitive perspective.

The second article shifts focus to opposition parties, arguing that abstract review, in contexts of intense partisan competition, is instrumentalized for short-term electoral gains. Employing Firth's logistic regression, the study analyzes whether legal or political incentives better explain the decision to challenge legislation. Results show that opposition parties escalate constitutional litigation during critical electoral periods, prioritizing media visibility and voter mobilization over legal viability. This instrumentalization exacerbates judicial workloads and public perceptions of the politicization of justice.

The third article investigates strategic legislative autolimitation, whereby governments preemptively modify legislation to avoid judicial rejection. Combining quantitative metrics of legislative amendments with multivariate regression models, the study reveals that governments strategically moderate bills when facing ideologically hostile courts. This "shadow of judicial review" distorts legislative bargaining, favoring risk aversion over policy innovation. The article contributes to separation of powers theories by empirically validating how judicial constraints alter legislative negotiations—a dynamic previously theorized but rarely tested.

Collectively, this research advances two core arguments. First, rising partisan competition transforms abstract review into a political weapon: opposition parties exploit litigation to craft electoral narratives, while judicial appointments and legislative agendas become politicized tools for consolidating power. Second, the court's effectiveness as a check on power depends asymmetrically on its ideological composition. When aligned with the government, its oversight role becomes symbolic; when favoring the opposition, legislative gridlock and perceptions of judicial overreach emerge. These dynamics destabilize democratic accountability, particularly in contexts of fragmented parliaments and illiberal threats.

By integrating judicial politics, legislative strategy, and partisan competition frameworks, this thesis redefines abstract review as a double-edged institution—essential for constitutional governance yet vulnerable to politicization. It underscores the urgent need to acknowledge the erosion of judicial independence and re-imagine how to bolster its democratic legitimacy in an era of growing polarization and institutional distrust.

Keywords: Constitutional Court, Abstract Judicial Review, Judicialization of Politics, Politicization of Justice, Judicial Behavior, Legislative Behavior, Polarization.

Resum

Aquesta tesi examina el paper del control de constitucionalitat abstracte, centrant-se en com el context polític i les dinàmiques que aquest genera transformen el paper dels tribunals constitucionals i la seva influència en el procés legislatiu. A través de tres estudis empírics interconnectats, analitza la relació bidireccional entre el comportament judicial i les estratègies legislatives dels partits polítics, oferint noves perspectives empíriques i teòriques sobre la judicialització de la política, la dinàmica de la separació de poders i la influència mútua entre les esferes política i judicial.

Article Primer demostra que la polarització judicial al Tribunal Constitucional d'Espanya reflecteix la polarització social i del sistema de partits, amb les preferències ideològiques dels jutges influint cada vegada més en les seves decisions. Utilitzant una base de dades original de decisions judicials (1996-2023) i una metodologia basada en la Teoria de Resposta a l'Ítem (TRI), l'estudi revela que les intervencions judicials en disputes constitucionals estan marcades per l'alineació ideològica del tribunal amb partits governants o d'oposició—una dinàmica que varia segons el context polític. Aquests descobriments refinen les teories del comportament judicial i de la judicialització de la política en oferir una perspectiva dinàmica i sensible al context.

Article Segon centra la seva atenció en els partits d'oposició, argumentant que la revisió abstracta, en contextos de forta competència partidista, s'instrumentalitza per obtenir guanys electorals a curt termini. Emprant la regressió logística de Firth, l'estudi analitza si els incentius legals o polítics expliquen millor la decisió de desafiar una llei. Els resultats mostren que els partits d'oposició intensifiquen la litigació constitucional durant períodes electorals crítics, prioritzant la visibilitat mediàtica i la mobilització de votants per sobre de la viabilitat legal. Aquesta instrumentalització exacerba la càrrega de treball judicial i les percepcions públiques de parcialitat, qüestionant radicalment el mite de la neutralitat judicial.

Article Tercer investiga l'autolimitació legislativa estratègica, mitjançant la qual els governs dilueixen preventivament legislació controvertida per evitar rebuigs judicials. Combinant mètriques quantitatives d'acceptació d'esmenes legislatives amb models de regressió multivariable, l'estudi revela que els governs moderen estratègicament els seus projectes de llei enfront de tribunals ideològicament hostils. Aquesta "ombra del control judicial" distorsiona la negociació legislativa, privilegiant l'aversió al risc per sobre de la innovació política. L'article contribueix a les teories de separació de poders en validar empíricament com els condicionants judicials alteren les negociacions legislatives—una dinàmica prèviament teoritzada però rarament provada.

En conjunt, aquesta investigació sosté dos arguments centrals. Primer, l'augment de la competència partidista transforma la revisió abstracta en una arma política: els partits d'oposició exploten la litigació per construir narratives electorals, mentre que els nomenaments judicials i les agendes legislatives es polititzen com a eines per consolidar el poder. Segon, l'efectivitat del tribunal com a contrapoder depèn asimètricament de la seva composició ideològica. Quan s'alinea amb el govern, la seva funció de supervisió esdevé simbòlica; quan afavoreix l'oposició, poden aparèixer bloquejos legislatius i percepcions d'activisme excessiu. Aquestes dinàmiques desestabilitzen la rendició de comptes democràtica, especialment en contextos de parlaments fragmentats i amenaces iliberals.

En integrar marcs teòrics de política judicial, estratègia legislativa i competència partidista, aquesta tesi redefineix la revisió abstracta com una institució de doble tall—essencial per a la governança constitucional, però vulnerable a la politització. Subratlla la necessitat urgent de reconèixer l'erosió de la independència judicial i replantejar com dotar-la d'una major legitimitat democràtica en una era de creixent polarització i desconfiança institucional.

Paraules clau: Tribunal Constitutional, Recurs d'inconstitucionalitat (revisió abstracta), Judicialització de la política, Politització de la justícia, Comportament judicial, Comportament legislatiu, Polarització.

Resumen

Esta tesis examina el papel del control de constitucionalidad abstracto, centrándose en cómo el contexto político y las dinámicas que este genera transforman el papel de los tribunales constitucionales y su influencia en el proceso legislativo. A través de tres estudios empíricos interconectados, analiza la relación bidireccional entre el comportamiento judicial y las estrategias legislativas de los partidos políticos, ofreciendo nuevas perspectivas empíricas y teóricas sobre la judicialización de la política, la dinámica de la separación de poderes y la influencia mutua entre las esferas política y judicial.

El primer artículo demuestra que la polarización judicial en el Tribunal Constitucional de España refleja la polarización social y del sistema de partidos, con las preferencias ideológicas de los jueces influyendo cada vez más en sus fallos. Utilizando un conjunto de datos originales de decisiones judiciales (1996-2023) y un método basado en la Teoría de Respuesta al Ítem (TRI), el estudio revela que las intervenciones judiciales en disputas constitucionales están marcadas por la alineación ideológica del tribunal con partidos gobernantes o de oposición, dinámica que varía según el contexto político. Estos hallazgos refinan las teorías del comportamiento judicial y de la judicialización de la política al ofrecer una visión que es dinámica y que varía de la mano del contexto político.

El segundo artículo centra su atención en los partidos de oposición, argumentando que la revisión abstracta, en contextos de alta competición partidista, se instrumentaliza para obtener réditos electorales a corto plazo. El estudio emplea regresión logística de Firth para analizar qué tipo de incentivos —legales o políticos— explican mejor la decisión de presentar un recurso. Los resultados muestran que los partidos de oposición intensifican la litigación constitucional durante períodos electorales críticos, priorizando la visibilidad mediática y la movilización de votantes sobre la viabilidad legal. Esta instrumentalización agrava la carga de trabajo judicial y las percepciones públicas de parcialidad, cuestionando radicalmente el mito de la neutralidad judicial.

El tercer artículo investiga la autolimitación legislativa estratégica, mediante la cual los gobiernos diluyen preemptivamente legislación controvertida para evitar rechazos judiciales. Combinando métricas cuantitativas de aceptación de enmiendas legislativas con modelos de regresión multivariable, el estudio revela que los gobiernos moderan sus proyectos de ley al enfrentar tribunales ideológicamente hostiles. Esta "sombra del control judicial" distorsiona la negociación legislativa, privilegiando la aversión al riesgo sobre la innovación política. El artículo contribuye a las teorías de separación de poderes al cuantificar cómo los condicionantes judiciales alteran las negociaciones legislativas, validando empíricamente una dinámica antes solo teorizada.

En conjunto, esta investigación sostiene dos argumentos centrales. Primero, el aumento de que la competencia partidista transforma la revisión abstracta en un arma de guerra política: los partidos de oposición explotan la litigación para construir narrativas electorales, mientras las designaciones judiciales y agendas legislativas se politizan en busca de poder político. Segundo, la efectividad del tribunal como contrapoder depende asimétricamente de su composición ideológica. Cuando se alinea con el gobierno, su función de supervisión legislative deviene simbólica; cuando favorece a la oposición, pueden aparecer bloqueos legislativos y percepciones de activismo excesivo. Estas dinámicas desestabilizan la rendición de cuentas democrática, particularmente en contextos de parlamentos fragmentados y amenazas iliberales.

Al integrar marcos teóricos de política judicial, estrategia legislativa y competencia partidista, esta tesis redefine la revisión abstracta como una institución de doble filo —esencial para la gobernanza constitucional, pero vulnerable a la politización—. Subraya la necesidad urgente de reconocer la erosión de la independencia judicial y replantear cómo dotarla de mayor legitimidad democrática en una era de creciente polarización y desconfianza institucional.

Palabras clave: Tribunal Constitucional, Recurso de inconstitucionalidad (revisión abstracta), Judicialización de la política, Politización de la justicia, Comportamiento judicial, Comportamiento legislativo, Polarización.

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Thesis Regulations

This dissertation is an article-based thesis fulfilling the regulations of the doctoral academic committee at the Universitat de Barcelona, Faculty of Law. According to the established requirements, this dissertation includes the following pieces:

- **1.** *Ideological Polarization on Constitutional Courts: Evidence from Spain.* This is the first empirical chapter of this dissertation and the only co-authored article in this thesis. The article is co-authored in alphabetical order with my host Dr. Arthur Dyevre at KU Leuven during a research stay funded by a LERU (League of European Research Universities) scholarship. It is currently a working paper available as a preprint on SSRN (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5124478).

- **2.** *Not just about the ruling: When does the opposition challenge a law in the Spanish Constitutional Court?* This article is the **main piece** of the dissertation. It is sole-authored and was accepted for publication in South European Society and Politics (SESP) on February 14 (DOI: 10.1080/13608746.2025.2475019). SESP is an indexed journal that meets the Q1 JCR requirement for submitting an article-based dissertation. Its key metrics are as follows:

  - **3.7 (2023)** Impact Factor
  - **Q1** Impact Factor Best Quartile
  - **3.7 (2023)** 5-Year Impact Factor
  - **5.8 (2023)** CiteScore (Scopus)
  - **Q1** CiteScore Best Quartile
  - **1.606 (2023)** SNIP
  - **0.712 (2023)** SJR

- **3.** *The shadow of the Constitutional Court over the legislative process. Evidence from Spain.* The article has not yet been submitted to any journal yet.

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Introduction

1 Motivation

In a power relationship, although it may be consensual and even desired, conflicts of interest are, by definition, resolved asymmetrically. This inevitably leads to the need for some form of control over power, which has been a constant concern throughout history. For St. Thomas Aquinas, sovereign power was constrained by God; for the Comuneros of Castile, by the nobility; and for Rousseau, by the people.

In constitutional governance, one of the primary mechanisms for limiting power—particularly legislative power—is constitutional judicial review, which aim to ensure that legislation remains within constitutional boundaries. To this end, specific courts have been granted the authority not only to interpret the constitutionality of laws but, in some cases, to invalidate them. Ideally, constitutional judicial review functions as a neutral arbiter, applying the constitution. However, in practice, legal ambiguity and political incentives left room for strategic behaviour of both judicial and political actors (e.g. Dyevre 2010; Epstein, Martin, Quinn and Segal 2012*b*; Aydın-Çakır 2014). As a result, judicial review may operate not only within the realm of jurisprudence—as is often argued—but also within a broader political and institutional context, shaping the legislative process and democracy itself beyond purely legal considerations.

Abstract judicial review (hereafter, abstract review)—where judges appointed by political institutions arbitrate constitutional challenges involving those same institutions—is particularly vulnerable to political influence. Particularly, political parties behind these institutions act as judicial appointers, lawmakers, and litigants, underscoring the deep interconnection between judicial and political arenas and raising concerns about neutrality and effectiveness. While abstract review aims to limit legislative power only when laws exceed constitutional boundaries, its politicization can impact legislative competence,

representation, and the definition of constitutional limits (Tate and Vallinder 1997). It may turn the constitutional court into a de facto third chamber, restricting parliamentary capacity, increasing legislative rigidity, and redefining constitutional boundaries without democratic representation (Hirschl 2009). Accordingly, this dissertation empirically examines the functioning of abstract review in Spain, focusing on whether political dynamics shape it.

These concerns about the potential impact of political dynamics on abstract review are especially pressing in today's climate of increasing global polarization and declining institutional trust (see Casal Bértoa and Rama 2021). Courts in many Western democracies are increasingly instrumentalized and subjected to populist attacks (Magalhães and Garoupa 2024). Notable examples include the legal actions leading to the resignation of former Portuguese Prime Minister António Costa, widely regarded as a case of lawfare, the court-curbing strategies employed by Donald Trump on his return to office, and the refusal of some Spanish judges to apply the amnesty law passed by parliament. Research suggests that political and judicial institutions are increasingly perceived as politicized and shaped by partisan interests (Hasen 2019; Casal Bértoa and Rama 2021; Harguindéguy 2024). Meanwhile, in many European democracies, parliaments are becoming more fragmented, and ideological divides dominate political and social debates (ibid.). In this political climate, where partisanship and ideological divides increasingly shape society, the functioning of institutions such as abstract review faces particular challenges and uncertainties. Therefore, examining their potential impact becomes especially relevant.

The literature analyzing abstract review has primarily taken two distinct approaches. Constitutional scholars have focused on conceptualization, legal reasoning, and the impact of judicial decisions on jurisprudence, providing valuable insights into the scope, direction, and consistency of judicial work (e.g., Loughlin 2005; García-Pelayo 1981). In contrast, political scientists—and scholars of judicial behavior more broadly—have primarily

focused on examining judicial decision-making (see Epstein, Martin, Quinn and Segal 2012*b*; Dyevre 2010), introducing political and strategic considerations (e.g., Muñoz and Rodilla 2024; Vallbé 2024; Garoupa and Ginsburg 2019). These branches of literature are complementary and, when considered together, offer a comprehensive understanding of judges' abstract review decisions and their legal consequences. However, on their own, they do not capture the full picture. Abstract review follows a sequence of decisions: before judges rule on a case, the legislator must enact a law, and an opposing institution with *locus standi*[1] must challenge it. Thus, the functioning of abstract review and the extent of political influence depend not only on judicial rulings but also on legislative decisions and the decision to challenge them. Accordingly, a more complete understanding of abstract review emerges by incorporating this sequence of decisions into the analysis.

Game-theoretic studies on the separation of powers (SOP models hereinafter) incorporate this perspective into their analysis. They model abstract review as a sequential game in which each actor's decisions influence the others. This approach connects the literature on parliamentary behavior—that has largely overlooked the role of courts over parties' legislative strategies (see Brouard 2009)—with legal studies and judicial decision-making (e.g., Sweet 1992; Vanberg 1998*b*; Engst 2021). SOP models consider all actors as strategic, analyzing the costs and incentives tied to both abstract review and the legislative process. Following this approach, all the actors balance their decisions to maximize their gains. Consequently, this literature not only highlights judicial decisions and the political and strategic behavior of judges but also underscores how expectations about abstract review rulings influence earlier decisions—such as the choice to challenge a law and legislative efforts to avoid its invalidation (e.g., Shapiro 1999). This perspective emphasizes the need to study how political and judicial arenas influence one another, as they impose different costs and incentives (Shapiro and Sweet 2002). Accordingly, their explanations of abstract review not only account for the traditionally low litigation

[1]This refers to the legal standing required to bring a case before the court—that is, the authority to challenge the constitutionality of a law.

levels in many European countries but also contribute to ongoing academic debates, such as those surrounding the recent surge in cases (e.g., Brouard 2009; Saavedra Herrera 2020). Despite extensive theoretical discussion, a lack of consensus persists due to limited empirical validation of these theories—integrating these interactions into a single empirical analysis poses significant challenges, including bulk data collection, accounting for multiple variables, and addressing potential endogeneity issues (see Engst 2021; Brouard 2009). This dissertation builds upon this literature and seeks to contribute to it through an empirical analysis of the Spanish case.

Specifically, this dissertation empirically examines how abstract review functions and the extent to which the political context—and the political and policy incentives it generates—shapes judges' decision-making, the decision to challenge laws, and legislative strategies for passing laws. The Spanish political and constitutional contexts provide a particularly relevant case for this analysis, given the growing public perception of judicialized politics and politicized justice (Harguindéguy 2024), which suggests a mutual influence between both judicial and political arenas. This perception is driven by several factors, including rising polarization, the increasing involvement of the Supreme and Constitutional Courts in high-profile, media-covered cases, the growing prominence of "lawfare" in public discourse, and the judiciary's role in addressing corruption scandals (ibid.). Additionally, ongoing political disputes over judicial appointments between Spain's two main parties—the conservative Partido Popular (PP) and the progressive Partido Socialista Obrero Español (PSOE)—highlight societal concerns about how partisanship and ideological divides influence some of the country's most important decisions (ibid.). These dynamics suggest that political incentives and broader political forces may significantly shape the functioning of abstract review, raising important societal concerns. Accordingly, Spain offers a compelling case for this analysis, as it clearly illustrates the interplay between politics and judicial decision-making.

The analysis is organized into three articles, each addressing a specific research question related to one of the three key decisions in an abstract review case—legislation, challenge, and ruling. Accordingly, each article focuses on one actor: the legislator, the challenger, and the judges. In Spain, abstract review also involves multilevel dynamics, as both national and regional laws can be challenged (Muñoz and Rodilla 2024). Moreover, regional institutions with locus standi may contest national legislation when it affects their interests. However, this empirical analysis focuses solely on the interactions between the court, legislator, and challenger at the central level, where the link between judges and political parties is most evident due to the appointment process (Vallbé and Lozano 2024). This makes such dynamics more likely to occur. Each article therefore analyzes how abstract review shapes the incentives and behavior of: (1) the government, as the primary initiator of legislation in Spain's parliamentary system[2], (2) the main opposition party, as the principal challenger[3], and (3) constitutional court judges, assessing whether their decisions are influenced by the political context.

The rest of the introduction is organized as follows: the next subsection presents the three research questions and provides a summary of the analyses conducted to answer the general question. Subsection three justifies the case selection, subsection four provides an overview of the data and methods employed in the analysis, subsection five reflects on the contribution of this dissertation, and subsection six outlines the titles and abstracts of the three articles corresponding to the chapters of this dissertation (Articles One, Two and Three hereinafter).

[2]Although the parliament holds legislative competence, the government plays a decisive role in the passage of laws in a parliamentary democracy like Spain's.

[3]Although in recent years Podemos and VOX have gained locus standi, most of the time it has been a game between the two majority parties—which in turn have had the most influence over appointments.

2 Research Question and Analysis

The general research question driving this dissertation is: *How abstract review functions in practice in Spain and to what extent political incentives and the broader political context influence its operation?* However, as outlined above, integrating analyses of party behavior in legislating and challenging laws with analyses of judicial behavior in a single empirical analysis presents significant challenges. Accordingly, to answer the main research question I break it down into three questions, each examining how political incentives may influence different stages of the process. Each question is addressed by one of the articles that comprise this dissertation, along with its corresponding empirical analysis. Finally, the conclusion chapter synthesizes the findings from all three articles to offer a comprehensive interpretation of how abstract review functions in Spain and the extent to which it is influenced by the political context and the incentives it generates.

Article One, co-authored with Dr. Arthur Dyevre, focuses on judicial decisions. Studies on judicial behavior have extensively analyzed the decisions of constitutional judges, providing strong evidence of strategic behavior (e.g. Mayoral and Pérez 2020; Martinsen and Mayoral Díaz-Asensio 2017), with ideology often being the most significant variable (Dyevre 2010; Epstein, Martin, Quinn and Segal 2012*b*)—including in Spain (Magalhães 2003; López-Laborda et al. 2018, 2019, 2024; Garoupa et al. 2013, 2021*a*,*b*; Garoupa and Ginsburg 2019; Vallbé 2024; Rodríguez López et al. 2019). However, the extent to which ideological influence varies, and whether these variations are influenced by the political context, remain largely unexplored from an empirical standpoint—specially outside the U.S.. If the SOP models literature—which argues that parties anticipate the outcome of court cases—is correct, then analyzing not only the strategic and political behavior of judges but also how it varies across different contexts is crucial for understanding the anticipatory behavior of political parties. This analysis is particularly relevant in the current context of political polarization, which may have significant consequences for the legislative process. Accordingly, this article examines whether court decisions are

influenced by judges' ideology and whether this influence has evolved in response to political polarization, potentially resulting in judicial polarization. The research question of Article One is as follows:

RQ A1: *Are constitutional judges' decisions in Spain influenced by their ideology, and has this influence evolved over time, leading to increasing judicial polarization?*

Article Two[4] analyzes the costs and incentives for the main opposition party to challenge a law through abstract review. Specifically, it examines whether the opposition's decision to challenge is based on its chances of winning the case—determined by the ideological composition of the court—or whether other incentives related to partisan competition drive this decision. Despite theories of court aversion, which suggest that the decision to challenge a law is primarily based on the likelihood of success, some studies on the strategic judicialization of laws and electoral veto theory argue that the opposition may also seek to instrumentalize the court for political gain (Dotan and Hofnung 2005; Calca 2022; Brouard 2009; Aydın-Çakır 2014; Muñoz and Rodilla 2024), regardless of the ruling. As socio-legal studies suggest (Vanhala 2012; McCann 1995), courts can also function as political arenas, amplifying challengers' discourse within a framework that questions legality. Addressing this issue is crucial, as it directly affects the court's workload and public visibility, which may have significant consequences for judicial legitimacy and the expansion of judicial power (Hamlin and Sala 2018). Moreover, it has the potential to influence legislators' decisions in anticipation of possible challenges (e.g., Vanberg 1998*a*; Engst 2021). Accordingly, the research question of Article Two is as follows:

RQ A2: *Do short-term incentives related to partisan competition influence opposition*

[4]In accordance with the PhD program, this article represents the "main article" in this dissertation. It has been accepted for publication in South European Society and Politics in February 2025. This journal meets the requirements for publishing this dissertation as article-based.

parties' decisions to challenge laws in Spain?

Finally, **Article Three** focuses on how abstract review influences the legislative decisions of the government's parliamentary group[5]—particularly the decision to modify a law during the legislative process to prevent it from being overturned. The opposition can strategically challenge such law based on either the likelihood of winning or the media impact they hope to achieve. Judges, in turn, may consider these factors when deciding whether to abstain from ruling, rule in favor of one actor, or rule in favor of the other. However, for a challenge and a case to arise, the legislator must first pass the law in question. In this context, the separation of powers literature suggests that, just as the opposition and the court can act strategically, legislators may also anticipate the outcome and modify a law before it is passed (e.g. Sweet 1992; Engst 2021). Therefore, abstract review may influence the legislative process even without direct intervention. This phenomenon, known as autolimitation, is directly linked to the effectiveness of abstract review and has been extensively analyzed theoretically (e.g. Sweet 1992; Stone 1990; Pavone and Stiansen 2022). However, empirical evidence remains limited (see Engst 2021). This article contributes to this literature by providing a new strategy for measuring this effect, empirically examining the acceptance of legislative amendments to understand how abstract review constrains legislative decisions while anticipating the actions of both the court and the opposition. This approach allows us to specifically test the effect of judges' ideology on anticipating court outcomes—i.e., independent of the legal controversy that the law may include. Accordingly, the research question of Article Three reads as follows:

RQ A3: *Does the parliamentary group of the governing party accept more legislative modifications when anticipating an ideologically unfavorable constitutional court?*

[5]As previously explained, in a parliamentary democracy like Spain's, laws are passed in parliament, but the government plays a central role in the legislative process as the primary initiator. Additionally, it holds significant control over its party's decisions regarding judicial appointments. Therefore, this analysis focuses on the government.

3 Case selection

Spain presents a compelling case for this analysis for four main reasons. First, its court and party system design facilitate empirical investigation, as Spain follows a concentrated model of constitutional review, with a single Kelsenian court holding exclusive jurisdiction over abstract review. Since all constitutional litigation is centralized in this court, empirical analysis becomes more straightforward. Additionally, Spain's strong party discipline simplifies the study of judicial ideology, as judicial appointments are determined by party decisions rather than individual MPs. Consequently, the analysis can focus on the interactions between the main political parties and the court, which, for most of the period, have been the principal legislators, the primary challengers, and the key actors influencing court appointments. Table 1 provides an overview of the Spanish system, highlighting both the appointment procedure and the abstract review design.

Table 1: Abstract Review Design in Spain

The Abstract Review Mechanism in Spain	
Appointment Procedure	**Abstract Review Procedure**
Number of Judges of the Spanish Constitutional Court	**Who Can Initiate an Abstract Review?**
12 Judges: • 1 President • 1 Vice President • 10 Magistrates	• The President of the Government (Prime Minister) • The President of the Congress of Deputies • The President of the Senate • 50 Deputies from the Congress of Deputies • 50 Senators from the Senate • Autonomous Communities (regional governments) • The national Ombudsman • Legislative assemblies of the Autonomous Communities

Term Length	**Time Limit to File an Appeal**
9 years (non-renewable)	3 months from the publication of the law in question in the Official Gazette
Appointing Bodies	**Procedure**
• 4 judges appointed by the Congress of Deputies • 4 judges appointed by the Senate • 2 judges appointed by the General Council of the Judiciary (Consejo General del Poder Judicial) • 2 judges appointed by the King, on the proposal of the Government	• The appellant submits a written appeal outlining the legal basis for contesting the constitutionality of the law or statute. • The Constitutional Court reviews the appeal and may ask for written responses from the other parties involved (e.g., the government or legislative body that passed the law). • The Court can summon oral hearings, though this is not obligatory. • The deliberations of the court are secret, and judges deliberate until a majority opinion is reached.
Requirements for Appointment	**Types of Decisions**
• Must be a Spanish national • Must be a jurist with at least 15 years of professional experience in fields such as law, politics, academia, or judiciary	• The Constitutional Court can declare the law or statute fully unconstitutional. • It can strike down only specific articles or provisions of the law. • It may also issue an interpretive ruling, clarifying the constitutional limits of the law while allowing it to remain in force.
Selection Process	**Effect of the Court's Decisions**
• The Congress of Deputies and the Senate must approve their appointees by a three-fifths majority. • The General Council of the Judiciary selects their appointees internally. • The King appoints the remaining two judges based on recommendations from the Government.	• The court's rulings are final and binding on all public authorities and institutions. • If a law is declared unconstitutional, it is nullified and ceases to have any legal effect. • The ruling is published in the Official State Gazette (Boletín Oficial del Estado) and applies immediately and retrospectively, unless otherwise specified.
Source: Own elaboration.	

As Table 1 illustrates, Spain's procedures for judicial appointments, locus standi, and the timing of abstract review reflect a system of checks and balances designed to represent elected political power through a judicial mechanism. The selection process aims to create a balanced court, considering Spain's parliamentary democracy and its traditionally bipartisan electoral system[6]. In Spain, parties need a three-fifths majority to appoint judges, while an opposition party challenging a law requires at least 50 MPs. Accordingly, the resulting dynamic in abstract review involves the government's parliamentary group, the main opposition party's parliamentary group, and the judges they appoint, which helps narrow the scope of the empirical analysis, making it more focused.

Second, a priori, the main political parties should ideally reach agreements to appoint judges—in parliament and senate—, but judicial appointments have become increasingly politicized, sometimes leading to gridlock (Vallbé 2024; Harguindéguy 2024). Moreover, recent political shifts—such as a more fragmented parliament and increased polarization—suggest that the functioning of abstract review may be evolving. Public perception of both the politicization of justice and the judicialization of politics has increased in recent years (Harguindéguy 2024; Muñoz and Rodilla 2024). This shift highlights the potential feedback dynamics between politics and the judiciary in Spain, which are influencing issues of significant societal concern (Harguindéguy 2024). As exposed before, the rise in perception has been fuelled by increasing polarization, judicial involvement in high-profile cases, and ongoing political disputes over judicial appointments (ibid.). Some concrete examples are the blocking of the General Council of the Judiciary and recent appointments to the Constitutional Court—judges with strong ties to major political parties. These developments have profound consequences for the functioning of the Spanish legislative process and democracy, contributing to growing public concern and further underscoring the relevance of this analysis.

[6]This changed in recent years with the emergence of Podemos and Ciudadanos.

Third, Spain's system of constitutional review and its parliamentary democracy share significant similarities with other European countries, making it an important case for comparative studies. A substantial body of literature has already integrated the Spanish case into broader analyses of constitutional review (see Engst 2021). Comparative studies have highlighted these similarities, noting, for instance, the comparable partisan influences and institutional constraints between the Spanish and Portuguese courts (Magalhães 2003). Additionally, Garoupa et al. (2019) reinforce these parallels in their analysis of the Portuguese system. Furthermore, Fasone (2018) examines the impact of the Euro-crisis on the Spanish, Portuguese, and Italian courts, identifying similar judicial responses, particularly in fiscal matters. A comparative study by Tsereteli and Uitz (2007) contrasts the Spanish, German, and Hungarian courts, underscoring structural and functional similarities between Spain and Germany. As can be seen, most of the comparative studies are with other European countries. As part of the second wave of constitutional review expansion, which helped shape the European model (Ginsburg 2007), Spain's system shares many features with other European parliamentary democracies that have concentrated constitutional review systems. For more detail, Table 2 provides an overview of 17 European constitutional courts, illustrating that, despite differences in judicial design, strategic interactions between governments and opposition parties are likely to occur across systems, highlighting the relevance of this analysis for comparative studies.

Table 2: Comparison of Abstract Review Mechanisms in Europe

Country	**Official Name of Court**	**Locus Standi**	**No. of Judges**	**Renewals**	**Appointment Procedure**
Austria	Constitutional Court of Austria (Verfassungs-gerichtshof)	Government, Parliament, one third of the Federal Parliament and one third of the State Parliament	14	Lifetime until 70	6 appointed by the government and 6 appointed by the national and federal councils

Belgium	Constitutional Court of Belgium (Cour constitutionnelle)	Council of Ministers, Government of a Community or Region, presidents of parliament, senate, and two thirds of regional parliaments	12	Lifetime until 70	6 by Senate, 6 by House of Representatives
Bulgaria	Constitutional Court of Bulgaria	President, Government, and one fifth of parliament	12	9 years	4 by President, 4 by Parliament, 4 by Judiciary
Croatia	Constitutional Court of Croatia (Ustavni sud Republike Hrvatske)	President, Parliament, Courts	13	8 years	Elected by Parliament
Czech Republic	Constitutional Court of the Czech Republic (Ústavní soud)	President, 41 MPs, and 10 Senators	15	10 years	Appointed by President, confirmed by Senate
France	Constitutional Council of France (Conseil Constitutionnel)	President, Prime Minister, President of the Assembly, President of the Senate, 60 Senators and 60 MPs	9	9 years	3 by President, 3 by Senate, 3 by National Assembly
Germany	Federal Constitutional Court of Germany (Bundesverfassungsgericht)	Federal and State government, one third of parliament, and one third of state parliaments	16	12 years	8 by Bundestag, 8 by Bundesrat
Hungary	Constitutional Court of Hungary (Magyarország Alkotmánybírósága)	The government or one quarter of parliament	15	12 years	Elected by Parliament
Italy	Constitutional Court of Italy (Corte Costituzionale)	President, Government, and State Parliaments	15	9 years	5 by President, 5 by Parliament, 5 by Judiciary
Latvia	Constitutional Court of Latvia (Latvijas Republikas Satversmes tiesa)	Parliament, President, Courts, Ombudsman	7	10 years	3 by Parliament, 2 by Government of Latvia, 2 by Supreme Court of Latvia
Lithuania	Constitutional Court of Lithuania (Lietuvos Respublikos Konstitucinis Teismas)	Government, one fifth of the Seimas, the president of the Republic, and courts concerning a law	9	9 years	3 by President, 3 by Parliament, 3 by Judiciary

Poland	Constitutional Tribunal of Poland (Trybunał Konstytucyjny)	President, Prime Minister, Marshalls, 50 MPs, 30 Senators, local governments, trade unions, and courts	15	9 years	Elected by Parliament
Portugal	Constitutional Court of Portugal (Tribunal Constitucional)	President, Prime Minister, President of the Assembly, one tenth of national parliament, regional government leaders, and regional assemblies	13	9 years	10 by Parliament, 3 by existing judges
Romania	Constitutional Court of Romania (Curtea Constituţională)	President, president of the Assembly and the Senate, 50 MPs, and 25 Senators	9	9 years	3 by President, 3 by Parliament, 3 by Judiciary
Slovakia	Constitutional Court of Slovakia (Ústavný súd Slovenskej republiky)	President, Government, and one fifth of MPs	13	12 years	Appointed by President
Slovenia	Constitutional Court of Slovenia (Ustavno sodišče Republike Slovenije)	Governments, local governments, and one third of national parliament	9	9 years	Elected by Parliament on President's proposal
Spain	Constitutional Court of Spain (Tribunal Constitucional)	President, Government, President of Parliament, 50 MPs, 50 senators, local governments, assemblies, and the ombudsman	12	9 years	2 by the Government, 4 by Congress, 4 by Senate, 2 by General Council of the Judiciary
Source: Own elaboration.					

Finally, recent political dynamics, such as parliamentary fragmentation and rising polarization in Spain, mirror broader global trends (McCoy et al. 2018*a*), suggesting that Spain's experience offers valuable insights for other European parliamentary democracies. While institutional features and the degree of politicization of the judiciary may vary across countries, common trends—such as polarization, the rise of illiberalism, and declining institutional trust—are becoming increasingly prevalent. In this context, despite specific differences, the core elements of abstract review—political parties, a

politically appointed court, and legislation enacted by an elected government—remain consistent, along with shared political dynamics. As a result, the Spanish case may offer important insights that contribute to broader debates on the interaction between political and judicial arenas in an era of growing polarization and diminishing institutional trust.

4 Data and Methods

The primary contribution of this dissertation, in terms of data, lies in its scope. Developed within the framework of the OPPOL project (La Oposición Política en España: Estrategias en la Arena Parlamentaria)[7] and a research line on abstract review in Spain, this work advances the development of comprehensive databases covering all decisions made throughout the legislative process, including their potential judicial review. The dataset spans all bills proposed during Spain's democratic period (1978–2023)[8] and is structured according to the legislative process phases. It systematically tracks decisions made by key actors at each stage while incorporating contextual variables that capture their motivations. A significant effort was dedicated to linking multiple databases (the most relevant detailed in Table 3) and developing missing data to enable an integrated analysis of the entire legislative process, including potential challenges before the Constitutional Court and subsequent rulings. This framework merges legislative and judicial data, offering a comprehensive empirical analysis of the impact of abstract review and the interplay between these arenas.

All data was collected through web scraping and text parsing techniques from official sources using R and Python scripts. The databases were structured around legislative process phases and connected via common identifiers, ensuring that each research question

[7] A MINECO project funded by the Spanish Ministry and co-led by Drs. Anna Palau and Luz Muñoz. The project collects data and studies political opposition in the Spanish Parliament. It also funded this thesis (Grant PRE2019-087633).

[8] Some variables are unavailable for the entire period due to the limited digitalization of historical documents required for proper construction.

is addressed with data specifically organized for its analysis. Table 3 provides an overview of the main databases—then, adapted to construct the final datasets for each article.

Data on the Legislative Process					
LP Stages	**Bills**	**Amendments**	**AR Cases**	**Deliberation**	**Ruling**
Databases	DB Iniciativas Legislativas (1986-2020)	DB Enmiendas (1986-2020)	DB Recursos Inconstitucionalidad (1978-2020)	DB Magistrados y Plenos TC (1978-2021)	DB Votos Judiciales (1978-2023)
References	Bonafont et al. (2015)	Not public yet.	Muñoz Marquez and Rodilla Lázaro (2025)	Not public yet.	Not public yet.
Description	The observation is at the bill level. It contains all bills introduced and proposed through the ordinary procedure.	The observation is at the bill level. It contains all the amendments proposed and modified during the legislative process.	The observation is at the law level. It contains all the appeals to the Constitutional Court.	The observation is at the individual judge level. It contains information of voting patterns and judge affiliations. It also tracks all the compositions of the Plenary.	The observation is at the judge level. It is a matrix that captures whether judges voted with or against the majority in Abstract and Concrete Review cases throughout the entire democratic period.
Variables (All the databases are related with a common ID)	• Media saliency • Fragmentation • Timing • Political Context (polarization...) • Context of the legislature (electoral cycle, geometry...) • Party positions • Law type • Court composition • Hearings • Votes	• Majority influence • Media saliency • Fragmentation • Timing • Political Context (polarization...) • Context of the legislature (electoral cycle, geometry...) • Party positions • Law type • Court composition • Hearings • Votes	• Success rate of cases • Court composition • Votes • Law features • Political Context (polarization...) • Context of the legislature (electoral cycle, geometry...)	• Judicial Unions • Appointor • Voting patterns • *Transformed into matrix for IPE*	• Ideological composition • Voting patterns

Table 3: **Overview of the original data.**

Article One is based on a database organized at the level of individual judicial decisions. This database records each judge's vote on both preliminary and final rulings in abstract and concrete cases, capturing whether the judge voted with or against the majority of the court, with more than 120,000 observations. Using this dataset, Item Response Theory—specifically the mean indifference points—is employed to estimate judges' ideologies. Additionally, the database includes information on the political context at both the case level (e.g., the degree of polarization or the ideological distance between parties) and the judge level (such as judicial associations, the political party that appointed each judge, and the judge's inferred ideological preferences, based on data from the Party Manifesto Project (Regel 2010)). This information is used to validate the estimated ideologies. The innovation of this approach lies not in the use of Item Response Theory and indifference points themselves, but in validating these estimates using the left-right ideological positions of the political party that appointed each judge—i.e., employing a proxy well-established in the literature. By combining these two sources of data, the article develops a method for investigating how judges' ideologies have evolved over time, revealing patterns consistent with judicial polarization.

Article Two analyzes the factors driving the main opposition party to challenge a law originated from the party in government. The final dataset used for the analysis is limited to the period 1996–2023, as it accounts for numerous control variables, some of which were unavailable before 1996 due to incomplete digitization of the text. The dataset includes all laws passed at the central level (N = 1566) and tracks all constitutional challenges (abstract review procedure) made by the main opposition party (6%), regardless of the court's final ruling. This dataset covers the legislative and challenge dynamics between the conservatives of the PP and the progressives of the PSOE, who have been the only parties in government and in opposition during this period[9]. Given

[9]In recent years, new parties have acquired locus standi—Podemos first, and then VOX.

that challenging every law is resource-intensive and could be politically costly in terms of future governance and support, only about 6% of laws have been challenged in court during this period. Therefore, I employ Firth's logistic regression model—a method commonly used in public health to handle rare events—to test the main hypotheses, ensuring that the large number of unchallenged laws does not bias the results. By combining this comprehensive dataset with the rare events model, the analysis offers fresh insights into the political strategies behind judicialization and opposition behavior in Spain.

Article Three examines legislative decisions by the government at the bill level. The dataset includes both approved and non-approved bills that reached the amendment phase of the legislative process, covering the period from 1996 to 2019[10] (N = 577 bills)[11]. The dataset tracks how legislative modifications are influenced by contextual factors such as competitive incentives and the anticipated behavior of the court. The primary dependent variable—the mean success rate of legislative amendments presented to each bill—represents one of the key methodological contributions of this dissertation and was developed through a workflow designed by Dr. Andreu Casas and jointly executed. To compute this variable, a vast collection of bills, laws, and amendments was scraped and parsed using R scripts[12]. This method allowed for the structuring of the database and the design of a Python workflow to calculate the success rate of over 79.147 amendments[13], providing an empirical approach to studying how the legislative positions of the government shift. In addition to legislative data, the dataset incorporates variables such as media saliency, the type of law, parliamentary majorities, and party system fragmentation. A key control variable tracks mentions by opposition parties to to the unconstitutionality of a law during parliamentary sessions, allowing for the isolation of autolimitation, independent of

[10]The period ends in 2019 because it marks the completion of the first web scraping of legislative amendments.

[11]The entire database contains 782 bills, but for the analysis, I focus only on bills that include amendments.

[12]As mentioned, the dataset is limited to the post-1996 period due to earlier records being image-based and difficult to process.

[13]The entire dataset contains 93,722 amendments, but the structure of the text prevented their processing.

the inherent judicial controversy surrounding each law. This variable was computed using R scripts and regular expressions, followed by manual validation.

5 Contribution

This dissertation contributes to three key areas: theory, methodology, and data.

5.1 Theoretical contribution

Theoretically, this dissertation bridges the gap between the literatures on the separation of powers, judicial behavior, judicialization, and parliamentary behavior—fields that, despite analyzing the same actors, have traditionally developed in isolation. Specifically, I integrate them aiming to refine the separation of powers literature's explanations of how abstract review functions and the extent to which it is influenced by the political context. In doing so, I offer theoretical contributions in three areas: first, the impact of the political context on judicial decision-making; second, the conditions under which opposition parties challenge a law; and third, whether the government anticipates potential court rulings and adjusts its legislative strategy accordingly.

First, I support theories of strategic behavior that propose a dynamic and evolving model of judicial behavior. This perspective suggests that judges' preferences are not static but are shaped by the broader political context. Therefore, abstract review is not solely driven by individual judges' decisions; instead, it emerges from a feedback loop of costs and incentives involving multiple actors. Article One builds on this argument by demonstrating not only that judges' decisions are influenced by their ideology—an established finding in the literature (e.g. Vallbé 2024; Epstein, Martin, Quinn and Segal 2012*b*)—but also that this ideological influence has intensified over time, reflecting the polarization of the party system. Thus, the politicization of justice cannot be solely attributed to judicial behavior; it is also shaped by political parties and broader societal

dynamics. The relationship between courts and political parties is reciprocal: courts influence political actors, while party dynamics also shape judicial behavior, ultimately affecting court outcomes. As the political context becomes more polarized, judges have greater incentives to align ideologically with their appointers (Hasen 2019). At the same time, parties are incentivized to appoint more ideologically aligned judges (ibid.). This creates a feedback loop that risks transforming the court into a de facto third chamber—a concern raised by figures such as Cisneros Laborda, Alzaga Villamil, and Solé Tura during the plenary debates on Spain's 1978 Constitution. In response to a proposed amendment on locus standi in abstract review, constituents warned against the danger of this possibility (Pleno del Congreso Nº. 92-92, 1978).

Second, I draw on the judicialization literature to reassess the costs faced by the opposition when challenging a law passed by the parliamentary group of the governing party (see Hamlin and Sala 2018), arguing that opposition parties have incentives that are often underestimated. Both the separation of powers literature and more legalistic approaches to abstract review emphasize parties' fear of losing a case in court (e.g. Vanberg 1998*a*)—the former due to potential narrative consequences and the latter due to legal considerations. These theories are very successful explaining the low number of cases brought before courts and why parties, despite initially mounting fierce political opposition, sometimes choose not to pursue legal challenges (see Dyevre 2010). However, they fail to account for the increasing number of challenges observed last years in cases like Spain (Harguindéguy 2024; Saavedra Herrera 2020). By distinguishing between short-term and long-term costs and incentives, this dissertation argues that heightened partisan competition pushes parties to prioritize short-term political gains. As a result, the broader political context becomes more influential, helping to explain the rising number of challenges filed for strategic political advantage. Otherwise, when incentives for partisan competition are lower, the likelihood of losing a case is of greater relevance in explaining party decisions.

The third theoretical contribution concerns the influence of abstract review on the government's legislative strategy[14]. In this dissertation, I demonstrate that autolimitation is strongly shaped by the ideology of judges. While other studies have examined whether parliamentary groups adjust their laws to align with jurisprudence—anticipating potential unconstitutionality during the legislative process to prevent annulment—my focus is on the role of judicial ideology in shaping this anticipation. Given that the ideological composition of the court influences its rulings, judges' ideologies become a reliable predictor for political parties. Moreover, parties are aware of their ideological leanings, as they appoint judges based on these preferences. As a result, abstract review operates under two distinct dynamics: one in which judicial oversight over government legislation is progressively weakened—when there is congruence between the legislator and the ideological composition of the court—and another in which it increasingly restricts legislative capacity—when such congruence does not exist. Consequently, the proper functioning of abstract review[15] depends largely on a balanced bench and low levels of politicization.

5.2 Methodological contribution

At the methodological level, this dissertation makes two key contributions. First, it introduces a novel approach to studying autolimitation by analyzing legislative amendments while also considering unconstitutionality threats[16] raised by the opposition during plenary sessions. Empirical measurements of autolimitation are scarce, with Engst (2021) being the most notable exception. He examines whether the legislature amends laws accused

[14]I refer specifically to the government because Spain's strong party discipline grants it significant influence over its party's decisions in parliament.

[15]Here I am referring to the desired functioning at a theoretical level, i.e. with some semblance of impartiality and independence.

[16]I refer here to all instances where the opposition mentions the illegality or unconstitutionality of a rule, as well as their declared intention to challenge it in court.

of being unconstitutional before they are passed. However, we know that the ideology of judges influences their rulings (e.g. Dyevre 2010; Epstein, Martin, Quinn and Segal 2012*b*), making it a good predictor of the outcome. Accordingly, this dissertation takes a different approach by using opposition threats as a control variable to isolate their responses to the ideological composition of a politicized court, such as Spain's. By doing so, it disentangles the political dimension of legislative decisions from potential legal controversies, offering a systematic method for investigating this phenomenon and assessing whether it is influenced by political dynamics. This approach not only deepens our understanding of autolimitation and the influence of political dynamics on the functioning of abstract review in Spain but also lays the groundwork for comparative studies across different political systems.

Second, this dissertation develops the first empirical framework for analyzing how polarization influences judicial decision-making outside the U.S. (Hasen 2019). By validating indifference point estimates with real-world data, this method provides a robust measure of judges' ideological positions. The research design enables us to explore shifts over time and test whether they are related to broader political dynamics, such as the polarization of the party system—i.e., it allows for the empirical study of judicial polarization. Together, these contributions enhance our ability to examine the interaction between the political and legal arenas, offering a comprehensive methodological framework applicable to comparative research. This contribution is particularly relevant in the context of global polarization (McCoy et al. 2018*a*), adding to the ongoing debate about its impact on non-majoritarian democratic institutions—such as constitutional courts.

5.3 Data contribution

In terms of data, this dissertation makes two principal contributions. First, it integrates the Q-Dem and OPPOL project databases (e.g. Palau et al. 2023), enriching them with

additional variables, such as the media saliency of bills at various stages of the legislative process. These databases, which cover the entire legislative process, are further linked to datasets on abstract review cases and constitutional judges—i.e., data on legal challenges is sourced from Muñoz and Rodilla (2024). The result is a comprehensive dataset that enables the tracking of decisions made by all actors involved, from the initial proposal of a bill to its (potential) final judicial ruling. This linkage and structuring of data offer two distinct advantages: first, it allows for an analysis of the legislative process that includes abstract review as the final phase—as it represents a last chance for the opposition to prevent the enactment of the law; and second, it facilitates the study of legislative dynamics from a relational perspective—i.e. integrating political and judicial constrains. Although the data is publicly available through the Spanish Parliament's website (https://www.congreso.es) and the official gazette (https://www.boe.es), the information across the legislative stages is not fully connected, and some data is fragmented across different databases, especially for earlier legislative sessions. This dissertation advances the systematic analysis of the legislative process, including its judicial phases.

Second, this dissertation introduces a novel workflow—developed under the supervision of Dr. Andreu Casas—to automatically download, parse, and analyze amendments and legislative texts, unraveling their hierarchical structure and generating a variable to capture the extent of accepted amendments. Specifically, it determines whether an amendment was accepted, a task not automatically managed by the Spanish Parliament's database, unlike in some other countries. Previously, this lack of automated data collection made it impossible to conduct empirical analyses on the acceptance of amendments in Spain. The measure has been built using a rule-based code designed for text reuse. The code determines the number of phrases that are included in the final text and weighs them based on the amount of text proposed. While the measure is not perfect and has several limitations—such as the nature of text reuse varying depending on the type of amendment, and the grammatical structure of amendments differing based on the drafting

styles of individual MPs, leading to inconsistencies over time—its strength lies in being very conservative, detecting even the smallest changes. However, new machine learning techniques offer opportunities for improvement.

6 Outline of the dissertation

This dissertation is structured into three main articles, followed by a concluding chapter that discusses the findings and suggests directions for future research. Below, I offer a brief summary of each article, providing an overview of the arguments in relation to the empirical analysis and highlighting the main conclusions.

Article One: Ideological Polarization on Constitutional Courts: Evidence from Spain

Ideological polarization is a phenomenon receiving increasing academic attention. The literature has focused particularly on public opinion and political parties when analyzing its causes and consequences. However, less attention has been paid to whether courts are also affected by this phenomenon, especially in Europe. In this paper, we reflect on judicial polarization—how ideological polarization affects courts—and provide a framework to analyze it empirically through the Spanish case. We estimate judges' ideologies, validate these estimates, and test whether their ideologies have changed over time, leading to judicial polarization. The empirical analysis examines decisions of the Spanish Constitutional Court (SCC) from 1980 to 2023. While constitutional courts in parliamentary democracies are often perceived as insulated from partisan dynamics and resistant to polarization, our results challenge this assumption. The analysis not only demonstrates that ideology influences the behavior of SCC judges, but also reveals more extreme positions and increasing conflict in court consistent with polarization trends observed in the Spanish party system.

Article Two: Not just about the ruling: When does the opposition challenge a law in the Spanish Constitutional Court?

Theory of anticipatory calculus posits that party decisions to challenge a law are based on expectations of a favourable court ruling; however, in cases such as Spain, laws are often brought to court when the chances of their being overturned seem low. The analysis draws on an original dataset covering all laws passed by the Spanish parliament between 1996 and 2023. The paper shows that short term political incentives related to partisan competition play a more important role in the decision to challenge a law than an actual intention of overturning it. Media attention to the bill and expected competition in forthcoming elections provide a better explanation for patterns of judicialization. Interestingly, findings in relation to the electoral cycle contradict prevailing expectations in the literature.

Article three: The shadow of the Constitutional Court over the legislative process. Evidence from Spain.

Constitutional courts with abstract review can directly impact the legislative process by overturning or modifying laws. However, the political nature of cases, and partisan judicial appointments suggest that its impact extends beyond rulings. Separation of powers literature highlights *autolimitation*—legislators modifying laws in anticipation of court outcomes—as a key mechanism. Despite significant theoretical contributions, empirical analyses of autolimitation remain scarce due to the complexity of its measurement. Based on an analysis of the Spanish case, this paper provides an innovative empirical approach based on the analysis of amendments' success rate to measure legislative modifications and, the ideology of the judges as a predictor of court outcomes. Additionally, I consider the media saliency of laws, as a factor that may influence autolimitation. The analysis

isolates autolimitation driven by political motivations—that is, whether it is independent of the law constitutional fit—by controlling for opposition parties' threat to challenge the law. The study relies on an original database capturing all laws passed in the Spanish parliament between 1996 and 2019 and their associated amendments. After controlling for many confounders, the results indicate that autolimitation is driven by the ideological composition of the court.

Article 1

Ideological Polarization on Constitutional Courts: Evidence from Spain

1 Introduction

Ideological polarization is a prominent phenomenon in democratic governance in the twenty-first century, characterized by sharpening ideological divisions among political elites and the broader public. In this regard, an exponential rise of radical parties and the subsequent widening of ideological divisions between parties and voters have been observed in several countries over the past decade (see Casal Bértoa and Rama 2021). This phenomenon has garnered significant academic attention because it undermines effective policymaking, erodes public trust in institutions, and exacerbates social tensions (Barber et al. 2015; Persily 2015).

The literature has focused on public opinion and political parties when analyzing the causes and consequences of ideological polarization (Barber et al. 2015; Fiorina and Abrams 2008; Lee 2015; Hacker and Pierson 2015; Karol 2015; Casal Bértoa and Rama 2021). However, less attention has been devoted to the extent to which non-majoritarian institutions, such as high courts, are also affected by this phenomenon (Devins and Lewis 2008). The U.S. judiciary has been the main focus of research on judicial polarization—manifestation and consequences of ideological polarization in courts—, with substantial evidence pointing to significant ideological divisions and partisan influences in both federal and state courts (Hasen 2019; Kritzer 2018). However, despite these advances,

the study of judicial polarization remains in its early stages, and we know considerably less about whether similar dynamics affect judiciaries outside the U.S.—particularly constitutional courts in parliamentary democracies.

Constitutional courts are often seen as the clearest manifestation of the global rise in judicial power following World War II and the third wave of democratization (Tate and Vallinder 1997). Their role as a check and balance on legislative power has traditionally been associated with an image of insulation from partisan pressures. Judges in these courts are expected to be neutral arbiters, upholding the rule of law, safeguarding fundamental rights, and protecting democratic principles. Moreover, professional norms and legal training emphasize impartiality, and their appointment processes typically involve multiple institutions to ensure a balanced bench. However, although many jurists outside the United States defend this image and dismiss the idea that ideology significantly influences judicial decisions, the increasingly prominent literature on judicial behavior in Europe suggests otherwise (e.g. Dyevre 2010; Epstein, Landes and Posner 2012).

This paper not only challenges the assumption that constitutional judges' decisions are unaffected by ideology but also aims to demonstrate that recent variations in judges' ideology show a tendency towards judicial polarization. To this end, we first review the literature and define judicial polarization. Next, we reflect on its theoretical mechanisms and identify the observable outcomes. The empirical analysis consists of measuring judges' ideology and their impact on litigants' prospects; testing observable outcomes of judicial polarization—the change in judges' ideology over time, the change in median judges' ideology over time, and the dissent rate over time; and correlating some of these outcomes with Dalton (2008)'s polarization index to demonstrate that variations in judges' behavior are related to a more general trend of ideological polarization, such as the one affecting the party system. The analysis draws on an original database containing data from the Spanish Constitutional Court (SCC) spanning the period from 1980 to 2023.

Our analysis not only demonstrates that ideology influences the behavior of SCC judges but also reveals temporal shifts consistent with polarization trends observed in the Spanish party system. Recent judicial appointees exhibit more partisan voting behaviors, and dissents—indicators of disagreement and internal conflict—have become more frequent, paralleling parties' polarization. The ideological distance between judges has become a stronger predictor of whether they vote similarly on the same case. Similarly, the median judge, who is theoretically the most influential judge[17], has shown more ideologically slanted positions in recent years. Furthermore, our results indicate that this polarization adversely affects litigants whose positions are ideologically distant from that of the median judge. These findings align with analyses of the U.S. judiciary (Hasen 2019), highlighting the increasing judicial polarization aligned with the broader phenomenon of ideological polarization of parties and society in general.

The rest of the paper is structured as follows: Section 2 situates the study within the existing literature. Section 3 examines the key concepts and operationalizes judicial polarization. Section 4 provides an overview of the Spanish case. Section 5 details the data and methodology. Section 6 presents the results, and Section 7 explores their implications and significance. Finally, we conclude with recommendations for future research.

2 Literature review

Our work contributes to three main strands of literature. First, it contributes to the literature on ideological polarization, which has primarily examined the role of voters and partisan organizations (Lee 2015; Dalton 2008; Heltzel and Laurin 2020). Ideological polarization

[17]This concept originates from the literature on judicial behavior, which assumes that judges base their decisions on ideology. In a court like the Spanish Constitutional Court, composed of twelve judges who vote in plenary sessions, the most moderate judge among them is expected to have the greatest influence on the final decision. We will return to this in the theory and methods section.

refers to a divide that aligns parties and voters—and society in general—into two opposing blocs (McCoy et al. 2018). Because it influences a wide range of actors and decisions, measuring polarization is inherently complex and requires capturing various outcomes that reflect this divide. Symptoms of polarization include diverging positions on most policy issues (Abramowitz 2010, 2015; Brewer and Stonecash 2015; Campbell 2018; Hetherington 2001; Motyl 2016) and increasingly polarized legislative voting patterns (Hacker and Pierson 2015; Karol 2015; Poole and Rosenthal 2000). Among voters, survey research provides evidence of widening policy preferences (Fiorina and Abrams 2008; Hetherington 2001; Niemi et al. 2001) and declining tolerance for ideological opponents (Lozada 2014), all contributing to the perception of a broader phenomenon of conflict driven by ideological division.

Second, within the polarization literature, our work contributes to a less developed body of research attempting to document ideological polarization within non-majoritarian institutions. This encompasses efforts to document polarization within independent agencies (Devins and Lewis 2008) and a small but expanding scholarship on judicial polarization (Hasen 2019; Berdejo and Chen 2017; Porat 2023). The literature on the U.S. judiciary has reported different dynamics pointing to a polarization of judges at all levels of the federal and state court systems (Hasen 2019; Sennewald et al. 2017), with ideological division affecting judicial decision making (Devins and Baum 2017) as well as judicial selection and public support for the judicial branch. Indeed, Berdejo and Chen (2017) report a two-fold increase in the rate at which U.S. Court of Appeals judges dissent and vote along partisan lines but find evidence that judges suppress dissent during periods of national unity such as wars. Likewise, Ditslear and Baum (2001) and Baum and Ditslear (2010) report evidence of ideological polarization in the nomination of law clerks.

Our study is one of the rare quantitative empirical analyses of judicial polarization outside the United States. The literature on this topic in Europe remains limited, with

studies focusing on different courts and indicators, often yielding varying results. For instance, Nizza (2021) finds that apparent polarization in French labor courts has not led to more ideological decisions. Similarly, while Porat (2023) identifies qualitative evidence of growing ideological tensions among elites and voters in Europe and Israel, he does not observe a comparable degree of polarization spilling over into judicial institutions, as seen in the United States. However, Harguindéguy (2024) reports that the Spanish Constitutional Court is increasingly perceived by citizens as politicized. This study highlights the instrumentalization of the court by political parties and its growing involvement in media-salient cases, suggesting a potential relationship between the politicization of the court and ideological polarization in Spain.

Third, insofar as ideological polarization in courts implies that judges' ideologies influence their decisions, our work contributes new evidence to the extensive literature on the impact of ideology on judicial decision-making (Epstein, Landes and Posner 2012; Ginsburg and Huq 2020; Epstein and Weinshall 2021; Magalhães 2003; Hönnige 2007, 2009; Dyevre 2010). Analyses of dissenting opinions and final judgments have already shown that Spanish constitutional judges tend to defer to the party that appointed them (Vallbé 2024; Garoupa et al. 2021; López-Laborda et al. 2019; Garoupa et al. 2013; Hanretty 2012; Magalhães 2003). Similarly, ideological behavior has been documented in cases concerning devolution, a divisive and ideologically salient issue since the return of democracy in Spain (Harguindéguy 2024; Muñoz and Rodilla 2024; Harguindéguy et al. 2020; Rodríguez López et al. 2019). However, skepticism persists regarding the extent to which ideology shapes judicial decisions. Our analysis builds on existing scholarship, while adding new evidence to this ongoing discussion by extending the analysis and providing evidence of how judges behavior has changed in recent years.

3 Theory and hypotheses

3.1 Definition of Judicial Polarization

Judicial polarization refers to the impact of ideological polarization on the judiciary, influencing judicial behavior in court. As mentioned above, the literature defines ideological polarization as a tendency to drive party preferences and decisions into two opposing blocs based on ideology (Dalton 2008). However, ideological polarization extends beyond party relationships and is neither exclusively elite-driven nor confined to party-voter interactions. Instead, it shapes how the public at large interprets political events and decisions, potentially affecting judges as well (Rogowski and Sutherland 2016; Hasen 2019; Casal Bértoa and Rama 2021). Consequently, similar to the polarization observed among voters and political parties, judicial decisions are expected to increasingly reflect judges' ideological leanings, potentially trending toward more extreme positions over time. These shifts may impact both individual judicial decisions and collective court outcomes, leading to heightened internal conflict and greater predictability of case outcomes, among other effects (Hasen 2019). Therefore, judicial polarization can be more precisely described as judges aligning more strongly with one of two ideological blocs and the resulting consequences[18].

In this context, judicial polarization is based on two key assumptions: (1) judges' ideological preferences influence their decisions, and (2) this influence has grown over time, resulting in observable judicial polarization in recent years. Therefore, studying judicial polarization—both theoretically and empirically—requires first identifying judges' preferences and then analyzing how these preferences evolve over time, ultimately contributing to a heightened divide. Accordingly, the next subsection addresses the first assumption, while the subsequent subsection examines the mechanisms driving judicial polarization. Specifically, it explores why judges' ideologies may shift and how these

[18]By two ideological blocs, we refer to the left-right divide, which in many cases coincides with the conservative-progressive divide, as is the case in Spain.

changes may align with a broader phenomenon of ideological polarization—in particular, those dynamics reflected in the party system.

Ideology and Judicial Behavior

In their official communication, judges often emphasize legal rules and doctrines while denying the influence of ideology. While it is true that some legal rules foster a shared understanding, allowing most judges, legal scholars, and even society to agree on their application, the indeterminacy of much of the law in practice leaves significant room for extraneous, non-legal influences (Stephenson 2009). The literature on judicial behavior—primarily focused on the U.S.—has qualitatively and empirically examined this issue, offering valuable insights into judges' motivations and constrains (Epstein, Martin, Quinn and Segal 2012).

This literature provides two big explanations on how ideology may influence judges' decision-making. The first is via the judges' sincere preferences. In this regard, the attitudinal model of judicial behavior posits that judges decide disputes in light of the facts of the case given their ideological values (Segal and Spaeth 2002; Epstein, Landes and Posner 2012; Martin and Quinn 2002). The second mechanism points to ideological outcomes as a result of strategic voting. In this regard, the strategic model of judicial behavior suggests that judges' decisions are constrained by their audiences (Garoupa and Ginsburg 2019) and constituencies as well as by the collegial nature of judicial organs[19] (Epstein and Knight 1997; Dyevre 2010; Vanberg 2004; Segal et al. 2011; Larsson and Naurin 2016).

According to the strategic model, judges consider more than just satisfying their legal or ideal preferences. Concerns about reputation and career prospects—both during and after their tenure—may lead judges to deviate from their legally or ideologically preferred

[19]Collegial institutions involve multiple judges making decisions on the same cases, which fosters strategic behavior among judges as they seek to impose their individual views.

outcomes and vote in favor of constituencies whose support they seek to cultivate. In fact, empirical studies support the notion that judicial decisions are influenced by career incentives, public opinion, and threats of legislative override (Larsson and Naurin 2016; Castro-Montero et al. 2018; Gray 2019; Casillas et al. 2011). These studies also demonstrate an alignment between judges' preferences and those of their appointing authorities (see Dyevre 2010), though this alignment does not necessarily indicate ideological convergence.

Whether this influence arises from sincere preferences or strategic alignment, the case outcome may reflect the same ideological alignment. Building on this, we infer the ideology of Spanish constitutional judges through their voting patterns and validate these estimations. We then extend the analysis to examine whether these ideological tendencies shift over time, potentially resulting in judicial polarization. The next subsection delves into the factors that may drive changes in judges' behavior and the resulting emergence of judicial polarization.

Mechanisms of Judicial Polarization

To identify and describe the mechanisms driving judicial polarization, we first distinguish between two key polarizing actors—those whose decisions or strategies both contribute to and reflect the phenomenon of polarization (McCoy and Somer 2021). On the one hand are political parties, which may contribute to judicial polarization by appointing judges, influencing their career trajectories, and shaping the cases brought before the court. On the other hand are the judges themselves, who directly determine more or less polarized court outcomes. Building on the limited literature on this subject (Hasen 2019), we next outline three primary mechanisms driving judicial polarization: the first centered on parties' appointments, and the other two focusing on distinct aspects of judicial behavior.

First, when political parties are considered polarizing actors, a key mechanism driving

judicial polarization may arise from the politicization of the judicial appointment process. As previous literature highlights, unfavorable court outcomes can undermine not only a party's jurisdiction over specific issues, but also its reputation (Vanberg 1998). Consequently, parties have strong incentives to nominate judges who share their ideological preferences to avoid such costs[20]. Furthermore, polarized parties are more likely to enact highly partisan legislation, increasing their reliance on ideologically aligned judges to uphold such laws. In other words, as ideological polarization among parties intensifies, this dynamic becomes even more pronounced. By prioritizing ideologically compatible nominees, parties aim to maximize their chances of securing favorable court rulings (Hasen 2019; Sunstein et al. 2007; Binder and Maltzman 2009), ultimately contributing to greater polarization within the judiciary (Devins and Baum 2017).

Second, when considering judges as polarizing actors, the mechanisms leading to judicial polarization may stem from an attitudinal change in behavior or to a strategic shift. In the first case, polarization may occur—consistent with the attitudinal model—through changes in judges' ideology. Judges ideological preferences may evolve in tandem with those of the groups with which they identify (Baum 2009). As these groups adopt positions more extreme ideological positions[21], judges also adopt them in a sincere way. That is, there is a change of preferences of the whole ideological spectrum that also affect judges. Thus, what drives judicial polarization under this mechanism is not the selection process, but the social forces that drive ideological polarization in society at large.

The third mechanism explaining judicial polarization also views judges as polarizing actors, but here it is attributed—consistent with the strategic model of judicial behavior—to strategic conduct. Strategic constraints, such as collegiality or the threat

[20] As long as larger parties influence both legislation and the nomination of judges, whether through parliament or other competent institutions.

[21] Hereinafter, we refer to more extreme ideological positions as those resulting from ordering all the positions (of all judges or parties) along a bi-dimensional spectrum. In this regard, the further they are located at the tails, the more extreme they are considered.

of legislative override, are likely to reduce rather than increase partisan voting, as influencing court outcomes in collegial bodies involves negotiation, and legislative override can impact the court's legitimacy. However, partisan organizations may informally incentivize certain judges to follow their ideological cues by promising reappointment or other professional rewards (Miller 2004), particularly if these rewards could advance future promotions—either within or outside the court. As a result, judges' strategic decisions may influence the alignment of court outcomes with the interests of particular parties.

These mechanisms are not mutually exclusive and may simultaneously contribute to judicial polarization. Indeed, they are, to some extent, endogenous. For example, parties may seek to shape the ideological composition of the court because they anticipate judges will sincerely favor certain outcomes. Similarly, as previously noted, whether the alignment between judges and parties arises from a sincere shift in judges' preferences or strategic considerations, changes in party positions may lead to corresponding shifts in judges' positions under either mechanism. While our data and methodology do not allow us to definitively disentangle these causal pathways or assess their relative influence, the theoretical foundation supporting the hypothesis that ideological polarization extends to the Constitutional Court remains robust.

The next section not only presents the main hypotheses of our study but also operationalizes the observable outcomes that we expect to test and confirm these hypotheses, with a particular focus on measuring judicial polarization and their relationship with polarization in parliament.

3.2 Operationalization of judicial polarization

Building on the discussion above, a comprehensive study of judicial polarization must address two key questions: 1) whether judges' ideologies influence their decisions,

and 2) whether these ideologies have changed over time, leading to judicial polarization. Accordingly, in this section, we present a general hypothesis for each question based on the outlined theory and identify testable outcomes to evaluate and confirm these hypotheses.

The first hypothesis examines the influence of judges' ideology on their decisions, a key assumption underlying judicial polarization. To explore this, the literature on judicial behavior has traditionally used the ideology of the appointing party as a proxy for judicial ideology (see Epstein, Martin, Quinn and Segal 2012). Much of the literature has analyzed dissenting opinions to assess how deferential judges are to their appointing party (e.g. Garoupa et al. 2013). At the collective level, scholars have expanded this approach by creating aggregate proxies for the court's overall ideology, often by summing the number of judges appointed by the governing party. Regarding estimation methods, logistic regression (e.g. Garoupa et al. 2021) and ideal-point estimation[22](e.g. Hanretty 2012) are commonly employed. In this paper, we adopt *Item Response Theory* to model and analyze judges' ideologies at both the individual and collective levels. Analyzing ideology at both levels is crucial because constitutional courts are collegial bodies, where individual decisions may not always reflect or determine the final ruling due to collective deliberation. This approach, combined with its validation, allows us to estimate and interpret judges' preferences comprehensively. Consistent with the literature on judicial behavior, we hypothesize:

H1: *Judges decide based on their ideology.*

To test this hypothesis, we first identify the primary dimension of disagreement among judges, infer their preferences, and validate our approach to ensure that we accurately capture judges' ideology. Specifically, we focus on indifference points to determine this primary dimension of disagreement. The resulting estimates not only reflect judges' individual ideologies but also enable us to study the court's behavior at the collective level

[22]A model based on Item Response Theory, which estimates an individual's underlying preferences based on observed behavior.

by identifying and positioning the median judge. Subsequently, we examine the role of ideology in litigants' prospects based on our estimation of the median judge. Consistent with our first hypothesis, we anticipate two outcomes. First, **H1.1**: The primary dimension of disagreement among judges is their ideology, meaning we can infer individual ideology from their voting patterns. Second, at the collective level—regarding final rulings—we expect **H1.2**: Litigants who are ideologically closer to the court's overall ideology are more likely to win their cases.

The second hypothesis examines changes in judges' ideology over time, consistent with judicial polarization. Judicial polarization manifests in various ways, as judges make a range of decisions (such as admissions, rulings, and dissenting opinions) that may reflect the influence of broader polarization trends differently. Accordingly, empirically testing judicial polarization involves identifying their symptoms and examining their relationship with broader patterns of ideological polarization. Key symptoms of judicial polarization include heightened internal conflict and more ideologically extreme positions. These symptoms lead to greater predictability in votes and case outcomes, with judges' decisions becoming increasingly aligned with their ideological preferences. In addition, as judicial polarization is part of a wider phenomenon, the empirical analysis should test the relationship with the wider phenomenon of polarization. Based on the discussion above, we outline the second hypothesis and purpose observable outcomes related to variations in judges' ideology—both at the individual and collective levels—,changes in the level of conflict within the court, and the extent to which these variations align with wider trends of polarization, such as the polarization of the party system.

H2: *Judges' voting patterns and decisions have become more ideologically polarized over time, reflecting a wider phenomenon of polarization.*

To empirically test this hypothesis, first, we focus on variations in judges' ideology

and propose testable outcomes consistent with judicial polarization. Specifically, we assess whether judges' ideological preferences have become more extreme over time[23]. Our analysis examines both the evolution of individual judges' ideologies and shifts in the court's ideological majority. Using previously validated estimates of individual judges' ideology and the concept of the median judge and its ideology as a proxy for the court's central tendency, we investigate how these measures have evolved over time. This approach captures whether individual judges now exhibit more extreme preferences and whether ideology plays an increasingly significant role in shaping the court's composition, consistent with the dynamics of judicial polarization. In this context, we expect that: **H2.1** judges appointed more recently exhibit more extreme ideological preferences, and **H2.2** the more recent a case is, the more extreme the ideology of the median judge.

Second, we focus on the level of conflict within the court and to what extent it is related with judges' ideological divide. A key symptom of ideological polarization in the party system is a heightened level of conflict. The literature highlights how polarization leads to more extreme voting patterns and an increase in vetoes against opposition parties (Casal Bértoa and Rama 2021). In courts, this dynamic is reflected in a growing number of dissenting opinions over time, which are expected to align with judges' ideology. Accordingly, we propose the following expectations: **H2.3** The number of nonunanimous cases has increased in recent years; and **H2.4** Over time, the likelihood that two judges will vote the same way in the same case becomes more closely related to the ideological distance between them. Thus, both variations in judges' ideology and the level of conflict within the court are expected to indicate a trend consistent with Hypothesis 2.

Finally, while previous outcomes align with judicial polarization, alternative explanations may also account for these patterns. Consequently, we examine whether shifts in judges' behavior are tied to broader polarization trends. Assuming that judicial polariza-

[23]Extreme judges are defined as those positioned at the tails of the ideological distribution, after ranking all judges by their ideological preferences.

tion—characterized by increased conflict and heightened ideological preferences—reflects the judiciary's response to ideological polarization, we expect previous outcomes to correlate with established measures of polarization. To test this, we use Dalton's index (Dalton 2008), a widely recognized measure of party system polarization. This index is particularly relevant as it has been extensively studied in the literature, not only in the context of party behavior but also in relation to other actors affected by polarization dynamics, such as voters and the media (see Casal Bértoa and Rama 2021). Moreover, it accounts for party behavior, which influences judicial appointments and the types of cases reaching the court—as previously discussed, the ideological polarization of political parties is a plausible driver of judicial polarization. Dalton's index, based on political parties' vote shares and their ideological positions derived from voters' self-reported preferences, captures both the extremity of parties' stances and their influence on political behavior (see Curini and Hino 2012). Accordingly, we propose the following hypotheses: **H2.5** The greater the polarization of the party system, the more nonunanimous court decisions; and **H2.6** The greater the polarization of the party system, the stronger the effect of ideological distance between two judges on their likelihood of voting together.

4 The Spanish case

The Spanish Constitutional Court (Tribunal Constitucional), established in 1980, is the highest authority for interpreting constitutional law in Spain. The court consists of 12 judges appointed for non-renewable nine-year terms. These appointments are distributed across different branches of government: four are nominated by the Congress, four by the Senate, two by the General Council of the Judiciary, and two by the Government, ensuring a balance of institutional influences. Judges are required to be highly qualified jurists with extensive legal experience, a prerequisite intended to safeguard their independence and impartiality. However, in line with our expectations, numerous judges have had direct ties to political parties, such as Enrique Arnaldo, Concepción Espejel, and former minister

Juan Carlos Campo. Indeed, studies on judicial behavior have consistently demonstrated that Spanish constitutional judges are influenced by their ideological orientations (e.g. Magalhães 2003; Garoupa et al. 2013, 2021; López-Laborda et al. 2019; Rodríguez López et al. 2019; Vallbé 2024).

The politicization of the Spanish Constitutional Court has been widely debated, reflecting broader concerns about the influence of political parties on judicial institutions (see Vallbé 2024). While the court is intended to function as an independent arbiter, its appointment process, involvement in legislative matters, and rulings in high-profile cases often contribute to perceptions of partisan bias tied to political events in parliament (Harguindéguy 2024). These concerns are particularly acute in politically sensitive cases, such as disputes over Catalonia's independence or major constitutional reforms, where the court's decisions carry significant political consequences and attract intense scrutiny from the media, political parties, and citizens (ibid.). The court's prominence in such cases, combined with conflicts among the judges involved in these rulings, reinforces interpretations—discussed in the theoretical framework of this paper—that judicial polarization closely mirrors parliamentary polarization. Furthermore, the politicization surrounding recent disputes over judicial appointments further supports this perspective (ibid.).

Finally, political polarization in Spain has also intensified in recent years, deepening the ideological divide between the left and right (Casal Bértoa and Rama 2021). This divide is evident in contentious debates over key issues such as regional autonomy, immigration, economic policies, and social rights. Events like the Catalan independence movement and the rise of new political forces, including the far-right VOX, have disrupted traditional party dynamics and further exacerbated polarization (Rodríguez et al. 2022). Parliamentary debates and public discourse now increasingly reflect adversarial rhetoric, with parties prioritizing ideological purity over consensus-building. This polarization extends beyond politics

into broader societal divisions, as surveys show growing intolerance for opposing views, affecting many spheres of political life (Torcal and Magalhães 2022). Accordingly, these dynamics likely influence judicial decision-making, including within the Spanish Constitutional Court (see Harguindéguy 2024).

5 Data and Methodology

This section outlines the data sources employed for these analyses and the methods for estimation. For this purpose, it is organized as follows: first, it explains how the data for the analysis were constructed; second, it details the estimation and validation of judges' ideology; third, it describes the operationalization of the median judge and the model capturing the influence of judges' ideology on litigant success; and finally, it outlines the model testing how ideology explains disagreement between judges. The remaining outcomes of the analysis are descriptive and derived from these data and methods. They are presented in the results section along with their interpretation.

5.1 Data

Our dataset includes all abstract (*Recurso de Inconstitucionalidad*) and concrete (*Recurso de Amparo*) review rulings from the Spanish Constitutional Court, covering the period from its inception in 1980 through December 2023. Abstract review can be initiated at the behest of the Prime Minister, the Ombudsman, 50 Deputies, 50 Senators or the executive collegiate bodies of the Autonomous Communities (and, where appropriate, their Assemblies). On the other hand, concrete review may be initiated by individuals or entities alleging violations of their constitutional rights. The data was scraped from the SCC's official repository, MAP Lexter, using R scripts. We extracted judges' names, individual votes, case number, procedure, date and, for abstract review cases, information about case initiators and defendants—all this data was extracted from the court texts using Mixtral 8x7b, with subsequent manual validation. In total, the raw dataset includes 23,948

rulings: 22,209 concrete review cases (1,028 of which feature dissents) and 1,739 abstract review cases (of which 412 include at least one dissent)[24].

This database allows us to measure judges' latent preferences using Item Response Theory (IRT), capturing judges' primary dimension of disagreement when deciding cases. To evaluate the accuracy of these estimates in reflecting judges' ideology, we employ two proxies for judicial ideology. The first proxy uses the Party Manifesto Project's RILE score for the party that nominated the judge at the time of appointment, representing the left-right ideological position of the party (Lehmann et al. 2024). For judges nominated by the judicial branch (the *Consejo General del Poder Judicial*, CGPJ), RILE scores are assigned based on prior party affiliations and union memberships[25]. The Party Manifesto data were merged from their repository using party names and the dates of judges' appointments. The second validation involves examining the issue parameters of the most polarizing cases and interpreting them in light of existing literature. For this purpose, we focused on the party that appointed each judge. This data was collected from the official website of the SCC.

The measure of the ideology of the litigants, and the analyses we perform using this data are limited to abstract review cases. All the actors involved in this cases have a party affiliation and therefore their ideological position can be measured also using their RILE measure of the Party Manifesto Project. For parties at the regional level we use the same measure of the Regional Party Manifesto Project (see Alonso et al. 2013). In contrast, concrete review cases can be brought by any citizen who believes that a law violates any of his or her constitutional rights. Therefore, we have no information on the political positions of the involved actors.

[24]Other type of cases, such as *Conflicts of Competence*, are not included because it is not possible to obtain proxies on their litigants for the analysis.

[25]Previous political affiliations and judicial union memberships were identified through a manual search of major Spanish newspapers.

Finally, we constructed the Polarization Index proposed by Dalton (2008) based on parliamentary seat distributions and poll data to measure the ideological positioning of parties. To do this, we collected data from the CIS barometer polls, which ask citizens to identify their ideological alignment with political parties (every three months). This data is then used to correlate with the analyses presented below. The following subsections provide detailed explanations of the methods.

5.2 Judges' ideology estimation

To measure judges' ideology and explore its changes and consequences, we first use Item Response Theory (IRT) to infer and scale judges' preferences along the latent dimension of disagreement. In short, observed votes are modeled as a function of the item (the case at issue) and the judge's latent characteristics—their indifference points. More technically, the probability that judge j will dissent in item (case) i is expressed as:

$$Pr(y_{ij}) = \frac{exp(-\alpha_i + \beta_i\theta_j)}{1 - exp(-\alpha_i + \beta_i\theta_j)} \tag{1}$$

Where θ_j is the latent preference of judge j on the underlying dimension of disagreement. α_i and β_i are item parameters. β_i is called the discrimination parameter. It captures the degree to which the case polarizes the sitting judges. Larger absolute values imply a more polarizing case—judges who are farther apart on the latent dimension of disagreement are more likely to diverge in their votes. Smaller values imply a less divisive item (or, alternatively one relating to a distinct, orthogonal dimension). α_i is the difficulty parameter. It determines where the item divides decision makers on the underlying dimension[26].

Unanimous cases reveal no information on the latent dimension of disagreement. In

[26]While θ_j refers to the judge's ideal point, α_i and β_i are case parameters. The indifference point for a given case is then determined by the combination of these parameters, specifically by the point at which a judge with a particular θ_j has a 50% probability of choosing either side of the decision.

consequence, this part of the analysis is restricted to the 1307 nonunanimous cases decided by the Spanish Constitutional Court over the period covered by our dataset. The IRT model is implemented in a Bayesian framework. Normal priors are placed on the ideal points and item parameters (with, respectively, mean 0 and standard deviation 1 for the ideal points and mean 0 and standard deviation 5 for the item parameters). Values are estimated via Markov Chain Monte Carlo using the R pscl library.[27]

Previous research suggests that progressive-conservative divide represents the primary dimension of disagreement on the TC. However, the approach adopted here is inductive. That is, no political dimension is imposed a priori on the data. We do not provide anchors to dictate the direction of the recovered scale. Nor do we impose assumptions of strategic or attitudinal voting behavior[28], that's why we validate the estimates afterwards—to demonstrate that the main dimension of disagreement aligns with judges ideology.

We validate the estimated indifference points by examining the item characteristic curves for cases with large absolute β values—the most polarized—and we compare them with insights from the literature and media coverage of each case to check for consistency. Then, we run an OLS to test the relationship between the judges' estimates and the Party Manifesto scores of the appointing party (at the moment of the appointment).

In summary, the model infers judges' preferences for each case by analyzing their dissenting opinions in contrast to their votes with the court's majority. We then evaluate specific cases to determine whether the model's predictions align with the judges' ideological positions in those instances. Finally, we use a proxy based on the appointing

[27]Ten million iterations were run after throwing the first 10 000. Starting values for ideal points are provided by extracting the first eigenvector of the n×n correlation matrix formed from the double-centered voting matrix. Starting values for the item parameters are generated from the intercept (difficulty parameter) and coefficient (discrimination parameter) of probit regressions (one for each item), using the starting values for the indifference points as predictors.

[28]For local identification, we post-process the estimates to normalize parameter values to have mean 0 and standard deviation 1. But this has no influence on the nature of the recovered dimension.

party's ideology to enhance the analysis's robustness, providing further evidence that this dimension of disagreement accurately reflects judges' ideological positions along a left-right/conservative-progressive axis.

This design allows us to test our first hypothesis regarding judges' ideology. In addition to testing H1.1, the validated estimates also enable us to track the evolution of judges' ideologies over time, addressing H2.1. Furthermore, in the following section, we explain how these estimates help identify and position the median judge, examine their ideological shifts, and analyze how these shifts influence the likelihood of success for different applicants—addressing H1.2 and H2.2.

5.3 Median judge and and likelihood of success for litigants

We use the latent preference estimates from the IRT model to identify the *median judge* in all cases within our dataset—including unanimous decisions—and study the court's behavior at the collective level. In other words, this refers to the judge at the center of the court's ideological spectrum, who, a priori, has the greatest capacity to influence court outcomes. In response to H2.2, in addition to exploring judges' individual ideologies, we also examine the extent to which the median judge's ideology has shifted toward more extreme positions in recent years, as an indicator of the court's overall ideological positioning.

Moreover, in response to H1.2—specifically testing whether the ideology of the court at the collective level influences the applicant's prospects—, we relate the ideology of the median judge to that of the litigants using Party Manifesto RILE scores. After standardizing the RILE scores, we compute the absolute ideological distance between the score of the judge's appointing party and those of the respondent (central or regional government) and the applicant (parliamentary opposition, regional government). We then test the relationship between the judge-litigant ideological distance and the likelihood of a

pro-litigant outcome.

In abstract review cases, we should expect the median judge and, therefore, the court as whole to be less favorable to more ideologically distant litigants. To test this hypothesis, we estimate the following baseline regression model:

$$y_{i,j,l} = b_0 + b_1|RILE_j - RILE_l| \tag{2}$$

Where $y_{i,j,l}$ is the vote of median judge j in case i involving litigant l; b_0 is the constant; $|RILE_j - RILE_k|$ captures the absolute ideological distance between the appointing parties of judge j and litigant l.

Coefficient b_1 captures the effect of the ideological distance between the median judge and litigants. Consistent with our hypothesis about judicial behavior at the collective level (H1.2), we expect greater distance to result in lower probability of a favorable ruling.

5.4 Impact of judges' ideology over internal court dynamics

In this subsection, we shift the focus from whether and how the case outcome favors one litigant over another to examining the likelihood of judges voting together based on ideology—that is, a measure of conflict within the court rooted in the ideological divide. Consistent with H2.4, assuming that TC judges are broadly aligned with their appointing party, we expect voting divergence to increase as the ideological distance between the parties grows.

This implies that judges appointed by parties with more divergent positions are less likely to agree with one another. To assess this expectation, we first convert the raw data into a dyadic format, where the observation represents the ideological distance between all the judges on the bench for each case. We then estimate the following model:

$$y_{i,j,k} = b_0 + b_1|RILE_j - RILE_k| \tag{3}$$

Here $y_{i,j,k} = 1$ if judge j and k agree on issue i. b_0 is the constant; $RILE_j$ is the RILE Party Manifesto score of judge j's appointing party and $RILE_k$ that of judge k's appointing party. $|RILE_j - RILE_k|$ captures the absolute distance between the appointing parties of judge j and k.

As more polarized parties appoint judges with more extreme policy preferences—or judges become more extreme their-selves (we return to this discussion in Section 6)—, we expect b_1 to be negative. Additionally, as polarization increases within the court, the negative effect of ideological distance between the appointing parties should also intensify over time. Therefore, our model also include an independent variable capturing the year of the ruling. Furthermore, in response to H3.2, we test the relationship with Dalton's (2008) Polarization Index Dalton (2008).

6 Results

The results section is organized as follows: The first subsection focuses on estimating judges' ideologies and validating these estimates, demonstrating how they reflect judges' ideological leanings and have become more extreme in recent appointments—addressing H1.1 and H2.1. The second subsection examines the position of the median judge and evaluates its impact on applicants' likelihood of winning a case—addressing H1.2 and H2.2. The third subsection analyzes internal conflict within the court, highlighting its increase over time and its relationship with Dalton (2008)'s Polarization Index—addressing

H2.3 and H3.1. The final subsection investigates the influence of ideological preferences on individual voting patterns, explores intra-plenary dynamics, and tests their connection to parliamentary polarization using Dalton (2008)'s Polarization Index—addressing H2.4 and H3.2. The findings are synthesized in the Discussion section to address our two general hypotheses.

6.1 Indifference point estimates

Figure 1 displays the judges' indifference point estimates (θ_j in equation 1 above). The figure orders the preferences of all judges in the history of the Constitutional Court based on their voting patterns—that is, which judges have voted more closely aligned with the main dimension of disagreement, which in this case is ideology. The model correctly predicts 90.4% of the votes in the 1,307 nonunanimous cases. It performs better at predicting support for the majority (96.8% accuracy) than dissent (69.8% accuracy), which may reflect dissent suppression given the SCC's heavy caseload. These statistics indicate that the recovered dimension—the estimates—is, by far, the primary source of disagreement within the SCC.

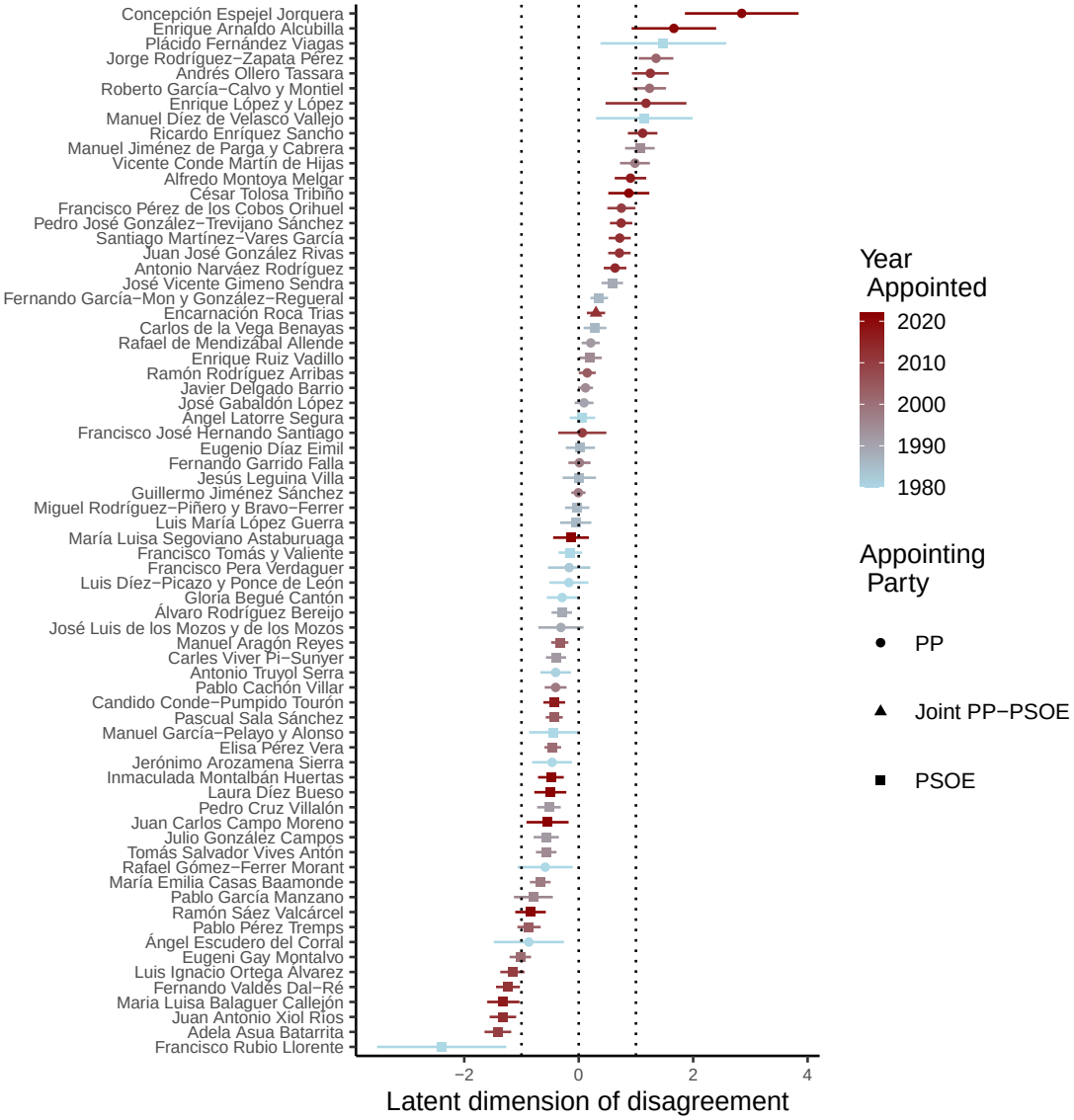

Figure 1: **Latent preferences, indifference point estimates from nonunanimous cases.** Dots represent posterior mean estimates. Horizontal bars denote 95% posterior credible intervals.

The indifference point estimates align with prevailing perceptions of the judges' ideological leanings and with findings from previous empirical studies (e.g. Magalhães 2003), supporting the interpretation of the latent divide as a left-right dimension—their ideology—and thus, confirming H1.1 about judges ideology at the individual level. Concepción Espejel Jorquera and Enrique Arnaldo, for example, are commonly viewed as

staunch conservatives with strong personal and institutional ties to the *Partido Popular*, while Adela Asúa Batarrita and Juan Antonio Xiol Ríos are seen as members of the SCC's progressive wing. The same is true of Enrique López, Pérez de los Cobos and Juan Carlos Campo, all of whom had previous party affiliations.

An examination of the issue parameters further supports interpreting the latent dimension as a measure of their ideological preferences: among the cases with the largest absolute value for the discrimination parameter is Order (*Auto*) 26/2007 of 5 February 2007, which addressed the recusation of Judge Pablo Pérez Tremps in connection with the constitutional challenge[29] brought against the highly polarizing reform of the Statute of Catalonia. Figure A2 illustrates the item characteristic curve along with the position assumed by the members of the SCC. Pérez Tremps, a Socialist appointee, had a solidly progressive record. As predicted by the model, the more conservative judges in the majority voted to grant the recusation; the more progressive judges against.

[29] *Recurso de inconstitucionalidad* in Spain. In other words, a case of abstract judicial review.

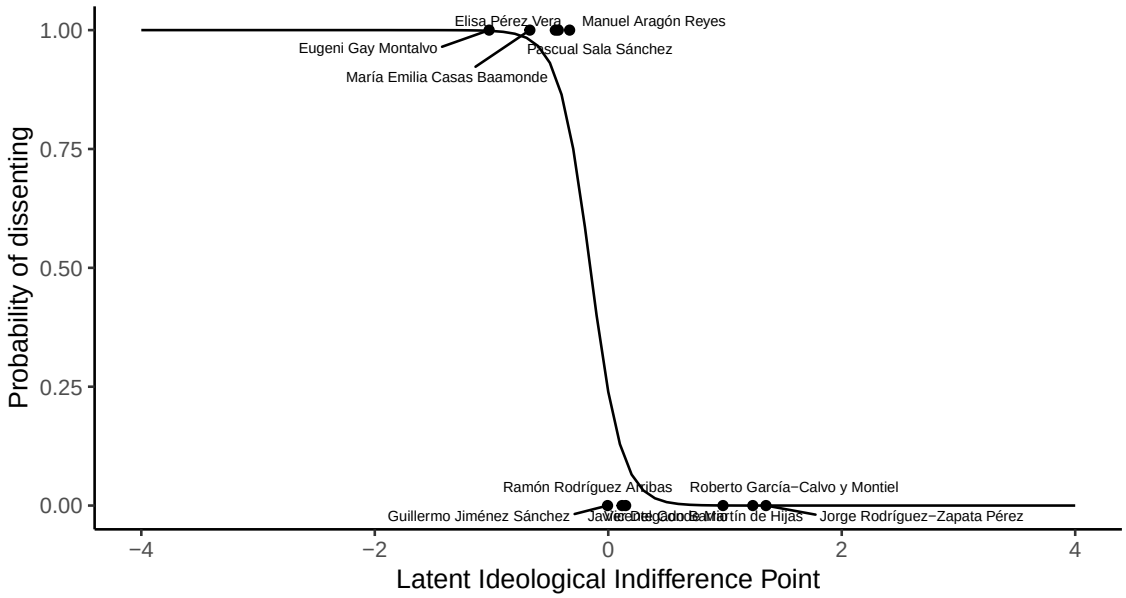

Figure 2: **Voting prediction against actual votes in *Order (Auto) 26/2007* (2007).** The item characteristic curve depicts the model prediction for the corresponding values of the ideal points. 1 indicates that the judge dissented. 0 indicates that the judge voted with the majority.

Another polarizing case is Decision 46/2001 of 15 February 2001. The case concerned the refusal by the Ministry of Justice to register the Unification Church in the Registry of Religious Entities. Led by the progressive wing of the SCC, the majority found that this refusal violated the right to religious freedom and the right to association (Figure 3. The conservative judges dissented, emphasising the hierarchy (with the Roman Catholic Church at the top) allegedly established by the Constitution in the protection enjoyed by religious groups.

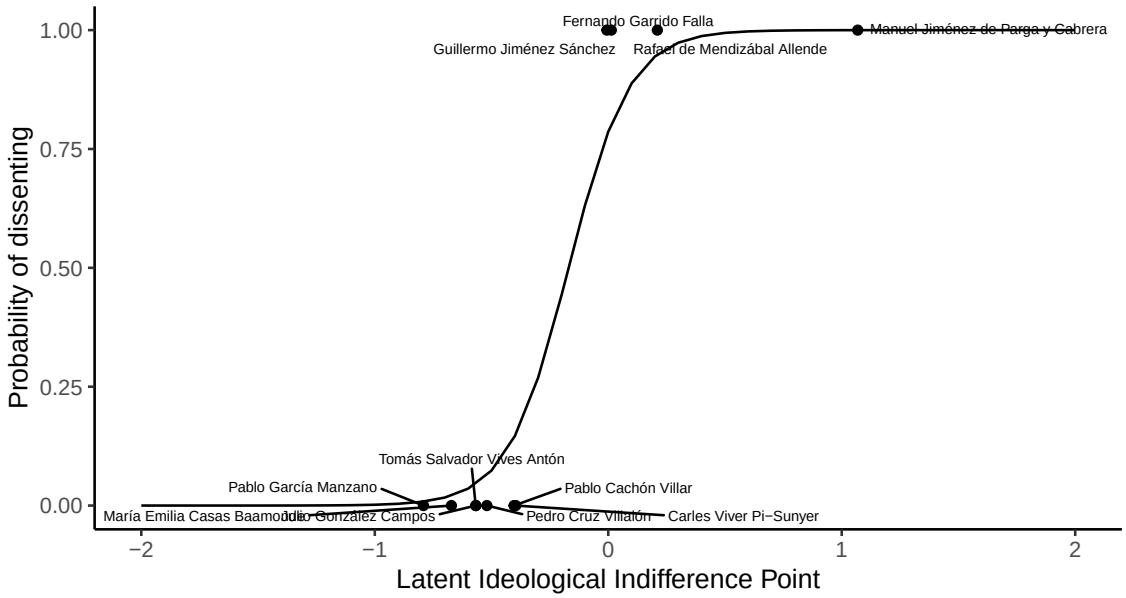

Figure 3: **Voting prediction against actual votes in *Decision 46/2001* (2001).** The item characteristic curve depicts the model prediction for the corresponding values of the ideal points. 1 indicates that the judge dissented. 0 indicates that the judge voted with the majority.

Another test that further supports the interpretation of our estimated preferences as a measure of their ideology is the correlation with the RILE value of the Party Manifesto for the party that appointed each judge (at the time of appointment). Latent preference estimate differ significantly across parties. On average, compared to *PP* appointees, *PSOE* appointees score 0.75 point lower on the latent scale ($p < 0.01$). As shown in Figure 4, our estimates strongly correlate with the Party Manifesto (RILE) scores of the judges' appointing parties, with Spearman $\rho = 0.59$ ($p - value < 0.000$) and Pearson $r = 0.56$ ($p - value < 0.000$). (We report weighted regression results in the Appendix. See Table A1.) Together, these findings suggest that our estimates capture the left-right divide, validate them for further analyses, and provide evidence supporting H1.1.

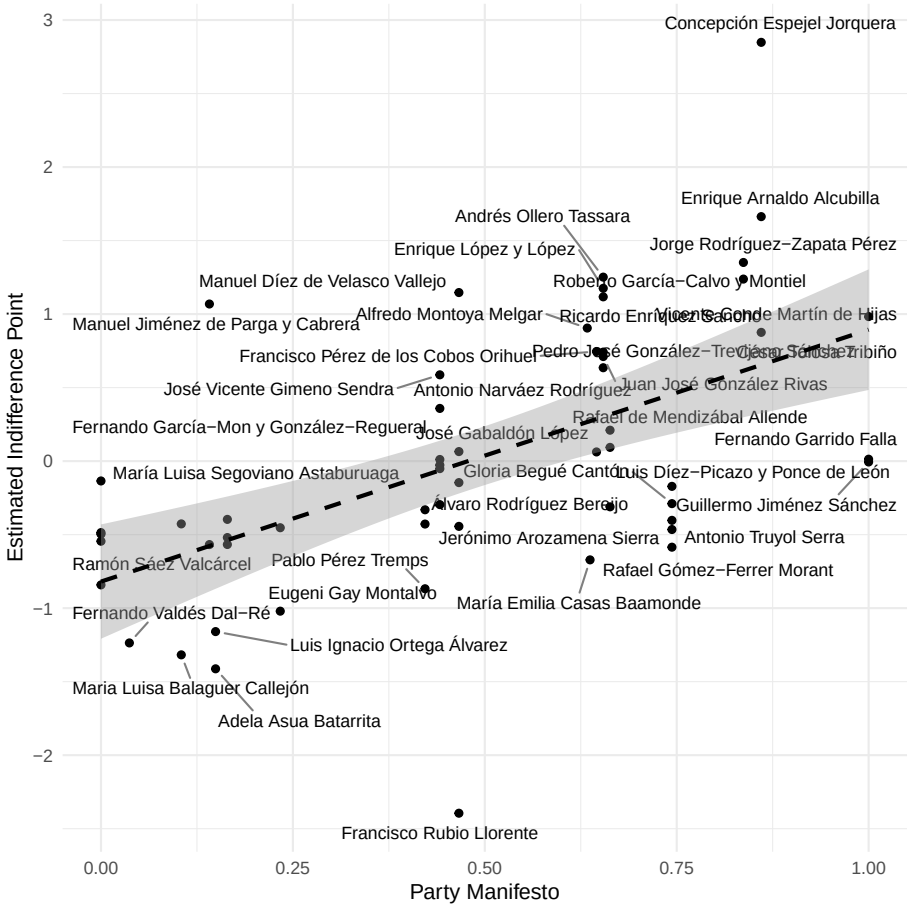

Figure 4: **Relationship between estimated indifference points and Party Manifesto score of appointing party.**

Now that we have validated our estimates, we can return to Figure 1 and extend our interpretation. Regarding judicial polarization, Figure 1 highlights two key trends. First, with the exception of Francisco Rubío Llorente and Plácido Fernández Viagas,[30] the most ideologically extreme judges are all recent appointees. In contrast, appointees from the 1980s and early 1990s, whose mean estimates are close to zero, appear to have been more centrist.

Second, more recent appointees make more ideologically consistent decisions in accordance with their appointing party. Fernández Viagas, a former Socialist governor

[30]It is important to note that these judges also have wider posterior credible intervals, indicating that their predictions may be less accurate compared to judges with narrower intervals.

of Andalusia, ends up close to the most conservative judges (albeit with a large 95% confidence margin), while Ángel Escudero del Corral, a *PP* appointee, ends up at the opposite end of the latent scale. However, these exceptions seem to be a thing of the past. As with the U.S. Supreme Court, polarization appears to induce greater ideological sorting among Spanish constitutional judges.

While the 2000s, in particular, featured some of the most politically salient constitutional disputes—most notably those surrounding devolution and Catalonia—these results do not appear to be driven by an increase in the polarizing intensity of the cases themselves. Indeed, the absolute values for the β parameter show only a small and insignificant increase over time (see Figures A3 and A4 in the Appendix). Thus, the validation of the results based on the indifference point estimates aligns with our H1.1, and the resulting order of new judges is consistent with H2.1—indicating a shift toward more ideologically extreme positions among individual judges appointed to the SCC.

6.2 Median Judge and Litigant Success

In this section we focus on judicial behavior at the collective level. Since decisions are by simple majority, it is the median judge who ought to determine which side prevails in disputes before the SCC. From a partisan perspective, controlling the median signifies controlling the ideological direction of the SCC as a whole. As polarization increases, we should also expect more abrupt shifts in the position of the predicted ideological median.

Figure 5 illustrates the position of the predicted median in both unanimous and nonunanimous cases over time. Whereas before 2010 the position of the median on the left-right latent dimension fluctuated between -0.6 and 0.25 (with judges such as Pablo Calchón Villar and Javier Delgado Barrio), the most likely median in the 2010 were judges with more conservative indifference points, such as Juan José González Rivas. As

progressives regained control of the majority, the turn of the next decade coincided with another marked shift in the position of the ideological median, a pattern consistent with H2.2.

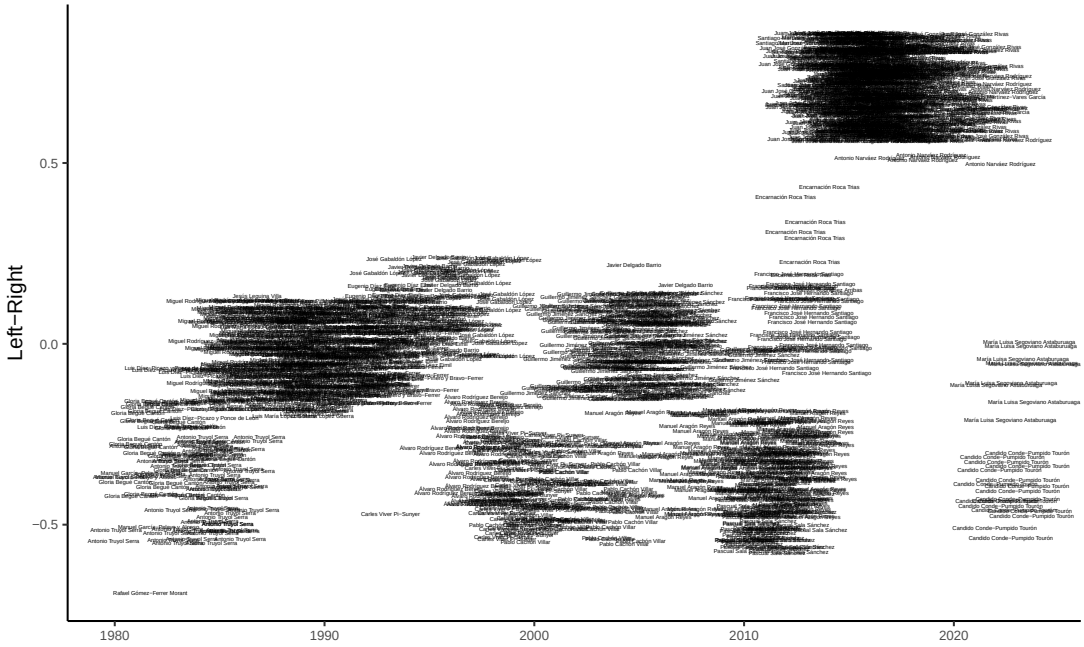

Figure 5: **Most likely median judge.**

Moreover, in abstract review cases, we expect the polarization of the median judge to influence the success rate of applicants, as these cases typically involve either the central or territorial government and opposition parties at the same or different levels of government. Table 4 presents regression models estimating the probability that the median judge will rule in favor of the applicant, based on the ideological distance between the median judge and the applicant.

	Dependent variable:		
	Vote (1 = pro-applicant, 0 = pro-respondent)		
	Model 1	Model 2	Model 3
(Intercept)	0.54^{***}	0.81^{***}	0.83^{***}
	(0.02)	(0.16)	(0.16)
Median-Applicant Ideological Distance	-0.16^{***}	-0.13^{**}	-0.14^{**}
	(0.06)	(0.06)	(0.06)
Year Fixed Effects	No	Yes	Yes
Judge Random Effects	No	No	Yes
R^2	0.01	0.06	
Adj. R^2	0.01	0.03	
Num. obs.	1207	1207	1207
AIC			1874.47
BIC			2103.79
Log Likelihood			-892.24
Num. groups: id_juez			19
Var: id_juez (Intercept)			0.01
Var: Residual			0.24

$^{***}p < 0.01$; $^{**}p < 0.05$; $^{*}p < 0.1$

Table 4: Probability that the median judge votes for the applicant and ideological distance between applicant and median judge. Ideological distance is operationalized as the absolute distance between the Party Manifesto (RILE) score of applicant and the appointing party of the median judge.

As expected, the coefficient for $Median-Applicant\ Ideological\ Distance$ is negative and significant. These results indicate that the greater the ideological distance between the applicant and the court majority, the lower the likelihood of the applicant winning the case.

Thus, the findings not only support H2.2 by demonstrating that ideological majorities have become increasingly polarized but also show that this shift influences litigants' likelihood of winning a case, supporting H1.2. In the following subsections, we move from the ideological changes of judges and courts and their impact on rulings to an analysis of the conflict between judges.

6.3 Court conflict I: Dissent frequency

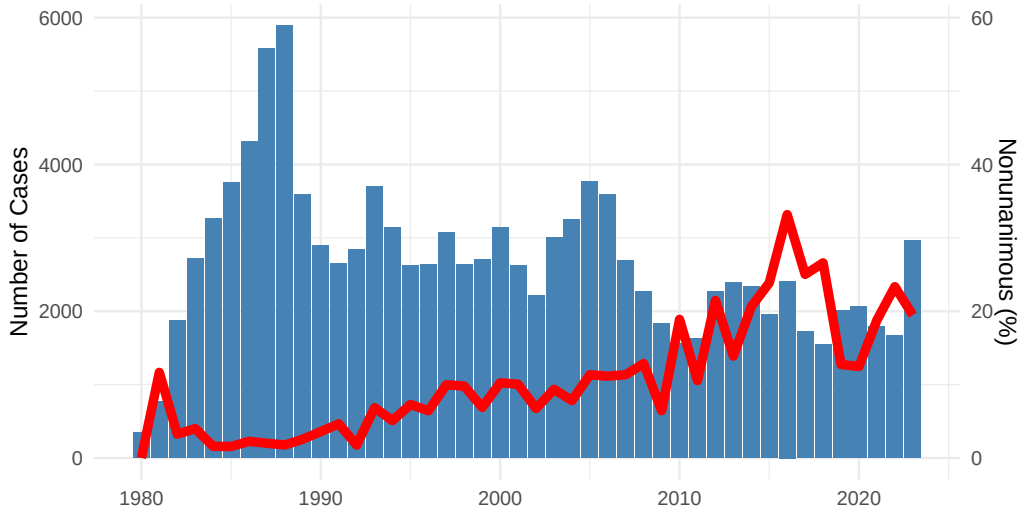

Figure 6: **Caseload and percentage nonunanimous cases, 1980-2023.**

In this section, we analyze variations in judges' behavior that align with judicial polarization. Specifically, we focus on conflict and its relationship with broader patterns of polarization. As depicted in Figure 6, the share of rulings including one or more dissents has gone up over time. The increase is especially pronounced for cases decided after 2010. While the judges' workload, which has fluctuated over the years, may impact the opportunity of dissenting (filing a dissent requires extra work), this pattern is consistent with H2.3. Furthermore, the correlation between dissent propensity—the ratio between the percentage of cases with dissenting opinions and the number of cases to be resolved—and Dalton

(2008)'s Polarization Index is modest in size but strongly significant (Pearson $r = 0.06$, $p - value < 0.000$). The modest correlation may stem from the divergence in the appointment and election cycles. These results, which point to an increase in conflict among judges in parallel to the polarization of the party system, are in line with H3.1.

6.4 Court conflict II: Ideological disagreement between judges

We will now turn our attention to the relationships between judges of the same court. Table 5 reports changes in the probability that two judges agree in the same case as a function of the ideological distance between their appointing parties. Moreover, models (3–5) test for an increasing effect of polarization over time, consistent with H2.4—regarding the influence of judges' ideology on their relationships.

Table 5: Dyadic disagreement and ideological distance between parties of judicial appointees.

Dependent Variable:	Pairwise Agreement				
	(1)	(2)	(3)	(4)	(5)
Variables					
Constant	5.412***	1.795***			
	(0.0869)	(0.1196)			
Distance App' Parties	-0.0727***	13.81***	14.53***	14.53***	13.54***
	(0.0017)	(0.3169)	(3.013)	(1.152)	(1.215)
Year	-0.0022***	-0.0004***			
	(4.35×10^{-5})	(5.98×10^{-5})			
Distance App' Parties × Year		-0.0069***	-0.0073***	-0.0073***	-0.0068***
		(0.0002)	(0.0015)	(0.0006)	(0.0006)
Year FE			Yes	Yes	Yes
Case FE				Yes	Yes
Judge FE					Yes
Observations	198,419	198,419	198,419	198,419	198,419
R^2	0.02794	0.03725	0.04629	0.42244	0.43294
Within R^2			0.01885	0.03401	0.01829

*Signif. Codes: ***: 0.01, **: 0.05, *: 0.1*

Note: The dependent variable is coded as 1 = pro-applicant, 0 = pro-defendant.

Consistent with expectations, $Distance\,Appointing Parties$[31] in model (1-2) and $Distance\,Appointing\,Parties\,\times\,Year$ exhibit negative, strongly significant coefficient. The temporal increase in the effect of ideological polarization remains robust even with the inclusion of year, case, and judge fixed effects. The model suggests that judges' ideological divisions are more pronounced now than during the early years of the court, a pattern consistent with increasing ideological polarization in the Spanish parliament (Harguindéguy 2024).

Finally, we test the relationship between the dependent variable in this model with the ideological polarization of the party system. Pairwise disagreement on the bench exhibits a modest yet highly significant correlation with Dalton (2008)'s Polarization Index: Pearson $r = 0.09$ ($p < 0.000$)—confirming H3.2. Thus, these findings suggest that as polarization in parliament intensifies, judges' ideological divisions play an increasingly prominent role in their voting patterns, resulting in more identifiable blocs within rulings.

7 Discussion

Overall, the results reported in the previous section strongly support the idea that constitutional court judges' decisions are constrained by their ideology and that this influence has become more pronounced with increasing ideological polarization in Spain. First, the judges' indifference point estimates are consistent with the two proxies we used to measure their ideological positions. These findings demonstrate that the primary dimension explaining judges' disagreement is their ideology, while also validating our estimates for subsequent analyses. Furthermore, the results indicate that more extreme judges are among the more recent appointments, highlighting an increase in judicial polarization consistent with the evolution of polarization in the Spanish party system.

[31] This variable represents the difference in the RILE values from the Party Manifesto Project (ideology) of the parties that appointed each judge at the time of their appointment. As the data structure is now a matrix, this difference captures the ideological distance between all the judges in the court for each case,

Second, these judges' ideological preferences not only influence the increasing frequency of dissenting opinions but also affect the decisions of the court as a whole. The concept of the median judge allows us to demonstrate that ideological majorities help explain the success of litigants. Thus, polarization not only increases the visibility of the ideological minority through dissenting opinions but also contributes to more identifiable court decisions that favor litigants based on their ideology.

Third, judicial polarization mirrors ideological polarization of the party system. As shown, parties are increasingly sorted at the extremes of the ideological spectrum, and the decisions of the court are increasingly aligned with the ideology of the litigants. Additionally, the results show that judges are more likely to vote together when they are ideologically closer to one another, and this trend also increases with rising ideological polarization. Taken together, these findings lead us to confirm both hypotheses: that the main dimension of agreement among judges is based on their ideology, and that this trend has become more evident as ideological polarization of the marty system has increased.

While these results cannot definitively disentangle the three mechanisms of judicial polarization outlined in section 3, they point to an overlap of them, with the appointment mechanism being the most plausible, based on our design and what we can explain—as long as the polarization index we employ is based on parties positions. The salience and politicization of appointments, along with the effectiveness of appointing ideologically aligned judges (Garoupa et al. 2013; Garoupa and Ginsburg 2019; Garoupa et al. 2021; Harguindéguy 2024; Magalhães 2003), suggests that parties have a strong interest in appointing more extreme judges as they become more extreme. This ensures that judges validate the parties laws, which also are expected to generate more ideological controversy (see Lee 2015).

On the other hand, the results on dyadic agreement, which remain robust to year, case

and judge fixed effects, suggest that judges also reinforce their ideological preferences as polarization heightens. Nevertheless, we lack dynamic measures of how judges' preferences evolve over time, and our research design cannot definitively address this mechanism. Future research would need to infer individual judges' preferences at different points in time to analyze how these preferences change internally. It would also be valuable to control for different incentives that might lead judges to behave strategically, allowing for a more nuanced understanding of how responsibility for this trend can be attributed. Nonetheless, these results highlight the role of political parties in influencing judicial polarization.

Independent of which mechanism is driving judicial polarization, our paper highlights this trend and its consequences. Specifically, judicial polarization leads to increasing conflict within the court due to ideological reasons, which translates into more rulings favoring ideologically aligned litigants, an increase in dissenting opinions from the minority, and a more visible division of voting patterns into ideological blocks.

8 Conclusion

In this paper, we aimed to examine the extent to which constitutional judges in the Spanish Constitutional Court base their decisions on ideological factors and the degree to which they are insulated from polarization phenomenon. Based on Item Response Theory (IRT), we extract the judges' latent preferences and position them along a single ideological dimension—the indifference points. These estimates were validated by comparing them to the ideological positions of the appointing parties, based on the Party Manifesto's Project. We then used these measures to analyze the role of ideology in plenary decisions and individual judges' voting patterns. Finally, we tested the relationship between these indicators and Dalton (2008)'s Polarization Index.

Our analysis contributes to the existing literature on judicial behavior by supporting theories of judicial decision-making in Kelnesian systems like Spain's. It also adds to the literature on political polarization, demonstrating that polarization extends beyond majoritarian institutions and permeates non-majoritarian institutions, such as constitutional courts. Furthermore, our study contributes to the emerging literature on judicial polarization, providing evidence that this trend is also observable in European countries with a concentrated system of judicial review. Additionally, our findings have implications for the literature on the legislative process, as political parties' decisions throughout the legislative process may be influenced by their predictions of the court's rulings as well as the final rulings—more specifically, the results are specially relevant in the context of separation of powers model's (Vanberg 1998).

Our results capture judicial polarization and show its correlation with polarization in the Spanish party system, suggesting that political parties strategically influence the court through judicial appointments. Importantly, we also demonstrate that judicial polarization has tangible consequences, affecting how the court rules. The increasing alignment of the court with particular ideological positions is crucial because of its potential impact on the functioning of the legislative process, the court itself, and its role as a check and balance in a democratic system. On one hand, ideologically-driven decisions by the court could lead to an asymmetric functioning of the judicial mechanism, where its effectiveness is highly dependent on the court's ideological composition. This could undermine the court's accountability, favoring the government in some cases while contributing to legislative gridlock in others (Rodilla 2025). On the other hand, the court's legitimacy may be called into question if polarization increases public perception of ideological bias in its decisions (Bartels and Johnston 2013).

These implications are particularly relevant in the current global context of rising political polarization. If judicial polarization is indeed driven by a wider polarization dynamic

that involves the parties and society, the consequences for democratic checks and balances may become even more pronounced in the future. Further research is needed to explore these implications, especially given the growing salience of ideological divisions in judicial and political systems worldwide (Schedler 2023).

References

Abramowitz, A. (2010), *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy*, New Haven, CT: Yale Univ Press.

Abramowitz, A. I. (2015), 'The new american electorate', *American gridlock: The sources, character, and impact of political polarization* **19**, 408–46.

Alonso, S., Gómez, B. and Cabeza, L. (2013), 'Measuring centre–periphery preferences: The regional manifestos project', *Regional & Federal Studies* **23**(2), 189–211.

Barber, M., McCarty, N., Mansbridge, J. and Martin, C. J. (2015), 'Causes and consequences of polarization', *Political negotiation: A handbook* **37**, 39–43.

Bartels, B. L. and Johnston, C. D. (2013), 'On the ideological foundations of supreme court legitimacy in the american public', *American Journal of Political Science* **57**(1), 184–199.

Baum, L. (2009), *Judges and their audiences: A perspective on judicial behavior*, Princeton University Press.

Baum, L. and Ditslear, C. (2010), 'Supreme court clerkships and "feeder" judges', *Justice System Journal* **31**(1), 26–48.

Berdejo, C. and Chen, D. L. (2017), 'Electoral cycles among us courts of appeals judges', *The Journal of Law and Economics* **60**(3), 479–496.

Binder, S. A. and Maltzman, F. (2009), *Advice and dissent: The struggle to shape the federal judiciary*, Rowman & Littlefield.

Brewer, M. D. and Stonecash, J. M. (2015), *Polarization and the politics of personal responsibility*, Oxford University Press.

Campbell, J. E. (2018), *Polarized: Making sense of a divided America*, Princeton University Press.

Casal Bértoa, F. and Rama, J. (2021), 'Polarization: what do we know and what can we do about it?', *Frontiers in Political Science* **3**, 687695.

Casillas, C. J., Enns, P. K. and Wohlfarth, P. C. (2011), 'How public opinion constrains the us supreme court', *American Journal of Political Science* **55**(1), 74–88.

Castro-Montero, J. L., Alblas, E., Dyevre, A. and Lampach, N. (2018), 'The court of justice and treaty revision: A case of strategic leniency?', *European Union Politics* **19**(4), 570–596.

Curini, L. and Hino, A. (2012), 'Missing links in party-system polarization: How institutions and voters matter', *The Journal of Politics* **74**(2), 460–473.

Dalton, R. J. (2008), 'The quantity and the quality of party systems: Party system polarization, its measurement, and its consequences', *Comparative political studies* **41**(7), 899–920.

Devins, N. and Baum, L. (2017), 'Split definitive: How party polarization turned the supreme court into a partisan court', *The Supreme Court Review* **2016**(1), 301–365.

Devins, N. and Lewis, D. E. (2008), 'Not-so independent agencies: Party polarization and the limits of institutional design', *BUL rev.* **88**, 459.

Ditslear, C. and Baum, L. (2001), 'Selection of law clerks and polarization in the us supreme court', *The Journal of Politics* **63**(3), 869–885.

Dyevre, A. (2010), 'Unifying the field of comparative judicial politics: towards a general theory of judicial behaviour', *European Political Science Review* **2**(2), 297–327.

Epstein, L. and Knight, J. (1997), *The choices justices make*, Sage.

Epstein, L., Landes, W. M. and Posner, R. A. (2012), *The behavior of federal judges: a theoretical and empirical study of rational choice*, Harvard University Press.

Epstein, L., Martin, A. D., Quinn, K. M. and Segal, J. A. (2012), 705Ideology and the Study of Judicial Behavior, *in* 'Ideology, Psychology, and Law', Oxford University Press. **URL:** *https://doi.org/10.1093/acprof:oso/9780199737512.003.0027*

Epstein, L. and Weinshall, K. (2021), *The Strategic Analysis of Judicial Behavior: A Comparative Perspective*, Cambridge University Press.

Fiorina, M. P. and Abrams, S. J. (2008), 'Political polarization in the american public', *Annu. Rev. Polit. Sci.* **11**(1), 563–588.

Garoupa, N., Gili, M. and Pomar, F. G. (2021), 'Loyalty to the party or loyalty to the party leader: Evidence from the spanish constitutional court', *International Review of Law and Economics* **67**, 105999.

Garoupa, N. and Ginsburg, T. (2019), *Judicial reputation: a comparative theory*, University of Chicago Press.

Garoupa, N., Gomez-Pomar, F. and Grembi, V. (2013), 'Judging under political pressure: An empirical analysis of constitutional review voting in the spanish constitutional court', *The Journal of Law, Economics, & Organization* **29**(3), 513–534.

Ginsburg, T. and Huq, A. Z. (2020), *How to save a constitutional democracy*, University of Chicago Press.

Gray, T. R. (2019), 'Executive influence on state supreme court justices: Strategic deference in reappointment states', *The Journal of Law, Economics, and Organization* **35**(2), 422–453.

Hacker, J. S. and Pierson, P. (2015), 'Confronting asymmetric polarization', *Solutions to political polarization in America* **59**, 66.

Hanretty, C. (2012), 'Dissent in iberia: The ideal points of justices on the spanish and portuguese constitutional tribunals', *European Journal of Political Research* **51**(5), 671–692.

Harguindéguy, J.-B. (2024), 'The constitutional court and the judicialization of spanish politics', *European Politics and Society* **25**(3), 501–517.

Harguindéguy, J.-B., Sola Rodríguez, G. and Cruz Díaz, J. (2020), 'Between justice and politics: The role of the spanish constitutional court in the state of autonomies', *Territory, Politics, Governance* **8**(2), 222–240.

Hasen, R. L. (2019), 'Polarization and the judiciary', *Annual Review of Political Science* **22**, 261–276.

Heltzel, G. and Laurin, K. (2020), 'Polarization in america: Two possible futures', *Current opinion in behavioral sciences* **34**, 179–184.

Hetherington, M. J. (2001), 'Resurgent mass partisanship: The role of elite polarization', *American political science review* **95**(3), 619–631.

Hönnige, C. (2007), *Verfassungsgericht, Regierung und Opposition: Die vergleichende Analyse eines Spannungsdreiecks*, Springer.

Hönnige, C. (2009), 'The electoral connection: How the pivotal judge affects oppositional success at european constitutional courts', *West European Politics* **32**(5), 963–984.

Karol, D. (2015), *American Political Parties: Exceptional No More*, Cambridge University Press, p. 208–217.

Kritzer, H. M. (2018), 'Polarized justice: Changing patterns of decision-making in the federal courts', *Kan. JL & Pub. Pol'y* **28**, 309.

Larsson, O. and Naurin, D. (2016), 'Judicial independence and political uncertainty: how the risk of override affects the court of justice of the eu', *International Organization* **70**(2), 377–408.

Lee, F. E. (2015), 'How party polarization affects governance', *Annual review of political science* **18**(1), 261–282.

Lehmann, P., Franzmann, S., Al-Gaddooa, D., Burst, T., Ivanusch, C., Regel, S., Riethmüller, F., Volkens, A., Weßels, B. and Zehnter, L. (2024), 'The manifesto data collection', Manifesto Project (MRG / CMP / MARPOR), Version 2024a. https://doi.org/10.25522/manifesto.mpds.2024a.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2019), 'Consensus and dissent in the resolution of conflicts of competence by the spanish constitutional court: the role of federalism and ideology', *European journal of law and economics* **48**, 305–330.

Lozada, M. (2014), 'Us or them? social representations and imaginaries of the other in venezuela', *Papers on Social Representations* **23**(2), 21–1.

Magalhães, P. C. (2003), *The limits to judicialization: Legislative politics and constitutional review in the Iberian democracies*, The Ohio State University.

Martin, A. D. and Quinn, K. M. (2002), 'Dynamic ideal point estimation via markov chain monte carlo for the us supreme court, 1953–1999', *Political analysis* **10**(2), 134–153.

McCoy, J., Rahman, T. and Somer, M. (2018), 'Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities', *American Behavioral Scientist* **62**(1), 16–42.
URL: *https://doi.org/10.1177/0002764218759576*

McCoy, J. and Somer, M. (2021), 'Overcoming polarization', *Journal of Democracy* **32**(1), 6–21.

Miller, G. P. (2004), 'Bad judges', *Tex L. Rev.* **83**, 431.

Motyl, M. (2016), Liberals and conservatives are (geographically) dividing, *in* 'Social psychology of political polarization', Routledge, pp. 7–37.

Muñoz, L. and Rodilla, A. (2024), 'A game of tug-of-war: regional laws before the spanish constitutional court', *Territory, Politics, Governance* pp. 1–19.

Niemi, R. G., Weisberg, H. F. and Kimball, D. (2001), *Controversies in Voting Behavior*.

Nizza, U. (2021), 'Are polarized courts dangerous for litigation? evidence from french labor courts', *Journal of Institutional Economics* **17**(5), 799–820.

Persily, N. (2015), *Solutions to political polarization in America*, Cambridge University Press.

Poole, K. T. and Rosenthal, H. (2000), *Congress: A political-economic history of roll call voting*, Oxford University Press, USA.

Porat, I. (2023), 'Court polarization: A comparative perpective', *Hastings Int'l & Comp. L. Rev.* **46**, 3.

Rodilla, A. (2025), 'Not just about the ruling: When does the opposition challenge a law in the spanish constitutional court?'.

Rodríguez, I., Santamaría, D. and Miller, L. (2022), 'Electoral competition and partisan affective polarisation in spain', *South European Society and Politics* **27**(1), 27–50.

Rodríguez López, E., Harguindéguy, J.-B. P. and Sánchez Sánchez, A. (2019), 'The perfect storm? how to explain the rise of intergovernmental conflicts in spain?(1984–2014)', *Innovation: The European Journal of Social Science Research* **32**(2), 211–230.

Rogowski, J. C. and Sutherland, J. L. (2016), 'How ideology fuels affective polarization', *Political behavior* **38**, 485–508.

Schedler, A. (2023), 'Rethinking political polarization', *Political science quarterly* **138**(3), 335–359.

Segal, J. A. and Spaeth, H. J. (2002), *The Supreme Court and the attitudinal model revisited*, Cambridge University Press.

Segal, J. A., Westerland, C. and Lindquist, S. A. (2011), 'Congress, the supreme court, and judicial review: Testing a constitutional separation of powers model', *American Journal of Political Science* **55**(1), 89–104.

Sennewald, M. A., Manning, K. L. and Carp, R. A. (2017), 'The polarization of the judiciary', *Party Politics* **23**(6), 657–665.

Stephenson, M. C. (2009), 'Legal realism for economists', *Journal of Economic Perspectives* **23**(2), 191–211.

Sunstein, C. R., Schkade, D., Ellman, L. M. and Sawicki, A. (2007), *Are judges political?: an empirical analysis of the federal judiciary*, Rowman & Littlefield.

Tate, C. N. and Vallinder, T. (1997), *The global expansion of judicial power*, NYU Press.

Torcal, M. and Magalhães, P. C. (2022), 'Ideological extremism, perceived party system polarization, and support for democracy', *European Political Science Review* **14**(2), 188–205.

Vallbé, J.-J. (2024), The spanish constitutional court: The judicial politics of constitutional review and interpretation, *in* 'Constitutional Review in Western Europe', Routledge, pp. 241–263.

Vanberg, G. (1998), 'Abstract judicial review, legislative bargaining, and policy compromise', *Journal of theoretical politics* **10**(3), 299–326.

Vanberg, G. (2004), *The politics of constitutional review in Germany*, Cambridge University Press.

9 Appendix

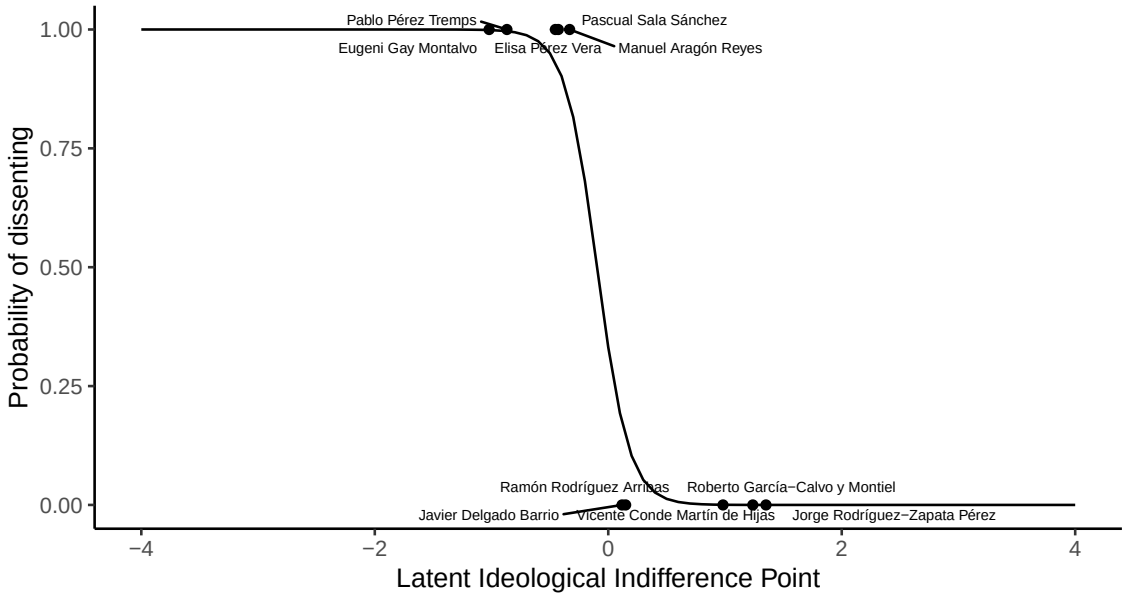

Figure A1: **Voting prediction against actual votes in *Order (Auto) 387/2007* (2007).** The item characteristic curve depicts the model prediction for the corresponding values of the ideal points. 1 indicates that the judge dissented. 0 indicates that the judge voted with the majority.

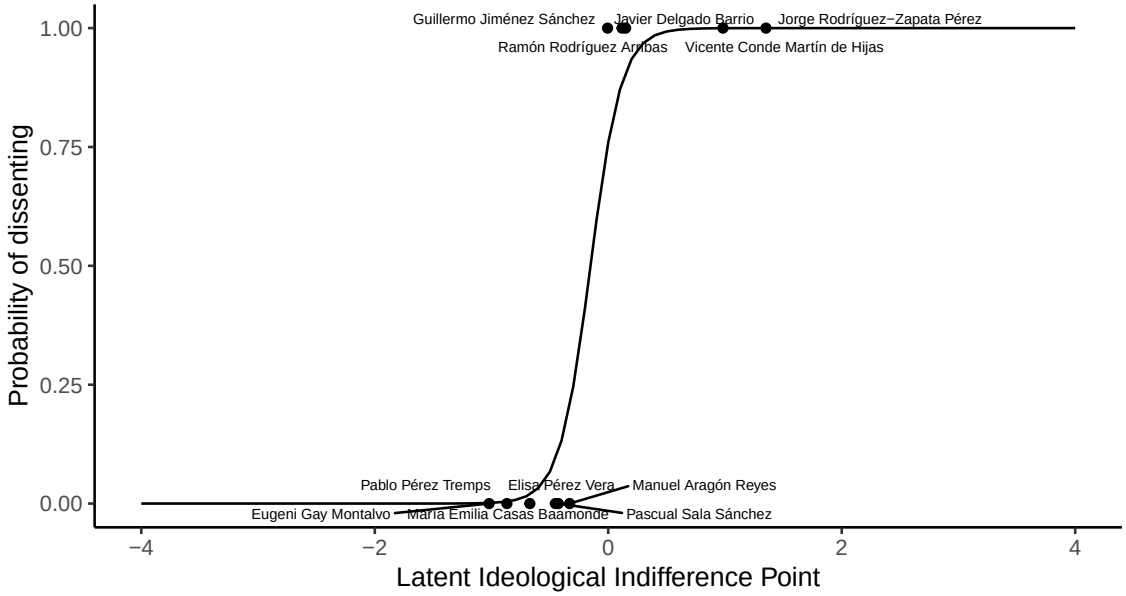

Figure A2: **Voting prediction against actual votes in *Decision 112/2010* (2010).** The item characteristic curve depicts the model prediction for the corresponding values of the ideal points. 1 indicates that the judge dissented. 0 indicates that the judge voted with the majority.

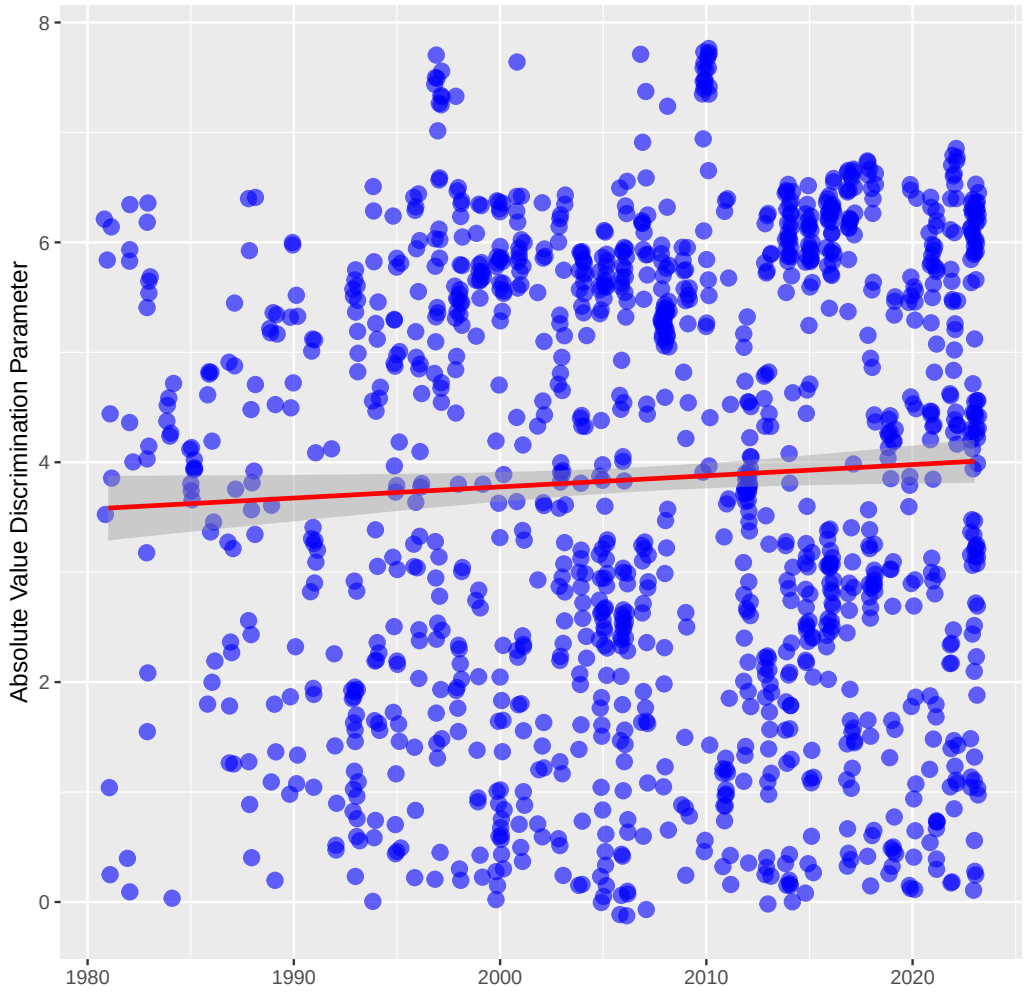

Figure A3: **Absolute β values over time.**

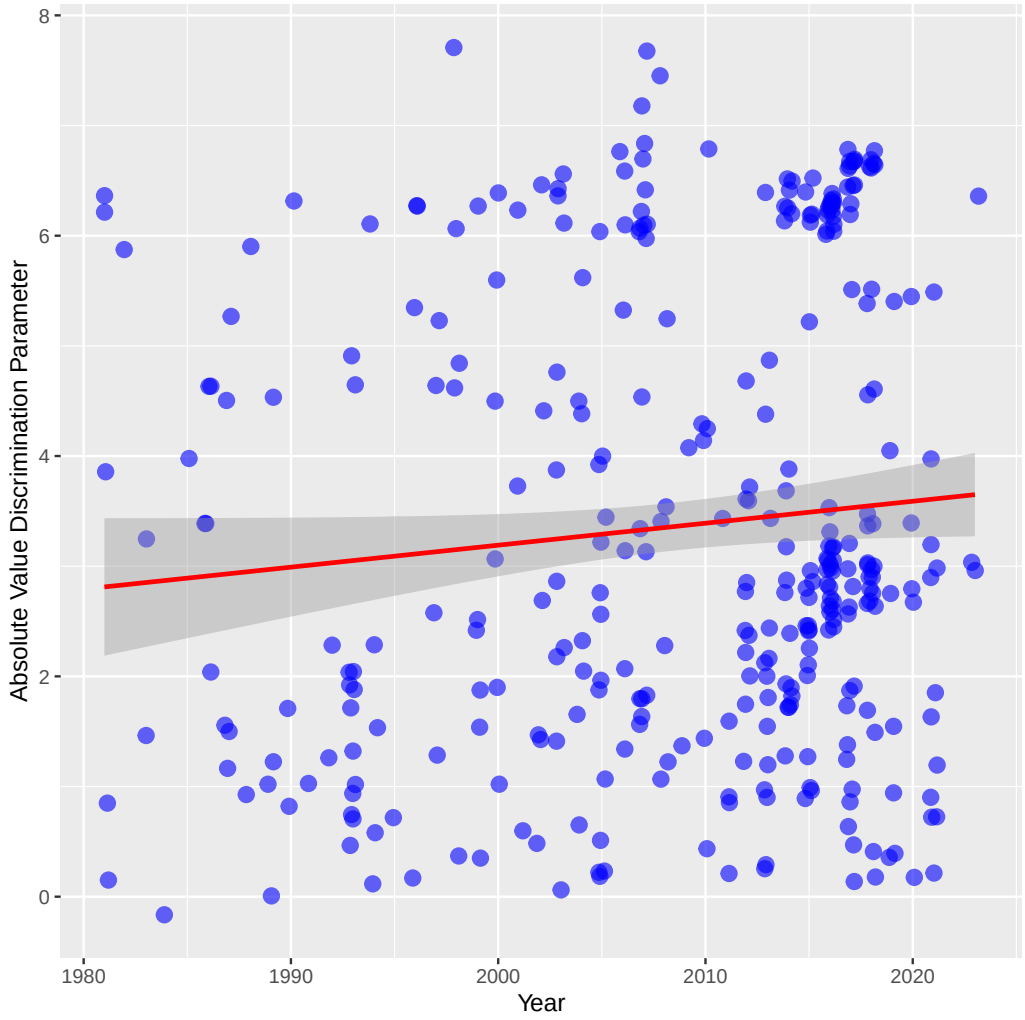

Figure A4: **Absolute β values over time, abstract review.**

Table A1

	Dependent variable:	
	Estimated Indifference Point	
	(1)	(2)
Party Manifesto Score	1.4509***	
	(0.2799)	
Joint PP/PSOE		−0.0598
		(0.5068)
PSOE		−0.7491***
		(0.1477)
Constant	−0.7484***	0.3619***
	(0.1529)	(0.1121)
Observations	57	70
R^2	0.3283	0.2817
Adjusted R^2	0.3160	0.2603
Residual Std. Error	1.7313 (df = 55)	1.7339 (df = 67)
F Statistic	26.8764*** (df = 1; 55)	13.1376*** (df = 2; 67)
Note:		*p<0.1; **p<0.05; ***p<0.01

Article 2

Not just about the ruling: When does the opposition challenge a law in the Spanish Constitutional Court?

1 Introduction

The spread of the Kelsenian courts in Western Europe introduced a European model of constitutional review, also known as the concentrated system, which contrasts with that of the American model (Vanberg 2004; Ginsburg 2007). The system is characterized by the establishment of a single court that holds exclusive jurisdiction over constitutional litigation. In the European model, these constitutional courts are empowered to conduct abstract judicial reviews (hereinafter, "abstract reviews"), allowing specific actors—those with *locus standi*[32]—to challenge a law in its entirety. Crucially, such courts can overturn a law before it has been implemented, independent of a specific legal dispute. If the challenge is well-founded, a law will be overturned, which explains why such court rulings have become a major focus of interest when analysing the circumstances under which abstract review proceedings are initiated.

The literature that applies game theory to the study of the separation of powers—hereinafter, referred to as "SOP models" (Rogers 2001; Staton 2008)—is of particular relevance for understanding the use of the abstract review. Such models examine the motivations of key actors and assess the associated costs and benefits faced when passing

[32]Or access to the court. A minimum number of MPs is required to have access to abstract review. Likewise, certain institutions, including territorial governments and the Ombudsman, have access to abstract review.

laws, challenging them, and making a ruling (Vanberg 1998*b*; Rogers 2001). SOP models specifically focus on the role of opposition parties in explaining the number of cases and emphasize that, as political competitors, the outcomes[33] of these cases directly influence the regulation of their preferred issues, as well as their political standing and legitimacy within the broader political system. They suggest, moreover, that opposition parties might be deterred from challenging laws by the potential costs of an unfavourable ruling (Sweet 1992; Epstein and Weinshall 2021); yet, in countries such as Spain, proceedings are frequently initiated even when the likelihood of overturning a law appears low. In this regard, recent qualitative research suggests that the judicialization of laws in the Spanish Constitutional Court may be partly politicized (Harguindéguy 2024), indicating that courts, in addition to functioning as legal arenas, may also serve as arenas for partisan competition.

The literature on judicialization (Dotan and Hofnung 2005; Aydın-Çakır 2014) and veto players (Tsebelis 2000; Brouard 2009) focuses on the political dimension of parties—their office-seeking and policy motivations—and offers alternative explanations for the determinants of abstract reviews. This line of research suggests that, in deciding whether to challenge a law, parties also consider immediate factors that have short-term consequences. While parties generally strategize by anticipating future rulings and their implications, elements associated with partisan competition—such as the proximity of elections or an issue's relevance to society—can significantly influence their decision. As socio-legal scholars stress, courts can construct narratives that impact the political arena (Vanhala 2012), thus allowing parties to use litigation strategically to exert political influence (McCann 1995). Here, in order to further our understanding of the use of abstract review, this paper examines whether additional short-term incentives related to partisan competition influence the decision of opposition parties to challenge laws in Spain.

While SOP models successfully explain the generally low levels of abstract review

[33]Refers to all decisions made during the judicial process, along with the associated political debates and their impact on public opinion.

cases in many countries, they struggle to account for increased judicialization[34]. This trend, although common in many countries (Ferejohn 2002), is particularly relevant in Spain, where the instrumentalization of justice and lawfare are becoming increasingly prominent in public debate (Harguindéguy 2024)—this is especially evident in high-profile cases such as the judicial process involving the state of alarm during the COVID-19 pandemic (Royal Decree 463/2020) (ibid.). This paper addresses this challenge with a two-fold contribution. First, it integrates SOP models with party behaviour literature by distinguishing between long- and short-term incentives and examining how each impacts the decision to challenge a law. Second, it fills a research gap by systematically examining the conditions under which Spain's opposition parties—specifically the main opposition party, which during the study period had exclusive access to the court and influence over judicial appointments—instigate abstract review proceedings against parliamentary laws. The findings demonstrate that short-term incentives related to partisan competition are more decisive in challenging a law than the probability of losing a case and the potential consequences of such a defeat.

The rest of this paper is organized as follows. The next section outlines the theoretical framework employed and develop the hypotheses I seek to test. Then, the specific traits of the Spanish Constitutional Court and the main government-opposition dynamics in Spain are described. I also reflect on why Spain makes a particularly interesting case in which to test my hypotheses. The subsequent sections present the data and methodology and the results. To conclude, the implications and generalizability of the results are discussed, along with potential lines of future research.

[34]The process is not strictly one of judicialization as the constitutional courts are technically considered to lie outside the judicial system; however, the literature tends to refer to legal challenges as judicialization because they involve placing a political conflict in the hands of judges (Aydın-Çakır 2014).

2 Theory and hypotheses

Abstract review engages laws and parties in a legal process. As such, the decision to resort to it has both a legal and political dimension, each associated with a distinct time horizon and with distinct structures as regards costs and incentives. This section explores sources of both costs and incentives with the potential to influence the decision to challenge a law. First, drawing on the theory of anticipatory calculus, long-term incentives are examined, with a focus on the court's ideological composition as a predictor of the ruling. Second, three variables capturing the short-term incentives of partisan competition are identified, and it is theorized how these incentives might impact the decision to initiate an abstract review.

2.1 Anticipatory calculus

SOP models are founded on the description of the legal framework and the identification of the motivations of the actors involved in abstract review, the information they manage, and the decisions they might make, while anticipating the potential behaviour of others (Rogers 2001; Staton 2008). Given the direct implications abstract review has for the legislative process, the focus is on the role of the government as the main legislator[35], the role of the main opposition party as the main challenger[36], and the role of the court. SOP models analyse costs and incentives and theorize about decision-making (Eskridge Jr 1991; Vanberg 1998*a*, 2001; Marks 2012; Rogers 2001). In explaining the decision to challenge a law, given that the court can overturn or legitimize it with its ruling, the focus is on the consequences of initiating such proceedings. Accordingly, the literature assumes

[35]While it is true that laws are passed by parliament, it is nevertheless the case that the party in government exerts a marked influence. This is especially true in the Spanish case, where the legislative process is heavily dominated by the political parties (Field and Gray 2019; Palau, Casas and Muñoz 2023).

[36]Opposition parties often have limited locus standi, as a minimum number of MPs is required to initiate certain actions. Moreover, their role in judicial appointments is similarly constrained by the need for a *supermajority*. In some instances, as was the case in Spain until the 11th legislature, only a single opposition party met these thresholds.

a strategic game between the parties and the court, where the aim of the abstract review is to secure a favourable ruling. Therefore, if we assume that parties hold different positions and have different interests and that challenging a law is an opportunity to overturn or modify it after its enactment: *Why are not all laws challenged?*

SOP models base their answer to this question on the potential costs of an adverse ruling (Dyevre 2010). A favourable ruling for the legislator—the government in this case—entails the acceptance of its preferred regulation of an issue and this could even hinder possible counter-regulations raised by the opposition. In addition to the failure of particular preferences and the success of others, constitutional courts have the power to confer the *imprimatur of legitimacy* (Murphy and Tanenhaus 1968), that is, their rulings serve to legitimize or delegitimize the legislation subject to challenge. Thus, parties can use the court rulings as authority arguments to reinforce their narratives—in other words, they are backed by a specialized institution that is a priori presumed impartial and independent. Similarly, parties may fear that the argument derived from an unfavourable ruling will weigh heavily against them (Vanberg 1998*a*). From the voters' point of view, it is not an opposition party telling them that their party is wrong; rather, it is a technical institution, a priori impartial and independent, that is telling them so.

Therefore, the likelihood of the opposition challenging a law depends on the predictions it makes regarding its chances of success and any resulting consequences (Vanberg 1998*a*; Sweet 1998; Sala 2014). Indeed, one of the main conclusions of this line of the literature is that the effects of an abstract review mechanism are primarily anticipatory (Sweet 1992; Vanberg 1998*a*, 2001; Manow and Burkhart 2007; Sala 2014; Engst 2021). Parties are assumed to be strategic actors; hence, the mere possibility that their decisions might be overturned prompts them to react in advance. To maximize their benefits, they seek to predict the outcome of the court's ruling and act accordingly—that is, they will challenge a law when their chances of winning appear greatest. In this regard, studies of

judicial behaviour have focused their attention on judges' decision-making and provide empirical evidence in relation to the variables that help predict rulings.

This literature has analysed how variables such as judges' career goals (Baum 2009; Black and Owens 2016), gender (Peresie 2004; Songer and Crews-Meyer 2000), race (Steffensmeier and Britt 2001), legal training (Berryessa, Dror and McCormack 2023), and seniority (Jacobi and Schweers 2017) influence their decision-making and, hence, court rulings. The strategic model of judicial decision-making (Epstein, Knight and Martin 2001) suggests that judicial decisions are shaped by both institutional and personal factors that align with judges' objectives and perspectives. However, since the formulation of the attitudinal model (Segal and Spaeth 1993), ideology has been singled out as being the most influential variable (Epstein et al. 2012). This conclusion has been tested, above all, in constitutional and supreme courts, their inherently political nature and the methods used for appointing their presiding judges making them perfect arenas in which to analyse this variable (e.g. Staton 2008; Garoupa, Gili and Pomar 2021*a*). Thus, parties dispose of information about the ideological preferences of the judges and this serves as a good predictor of their behaviour.

Consequently, the closer a judge is ideologically to the party in government[37], the less likely the opposition is to win an abstract review. Although the parties cannot predict with total accuracy the composition of the court when deciding whether they wish to challenge a law—as long as the duration of the process is variable and unpredictable—, the prevailing ideological majority at the time of the challenge is likely to impact the outcome of the case (Buchman 2007; Yates, Cann and Boyea 2013). An unfavourable court, moreover, increases the likelihood of an unfavourable ruling, which would activate the punishment mechanisms discussed above. This is particularly true in the Spanish case, where judicial

[37]Note, in countries with a strong party doctrine, such as Spain, the government exerts significant control over the legislative process. It also appoints two judges to the Constitutional Court and exercises considerable influence over those appointed by the two chambers.

behaviour has come under increasing scrutiny with various studies highlighting the impact of ideology on judicial decisions (see Magalhães 2003; López-Laborda, Rodrigo and Sanz-Arcega 2018, 2019; Garoupa, Gomez-Pomar and Grembi 2013; Garoupa, Gili and Pomar 2021*a*,*b*; López-Laborda, Rodrigo and Sanz-Arcega 2024). Additionally, prior research has shown that the central government is more likely to judicialize territorial laws in the Spanish Constitutional Court when the court is ideologically aligned with the governing party (Muñoz and Rodilla 2024), consistent with anticipatory calculus theory. Thus, based on the arguments exposed above, we should expect:

H1: *The closer the court is ideologically to the government, the less the likelihood of a law being challenged by the opposition.*

2.2 Incentives for partisan competition

The theories discussed above focus on the consequences of a potential court ruling in accounting for the initiation of an abstract review; however, these theories lack consistent empirical support (see Brouard 2009). Indeed, the increase in the judicialization of laws observed in several countries (e.g. Spain and France) challenges some of these conclusions (Brouard 2009; Hönnige 2011). In this regard, the costs of an unfavourable ruling seem to be relativized by the time, uncertainty and complexity of the judicial process. The amount of time involved in a judicial process is long and unpredictable. Indeed, by the time a ruling is made, the parties are likely to find themselves in a different institutional position with different costs and incentives. Likewise, the relevance voters attach to an issue can vary over time (Feld, Merrill and Grofman 2014) so that when the court issues its ruling it is likely that the issue has lost importance (see Vanberg 1998*a*). Additionally, the length of the proceedings and their highly technical nature serve as barriers of time, expertise, and effort as citizens strive to follow the process (Bowles 1995).

While the costs of a ruling may not, in many cases, deter challengers (as is suggested by anticipatory calculus theory), research into party behaviour and agenda-setting offers an alternative explanation that contributes to a better understanding of the determinants of the opposition's use of abstract review. It is stressed that attention and resources are not limitless and, so, political parties are constrained by bounded rationality, which limits their capacity to challenge all laws, given the time and resources available to them (Simon 2000; Jones 2002). This means parties have to prioritize and select the issues to which they wish to respond. In this regard, and as the agenda-setting literature has amply demonstrated, they do so based on institutional constraints and political incentives (Jones 2005). Thus, in the same way as parties prioritize certain discourses over others based on the political benefits they expect to accrue, they are also more likely to challenge a law when doing so offers greater political incentives.

Since an abstract review has an obvious political dimension, initiating proceedings offers considerable incentives at the narrative level. By challenging a law before the constitutional court, the opposition sends a clear message of staunch opposition to the government's position—indicating that the issue at hand is relevant enough to justify the financial and time commitments of bringing a case. Moreover, the court proceedings themselves imply a challenge to the law's constitutional validity, and indirectly questions the legality of the legislative proposal. Indeed, this perceived illegitimacy can be wielded discursively by the applicant to delegitimize the legislator's actions—in this case the party in government. In other words, an abstract review has the potential to influence partisan competition and, in line with this line of argument, is more likely to be invoked when the political impact of this narrative seems likely to be at its greatest. As such, below, three variables with the potential to incentivize the use of abstract review as an arena for partisan competition are examined in greater detail.

Media saliency of a law

The media serve as a conduit for information, influencing public and political actors alike in terms of their attention processes (Gava, Jaquet and Sciarini 2021). In this regard, the agenda-setting literature provides ample evidence that parties prioritize their reactions to those issues most salient in the media (Vliegenthart et al. 2016). From both policy-making and electoral perspectives, laws that receive media attention are more attractive to political parties than those that are largely ignored (Palau, Casas and Muñoz 2023). The media saliency of a given political issue signals its importance and alerts parties to potential areas of public concern (ibid.). Moreover, laws that capture media interest can be more rewarding electorally, as they are likely to resonate with voters and increase the party's visibility and appeal (Gava, Jaquet and Sciarini 2021). Therefore, party incentives to challenge laws that are salient in the media can be expected to increase.

Although greater political incentives are associated with challenging media-salient laws, a party's motivation remains unclear. The media agenda and the political agenda are closely related (Wolfe, Jones and Baumgartner 2013), although the influence the former has on the latter, and vice versa, is complex (ibid.). Indeed, the saliency of political issues can be both a cause and an effect of the political process (Palau, Casas and Muñoz 2023). Thus, an abstract review can serve either to increase the saliency of a law or to respond to one that is already salient—meaning, highly salient laws cannot be ignored precisely because of their prominence. So, by challenging a law that is receiving significant media attention, political parties may be seeking to keep the debate relevant or to highlight their position by sending a staunch message of opposition. However, whether the motivation is to increase visibility or to send out a message, political parties will be more inclined to instigate abstract reviews against these laws. That is, given that parties can benefit narratively from challenging a law but cannot challenge all laws, it is reasonable to expect more abstract review cases for media-salient laws because of the interests at stake.

H2: *The more media attention the law attracts before enactment, the greater the*

likelihood of its being challenged by the opposition.

Electoral cycle

In a democratic system, voters elect their representatives for the next legislature. Thus, as elections approach, the status quo of political power is subject to revision as the parties seek to maximize their institutional power (Schmidt 1996; Schwalbach 2022). That is, they increase their vote-seeking behaviour, the so-called *campaign concentration effect* (Jacob and Pollex 2022). In fact, it has been shown how electoral cycles have tended to increase the number of partisan attacks in the media in the case of Belgium, Croatia, and the United Kingdom (Poljak 2023). It has also been shown how parties emphasize certain issues over others (Gross and Chiru 2022) and how they change the tone of their political discourse (Schwalbach 2022). By the same measure, it is reasonable to expect that elections will also encourage the use of the courts to challenge laws so that parties can signal their positions and delegitimize those of the government. In this way, parties prioritize their vote-seeking behaviour through their available resources (Jacob and Pollex 2022), one of which is the abstract review.

Some authors point to the strong incentives on the part of the opposition to go to court when political power is at stake (Sweet 1992, 1998; Dotan and Hofnung 2005); however, empirical findings remain limited. In Turkey, for example, opposition parties increased the number of court challenges when they anticipated defeat at the ballot box (Aydın-Çakır 2014). Here, opposition parties are described as seeking to leverage the courts to gain greater visibility and undermine the government's legitimacy before an election. Similar dynamics have been observed in Israel, where analyses of MPs' behaviour in the Supreme Court also underscored the strategic use of legal challenges to enhance electoral visibility (Dotan and Hofnung 2005). According to socio-legal studies, the courts can act as alternative arenas for partisan competition (McCann 1995). Thus, if the costs of a potential ruling are minimal and elections incentivize opposition parties to signal their dissent and

to delegitimize the government, it is to be expected that:

H3: *The closer the next elections are, the greater the likelihood of a law being challenged by the opposition.*

Expected Competition

Partisan competition varies across contexts, with parties frequently adjusting their positions for strategic political gain rather than adhering strictly to policy preferences (Adams, Merrill III and Grofman 2005). Moreover, parties have been shown to increase their vote-seeking behaviour as the competition between parties becomes fiercer (Vachudova 2021). Partisan competition is closely linked to the fragmentation of the party system. Shifts in the distribution of parliamentary seats can alter institutional privileges, such as locus standi, which further fuels incentives for vote-seeking (Coleman 1995; Vachudova 2021). This dynamic of decreasing differences in the number of seats held is traditionally captured by the Taagepera and Laakso (1980) index of party-system fragmentation, although this measure remains static throughout the legislature, potentially limiting its sensitivity to expected changes in the number of seats, such as the impact of emerging parties. In this regard, research indicates that parties respond proactively to electoral polling data, reacting strategically long before these data are reflected in the parliamentary distribution of seats (Schwalbach 2022). Parties therefore seek to maximize their influence even before these changes are evident in parliament. Consequently, this variable concerns itself with predictions of partisan competition derived from the expected loss of electoral support.

Both the government and the main opposition party are significantly affected by this growing competition, especially in systems such as Spain's where they have traditionally held dominant positions. As their electoral support has declined, new parties have gained institutional influence and even a position from which to challenge this dominance. This shift is especially relevant in Spain, as for most of the period analysed here, only the

main opposition party held locus standi—this situation was threatened by the decline in their electoral support that marked what is known as the decline of the two-party system. Against this backdrop, the main opposition party can be expected to use all available means to maintain its influence, as new parties gain support. Accordingly, abstract review becomes a critical tool, enabling a party to highlight a specific issue, delegitimize the government and position itself as a 'useful opposition'. Insurance theory further supports this notion by linking heightened partisan competition with an increased number of challenges (Ramseyer 1994; Ginsburg 2003; Krehbiel 2022). Although empirical studies directly examining the relationship between expected competition and abstract review are scarce, these theoretical perspectives suggest that:

H4: *The more the main opposition party expects to lose electoral support to minority parties, the greater the likelihood of a law being challenged by the opposition,*

3 Abstract review design and dynamics in Spain

Spain, as a post-fascist state, adopted a centralized model of constitutional review to protect democracy from partisan overreach (Sweet 1992). The 1978 Constitution left many areas to be legislated (de Enterría 1982), making abstract review pivotal in shaping the legislative framework. Consequently, the parties' interest in controlling the Constitutional Court has been consistently evident in judicial appointments, which are made as follows: four by Congress of Deputies, four by the Senate, two by the government, and two by the General Council of the Judiciary[38]. The two main parties, the Spanish Socialist Workers' Party (PSOE) and the People's Party (PP), have thus been the only governing and main opposition parties with the power to appoint judges during the period of analysis (1996 - 2023). Consequently, they have shaped the court's composition to reflect their own interests. This influence in nominations has at times resulted in a politicized process,

[38]The General Council of the Judiciary is also party-appointed (art. 159.3 CE).

with controversies over appointees who have prior affiliations with nominating parties, foundations, or elected positions (Garoupa, Gili and Pomar 2021*a*; Harguindéguy 2024). Notable examples include former minister Juan Carlos Campo, party-affiliated magistrate Francisco Pérez de Los Cobos, and former prosecutor Antonio Narváez.

These legal-political connections and the politicization of the judiciary in Spain provide the country's political parties with an in-depth knowledge of the judges in the Constitutional Court's plenary. The appointment process and media scrutiny of negotiations further reveal judges' ideological leanings, making these attitudes publicly known. The Spanish case, moreover, has been widely studied in relation to judicial behaviour, yielding a wealth of information on judges' ideological preferences (Garoupa and Magalhães 2020; Vallbé 2024). Moreover, research has shown that judges' ideologies significantly influence their rulings (del Castillo Vera 1987; Magalhães 2003; Garoupa, Gomez-Pomar and Grembi 2013; Garoupa, Gili and Pomar 2021*a*; López-Laborda, Rodrigo and Sanz-Arcega 2018, 2019; Rodríguez López, Harguindéguy and Sánchez Sánchez 2019; Vallbé 2024; Garoupa, Gili and Pomar 2021*b*; López-Laborda, Rodrigo and Sanz-Arcega 2024). Accordingly, parties aim to maximize their influence over the judges ideologically closest to them, making the judges' ideology a reasonable predictor when exploring the parties' anticipatory calculus (Muñoz and Rodilla 2024). If this theory holds true, we should expect parties to challenge laws when they are in close ideological alignment with the court.

Conversely, budget bills are routinely challenged, along with certain laws passed when the court is ideologically aligned with the government. The paradigmatic case is the 2010 abortion law, illustrating how political context and partisan competition shaped party actions. Each time abortion policy is revisited in Spain, a media war involving parties and lobbies is unleashed. In 2010, despite lacking an ideologically favorauble court, conservatives challenged the Organic Law 2/2010, initiating a legal debate that spanned thirteen years before a final ruling upheld the law in 2023 (Ramos-Arroyo

and Díaz-Campo 2018; Chaqués-Bonafont, Palau and Baumgartner 2015). The case received substantial media attention, making it a matter of public opinion and enabling conservatives to challenge the government's regulation on this highly politicized issue. A similar situation occurred with the Organic Law 6/2006 on the Catalan statute of autonomy, which conservatives also challenged without a favorauble majority. Here, judicialization amplified the issue's politicization, though conservatives ultimately won. These cases, in contrast to anticipatory calculus theory, suggest that short-term partisan incentives significantly drive abstract review in Spain (Harguindéguy 2024). This judicialization of politics is a trend that has been documented for years in many European countries and the U.S. (Ferejohn 2002). However, in recent years, with cases such as the challenge to the government's measures to combat the COVID-19 pandemic, this trend has become particularly pronounced in Spain.

The Spanish Constitutional Court's role in politics has grown substantially in recent years, especially in high-profile cases that attract significant media attention (Harguindéguy 2024). This rise in influence aligns with intensifying partisan competition, as reflected in the increase in challenged laws—from 3.42% in the 6th legislature (March 1996-January 2000) to 11.2% in the 13th (May-September 2019) (see Figure 1)[39]. While multiple factors have contributed to this trend, a key driver appears to be the recent fragmentation of Spain's party system and the decline in traditional bipartisanship. Before 2016, PP and PSOE dominated, consolidating conservative and progressive votes, respectively (see Regel 2010; Alonso and Rovira Kaltwasser 2015). However, the emergence of parties after the 2008 crisis such as Podemos—after the 15M movement—and then Ciudadanos marked the start of their decline (Rama, Cordero and Zagórski 2021). As competition for votes has intensified, courts have become crucial tools for shaping public perception (Linos and Twist 2016). In this polarized context, court rulings may influence voter

[39]The period of analysis spans from Aznar's first legislature to the first coalition government since Spain's transition to democracy. After four years of PSOE dominance, including two consecutive absolute majorities, the conservatives came to power for the first time in 1996. After that, no party came to power more than twice in a row,

opinions and potentially influence election outcomes.Furthermore, the literature shows how the perception of a polarized Constitutional Court has increased in recent years, with the growing number of court interventions in high-profile cases and the instrumentalization of abstract review by political parties being the most important contributing factors (Harguindéguy 2024).

4 Data and Methodology

Dataset

To test these four hypotheses, I draw on an original database that includes all laws passed by the Spanish parliament between 1996 and 2023. This timeframe was chosen for two main reasons. First, the data were extracted using web-scraping techniques from the Official State Gazette (BOE) website, which limits the period to the years in which legislative documents were available in HTML format. In this way, I was able to comprehensively parse bill texts and extract detailed information about the legislative process. Second, from a theoretical perspective, legal scholars suggest that the early years of the Constitutional Court were predominantly shaped by territorial disputes related to the development of Spain's autonomous regions (Comella 2013). Thus, the greater prominence of the Court in national politics is expected to have emerged in the years following this period. Excluding these earlier years also circumvents the unique circumstances of Spain's transition to democracy. The resulting dataset includes 1,566 laws and incorporates information on their timing, court composition, parliamentary distribution of power, and legal characteristics.

Dependent variable

The variable 'challenged in court' is a binary variable that takes a value of 1 if a law was challenged by the main opposition party (either the PP or PSOE) and 0 otherwise. As discussed, I focus on the main opposition party because, during the period analysed, it

was the only party with access to the courts and to judicial appointments. The approach I adopt also facilitates the assumption of a link between the opposition and the judges they appointed. To identify this variable, all decisions made on abstract review cases during the specified time period were automatically collected from the Constitutional Court database (MAP-LEXTER). Thus, all laws brought to court were identified and coded as 1 to create this dependent variable. Additionally, since the 11th legislature (January-May 2016), an additional party gained locus standi, so I also ran the same model with a dependent variable that includes those cases filed by smaller opposition parties with more than 50 seats (primarily VOX during the 13th legislature[40] between May and September of 2019), to test the robustness of the dynamics found and to ensure that additional opposition parties with access to the Court did not change them (see Tables A1 & A3).

Court favorable to government

This variable captures parties' prospects for the outcome of a judicial process[41]. Information concerning the ideology of judges at the individual level was collected for all judges sitting on the Spanish Constitutional Court for the period of analysis. Information was gathered on their appointments, court positions, and known political affiliations. Moreover, all new appointments and removals of judges were traced to capture the shifting ideological composition of the Court. The variable is constructed using the difference between the number of judges proposed by the party in government (for appointment) and those proposed by the opposition party[42]. This proxy has been widely used in the literature to measure the ideological behaviour of judges (Garoupa and Ginsburg 2008; Carroll and Tiede 2011). Accordingly, the resulting variable is numerical, ranging from -8 to 7, with positive values indicating a majority of judges favorauble to the government and negative

[40]The 11th legislature had no legislative activity. Elections were repeated and the 12th legislature was governed by the PP conservatives, but they were ousted by a motion of confidence tabled by the progressive and regional parties.

[41]This variable captures parties' expectations regarding the judicial process, encompassing not only the final ruling but also preliminary decisions, where judges may favor their appointees.

[42]For judges elected by the General Council of the Judiciary, I consider whether there had been previous affiliation with a political party or sponsorship by a judicial union.

values indicating the opposite[43].

Media Saliency

To trace the media saliency of a law, a search for the name was conducted in all stories appearing in the two most widely read newspapers in Spain, i.e. El País and El Mundo. The variable captures all mentions of a bill from one year before it is presented until its promulgation. The coding protocol is based on the search for all possible bigrams (of the title of the law) connected to the word *law* and a manual review of the results to ensure the direct mention of the regulation in question. It captures the visibility that the regulation has had until the point when the opposition parties decide to challenge it. To do so, the Factiva database was employed, drawing upon the print versions of the two newspapers and calculating the average media pressure brought to bear between them (the sum of the number of articles divided by two). The variable was then standardized owing to the wide range of media attention. Additionally, the methodological appendix sets out a model with the two newspapers treated separately to show that the effect is not influenced by the publisher's ideology (see Table AT4).

Electoral Cycle

To measure the timing within the electoral cycle, a numerical variable was developed and standardized, ranging from one to four, representing the year of the legislature in which the law was enacted. The variable takes a value of 1 if the law was passed in the first year of the legislature, 2 for the second year, and so on, up to 4 for the final year. This measure was chosen because, although the government has the power to call early elections, opposition parties cannot predict whether or when this will happen. Therefore, it is reasonable to assume that political parties operate under the expectation that the legislature will last its full term of four years, as established by the constitution. To add robustness to the analysis, models that measure the electoral cycle based on the time

[43] A numerical variable allows periods of ideological balance in the composition of the court to be differentiated from periods with clear majorities that benefit one or the other party.

remaining until the next election are also provided (see Table A2 and A3). In the case of this alternative variable, 1 represents the year leading up to the next election, and 4 represents the farthest point from it, thereby accounting for shorter legislative periods, which have tended to concentrate following the decline of bipartisanship.

Expected Competition

Expected partisan competition is measured using the sum of the expected vote shares for the two main parties, based on standardized CIS polls[44]. The variable is then multiplied by -1 to invert the measure, ensuring that higher values indicate stronger incentives for partisan competition. While traditional measures of party system fragmentation reflect the number and relative strength of effective parties in parliament (Taagepera and Laakso 1980), this approach focuses on the likelihood that the two historically dominant parties in Spain could lose power to smaller emerging parties. This measure captures the decline in bipartisanship, which, as discussed, has had significant implications for party politics, particularly for those in opposition. Additionally, it accounts for variations in party behaviour during any given legislature. Parties react to evolving electoral expectations, especially when the prospect of institutional change is on the horizon. This variable, therefore, reflects how strategies are adjusted in response to such expectations.

Controls

In addition to the independent variables, I include three control variables: one of them taken from the previous literature reflecting key aspects of power distribution in the legislature, and two additional variables that capture important features of the laws under analysis. The first is *Type of Government*, a dummy variable that takes a value of 1 for majority governments and 0 for minority or coalition governments. As previous studies have shown, the type of government affects the opposition's ability to effectively engage with the legislative process (Chaqués-Bonafont, Palau and Baumgartner 2015; Mújica

[44]The CIS (Centro de Investigaciones Sociológicas) is a Spanish public research institution that conducts various types of social and political studies, including opinion polls and surveys.

and Sánchez-Cuenca 2006; Palau, Casas and Muñoz 2023). Research also indicates that majority governments are more likely to trigger judicial conflicts, especially at the territorial level (Harguindéguy, Rodríguez-López and Sánchez 2017). When a government relies on external support to pass legislation, it is often forced to negotiate, which may reduce its control over the legislative process. In the case of minority governments, for instance, lawmakers are more likely to be conscious of these limitations, leading to more moderate legislative stances to ensure broader support. Consequently, minority governments are expected to pass laws that receive greater acceptance from opposition parties, which could reduce the likelihood of these laws being challenged.

Second, the variable *Origin* is a dummy variable that takes a value of 0 if the law was proposed by the parliamentary group of the governing party (or directly by the Government in the case of decree-laws and legislative decrees) and 1 if it was proposed by an opposition parliamentary group. In the Spanish system, parliamentary bills can be introduced by opposition groups, and laws initiated by these parties are generally less likely to create conflict when they are passed, as they typically already enjoy some degree of support. Although the government can modify these bills during the legislative process using its majority, it is reasonable to expect greater consensus among opposition parties for laws they themselves proposed compared to those initiated by the government or its parliamentary group.

Third, the *Type of law* is a variable with four categories: ordinary law, organic law, decree-law, and legislative decree. Although all laws in this analysis were introduced via the ordinary legislative process, they originate from different legal frameworks, each offering varying degrees of legislative discretion and referring to specific areas of governance. Ordinary and organic laws are governed by Article 82 of the Spanish Constitution (CE) and are passed directly by parliament. Organic laws, which require a qualified majority, are reserved for matters involving fundamental rights and public freedoms, reflecting both

the importance of the issue and the need for broader political support. As a result, the interests at stake a priori make them less consensual than ordinary laws—although studies suggest that, in practice, the vote is not so divisive (Mújica and Sánchez-Cuenca 2006). In contrast, decree-laws are enacted by the government in cases of extraordinary and urgent necessity; however, they must be convalidated in parliament within 15 days or processed as an ordinary bill. Article 86 of the CE allows any matter to be addressed except those involving basic state institutions, rights and freedoms, the autonomous communities, and the general electoral law. Legislative decrees, however, are governed by Article 85 of the CE. They are also passed by the government but apply only to delegated areas of governance. Because decree-laws grant the government more discretion than other types of law, they tend to generate less consensus, while legislative decrees are generally more constrained by delegation and, as such, more likely to foster consensus. Thus, by including this variable I am able to control the type of issue being legislated on and its impact in legal and political terms.

Method

Overall, only 6% of the laws passed by the Spanish parliament were challenged during the period of analysis. Given the distribution of this dependent variable (see Figure 1), I draw on the literature concerning rare events and use Firth's logistic regression to estimate the model. This method helps minimize bias related to the large number of zeros in the data (Wang 2014). Additionally, all models account for robustness by including issue and year fixed effects. First, each issue involves distinct common interests and varying levels of politicization (see the coding scheme in Table A6). Therefore, to improve the accuracy of the results, I account for this with a manually coded variable based on the Comparative Agendas Project coding scheme (Jones et al. 2023). Finally, I also include year fixed effects to capture the influence of significant changes within specific years, ensuring that broader trends are not biasing the results.

5 Results

The data span eight legislative periods under four different Spanish prime ministers. In this period (1996-2023), the PSOE (shown in Figure 1) governed for about ten years, while the PP held power for fourteen. There were two majority governments (during the 6th and 10th legislative periods—1996 to 2000 and 2011 to 2015) and five minority governments. Parallel to this, the judicial majorities changed asymmetrically with this parliamentary geometry, given that court renewals occur every three years, and the negotiations may delay or advance the timing of these changes. Following the four consecutive governments of Prime Minister González (PSOE), the presence of conservative judges increased under Prime Minister Aznar (PP), leading to a period of balance in the court that did not clearly favour either side (six conservative and six progressive judges). However, greater variation is found in the court majority after the 2008 crisis, which also coincided with the increased brevity of mandates. As discussed, the overall judicialization rate seems to be low (6%). Nevertheless, Figure 1, which shows the data disaggregated by legislature, reflects a clear upward trend. A priori, this does not seem problematic for the functioning of the court, although the potential problems of the court depend mostly on its capacity and legitimacy—which in the Spanish context is limited and has led to modifications of the judicial rules to manage the overload (Harguindéguy 2024).

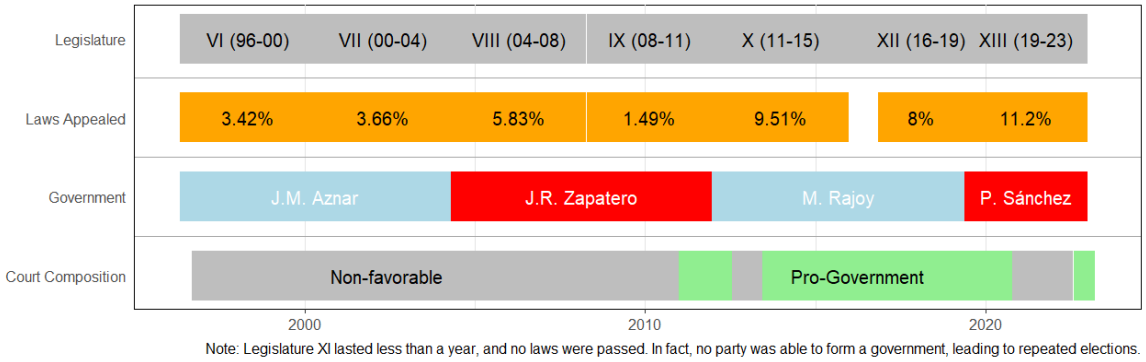

Figure 1: Descriptive statistics for the period of analysis (1996-2023).

According to SOP models, the costs incurred by an unfavourable ruling deter parties from initiating a challenge and, as such, act as a check on judicialization levels. However, the upward trend[45], together with important political changes in Spain, since the 2008 crisis (most notably the loss of power by the dominant parties) points to the possible influence of political variables in the decision to challenge a law. Model 1 tests the expectations of the anticipatory calculus theory and the influence of partisan competition. The variable *'Court favourable to government'* tests Hypothesis 1 while holding the rest of the variables constant. The coefficient in Table 1 presents a negative sign. In line with SOP models and the anticipatory calculus theory, this indicates that the opposition reduces the number of cases it brings when the court is favourable to the government. However, the coefficient is not statistically significant and, so, the null hypothesis cannot be rejected. Additionally, the results show that short-term costs and incentives derived from partisan competition are more important in influencing this decision. As shown in Table 1, all three independent variables capturing greater political interests for the opposition are statistically significant.

First, the results for the variable *'Media saliency'*, testing Hypothesis 2, show that it is the strongest predictor of litigation. Its p-value is closest to zero and it presents the highest coefficient, outcomes that hold also for both issue and year fixed effects (Models 2 and 3, respectively, in Table 1). The slope indicates that as the media saliency of a law prior to enactment increases, the likelihood of opposition parties challenging it also increases. The estimates suggest that the main opposition party prioritizes challenging laws with high media saliency due to the incentives this generates, and that this effect is even greater than that of the composition of the court—for ease of interpretation, regression coefficients are also plotted in Figure 2. Although opposition parties' real motivation is unclear, the results show that media saliency clearly captures the prioritization given by opposition parties to challenging laws (Jones and Wolfe 2010; De Vries and Giger 2014). As noted above, in

[45]This upward trend became particularly pronounced during the 10th legislature (2011-2015), when the government held an absolute majority. However, public opinion polls indicated growing support for minor parties, a shift that became increasingly evident as the next election approached.

	Model 1 Main Variables	**Model 2** Issue FE	**Model 3** Issue + Year FE
(Intercept)	-3.24***	-2.74***	-2.99**
	(0.24)	(0.31)	(1.06)
Court favorable to government	-0.06	-0.05	-0.07
	(0.04)	(0.043)	(0.087)
Media saliency	0.84***	0.72***	0.74***
	(0.14)	(0.13)	(0.13)
Electoral cycle	-0.38**	-0.41**	-0.52
	(0.14)	(0.14)	(0.30)
Expected competition	0.39**	0.38**	0.84**
	(0.12)	(0.12)	(0.35)
Type of government	0.37	0.44	0.72
	(0.27)	(0.26)	(1.45)
Origin	-0.30	-0.24	0.04
	(0.48)	(0.47)	(0.44)
Type of law: Legislative Decree	-1.38	-2.24	-2.45
	(1.48)	(1.61)	(1.49)
Type of law: Ordinary	-0.27	-0.29	-0.45
	(0.29)	(0.29)	(0.28)
Type of law: Organic	0.44	0.26	0.04
	(0.35)	(0.39)	(0.39)
Issue FE	No	Yes	Yes
Year FE	No	No	Yes
Observations	1564	1564	1564

Note: *p<0.05; **p<0.01; ***p<0.001. SE in parentheses.

Table 1: Firth's Logistic Regression Results. Main opposition party.

the case of both motivations—i.e. the desire to keep the law salient and the wish to avoid the costs of failing to show opposition to the government—the media saliency of laws seems to signal when abstract review is more politically advantageous.

The results for the variable capturing 'Expected competition', testing Hypothesis 4, show it to be another important predictor of the probability of a law being challenged. The coefficient shows that as the expected competition increases, the likelihood of going to

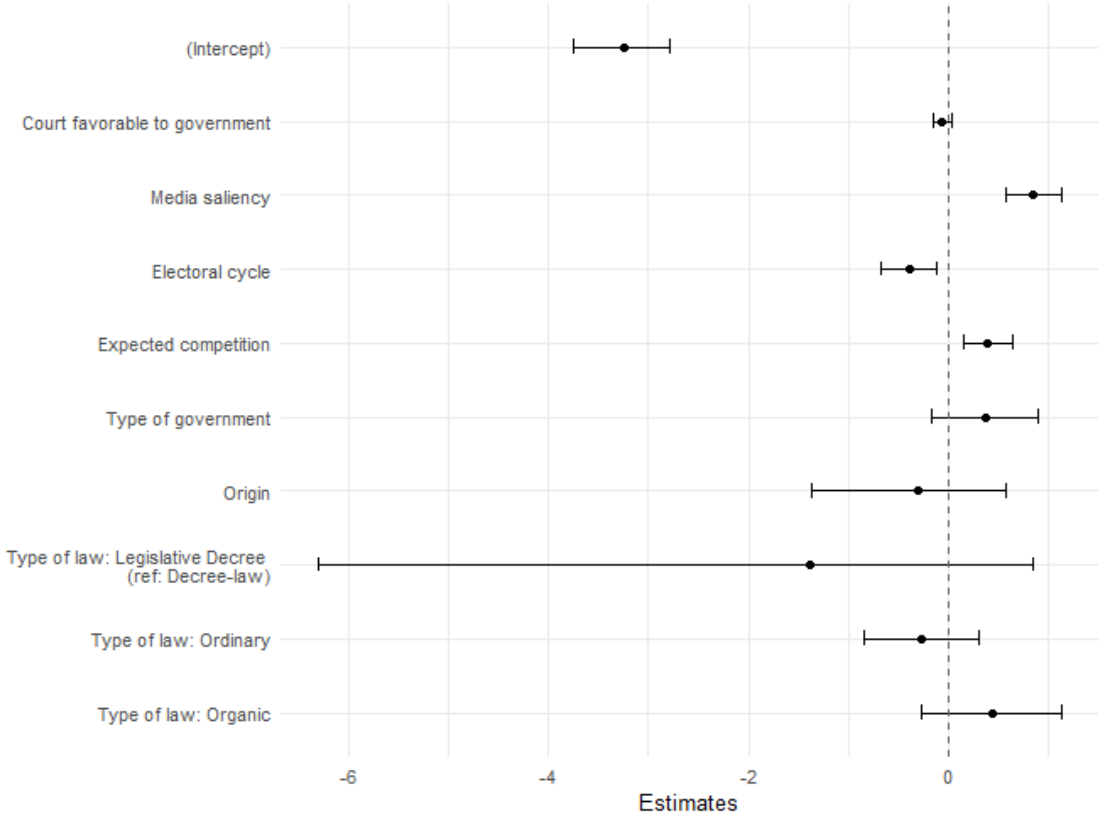

Figure 2: Effect of the independent variables. Coefficients with 95% Confidence intervals.

court also increases—even when we account for issue and year fixed effects. That is, as the expected sum of the top two parties is lower, the main opposition party increases its use of abstract review. When the main opposition party expects to lose electoral support to minority parties, it intensifies its court activity to signal its positions—as do the other opposition parties as shown in models Tables A1 and A3. Thus, Hypothesis 4 is confirmed. As other minority parties gain support and pose a threat of becoming the *'main opposition party'*[46], abstract review proceedings become a political tool to demonstrate its opposition to the government, i.e. a differential opposition to the other parties without locus standi (Cabezas Fernández, Pichel-Vázquez and Enguix Grau 2023).

[46]The opposition party most likely to take office.

The results for the variable measuring the influence of the electoral cycle (testing Hypothesis 3) are statistically significant—except when both issue and year fixed effects are included, where the p-value is close to 0.05 but not significant—and show that timing within the legislative term of office affects the likelihood of a challenge. However, contrary to expectations, the coefficient presents a negative sign, indicating that as elections approach, the main opposition party is less likely to challenge a law. This trend is consistent across the models in Tables A2 and A3, where the electoral cycle is measured differently, but the coefficients remain similar. While previous studies suggested that approaching elections might increase the number of cases for electoral motives (Aydın-Çakır 2014; Dotan and Hofnung 2005), the Spanish case appears to show the opposite: elections seem to act as a restraint on the opposition's use of abstract review. This finding, contrary to the expectations of SOP models, suggests that bringing cases close to elections may incur certain political costs, rather than offering incentives. This outcome is in line with two competing explanations in the judicialization literature (see Aydın-Çakır 2014): either the opposition strategically avoids the court as elections approach, or the government exercises self-restraint by passing less controversial laws.

As regards the first of these explanations, Spain effectively had a bipartisan system until 2016 (Lancaster 2017), with the main election-winning parties lying near the center of the voting spectrum (Cordero and Montero 2018). According to the median voter theorem, this results in policy convergence between the two primary parties as they seek the largest share of votes (Rowley 1984). In this context, only two parties had a chance of winning elections and held locus standi until the 11th legislature. Thus, the negative effect observed may reflect majority party behaviour, as challenging government policy could risk alienating centrist voters. The government likely avoids proposing highly controversial policies before elections if they are widely unpopular (Adams and Merrill 2006). Consequently, frequent challenges could signal a shift away from the political center, potentially resulting in vote loss and, hence, the costs.

The second explanation centres on government strategy. The government decides not only if, but also how and when, to introduce laws, often passing more contentious laws earlier on in a legislature, which could explain why opposition parties tend to challenge more laws in years further away from those of an election (Padovano, Petrarca et al. 2012). I test these competing explanations by analysing the electoral cycle's relationship to media pressure, a proxy for public reaction to laws. The distribution of laws passed per year is shown in Figure A1, which suggests that there is no bias on the government's part, as the proportion of laws passed in the first and last years of the legislature are the same. I then run an OLS test to determine whether the government passes more media-salient laws at the beginning of the legislature. A negative, statistically significant relationship would support the government behaviour hypothesis, yet Table A5 shows no significant relationship between media saliency of laws and timing within the legislature. This supports the view that the main opposition party strategically refrains from challenges as elections approach in an effort to attract the governing party's voters. Examining these dynamics as party system fragmentation grows, especially with populist parties gaining parliamentary rights, should yield valuable insights.

As noted earlier, the decline in bipartisanship in Spain led to the emergence of new populist parties, including Podemos and, later, VOX. In legislatures 11, 12, and 13, at least one of these parties gained *locus standi*. To account for this, I run an additional Firth's logistic regression model (see Tables A1 and A3 in the appendix), which includes the cases brought primarily by VOX (as Podemos was part of the coalition government, their challenges were minimal by comparison). The goal of this model is twofold. First, it aims to examine whether the entry of these new parties has affected the established dynamics as regards abstract review. Specifically, it seeks to understand how new parties behave in this arena and whether their presence has altered levels of judicialization. Second, the model adds robustness to the analysis by acknowledging that, as additional parties gain *locus*

standi and the capacity to influence judicial appointments, their behaviour in relation to abstract review might change.

For the dependent variable, here, I measured favourable judges in terms of the percentage of conservatives, i.e. those most closely aligned with VOX's ideology. The results are similar to those obtained for the model in Table 1, which included only cases brought by the main opposition party, though there are a number of minor differences that are worth mentioning. For example, the p-value for the ideological composition of the court is slightly lower (albeit still not significant), suggesting that these new parties are less concerned about the court's rulings. However, the coefficients for media saliency and expected competition are slightly higher, indicating that short-term incentives are more critical when these additional parties are included. Although preliminary, these findings are in line with those reported in the extant literature, suggesting that populist parties use the media strategically for partisan purposes (Baugut and Neumann 2019) and seek to leverage the courts to delegitimize the government (Egelhofer, Aaldering and Lecheler 2021). These trends extend beyond the Spanish case, reflecting a broader phenomenon whereby radical parties gain institutional power and access to the courts (see Wondreys and Mudde 2022). However, further research is needed to gain better insights into the impact of these new parties and their dynamics.

6 Discussion

The results reported here show that the functioning of abstract review in Spain depends largely on the decision-making of parties and their incentives for partisan competition. I show that opposition parties, when deciding whether to challenge a law, do not simply contemplate the legal dimension of such an action and its potential consequences. Beyond the potential costs of an unfavourable ruling, parties have to address immediate political decisions that might generate short-term cost incentives. In this regard, I have shown

that the salience of a bill in the media and the potential loss of power of the main parties incentivise the decision to challenge a law. The electoral cycle also affects the decision to challenge; however, in the Spanish case it is the beginning of a legislature that is the most contentious period in terms of abstract reviews brought before the Constitutional Court. Although this result contracts the expectations of the extant literature, it also contributes to a better understanding of the role of abstract review in the legislative process in Spain.

The study highlights the influential role of media saliency in shaping opposition strategies and enhancing party visibility; moreover, the recent decline in bipartisan dominance in Spain has served to amplify this effect. With smaller, emerging parties competing for power, abstract review has become a strategic tool for the main opposition party to position itself as an effective "government watchdog". This heightened partisan competition, combined with increased media saliency, shifts opposition priorities from merely seeking to obstruct legislation to actively framing government decisions as contentious or detrimental. As a result, political incentives influence opposition decisions to challenge laws, offering them a public platform to critique government policy while maximizing electoral gain.

The findings also underline the importance of Spain's institutional context, where a history of bipartisan dominance has shifted with the recent emergence of smaller parties. This transformation suggests that, as Spain's distribution of power becomes more fragmented, opposition parties are becoming increasingly strategic in their leveraging of abstract review, not only as a check on government power but also as a tool for positioning themselves publicly. The structure of the Constitutional Court and the process of politicization in Spain allow opposition parties to consider not only the substance of a law but also the potential receptivity of the Court; however this does not have a direct influence on the behaviour of the opposition. The political incentives to go to court therefore appear to outweigh the potential costs. Moreover, the influence reported herein of the electoral

cycle also points to the marked influence of the political context and political dynamics on the functioning of abstract review. As such, future research needs to focus on the legislator and question whether it acts strategically with respect to the possibility of having its laws overturned.

This study contributes to the fields of both party behaviour and judicial politics by bridging the gap between them in its efforts to further understanding of abstract review. Traditionally, party strategies and judicial challenges have been studied independently, with little consideration for how they might interact. This study goes some way to reframing abstract review as the final phase in the legislative process. While the latter is deemed to be formally complete upon enactment, the power of opposition parties to challenge laws in the Constitutional Court constitutes a new strategic tool, which enables the legislative debate to be extended beyond parliament. Moreover, this extended framework provides a more nuanced view of abstract review, showing that challenging a law is not solely a matter of legality but also one of partisan competition. Overall, this study has been able to advance existing theoretical models by illustrating how judicial processes serve as extensions of political strategy in an increasingly competitive environment.

The Spanish case offers valuable insights with respect to two of its main dimensions that appear to be generalizable across Europe. First, the increased partisan competition displayed by Spain's party system is part of a broader European trend, often linked to the rise of right-wing populism, as experienced here with VOX (Rydgren 2017). Spain's evolving parliamentary dynamics provide comparative lessons for other countries with abstract review systems in which new parties are intensifying partisan competition. Understanding how such fragmentation influences constitutional review in Spain should help shed light on similar processes across European nations with Kelnesian courts. Second, while the politicization of abstract review is particularly pronounced in Spain (Harguindéguy, Sola Rodríguez and Cruz Díaz 2020), it is by no means unique. Comparative studies have

drawn parallels with countries such as Austria, Belgium, and Germany, who share similar judicial review systems and appointment procedures (Magalhães 2003; Hanretty 2012; De Visser 2013; Engst 2021). This should mean that the theoretical framework exploited in this study has broader applicability across countries with Kelnesian courts.

This study, while offering valuable insights, presents several limitations that, nevertheless, point to new directions for future research. First, although the study reveals a certain instrumentalization of the court, the motivations and strategies of political parties are not easily explored in depth. Future research needs to be able to measure opposition party preferences with regard to specific legislative formulations so as to clarify their policy positions and any deviations from them, i.e. in the words of Garoupa and Ginsburg (2011), in order to distinguish between sincere signaling and mere opportunism. Second, comparative studies focused on the electoral cycle would further our understanding of its role in abstract review and whether its influence is context dependent. Additionally, as discussed, future research might usefully explore how governments react to court decisions. Indeed, SOP models suggest that governments strategically anticipate court rulings during the legislative process, which could necessitate a more cautious interpretation of certain findings. Addressing these limitations would undoubtedly enhance the study's relevance, broadening its implications for understanding partisan competition and abstract review in Spain and other countries with European judicial review systems.

Finally, the findings of this study have significant implications for broader democratic processes, particularly as regards the principles of checks and balances, representation, and political accountability. As incentives for partisan competition grow, the number of abstract review cases being brought increases, potentially leading to the overexposure of the court and even to its overburdening. Such overexposure could undermine the court's legitimacy and contribute to the expansion of judicial power, which directly impacts the competences of the legislator and shapes citizens' responses to court rulings. Furthermore,

the current period of political instability in Western European democracies—marked by parliamentary fragmentation and rising polarization—suggests an increase in partisan competition, which may place additional strain on courts. However, these dynamics depend on the behaviour of all parties involved in the abstract review process, and more research is needed to understand the implications of their actions.

References

Adams, J. F., Merrill III, S. and Grofman, B. (2005), *A unified theory of party competition: A cross-national analysis integrating spatial and behavioral factors*, Cambridge University Press.

Adams, J. and Merrill, S. (2006), 'Why small, centrist third parties motivate policy divergence by major parties', *American Political Science Review* **100**(3), 403–417.

Alonso, S. and Rovira Kaltwasser, C. (2015), 'Spain: No country for the populist radical right?', *South European Society and Politics* **20**(1), 21–45.

Aydın-Çakır, A. (2014), 'Judicialization of politics by elected politicians: The theory of strategic litigation', *Political Research Quarterly* **67**(3), 489–503.

Baugut, P. and Neumann, K. (2019), 'How right-wing extremists use and perceive news media', *Journalism & Mass Communication Quarterly* **96**(3), 696–720.

Baum, L. (2009), *Judges and their audiences: A perspective on judicial behavior*, Princeton University Press.

Berryessa, C. M., Dror, I. E. and McCormack, C. J. B. (2023), 'Prosecuting from the bench? examining sources of pro-prosecution bias in judges', *Legal and criminological psychology* **28**(1), 1–14.

Black, R. C. and Owens, R. J. (2016), 'Courting the president: how circuit court judges alter their behavior for promotion to the supreme court', *American Journal of Political Science* **60**(1), 30–43.

Bowles, H. (1995), 'Why are newspaper law reports so hard to understand?', *English for Specific Purposes* **14**(3), 201–222.

Brouard, S. (2009), 'The politics of constitutional veto in france: constitutional council, legislative majority and electoral competition', *West European Politics* **32**(2), 384–403.

Buchman, J. (2007), 'The effects of ideology on federal trial judges' decisions to admit scientific expert testimony', *American Politics Research* **35**(5), 671–693.

Cabezas Fernández, M., Pichel-Vázquez, A. and Enguix Grau, B. (2023), 'The "anti-gender" frames and the spanish (far) right. focus groups with vox and partido popular voters', *Revista de Estudios Sociales* **85**(6), 109–114.

Carroll, R. and Tiede, L. (2011), 'Judicial behavior on the chilean constitutional tribunal', *Journal of Empirical Legal Studies* **8**(4), 856–877.

Chaqués-Bonafont, L., Palau, A. M. and Baumgartner, F. R. (2015), Framing the abortion debate, *in* 'Agenda dynamics in Spain', Springer, pp. 199–226.

Coleman, S. (1995), 'Dynamics in the fragmentation of political party systems', *Quality and Quantity* **29**(2), 141–155.

Comella, V. F. (2013), *The constitution of Spain: a contextual analysis*, Bloomsbury Publishing.

Cordero, G. and Montero, J. R. (2018), Against bipartyism, towards dealignment? the 2014 european election in spain, *in* 'Still Second Order or Critical Contests? The 2014 European Parliament Elections in Southern Europe', Routledge, pp. 85–108.

de Enterría, E. G. (1982), 'La significación de las competencias exclusivas del estado en el sistema autonómico', *Revista española de derecho constitucional* (5), 63–93.

De Visser, M. (2013), *Constitutional review in Europe: A comparative analysis*, Bloomsbury Publishing.

De Vries, C. E. and Giger, N. (2014), 'Holding governments accountable? individual heterogeneity in performance voting', *European Journal of Political Research* **53**(2), 345–362.

del Castillo Vera, P. (1987), 'Notas para el estudio del comportamiento judicial. el caso del tribunal constitucional', *Revista Española de Derecho Constitucional* (20), 177–191.

Dotan, Y. and Hofnung, M. (2005), 'Legal defeats—political wins: why do elected representatives go to court?', *Comparative Political Studies* **38**(1), 75–103.

Dyevre, A. (2010), 'Unifying the field of comparative judicial politics: towards a general theory of judicial behaviour', *European Political Science Review* **2**(2), 297–327.

Egelhofer, J. L., Aaldering, L. and Lecheler, S. (2021), 'Delegitimizing the media? analyzing politicians' media criticism on social media', *Journal of Language and Politics* **20**(5), 653–675.

Engst, B. G. (2021), *The Two Faces of Judicial Power*, Oxford Univ. Press.

Epstein, L., Knight, J. and Martin, A. D. (2001), 'The supreme court as a strategic national policymaker', *EMoRY Lj* **50**, 583.

Epstein, L., Martin, A. D., Quinn, K. M. and Segal, J. A. (2012), Ideology and the study of judicial behavior.

Epstein, L. and Weinshall, K. (2021), *The Strategic Analysis of Judicial Behavior: A Comparative Perspective*, Cambridge University Press.

Eskridge Jr, W. N. (1991), 'Overriding supreme court statutory interpretation decisions', *Yale Law Journal* pp. 331–455.

Feld, S. L., Merrill, S. and Grofman, B. (2014), 'Modeling the effects of changing issue salience in two-party competition', *Public Choice* **158**, 465–482.

Ferejohn, J. (2002), 'Judicializing politics, politicizing law', *Law and contemporary problems* **65**(3), 41–68.

Field, B. N. and Gray, C. (2019), The spanish parliament in context, *in* 'The Iberian Legislatures in Comparative Perspective', Routledge, pp. 25–46.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*a*), 'Loyalty to the party or loyalty to the party leader: Evidence from the spanish constitutional court', *International Review of Law and Economics* **67**, 105999.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*b*), 'Mixed judicial selection and constitutional review: Evidence from spain', *European Constitutional Law Review* **17**(2), 287–313.

Garoupa, N. and Ginsburg, T. (2008), 'Judicial audiences and reputation: perspectives from comparative law', *Colum. J. Transnat'l L.* **47**(3), 451.

Garoupa, N. and Ginsburg, T. (2011), 'Building reputation in constitutional courts: Political and judicial audiences', *Ariz. J. Int'l & Comp. L.* **28**(3), 539.

Garoupa, N., Gomez-Pomar, F. and Grembi, V. (2013), 'Judging under political pressure: An empirical analysis of constitutional review voting in the spanish constitutional court', *The Journal of Law, Economics, & Organization* **29**(3), 513–534.

Garoupa, N. and Magalhães, P. C. (2020), Judicial politics: The constitutional court, *in* D. Muro and I. Lago-Peñas, eds, 'The Oxford Handbook of Spanish Politics', Oxford University Press, Oxford, pp. 258–275.

Gava, R., Jaquet, J. M. and Sciarini, P. (2021), 'Legislating or rubber-stamping? assessing parliament's influence on law-making with text reuse', *European Journal of Political Research* **60**(1), 175–198.

Ginsburg, T. (2003), *Judicial review in new democracies: Constitutional courts in Asian cases*, Cambridge University Press.

Ginsburg, T. (2007), The global spread of constitutional review, *in* K. E. Whittington and R. D. Kelemen, eds, 'Oxford Handbook of Law and Politics', Oxford University Press, Oxford, pp. 81–94.

Gross, M. and Chiru, M. (2022), 'Time is on my side? the temporal proximity between elections and parties' salience strategies', *European Political Science Review* **14**(4), 482–497.

Hanretty, C. (2012), 'Dissent in iberia: The ideal points of justices on the spanish and portuguese constitutional tribunals', *European Journal of Political Research* **51**(5), 671–692.

Harguindéguy, J.-B. (2024), 'The constitutional court and the judicialization of spanish politics', *European Politics and Society* **25**(3), 501–517.

Harguindéguy, J.-B., Rodríguez-López, E. and Sánchez, A. (2017), 'Los conflictos intergubernamentales entre españa y cataluña: Inter-governmental conflicts between spain and catalonia', *Reis: Revista Española de Investigaciones Sociológicas* pp. 79–96.

Harguindéguy, J.-B., Sola Rodríguez, G. and Cruz Díaz, J. (2020), 'Between justice and politics: The role of the spanish constitutional court in the state of autonomies', *Territory, Politics, Governance* **8**(2), 222–240.

Hönnige, C. (2011), 'Beyond judicialization: why we need more comparative research about constitutional courts', *European Political Science* **10**, 346–358.

Jacob, M. S. and Pollex, J. (2022), 'Party fragmentation and campaign spending: A subnational analysis of the german party system', *Party Politics* **28**(4), 770–782.

Jacobi, T. and Schweers, D. (2017), 'Justice, interrupted: The effect of gender, ideology, and seniority at supreme court oral arguments', *Va. L. Rev.* **103**(7), 1379–1486.

Jones, B. D. (2002), 'Bounded rationality and public policy: Herbert a. simon and the decisional foundation of collective choice', *Policy Sciences* **35**(3), 269–284.

Jones, B. D. (2005), *The politics of attention: How government prioritizes problems*, University of Chicago Press.

Jones, B. D., Baumgartner, F. R., Theriault, S. M., Epp, D. A., Lee, C., Sullivan, M. E. and Cassella, C. (2023), 'Policy agendas project: codebook', *Comparative Agendas Project. URL: https://www. comparativeagendas. net/us* .

Jones, B. D. and Wolfe, M. (2010), Public policy and the mass media: An information processing approach, *in* S. Koch-Baumgarten and K. Voltmer, eds, 'Public Policy and the Media: The Interplay of Mass Communication and Political Decision Making', Routledge, New York, NY, pp. 17–43.

Krehbiel, J. (2022), 'The politics of panel systems: political insurance and the organization of high courts', *European Political Science* **21**(4), 522–536.

Lancaster, T. D. (2017), 'The spanish general elections of 2015 and 2016: a new stage in democratic politics?', *West European Politics* **40**(4), 919–937.

Linos, K. and Twist, K. (2016), 'The supreme court, the media, and public opinion: Comparing experimental and observational methods', *The Journal of Legal Studies* **45**(2), 223–254.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2018), 'Is the spanish constitutional court an instrument of the central government against the autonomous communities?', *Constitutional Political Economy* **29**, 317–337.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2019), 'Consensus and dissent in the resolution of conflicts of competence by the spanish constitutional court: the role of federalism and ideology', *European journal of law and economics* **48**, 305–330.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2024), 'No war of courts in the protection of fundamental rights: The case of amparo appeals in spain', *International Review of Law and Economics* **79**, 106212.

Magalhães, P. C. (2003), *The limits to judicialization: Legislative politics and constitutional review in the Iberian democracies*, The Ohio State University.

Manow, P. and Burkhart, S. (2007), 'Legislative self-restraint under divided government in germany, 1976–2002', *Legislative Studies Quarterly* **32**(2), 167–191.

Marks, B. A. (2012), 'A model of judicial influence on congressional policy making: Grove city college v. bell', *The Journal of Law, Economics, and Organization* **31**(4), 843–875.

McCann, M. W. (1995), Rights at work: pay equity reform and the politics of legal mobilization, *in* 'The Legal Studies Forum', Vol. 19, HeinOnline, p. 95.

Mújica, A. and Sánchez-Cuenca, I. (2006), 'Consensus and parliamentary opposition: The case of spain', *Government and opposition* **41**(1), 86–108.

Muñoz, L. and Rodilla, A. (2024), 'A game of tug-of-war: regional laws before the spanish constitutional court', *Territory, Politics, Governance* pp. 1–19.

Murphy, W. F. and Tanenhaus, J. (1968), 'Public opinion and the united states supreme court: Mapping of some prerequisites for court legitimation of regime changes', *Law & Society Review* **2**(3), 357–384.

Padovano, F., Petrarca, I. et al. (2012), 'A theory of cyclical production of laws and decrees', *Centre Condorcet for Political Economy, Working Paper* (9).

Palau, A. M., Casas, A. and Muñoz, L. (2023), 'To amend or not to amend: Under what circumstances do spanish legislators propose amendments to executive bills?', *West European Politics* . Advance online publication.
URL: *https://doi.org/10.1080/01402382.2023.2241253*

Peresie, J. L. (2004), 'Female judges matter: Gender and collegial decisionmaking in the federal appellate courts', *Yale LJ* **114**, 1759.

Poljak, Ž. (2023), 'Parties' attack behaviour in parliaments: Who attacks whom and when', *European Journal of Political Research* **62**(3), 903–923.

Rama, J., Cordero, G. and Zagórski, P. (2021), 'Three is a crowd? podemos, ciudadanos, and vox: The end of bipartisanship in spain', *Frontiers in political science* **3**(688130).

Ramos-Arroyo, A. and Díaz-Campo, J. (2018), 'El uso del framing en el tratamiento político y mediático de las leyes del aborto en españa', *Espacios* **39**(22), 16–39.

Ramseyer, J. M. (1994), 'The puzzling (in) dependence of courts: A comparative approach', *The Journal of Legal Studies* **23**(2), 721–747.

Regel, S. (2010), The manifesto project database: A large-scale political text access and analysis database, *in* 'Workshop From Text to Political Positions', Amsterdam, the Netherlands. Presented at Workshop From Text to Political Positions.

Rodríguez López, E., Harguindéguy, J.-B. P. and Sánchez Sánchez, A. (2019), 'The perfect storm? how to explain the rise of intergovernmental conflicts in spain?(1984–2014)', *Innovation: The European Journal of Social Science Research* **32**(2), 211–230.

Rogers, J. R. (2001), 'Information and judicial review: A signaling game of legislative-judicial interaction', *American Journal of Political Science* **45**(1), 84–99.

Rowley, C. K. (1984), 'The relevance of the median voter theorem', *Zeitschrift für die gesamte Staatswissenschaft/Journal of Institutional and Theoretical Economics (JITE)* **140**(1), 104–126.

Rydgren, J. (2017), 'Radical right-wing parties in europe: What's populism got to do with it?', *Journal of Language and Politics* **16**(4), 485–496.

Sala, G. (2014), 'Can courts make federalism work? a game theory approach to court-induced compliance and defection in federal systems', *Economies* **2**(4), 193–217.

Schmidt, M. G. (1996), 'When parties matter: A review of the possibilities and limits of partisan influence on public policy', *European journal of political research* **30**(2), 155–183.

Schwalbach, J. (2022), 'Going in circles? the influence of the electoral cycle on the party behaviour in parliament', *European Political Science Review* **14**(1), 36–55.

Segal, J. and Spaeth, H. (1993), 'The supreme court and the attitudinal model cambridge, uk: Cambridge univ'.

Simon, H. A. (2000), 'Bounded rationality in social science: Today and tomorrow', *Mind and Society* **1**, 25–39.

Songer, D. R. and Crews-Meyer, K. A. (2000), 'Does judge gender matter? decision making in state supreme courts', *Social Science Quarterly* pp. 750–762.

Staton, J. (2008), 'Formal theory in comparative judicial politics', *Law & Courts* **18**(3), 10–15.

Steffensmeier, D. and Britt, C. L. (2001), 'Judges' race and judicial decision making: Do black judges sentence differently?', *Social science quarterly* **82**(4), 749–764.

Sweet, A. S. (1992), *The birth of judicial politics in France: The Constitutional Council in comparative perspective*, Oxford University Press.

Sweet, A. S. (1998), 'Rules, dispute resolution, and strategic behavior', *Journal of Theoretical Politics* **10**(3), 327–338.

Taagepera, R. and Laakso, M. (1980), 'Proportionality profiles of west european electoral systems', *European Journal of Political Research* **8**(4), 423–446.

Tsebelis, G. (2000), 'Veto players and institutional analysis', *Governance* **13**(4), 441–474.

Vachudova, M. A. (2021), 'Populism, democracy, and party system change in europe', *Annual Review of Political Science* **24**(1), 471–498.

Vallbé, J. J. (2024), The spanish constitutional court, *in* K. Pócza, ed., 'Constitutional Review in Western Europe: Judicial-Legislative Relations in Comparative Perspective', Routledge, pp. 241–263.

Vanberg, G. (1998*a*), 'Abstract judicial review, legislative bargaining, and policy compromise', *Journal of theoretical politics* **10**(3), 299–326.

Vanberg, G. (1998*b*), 'Reply to stone sweet', *Journal of Theoretical Politics* **10**(3), 339–346.

Vanberg, G. (2001), 'Legislative-judicial relations: A game-theoretic approach to constitutional review', *American journal of political science* pp. 346–361.

Vanberg, G. (2004), *The politics of constitutional review in Germany*, Cambridge University Press.

Vanhala, L. (2012), 'Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the uk', *Law & Society Review* **46**(3), 523–556.

Vliegenthart, R., Walgrave, S., Baumgartner, F. R., Bevan, S., Breunig, C., Brouard, S., Bonafont, L. C., Grossman, E., Jennings, W., Mortensen, P. B. et al. (2016), 'Do the media set the parliamentary agenda? a comparative study in seven countries', *European Journal of Political Research* **55**(2), 283–301.

Wang, X. (2014), 'Firth logistic regression for rare variant association tests'.

Wolfe, M., Jones, B. D. and Baumgartner, F. R. (2013), 'A failure to communicate: Agenda setting in media and policy studies', *Political communication* **30**(2), 175–192.

Wondreys, J. and Mudde, C. (2022), 'Victims of the pandemic? european far-right parties and covid-19', *Nationalities Papers* **50**(1), 86–103.

Yates, J., Cann, D. M. and Boyea, B. D. (2013), 'Judicial ideology and the selection of disputes for us supreme court adjudication', *Journal of Empirical Legal Studies* **10**(4), 847–865.

7 Appendix

	Model 1 Main Variables	**Model 2** Issue FE	**Model 3** Issue + Year FE
(Intercept)	-2.95***	-2.53***	-2.30**
	(0.22)	(0.30)	(0.90)
Court favorable to government	-0.03	-0.03	0.01
	(0.04)	(0.04)	(0.07)
Media saliency	0.99***	0.84***	0.82***
	(0.15)	(0.14)	(0.15)
Electoral cycle	-0.33*	-0.37**	-0.35
	(0.13)	(0.13)	(0.28)
Expected competition	0.44***	0.43***	0.79*
	(0.12)	(0.12)	(0.33)
Type of government	0.06	0.15	1.18
	(0.26)	(0.26)	(1.41)
Origin	0.15	0.10	0.33
	(0.40)	(0.39)	(0.38)
Type of law: Legislative Decree	-1.78	-2.65	-2.88
	(1.54)	(1.68)	(1.56)
Type of law: Ordinary	-0.36	-0.38	-0.60*
	(0.28)	(0.28)	(0.27)
Type of law: Organic	0.41	0.18	-0.11
	(0.33)	(0.38)	(0.37)
Issue FE	No	Yes	Yes
Year FE	No	No	Yes
Observations	1564	1564	1564

Note: *p<0.05; **p<0.01; ***p<0.001. Standard errors in parentheses.

Table A1: Firth's Logistic Regression Results. All opposition parties.

	Model 1 Main Variables	**Model 2** Issue FE	**Model 3** Issue + Year FE
(Intercept)	-3.18	-2.68	-2.85
	(0.24)	(0.31)	(1.06)
Court favorauble to government	-0.05	-0.04	-0.06
	(0.05)	(0.04)	(0.09)
Media saliency	0.85	0.72	0.74
	(0.14)	(0.13)	(0.13)
Electoral cycle	0.34	0.37	0.42
	(0.14)	(0.13)	(0.30)
Expected competition	0.44	0.43	0.90
	(0.12)	(0.12)	(0.36)
Type of government	0.24	0.29	1.50
	(0.27)	(0.27)	(1.23)
Origin	-0.29	-0.23	-0.01
	(0.48)	(0.48)	(0.44)
Type of law: Legislative Decree	-1.38	-2.27	-3.13
	(1.49)	(1.63)	(1.56)
Type of law: Ordinary	-0.27	-0.29	-0.42
	(0.29)	(0.29)	(0.29)
Type of law: Organic	0.42	0.25	0.07
	(0.35)	(0.39)	(0.39)
Issue FE	No	Yes	Yes
Year FE	No	No	Yes
Observations	1564	1564	1564
Note:	$^{*}p<0.05$; $^{**}p<0.01$; $^{***}p<0.001$. SE in parentheses.		

Table A2: Firth's Logistic Regression Results. Main opposition party. Alternative measure for the electoral cycle.

	Model 1 Main Variables	**Model 2** Issue FE	**Model 3** Issue + Year FE
(Intercept)	-3.18***	-2.68***	-2.85**
	(0.24)	(0.31)	(1.06)
Court favorable to government	-0.05	-0.04	-0.06
	(0.05)	(0.04)	(0.09)
Media saliency	0.85***	0.72***	0.74***
	(0.14)	(0.13)	(0.13)
Electoral cycle	0.34*	0.37**	0.42
	(0.14)	(0.13)	(0.30)
Expected competition	0.44**	0.43**	0.90*
	(0.12)	(0.12)	(0.36)
Type of government	0.24	0.29	1.50
	(0.27)	(0.27)	(1.23)
Origin	-0.29	-0.23	-0.01
	(0.48)	(0.48)	(0.44)
Type of law: Legislative Decree	-1.38	-2.27	-3.13*
	(1.49)	(1.63)	(1.56)
Type of law: Ordinary	-0.27	-0.29	-0.42
	(0.29)	(0.29)	(0.29)
Type of law: Organic	0.42	0.25	0.07
	(0.35)	(0.39)	(0.39)
Issue FE	No	Yes	Yes
Year FE	No	No	Yes
Observations	1564	1564	1564

Note: *p<0.05; **p<0.01; ***p<0.001. Standard errors in parentheses.

Table A3: Firth's Logistic Regression Results. Main opposition party. Alternative measure for the electoral cycle.

	El Mundo			El País		
	Model 1	**Model 2**	**Model 3**	**Model 1**	**Model 2**	**Model 3**
(Intercept)	-2.83***	-2.48***	-2.20*	-2.86***	-2.40***	-2.01*
	(0.23)	(0.31)	(0.93)	(0.23)	(0.30)	(0.94)
Court favorable to government	-0.46	-0.39	-0.87	-0.42	-0.39	-0.96
	(0.33)	(0.33)	(0.53)	(0.33)	(0.33)	(0.54)
Media saliency	1.19***	1.03***	1.08***	0.54***	0.46***	0.48***
	(0.19)	(0.19)	(0.21)	(0.09)	(0.08)	(0.09)
Electoral cycle	-0.27*	-0.31*	-0.27	-0.31*	-0.34*	-0.22
	(0.13)	(0.13)	(0.27)	(0.13)	(0.13)	(0.28)
Expected competition	0.53***	0.50***	0.78*	0.45***	0.44**	0.86*
	(0.13)	(0.13)	(0.32)	(0.13)	(0.13)	(0.33)
Type of government	0.12	0.21	0.70	0.14	0.22	1.10
	(0.25)	(0.25)	(1.25)	(0.25)	(0.25)	(1.31)
Origin	0.19	0.11	0.33	0.09	0.07	0.29
	(0.39)	(0.39)	(0.38)	(0.40)	(0.40)	(0.38)
Type of law: Legislative Decree	-0.95	-1.31	-1.99	-2.18	-2.96	-3.50*
	(1.43)	(1.43)	(1.48)	(1.61)	(1.74)	(1.64)
Type of law: Ordinary	-0.34	-0.37	-0.58*	-0.32	-0.34	-0.58
	(0.27)	(0.28)	(0.27)	(0.28)	(0.27)	(0.27)
Type of law: Organic	0.40	0.20	-0.11	0.47	0.22	-0.11
	(0.33)	(0.38)	(0.37)	(0.33)	(0.37)	(0.37)
Topic FE	No	Yes	Yes	No	Yes	Yes
Year FE	No	No	Yes	No	No	Yes
Observations	1563	1563	1563	1564	1564	1564

Note: *p<0.05; **p<0.01; ***p<0.001. Standard errors in parentheses.

Table A4: Firth's Logistic Regression Results. Comparison between Media Saliency: El Mundo and El País.

	Estimate	Std. Error	t value	Pr($>\|t\|$)
(Intercept)	2.57955	0.02669	96.63	<2e-16***
Media Saliency	-0.01202	0.02670	-0.45	0.653

Note: Dependent Variable: Electoral Cycle (factor from one to four, Year of enactment).
*** p<0.001.

Table A5: Simple Linear Regression. Endogeneity Test Model

Table A6: Major Topics, Comparative Agendas Project Coding System

Code	Description	Code	Description
1	Macroeconomic issues	14	Housing & Community Development
2	Rights	15	Commerce and Banking
3	Health	16	Defense
4	Agriculture	17	R&D and Communication
5	Labor	18	Foreign Trade
6	Education	19	Foreign Affairs
7	Environment	20	Governmental Issues
8	Energy	21	Public Lands
9	Immigration & Refugee	23	Culture
10	Transport		
12	Crime and Justice		
13	Social Policy		

Source: Q-Dem research group and their master codebook at https://q-dem.com/wp-content/uploads/2018/05/Codebook-ingle%CC%81s-1.pdfQ-Dem Codebook.

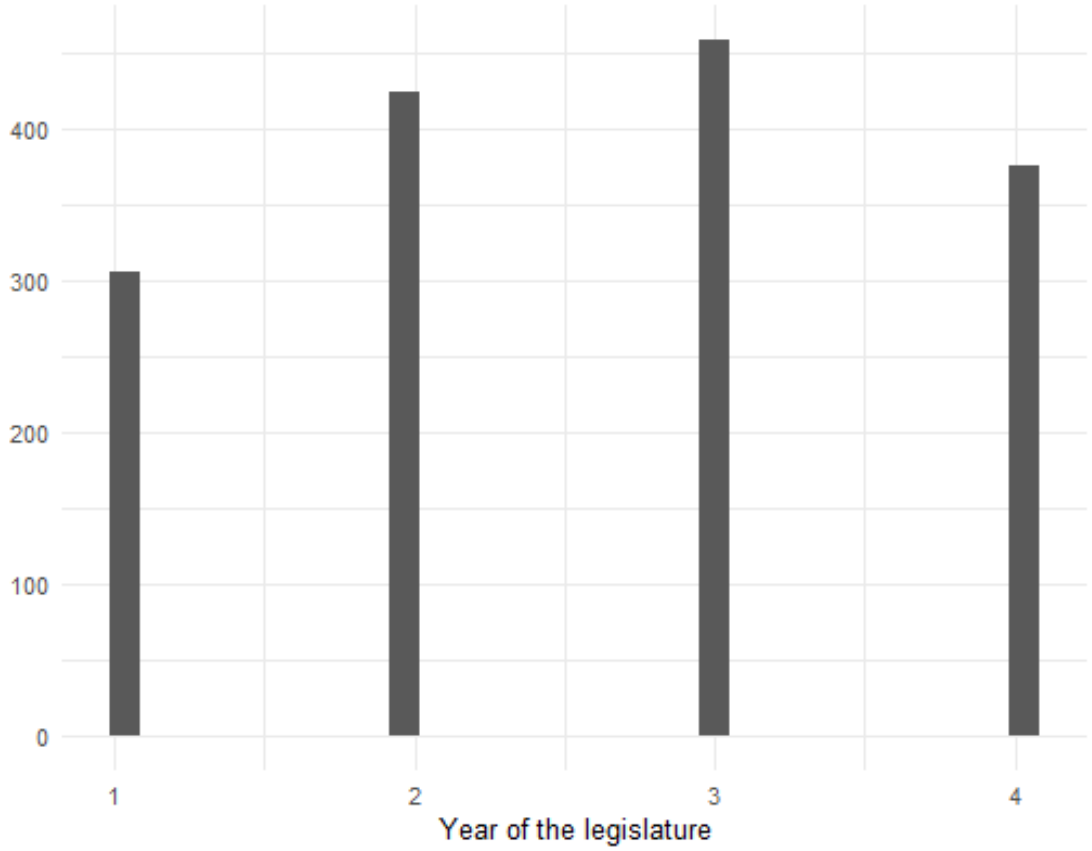

Figure A1: Distribution of the variable *Electoral Cycle*.

Article 3

The shadow of the Constitutional Court over the legislative process. Evidence from Spain.

1 Introduction

Following the totalitarian regimes of the 20th century, constitutional review[47] became widespread in Europe to prevent the founding consensus of states from being undermined (Ginsburg 2007). This expansion introduced the *concentrated model* of constitutional review, marked by a Kelsenian court with exclusive constitutional jurisdiction. A key feature of this model is abstract judicial review ('*abstract review*' hereinafter), which allows the opposition[48] to challenge a law passed in parliament without being tied to a specific case. This mechanism enables a law to be overturned without ever being applied. Consequently, abstract review significantly influences the legislative process, at least through the outcome of cases—whether the court overturns the law or not. Legal studies have traditionally focused on this influence from a doctrinal perspective (Hagan 1986; Sisk 2008) i.e. the influence of the court as an arbiter of legislative change. However, the political nature of cases, the involvement of political parties in the legal process, and the partisan appointment of judges suggest that abstract review may impact the legislative process beyond the rulings themselves (Vanberg 1998*b*; Sweet 1992).

[47] It refers to all the legal mechanisms to review the accordance of legislation with the constitution. It includes the abstract and concrete review, conflicts of competence or unconstitutionality issues among others.

[48] Here, the opposition refers to all actors with access to the court who may oppose the legislator—in the Spanish case, for example, this includes more than 50 MPs in parliament, 50 senators, the legislative assemblies, and the collegiate executive bodies (or "Governments") of the autonomous communities. The literature refers to opposition because it can be assumed that opposition parties are the most likely to differ from the government in terms of policy and political interests, regardless of the institution they belong to.

The literature on separation of powers (hereinafter SOP models) focuses on the interactions between the government, as the main legislator; the main opposition party, as the main challenger; and the court, as the decision-maker, to explore this impact (Staton 2008)[49]. SOP models consider parties and judges as strategic actors, emphasizing their political motivations. Courts, in this framework, are not merely legal arenas but also platforms for partisan competition, enhancing the visibility of challengers' positions and shaping political narratives (McCann 1995; Vanhala 2012; Dotan and Hofnung 2005). Consequently, the incentives to challenge a law and the consequences of an unfavourable ruling extend beyond the immediate legal outcome. In this context, SOP models describe *autolimitation*[50]: governments, faced with the substantial costs of losing a case—and the corresponding benefits this provides to the opposition—adjust their strategies to avoid unfavourable court decisions (Vanberg 1998*a*; Staton 2008). Moreover, drawing on the literature on judicial behaviour, they suggest that governments may refrain from proposing certain laws or modify them in anticipation of the court's ideological alignment (e.g Vanberg 1998*a*).

Despite a substantial body of theoretical literature describing autolimitation (Sweet 1992; Vanberg 1998*a*, 2001; Rogers 2001; Manow and Burkhart 2007; Sala 2014; Brouard 2009; Marks 2012; Pavone and Stiansen 2022; Favoreu 1992; Landfried 1985, 1992; Sweet 2000; Uribe et al. 2014), inherent difficulties in measurement have limited the number of empirical studies (see Engst 2021). This paper proposes a novel approach, grounded in the Spanish context, to measure autolimitation by using legislative amendments as

[49]Drawing on Vanberg (1998*a*), it examines how the government's legislative decisions may be shaped by the abstract review mechanism—specifically, whether the government anticipates court outcomes and how it responds. Although laws are formally passed by parliament, most originate from the governing party, which typically dominates the legislative agenda in parliamentary systems with strong party discipline such as Spain's (Chaqués Bonafont and Palau Roqué 2011; Bräuninger et al. 2012). Moreover, both the government and the main opposition party wield significant influence over court appointments, underscoring their central roles in autolimitation and further justifying the focus on these actors.

[50]Also referred to as self-restraint or the court's 'shadow effect'.

a proxy for legislative modifications, and the ideology of the court as a proxy for case prospects. Furthermore, the analysis examines whether autolimitation occurs even if a law's constitutional fit is not under question—that is, to what extent autolimitation is merely driven by political factors. To this end, whether the opposition threatens the illegality of each specific law in parliament is considered as a proxy of its constitutional fit.

Finally, while SOP models focus on the interaction between the legislative and the judicial branches, they also account for additional variables that may influence autolimitation, like the media salience of the law (Vanberg 1998*a*). The literature demonstrates that media salience influences the level of attention it receives from both political parties and voters, suggesting that the costs associated with having the law overturned are likely to vary. Accordingly, this paper examines its impact on autolimitation. The analysis also incorporates several control variables from the legislative studies literature, such as the electoral cycle, partisan competition, the type of government and the type of law. By doing so, the paper also contributes to the literature explaining the efficacy of legislatures, namely under what circumstances legislative amendments are likely to be accepted. So far, this question has been analysed mainly considering governmental factors (e.g. Martin and Vanberg 2005, 2014, 2020). This paper illustrate that constitutional courts—particularly those with abstract review—might also play a role in the process, even without direct intervention.

The article is structured as follows. The next two sections describe and situate the analysis of autolimitation in the context of previous literature and approaches the debate regarding its operationalization. Section four sets out the hypotheses for the analysis, and next the characteristics of the Spanish case are explained. Section 5 describes the methods and data used to test the hypotheses; and sections 5 and 6 present and discuss the results.

2 Autolimitation in context

Laws are the primary tool for parties to fulfil voter demands and remain in power (Arnold 1990). Accordingly, they are central to political debate. The legislator—understood hereinafter as the government—aims to introduce laws that satisfy policy preferences and yield political advantages (Brunner 2012). However, the opposition—understood hereinafter as the main opposition party—pursue competing interests. While it may agree with the government on some issues, it often diverges on others and seeks office to advance its own agenda. It is therefore reasonable to expect the opposition to use any available means—including abstract review—to achieve these goals (Sweet 1998; Vanberg 1998*a*). SOP models and socio-legal studies emphasize that an unfavourable ruling not only overturns laws but also incurs narrative costs by undermining the government's credibility, as courts are seen as technical institutions with imprimatur of legitimacy (Murphy and Tanenhaus 1968; Vanberg 1998*a*). Accordingly, the opposition has strong incentives to leverage abstract review to challenge laws, signal its positions, and potentially gain political advantages (Dotan and Hofnung 2005).

Based on the strong incentives for the opposition and the potential costs for the government, SOP models suggest that the mere possibility of a law being overturned can influence the legislative process. In this context, they introduce the concept of autolimitation, which occurs when governments adjust their legislative behaviour to pre-empt unfavourable court rulings (e.g. Stokes 1999). Accordingly, autolimitation operates through two main factors: (1) the likelihood of losing a case, and (2) the potential costs of such a loss. Regarding the likelihood of being overturned, the literature emphasizes the role of ideological congruence between the government and the court, as this alignment significantly affects court outcomes (Vanberg 1998*a*; Engst 2021). The potential consequences, on the other hand, depend largely on the political relevance of the law in question (ibid.). Accordingly, under autolimitation, governments are expected to act strategically, adjusting their legislative behaviour based on the ideological distance from the court and the saliency of the law.

Autolimitation can occur at two stages: when proposing a law or during the legislative process (see Engst 2021). In the first case, the legislator must decide whether to legislate or abstain. However, abstaining is not always feasible, as external factors—such as policy compromises, urgent issues, or external pressures like political crises or natural disasters—can make inaction more costly. Additionally, inaction is difficult to observe and analyse, as it is inherently a non-event (ibid.). Consequently, the limited analyses on autolimitation—and this paper—have primarily focused on its occurrence during the legislative process (Landfried 1992; Sweet 2000; Manow and Burkhart 2007; Sala 2014; Uribe et al. 2014; Engst 2021; Pavone and Stiansen 2022; Kommers 1994). This focus is further supported by theoretical considerations: first, the government cannot fully anticipate whether the opposition will introduce new demands during the legislative process; second, the legislative process itself reveals critical information about the positions of the opposition and its ideological spectrum.

Notwithstanding the comprehensive qualitative analyses of autolimitation (Landfried 1992; Kommers 1994; Sweet 2000; Sala 2014; Pavone and Stiansen 2022), intrinsic measurement challenges—such as systematically capturing legislative modifications—have constrained the development of empirical analyses (see Engst 2021). The most significant empirical work in the European context comes from the German case. Manow and Burkhart (2007) examined the influence of government parliamentary majorities on the approval of controversial laws, suggesting that governments engage in autolimitation to avoid potential vetoes. However, their data do not explicitly link this behaviour to courts. By contrast, Engst (2021) measured the impact of opposition threats to challenge a law on autolimitation, finding that laws threatened by opposition parties are more likely to be modified by the government in alignment with court preferences. Schroeder (2022), however, argues that governments may have incentives to refrain from self-restraint and instead confront the court—as overturning laws from the government may also be costly.

While recent research has made strides in identifying anticipatory behaviours, differing measurement strategies capture distinct facets of autolimitation, leading to divergent results. Consequently, further empirical and comparative studies are crucial to deepening our understanding of autolimitation (Sweet 2004). The next subsection develops the operationalization of autolimitation, focusing on its measurement and implications.

3 Operationalization of legislative autolimitation

Measuring autolimitation during the legislative process begins with identifying the modifications made by the government in parliament. In this context, this paper focus on legislative amendments, as they allow laws to be modified once the legislative process has started. Once a law is proposed, the legislative process begins, and all actors are aware of the concrete draft. At this point, opposition parties can submit amendments, which are debated in legislative committees and plenary sessions. These amendments formalize concrete modifications to the text and go beyond political rhetoric by clarifying the opposition's policy and political positions (Palau et al. 2023). In doing so, parties reveal their preferences and demonstrate how they would structure the final law, offering insights into their broader ideological spectrum and potentially signalling the court's perspective (Rogers 2001). Accordingly, amendments allow us both to measure the acceptance of legislative modifications and identify the extent to which these modifications are aligned with concrete party interests and their ideological spectrum—including constitutional judges.

In terms of measuring autolimitation, while amendments reflect the demands of opposition parties and their interpretation of the law, they may also address technical-legal issues. In fact, this is one of the main challenges of autolimitation, both in theory and in its empirical analysis (see Engst 2021). Some degree of autolimitation is inherent

in constitutional democracies due to a shared understanding of legal—and particularly constitutional—boundaries (ibid.). In practice, parties may occasionally consider policies that are unconstitutional but generally refrain from formally proposing them, recognizing that such measures would likely be short-lived and carry negative consequences (Sweet 2000). Similarly, when a law is introduced with certain legal issues, more amendments are likely to be accepted. This inherent autolimitation differs from autolimitation driven by political factors. That is, as parties appoint ideologically aligned judges to influence court outcomes, the composition of the court becomes more influential in predicting the consequences of having a law overturned. Therefore, in this context, legislative autolimitation is not solely driven by legal considerations.

Research on constitutional adjudication shows that some rules are clear and uncontested, with no ambiguity in their application and a shared understanding among all actors (see Dyevre 2011). This is where inherent autolimitation occurs. However, constitutional interpretation often allows judges discretionary room which leads to more ideologically driven court outcomes (see Epstein et al., 2012). Additionally, judicialization literature also highlights challengers' political motivations to use the court, i.e., for signalling purposes (Aydın-Çakır 2014). Thus, SOP models, socio-legal studies and judicialization literatures support this form of autolimitation: driven by political factors and regardless of constitutional fit. To capture this behaviour, this study accounts whether the opposition threatens a law's legality in parliament—as a proxy of its constitutional fit. This measure has already been employed in the literature to explain how such threats prompt governments to engage in autolimitation to avoid being overturned (Engst 2021). However, in this case, it is used as a control to capture whether autolimitation is independent of legal issues.

The next subsection focuses on the anticipation of court outcomes based on judges' ideology and introduces the first hypothesis. The following subsection then examines the

consequences of an unfavourable outcome and explores how the relevance of the law may influence autolimitation, along with the associated hypothesis.

4 Research hypotheses

4.1 The ideology of the court as a predictor of ruling

As previously discussed, autolimitation is influenced by two main factors: the likelihood of losing a case and the associated consequences. Regarding the first factor, since judges are often appointed by political parties—as is the case in Spain[51]—the literature on judicial behaviour indicates that ideology is a reliable predictor of court outcomes (see Epstein et al. 2012). While there is ongoing debate over whether this alignment reflects ideological congruence or deference to the appointing party, substantial empirical evidence highlights a significant overlap between the preferences of appointees and their nominators (see Dyevre 2010). Indeed, Supreme and Constitutional Courts have been the primary focus of most analyses due to the easy identification of judge's backgrounds, particularly in the Spanish context (del Castillo Vera 1987; Magalhães 2003; Garoupa et al. 2013, 2021*a*; López-Laborda et al. 2018, 2019; Rodríguez López et al. 2019; Vallbé 2024; Muñoz and Rodilla 2024). Accordingly, SOP models directly link the ideology of the court with the legislative modifications the government makes (Vanberg 1998*a*; Engst 2021). From this perspective, the ideology of the court serves as a valuable indicator for parties' case prospects.

Regarding legislative modifications, as previously noted, this paper relies on legislative amendments to capture them. These amendments provide important insights into how each opposition party interprets the text and serve as tools for the government to discern not

[51] In Spain, the court consists of twelve judges. The president appoints two judges, four are appointed by the Senate, four by Parliament, and the remaining two are appointed by the Judicial Council (which is also party-appointed).

only the law's legal fit but also how it is perceived from different ideological perspectives. In this context, as judges tend to align with the interpretations of the parties that appointed them (see Dyevre 2011), as well as with their policy and political preferences, the government can anticipate how judges might react based on their ideology (e.g. Vanberg 1998*a*). Accordingly, it is more likely to accept opposition amendments depending on the court composition, regardless of legal considerations related to the law's constitutional fit (e.g. Vanberg 1998*a*). This not only brings the law closer to the opposition's stance but also aligns it with its broader ideological spectrum—including voters and ideologically aligned judges—thereby reducing the likelihood of the law being challenged or overturned.

H1: *The more ideologically distant the court is from the government, the more likely the government is to accept legislative amendments, regardless of the law's constitutional fit.*

4.2 The media saliency of the law as a proxy of its relevance

As anticipated earlier, one relevant cost of an unfavourable court outcome—beyond the mere invalidation of the law or the loss of regulatory authority over a particular issue—lies in its narrative impact (Dotan and Hofnung 2005). A discrediting argument from the constitutional court—given the a priori technical considerations of the institution—could be perceived by voters as a delegitimization of the government and its legislative competence (Sweet 1992; Vanberg 1998*a*). Thus, media salience may amplify the costs associated with such unfavourable outcome. Accordingly, SOP models suggest that autolimitation might increase in cases of public relevance, as the government seeks to avoid the reputational damage that comes with being discredited in relation to a significant law (e.g. Vanberg 1998*a*). While this literature has not yet measured the relationship between media salience and autolimitation, studies in legislative research support this theory. For example, Gava et al. (2021) shows how the media salience of laws influ-

ences the acceptance of amendments through an empirical analysis of the Swiss parliament.

The agenda-setting literature highlights that media salience signals the importance of a given law and alerts parties to potential areas of public concern (Vliegenthart et al. 2016; Palau et al. 2023). Because public attention is limited, citizens are more aware of certain laws than others, resulting in varying political reactions and, consequently, different payoffs for political parties. Media salience, therefore, helps parties prioritize decisions and focus on laws that are more prominent in public discourse (Gava et al. 2021). When applied to the acceptance of amendments, media salience reveals when citizens are particularly attentive to a law and its potential judicial process, thereby increasing the narrative costs of losing a potential case. Moreover, while the process of mediatization is complex, and parties may intentionally amplify the media salience of a law for political gain, its mere presence in the media already produces distinct political payoffs compared to laws that receive less coverage. Thus, based on SOP models and legislative studies, autolimitation is more likely to occur when media salience is heightened.

H2: *The more media saliency of a law, the more likely the government is to accept legislative amendments regardless of the constitutional fit.*

5 The Spanish legislative process and the "Tribunal Constitucional"

The analysis relies on the Spanish case. Spain operates under a parliamentary system characterised by strong party discipline (de Dios 1999). Consequently, the government exerts substantial control over its parliamentary group's activities (Field and Gray 2019), enabling us to treat the group's decisions as extensions of the government's will. Although legislative jurisdiction formally resides with parliament, research in legislative studies underscores the role of the government in Spain as the primary legislator. Indeed, previous studies suggest that not only the passage of laws but also the acceptance of

amendments is significantly shaped by the government[52] (López Garrido and Subirats 1990; Calvet Crespo 2003). While parliamentary groups are responsible for proposing amendments, the relationship between opposition parties and the government has been shown to influence the acceptance of amendments at a descriptive level (Calvet Crespo 2003)—as empirically demonstrated in Switzerland (Gava et al. 2021). Moreover, evidence indicates that many of the government's political elites are also members of parliament, highlighting this influence (López Garrido and Subirats 1990). Indeed, this influence of the government over the legislative process, suggests strategic legislative behaviour, making the Spanish case particularly interesting for studying autolimitation.

The Spanish legislative process includes various procedures, such as urgency measures or delegation of full legislative competence to committees. Each of these procedures has distinct implications. However, the ordinary procedure is the most suitable for studying autolimitation for three key reasons. First, it is the only procedure that allows the opposition to formalise their demands through amendments. Once a law is purposed, it is referred to a committee for review. During this stage, parties propose amendments and engage in discussions which contain relevant information about their legislative positions. Second, these amendments, along with the committee discussions and voting results, are documented by parliament. These records are publicly accessible, enabling a systematic analysis of legislative modifications—after processing all the information. Finally, the ordinary procedure is the most commonly used in the Spanish system, offering a comprehensive overview of legislative dynamics. As illustrated in 1, the majority of laws—782 out of 1,168 (approximately 67%)—have been passed through this procedure.

Regarding the court, as a post-fascist state, a centralized model of constitutional review was established to prevent partisan overreach and protect democracy in Spain (Sweet 1992; Ginsburg 2007). The 1978 Constitution left significant areas undefined, relying on the

[52]Calvet Crespo (2003) descriptively analyse the legislative production under minority governments in Spain.

Constitutional Court to shape the legislative framework (de Enterría 1982). Accordingly, judicial appointments have since become a key focus of political parties, with four judges chosen by Parliament, four by the Senate, two by the Government, and two by the General Council of the Judiciary, which is also influenced by party politics (Article 159.3 CE). The Spanish Socialist Workers' Party (PSOE) and the People's Party (PP), as the primary governing and opposition forces, have consistently influenced the court's composition to reflect their interests (Garoupa et al. 2021*a*). This influence over appointments has occasionally led to a politicized process, highlighting controversies regarding nominees with previous connections to appointing parties, associated organizations, or prior political roles (Harguindéguy 2024). Prominent cases include former minister Juan Carlos Campo, magistrate Francisco Pérez de los Cobos with party ties, and former prosecutor Antonio Narváez.

Legislature	**Period**	**Laws Total**	**Ordinary Procedure**	**%**
6	1996-2000	254	172	67.72
7	2000-2004	212	173	81.60
8	2004-2008	197	140	71.07
9	2008-2011	176	120	68.18
10	2011-2018	284	159	55.99
12	2018-2019	45	18	40.00
TOTALS		**1168**	**782**	**66.95**

Table 1: Summary of Laws and Ordinary Procedures by Legislature

These legal-political ties and the judiciary's politicization in Spain grant political parties' substantial insight into the ideological profiles of judges in the Constitutional Court's plenary. The appointment process, coupled with media coverage of related negotiations, further exposes judges' ideological stances, making these tendencies publicly visible. Additionally, the Spanish judiciary has been extensively analysed in the context of judicial behaviour, generating an important amount of data on judges' ideological leanings (Garoupa and Magalhães 2020; Vallbé and Lozano 2024). Several studies have consistently

shown that judicial ideology plays a key role in shaping rulings in Spain (del Castillo Vera 1987; Magalhães 2003; Garoupa et al. 2013, 2021*b*; López-Laborda et al. 2018, 2019; Rodríguez López et al. 2019; Vallbé 2024; Muñoz and Rodilla 2024). As a result, political parties strive to maximize their influence over judges ideologically aligned with them, making judicial ideology a reasonable predictor for assessing parties' anticipatory strategies. These relationships between judges and parties and the consequent influence of rulings allows the study of autolimitation based on the ideological alignment with the court.

6 Data and methods

6.1 Dataset

This paper utilizes an original database encompassing all laws passed by the Spanish Parliament through the ordinary legislative procedure between 1996 and 2019, including detailed information on the amendment process. The database was created using web scraping techniques applied to the official website of the Spanish Parliament. Additionally, this data was linked with records of abstract review cases and the judges serving in the Constitutional Court during the same period. This was achieved by scraping data on judges' appointments and departures from MAP LEXTER and identifying their appointing parties through searches in the BOE. The time span is limited to these years because the database was built using the digitalized version of the official texts. As a result, we could not extract the most relevant variables for each law prior to 1996, as they were image-based.

The resulting dataset covers six legislatures, featuring four different presidents of two parties. The governments are split between PP (conservatives) and PSOE (progressives). But also, they are the opposition parties with locus standi for the period analysed. Only Podemos for a very short period and the far-right VOX (2019-2023) have gained access to the court in addition to PP and PSOE. It has therefore been a story of government-

opposition dominated by the two main parties. Accordingly, they have elected most of the court's judges. Therefore, court majorities have always favoured one side or the other. The exception is the period of equilibrium that can be attributed to socialist President González's continuous governance of four legislatures (1982-1996). However, there is sufficient variation in the dataset, both in the colours of government and in the changes in judicial majorities.

A key contribution of this paper is measuring autolimitation through legislative amendments. Data on the amendatory process and their approval status is an original contribution developed as part of a project funded by the Spanish Ministry of Science: OPPOL (Palau et al. 2023). The Spanish legislative process generates many documents on the activity of MPs, senators and parliamentary groups along the legislative process. However, the outcome of whether the amendments are adopted or not is not systematically captured. The parliament provides a HTML document with all the amendments presented regarding each law. However, whether they pass or not is unknown. The OPPOL project elaborated a database by performing web scraping and parsing on all documents. To identify the amendments, their type, the parliamentary group, the section of the law, the text, and the modification, we analysed HTML tags and text patterns, incorporating them into a rule-based code using regular expressions—using RStudio. This code built a comprehensive database containing over 93.722 legislative amendments (Palau et al. 2023).

To calculate, the amendment success rate we extracted all the texts of the law drafts and the texts of the final laws previously identified by common identifiers. Subsequently, we parsed all the documents to disentangle the different legal hierarchies and match them with the corresponding text of the amendment. This process involved constructing a separate database for each law stored in CSV format files for each. Finally, we developed another rule-based code that goes through these databases to calculate the success of the amendments based on a text reuse approach—using Python. The code takes each

amendment, identifies the text of the draft to be amended, deletes the text that was already there, and then cross-references it with the final version to determine the percentage of sentences finally incorporated. We calculated the success rate for 79.147 amendments. So, less than 16% of the total amendments couldn't be calculated due to its structure[53]. In addition, we validated the results on a set of 2,718 hand-coded amendments (see Figures A2 and A3 in the methodological appendix). The resulting database was sorted at the law level, so the analysis finally considers 577 laws (out of 782). The rest either had no amendments proposed by the main opposition party or only had amendments whose success rate we could not calculate (26%).

6.2 Dependent variable

To calculate the dependent variable, I use the average acceptance rate of amendments for each law. I focus exclusively on amendments submitted by the main opposition party, given its greater influence in appointing judges. Therefore, the resulting variable only captures amendments purposed and accepted by PP and PSOE. Moreover, during the period under analysis, only these two major parties have governed the country and have wielded significant and consistent power in shaping judicial appointments to the Constitutional Court.

6.3 Court ideological composition

The court's ideological composition is captured using a numerical variable resulting after subtracting the number of judges appointed by the government from the number of judges appointed by the opposition (*Court favourable to government*). Party ap-

[53] Suppression amendments couldn't be calculated because cross-referencing the amendment with the exact part of the law-draft's text and the corresponding part of the final law was particularly challenging. Each MP responsible for submitting their parliamentary group's amendments document wrote the section of the part to be amended—for each amendment—without following a consistent pattern. As a result, it was difficult to identify the specific part using regular expressions.

pointments and their prior affiliations serve as a proxy for judges' ideology. For the judges appointed by the government, I employ the colour of the government as a proxy of their ideology. For the judges appointed by the senate and the parliament, I use the party that proposes the judge for the appointment, but I also double-check the links with each party in the newspapers and within the judicial union they belong. For judges appointed by the CGPJ, I use the judicial unions and make the same checks in the newspapers.

Judges are elected for a nine-year term, and the court is renewed by one-third every three years (Art 16.3 LO 2/1979). So, majorities in the court and legislatures change asymmetrically, leading to variations in scenarios regarding ideological congruence. The shifts in governments and parliamentary majorities often give rise to periods of perfect equilibrium in court (e.g. six conservatives vs six progressives). Therefore, the use of a numeric variable allows us to account for these equilibrium scenarios. It can reasonably be expected to affect the parties' ability to anticipate the court's decisions and thus autolimitation.

6.4 Media saliency

This variable captures the saliency of the law in the media one year before the proposal (*Media saliency*). To track the saliency in the media, I conducted searches for the law's name within all stories featured in Spain's two most widely read newspapers, namely El País and El Mundo. The coding protocol involves searching for possible bigrams (combinations of substantial words in the law-draft and the final version titles)[54] linked to the terms 'project' and 'law,' followed by a manual review of results to ensure direct mentions of the specific regulation. The variable captures the visibility of the regulation itself before the legislative process commences. The objective is to specifically monitor the prominence of the issues to be regulated in the text, excluding broader topics unrelated to the concrete

[54]Using R, I first deleted all the stopwords from the whole corpus of the draft-law and the final law titles.

law. To achieve this, I utilized the Factiva database, employing the written versions of both newspapers and calculating the average media coverage between them (the sum of the number of articles divided by two). Subsequently, I standardized the variable due to the wide range of media attention.

6.5 Model

As previously mentioned, the dependent variable employed to capture autolimitation is a numerical variable ranging from 1 to 100 (Figure 1 in the methodological appendix shows the distribution). Accordingly, I run a multiple linear regression to test the extent to which judges' ideology and the relevance of a law influences the acceptance of amendments. However, the government might also accept amendments in cases where opposition parties highlight clear legal controversies through their proposed changes. In such cases, the results couldn't distinguish between the inherent autolimitation in a constitutional democracy—whether amendments capture parliament's capacity to correct legal inconsistencies—and autolimitation driven by political preferences—where ideology and party strategy plays a crucial role. Therefore, an important part of the empirical strategy is including as a control, in addition to other variables, the threats to illegality made by the opposition in parliament. This control allows us to isolate the effect of autolimitation lead by political factors.

6.6 Controls

Threats to illegality

The variable *Threats to illegality* is binary, taking a value of 1 if there is any mention of unconstitutionality or illegality of the norm during plenary session debates. To compute this, I developed an R script to access the legislative process website of the parliament for each law, retrieving the HTML containing the debate transcripts. After converting the text to lowercase, I applied a bag-of-words approach to identify word combinations

related to 'unconstitution-' (e.g., references to 'Recurso de Inconstitucionalidad'), appeals to the constitutional court, or phrases challenging the legality of specific provisions (e.g., 'ilegal-'). All mentions were manually reviewed to avoid false positives. These mentions were tallied to create the dummy variable for subsequent analysis.

As previously mentioned, Engst (2021) used this variable as a treatment in a Difference-in-Differences framework to measure its effect on autolimitation. This paper, in contrast, employs it as a control variable. This design enables the attribution of autolimitation effects to strategic government behaviour in response to political demands, rather than to obvious constitutional violations.

Electoral Cycle

To measure the timing within each legislative term, a numerical variable was developed and standardized, ranging from one to four, representing the year of the legislature in which the law was introduced. The variable takes a value of 1 if the law was purposed in the first year of the legislature, 2 for the second year, and so on, up to 4 for the final year. This measure was chosen because, although the government has the power to call early elections, opposition parties cannot predict whether or when this will happen. Therefore, it is reasonable to assume that political parties operate under the expectation that the legislature will last its full term of four years, as established by the constitution. Moreover, within this period only two legislatures had less than four years: IX and XI legislatures. However, only one had legislative activity—the IX legislature—and lasted more than three years.

Expected partisan competition

Expected partisan competition is measured using the sum of the expected vote shares for the two main parties, based on standardized CIS polls. The slope is then inverted by multiplying it by -1 to obtain a measure whose higher values indicate higher incentives

for partisan competition. While traditional measures of party system fragmentation reflect the number and relative strength of effective parties in parliament (Taagepera and Laakso 1980), this approach focuses on the likelihood that the two historically dominant parties in Spain could lose power to smaller emerging parties. This measure captures the decline in bipartisanship, which has had significant implications for party politics, particularly for those in opposition (Rama et al. 2021). Additionally, it accounts for variations in party behaviour during any given legislature. Parties react to evolving electoral expectations, especially when the prospect of institutional change is on the horizon. This variable, therefore, reflects how strategies are adjusted in response to such expectations.

Type of Government

The Type of Government is a dummy variable that takes a value of 1 for majority governments and 0 for minority or coalition governments. As previous studies have shown, the type of government affects the opposition's ability to effectively engage with the legislative process (Magalhães 2003; Palau et al. 2017). Research also indicates that majority governments are more likely to trigger judicial conflicts, especially at the territorial level (Harguindéguy et al. 2017). When a government relies on external support to pass legislation, it is often forced to negotiate, which may reduce its control over the legislative process. In the case of minority governments, for instance, lawmakers are more likely to be conscious of these limitations, leading to more moderate legislation to ensure broader support. Consequently, minority governments are expected to pass laws that receive greater acceptance from opposition parties, which could reduce the likelihood of these laws being challenged.

Type of Law

The 'Type of law' is a variable with four categories: ordinary law, organic law, decree-law, and legislative decree. Although all laws in this analysis were introduced via the ordinary legislative process, they originate from different legal frameworks, each offering

varying degrees of legislative discretion and referring to specific areas of governance. Ordinary and organic laws are governed by Article 82 of the Spanish Constitution (CE) and are passed directly by parliament. Organic laws, which require a qualified majority, are reserved for matters involving fundamental rights and public freedoms, reflecting both the importance of the issue and the need for broader political support. As a result, the interests at stake often make them less consensual than ordinary laws. In contrast, decree-laws are enacted by the government in cases of extraordinary and urgent necessity; however, they must be convalidated in parliament within 15 days or processed as an ordinary law. Article 86 of the CE allows any matter to be addressed except those involving basic state institutions, rights and freedoms, the Autonomous Communities, and the general electoral law. Legislative decrees, however, are governed by Article 85 of the CE. They are also passed by the government but apply only to delegated areas of governance. Because decree-laws grant the government more discretion than other types of law, they tend to generate less consensus, while legislative decrees are generally more constrained by delegation and, as such, more likely to foster consensus. Thus, by including this variable the models accounts for the type of issue being legislated on and its impact in legal and political terms.

7 Results

Model 1 tests the relationship between the independent variables with the acceptance rate of the amendments proposed by the main opposition party to all the laws passed in Spain through the ordinary procedure between 1996 and 2019. Table 2 shows the results—see Figure A4 in the methodological appendix for the tests of the regression assumptions. First, regarding the influence of the ideology of the court—that is, autolimitation—, results in Table 2 show a negative coefficient and statistically significant p-value. This means that less amendments are accepted when more judges ideologically close to the government are in court. These results align with autolimitation theory and confirm Hypothesis 1

showing that the government is more inclined to accept demands from the main opposition based on the ideology to the court (e.g. Sweet 1992, 2000; Vanberg 1998*a*, 2001). That is, the findings show that, given the politicization of the constitutional court (see Vanberg 1998*a*; Harguindéguy 2024), ideology indicates when it is more likely to win a case and, therefore, shapes the influence of abstract review on the legislative process.

Variable	**Model 1**	
	Coefficient	**(SE)**
(Intercept)	-0.82	(0.64)
Court favourable to the government	-0.18***	(0.05)
Media saliency	0.02	(0.04)
Threats to illegality	-0.06	(0.14)
Electoral cycle	0.11*	(0.04)
Expected partisan competition	0.24***	(0.05)
Type of Government	-0.03	(0.10)
TypeLawLegislative Decree	-0.52	(1.15)
TypeLawOrdinary Law	0.52	(0.63)
TypeLawOrganic Law	0.53	(0.63)
N	577	
AIC	1614.56	
BIC	1662.50	
Pseudo R^2	0.07	

Table 2: Regression Results

Note: *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.

Furthermore, results are independent of the variable *Threats to illegality* which in addition is not statistically significant, meaning that autolimitation occurs mainly driven by political factors. This reinforces the idea described by SOP models by which the government faces strong costs of getting a law overturned. That is, given the strong incentives to challenge for the opposition and the strong costs for the government to be overturned together with the politization of the court, ideology of judges become even more relevant predictor than legal considerations. Accordingly, the government accommodates their laws through the amendments when the court is not favourable to

them— regardless of whether the government expects the opposition to challenge the law or not, or whether the law is more or less in line with the constitution.

These results are in line with the results on the media salience of the law, which are surprisingly contrary to expectations. The model does not confirm hypothesis 2. While the coefficient shows a positive relationship, the effect is not statistically significant, suggesting that the ideology of the court is relevant even with non-salient laws. This null effect of the media saliency together with the null effect of the opposition threatening the illegality of the government's law, suggest a counter-hypothesis: that all laws are to some extent important and thus the government have permanent costs for losing a case. In this context, the results indicate that the politicization of the court further influences the government's legislative behaviour, even apart from constitutional considerations and the relevance of the law to public opinion.

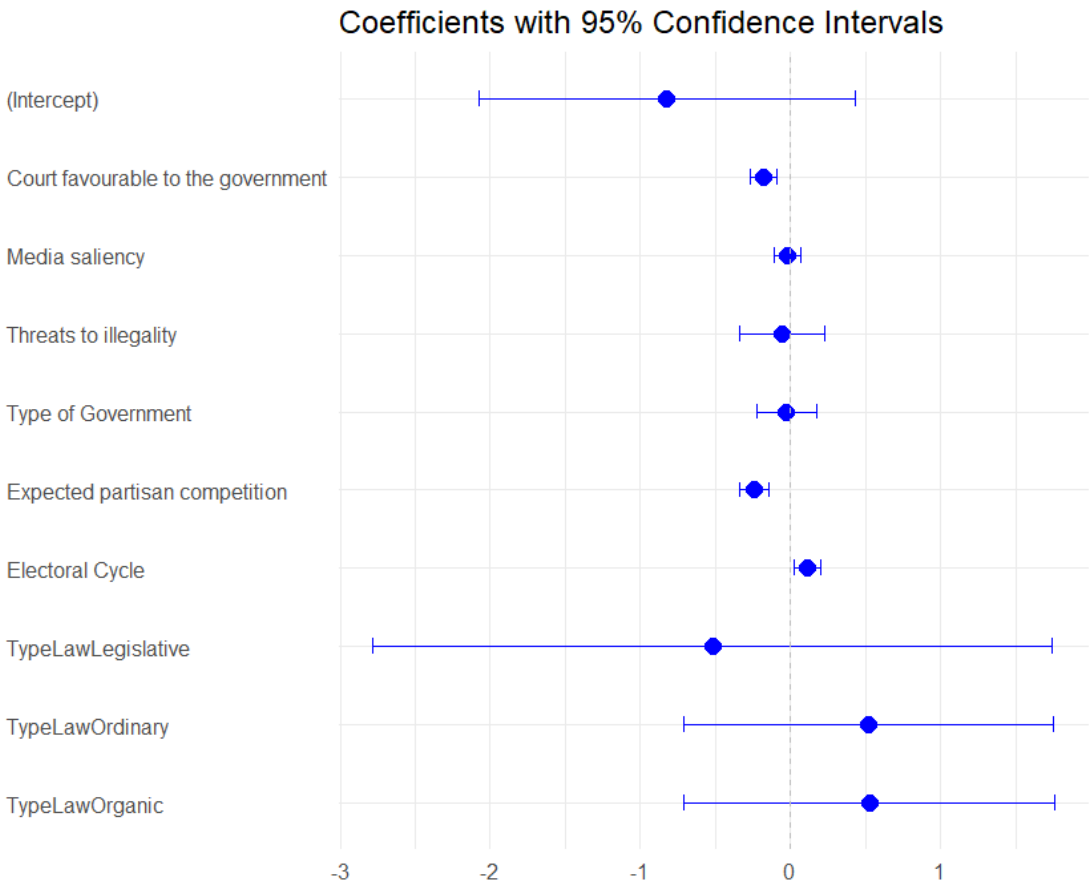

Figure 1: Model 1 Estimates

While SOP models establish the link between laws' relevance and autolimitation, it has never been empirically demonstrated. While the incentives to challenge a law are well-identified (Vanberg 1998*a*; Brouard 2009), the implications of an unfavourable ruling for the government are less clearly addressed in the literature. Indeed, factors such as the length, complexity, and timing of the judicial process make it difficult to predict the narrative impact of a ruling (Jones et al. 2023). Additionally, when the government proposes a law, it has already entered the legislative agenda, meaning that some level of interest in the issue already exists, even if it is limited to specific actors or social groups. That is, while media saliency does indicate which issues are more relevant and should be prioritized, all laws have already been prioritized by the time they are introduced. The

government thus has strong incentives to ensure they pass, as having they overturned can still have significant implications for a relevant group. Moreover, accepting amendments is not a costly decision for the government in terms of resources, so there is no need for additional prioritization. Consequently, autolimitation may even extend beyond the public relevance of laws.

Finally, the electoral cycle and the expected partisan competition have a statistically significant effect, meaning that the government accepts more amendments at the beginning of the legislature and when partisan competition intensifies. Interestingly, the results for the electoral cycle in the Spanish case contradict theoretical expectations, suggesting that further research is needed. However, the findings on expected partisan competition align with the government's fear of being overturned in court. It is reasonable to expect that increased partisan competition leads to greater instrumentalization of the court (Dotan and Hofnung 2005; Aydın-Çakır 2014). Therefore, when the government anticipates higher costs from losing a legal challenge, it is more likely to accept additional amendments to pre-empt opposition challenges. To conclude, regarding the remaining control variables, the type of government is not significant which is reasonable if we consider that typically are the pivotal parties those that foster compromises with the government under minority legislatures—and not the main opposition party. In contrast, the type of law does not seem to influence autolimitation, which aligns with the counter-hypothesis suggesting that parties face constant costs for having their laws overturned.

8 Discussion

This study examines the impact of constitutional courts on the legislative process in the Spanish context, focusing on how Abstract Review contributes to moderating the government's legislative positions. The findings make two key contributions: First, legislative autolimitation is empirically demonstrated, showing that governments accept

more legislative amendments from opposition parties when the court is ideologically closer to these parties. This dynamic strengthens the opposition's legislative influence and decreases the government's autonomy. Second, we find that autolimitation is independent from the media saliency of laws, and also from the risk of being challenged—due to the constitutional fit. The results mostly align with separation of powers (SOP) models, particularly Vanberg (1998*a*) legislative bargaining model, and the judicialization literature (Dotan and Hofnung 2005). Autolimitation in anticipation of court ideology has already been demonstrated by previous literature. However, its effect appears to be even stronger than predicted by previous models, suggesting the need for further research—exploring the role of the media saliency of laws in autolimitation in different contexts offers a promising direction for future studies.

From a theoretical perspective, these findings refine our understanding of constitutional courts as checks and balances in a democratic system. Abstract Review appears to function as intended, moderating policy positions. However, as it depends on the politization of the court, this balance relies on political stability and the willingness of parties to maintain an ideological equilibrium of judges. For example, short governments or those without sufficient majorities to appoint favourable judges may face challenges in passing significant legislation. Accordingly, abstract judicial review shapes the legislative process through two tendencies: pushing governments toward legislating without judicial accountability or even paralyzing the process. This dynamic is neither inherently positive nor negative, nor deterministic. It demonstrates that both the legislative process and the functioning of the court depend largely on the willingness of political parties to compromise. In a period of heightened instability and increasing judicialization of politics, as observed in contemporary Spain (Harguindeguy, 2024), this study provides insights into the tendencies such dynamics might follow. However, the scope of this analysis does not allow us to fully assess the consequences or determine the resilience of this mechanism, as it would also imply studying the consequences on the legitimacy of all the actors involved.

While these findings offer valuable insights, this study has several limitations. First, it focuses exclusively on the Spanish case, which may limit the generalization of results. Second, it does not directly measure judges' preferences for specific texts of specific laws but relies on a proxy. Although this approach is supported by the literature, future research should seek more granular data on judicial decisions to better capture their preferences beyond the conservative-progressive axis. Third, while this study includes the full sample of laws passed through the ordinary legislative procedure in Spain during the period analysed, the sample size is not large enough to account for time or specific policy areas. Fourth, while we successfully computed the passage of amendments in most cases, some methodological limitations remain and could be addressed in future research. Finally, while this analysis considers the possible movements of all the actors involved in abstract review, it does not delve empirically into the role of the opposition or judges as key actors. Future research should explore these dimensions, examining how opposition parties strategically use the court and how judges navigate their role as guardians of court legitimacy.

Despite these limitations, this study sheds light on the dynamics of legislative autolimitation and the broader implications of Abstract Review. The findings highlight the responsibility of political elites and their electors in shaping the functioning of legislative and constitutional control mechanisms. Thus, they point to the consequences that prolonged instrumentalization of the court by opposition parties can have on the legislative process. In this light, this paper provides valuable insights to previous literature exploring the variables that influence the efficacy of legislatures, demonstrating the complex interactions that might exist between parliaments and Courts. The findings also provide insights into how this impacts the principles of representation and accountability, as it constrains the legislative capacity of elected powers and undermines the mechanisms of accountability designed to oversee them. Therefore, understanding these dynamics is

essential for safeguarding the democratic balance between legislative action and judicial oversight.

References

Arnold, R. D. (1990), *The logic of congressional action*, Yale University Press.

Aydın-Çakır, A. (2014), 'Judicialization of politics by elected politicians: The theory of strategic litigation', *Political Research Quarterly* **67**(3), 489–503.

Bräuninger, T., Debus, M., Müller, J. and Stecker, C. (2012), *Parteienwettbewerb in den deutschen Bundesländern*, Springer.

Brouard, S. (2009), 'The politics of constitutional veto in france: constitutional council, legislative majority and electoral competition', *West European Politics* **32**(2), 384–403.

Brunner, M. (2012), Public opinion and parliamentary activities, *in* 'Parliaments and Legislative Activity: Motivations for Bill Introduction', Springer, pp. 67–112.

Calvet Crespo, J. (2003), 'Gobiernos minoritarios, pactos parlamentarios y producción legislativa en españa', *Política y Sociedad, 2003, vol. 40, num. 2, p. 89-103* .

Chaqués Bonafont, L. and Palau Roqué, A. M. (2011), 'Comparing law-making activities in a quasi-federal system of government: The case of spain', *Comparative Political Studies, 2011, vol. 44, num. 8, p. 1089-1119* .

de Dios, M. S. (1999), 'Parliamentary party discipline in spain', *Party discipline and parliamentary government* pp. 141–162.

de Enterría, E. G. (1982), 'La significación de las competencias exclusivas del estado en el sistema autonómico', *Revista española de derecho constitucional* (5), 63–93.

del Castillo Vera, P. (1987), 'Notas para el estudio del comportamiento judicial. el caso del tribunal constitucional', *Revista Española de Derecho Constitucional* (20), 177–191.

Dotan, Y. and Hofnung, M. (2005), 'Legal defeats—political wins: why do elected representatives go to court?', *Comparative Political Studies* **38**(1), 75–103.

Dyevre, A. (2010), 'Unifying the field of comparative judicial politics: towards a general theory of judicial behaviour', *European Political Science Review* **2**(2), 297–327.

Dyevre, A. (2011), Game theory and judicial behaviour, *in* W. Zaluski and J. Stelmach, eds, 'Studies in the Philosophy of Law: Game Theory and the Law', Copernicus Center Press, Kraków, pp. 115–144.

Engst, B. G. (2021), *The Two Faces of Judicial Power*, Oxford Univ. Press.

Epstein, L., Martin, A. D., Quinn, K. M. and Segal, J. A. (2012), Ideology and the study of judicial behavior.

Favoreu, L. (1992), 'The principle of equality in the jurisprudence of the conseil constitutionnel', *Cap. UL Rev.* **21**, 165.

Field, B. N. and Gray, C. (2019), The spanish parliament in context, *in* 'The Iberian Legislatures in Comparative Perspective', Routledge, pp. 25–46.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*a*), 'Loyalty to the party or loyalty to the party leader: Evidence from the spanish constitutional court', *International Review of Law and Economics* **67**, 105999.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*b*), 'Mixed judicial selection and constitutional review: Evidence from spain', *European Constitutional Law Review* **17**(2), 287–313.

Garoupa, N., Gomez-Pomar, F. and Grembi, V. (2013), 'Judging under political pressure: An empirical analysis of constitutional review voting in the spanish constitutional court', *The Journal of Law, Economics, & Organization* **29**(3), 513–534.

Garoupa, N. and Magalhães, P. C. (2020), Judicial politics: The constitutional court, *in* D. Muro and I. Lago-Peñas, eds, 'The Oxford Handbook of Spanish Politics', Oxford University Press, Oxford, pp. 258–275.

Gava, R., Jaquet, J. M. and Sciarini, P. (2021), 'Legislating or rubber-stamping? assessing parliament's influence on law-making with text reuse', *European Journal of Political Research* **60**(1), 175–198.

Ginsburg, T. (2007), The global spread of constitutional review, *in* K. E. Whittington and R. D. Kelemen, eds, 'Oxford Handbook of Law and Politics', Oxford University Press, Oxford, pp. 81–94.

Hagan, J. (1986), 'The new legal scholarship: Problems and prospects', *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* **1**, 35–56.

Harguindéguy, J.-B. (2024), 'The constitutional court and the judicialization of spanish politics', *European Politics and Society* **25**(3), 501–517.

Harguindéguy, J.-B., Rodríguez-López, E. and Sánchez, A. (2017), 'Los conflictos intergubernamentales entre españa y cataluña: Inter-governmental conflicts between spain and catalonia', *Reis: Revista Española de Investigaciones Sociológicas* pp. 79–96.

Jones, B. D., Baumgartner, F. R., Theriault, S. M., Epp, D. A., Lee, C., Sullivan, M. E. and Cassella, C. (2023), 'Policy agendas project: codebook', *Comparative Agendas Project. URL: https://www. comparativeagendas. net/us* .

Kommers, D. P. (1994), 'The federal constitutional court in the german political system', *Comparative Political Studies* **26**(4), 470–491.

Landfried, C. (1985), 'The impact of the german federal constitutional court on politics and policy output', *Government and Opposition* **20**(4), 522–542.

Landfried, C. (1992), 'Judicial policy-making in germany: The federal constitutional court', *West European Politics* **15**(3), 50–67.

López Garrido, D. and Subirats, J. (1990), 'El proceso de toma de decisiones legislativas: las relaciones gobierno-parlamento en españa', *Papers: revista de sociologia* (33), 035–49.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2018), 'Is the spanish constitutional court an instrument of the central government against the autonomous communities?', *Constitutional Political Economy* **29**, 317–337.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2019), 'Consensus and dissent in the resolution of conflicts of competence by the spanish constitutional court: the role of federalism and ideology', *European journal of law and economics* **48**, 305–330.

Magalhães, P. C. (2003), *The limits to judicialization: Legislative politics and constitutional review in the Iberian democracies*, The Ohio State University.

Manow, P. and Burkhart, S. (2007), 'Legislative self-restraint under divided government in germany, 1976–2002', *Legislative Studies Quarterly* **32**(2), 167–191.

Marks, B. A. (2012), 'A model of judicial influence on congressional policy making: Grove city college v. bell', *The Journal of Law, Economics, and Organization* **31**(4), 843–875.

Martin, L. W. and Vanberg, G. (2005), 'Coalition policymaking and legislative review', *American Political Science Review* **99**(1), 93–106.

Martin, L. W. and Vanberg, G. (2014), 'Parties and policymaking in multiparty governments: the legislative median, ministerial autonomy, and the coalition compromise', *American Journal of Political Science* **58**(4), 979–996.

Martin, L. W. and Vanberg, G. (2020), 'Coalition government, legislative institutions, and public policy in parliamentary democracies', *American Journal of Political Science* **64**(2), 325–340.

McCann, M. W. (1995), Rights at work: pay equity reform and the politics of legal mobilization, *in* 'The Legal Studies Forum', Vol. 19, HeinOnline, p. 95.

Murphy, W. F. and Tanenhaus, J. (1968), 'Public opinion and the united states supreme court: Mapping of some prerequisites for court legitimation of regime changes', *Law & Society Review* **2**(3), 357–384.

Muñoz, L. and Rodilla, A. (2024), 'A tug-of-war game: regional laws before the spanish constitutional court', *Territory, Politics and Governance* **x**(x), 1–19.

Palau, A. M., Casas, A. and Muñoz, L. (2023), 'To amend or not to amend: Under what circumstances do spanish legislators propose amendments to executive bills?', *West European Politics* . Advance online publication.
URL: *https://doi.org/10.1080/01402382.2023.2241253*

Palau, A. M., Márquez, L. M. and Chaqués-Bonafont, L. (2017), Government–opposition dynamics in spain under the pressure of economic collapse and the debt crisis, *in* 'Government-Opposition in Southern European Countries during the Economic Crisis', Routledge, pp. 75–95.

Pavone, T. and Stiansen, Ø. (2022), 'The shadow effect of courts: Judicial review and the politics of preemptive reform', *American Political Science Review* **116**(1), 322–336.

Rama, J., Cordero, G. and Zagórski, P. (2021), 'Three is a crowd? podemos, ciudadanos, and vox: The end of bipartisanship in spain', *Frontiers in political science* **3**(688130).

Rodríguez López, E., Harguindéguy, J.-B. P. and Sánchez Sánchez, A. (2019), 'The perfect storm? how to explain the rise of intergovernmental conflicts in spain?(1984–2014)', *Innovation: The European Journal of Social Science Research* **32**(2), 211–230.

Rogers, J. R. (2001), 'Information and judicial review: A signaling game of legislative-judicial interaction', *American Journal of Political Science* **45**(1), 84–99.

Sala, G. (2014), 'Can courts make federalism work? a game theory approach to court-induced compliance and defection in federal systems', *Economies* **2**(4), 193–217.

Schroeder, P. (2022), 'Pushing boundaries: How lawmakers shape judicial decision-making', *Comparative Political Studies* **55**(14), 2447–2479.

Sisk, G. C. (2008), 'The quantitative moment and the qualitative opportunity: Legal studies of judicial decision making (book review)', *Cornell Law Review* **93**, 08–16.

Staton, J. (2008), 'Formal theory in comparative judicial politics', *Law & Courts* **18**(3), 10–15.

Stokes, S. C. (1999), 'Political parties and democracy', *Annual Review of Political Science* **2**(1), 243–267.

Sweet, A. S. (1992), *The birth of judicial politics in France: The Constitutional Council in comparative perspective*, Oxford University Press.

Sweet, A. S. (1998), 'Rules, dispute resolution, and strategic behavior', *Journal of Theoretical Politics* **10**(3), 327–338.

Sweet, A. S. (2000), *Governing with judges: constitutional politics in Europe*, Oxford University Press.

Sweet, A. S. (2004), *The judicial construction of Europe*, Oxford University Press.

Taagepera, R. and Laakso, M. (1980), 'Proportionality profiles of west european electoral systems', *European Journal of Political Research* **8**(4), 423–446.

Uribe, A., Spriggs II, J. F. and Hansford, T. G. (2014), 'The influence of congressional preferences on legislative overrides of supreme court decisions', *Law & Society Review* **48**(4), 921–945.

Vallbé, J.-J. and Lozano, L. M. (2024), 'Strategic manipulation of courts in civil law systems', *Available at SSRN* .

Vallbé, J. J. (2024), The spanish constitutional court, *in* K. Pócza, ed., 'Constitutional Review in Western Europe: Judicial-Legislative Relations in Comparative Perspective', Routledge, pp. 241–263.

Vanberg, G. (1998*a*), 'Abstract judicial review, legislative bargaining, and policy compromise', *Journal of theoretical politics* **10**(3), 299–326.

Vanberg, G. (1998*b*), 'Reply to stone sweet', *Journal of Theoretical Politics* **10**(3), 339–346.

Vanberg, G. (2001), 'Legislative-judicial relations: A game-theoretic approach to constitutional review', *American journal of political science* pp. 346–361.

Vanhala, L. (2012), 'Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the uk', *Law & Society Review* **46**(3), 523–556.

Vliegenthart, R., Walgrave, S., Baumgartner, F. R., Bevan, S., Breunig, C., Brouard, S., Bonafont, L. C., Grossman, E., Jennings, W., Mortensen, P. B. et al. (2016), 'Do the media set the parliamentary agenda? a comparative study in seven countries', *European Journal of Political Research* **55**(2), 283–301.

9 Appendix

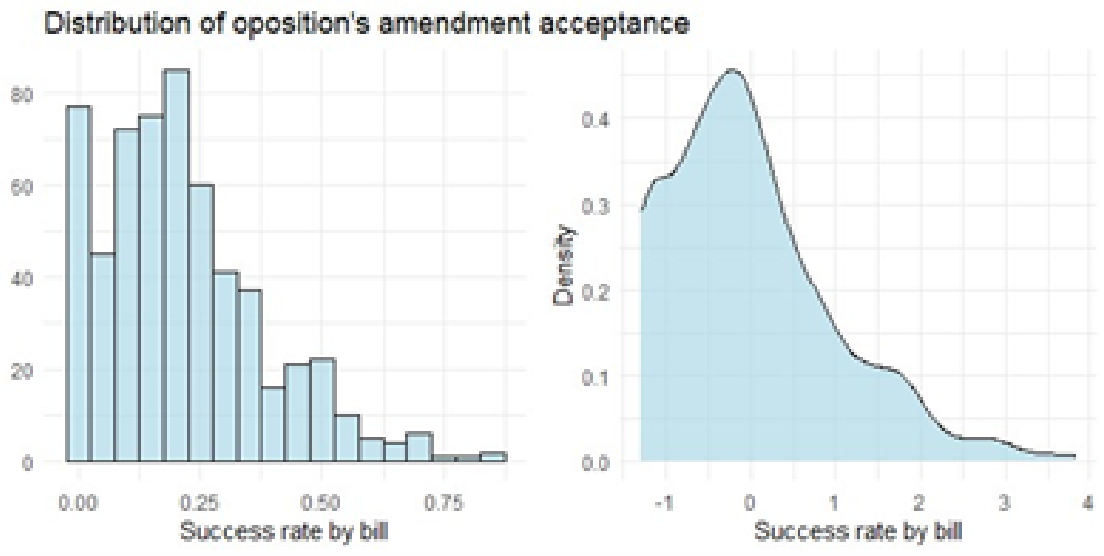

Figure A1: Distribution of dependent variable of Model 1

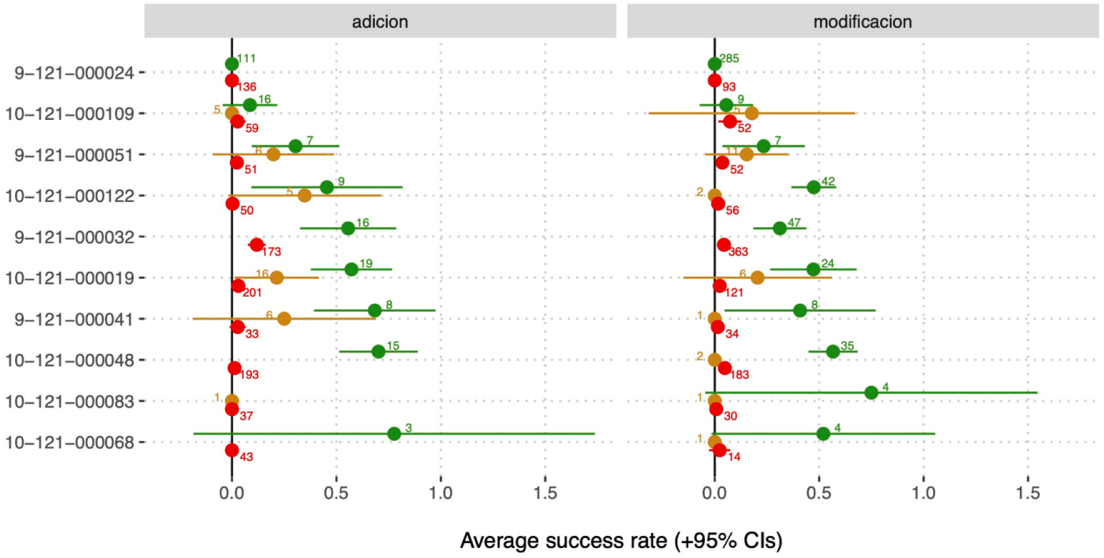

Figure A2: Validation of the success rate measure (first round)[55]

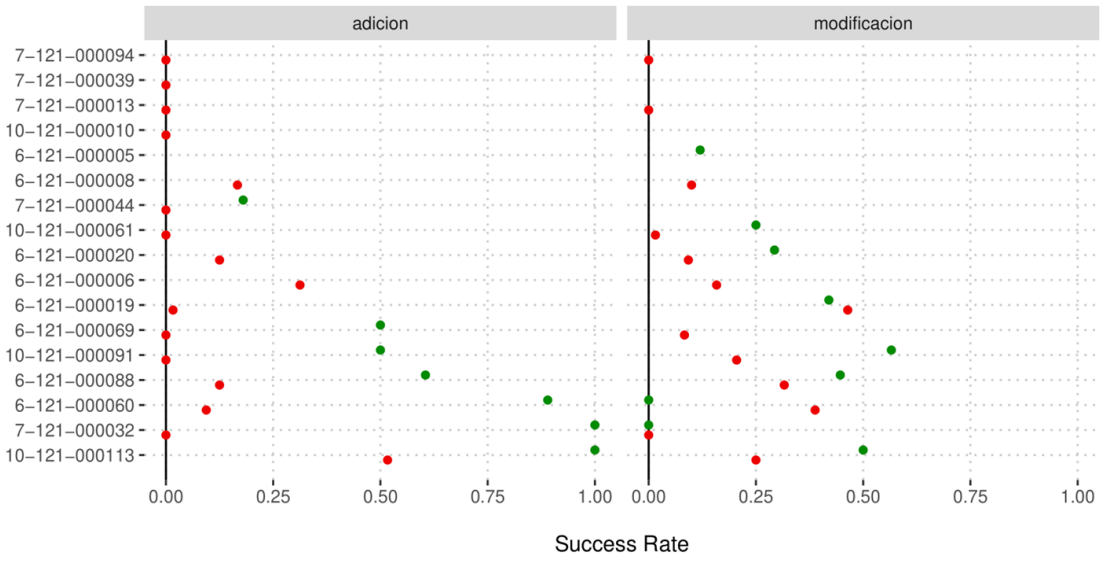

Figure A3: Validation of the success rate measure (second round)

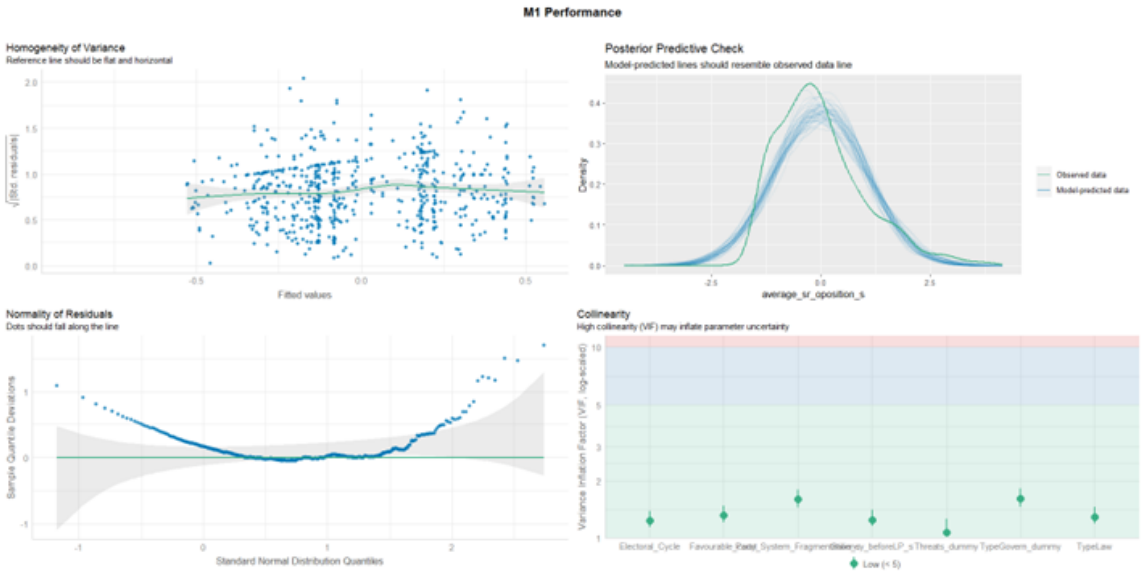

Figure A4: Verification of the regression assumptions for Model 1.

Conclusions

This dissertation has empirically examined the functioning of abstract review in Spain, focusing on how the political context—and the incentives (for policy and politics) it generates—shapes abstract review rulings, the decision to challenge a law in court, and legislative strategies to avoid its invalidation.This analysis contributes to the understanding of abstract review by bridging the political and judicial arenas. It integrates research on parliamentary behavior and judicial decision-making to provide a more comprehensive understanding of the functioning of abstract review. However, the significance of this study extends beyond academia by contributing to the debate on an urgent contemporary issue: how the political context—currently characterized by heightened polarization and rising illiberalism—might impact the functioning of non-majoritarian institutions such as constitutional courts.

Abstract review is a fundamental mechanism of checks and balances in democratic systems, having expanded across Europe after World War II to protect political systems from legislative threats (Shapiro and Sweet 2002; Ginsburg 2007). In the current context, with the rise of reactionary parties hostile to democratic principles, the resilience of institutional safeguards—such as abstract review—is once again under scrutiny (Hasen 2019; Casal Bértoa and Rama 2021). Understanding how the political context and the incentives it generates shape the functioning of abstract review is crucial to the broader debate on the impact of these challenges on non-majoritarian institutions like constitutional courts. By examining the roles of political parties and judges in the politicization of justice and the judicialization of politics, this study offered insights into the mechanisms by which the functioning of abstract review is undermined in Spain.

To address the broader question of how abstract review functions, this dissertation conducted three analyses across three interrelated articles. The first article investigated whether the Spanish Constitutional Court is influenced by the current political climate

of polarization. To do so, it examined how judges' ideological preferences shaped their rulings and how this ideological influence evolved over time. The findings aligned with theories of judicial behavior, confirming that judges' decisions were indeed shaped by their ideology. More importantly, the analysis revealed that this influence intensified over time, indicating signs of judicial polarization. Finally, it demonstrated that this shift in judicial behavior, consistent with judicial polarization, was linked to the increasing polarization of the party system. In sum, this article highlighted the growing role of ideology in judicial decisions and the escalating ideological conflict among judges, underscoring the profound impact of political contexts on judicial decision-making.

The second article examined whether the main opposition party's decision to challenge a law was driven by the anticipated outcome of a court ruling or by partisan strategy. Its primary contribution lay in distinguishing between long-term and short-term incentives, demonstrating that as short-term political competition intensified, the opposition increased the number of challenges to gain a strategic political advantage. This study aligned with theories of the politicization of justice, which suggested that instrumentalizing the court could increase its workload, expose it to political pressures, and shape public perceptions of the relationship between politics and justice (Hirschl 2009; Hasen 2019; Tate and Vallinder 1997). Moreover, beyond shedding light on the opposition's behavior and its consequences, the study also contributed to understanding legislators' incentives to appoint ideologically aligned judges and preemptively amend legislation to avoid adverse rulings.

Finally, Article Three examined the extent to which the parliamentary group of the governing party accepted legislative modifications to prevent its laws from being overturned. This article demonstrated the existence of legislative autolimitation in Spain, consistent with separation of powers (SOP) models (e.g. Vanberg 1998*a*; Sweet 1992). In other words, the legislature tooks the threat of judicial invalidation seriously and acts preemptively to avoid it. Moreover, the analysis revealed that the court's ideological

composition played a key role in how parties anticipated court rulings.

Together, these three articles provide a comprehensive perspective on how the political context shaped the legislature's ability to pass laws while also influencing the extent of judicial oversight. Furthermore, they offer key insights into the consequences of intense partisan competition, particularly those driven by political polarization. Ultimately, this dissertation presents a more dynamic view of ideological influence on judicial behavior. While ideological biases exist, they are not solely the product of legal reasoning or individual judicial decisions. Rather, they emerge from complex interactions within the broader political system.

1 Summary of Main Findings

1.1 Main Findings of Article One

Article One demonstrates that the decisions of constitutional judges in Spain are influenced by their ideology, and that this influence has evolved over time, leading to increasing judicial polarization. To do this, judges' ideologies are inferred from their votes in court between 1980 and 2023. After validating these ideological estimates, the analysis investigates their evolution, searching for patterns of polarization, such as heightened conflict within the court or more ideologically extreme voting behaviors. The relationship between judicial polarization and the polarization of the party system is then tested. Overall, the results of this analysis strongly support the idea that the decisions of constitutional court judges are constrained by their ideology, and that this ideological influence has become more pronounced as Spain's ideological polarization has increased.

First, judges mean indifference points are robust to the validations, meaning that judges' voting patterns clearly reflect their ideology. Moreover, the estimates show

that more recent judges exhibit more extreme voting patterns. They are increasingly aligned with the party that appointed them, a trend that matches with the increasing polarization trends observed in the Spanish society last years (Casal Bértoa and Rama 2021; Harguindéguy 2024). These findings are also observed at the aggregated level. That is, judges estimated ideology allow us to position the median judge and observe also how the ideological composition of the court as a whole has changed. Median judges' ideology has evolved towards more extreme positions, which reflects a more divided court with the "consensus" judge increasingly at the tails of the ideological spectrum. This means that ideology plays an increasing role in deciding the direction of the ruling, a finding also consistent with increasing polarization.

Second, following with the analysis of the court at the collective level, we also assess the extent to which the ideology of the median judge influences final court's rulings. The regression results indicate a strong correlation between the ideological distance of the median judge and the success of litigants, an effect that remains robust even when controlling for year and judge fixed effects. These findings suggest that, while we analyze individual votes to estimate judges' ideological positions at the individual level, these estimations are also useful in explaining judicial decisions at the collective level. In other words, not only do individual ideological leanings shape dissenting opinions, but they also contribute to determine the court ruling—after voting all judges. Therefore, our results further confirm the strategic importance for political parties of ensuring that ideologically aligned judges are present in the court, as judicial ideology can significantly impact overall rulings.

Finally, the evolution of judicial ideology at both the individual and collective levels reflects broader patterns of polarization. As demonstrated, political parties are increasingly positioned at the ideological extremes of the spectrum, and court decisions are progressively aligning with the ideology of the litigants. Moreover, the results indicate

that judges are more likely to vote together when they share similar ideological positions. Taken together, these patterns show a rise in internal conflicts within the court and a growing influence of judicial ideology on decision-making. Furthermore, these indicators have been correlated with the polarization index of the party system (Dalton 2008), revealing a positive and statistically significant relationship. This finding suggests that judicial behavior, consistent with patterns of polarization, is closely tied to a broader polarization phenomenon affecting political parties, voters, the media, and society as a whole (Casal Bértoa and Rama 2021). In sum, these results confirm, first, that ideology is the primary factor driving agreement among judges, and second, that this ideological alignment has become more pronounced as party-system polarization has intensified, thereby reflecting judicial polarization.

1.2 Main Findings of Article Two

Article Two demonstrates that the decision of the main opposition party to challenge a law is driven more by short-term or long-term incentives. To test this, I ran a Firth's logistic regression model to analyze whether independent variables capturing both types of incentives explain legal challenges to laws passed in the Spanish Parliament between 1996 and 2023. For long-term incentives, the model incorporates the ideological composition of the court as a proxy for the likelihood of successfully overturning a law. This variable builds on findings from Article One, which demonstrated that the court's ideological alignment strongly predicts litigants' success rates. Here, the court's composition serves as a measure of the opposition's strategic calculus. For short-term incentives, the model includes variables such as media salience of the law, expected partisan competition, and proximity to elections. These factors reflect scenarios where the opposition prioritizes immediate political gains—such as shaping public narratives or undermining the government—over the legal merits of the case.

First, the coefficient related to the composition of the court—i.e., a proxie of the likelihood of winning the case—is not statistically significant in any of the models. This suggests that the main opposition party is primarily concerned with political competition rather than the result of a potential case in court. This finding aligns with existing studies on the judicialization of politics, which highlight that judicial arenas serve as strategic platforms for political parties (e.g. Brouard 2009; Aydın-Çakır 2014; Vanhala 2012; McCann 1995; Dotan and Hofnung 2005; Muñoz and Rodilla 2024). These arenas provide an opportunity for parties to amplify the visibility of their discourses, challenge their opponents, and delegitimize the legislator by framing certain policies or decisions as illegal.

Second, the results of the variables measuring long-term effects are statistically significant, indicating that incentives for political competition play a crucial role in the main opposition party's decision to challenge a law. Specifically, the coefficients for the variables measuring the media saliency of the law and the expected partisan competition are both positive and statistically significant. These findings suggest that when a law attracts significant public attention and the main opposition party anticipates losing electoral support to smaller minority parties, it uses abstract review as a strategic tool, increasing its frequency. Following the previous finding, this tactic not only enhances its public presence but also allows them to frame their resistance in legal terms, reinforcing their position as a credible alternative to the ruling government.

Finally, while the variable capturing the electoral cycle is statistically significant, its negative coefficient indicates an inverse relationship. In other words, the main opposition party is more likely to increase the number of legal challenges at the beginning of the legislative term, even though most laws are passed during the second and third years of the legislature. This finding contradicts prevailing expectations in the literature on the judicialization of politics (e.g. Aydın-Çakır 2014), which generally suggests that opposition parties should file more challenges as elections approach to maximize their

visibility. However, alternative explanations for this pattern are also plausible, such as increased competition for the median voter as elections draw near, but further research is needed to substantiate these claims.

1.3 Main Findings of Article Three

Article Three examines the impact of constitutional courts on the legislative process, focusing on how Abstract Review contributes to modify the laws before being passed to avoid their invalidation. The analysis uses the acceptance of amendments—particularly the mean success rate of all the amendments presented to each bill—by the parliamentary group of the governing party to capture legislative modifications. The likelihood of winning a case on the court, following the logic of Article Two and based on the results of Article One, is measured through the ideological composition of the court. Moreover, to account for the potential legal problems implicit in a given bill, I control for a variable capturing all the mentions to the illegality or the unconstitutionality of the law made during the plenary debates in parliament. Two main findings emerge from this analysis.

First, the coefficient measuring the mean acceptance rate of amendments is negative and statistically significant, providing empirical support for the theory of legislative autolimitation. The results suggest that governments are more likely to accept legislative amendments proposed by opposition parties when the chances of winning are lower—specifically, when the court's ideological composition is unfavorable to the government. This finding underscores the significant role the court's ideological composition plays in shaping the legislative process. It is not merely the case that unfavorable judges may systematically overturn more laws passed by the legislature, but also that the legislature, anticipating such challenges, is less likely to pass laws that align with its preferred policies. This fear of judicial intervention thus tends to limit the legislative autonomy of the government in situations where the court is ideologically opposed, while

simultaneously enhancing its autonomy when the court is more ideologically aligned with the government's interests.

Second, I find that legislative autolimitation is independent of both the media salience of laws and the risk of being challenged—a proxy for a priori constitutional fit. Specifically, neither the coefficients capturing the media salience of laws nor the control variable measuring threats of unconstitutionality are statistically significant. This suggests that media attention on specific laws and the perceived likelihood of constitutional challenges do not directly influence legislative autolimitation. Instead, the results indicate that legislators respond to the ideological composition of the court when deciding whether to accept more or fewer amendments. These findings align with both separation of powers (SOP) models, particularly the legislative bargaining framework proposed by Vanberg (1998*a*), and the literature on judicial behavior, which highlights the relevance of judges' ideology in shaping rulings (e.g. Vallbé 2024; Garoupa et al. 2013, 2021*a*). While previous studies have examined autolimitation in response to potential legal controversies, this study shifts the focus to judges' ideology as the key predictor that parties use to anticipate the outcome of a hypothetical case—after first establishing its influence on judicial rulings.

2 Implications

Each of the three articles in this thesis has both theoretical and empirical implications. Taken together, their findings offer additional theoretical insights into the functioning of abstract review, with relevance for the literature on judicial behavior, separation of powers, and parliamentary studies. Furthermore, they contribute to the broader political debate on how rising polarization may affect institutions such as constitutional courts, with implications for research on political and judicial polarization. Below, I summarize the theoretical and empirical implications of each article and conclude with two key theoretical arguments: one that enhances our understanding of abstract review by clarifying the

interaction between political and judicial arenas, and another that informs the debate on the potential consequences of political polarization for democratic institutions.

2.1 Implications Article One

Article One offers several theoretical implications. First, it reveals how institutional dynamics in European judiciaries respond to shifting political contexts. While prior research has emphasized courts' sensitivity to political incentives, these findings highlight how such incentives are shaped by distinct political contexts. Moreover, capturing similar dynamics in Europe and the U.S prompts scholars to further reconsider comparative analyses of institutional designs, especially as global political trends increasingly influence judicial behavior (Hasen 2019; McCoy et al. 2018*a*; Casal Bértoa and Rama 2021). Second, the results reinforce the view of polarization as a structural force permeating institutions beyond partisan politics. While scholars have primarily studied polarization as a societal phenomenon influencing party institutions and overtly political actors (see Casal Bértoa and Rama 2021), its impact on courts remains largely overlooked. This article demonstrates how polarization manifests in European constitutional courts—whose judges are appointed by political parties. By extending these arguments to non-majoritarian institutions, the study urges scholars to account for the diffuse effects of polarization even in bodies traditionally insulated from politics. This shifts the focus from polarization as a purely political phenomenon to one that reshapes institutional dynamics in systems where judicial appointments are politicized.

Empirically, Article One demonstrates that judicial polarization can be systematically measured using judges' individual votes, even without prior knowledge of their ideological leanings. This enables future comparative studies to quantify polarization in non-majoritarian institutions and assess its relationship to broader societal divides. The empirical results also challenge claims of judicial neutrality in separation of powers

frameworks (Stone 1990). By showing that ideology directly influences final rulings, the findings contribute to the use of judicial ideology as a key predictor of court decisions. Furthermore, these results reshape understandings of legislative-executive interactions. The abstract review process—often used by opposition groups to overturn legislation—forces policymakers to anticipate potential invalidation, thereby altering legislative strategies. In this context, scholars of parliamentary studies in Spain, who have traditionally focused on the vote- and policy-seeking strategies of parties (e.g. Mújica and Sánchez-Cuenca 2006; Bonafont et al. 2015; Field and Gray 2019; Giol 2003; Field 2014; Palau et al. 2023; Palau and Rodilla 2022), must now consider how constitutional courts indirectly shape legislative behavior through anticipatory adjustments.

2.2 Implications Article Two

Theoretically, the article advances understanding in three key ways. First, it distinguishes between short-term and long-term costs and incentives in judicial-political interactions. While prior work suggests that the fear of unfavorable rulings—which harm policy and legitimacy—deters challengers from constantly going to court (e.g. Stone 1990; Magalhães 2003), this study demonstrates that short-term electoral incentives dominate actors' strategic behavior, explaining peaks in constitutional litigation such as the recent increase in the number of abstract review cases (Vallbé 2024; Harguindéguy 2024). Second, this distinction resolves a paradox in the literature: it reconciles the rise in constitutional litigation (attributed to polarized political competition, (Casal Bértoa and Rama 2021; Harguindéguy et al. 2017)) with the judicial and resource constraints that otherwise limit challengers (Sweet 2000; Magalhães 2003). Third, by attributing this surge to political parties' electoral strategies, the findings challenge assumptions that institutional safeguards alone regulate litigation, emphasizing instead the primacy of political competition in shaping judicial behavior.

Empirically, the article provides three critical insights. First, it highlights the dominance of political incentives in constitutional litigation, underscoring the vulnerability of courts to partisan weaponization in polarized systems. While existing explanations of party strategic behavior account for traditionally low levels of constitutional litigation in Spain (Magalhães 2003), this study adds to the literature by demonstrating that increases in litigation can also result from parties' strategic behavior. Second, it reinforces the challenge to assumptions of judicial neutrality by successfully linking rulings to electoral strategies, particularly highlighting the incentives of parties to politicize judicial appointments, as courts are weaponized for partisan goals. Third, by linking judicial behavior to broader debates about judicial overload and partisan court abuse, it suggests the future deepening of judicialization. Finally, by clarifying how short-term political incentives drive litigation, Article Two exposes judicial-electoral collusion as a systemic feature of polarized democracies—a perspective with profound implications for separation of powers theory and institutional design in polarized democracies.

2.3 Implications Article Three

Article Three carries significant theoretical implications for understanding parliamentary behavior and judicial-legislative interactions. First, it reveals how the probability of winning in court adds a layer of complexity to lawmaking, as parties' vote- and policy-seeking incentives are shaped by their anticipated success in constitutional challenges. This underscores the importance of incorporating judicial outcomes into parliamentary studies, a factor often overlooked by the literature (see Brouard 2009). Second, the article advances separation of powers theories (Vanberg 1998*a*) by showing how abstract review influences legislative strategies even without judicial intervention. For example, legislators may preemptively modify laws to avoid court rejection, while opposition parties leverage constitutional challenges for political gain. These dynamics reframe abstract review as a shadow mechanism that shapes lawmaking beyond formal judicial rulings.

Empirically, Article Three reshapes how scholars study the interplay between legislatures and courts. By measuring the effect of anticipated judicial outcomes on legislative amendments, the findings highlight strategic legislative modifications of lawmakers in response to the ideological composition of the court. This underscores the political nature of constitutional review, even in the absence of direct legal controversy. Furthermore, the article's methodological approach—calculating the success rate of legislative amendments and analyzing autolimitation—provides a replicable framework for comparative studies. These tools enable future research to assess how different institutional designs mitigate or exacerbate the politicization of justice, offering insights into which systems are more resilient to partisan abuse of constitutional courts.

2.4 General implications of the dissertation

The interplay of findings across the three articles illustrates how incentives for partisan competition—such as those driven by increasing political polarization—reshape the functioning of abstract review. As phenomenons such as political polarization increase, actors prioritize short-term electoral gains over long-term policy goals, leading to a surge in constitutional litigation and ideologically driven judicial behavior. Legislators, opposition parties, and judges alike engage in strategic behavior—modifying laws, weaponizing judicial appointments, or leveraging abstract review—to maximize immediate political advantages. This self-reinforcing cycle explains dramatic increases in the number of constitutional cases and the shift of constitutional judges toward ideological decision-making. For scholars, this underscores the need to integrate electoral incentives into the analysis of abstract review, as traditional frameworks underestimate the role of partisan competition in judicial-legislative interactions.

The articles collectively demonstrate that abstract review operates asymmetrically,

depending on the ideological alignment between courts and legislators. When courts align with the governing majority, legislators push policies closer to their ideal points, reducing substantive judicial checks and relegating oversight to symbolic gestures. Conversely, when courts favor the opposition, they obstruct significant reforms, even creating gridlock in some circumstances. This judicial-legislative power interplay is amplified by polarization, which incentivizes parties to politicize appointments and instrumentalize the courts. While constitutional safeguards prevent outright unconstitutional laws, the findings caution against overreliance on courts as neutral arbiters in polarized democracies. For institutional design, this implies that reforms to make judicial appointments (e.g., supermajority requirements, nonpartisan panels) more balanced and representative of society are critical to preserving judicial legitimacy while minimising interference in the legislative process.

These dynamics have profound consequences in an era of rising illiberalism and parliamentary fragmentation. As political conflicts become identity-driven, parties increasingly view constitutional courts as extensions of partisan warfare rather than guardians of legality. This risks transforming courts into de facto third legislative chambers, undermining both judicial legitimacy and legislative representation. The findings align with warnings about the erosion of judicial independence in polarized democracies (Hirschl 2009; Tate and Vallinder 1997; Hasen 2019), urging scholars and policymakers to re-examine institutional safeguards against judicial politicization, develop metrics to assess democratic erosion, and prioritize comparative studies to identify designs resilient to partisan abuse.

3 Limitations and Future Research

While this dissertation advances understanding of how abstract review functions and how political context—and the incentives it generates—shape its outcomes, its findings are subject to several limitations. First, the analysis is confined to Spain, which, despite

sharing institutional features (e.g., concentrated system of judicial review) and political dynamics with other parliamentary democracies, limits the generalizability of the results. Future research should expand the scope to include diverse contexts, particularly courts in historically less politicized systems, to determine whether similar patterns of ideological influence and strategic behavior emerge. Such comparative studies would help develop a generalizable theory of abstract review applicable across different institutional and political settings.

Second, the data used in this study present two key challenges. First, the temporal scope of Articles Two and Three begins in 1996 due to the lack of digitized text for earlier periods. The reliance on image-based documents complicates analysis using traditional computational techniques. Future research could leverage advances in optical character recognition (OCR) to transcribe and analyze pre-1996 materials, enabling a longer-term perspective on judicial and legislative behavior. Second, the variable measuring whether an amendment was accepted, while achieving an acceptable accuracy rate (above 75%), could be improved. Rule-based methods allowed for efficient processing of large datasets but struggled with the grammatical diversity of amendment texts. Future studies could employ language models (e.g., transformer-based architectures like BERT or GPT) to enhance precision by parsing syntactic and semantic structures, thereby improving the reliability of amendment analysis.

Third, at a theoretical level, Article Three yields unexpected results regarding the influence of the electoral cycle on litigation decisions. Contrary to the hypothesis that opposition parties would challenge laws more frequently during electoral periods, the findings suggest the opposite. A plausible explanation lies in Spain's evolving party system. For most of the period under analysis, Spain operated under a two-party system dominated by the PP and PSOE[56]. In this bipartisan context, opposition parties may

[56]Although the rise of new parties like Podemos and Ciudadanos has increased multiparty competition, the PP and PSOE have dominated for most of the period. Moreover, these two mainstream parties have been

avoid litigation during electoral periods to appeal to moderate voters, as aggressive legal challenges could alienate centrist constituencies (Downs 1957). This strategic restraint aligns with the broader logic of electoral competition in systems where moderate voters play a decisive role. However, this interpretation remains speculative, as the analysis does not directly measure voter perceptions or party strategies—moreover, the results suggest that these behaviors may have also changed in recent years in response to increasing partisan competition. Future research should test this hypothesis in varied party systems (e.g., systems with a stronger multi-party tradition or less ideological polarization) to assess how electoral incentives and voter dynamics shape litigation strategies.

Fourth, while this dissertation makes a significant contribution to the debates on polarization and constitutional review, it does not analyzes the all the potential consequences of the judicialization of politics—and the politicization of justice. Specifically, this thesis does not identify how the dynamics described directly affect the legislative competencies of parliament on various issues or how these judicial-political links influence the legitimacy of the courts—i.e., it does not analyze how these dynamics affect the application of certain laws or to what extent the court expands or reduces its power as it becomes more politicized. Future research should disaggregate both laws and rulings to examine how judicial decisions impact legislative competencies on specific matters. Additionally, while the dissertation discusses the risks to the court's legitimacy, it does not directly assess public perceptions of judicial credibility—a critical factor in theories of judicial-legislative interaction (Vanberg 1998*a*). To advance our understanding, future studies should rigorously investigate the tangible effects of judicialization, including its impact on legislative productivity and public trust in the judiciary, in order to draw more definitive conclusions about its long-term institutional and democratic consequences.

Finally, this thesis relies on proxies to measure the preferences of political parties

the only ones to govern during this time and continue to exert significant political influence over institutions elected by qualified majorities, such as judicial appointments.

and judges. While these proxies are supported by previous literature (e.g. Dyevre 2010), future research should prioritize direct, granular measurements of preferences regarding regulations for each specific topic by each actor, including judges. Databases that compare the reasoning of individual judges over time and across issues may enhance our understanding of the strategic behavior of all three actors—how it is shaped and how it influences jurisprudence. Such efforts would clarify the interplay between legal strategies and political tactics, refine predictive models of judicial decision-making, and account for deviations from expected behavior. Advancing these research agendas will deepen our understanding of abstract review—a cornerstone of democratic checks and balances—and its role in mediating conflicts between legislative and judicial powers in polarized societies.

References

Abramowitz, A. (2010), *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy*, New Haven, CT: Yale Univ Press.

Abramowitz, A. I. (2015), 'The new american electorate', *American gridlock: The sources, character, and impact of political polarization* **19**, 408–46.

Adams, J. F., Merrill III, S. and Grofman, B. (2005), *A unified theory of party competition: A cross-national analysis integrating spatial and behavioral factors*, Cambridge University Press.

Adams, J. and Merrill, S. (2006), 'Why small, centrist third parties motivate policy divergence by major parties', *American Political Science Review* **100**(3), 403–417.

Alonso, S., Gómez, B. and Cabeza, L. (2013), 'Measuring centre–periphery preferences: The regional manifestos project', *Regional & Federal Studies* **23**(2), 189–211.

Alonso, S. and Rovira Kaltwasser, C. (2015), 'Spain: No country for the populist radical right?', *South European Society and Politics* **20**(1), 21–45.

Arnold, R. D. (1990), *The logic of congressional action*, Yale University Press.

Aydın-Çakır, A. (2014), 'Judicialization of politics by elected politicians: The theory of strategic litigation', *Political Research Quarterly* **67**(3), 489–503.

Barber, M., McCarty, N., Mansbridge, J. and Martin, C. J. (2015), 'Causes and consequences of polarization', *Political negotiation: A handbook* **37**, 39–43.

Bartels, B. L. and Johnston, C. D. (2013), 'On the ideological foundations of supreme court legitimacy in the american public', *American Journal of Political Science* **57**(1), 184–199.

Baugut, P. and Neumann, K. (2019), 'How right-wing extremists use and perceive news media', *Journalism & Mass Communication Quarterly* **96**(3), 696–720.

Baum, L. (2009), *Judges and their audiences: A perspective on judicial behavior*, Princeton University Press.

Baum, L. and Ditslear, C. (2010), 'Supreme court clerkships and "feeder" judges', *Justice System Journal* **31**(1), 26–48.

Berdejo, C. and Chen, D. L. (2017), 'Electoral cycles among us courts of appeals judges', *The Journal of Law and Economics* **60**(3), 479–496.

Berryessa, C. M., Dror, I. E. and McCormack, C. J. B. (2023), 'Prosecuting from the bench? examining sources of pro-prosecution bias in judges', *Legal and criminological psychology* **28**(1), 1–14.

Binder, S. A. and Maltzman, F. (2009), *Advice and dissent: The struggle to shape the federal judiciary*, Rowman & Littlefield.

Black, R. C. and Owens, R. J. (2016), 'Courting the president: how circuit court judges alter their behavior for promotion to the supreme court', *American Journal of Political Science* **60**(1), 30–43.

Bonafont, L. C., Baumgartner, F. R. and Palau, A. (2015), *Agenda dynamics in Spain*, Springer.

Bowles, H. (1995), 'Why are newspaper law reports so hard to understand?', *English for Specific Purposes* **14**(3), 201–222.

Bräuninger, T., Debus, M., Müller, J. and Stecker, C. (2012), *Parteienwettbewerb in den deutschen Bundesländern*, Springer.

Brewer, M. D. and Stonecash, J. M. (2015), *Polarization and the politics of personal responsibility*, Oxford University Press.

Brouard, S. (2009), 'The politics of constitutional veto in france: constitutional council, legislative majority and electoral competition', *West European Politics* **32**(2), 384–403.

Brunner, M. (2012), Public opinion and parliamentary activities, *in* 'Parliaments and Legislative Activity: Motivations for Bill Introduction', Springer, pp. 67–112.

Buchman, J. (2007), 'The effects of ideology on federal trial judges' decisions to admit scientific expert testimony', *American Politics Research* **35**(5), 671–693.

Cabezas Fernández, M., Pichel-Vázquez, A. and Enguix Grau, B. (2023), 'The "anti-gender" frames and the spanish (far) right. focus groups with vox and partido popular voters', *Revista de Estudios Sociales* **85**(6), 109–114.

Calca, P. (2022), *Executive-legislative relations in parliamentary systems: policy-making and legislative processes*, Springer.

Calvet Crespo, J. (2003), 'Gobiernos minoritarios, pactos parlamentarios y producción legislativa en españa', *Política y Sociedad, 2003, vol. 40, num. 2, p. 89-103* .

Campbell, J. E. (2018), *Polarized: Making sense of a divided America*, Princeton University Press.

Carroll, R. and Tiede, L. (2011), 'Judicial behavior on the chilean constitutional tribunal', *Journal of Empirical Legal Studies* **8**(4), 856–877.

Casal Bértoa, F. and Rama, J. (2021), 'Polarization: what do we know and what can we do about it?', *Frontiers in Political Science* **3**, 687695.

Casillas, C. J., Enns, P. K. and Wohlfarth, P. C. (2011), 'How public opinion constrains the us supreme court', *American Journal of Political Science* **55**(1), 74–88.

Castro-Montero, J. L., Alblas, E., Dyevre, A. and Lampach, N. (2018), 'The court of justice and treaty revision: A case of strategic leniency?', *European Union Politics* **19**(4), 570–596.

Chaqués-Bonafont, L., Palau, A. M. and Baumgartner, F. R. (2015), Framing the abortion debate, *in* 'Agenda dynamics in Spain', Springer, pp. 199–226.

Chaqués Bonafont, L. and Palau Roqué, A. M. (2011), 'Comparing law-making activities in a quasi-federal system of government: The case of spain', *Comparative Political Studies, 2011, vol. 44, num. 8, p. 1089-1119* .

Coleman, S. (1995), 'Dynamics in the fragmentation of political party systems', *Quality and Quantity* **29**(2), 141–155.

Comella, V. F. (2013), *The constitution of Spain: a contextual analysis*, Bloomsbury Publishing.

Cordero, G. and Montero, J. R. (2018), Against bipartyism, towards dealignment? the 2014 european election in spain, *in* 'Still Second Order or Critical Contests? The 2014 European Parliament Elections in Southern Europe', Routledge, pp. 85–108.

Curini, L. and Hino, A. (2012), 'Missing links in party-system polarization: How institutions and voters matter', *The Journal of Politics* **74**(2), 460–473.

Dalton, R. J. (2008), 'The quantity and the quality of party systems: Party system polarization, its measurement, and its consequences', *Comparative political studies* **41**(7), 899–920.

de Dios, M. S. (1999), 'Parliamentary party discipline in spain', *Party discipline and parliamentary government* pp. 141–162.

de Enterría, E. G. (1982), 'La significación de las competencias exclusivas del estado en el sistema autonómico', *Revista española de derecho constitucional* (5), 63–93.

De Visser, M. (2013), *Constitutional review in Europe: A comparative analysis*, Bloomsbury Publishing.

De Vries, C. E. and Giger, N. (2014), 'Holding governments accountable? individual heterogeneity in performance voting', *European Journal of Political Research* **53**(2), 345–362.

del Castillo Vera, P. (1987), 'Notas para el estudio del comportamiento judicial. el caso del tribunal constitucional', *Revista Española de Derecho Constitucional* (20), 177–191.

Devins, N. and Baum, L. (2017), 'Split definitive: How party polarization turned the supreme court into a partisan court', *The Supreme Court Review* **2016**(1), 301–365.

Devins, N. and Lewis, D. E. (2008), 'Not-so independent agencies: Party polarization and the limits of institutional design', *BUL rev.* **88**, 459.

Ditslear, C. and Baum, L. (2001), 'Selection of law clerks and polarization in the us supreme court', *The Journal of Politics* **63**(3), 869–885.

Dotan, Y. and Hofnung, M. (2005), 'Legal defeats—political wins: why do elected representatives go to court?', *Comparative Political Studies* **38**(1), 75–103.

Downs, A. (1957), 'An economic theory of political action in a democracy', *Journal of political economy* **65**(2), 135–150.

Dyevre, A. (2010), 'Unifying the field of comparative judicial politics: towards a general theory of judicial behaviour', *European Political Science Review* **2**(2), 297–327.

Dyevre, A. (2011), Game theory and judicial behaviour, *in* W. Zaluski and J. Stelmach, eds, 'Studies in the Philosophy of Law: Game Theory and the Law', Copernicus Center Press, Kraków, pp. 115–144.

Egelhofer, J. L., Aaldering, L. and Lecheler, S. (2021), 'Delegitimizing the media? analyzing politicians' media criticism on social media', *Journal of Language and Politics* **20**(5), 653–675.

Engst, B. G. (2021), *The Two Faces of Judicial Power*, Oxford Univ. Press.

Epstein, L. and Knight, J. (1997), *The choices justices make*, Sage.

Epstein, L., Knight, J. and Martin, A. D. (2001), 'The supreme court as a strategic national policymaker', *EMoRY Lj* **50**, 583.

Epstein, L., Landes, W. M. and Posner, R. A. (2012), *The behavior of federal judges: a theoretical and empirical study of rational choice*, Harvard University Press.

Epstein, L., Martin, A. D., Quinn, K. M. and Segal, J. A. (2012*a*), 705Ideology and the Study of Judicial Behavior, *in* 'Ideology, Psychology, and Law', Oxford University Press.
URL: *https://doi.org/10.1093/acprof:oso/9780199737512.003.0027*

Epstein, L., Martin, A. D., Quinn, K. M. and Segal, J. A. (2012*b*), Ideology and the study of judicial behavior.

Epstein, L. and Weinshall, K. (2021), *The Strategic Analysis of Judicial Behavior: A Comparative Perspective*, Cambridge University Press.

Eskridge Jr, W. N. (1991), 'Overriding supreme court statutory interpretation decisions', *Yale Law Journal* pp. 331–455.

Fasone, C. (2018), 'Do constitutional courts care about parliaments in the euro-crisis: on the precedence of the constitutional identity review', *Italian J. Pub. L.* **10**, 351.

Favoreu, L. (1992), 'The principle of equality in the jurisprudence of the conseil constitutionnel', *Cap. UL Rev.* **21**, 165.

Feld, S. L., Merrill, S. and Grofman, B. (2014), 'Modeling the effects of changing issue salience in two-party competition', *Public Choice* **158**, 465–482.

Ferejohn, J. (2002), 'Judicializing politics, politicizing law', *Law and contemporary problems* **65**(3), 41–68.

Field, B. N. (2014), 'Minority parliamentary government and multilevel politics: Spain's system of mutual back scratching', *Comparative Politics* **46**(3), 293–312.

Field, B. N. and Gray, C. (2019), The spanish parliament in context, *in* 'The Iberian Legislatures in Comparative Perspective', Routledge, pp. 25–46.

Fiorina, M. P. and Abrams, S. J. (2008), 'Political polarization in the american public', *Annu. Rev. Polit. Sci.* **11**(1), 563–588.

García-Pelayo, M. (1981), 'El" status" del tribunal constitucional', *Revista española de derecho constitucional* (1), 11–34.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*a*), 'Loyalty to the party or loyalty to the party leader: Evidence from the spanish constitutional court', *International Review of Law and Economics* **67**, 105999.

Garoupa, N., Gili, M. and Pomar, F. G. (2021*b*), 'Mixed judicial selection and constitutional review: Evidence from spain', *European Constitutional Law Review* **17**(2), 287–313.

Garoupa, N. and Ginsburg, T. (2008), 'Judicial audiences and reputation: perspectives from comparative law', *Colum. J. Transnat'l L.* **47**(3), 451.

Garoupa, N. and Ginsburg, T. (2011), 'Building reputation in constitutional courts: Political and judicial audiences', *Ariz. J. Int'l & Comp. L.* **28**(3), 539.

Garoupa, N. and Ginsburg, T. (2019), *Judicial reputation: a comparative theory*, University of Chicago Press.

Garoupa, N., Gomez-Pomar, F. and Grembi, V. (2013), 'Judging under political pressure: An empirical analysis of constitutional review voting in the spanish constitutional court', *The Journal of Law, Economics, & Organization* **29**(3), 513–534.

Garoupa, N. and Magalhães, P. C. (2020), Judicial politics: The constitutional court, *in* D. Muro and I. Lago-Peñas, eds, 'The Oxford Handbook of Spanish Politics', Oxford University Press, Oxford, pp. 258–275.

Garoupa, N., Mullor, J. S. and Violante, T. (2019), Constitutional courts and national parliaments in spain and portugal 1, *in* 'The Iberian Legislatures in Comparative Perspective', Routledge, pp. 241–256.

Gava, R., Jaquet, J. M. and Sciarini, P. (2021), 'Legislating or rubber-stamping? assessing parliament's influence on law-making with text reuse', *European Journal of Political Research* **60**(1), 175–198.

Ginsburg, T. (2003), *Judicial review in new democracies: Constitutional courts in Asian cases*, Cambridge University Press.

Ginsburg, T. (2007), The global spread of constitutional review, *in* K. E. Whittington and R. D. Kelemen, eds, 'Oxford Handbook of Law and Politics', Oxford University Press, Oxford, pp. 81–94.

Ginsburg, T. and Huq, A. Z. (2020), *How to save a constitutional democracy*, University of Chicago Press.

Giol, J. C. (2003), 'The spanish parliament in a triangular relationship, 1982–2000', *The Journal of Legislative Studies* **9**(2), 107–129.

Gray, T. R. (2019), 'Executive influence on state supreme court justices: Strategic deference in reappointment states', *The Journal of Law, Economics, and Organization* **35**(2), 422–453.

Gross, M. and Chiru, M. (2022), 'Time is on my side? the temporal proximity between elections and parties' salience strategies', *European Political Science Review* **14**(4), 482–497.

Hacker, J. S. and Pierson, P. (2015), 'Confronting asymmetric polarization', *Solutions to political polarization in America* **59**, 66.

Hagan, J. (1986), 'The new legal scholarship: Problems and prospects', *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* **1**, 35–56.

Hamlin, R. and Sala, G. (2018), The judicialization of politics disentangled, *in* 'Oxford Research Encyclopedia of Politics'.

Hanretty, C. (2012), 'Dissent in iberia: The ideal points of justices on the spanish and portuguese constitutional tribunals', *European Journal of Political Research* **51**(5), 671–692.

Harguindéguy, J.-B. (2024), 'The constitutional court and the judicialization of spanish politics', *European Politics and Society* **25**(3), 501–517.

Harguindéguy, J.-B., Rodríguez-López, E. and Sánchez, A. (2017), 'Los conflictos intergubernamentales entre españa y cataluña: Inter-governmental conflicts between spain and catalonia', *Reis: Revista Española de Investigaciones Sociológicas* pp. 79–96.

Harguindéguy, J.-B., Sola Rodríguez, G. and Cruz Díaz, J. (2020), 'Between justice and politics: The role of the spanish constitutional court in the state of autonomies', *Territory, Politics, Governance* **8**(2), 222–240.

Hasen, R. L. (2019), 'Polarization and the judiciary', *Annual Review of Political Science* **22**, 261–276.

Heltzel, G. and Laurin, K. (2020), 'Polarization in america: Two possible futures', *Current opinion in behavioral sciences* **34**, 179–184.

Hetherington, M. J. (2001), 'Resurgent mass partisanship: The role of elite polarization', *American political science review* **95**(3), 619–631.

Hirschl, R. (2009), *Towards juristocracy: the origins and consequences of the new constitutionalism*, Harvard University Press.

Hönnige, C. (2007), *Verfassungsgericht, Regierung und Opposition: Die vergleichende Analyse eines Spannungsdreiecks*, Springer.

Hönnige, C. (2009), 'The electoral connection: How the pivotal judge affects oppositional success at european constitutional courts', *West European Politics* **32**(5), 963–984.

Hönnige, C. (2011), 'Beyond judicialization: why we need more comparative research about constitutional courts', *European Political Science* **10**, 346–358.

Jacob, M. S. and Pollex, J. (2022), 'Party fragmentation and campaign spending: A subnational analysis of the german party system', *Party Politics* **28**(4), 770–782.

Jacobi, T. and Schweers, D. (2017), 'Justice, interrupted: The effect of gender, ideology, and seniority at supreme court oral arguments', *Va. L. Rev.* **103**(7), 1379–1486.

Jones, B. D. (2002), 'Bounded rationality and public policy: Herbert a. simon and the decisional foundation of collective choice', *Policy Sciences* **35**(3), 269–284.

Jones, B. D. (2005), *The politics of attention: How government prioritizes problems*, University of Chicago Press.

Jones, B. D., Baumgartner, F. R., Theriault, S. M., Epp, D. A., Lee, C., Sullivan, M. E. and Cassella, C. (2023), 'Policy agendas project: codebook', *Comparative Agendas Project. URL: https://www. comparativeagendas. net/us* .

Jones, B. D. and Wolfe, M. (2010), Public policy and the mass media: An information processing approach, *in* S. Koch-Baumgarten and K. Voltmer, eds, 'Public Policy and the Media: The Interplay of Mass Communication and Political Decision Making', Routledge, New York, NY, pp. 17–43.

Karol, D. (2015), *American Political Parties: Exceptional No More*, Cambridge University Press, p. 208–217.

Kommers, D. P. (1994), 'The federal constitutional court in the german political system', *Comparative Political Studies* **26**(4), 470–491.

Krehbiel, J. (2022), 'The politics of panel systems: political insurance and the organization of high courts', *European Political Science* **21**(4), 522–536.

Kritzer, H. M. (2018), 'Polarized justice: Changing patterns of decision-making in the federal courts', *Kan. JL & Pub. Pol'y* **28**, 309.

Lancaster, T. D. (2017), 'The spanish general elections of 2015 and 2016: a new stage in democratic politics?', *West European Politics* **40**(4), 919–937.

Landfried, C. (1985), 'The impact of the german federal constitutional court on politics and policy output', *Government and Opposition* **20**(4), 522–542.

Landfried, C. (1992), 'Judicial policy-making in germany: The federal constitutional court', *West European Politics* **15**(3), 50–67.

Larsson, O. and Naurin, D. (2016), 'Judicial independence and political uncertainty: how the risk of override affects the court of justice of the eu', *International Organization* **70**(2), 377–408.

Lee, F. E. (2015), 'How party polarization affects governance', *Annual review of political science* **18**(1), 261–282.

Lehmann, P., Franzmann, S., Al-Gaddooa, D., Burst, T., Ivanusch, C., Regel, S., Riethmüller, F., Volkens, A., Weßels, B. and Zehnter, L. (2024), 'The manifesto data collection', Manifesto Project (MRG / CMP / MARPOR), Version 2024a. `https://doi.org/10.25522/manifesto.mpds.2024a`.

Linos, K. and Twist, K. (2016), 'The supreme court, the media, and public opinion: Comparing experimental and observational methods', *The Journal of Legal Studies* **45**(2), 223–254.

López Garrido, D. and Subirats, J. (1990), 'El proceso de toma de decisiones legislativas: las relaciones gobierno-parlamento en españa', *Papers: revista de sociologia* (33), 035–49.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2018), 'Is the spanish constitutional court an instrument of the central government against the autonomous communities?', *Constitutional Political Economy* **29**, 317–337.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2019), 'Consensus and dissent in the resolution of conflicts of competence by the spanish constitutional court: the role of federalism and ideology', *European journal of law and economics* **48**, 305–330.

López-Laborda, J., Rodrigo, F. and Sanz-Arcega, E. (2024), 'No war of courts in the protection of fundamental rights: The case of amparo appeals in spain', *International Review of Law and Economics* **79**, 106212.

Loughlin, M. (2005), 'Constitutional theory: A 25th anniversary essay', *Oxford J. Legal Stud.* **25**, 183.

Lozada, M. (2014), 'Us or them? social representations and imaginaries of the other in venezuela', *Papers on Social Representations* **23**(2), 21–1.

Magalhães, P. C. (2003), *The limits to judicialization: Legislative politics and constitutional review in the Iberian democracies*, The Ohio State University.

Magalhães, P. C. and Garoupa, N. (2024), 'Populist governments, judicial independence, and public trust in the courts', *Journal of European Public Policy* **31**(9), 2748–2774.

Manow, P. and Burkhart, S. (2007), 'Legislative self-restraint under divided government in germany, 1976–2002', *Legislative Studies Quarterly* **32**(2), 167–191.

Marks, B. A. (2012), 'A model of judicial influence on congressional policy making: Grove city college v. bell', *The Journal of Law, Economics, and Organization* **31**(4), 843–875.

Martin, A. D. and Quinn, K. M. (2002), 'Dynamic ideal point estimation via markov chain monte carlo for the us supreme court, 1953–1999', *Political analysis* **10**(2), 134–153.

Martin, L. W. and Vanberg, G. (2005), 'Coalition policymaking and legislative review', *American Political Science Review* **99**(1), 93–106.

Martin, L. W. and Vanberg, G. (2014), 'Parties and policymaking in multiparty governments: the legislative median, ministerial autonomy, and the coalition compromise', *American Journal of Political Science* **58**(4), 979–996.

Martin, L. W. and Vanberg, G. (2020), 'Coalition government, legislative institutions, and public policy in parliamentary democracies', *American Journal of Political Science* **64**(2), 325–340.

Martinsen, D. S. and Mayoral Díaz-Asensio, J. A. (2017), 'A judicialisation of healthcare policies in denmark and spain? the universalist healthcare model meets the european union', *Comparative European Politics* **15**(3), 414–434.

Mayoral, J. A. and Pérez, A. T. (2020), On judicial mobilization: entrepreneuring for policy change at times of crisis, *in* 'Public Policy and the CJEU's Power', Routledge, pp. 67–84.

McCann, M. W. (1995), Rights at work: pay equity reform and the politics of legal mobilization, *in* 'The Legal Studies Forum', Vol. 19, HeinOnline, p. 95.

McCoy, J., Rahman, T. and Somer, M. (2018*a*), 'Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities', *American Behavioral Scientist* **62**(1), 16–42.

McCoy, J., Rahman, T. and Somer, M. (2018*b*), 'Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities', *American Behavioral Scientist* **62**(1), 16–42.
URL: *https://doi.org/10.1177/0002764218759576*

McCoy, J. and Somer, M. (2021), 'Overcoming polarization', *Journal of Democracy* **32**(1), 6–21.

Miller, G. P. (2004), 'Bad judges', *Tex L. Rev.* **83**, 431.

Motyl, M. (2016), Liberals and conservatives are (geographically) dividing, *in* 'Social psychology of political polarization', Routledge, pp. 7–37.

Mújica, A. and Sánchez-Cuenca, I. (2006), 'Consensus and parliamentary opposition: The case of spain', *Government and opposition* **41**(1), 86–108.

Muñoz, L. and Rodilla, A. (2024), 'A game of tug-of-war: regional laws before the spanish constitutional court', *Territory, Politics, Governance* pp. 1–19.

Murphy, W. F. and Tanenhaus, J. (1968), 'Public opinion and the united states supreme court: Mapping of some prerequisites for court legitimation of regime changes', *Law & Society Review* **2**(3), 357–384.

Muñoz, L. and Rodilla, A. (2024), 'A tug-of-war game: regional laws before the spanish constitutional court', *Territory, Politics and Governance* **x**(x), 1–19.

Muñoz Marquez, L. M. and Rodilla Lázaro, A. (2025), 'Constitutional challenges (abstract reviews) in spain 1980-2019'.
URL: *https://doi.org/10.34810/data2100*

Niemi, R. G., Weisberg, H. F. and Kimball, D. (2001), *Controversies in Voting Behavior*.

Nizza, U. (2021), 'Are polarized courts dangerous for litigation? evidence from french labor courts', *Journal of Institutional Economics* **17**(5), 799–820.

Padovano, F., Petrarca, I. et al. (2012), 'A theory of cyclical production of laws and decrees', *Centre Condorcet for Political Economy, Working Paper* (9).

Palau, A. M., Casas, A. and Muñoz, L. (2023), 'To amend or not to amend: Under what circumstances do spanish legislators propose amendments to executive bills?', *West European Politics* . Advance online publication.
URL: *https://doi.org/10.1080/01402382.2023.2241253*

Palau, A. M., Márquez, L. M. and Chaqués-Bonafont, L. (2017), Government–opposition dynamics in spain under the pressure of economic collapse and the debt crisis, *in* 'Government-Opposition in Southern European Countries during the Economic Crisis', Routledge, pp. 75–95.

Palau, A. M. and Rodilla, A. (2022), Parliamentary committees as policy analysis institutions, *in* 'Policy Analysis in Spain', Policy Press, pp. 141–164.

Pavone, T. and Stiansen, Ø. (2022), 'The shadow effect of courts: Judicial review and the politics of preemptive reform', *American Political Science Review* **116**(1), 322–336.

Peresie, J. L. (2004), 'Female judges matter: Gender and collegial decisionmaking in the federal appellate courts', *Yale LJ* **114**, 1759.

Persily, N. (2015), *Solutions to political polarization in America*, Cambridge University Press.

Poljak, Ž. (2023), 'Parties' attack behaviour in parliaments: Who attacks whom and when', *European Journal of Political Research* **62**(3), 903–923.

Poole, K. T. and Rosenthal, H. (2000), *Congress: A political-economic history of roll call voting*, Oxford University Press, USA.

Porat, I. (2023), 'Court polarization: A comparative perpective', *Hastings Int'l & Comp. L. Rev.* **46**, 3.

Rama, J., Cordero, G. and Zagórski, P. (2021), 'Three is a crowd? podemos, ciudadanos, and vox: The end of bipartisanship in spain', *Frontiers in political science* **3**(688130).

Ramos-Arroyo, A. and Díaz-Campo, J. (2018), 'El uso del framing en el tratamiento político y mediático de las leyes del aborto en españa', *Espacios* **39**(22), 16–39.

Ramseyer, J. M. (1994), 'The puzzling (in) dependence of courts: A comparative approach', *The Journal of Legal Studies* **23**(2), 721–747.

Regel, S. (2010), The manifesto project database: A large-scale political text access and analysis database, *in* 'Workshop From Text to Political Positions', Amsterdam, the Netherlands. Presented at Workshop From Text to Political Positions.

Rodilla, A. (2025), 'Not just about the ruling: When does the opposition challenge a law in the spanish constitutional court?'.

Rodríguez, I., Santamaría, D. and Miller, L. (2022), 'Electoral competition and partisan affective polarisation in spain', *South European Society and Politics* **27**(1), 27–50.

Rodríguez López, E., Harguindéguy, J.-B. P. and Sánchez Sánchez, A. (2019), 'The perfect storm? how to explain the rise of intergovernmental conflicts in spain?(1984–2014)', *Innovation: The European Journal of Social Science Research* **32**(2), 211–230.

Rogers, J. R. (2001), 'Information and judicial review: A signaling game of legislative-judicial interaction', *American Journal of Political Science* **45**(1), 84–99.

Rogowski, J. C. and Sutherland, J. L. (2016), 'How ideology fuels affective polarization', *Political behavior* **38**, 485–508.

Rowley, C. K. (1984), 'The relevance of the median voter theorem', *Zeitschrift für die gesamte Staatswissenschaft/Journal of Institutional and Theoretical Economics (JITE)* **140**(1), 104–126.

Rydgren, J. (2017), 'Radical right-wing parties in europe: What's populism got to do with it?', *Journal of Language and Politics* **16**(4), 485–496.

Saavedra Herrera, C. (2020), 'The keys of the supreme court: political fragmentation and constitutional litigation in mexico', *Revista mexicana de sociología* **82**(2), 429–460.

Sala, G. (2014), 'Can courts make federalism work? a game theory approach to court-induced compliance and defection in federal systems', *Economies* **2**(4), 193–217.

Schedler, A. (2023), 'Rethinking political polarization', *Political science quarterly* **138**(3), 335–359.

Schmidt, M. G. (1996), 'When parties matter: A review of the possibilities and limits of partisan influence on public policy', *European journal of political research* **30**(2), 155–183.

Schroeder, P. (2022), 'Pushing boundaries: How lawmakers shape judicial decision-making', *Comparative Political Studies* **55**(14), 2447–2479.

Schwalbach, J. (2022), 'Going in circles? the influence of the electoral cycle on the party behaviour in parliament', *European Political Science Review* **14**(1), 36–55.

Segal, J. A. and Spaeth, H. J. (2002), *The Supreme Court and the attitudinal model revisited*, Cambridge University Press.

Segal, J. A., Westerland, C. and Lindquist, S. A. (2011), 'Congress, the supreme court, and judicial review: Testing a constitutional separation of powers model', *American Journal of Political Science* **55**(1), 89–104.

Segal, J. and Spaeth, H. (1993), 'The supreme court and the attitudinal model cambridge, uk: Cambridge univ'.

Sennewald, M. A., Manning, K. L. and Carp, R. A. (2017), 'The polarization of the judiciary', *Party Politics* **23**(6), 657–665.

Shapiro, M. (1999), The success of judicial review, *in* 'Constitutional dialogues in comparative perspective', Springer, pp. 193–219.

Shapiro, M. and Sweet, A. S. (2002), *On law, politics, and judicialization*, Oxford University Press.

Simon, H. A. (2000), 'Bounded rationality in social science: Today and tomorrow', *Mind and Society* **1**, 25–39.

Sisk, G. C. (2008), 'The quantitative moment and the qualitative opportunity: Legal studies of judicial decision making (book review)', *Cornell Law Review* **93**, 08–16.

Songer, D. R. and Crews-Meyer, K. A. (2000), 'Does judge gender matter? decision making in state supreme courts', *Social Science Quarterly* pp. 750–762.

Staton, J. (2008), 'Formal theory in comparative judicial politics', *Law & Courts* **18**(3), 10–15.

Steffensmeier, D. and Britt, C. L. (2001), 'Judges' race and judicial decision making: Do black judges sentence differently?', *Social science quarterly* **82**(4), 749–764.

Stephenson, M. C. (2009), 'Legal realism for economists', *Journal of Economic Perspectives* **23**(2), 191–211.

Stokes, S. C. (1999), 'Political parties and democracy', *Annual Review of Political Science* **2**(1), 243–267.

Stone, A. (1990), 'The birth and development of abstract review: Constitutional courts and policymaking in western europe.', *Policy Studies Journal* **19**(1).

Sunstein, C. R., Schkade, D., Ellman, L. M. and Sawicki, A. (2007), *Are judges political?: an empirical analysis of the federal judiciary*, Rowman & Littlefield.

Sweet, A. S. (1992), *The birth of judicial politics in France: The Constitutional Council in comparative perspective*, Oxford University Press.

Sweet, A. S. (1998), 'Rules, dispute resolution, and strategic behavior', *Journal of Theoretical Politics* **10**(3), 327–338.

Sweet, A. S. (2000), *Governing with judges: constitutional politics in Europe*, Oxford University Press.

Sweet, A. S. (2004), *The judicial construction of Europe*, Oxford University Press.

Taagepera, R. and Laakso, M. (1980), 'Proportionality profiles of west european electoral systems', *European Journal of Political Research* **8**(4), 423–446.

Tate, C. N. and Vallinder, T. (1997), *The global expansion of judicial power*, NYU Press.

Torcal, M. and Magalhães, P. C. (2022), 'Ideological extremism, perceived party system polarization, and support for democracy', *European Political Science Review* **14**(2), 188–205.

Tsebelis, G. (2000), 'Veto players and institutional analysis', *Governance* **13**(4), 441–474.

Tsereteli, N. and Uitz, R. (2007), 'Mechanism of individual complaints–germany, spanish and hungarian constitutional court–comparative analysis', *LL. M Thesis, Central European University, Hungary* **2**.

Uribe, A., Spriggs II, J. F. and Hansford, T. G. (2014), 'The influence of congressional preferences on legislative overrides of supreme court decisions', *Law & Society Review* **48**(4), 921–945.

Vachudova, M. A. (2021), 'Populism, democracy, and party system change in europe', *Annual Review of Political Science* **24**(1), 471–498.

Vallbé, J.-J. (2024), The spanish constitutional court: The judicial politics of constitutional review and interpretation, *in* 'Constitutional Review in Western Europe', Routledge, pp. 241–263.

Vallbé, J.-J. and Lozano, L. M. (2024), 'Strategic manipulation of courts in civil law systems', *Available at SSRN* .

Vallbé, J. J. (2024), The spanish constitutional court, *in* K. Pócza, ed., 'Constitutional Review in Western Europe: Judicial-Legislative Relations in Comparative Perspective', Routledge, pp. 241–263.

Vanberg, G. (1998*a*), 'Abstract judicial review, legislative bargaining, and policy compromise', *Journal of theoretical politics* **10**(3), 299–326.

Vanberg, G. (1998*b*), 'Reply to stone sweet', *Journal of Theoretical Politics* **10**(3), 339–346.

Vanberg, G. (2001), 'Legislative-judicial relations: A game-theoretic approach to constitutional review', *American journal of political science* pp. 346–361.

Vanberg, G. (2004), *The politics of constitutional review in Germany*, Cambridge University Press.

Vanhala, L. (2012), 'Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the uk', *Law & Society Review* **46**(3), 523–556.

Vliegenthart, R., Walgrave, S., Baumgartner, F. R., Bevan, S., Breunig, C., Brouard, S., Bonafont, L. C., Grossman, E., Jennings, W., Mortensen, P. B. et al. (2016), 'Do the media set the parliamentary agenda? a comparative study in seven countries', *European Journal of Political Research* **55**(2), 283–301.

Wang, X. (2014), 'Firth logistic regression for rare variant association tests'.

Wolfe, M., Jones, B. D. and Baumgartner, F. R. (2013), 'A failure to communicate: Agenda setting in media and policy studies', *Political communication* **30**(2), 175–192.

Wondreys, J. and Mudde, C. (2022), 'Victims of the pandemic? european far-right parties and covid-19', *Nationalities Papers* **50**(1), 86–103.

Yates, J., Cann, D. M. and Boyea, B. D. (2013), 'Judicial ideology and the selection of disputes for us supreme court adjudication', *Journal of Empirical Legal Studies* **10**(4), 847–865.