

The Ideological Implications of the Federal Rules

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ABSTRACT Unlike the U.S. Supreme Court, federal courts of appeals have mandatory dockets requiring courts to hear claims appealed from federal trial courts. The lack of discretion limits their ability to set their own agendas by granting appeals to hear certain kinds of cases. Although they formally lack power to control their dockets, they can informally control their dockets by summarily dismissing claims on the basis of a procedural rule. The findings provide evidence that courts of appeals control their dockets by dismissing claims for ideologically incongruent litigants. The findings show also that because Congress maintains oversight for laws governing procedural rules, courts' ability to decide cases according to their ideological preferences is constrained.

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INTRODUCTION

Political scientists argue that justices of the U.S. Supreme Court act strategically by using the *writ of certiorari* as a mechanism to control the Court's docket and set its own judicial agenda (Boucher & Segal, 1995; Caldeira, Wright, & Zorn, 1999; Baird, 2007). Losing parties may file a *writ of certiorari*, a mechanism to ask the Court to hear their case. The U.S. Supreme Court possesses an almost entirely discretionary docket whereby the justices choose which appeals will be reviewed (Segal & Spaeth, 2002). While the Court receives between 7,000 and 8,000 writs a year, it grants only about one percent of them. Because the U.S. Supreme Court has a discretionary docket, justices set the Supreme Court's agenda by granting *certiorari* when they desire to hear cases in certain issues areas (Ulmer, 1972; Baum, 1977). For example, Chief Justice Earl Warren set the Supreme Court's agenda in the 1960s when it granted *certiorari* in a number of criminal cases, which expanded the rights of the accused (Baird, 2007). By controlling its docket, the Supreme Court strategically sets its own judicial agenda.

Alternatively, federal courts of appeals are limited in their ability to set their own judicial agendas. Unlike the U.S. Supreme Court, courts of appeals have a mandatory docket for appeals from federal trial courts; that is, appellate courts must grant a losing party's appeal. Because appellate courts lack discretion in granting or denying appeals, it is more difficult for these courts to strategically control their own dockets. Due to the lack of docket control, they cannot formally set their own judicial agendas. Although federal courts of appeals lack a formal discretionary mechanism to grant or deny appeals, they can informally control their dockets by dismissing claims on the basis of a threshold issue. Threshold issues are issues that a court must decide before it hears the substance or merits of a litigant's claim. Threshold issues encompass a wide variety

of issues, including whether a plaintiff is the proper party to file a lawsuit (standing), whether the court has jurisdiction to hear the case, or whether a party has satisfied various procedural rules. Procedural rules are a subset of threshold issues that govern the pre-trial phase of litigation, the admission of evidence, post-trial motions, and appeals. Examples of procedural rules include timelines for responding to opposing party's evidentiary pre-trial requests to rules that govern deadlines for filing appeals. If appellate courts control their dockets by dismissing claims on threshold issues, namely procedural rules, then courts can informally control their own agendas. Having docket control gives appellate courts the ability to control the kinds of issues they decide, which can reflect the type of docket control utilized by the U.S. Supreme Court.

However, federal courts' ability to control their own agendas is not unfettered. Judges sitting on federal courts are not free to vote according to their sincere policy preferences. They strategically render decisions because Congress has power to constrain judicial decisions by overriding decisions that are incongruent with congressional policy preferences (Epstein & Knight, 1998; Smith & Tiller, 2002). That is, if courts render statutory decisions outside of congressional preferences, Congress can retaliate by overriding a court's decision. To avoid adverse action, courts act strategically by deciding cases within the confines of congressional preferences.

Generally, Congress's oversight of judicial decisions is confined to decisions interpreting statutes governing a particular subject. Congress enacts statutes and courts interpret those statutes. Unlike the vast majority of laws, federal courts exercise a legislative function by enacting procedural rules. Courts enact, interpret, and apply these rules to litigants who come before their courts. However, judicial power to enact or promulgate procedural rules is not unconstrained. Congress has created a mechanism to maintain oversight over rules enacted by federal

courts, which is similar to oversight of rules promulgated by bureaucratic agencies. Because Congress maintains oversight over federal procedural rules, federal courts of appeals render decisions on procedural rules within congressional policy preferences.

The implications for appellate courts rendering decisions on procedural rules are vast. In certain instances, a court will permanently dismiss a litigant's claim on the basis of a procedural rule and the litigant is without recourse in the judicial system. As a result, a litigant will never have his or her "day in court." The impact of a negative decision on a procedural rule is fatal not only for the litigant who comes before the court, but also for similarly situated litigants. If courts bar certain kinds of litigants from bringing lawsuits by ruling against those litigants on procedural rules, courts can effectively shape policy by discouraging and preventing prospective plaintiffs from bringing similar lawsuits. Courts can therefore discourage litigation from entire classes of plaintiffs and/or types of claims. Given the foregoing, federal courts seek to maintain the power to control their dockets because of the sweeping impact of rendering decisions on basis of procedural rules.

FEDERAL COURTS' POWER TO ENACT PROCEDURAL RULES

The federal judiciary possesses the unique power to conduct a legislative function by creating procedural rules. In the Rules Enabling Act of 1934, Congress conferred power to the U.S. Supreme Court to enact or promulgate the Federal Rules of Practice and Procedure. These rules include the Federal Rules of Civil Procedure, Criminal Procedure, Appellate Procedure, Evidence, and Bankruptcy. The Federal Rules are drafted by a committee called the Judicial Conference, which is comprised of judges from federal trial and appellate courts and chaired by the chief justice of the U.S. Supreme Court. The Judicial Conference receives and considers suggestions to rule changes from members of the legal community and the general public. Proposed rule changes must be approved by the U.S. Supreme Court, but Congress maintains power to override a rule before it takes effect. Although Congress transferred this power to the federal courts on the ground that procedural rules did not affect decisions on substantive claims, federal courts began to use this power to control access to its courts. As early as 1938, the Supreme Court amended the Federal Rules allowing plaintiffs to more easily assert and support their claims in federal court (Frymer, 2003). In particular, rules governing the pre-trial phase were liberalized allowing plaintiffs to make broad evidentiary requests from an opposing party to support their claims at trial. Plaintiffs were then able to proceed to trial because they were able to gain critical pieces of evidence because of liberalized pre-trial discovery rules. The American Bar Association advocated for these changes to render it easier for the general public to gain access to the courts. Particularly, rule changes in the mid-1960s and 1970s were enacted to assist plaintiffs seeking to file civil rights lawsuits. The intent and/or effect of these rule changes were substantive in nature, creating an environment conducive to successfully litigating civil rights claims (Frymer, 2003).

Because members of Congress perceived that rule changes had

substantive effects, Congress prevented the rules from taking effect for the first time in 1972 (Burbank, 2004). Congress enacted legislation that substantially revised the Federal Rules of Evidence (McCabe, 1995). Congress subsequently amended the rules by opening the rulemaking process to the public to create a notice and comment period that is similar to the period required for bureaucratic agencies under the Administrative Procedure Act (McCabe, 1995). Even more changes were proposed when Republicans gained a majority in the House in 1994 with its "Contract with America," having tort reform as one of their primary legislative priorities. As part of their agenda seeking to enact tort reform, Republicans introduced several bills to amend the Federal Rules to render it more difficult for plaintiffs to succeed in court. For example, Republicans introduced legislation to change the American Rule, which provides that each party pays their own attorney's fees, to the English Rule which states that the losing party pays the winner's attorney's fees (Rowe, 1997). House Republicans were partially successful in passing legislation to modify the payment of attorney's fees. The House passed the Attorney Accountability Act requiring a party to pay opposing party's attorney's fees if that party rejects a settlement offer and is subsequently awarded a smaller judgment than the settlement offer. The aforementioned legislation demonstrates that political parties recognize the substantive implications of procedural rules and the effect on plaintiffs' ability to gain access to federal courts.

RULE 11 SANCTIONS

One procedural rule that has been subject to political debate is Rule 11 of the Federal Rules of Civil Procedure. Pursuant to Rule 11, attorneys must attest to the following regarding any lawsuit filed:

- (1) [the claim] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Rule 11(b)(1)-(4), Federal Rules of Civil Procedure.¹ A party may request that a court sanction a party or attorney if there is cause to believe that Rule 11 ("Rule")

¹ Rule 11(a) requires parties or attorneys to sign all pleadings, motions, or other filings. If a filing is submitted without a signature, a court may return the document for a signature. Rarely is a party or attorney sanctioned for failing to sign a pleading as the rules permit parties to remedy an unsigned pleading by subsequently affixing a signature.

has been violated. Additionally, a court may impose a sanction on its own initiative if it deems that an attorney or party has violated the Rule.

In 1983, the Supreme Court amended Rule 11, removing a court's discretion to find an attorney or party in violation by requiring courts to impose sanctions against a noncompliant party. The change may have been prompted by the growth of litigation due to the proliferation of laws creating new grounds to file lawsuits (Schwarzer, 1994). However, the impact of the Rule disproportionately affected plaintiffs. Plaintiffs who were civil rights litigants were sanctioned at a higher rate than those who asserted tort or contractual claims (Schwarzer, 1994). Some argue that the amended Rule was a direct attempt to curb plaintiffs' ability to file lawsuits alleging certain kinds of claims (Redish & Amuluru, 2005).

In 1993, the Judicial Conference sought to address some of the concerns and disparities that arose as a result of the changes to the 1983 amendment. Particularly, the Rule was changed to allow plaintiffs to assess the validity of claims after the pre-trial phase and, therefore, gave attorneys an opportunity to develop and revise claims as they discovered evidence. Some argued that the change in this Rule created an environment that was more conducive to plaintiffs asserting their rights in court (Redish & Amuluru, 2005). The Rule provided plaintiffs more leeway to further develop their claims to conform to newly discovered evidence.

The most significant amendment to Rule 11 was a provision that required courts to sanction parties when they were in violation of the Rule. Although the Rule required sanctions, courts could devise novel methods of sanctioning violators including imposing monetary or nonmonetary sanctions (Federal Rules of Civil Procedure, Comment to 1993 Amendment). Nonmonetary sanctions could range from finding a violator in contempt of court or dismissing a violator's case. Monetary sanctions included paying an opposing party attorney's fees and costs. The purpose of the amended Rule was to deter objectionable conduct rather than to reward the opposing party. As such, the Rule provided that monetary fines should be paid to the opposing party only in "unusual circumstances." This is a change from the prior Rule, which courts routinely awarded attorney's fees to the opposing party when a violator was sanctioned (Schwarzer, 1994).

The 1993 changes were not well-received by the new Republican House. As previously stated, they advocated sweeping tort reform in its Contract with America. In response to the liberalization of Rule 11, they sought to amend many of these changes. Particularly, they introduced legislation that required sanctions once a court determined a violation occurred as provided in the 1983 Rules. Republicans also introduced legislation that eliminated the "safe harbor" provision to allow attorneys to correct objectionable statements as a remedy for a violation. House Republicans specifically changed the primary goal of deterring sanctionable conduct to compensating opposing counsel and parties by requiring the violator to pay opposing party's attorney's fees and costs (Rowe, 1997). Although the foregoing bills were unsuccessful, Congress passed the Private Securities

Litigation Reform Act of 1995, which required courts to make a written finding determining whether any party or attorney had violated Rule 11 in a class action securities lawsuit. Sanctions for violations became mandatory, carrying a presumption of an attorney's fee award in certain cases. See 15 U.S.C. § 77z-1(c). In 2004, House Republicans again sought to amend Rule 11. They sought to change the provision to remove courts' discretion to impose sanctions when a party violates the Rule. The amendment would have reinstated the provision in the 1983 Rule that required courts to sanction a party when the court finds a party in violation of the Rule (Redish & Amuluru, 2005).

STRATEGIC DOCKET CONTROL, PROCEDURAL RULES, AND FEDERAL COURTS OF APPEALS

Federal courts of appeals do not have a formal mechanism to control their judicial agendas. Nevertheless, federal courts of appeals seek to control their dockets and, therefore, set their judicial agendas. They set their judicial agendas by transforming their mandatory appellate dockets into dockets that are discretionary. They are able to do so by controlling which litigants gain access to their courts by deciding cases on procedural rules instead of rendering decisions on the actual substance or merits of their claims. Particularly, conservative courts seek to control their dockets by ruling against individual litigants on procedural grounds when individuals are engaged in lawsuits against businesses and corporations.

Scholarship has demonstrated that individuals are disadvantaged when litigating primarily because they lack resources and incentive to create a sustained litigation strategy (Galanter, 1974). Later empirical research confirms that individuals are in fact disadvantaged (Songer & Sheehan 1992; Songer, Sheehan, & Haire, 2000; Kaheny, 2010). Not only are individuals disadvantaged, they have a greater disadvantage when litigating before a conservative appellate court. Because conservatives tend to favor business interests while liberals tend to favor individual litigants (Howard & Brazelton, 2014), conservative appellate courts are more likely than liberal courts to rule against individuals when appealing a judgment by disposing a claim on procedural grounds.

Federal appellate courts' ability to control their dockets by deciding cases on procedural grounds is limited because Congress maintains oversight when federal courts enact procedural rules. Particularly, federal courts of appeals must be cognizant of members of the House and Senate Judiciary Committees that act as gatekeepers for any bills seeking to modify laws regulating the power of federal courts to enact such rules (Eskridge, 1991). Federal appellate courts are cognizant of the political party that controls congressional committees and, as a result, act strategically by rendering decisions on procedural grounds within the confines of congressional committee preferences. Such constraints are similar to congressional oversight of bureaucratic agencies (McCubbins & Schwartz, 1984; McCubbins, Noll, & Weingast, 1987; McCubbins, Noll, & Weingast, 1989). Bureaucratic agencies maintain power to enact rules and regulations for its agencies. Scholarship has demonstrated that congressional oversight of bureaucratic agencies constrains bureaucratic outcomes because Congress can override

any rule or regulation enacted outside of its preferences (Weingast & Moran, 1983; Epstein & O'Halloran, 1994; Shipan, 2004). Similar oversight of procedural rules acts as a similar restraint on federal courts. Although federal judges differ from bureaucratic actors because judges enjoy lifetime tenure, it is not the nature of their tenure that constrains judicial decisions but it is the threat of congressional retaliation to override a rule that is incongruent with congressional preferences.

Unlike literature that provides that federal courts of appeals generally are unresponsive to congressional preferences (Revesz, 2001; Hume, 2009; but see Cross, 2007), federal courts of appeals are attentive to congressional preferences for procedural rules. Congress's ability to override a court's incongruent statutory decision is piecemeal; such change takes place one statute at a time and typically affects one issue area. Conversely, Congress's ability to control procedural rules is expansive because a change in a procedural rule can impact a number of issues areas. More importantly, any congressional change in a procedural rule will impede federal courts' ability to set their own agendas. Federal appellate courts may view congressional regulation of procedural rules as a substantial threat to its power to set their own judicial agendas. Because they seek to invite less scrutiny, they are more responsive to congressional preferences regarding procedural rules than issues raised in substantive claims. For example, Rule 11 governs all pleadings in civil litigation. Accordingly, any legislation seeking to limit or expand the discretion of federal courts to impose Rule 11 sanctions applies to litigation in all practice areas and, therefore, would substantially curb judicial discretion in all areas. Because any retaliation from Congress can significantly hinder federal courts' ability to control their appellate jurisdiction, federal courts are acutely attuned to congressional preferences.

HYPOTHESES

Given the aforementioned discussion, the hypotheses test the presented theory. The following hypotheses test (1) whether federal appellate court panels engage in ideological decision making regarding procedural rules and (2) whether federal appellate court panels' discretion to render decisions on procedural rules is curbed by congressional preferences.²

H1: Conservative panels are more likely than liberal panels to rule against individual litigants in an appeal challenging a Rule 11 sanction.

H2a: As the ideology of the House Judiciary Committee becomes more conservative, the individual is less likely to prevail on a Rule 11 sanction.

H2b: As the ideology of the Senate Judiciary Committee becomes more conservative, the individual is less likely to prevail on a Rule 11 sanction.

H3a: As the ideology of the Chair of the House Judiciary Committee becomes more conservative, individuals are less likely to win.

H3b: As the ideology of the Chair of the Senate Judiciary Committee becomes more conservative, individuals are less likely to win.

² Federal courts of appeals sit in three-judge courts called "panels."

DATA AND METHODS

Data for this project were collected by examining cases published in Lexis/Nexis Academic. Cases were coded from 1980 to 2005 for the First through Eleventh Federal Courts of Appeals and the D.C. Court of Appeals. All cases that included the term "Rule 11" and "Civil Procedure" were searched. The dataset includes all published and unpublished cases where a party appealed the decision of a federal trial court finding a violation of Rule 11 or a trial court denied an opposing party's request for a Rule 11 sanction. Given the focus in understanding the effects of appellate court ideology on sanctions for individual plaintiffs, only cases involving individuals and businesses were included for an overall N of 307.³

The dependent variable is whether the individual won the appeal. A code of "1" was assigned if the individual won and "0" if the individual lost. The independent variables include the median ideology of the appellate court panel. The Giles, Hettinger, and Pepper nominate scores (GHP scores) were used for this project (Giles, Hettinger, & Peppers, 2001). The GHP scores are an ideological measure of judges who sit on the federal courts of appeals. Giles, Hettinger, and Peppers use the Poole (1998, 2009) and Rosenthal Common Space scores of the nominating senator, considering the strong influence of senatorial courtesy, which is the norm of senators voting to confirm a nominee when the president nominates a candidate recommended by a "home-state" senator.⁴ If one home-state senator is from the president's party, the senator's Common Space score was used. If both home-state senators are from the president's party, the average of the two scores was used. Finally, if the judge is from a state where there is no senator who is a member of the president's party, the president's score was used. To ascertain the ideology of the federal trial court judge, Boyd (2010) uses the method employed by Giles, Hettinger, and Peppers (2001) and the extension by Epstein, Martin, Segal, and Westerland (2007).⁵ Additionally, the median ideology of the Judicial Conference was controlled by using each member's GHP score as this Conference acts as a gatekeeper for proposed amendments to the Federal Rules. The ideology of the U.S. Supreme Court was controlled by using the median judicial common space score for the Court. This is important because the Supreme Court has power to reverse appellate court decisions. Although some scholarship has found that appellate court panels are not responsive to the Supreme Court (Klein & Hume, 2003), other scholarship has shown that courts of appeals follow Supreme Court mandates (Songer, Segal, & Cameron, 1994). The influence of Congress was controlled by using the median Poole and Rosenthal Common Space scores for the House and Senate

³ The dataset has a total of 483 cases. However, cases of individuals suing other individuals, businesses suing other businesses, etc. were omitted from the dataset in order to test the ideological preferences of judges and members of Congress. Also, cases where the government was a party were also omitted.

⁴ A "home-state" senator is the senator who recommends a candidate to the President when there is a vacancy in that senator's state.

⁵ Because there are many vacancies on the courts of appeals, many of those vacancies are filled with federal trial court judges who sit on appellate court panels when the chief judge assigns them to sit "by designation." Accordingly, Christina Boyd's ideology measures of federal trial court judges for those judges who sat by designation were used (Boyd, 2010).

Judiciary Committees, their respective Chairs.⁶ The president's ideology is included in the model as he has the power to veto legislation passed by Congress. The model is estimated using probit because the dependent variable is dichotomous. For all independent variables, the distance of the median ideology of the panel from each of the independent variables was measured by subtracting the absolute value of the median ideology of the panel from the absolute value of the ideology of the requisite independent variable. Also, robust standard errors were clustered on the court of appeals to account for the possibility that residuals may not be independent within each court. Therefore, the model provides as follows:

$$\text{Sanction} = \beta_0 + \beta_1 \text{Panel Ideology} + \beta_2 \text{Circuit Median} + \beta_3 \text{Judicial Conference} + \beta_4 \text{Supreme Court} + \beta_5 \text{House Judiciary Committee} + \beta_6 \text{Senate Judiciary Committee} + \beta_7 \text{House Chair} + \beta_8 \text{Senate Chair} + \beta_9 \text{President} + \varepsilon$$

RESULTS AND DISCUSSION

The summary statistics are below in Table A1.

Summary Statistics

Variable	Mean	Standard Dev.	Minimum	Maximum
Individual Winning	.375	.48	0	1
Panel Ideology	.067	.289	-.532	.559
Circuit Median	.063	.182	-.385	.507
Judicial Conference	.113	.166	-.290	.530
Supreme Court	.145	.154	-.188	.462
House Judiciary Cmt	-.030	.166	-.405	.366
Senate Judiciary Cmt	.098	.163	-.274	.556
House Chair	-.116	.422	-.449	.659
Senate Chair	-.095	.342	-.470	.407
President	-.328	.185	-.715	.087

Table A1 shows that individuals won at a rate of 37.5 percent, providing some evidence that individuals are disadvantaged

6 See Epstein, Martin, Segal, and Westerland (2007) using a bridging method placing common space scores on the same scale; see also Bailey and Chang (2001) using a similar method.

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when litigating against businesses. Businesses have superior resources and incentive to carry forth a sustained litigation strategy (Galanter, 1974). However, if judicial ideology does not influence Rule 11 decisions, individual litigants should be equally disadvantaged when litigating before liberal and conservative panels. The results of the probit model testing the hypotheses are presented in Table A2.

Probit Model of the Individual Winning

Variable	Coefficient	Standard Error
Panel Ideology	-.854*	(.299)
Circuit Median	-.433	(.514)
Judicial Conference	1.721*	(.806)
Supreme Court	-1.162	(1.005)
House Judiciary Cmt	6.444	(3.820)
Senate Judiciary Cmt	-4.178	(3.005)
House Chair	-2.161*	(.978)
Senate Chair	-1.421	(1.443)
Constant	-.283	(.324)
N=307 Log Likelihood	= -190.940	* = p > .05; χ ² = 72.64*

As hypothesized, the median ideology of the panel has a statistically significant effect on the likelihood of the panel ruling in favor of the individual when litigating against a business. These results indicate that the null hypothesis can be rejected. It provides support that as the panel becomes more conservative, the panel is less likely to rule in favor of the individual. However, probit coefficients do not provide information regarding the effects of the magnitude of the independent variable (Zelner, 2009). In order to ascertain the magnitude, the predicted probability of the individual winning is estimated. The results of that estimation are presented in Table A3.

Predicted Probability of the Individual Winning by Appellate Court Panel

Panel Ideology	Probability	Confidence Intervals
Mean	.36	(.33, .38)
Minimum	.57	(.41, .72)
Maximum	.22	(.15, .29)

This estimation is constructed with a 95 percent confidence interval with all variables except Panel Ideology held at their mean. When Panel Ideology is held at its mean, the likelihood of the individual winning a Rule 11 appeal is 36 percent. However, when Panel Ideology is held at its minimum, i.e., when the

panel is most liberal, the likelihood of the individual winning increases to 57 percent. When Panel Ideology is held at its maximum, i.e., when the panel is most conservative, the probability of the individual winning decreases to 22 percent. The confidence intervals indicate that the results of this estimation are statistically significant. Estimating first differences, the individual is 34 percent less likely to win as the ideology of the panel changes from minimum to maximum. The results of this estimation are depicted in Figure 1 below.

distance between the House Judiciary Committee Chair and the circuit panel grows, the individual is less likely to win.

Table A4
Predicted Probability of the Individual Winning by House Chair

House Chair Ideology	Probability	Confidence Intervals
Median	.36	(0.33, 0.38)
Minimum	.76	(0.46, 1.05)
Maximum	.11	(-0.04, 0.25)

The estimation of the predicted probability is presented in Table A4. This estimation is also constructed with a 95 percent confidence interval with all variables except House Chair held at their mean. When House Chair is held at its median, the likelihood of the individual winning a Rule 11 appeal is 36 percent. However, when House Chair is held at its minimum, i.e., when the panel is most liberal, the likelihood of the individual winning increases to 76 percent. When Panel Ideology is held at its maximum, i.e., when the panel is most conservative, the probability of the individual winning decreases to 11 percent. The confidence intervals indicate that the results of the estimation holding House Chair at its median and minimum are statistically significant, but the estimation holding House Chair at its maximum is not statistically significant.

These results may be a reflection of House Republicans' activity in this area. House Republicans had been introducing legislation seeking to amend Rule 11 to discourage trial lawyers from filing claims that may be considered frivolous. If an attorney was unsure whether their arguments were grounded in law, they would be discouraged from asserting novel arguments on their plaintiffs' behalf because they would not want to risk a court finding that their "novel" arguments was in fact frivolous.

Furthermore, the Chair is a powerful gatekeeper for bills introduced. This finding lends some support for the theory that courts of appeals are responsive to Congress. This finding also lends some support providing that the Rules Enabling Act sufficiently influences the outcome of judicial decisions. Because of the unique provisions of the Rules Enabling Act which subject the Federal Rules of Practice and Procedure to congressional review and public scrutiny, courts of appeals may be particularly receptive to changes in congressional ideology, namely the Chair of the House Judiciary Committee, in order to prevent congressional action incongruent with their preferences.

CONCLUSION

The models provide evidence that courts of appeals transform their mandatory appellate jurisdiction into one that is discretionary by deciding procedural rules to set their judicial agendas. The evidence provides that the ideology of the circuit panel has a significant effect on the likelihood of a litigant's success, depending on the litigant's status. Particularly, conservative panels are more likely to rule against individual litigants

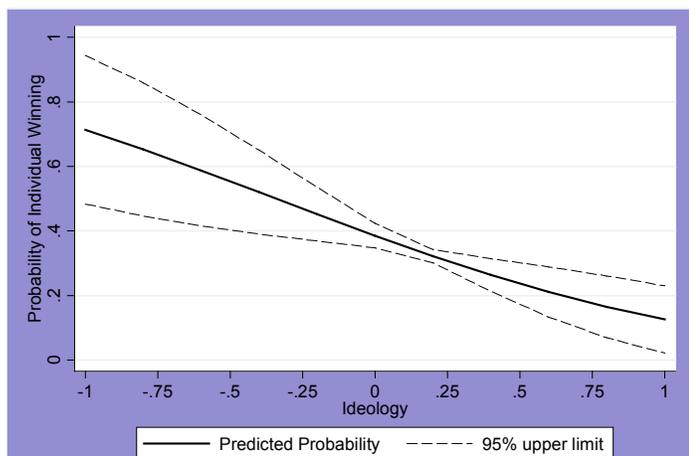


Figure 1: First Differences of Panel Ideology & the Likelihood of the Individual Winning

When individuals litigate against businesses, conservative panels are more likely to find that individual litigants violated Rule 11 rendering their claims more likely to be characterized as frivolous. The evidence suggests that conservative panels are sanctioning individuals because of their status. This places individuals at a substantial disadvantage in the litigation process when they litigate against businesses. Galanter's theory provides that individuals are disadvantaged because they often lack resources to hire better attorneys, incentive to maintain the high costs of sustained litigation, and long-term goals of shaping legal precedent to their advantage. These results provide evidence that individuals are disadvantaged not only because they lack resources, but also because their status prompts ideological decision-making that is detrimental when litigating before a conservative court. The substantive implications are important for individual litigants. Adverse decisions against individual litigants prevent them from "having their day in court" because the merits of their claims are not addressed. If conservative panels are more likely to uphold a Rule 11 sanction for individual litigants and, therefore, prevent a court from hearing the merits of the case, then business litigants are not only able to shape precedent, but may also deter individual litigants from filing lawsuits in jurisdictions with conservative courts or from filing lawsuits altogether.

The hypotheses testing the effects of Congress provide mixed results. First, the null hypotheses cannot be rejected testing the effects of the House and Senate Judiciary Committees. The third hypotheses regarding the Chairs of those committees also have mixed results, with no effect for the ideology of the Chair of the Senate Judiciary Committee. However, as the ideological

when appealing the grant or denial of a Rule 11 sanction. These results have significant implications for granting litigants access to the courts. Courts have power to dismiss a litigant's claim as a sanction pursuant to Rule 11. In certain instances, a court can permanently dismiss a litigant's claim seeking relief thus barring the plaintiff from litigating the merits of that claim. Consequently, these judicial decisions often act as an absolute bar, preventing a court from deciding the case. Accordingly, the litigant can never obtain redress from his or her grievances. As a result, the implications of a court declining to reach the merits of a litigant's claim are immense. A litigant is without recourse in the judicial system if a court refuses to hear their claim. Because of this, a litigant's ability to comply with procedural rules is of the uttermost importance.

Furthermore, there is some support that panels in the federal courts of appeals are responsive to ideological changes of members of Congress. While panels seem not to respond to Congress as a whole, the evidence suggests that circuit panels render decisions based on the ideology of the Chair of the House Judiciary Committee. Given that the House Judiciary Committee is likely the principal gatekeeper for bills seeking to amend Rule 11, these results indicate that appellate panels are cognizant of Congress's power to override their decisions. More broadly, these results suggest that federal judges do take into account congressional preferences, thus constraining their ability to freely decide according to their sincere policy preferences.

Although the evidence provides support for courts and ideological decision-making when deciding procedural rules, this study does not investigate whether courts employ their ideology in enacting procedural rules or whether congressional ideology constrains courts from enacting rules that reflect their sincere policy preferences. Further research may examine the effects of interest groups in amending the Federal Rules. Because conservative and liberal groups use litigation as a means to expand or limit rights, the effect of interest group pressure on courts and members of Congress should be examined.

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