

**Political Signals and Judicial Review
on the Bulgarian Constitutional Court**

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In exercising judicial review, high courts often decide the constitutionality of laws which have been approved over significant disagreements among lawmakers and often in opposition to important segments of society. We ask whether such opposition makes it more or less likely that the Court will strike down such laws as unconstitutional. Using original data on decisions of the Bulgarian Constitutional Court from 2000 to 2013, we find that signals of opposition to the law (manifested in Court briefs or legislators voting against the reviewed law), substantially increase the likelihood of judges' finding the law unconstitutional.

While constitutional courts have existed in many countries, they have proliferated the political landscape most notably since the third wave of democratization and the fall of the Berlin wall in many developing countries. While judicial reforms and the creation of new institutions is not unusual after democratic transitions, the powers afforded constitutional courts have been startling broad. Despite these courts' extensive powers, the behavior of such courts has been generally understudied and concerns regarding their effectiveness as well as their impartiality and receptiveness to changes in societal norms abound. Special concern is raised when constitutional courts exercise their broad powers to invalidate laws enacted by elected politicians.

Many existing theories related to high courts' nullification of laws assert the importance of the political context in which a high court operates. Judges are generally deferential to other branches of the government, however, this deference is not always constant. As a result, scholars debate the necessary conditions for courts and judges to act against the interests of other branches of government. Fragmented government is thought by some to create the ideal environment for courts and their judges to invalidate laws drafted by other branches of government. According to this perspective, under a fragmented polity, it is more difficult for branches of government to coordinate punishment of a court or its judges when they find laws unconstitutional. While this line of argument has been highly influential, it is not without its detractors. While most scholars focus on the importance of fragmentation, others have argued that fragmentation is not a necessary condition for high court assertiveness.

The broader discussion of political fragmentation and its effect on high court decision-making suffers from a lack of definitional clarity regarding what is meant by "political fragmentation." In presidential systems with two parties, scholars have traditionally found fragmented government when the president and the majority of one or two legislative chambers do not share the same party. Unified government on the other hand occurs when the executive and the

legislature do share the same party. In multiparty, presidential regimes, often found in Latin America, fragmented government is instead defined on a continuum. The smaller share of party seats the executive shares in the legislature, the greater the fragmentation in the polity and the larger the share of seats the less fragmented. In parliamentary systems, fragmentation traditionally has been defined as the effective number of parties, but more often as the percent of seats in the legislature held by the party or parties of the governing coalition.

While the fragmentation literature is informative, scholars espousing this viewpoint mostly evaluate what political conditions are more or less conducive to high court deference or assertiveness in two party presidential systems at the macro level. The literature does little to consider judicial behavior in multiparty or parliamentary regimes. Further, the general measures of political fragmentation vary little over time and do not capture the fragmentation of political opinions on specific laws that necessarily occur during the legislative process. In response to this debate in the literature, we explore the relationship of traditional measures of fragmentation on judicial decision-making in the Bulgarian Constitutional Court, a relatively young high court with judicial review powers operating in a parliamentary system.

We suggest that while measures of fragmentation in the polity may impact judges' decision to invalidate a law, more important determinants are signals by political actors (and civil society) in opposition to laws being reviewed. We argue that opposition within and among branches of government or between branches of government and civil society on specific laws signals to a high court that the law itself is deeply problematic and unacceptable to a portion of society. Likewise, laws enacted with a large consensus suggest to a high court that many diverse interests in society support the law. In these instances, a high court should be unusually cautious in choosing to invalidate laws or have strong justifications for doing so.

High Court Decision-making and Inter-branch Confrontation

Judicial review is one of the most controversial and often misunderstood powers of high courts. For many, the work of high courts creates a counter-majoritarian dilemma because judicial review empowers unelected judges to subvert the will of elected policymakers. On the other hand, judicial review is vital to the separation of powers and checking the will of powerful presidents and legislators. As noted by many, although judicial review may be controversial, high courts are often deferential to other political branches due to their inability to enforce their decisions or control their budget (See Federalist 78). Further, high courts in new or young democracies may be hesitant to use their judicial review powers for fear of losing legitimacy in the public eye or for fear of punishment from other powerful political actors (Couso 2004).

Due to institutional limitations on high courts' powers, scholars have found that many courts act deferentially to those in power and even to public opinion. High court deference is thought to be related to the ability of other branches of government to punish the court for unfavorable decisions. Elected legislators and presidents can punish courts for invalidating their laws in a variety of ways including punishing or removing individual judges or limiting the courts' powers and budget. Furthermore, lawmakers can punish courts by overriding their decisions by new legislation, executive orders, or more difficultly by constitutional amendment.

While these institutional constraints suggest why high courts may be hesitant to invalidate laws, courts still choose to find some laws unconstitutional and scholars suggest what conditions are more or less conducive to such invalidations. For example, in the American context, many authors assert that the U.S. Supreme Court follows the interests of the public much in the way that legislators do, and may choose to invalidate laws that are unpopular in society (McGuire & Stimson 2004, Friedman 2009, McGuire et al. 2009, Carrubba & Zorn 2010). Public opinion is also manifested in the legislation adopted by elected politicians and Dahl (1957) has suggested that,

within the period of his analysis, the U.S. Supreme Court followed the norms adopted by the sitting legislative majority and was therefore unwilling to act against it. For Dahl, this deference to current legislative bodies is due to the inability of the Court to actuate policy. For different reasons, Shapiro (2004) claims that courts in general are more likely to overturn laws of prior legislators than current legislators because the threat of overriding a court's decision is unlikely due to the great difficulty of reconstituting the prior enacting legislative coalition.

While many high courts may act deferentially, this is not always the case. Sometimes high courts confront congress and the president with little fear of reprisal due to the high stature a court has gained either through longevity or due to the high public opinion afforded it (Gibson et al. 1998). In the context of younger courts, they may seek to use their powers to establish their legitimacy and show they are also a powerful actor on the political landscape. However, they also may be hesitant to use their powers as this may invite court curbing mechanisms (Couso, 2004).

A large number of scholars build on the above themes arguing that high court assertiveness or independence may fluctuate with the political composition of the polity itself. High courts are more likely to find laws unconstitutional thereby opposing the other branches of government when the political context is more fragmented making it less likely that the court will be punished. Accordingly, in presidential systems, judges tend to avoid voting against government actors, if those actors are unified (Epstein & Knight 1999; Murphy 1964; see also, Helmke 2002; McCubbins, Noll and Weingast 1995, 2006). In contrast, judges should act more assertively under divided government because the other branches of government will have difficulty coordinating efforts to retaliate against the judiciary through legislative overrides or attacks on the court or individual judges (Eskridge 1991; Gely and Spiller 1990; Bergara, Richman and Spiller 2003).

Ferejohn (2002) notes that the more political fragmentation exists among political actors, the less likely that those actors can control courts and as a result courts will become more assertive (see

also Chavez, Ferejohn and Weingast (2004). Ferejohn, Rosenbluth and Shipan (2004) insist that the logic surrounding the effect of political fragmentation in U.S. federal courts equally applies to courts in presidential systems in Latin America and several scholars have tested this proposition. Scribner (2011) finds that the Chilean and Argentine Supreme Courts are more likely to check executive power under divided rather than unified government. Similarly, Iaryczower, Spiller and Tommasi (2002), using a wide range of court cases, find that Argentine Supreme Court judges increasingly voted against the government the weaker the executive's control over the legislature.

Additional, but less prolific literature focuses on how political fragmentation affects judicial decision-making in parliamentary systems. However, this literature seems to suggest conflicting results with the presidential fragmentation literature and also among those studying courts in parliamentary systems. Rather than fragmentation increasing the likelihood of high court invalidation, Stone Sweet (2000) suggests the opposite. He asserts that when a minority government is in power in a parliamentary system, it must rely heavily on parliamentary parties not in the government leading to vast compromises on policy issues. In these situations, constitutional courts will be less likely to strike down the resulting laws because the laws themselves reflect the wide societal consensus on policy needed to create an enacting coalition. Putting such theories to test in a cross sectional analysis of former communist countries, Herron and Randazzo (2003) find that political fragmentation, measured by the Laakso-Taagepera index of effective parliamentary parties, has no effect on eastern European high courts declaring laws unconstitutional.

While the fragmentation literature is widely cited, it is not without criticism. First, most of the above studies rely on broad measurements of fragmentation such as whether the president and majority of legislators share the same party in a two party system or whether the executive's party has a large percent of legislative seats in multiparty systems. While such studies indicate almost overwhelmingly that fragmented government increases judges' and high courts' propensity to find

laws unconstitutional, the conception of fragmentation is often presented in a simplistic manner which assumes that parties are homogenous and vote as a block with little disagreement. Further, scholars advocating fragmentation as an explanatory variable fail to acknowledge inter-party disagreements which may arise depending on the exact policy issue being discussed. Disagreements on certain issues, such as the scope of legislative or executive powers, may not divide easily along party lines, but rather along institutional allegiances.

Finally, a main assumption of the fragmentation literature is that courts will be hesitant to act when they face a more unified government for fear of some kind of punishment. This line of reasoning fails to recognize that often legislators favor the court overturning laws, especially those that are antiquated and from another era. Further, when laws are passed with close majorities, a high court decision of unconstitutionality would be welcomed by a great many legislators (See Whittington 2005).

In opposition to the overwhelming amount of literature that indicates that political fragmentation drives judges' decisions about exercising their legislative veto, Hilbink (2012) finds, through an analysis of case examples, that political fragmentation is neither a necessary nor sufficient condition for judicial assertiveness. Rather she shows that there are other factors that may be driving judges to assert themselves against other powerful political actors. She states:

What political fragmentation theories miss ... is the important way that judicial attitudes and the social and institutional processes that constitute them affect judges' responsiveness to opportunities and constraints in their environment. Sincere judicial attitudes are not inert background characteristics, awaiting the right strategic conditions to be released or activated; rather, they are themselves crucial to explaining judges' proclivity to assert their authority against powerful actors. Moreover, judges' attitudes vary not only along a single left/right dimension but also in how they understand their function in a democratic system, that is, whether they believe their default approach should be to defer to or to question the decisions of state and government officials. (p. 589).

While political fragmentation is one of the main explanations of high court assertiveness, many scholars have argued that decision-making is based on at least two other determinants. First, a significant portion of the judicial behavior literature suggests that judges' voting behavior is largely affected by judges' individual political preferences. This literature focuses on whether judges are making impartial decisions or are biased by such things as a judge's allegiance to their political parties (ie. the attitudinal model)(Segal and Spaeth 2002; Amaral-Garcia 2009) or their appointers' parties (Hanssen 1999; Peretti 2002; Burbank & Friedman 2002; See also, La Porta et al. 2003; Feld & Voigt 2003; Moreno et al. 2003; Magaloni 2003). Under this perspective, if judicial attitudes are driving judges' decisions to invalidate laws, this would suggest that they are voting against laws supported by parties who they do not favor.

A second widely held determinant of decision-making is related to legal constraints (See Kritzer and Richards 2005; Brisbin 1996 and Gilman 2001). Judges are thought to base their decisions on statutory laws, or prior legal decisions. For constitutional courts, which are analyzing laws approved by elected officials, judges are evaluating whether such laws violate the constitution. Under this view, judges' decisions are constrained by the constitution itself and often by the courts' own prior decisions or those of higher courts such as the European Court of Justice.¹

The Bulgarian Constitutional Court: Powers and Constraints

Why Bulgaria?

While single country studies are criticized due to the inability to fully generalize their results to other countries, they often allow researchers to engage in more in depth micro-level analyses. When studying law and courts this is especially important because a single country study ensures that

¹ While high courts found in Europe under civil law traditions do not traditionally follow precedent or stare decisis in the same way as do courts in common law systems, these high courts often still reference prior cases and those of international tribunals in their decisions.

differences across legal traditions, legal cultures, and institutional rules and domestic laws are thoroughly controlled for in any empirical examination. While recognizing that the results may not extend to other countries, analyzing the Bulgarian Constitutional Court allows a deeper look at individual judges' behavior in reviewing specific laws. It also allows us to analyze the effects of disagreements within and between branches of government and civil society on specific policy issues. Further, Bulgaria is similar to many eastern European countries in that its constitutional court is relatively young having originated after its transition to democracy. Like other countries in the region, the Bulgarian Court is modelled after many features of the Kelsenian constitutional court prototype which was adopted in many western European countries before and after World War II for the purpose of providing checks on overly powerful executives and legislators (See Kelsen 1942). Recent political turmoil in many eastern European countries, such as that seen in Hungary and Poland in 2014 and 2015, has focused on the ability of constitutional courts to use their broad powers to hold governmental officials accountable under their respective constitutions. To understand the politics and powers of such courts and perhaps to understand why some countries are at risk for similar constitutional crises, Bulgaria provides a useful example. The Court uses its judicial review powers to decide important separation of powers issues faced by the country and often reviews laws which are highly contentious to some political actors and society itself.

Several studies regarding the early years of a Court's existence suggest that the Court is somewhat of an outlier from other courts in new democracies for two reasons. First, the Court often asserts its judicial powers to check the actions of the legislative and executive branches at least on certain issues (See, Schwartz 2000). Some observers have actually characterized the independence of the Constitutional Court in Bulgaria as extreme (see Schrameyer, Klaus 1993, pp. 73 – 105). In the first decade of its existence, the court voided 145 laws. Second, since its creation, there has been no norm of consensus, suggested to exist in many young courts (Garoupa and Ginsburg 2012).

Instead, a large proportion of cases are decided non-unanimously and judges dissent together often in large coalitions. A more recent study by Hanretty (2014) suggests that Bulgarian Constitutional Court judges' high dissent rate has continued through 2010 and that disagreements in voting reflect the polarization of what he classifies as right and left wing judges.

Institutional and Political Context of the Court

After the fall of the Berlin Wall in 1989, a wave of eastern European and independent Russian states attempted to transition from former authoritarian rule to democracy. Despite the aspirations for such transitions, countries have struggled, with varying success, to create or recreate effective political institutions. In many of these countries, the creation of constitutional tribunals was seen as a way to ensure that new constitutions in these countries were respected by powerful executives and legislatures. Bulgaria followed these general trends by becoming independent and democratic in 1990 ending years of Communist domination. The National Assembly adopted a new constitution and created the Constitutional Court in 1991. Bulgaria joined NATO in 2004 and the European Union in 2007. Bulgaria's Constitutional Court shares many features, such as appointment method and powers with many other courts in Eastern Europe which were created or re-constituted after the fall of the Berlin Wall in the early 1990s.

Bulgaria is usually considered a parliamentary system with reinforced presidential powers. The Bulgarian president is less powerful than the president of the United States, but significantly stronger than a ceremonial figure such as the president of Germany. The Bulgarian president is directly elected by voters for a period of five years. The cabinet formation process largely follows a parliamentary logic—the Bulgarian constitution significantly constrains the ability of the president to choose a candidate for a prime minister or to remove a prime minister or a minister. The president formally appoints the prime minister who is nominated by the party which holds the largest number

of seats in the unicameral National Assembly. The president may dissolve the government if no agreement can be reached on selecting the prime minister. A council of ministers consisting of the prime minister, deputy prime minister and other ministers is responsible for conducting national and foreign policy and ensuring national security. The president can veto a law, which can be overridden by the National Assembly with a simple majority.

Constitutional Court Creation and Institutional Rules

Bulgaria's 1991 Constitution created the Constitutional Court and the National Assembly's Constitutional Court Act established the Court's rules and procedures. The first judges were selected and approved by December 1991. The Constitutional Court serves as a fourth branch of government being independent from the executive, legislature, and judicial branches. Like courts in many Latin American and European countries, the Constitutional Court is not considered part of the judicial branch which consists of two high courts and lower courts.

There are twelve members of the Bulgarian Constitutional Court. Judges serve nine year non-renewable terms and may have fewer career options after the Court (Schwartz 2000). Judges' terms are staggered such that one-third of the Court is replaced every three years. Constitutional Court judges are largely self-disciplined. To lift a judge's immunity from prosecution or to establish a judge's incapacity, two thirds of the Court's judges must agree by secret vote. Judges are appointed by a mixed appointment method which allows different political actors to choose a certain number of judges. In this regard, three main political actors choose four judges a piece. These political actors include the unitary National Assembly, the President, and a group composed of all justices of both the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC), the country's top appellate civil and administrative courts. The National Assembly and group of judges

from the SCC and SAC² choose judges by majority vote. The President selects judges unilaterally without confirmation by other branches of the government. Ganev (2003) claims that the rules of appointment “made it virtually impossible for a single political force to colonize the Court” (p. 607). However, Sadurski (2008) counters that one danger with mixed appointment systems “is that each of the bodies will elect ‘their own’ judges who will then be under an obligation to be loyal to their appointing body” (p. 17).

As with many constitutional courts in new democracies, the Bulgarian Constitution specifically provides the Court with judicial review among other powers. In this regard, the Court may find enacted laws unconstitutional, but the Court does not have broader powers to find laws unconstitutional prior to enactment except in the case where a proposed law may be incompatible with international laws or treaties. For many the Court was “to be a substitute for a second legislative chamber to play a role similar to the Senate” (Schwartz 2000, p. 169).³

Besides judicial review powers, the Court also has the ability to interpret the constitution, resolve disputes between other branches of government and between local government and national government, the constitutionality of political parties, and impeachment of the President or Vice President for treason or violations of the Constitution if brought by the National Assembly (Constitution article 149). The Court also has broad powers to establish constitutionally relevant facts regarding the incapacity or removal of the president or vice president, members of the National Assembly or Constitutional Court itself.

² Judges of the SCC and SAC are themselves appointed, demoted and removed by the Supreme Judicial Council, body of 25 members who are practicing attorneys with high professional and moral attributes and 15 years of experience. Eleven of the 25 members are elected by the National Assembly and eleven by the elected bodies of the judiciary. The remaining three members of the Supreme Judicial Council are the Chairmen of the SCC and SAC and the Prosecutor General. These members sit *ex officio* (See Constitution article 130).

³ Schwartz claims that the Constitutional Commission conceived of the Court as a second legislative chamber based on his individual interviews.

Unlike the U.S Supreme Court, the Bulgarian Constitutional Court does not review cases and controversies brought by individuals whose cases have been heard by other courts, nor does the BCC appear to have discretionary review to choose not to hear a case, which is properly brought before it by specific political actors including the following:

- The President
- No less than one-fifth of all members of the National Assembly
- The Council of Ministers
- The Supreme Court of Cassation (SCC)
- The Supreme Administrative Court (SAC)
- The Prosecutor General
- The Ombudsman since 2006 with requests to find laws unconstitutional which infringe on human rights and freedoms

(Bulgarian Constitution Article 150, para. 1; Constitutional Court Act, Article 16). Schwartz (2000) asserts that the “refusal to allow individual [human rights] claims was quite deliberate” (p. 169). Unlike other constitutional courts, the Court is not a final court of appellate review of lower court decisions. Such functions reside in the powers of the Supreme Court of Cassation and the Supreme Administrative Court. The Constitutional Court has exclusive jurisdiction over determining whether laws are constitutional or not and thus appears to deal with political issues rather than general disputes between two litigants.

While most of the cases are initiated by the National Assembly, the Court is allowed to consider the positions of all “interested parties,” who file briefs with the Court. Interested parties include political actors such as those allowed to initiate cases mentioned above, as well as specific ministries and non-governmental organizations. This type of procedure is not unique to Bulgaria, but also applies to many courts in Europe including constitutional courts in France, Germany, Italy,

Spain, Switzerland, Austria, Belgium, Portugal, Hungary, Romania, Slovakia and Italy (Stone Sweet 2000; Garoupa et al., 201; Ganev, 2003). Interested parties are allowed to file briefs with the Court stating their positions on the law's constitutionality, but they are not required to do so. As a result, there are different combinations of interested parties on each case. Further, it is not unusual for different branches of the government to have opposing views on the constitutionality of laws or for some of these political actors to disagree with the positions of civil society organizations. As a result, the filing of a petition by a political actor and the filing of briefs by interested parties often indicate that the law is controversial either among government branches or between branches and civil society.

The Court makes decisions using a majority voting rule requiring more than half of all judges (ie. 7 of 12 judges) to agree. The decisions of the Court come into force three days after promulgation which occurs when the opinion appears in the State Gazette within 15 days of being issued (Constitution article 151). Therefore, unlike many high courts, whose decisions become effective on the date of issuance, the Bulgarian Constitutional Court's decisions have a lagged effect.

Theory and Predictions

A significant portion of the comparative judicial politics literature shows that political fragmentation is one of the key determinants of judges' voting against other branches of government. In general, scholars argue that courts are unlikely to find laws unconstitutional when government is less fragmented because under more unified government, the legislature and executive can coordinate actions to undermine the Court such as voting to remove or punish judges, voting to reduce the Court's powers or budget, or voting to override an unfavorable Court decision. While political fragmentation and the political context may be one determinant of judicial assertiveness, we predict that it may not be the most important, if conceptualized in the traditional

way which, in a parliamentary system, refers to the ruling coalition's vote share or share of party seats in the legislature. Such traditional measures of government fragmentation are very general and do not capture internal disputes on specific policy issues within and between branches of government which may cut across party lines.

We argue that although fragmentation may be an important contextual variable, courts are far more concerned about opposition and disagreements over specific policy issues during the legislative process rather than just the general composition of the polity. In other words, we argue that courts are far more concerned about whether a critical mass of citizens and the politicians they elect support a policy than whether the polity itself is unified or divided. High courts that review the constitutionality of laws are well aware that they must directly confront disagreements inherent in the legislative process – a process requiring compromise among legislators to produce laws over which society may itself be deeply divided. Legislation that is passed over opposition of lawmakers or that political actors disagree on should make the Court more hesitant to uphold it. In acknowledgement that judges may be responsive to other political actors' concerns about the laws they review, Vanberg (2001) shows that the German Constitutional Court is more likely to find a law unconstitutional if at least one interested party requests that court to find the law unconstitutional.

Using this same logic, it seems likely that highly contested policies (evidenced by opposition by political actors) are less likely to be followed by the public or upheld by other institutions. To the extent that high courts follow political elites (Dahl 1957), courts may be reluctant to uphold legislation that was passed with a significant amount of discord among lawmakers or other political actors. In other words, when there is a significant amount of opposition to laws being reviewed, high courts may, for good reason, be reluctant to uphold them.⁴

⁴ Further, reasoning related to signaling from the literature on conflict among judges is informative as well. Judicial politics' scholars study dissent on high courts because they have concern that decisions with dissent are less likely to be enforced by other branches of government or by lower courts (e.g. Milner 1971; Brenner and Spaeth 1988; Gibson et al.

In the Bulgarian case, substantial opposition to policy can be analyzed in two ways. First, opposition can take the form of interested party briefs indicating opposition to the law. Underlying opposition to legislation by political branches (including the legislature) or civil society shown in these briefs sends a signal to high courts reviewing the legislation that the law itself is weak or problematic. Opposition also indicates that in the future there are forces that would like to undermine the law. We therefore predict that the more opposition to a law by key political actors or civil society, the more likely the Court will find the law unconstitutional.

Second, opposition to policy can be determined by the amount of agreement in the legislative process. Legislation that is passed with large majorities or unanimously is highly consensual legislation in which a large number of legislators with diverse interests and constituencies agree. If the Court indeed follows political elites or is concerned about following citizens' interests, the Court would be more likely to uphold legislation that is agreed upon by a large number of legislators or unanimously. Conversely, legislation passed by slim majorities or passed over a significant number of nay votes should alert the Court that the law under review is not representative of citizens' or their legislative representatives' interests.

Finally, we predict that the effect of opposition to particular pieces of legislation manifested through interested party briefs or a large proportion of nay votes by legislators should affect the Court's determinations of unconstitutionality more than the political fragmentation of the polity itself.

1998; Gibson and Caldiera 2009; Pritchett 1948; O'Brien 2011; Garoupa and Ginsburg 2006). In other words, these scholars assert that disagreement in the judicial decision-making process, undermines the strength and enforcement of the decision. By analogy, similar disagreement among political actors may undermine the law's validity.

Data and Methods

The data consist of 135 cases from 2000 to 2013 in which a political actor initiated an action requiring the Court to review the constitutionality of a law. The case level data is coded for the case outcome (constitutional or not), the extent that interested parties oppose the law, and the proportion of nay votes in the legislature against the law being reviewed. These variables will be discussed in full below.

Table 1 summarizes the relationship between interested party disagreement and the Court finding a law unconstitutional at the case level. Disagreement is evidenced by briefs by some interested parties who support the law's constitutionality and some briefs that claim it is unconstitutional. Decisions of unconstitutionality are twice as likely when there is disagreement among the interested parties about the constitutionality of the law under judicial review. In cases with disagreement among interested parties, cases are found unconstitutional 50% of the time. In cases with no disagreement among these interested parties, laws are found unconstitutional 26% of the time. A t-test reveals that the difference between the average rate of unconstitutionality of the two groups is statistically significant. This suggests that disagreement of interested parties may send a signal to the Court that there is a problem with the law and that it should be cautious about upholding it.

{Insert Table 1}

Our research seeks to analyze one aspect of judicial decision-making -- invalidating laws or voting for unconstitutionality. We determine whether these decisions are due to underlying opposition to the laws by either interested parties or legislators or due to underlying preference divergence in the polity (ie. fragmentation), while controlling for some judicial attributes. To test the effect of opposition of laws by interested parties or legislators as well as political fragmentation on judges' votes of unconstitutionality, the data are disaggregated to the individual judge vote, which

will allow an examination of both judge-level variation and to distinguish those factors from the effects of case-level variables. The vote level data include one dependent variable, *Unconstitutionality*, which is coded as 1 when a judge votes for unconstitutionality and 0 otherwise. There are 1,017 judges' votes on 135 cases.

The first three independent variables refer to attributes of the case, while the remaining independent variables refer to the judges' attributes. Our two main explanatory variables are related to political actors' opposition to the law reviewed. The first variable, *Proportion of interested parties unconstitutional*, captures the proportion of interested parties who filed a brief in a case requesting the law to be found unconstitutional. An important determinant of unconstitutionality on other high courts with similar rules as the Bulgarian Court has been whether any interested party requested the law be found unconstitutional (See Vanberg 2001). Our variable is calculated by dividing the number of interested parties who requested the Court find the law unconstitutional by the total number of interested parties who filed briefs with the Court on any given case. As mentioned previously, interested parties may include branches of government, individual ministries, the SAC and SCC, the prosecutor general, ombudsman and non-governmental organizations. While there is no limit to the number of interested parties who may file a brief, interested parties are not required to file briefs in every case.

The second variable, *Proportion of legislators voting nay*, indicates the magnitude of opposition in the unicameral parliament to the law being reviewed. It is calculated by taking the number of individual legislators voting nay over the total number of legislators voting. When there are multiple votes on the same legislation these calculations are averaged. Values tending towards zero indicate little opposition to the law by a portion of legislators, while values tending towards 1 indicate that there is more opposition.

Our analysis includes a variable for fragmentation. As stated in the literature review, the majority of scholars believe that fragmentation in the polity is an important determinant of judicial independence. For fragmentation we use the variable, *Largest governing party seat share*, which comes from the Database of Political Institutions (2012). Low values of this variable indicate that the largest government party had a small share of seats while higher values of this variable indicate that the government had a greater share of seats. This variable is highly correlated with the percentage seat share of the entire governing coalition (ie. consisting of all government parties). Indeed, the correlation coefficient between the two variables is 0.812. The results from our analysis do not substantially change whether we use the seat shares of the largest government party or the seat shares of the governing coalition.

We also include control variables related to the judges themselves. The first variable indicates the judges' time on the bench. *Tenure* is the number of years a judge has been on the bench at the time of the decision. We include this variable as it provides some indication of whether the judge is aligned with the current government in power (Iaryczower et al. 2002). Judges who have been on the Court only a short time are more likely to have been chosen by the sitting president or National Assembly. Those who have been on the Court longer are unlikely to be as closely connected to the current government. Further, judges, who have been on the Court longer may face different incentives than newer judges. Judges who are nearing the end of their term on the bench (with no possibility of re-election) may be concerned about their career prospects after their court service. Magaloni (2003) indicates that such concerns may affect judges who may be keen on pleasing others who can aid them securing future jobs.

As stated in the review of literature, many studies have shown that judges' decisions are largely based on their own political or policy preferences (See Segal and Spaeth 2002). According to this theory, judges' political preferences often reflect those of their appointers. In instances where judges have strong allegiances with the political preferences of their appointers, they may vote in the

same direction of their appointer.⁵ To capture the political preferences of judges who were appointed by many specific political actors, we create the variable *Appointer unconstitutional*. If the judges' specific appointer acting as an interested party voted for unconstitutionality this variable received a 1. The variable was coded 0 if the institutional actor filed an opinion to find the law constitutional. There were four different presidents who appointed judges and voted as interested parties and five different legislatures that appointed judges. Again, we code for whether one of these 9 different appointers specifically voted for constitutionality or unconstitutionality in a given case. The SAC and SCC had longer terms than either the National Assembly or the president. As a result, we simply noted if these courts, acting as interested parties, filed opinions with the Court and the direction of those opinions. The judges' names and institutional appointers are listed in Table 2.

{Insert Table 2}

We also create a variable which interacts whether the appointer voted for unconstitutionality with the proportion of judges voting nay. In this way we combine the appointer's preferences with the preferences of the legislature. Summary statistics for all the variables in the vote level data are found in Table 3.

{Insert Table 3}

The analysis focuses on factors leading judges to vote for unconstitutionality, our main dependent variable. We use unconstitutionality as our dependent variables as it captures when a high court is deviating from norms of deference and confronts other lawmaking branches of

⁵ Apart from studies regarding the U.S. Supreme Court, judges' have appeared to follow their political preferences, defined by judges' or their appointers' political party allegiances, to find laws unconstitutional on the Canadian Supreme Court (Ostberg and Wetstein 1998, 2007; Wetstein and Ostberg 1999), the Malawi Supreme Court (VonDoepp 2006), the Italian Constitutional Court (Pellegrina and Garoupa 2013), the Portuguese Supreme Court (Amaral-García, et al. 2009), the Spanish Constitutional Court (Garoupa, Gomez-Pomar, Grembi 2011), and the Chilean Constitutional Tribunal (Tiede 2015).

government. Here unconstitutionality is coded 1 if a judge voted to find the law unconstitutional and a 0 otherwise.

The regression analysis is captured by the following equation:

$$\text{Logit } \{\Pr(Y_{ij}=1)\} = B_0 + B_1 \text{Prop. interested parties unconstitutional} + B_2 \text{Prop. of legislators voting nay} + B_3 \text{Largest governing party seat share} + B_5 \text{Tenure of judge} + B_6 \text{Judicial appointer unconstitutional} + B_7 \text{Judicial appointer unconstitutional} * \text{Prop. nay votes} + \varepsilon.$$

We analyze six samples. The first sample uses all the data available and defines the *Proportion of interested parties unconstitutional* as the number of interested parties voting against unconstitutionality over the total number of interested party briefs. In sample 2, for this same variable, the numerator is the number of governmental interested parties requesting the Court invalidate the law and in Sample 3 the numerator is the number of non-governmental interested parties. In the fourth sample, the data is restricted to cases in which the legislative vote is on the exact provision of the law being reviewed by the Court, rather than the entire law. In this way, we provide a more precise measure of legislative opposition. The fifth sample adds an additional variable related to the position of the interested party who appointed a judge on the law reviewed. In this sample, we look at whether a judge's specific appointer voted for unconstitutionality as an interested party. The sixth sample interacts the institutional appointer variable with the legislative votes variable. As logit coefficients are difficult to interpret, we convert them to odds ratios and also analyze the marginal effects.

Results

The results, presented in Tables 4 and 5, assess what factors make it more or less likely that individual judges will vote for unconstitutionality. In Table 4, the results are provided in terms of odds ratios because coefficients from logistic regressions are difficult to interpret and the odds ratios

allow us to assess the risk of a particular outcome of interest when exposed to the explanatory variables. In Table 5, we present the marginal effects. In Tables 4 and 5, across all samples, our main variables of interest, proportion of interested parties who file a brief favoring unconstitutionality and proportion of legislators voting nay, are highly significant. In general, the results indicate that as interested parties' and legislators' opposition to a law reviewed increases, it is more likely that judges will find the law unconstitutional.

In sample 1, the odds of a judge voting for unconstitutionality are eighteen times higher for each unit increase of the proportion of interested parties requesting that the law be found unconstitutional. For this sample, the odds of a judge voting for unconstitutionality are seven times higher as the proportion of legislators voting nay increases by one unit. In terms of marginal effects this means that the change in probability of voting for unconstitutionality increases by 37% for each one unit increase in the interested parties' variable and by 25% for a one unit increase in the legislators voting nay variable.

In sample 2, the interested party variable is redefined as the proportion of governmental interested parties opposing the law reviewed. In this sample, the odds that a judge will vote for unconstitutionality are four times higher with every one unit increase in the interested party variable and 4.66 times higher for every one unit increase of the legislators voting nay variable. In terms of marginal effects, for the two main variables of interest, this is about a 20% increase in the change in probability of judges voting for unconstitutionality. The results in sample 3, redefine the interested party variable now as the proportion of non-governmental interested parties who vote against the law. The results in sample 3 are quite similar to sample 2. A one unit increase of this interested party variable, increases the odds of voting for unconstitutionality by five times (or in terms of marginal effects, increases the change in the probability of declaring a law unconstitutional by 9 percentage points). Likewise, a one unit increase in the proportion of legislators voting nay, makes

it about 7 times more likely that a judge will vote for unconstitutionality (or in terms of marginal effects leads to an increase in the change in probability of 12%).

In sample 4, we restrict our analysis to cases in which the legislative vote is on the exact provision of the law reviewed by the Court rather than on the law as a whole. With this more precise measure of legislative voting, our coefficients are even larger than the previous samples. In sample 4, a one unit increase in in an interested party voting for unconstitutionality increases the odds of voting for unconstitutionality 21 times. A one unit increase in legislators voting nay increases the odds of a judge voting for unconstitutionality 12 times. In terms of marginal effects for this sample, when the proportion of interested parties voting for unconstitutionality changes by one unit, the change in probability of a judge declaring the law unconstitutional increases by 20 percentage points. A one unit increase of legislators voting nay, leads to a 16% increase in the change of probability of a judge voting for unconstitutionality.

In sample 5, we add a variable regarding the position of the judges' appointer when appearing as an interested party. Because not all the judges' appointers appear as interested parties on all cases, the data is restricted to just 211 observations. In this sample, the interested party and legislative votes' coefficients are highly significant and substantively meaningful. A one unit increase in the proportion of interested parties wanting the law found unconstitutional increases the odds of a judge voting for unconstitutionality by 16.61. A one unit increase of the proportion of the legislator voting nay increases the odds 33 times. The marginal effects indicate that a one unit change of these variables increases the change of probability of voting for unconstitutionality by 9 to 11 percentage points, respectively. The variable regarding the appointer's position is not significant.

In sample 6, we interact our appointer as interested party variable with the proportion of legislators opposing the law and the two variables of interest remain substantively large and significant. In this sample the interaction term is also significant. A one unit increases in the judges

appointer voting for unconstitutionality interacted with the legislator voting nay increases the odds of a judge voting for unconstitutionality by 10.

The tenure variable is also statistically significant in all samples indicating that as the length of a judges' time on the bench increases, he or she is more likely to vote for unconstitutionality. While this variable is statistically significant, it is substantively small with an odds ratio close to one and marginal effects of about 1 to 2%.

The fragmentation variable which we use, vote share of largest government party, is significant in samples 2, 3, 5, and 6. However, in these samples, the direction of the coefficient is in an opposite direction as suggested by the vast majority of the literature on fragmentation. For instance, a one unit change increasing the largest governing party seat share increases the odds of finding a law unconstitutional by 3 in sample 2, by about 8 in sample 3 and by about 10 and 11 in samples 5 and 6 respectively. In terms of marginal effects, a one unit increase in the seat share variable increases the change in probability of voting for unconstitutionality by 7 to 16 percentage points respectively. The vast majority of literature predicted that as government becomes more unified, judges should be less willing to find laws unconstitutional. Our results, for some of our samples are inconsistent with this literature. Furthermore, while we used different measures of fragmentation as robustness checks with similar findings, it is possible that the size of the largest governing party is not so much capturing unified government as much as it is capturing the power of one large party. In other words, the relative power of one party in respect to other parties may be an unexplored factor of judicial decision-making.

The results suggest that judges are concerned about the lawmaking process and how favorable policy choices are to political actors and civil society. Furthermore, more adversarial or contentious voting by the legislature on policy sends a strong signal to the Court that the underlying law is not only problematic, but also unsupported by a portion of the population. As a result, in

exercising judicial review in Bulgaria, it appears that judges are highly responsive to whether the law is generally acceptable to politicians and the citizens they represent or whether there is opposition to it.

{Insert Table 5}

Case examples supporting the theory

Several of the Bulgarian Constitutional Court's decisions exemplify the patterns shown by our statistical analysis which indicate that the Court is more likely to find laws unconstitutional when there is underlying opposition to the law by interested parties or other political actors. For example, in 2002, a group of deputies from the National Assembly referred an important separation of powers case to the Court. The Court was asked to evaluate provisions in the Law on the Judiciary especially related to the augmentation of executive powers over judicial powers. In this case there was vast disagreement among a large number of interested parties to the action. In this case, the National Assembly, the Council of Ministers, and the Ministries of Finance and Justice all filed interested party briefs indicating that the Court should uphold the law. In opposition, the Supreme Judicial Council, the Supreme Administrative Court, the Procurator General, the National Investigative Agency as well as several courts (including the military appeals court), and nongovernmental lawyers and investigative organizations filed briefs requesting the Court to find the law unconstitutional. In all, there were representatives from four national institutions favoring constitutionality. On the other side, four national institutions and 9 regional courts and nongovernmental organizations favored unconstitutionality. In other words, there was broad opposition to this by branches of government as well as civil society organizations.

In response to this opposition, the Court struck down many provisions of the law which would have provided executive control over the judiciary. For example, the Court struck down provisions which allowed the Minister of Justice, as part of the executive branch, to present and thus control

proposals to the Judicial Service Commission that originated from the Courts and the Prosecutor General and to present and add to annual reports submitted by the courts to Congress. The Court also struck down provisions which would allow the Minister of Justice to handle files regarding individual judges and prosecutors rather than allowing these institutions to handle them themselves. The Court invalidated provisions which would have provided the Minister of Justice with exclusive power to appoint and discharge Supreme Court judges and prosecutors of the Prosecutor General's Office. Finally, the Court struck down a provision which would allow the executive power to control the National Institute of Justice which is tasked with educating judges and prosecutors. In this case the Court justified its decision based on the doctrine of separation of powers. It emphasized that the "three powers should cooperate.... and [t]he legislature must implement measures to ensure balanced relations within the system, rather than accept the executive power's taking over the role of the judicial power."⁶

Another case which reflects our statistical analysis and general theory involved the constitutionality of Section 17 of the Law on the 2010 State Budget of the Republic of Bulgaria. Section 17 allowed the Council of Ministers, rather than the Parliament, to reduce certain expenditures under the annual budget. A group of the deputies referred the case to the Court. The National Assembly, Council of Ministry and Minister of Finance all filed interested party briefs in favor of upholding the law. However, the Ministry of Culture and eight unions and nongovernmental organizations associated with the movie industry filed interested party briefs asking the Court to find the law unconstitutional.

In apparent response to this opposition, the Court struck down the provisions regarding the Council of Ministers' role in the budget making process and indicated that the law provided for an

⁶ See European Commission for Democracy through Law, Bulletin decision Bul-2002-3-03 as referenced in Darzaven vestnik (official gazette), 118, 20, 12.2002.

undue delegation of legislative powers to the executive, therefore violating several articles of the Constitution. In this decision, the Court also found “that Section 17 of the Law before it was contrary to the principle of the rule of law, whereby the executive’s subordination derives from the stipulation of guaranteeing the predictability of its activities, to be reformed under conditions of publicity and transparency. The Court invalidated section 17 which allowed the Council of Ministers power to amend the annual budget of its own motion and did not provide for the organization of a public debate in the National Assembly.”⁷

Also consistent with our theory was a case in which there was no opposition to the law by any of the interested parties and as predicted the Court upheld the referred law. This case involved whether sections of the Law on the Budget and National Sickness Insurance Fund for 2007 violated the Constitution. Several deputies referred the case to the Court on the grounds that provisions of the new law prevented patients from being referred to a specialist by their general practitioner. The deputies argued that this new procedure violated the Constitution’s provisions regarding access to medical assistance for special treatment outside of a hospital. In this case, there were only three interested parties, the National Assembly, the Ministry of Finance and the Ministry of Healthcare, which all argued that the law should be upheld. There were no other interested party briefs filed requesting the law be struck down. Perhaps in response to the general consensus on the law, the Court found it constitutional.⁸

While many of our cases support the general pattern revealing the Court’s likelihood to invalidate laws in which at least some of the interested parties oppose the law, not all cases reflect this general trend. For example in a 2001 case, a group of deputies asked the Court to review the

⁷ See European Commission for Democracy through Law, Bulletin decision Bul-2010-1-001 in *Darzhaven vestnik* 27,09.04.2010.

⁸ See European Commission for Democracy through Law, Bulletin decision Bul-2010-1-001, *Darzhaven vestnik* 27, 09.04.2010.

constitutionality of provisions of the Act of Election of Members of Parliament allowing individuals and parties running for election to defray all election related expenses, *except* the printing of voting papers. In this case two interested parties, the Council of Ministry and the Bulgarian Helsinki Committee, a human rights group, both filed briefs asking the Court to uphold this provision. Despite the fact that the two interested parties represented diverse interests and that there was no disagreement among the interested parties, the Court still held that the provision was unconstitutional because requiring some individuals to pay for voting papers impeded “the exercise of the right both to elect and to stand for election.”⁹ Despite the general position of the two interested parties, the Court still acted assertively, perhaps because the law seemed to violate such a fundamental right regarding elections.

Conclusion

The results indicate that opposition to laws by lawmakers and civil society is an important determinant driving judges to find laws unconstitutional. Judges are more likely to vote for unconstitutionality when interested parties or legislators oppose the law and the likelihood of a vote for unconstitutionality increases with the number of interested parties or legislators opposing the law. Such a result, suggests that political opposition and thus disagreement about particular pieces of legislation signals to judges that the law being reviewed is not unanimously supported by politicians or citizens. Such a signal suggests to judges that they too should question a law’s validity.

The results are not consistent with the literature on political fragmentation. While many scholars have shown that high court assertiveness is largely a factor of political fragmentation in two party presidential regimes, there has been little research on this in multi-party parliamentary regimes

⁹ See European Commission for Democracy through Law, Bulletin decision Bulgaria 2001-2-002, Darzaven vestnik 44, 08.05.2001.

where the executive and legislative branches are not as strictly separated. Our results question whether the general theory of fragmentation applies in the Bulgarian case or other parliamentary democracies.

Scholars are increasingly interested in judicial behavior of national high courts due to the increased influence that these courts, especially constitutional courts with abstract review powers, have on policy-making. Unlike courts within the traditional judicial hierarchy, constitutional courts generally have legislative veto powers which allow them to check the work of powerful legislatures or executives. For many this causes a counter-majoritarian dilemma as these judges' are not popularly elected. For others, only a court which is willing to invalidate laws can effectively check the powers of other branches of government. For Bulgaria, these results seem to indicate that the Court is a powerful actor, which is also responsive to opposition to laws which often divide elected politicians and their constituencies.

Table 1. Disagreement among interested parties and unconstitutionality, case level data

	Unconstitutionality likelihood (sd)	Significantly different?
No interested party disagreement	0.26 (0.07)	Yes t=-2.73 p=0.01 (N=135)
Interested party disagreement	0.50 (0.05)	

Table 2. Judges of the Bulgarian Constitutional Court and Coding

Judge	Nominated by	Year
Aleksandar Arabadzhiev	SCC & SAC	1991
Asen Manov	SCC & SAC	1991
Tsanko Hadzhistoychev	President Zhelju Zhelev	1991
Stanislav Dimitrov	National Assembly--SDS	1992
Dimitar Gochev	National Assembly —SDS	1994
Georgi Markov	President Zhelju Zhelev	1994
Ivan Grigorov	SCC & SAC	1994
Todor Todorov	National Assembly --DAR (Tomov)	1994
Margarita Zlatareva	President Stoyanov	1997
Hristo Danov	President Stoyanov	2000
Lyudmil Neikov	SCC & SAC	2000
Penka Tomcheva	SCC & SAC	2000
Rumen Yankov	SCC & SAC	2000
Snezhana Nacheva	President Parvanov	2000
Vasil Gotsev	National Assembly – SDS	2000
Zhivan Belchev	President Stoyanov	2000
Emiliya Drumeva	National Assembly—NDSV	2003
Evgeni Tanchev	President Georgi Parvanov	2003
Lazar Gruev	President Georgi Parvanov	2003
Mariya Pavlova	National Assembly—NDSV	2003
Vladislav Slavov	SCC & SAC	2003
Nedelcho Beronov	National Assembly --SDS	2005
Stefanka Stoyanova	SCC & SAC	2005
Zhivko Stalev	President Stoyanov	2005
Blagovest Punev	SCC & SAC	2006
Dimitar Tokushev	President Georgi Parvanov	2006
Krasen Stoychev	National Assembly --BSP	2006
Plamen Kirov	President Parvanov	2006
Georgi Petkanov	National Assembly --NDSV	2008
Rumen Nenkov	SCC & SAC	2009
Stefka Stoeva	SCC & SAC	2009
Tsanka Tsankova	National Assembly --GERB	2009
Vaniushka Angusheva	President Georgi Parvanov	2009
Anastas Anastasov	National Assembly --GERB	2012
Boris Velchev	President Plevneliev	2012
Georgi Angelov	SCC & SAC	2012
Keti Markova	President Rossen Plevneliev	2012
Grozdan Iliev	National Assembly GERB	2013

Note: The following abbreviations describe the political parties: SDS (Union of Democratic Forces), GERB (Citizens for European Development of Bulgaria), NDSV (National Movement Symeon II), BSP (Bulgarian Socialist Party).

Table 3. Summary statistics of vote level data

Variable	Mean	Std. Dev.	Min	Max
Unconstitutionality	0.4287119	0.4951354	0	1
Prop. interested parties unconst.	0.3166887	0.2734917	0	1
Prop. legislators voting Nay	0.2425561	0.2145792	0	0.77
Largest governing party seat share	0.4618149	0.0810575	0.34	0.57
Tenure of judge tenure	5.393314	2.670684	1	13
Judicial appointer unconstitutional	0.4738372	0.5000424	0	1

Table 4. Odds ratio, voting for unconstitutionality

Variables	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5	Sample 6
Prop. interested parties unconst.	18.08*** (5.98)	4.34*** (0.78)	5.05*** (1.70)	21.02*** (8.04)	16.61*** (13.33)	18.48*** (15.29)
Prop. legislators voting Nay	7.24*** (1.22)	4.66*** (0.80)	7.39*** (1.77)	12.40*** (2.99)	33.17*** (26.34)	10.43** (11.17)
Largest governing party seat share	0.85 (0.44)	3.39** (1.53)	8.87*** (4.54)	3.74 (3.08)	10.02** (9.32)	11.60** (10.87)
Tenure of judge	1.10** (0.03)	1.14*** (0.03)	1.10** (0.04)	1.12** (0.04)	1.16*** (0.03)	1.16*** (0.04)
Judicial appointer unconstitutional					1.44 (0.74)	0.73 (0.37)
Appointer unconst*prop. nay						10.94** (11.71)
Pseudo R ²	0.13	0.05	0.10	0.15	0.19	0.20
Wald X ²	259.62	370.80	230.71	733.18	233.84	171.99
Observations	1,017	973	860	843	211	211

Note: The dependent variable is a judge's vote for finding the law unconstitutional. Sample 1 uses all available data on interested parties, governmental and non-governmental. Sample 2's *Prop. interested parties unconst.* variable is defined as the proportion of governmental interested parties that file a brief advocating unconstitutionality. Sample 3's *Prop. interested parties unconst.* variable is defined as the proportion of non-governmental interested parties who file a brief advocating unconstitutionality. Sample 4 involves cases in which there is an exact match between the provision of the law voted on by the legislator and the provision of the law reviewed by the Court. Sample 5 involves cases in which the judge's appointer is an interested party. Sample 6 interacts the judge's appointer as an interested party with the proportion of legislative votes against the reviewed law. Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.10.

Table 5. Marginal effects

Variables	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5	Sample 6
Prop. interested parties unconst.	0.37*** (0.06)	0.19*** (0.03)	0.09*** (0.02)	0.20** (0.06)	0.09** (0.04)	0.11** (0.05)
Prop. legislators voting Nay	0.25*** (0.04)	0.20*** (0.04)	0.12*** (0.03)	0.16** (0.05)	0.11** (0.05)	0.09* (0.05)
Largest governing party seat share	-0.02 (0.07)	0.16*** (0.04)	0.13*** (0.03)	0.09** (0.04)	0.07*** (0.01)	0.09*** (0.02)
Tenure of judge	0.01*** (0.00)	0.02*** (0.00)	0.01** (0.00)	0.01** (0.00)	0.01** (0.00)	0.01*** (0.00)
Judicial appointer unconstitutional					0.01 (0.02)	-0.01 (0.02)

Note: The dependent variable is a judge's vote for finding the law unconstitutional. Sample 1 uses all available data on interested parties, governmental and non-governmental. Sample 2's *Prop. interested parties unconst.* variable is defined as the proportion of governmental interested parties that file a brief advocating unconstitutionality. Sample 3's *Prop. interested parties unconst.* variable is defined as the proportion of non-governmental interested parties who file a brief advocating unconstitutionality. Sample 4 involves cases in which there is an exact match between the provision of the law voted on by the legislator and the provision of the law reviewed by the Court. Sample 5 involves cases in which the judge's appointer is an interested party. Sample 6 interacts the judge's appointer as an interested party with the proportion of legislative votes against the reviewed law. Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.10.

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