Shaping the Bench: The Effect of Ideology and Influence on Judicial Reappointments

Silje Synnøve Lyder Hermansen

Daniel Naurin

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Abstract

Judicial appointments allow selectors to advance policy goals by appointing influential judges who share their ideological preferences. Under renewable terms, judicial records provide information that helps identify desirable candidates. While prior research focuses on judicial voting, we examine how expectations about judges' ideology and influence on case law shape reappointments. Using original data on all potential reappointments to the Court of Justice of the European Union (CJEU), we show that secret voting – intended to safeguard judicial independence – fails to shield judges from ideological deselection. However, reappointment levels remain high because governments recognize the need to translate preferences into policies. Peer selection for influential court positions signals who will obtain influence. Holding many such positions, therefore, favors judges' reappointment, while non-selective processes do not. Our findings challenge the belief that renewable terms weaken judicial independence, showing that selectors trade ideology for influence by relying on peer evaluations for reappointments. [1]

[1]Replication files are available in the JOP Data Archive on Harvard Dataverse

Introduction

Judicial independence and responsiveness are central democratic principles (Ferejohn et al., 1999; North and Weingast, 1989), and rules governing judges' appointments aim to balance these goals (Larsson, Squatrito, et al., 2022; Tiede, 2022; Gibson and Nelson, 2022; Kritzer, 2020; Melton and Ginsburg, 2014; Garoupa and Ginsburg, 2009; Hayo and Voigt, 2007). However, a court's internal organization can profoundly affect this balance, even when appointment rules remain unchanged. This article examines how the availability and relevance of information provided by courts shape judicial (re)appointments.

We argue that selectors advance their policy goals by appointing influential judges who share their ideological preferences. When terms are renewable, judicial records become crucial for identifying desirable candidates, as they help selectors assess the uncertain link between judges' qualities and their influence over case law. We demonstrate that secret voting, while protecting judicial independence (Dunoff and Pollack, 2017), does not shield judges from ideological deselection. Absent new information, selectors simply rely on their prior beliefs about judges' preferences. We also show that records on peer selection for key court positions provide essential information about which judges shape case law, allowing candidates with suboptimal preferences to compensate through higher potential impact.

Renewable terms are common across U.S. state supreme courts (Geyh, 2019, p. 47) and international judiciaries (Dunoff and Pollack, 2017). In 2014, 17 of 24 international courts permitted judges to seek reappointment (Squatrito, 2018). Yet, research on judicial appointments remains limited compared to studies of judicial behavior. While some scholars focus on immutable qualities like ideology and expertise (i.e. adverse selection)(Cameron, Cover, and Segal, 1990; Epstein and Segal, 2005; Elsig and Pollack, 2014; Cameron, Kastellec, and Mattioli, 2023), others highlight how judges adjust decisions to avoid deselection (i.e. moral

(https://dataverse.harvard.edu/dataverse/jop). The empirical analysis has been successfully replicated by the JOP replication analyst

hazard) (Gray, 2017; Gray, 2019; Shepherd, 2009a; Shepherd, 2009b; Canes-Wrone, Clark, and Kelly, 2014; Dunoff and Pollack, 2017; Stiansen, 2022). Contrary to the view that renewable terms serve only as a sanctioning tool (Ferejohn et al., 1999), we propose that reappointments are forward-looking (Fearon, 1999) but informed by judicial records. While prior work emphasizes behavioral incentives for judges, we instead explore institutional incentives for governments to act on courts' organizational decisions.

The shift in focus sheds new light on judicial recruitment. First, variation in reappointment rates when information on performance is available reveals how beliefs about judges' influence shape recruitment. Personal standing, bolstered by seniority norms or peer recognition, is instrumental to judges' influence in collegial courts. If reappointments were driven solely by ideology, selectors would replace any judge whose preferences deviate from their own. However, judges often retain office despite shifts in selectors' preferences (e.g., after an election), as those with strong personal standing help selectors achieve policy goals. Selectors may therefore accept some policy drift to balance ideology with impact.

Second, information matters to selectors only when it predicts future judicial impact rather than simply documenting past behavior. Records of case assignments or leadership roles are valuable when they reflect a judge's personal qualities. Conversely, such records are irrelevant if assignments are random or administrative, as any new judge could also obtain them. Thus, information about judges' records may influence reappointment in some cases but not others, depending on court procedures.

To test our argument, we study the Court of Justice of the European Union (CJEU or the Court). Judges are appointed by the governments of EU Member States for six-year renewable terms, yet the Court is widely regarded as exceptionally independent (Pollack, 2003; Alter, 2009).Secret deliberations and votes safeguard this independence (Dunoff and Pollack, 2017), but the Court also reintroduces accountability by providing selectors with information about judges' roles in decision-making processes (Hermansen, 2020).

The institutional features of the CJEU have broad generalizability. Like many collegial courts in Europe and the Americas, it delegates case preparation to a single judge (the "reporting judge"), akin to the majority opinion writer in the U.S. Supreme Court (K. Kelemen, 2016). These roles exemplify a judge's ability to influence their peers and shape the Court's jurisprudence. By 2011, the CJEU model had inspired 11 other international courts (Alter, 2014), cementing its significance as a template for judicial institutions worldwide.

Moreover, the CJEU provides critical variation for research design. The Court comprises two levels: the Court of Justice (CJ) and the General Court (GC). In the CJ, cases are allocated selectively to individual judges, while the GC relies on more administrative procedures. Leadership selection has also shifted over time, moving from a rotational system to peer elections. As a result, judges' records of service sometimes offer relevant information to selectors—and sometimes do not.

Finally, the stakes of judicial appointments at the CJEU are high. As the EU's highest court, it interprets EU law for a bloc of 450 million people—the world's third-largest economy—across diverse policy areas, including market regulation, competition, monetary policy, migration, and environmental protection. Its decisions shape the constitutional development of the EU and frequently challenge Member State policies (Weiler, 1994; Stone Sweet, 2004). Yet, while Member States fiercely guard their prerogative to unilaterally nominate judges (Dehousse, 2016), scholars argue that appointing a single judge provides governments with only limited influence (Alter 2008, p. 46; see also R. D. Kelemen 2012).

Our findings have significant implications for how governmental preferences interact with courts' institutional design to shape the bench. Analyzing 268 reappointment decisions from the Court's 70-year history (1952–2021), we show that renewable terms foster responsiveness in two ways. First, judges are selected for their preferences. The Court's composition is continuously updated to reflect the economic left-right ideology of successive ruling majorities in EU Member States. A shift in government during a judge's term significantly reduces their

chances of reappointment.

Second, judges may be held accountable for their performance, but this depends on the Court's internal organization. Incumbent judges with many selective positions of influence are more likely to be reappointed, whereas non-selective positions have no impact on their job security. As a result, renewable terms, combined with transparency about judicial performance, make selectors reliant on the Court itself to assess incumbent candidates (see also, Krenn, 2022, p. 202).

Importantly, we find no evidence that the effect of performance is conditional on ideology, as would be expected if appointments were based on political spoils. This aligns with our assumption that selectors are policy-seekers who recognize the futility of retaining a low-performing party loyalist. It also explains the high reappointment rate (73%) at the CJEU: replacing an experienced judge with a newcomer entails an opportunity cost, as the latter may require years to develop comparable standing.

Our study sheds light on how selectors' expectations about judges' future influence shape judicial appointments. In the US, scholars have theorized that the Supreme Court's reliance on a majority opinion writer means "that even 'lesser' judicial appointments can affect legal policy" (Lax and Rader, 2015, p. 661). Expectations about the qualities required for such positions should, in turn, influence appointments to the bench (Cameron, Kastellec, and Mattioli, 2023), but evidence for this link has remained elusive. To address this gap, we show that expectations about the European equivalent of the majority opinion writer—the reporting judge—play a critical role in shaping reappointment decisions.

A fruitful path forward is to shift research from asking *whether* expertise matters for judicial nominations to examining *how* judges sway their peers. While US scholars have linked legal experience to ideology as a form of "policy reliability" (Cameron, Kastellec, and Mattioli, 2023), students of international courts have debated whether governments perceive judges as policy agents or expert trustees (Elsig and Pollack, 2014; Alter, 2008). Our findings

suggest that governments seek to pair ideology with expertise, but this pairing depends on whether legal qualifications also yield policy gains.

Selecting judges to international and domestic high courts

Judicial appointments provide the political branch with a crucial opportunity to shape case law (Dahl, 1957; Segal and Spaeth, 2002). While the role of ideology in judicial selection is well-studied, there is limited research on how selectors consider judges' potential influence over court decisions.

Most of the literature focuses on the United States, where selectors' political preferences are regarded as the main driver of judicial appointments. This influence often leads state court judges to strategically adjust their rulings to align with selectors' preferences in order to retain office or secure promotion (Gray, 2017; Gray, 2019; Shepherd, 2009a; Shepherd, 2009b; Canes-Wrone, Clark, and Kelly, 2014; Black and Owens, 2016). When judges' independence is guaranteed by lifetime appointments, candidates' ideological alignment with selectors is central (Epstein and Segal, 2005; Cameron, Cover, and Segal, 1990; Binder and Maltzman, 2009; Bonica and Sen, 2020). According to the move-the-median theory, successful judicial nominees must shift the court's median closer to the US President's preferences while remaining ideologically moderate enough to gain Senate support (Krehbiel, 2007; Moraski and Shipan, 1999). Since court decisions rely on majority voting, appointments are seen as pivotal for court decisions only when they alter the median voter on the bench.

Recent empirical studies, however, highlight two important deviations from these predictions. First, appointed judges are sometimes more or less extreme than anticipated, suggesting that their selection may hinge on additional factors (Cottrell, Shipan, and Anderson, 2019); see also (Bailey and Spitzer, 2018). Second, scholars note that case delegation to majority opinion writers allows judges other than the median to wield disproportionate influence over court policies (Lax and Rader, 2015). This raises a critical question: how do

expectations about future majority opinion writers influence judicial appointments?

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

Why would expertise not also be theorized as a strategic asset when judges are nominated? While expertise is inherently important for high-quality legal reasoning, it can also serve as a strategic tool for achieving policy goals. The case-space model, for example, posits that the legal quality of a proposed judgment may induce other judges to vote for outcomes they would otherwise oppose (Lax and Cameron, 2007). Expertise, therefore, could influence judicial outcomes alongside ideology.

Yet, evidence linking legal expertise to judicial appointments outside the US Supreme Court remains mixed (Epstein, Knight, and Martin, 2003; Choi, Gulati, and Posner, 2015; Cameron, Kastellec, and Mattioli, 2023). Some scholars argue that selectors may discount expertise when acquiring such information is costly or when the political rewards of an appointment are too low (Cameron, Kastellec, and Mattioli 2019, 471–472; Choi, Gulati, and Posner 2015, 129–130). This article does not focus on expertise, but we propose that variations in how judges gain influence within the court shape the selection criteria used

during judicial appointments.

The literature on international courts – though less developed than its American counterpart – mirrors similar debates. Legal academics have proposed merit selection committees to reduce the cost of screening for competence (Bobek, 2015). However, observers question whether states would commit to expertise-based selections if it risks policy drift (Pérez, 2015). Surprisingly, ideology and expertise are often treated as mutually exclusive rather than complementary tools for achieving policy goals.

The "principal-agent model" argues that judicial appointments are driven by strategic considerations about candidates' preferences (Pollack, 2003; Elsig and Pollack, 2014). For example, studies of state appointments to the World Trade Organization's Appellate Body show the process is "deeply politicized" and far from a pure search for expertise (Elsig and Pollack, 2014, p. 3). Similarly, research on the International Court of Justice finds that international judges often follow the preferences of their appointing states (Posner and de Figueiredo, 2005).

A central question is whether judicial independence can coexist with renewable terms. Research on the European Court of Human Rights shows that judges' deference to home states significantly decreased after moving from renewable to non-renewable terms (Stiansen 2022; see also Voeten 2008, p. 417). In contrast, the CJEU uses secret voting to safeguard judicial independence (Dunoff and Pollack, 2017). Yet, existing research says little about alternative mechanisms for monitoring judicial behavior and performance, or how states balance ideological alignment with expectations of future influence.

The "trustee model," by contrast, emphasizes that judicial decision-making in courts differs from political institutions. International judges derive legitimacy from rational-legal expertise and the ideal of impartial dispute resolution. Influence is achieved through legal reasoning, making expertise a key asset. This model expects governments to prioritize professional legal merits and personal reputations over political criteria (Alter, 2008; Stone Sweet

and Brunell, 2013). Accountability is considered minimal; as Alter (2008, p. 34) notes, tools like "not reappointing the Agent" hold little political relevance for shaping trustee behavior.

Scholars also highlight the decentralized nature of international judicial appointments, where no single state controls the court's ideological composition. Consequently, politically motivated selections are often futile. "International judges are institutionally less subject to appointment politics than their domestic counterparts" (Alter 2008, p. 46; see also R. D. Kelemen 2012).

Contrary to current scholarship, we derive both selection criteria from the same assumption: selectors are policy-seekers. The ideal candidate is ideologically aligned with the selector's agenda and possesses the authority to persuade other judges. Following the principal-agent model, we assume selectors view judicial appointments instrumentally. While the trustee model correctly identifies legal expertise as a source of influence, the two approaches are not inherently contradictory. Rather than studying *how* judges gain influence, we measure incumbent judges' impact directly through the CJEU's case allocations. We suspect governments do the same.

Theory and empirical expectations

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

Candidate judges vary in their ideological leanings, posing challenges for governments seek-

ing to influence court decisions. Secret voting is a design feature intended to protect judicial independence, but it introduces moral hazard by limiting governments' ability to monitor and sanction judges. To minimize policy drift, governments select nominees whose ideology closely aligns with their own. When judicial votes remain secret, successive governments rely on the same ideological signals about judges. At the reappointment stage, a new government may even infer the incumbent judge's ideology from that of the previous government. As a result, we expect that different governments will have different preferences over the same judge.

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

Beyond ideology, candidate judges also vary in their ability to exert influence on the bench. The extent to which governments update their beliefs about a judge's capacity to impact outcomes depends on the relevance of available information. Specifically, procedural rules determine whether judges' past roles serve as signals of their future influence. When influential positions – such as leadership roles or assignments to important cases – are distributed *selectively*, strong performance should reduce the likelihood of replacement. In contrast, positions acquired through predetermined procedures carry little weight. This distinction gives rise to two interlinked expectations.

Hypothesis 2a *The probability of a judge's reappointment increases with their past performance on the bench, measured by their selection for positions of influence.*

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

By focusing on adverse selection, we model governments' decisions as a function of qualities that are entirely or partially beyond judges' control – namely, their ideology and impact.

While prior research on renewable terms explores judges' behavioral incentives, we instead examine governments' incentives to select judges based on signals from the Court.

The theoretical framework also allows for inferences about judges' behavior under accountability. For instance, if hard work results in visible and lasting influence among a judge's colleagues, we can expect judges to exert greater effort in office. Conversely, in courts with strong seniority norms, high reappointment rates may occur without significant behavioral adaptations, particularly in voting patterns.

Lastly, positions of influence may be allocated indiscriminately – through lotteries, quotas, or other indiscriminate mechanisms. In these cases, judges whose preferences align more closely with the current government cannot distinguish themselves through performance. Yet, they still offer higher political rewards to the government by aligning more closely with its preferences. Put differently, governments cannot credibly commit to retaining judges unless their record of service provides information relevant for the next term (Fearon, 1999). In such cases, we expect judges to invest less effort, with court membership turnover closely mirroring government changes. As we will see, this has been an issue in the lower-level EU court, where case allocations follow a rota system (Zhang, Liu, and Garoupa, 2018, p. 13).

The Court of Justice of the European Union

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

Ideology (H_1)

We have argued that the likelihood of replacing a judge increases as the preference distance between successive governments grows. This requires, first, that governments enjoy discretion in their choice of judge, and second, that we identify the policy dimension they prioritize.

Each government has wide discretion in nominating its judge, with few strategic incentives to deviate from its ideal candidate. Judges are appointed through the unilateral nomination of a single government. While Member States formally appoint judges collectively ('by common accord'), in practice, this stage has been a mere formality (Dunoff and Pollack, 2017). Each Member State sends an equal number of judges to the Court, where they serve six-year renewable terms. Currently, this comprises nominations of one judge to the higher-level Court of Justice (CJ) and two to the lower-level General Court (GC). This gatekeeping power over judicial nominations allows governments to align appointments with their political preferences, making ideology a central factor in their decisions.

We further assume that the economic left-right dimension shapes the appointments of CJEU judges, aligning EU judicial politics more closely with the broader comparative EU literature (M. Gabel and Hix, 2002). Previous research, by contrast, has argued that Court-government relations are primarily influenced by attitudes toward European integration (Weiler, 1994, p. 523–24). One of the few studies addressing CJEU judge selection notes that 'some anecdotal evidence suggests Member States sought candidates who were perhaps less of a Euro-enthusiast in a general sense than their predecessors' (Kenney, 1998, p. 128). However, large-N studies of judicial decision-making have found mixed evidence for the influence of attitudes toward European integration, instead highlighting a left–right orientation (Malecki, 2012; Frankenreiter, 2017; Wijtvliet and Dyevre, 2021).

The left–right dimension is not only historically central to European national party systems but also highly relevant to EU policy. Questions about the role of the state in the economy and individuals' rights vis-à-vis the state lie at the core of the single European

market. The CJEU's case law has frequently sparked controversy along the left–right spectrum. For instance, some view the Court's strengthening of individual citizenship rights as a progressive step toward embedded liberalism and expanded social rights at the international level (Caporaso and Tarrow, 2009), while others criticize the 'Hayekian' bias in its rulings (Scharpf, 2010; Höpner and Schäfer, 2012; Schmidt, 2018). Furthermore, there is some evidence that the economic left–right dimension structures divisions among Member States in amici briefs (Larsson and Naurin, 2019), which in turn influence the Court's leadership decisions in case allocations (Hermansen, 2020). This emphasis on the left–right dimension ties directly to our hypothesis, which posits that ideological distance between governments affects the likelihood of judicial replacement.

Performance (H_2)

Unlike judges' votes, the Court is transparent about positions of influence, which allows governments to assess judges' past performance and their potential future impact. The allocation procedure determines whether this information is relevant to selectors. We first discuss the influence these positions confer and then examine how they are acquired.

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

We consider two sets of positions commonly found in courts: the agenda setter in each case (the 'reporting judge') and the Court's leadership (K. Kelemen, 2016, p. 29-43).

The reporting judge in the CJEU – like the American majority opinion writer – wields disproportionate influence over the Court's decisions. As case manager, they leverage the information asymmetry between themselves and other judges. They first collect information and present the case to their peers. They later take a lead role in oral hearings, frame the debate during deliberations, and prepare the draft that the Chamber President then uses as the basis for chamber discussions. The reporting judge also authors the final text

of the judgment, and their identity is publicly disclosed. The Court reaches its decisions in chambers, meaning that the median voter on the Court is of little importance for case outcomes. Instead, there is growing evidence that case outcomes reflect the preferences of the reporting judge's appointing government (Zhang, Liu, and Garoupa, 2018; Cheruvu, 2024; Hermansen and Voeten, 2024). Their early involvement, as well as their investment and expertise relative to their peers, put reporting judges in a central position to influence court rulings. However, unlike some other international courts (Voeten, 2008), judges never prepare cases against their own member state and their presence in the chamber is not guaranteed (Hermansen, 2020). By appointing judges who later author important judgments, governments may hope to influence the Court's case law, but cannot expect their appointee to secure resources or shelter their home government against adverse rulings.

A second set of influential roles includes the Court's top- and mid-level leadership positions. The top-level leaders – Presidents and Vice-Presidents – oversee the Court's daily operations, preside over Grand Chamber cases, and represent the Court externally. They monitor rank-and-file judges and allocate key positions on the bench. Specifically, the President assigns judges to chambers and plays a role in matching cases with judges for each proceeding. In the higher-level Court of Justice (CJ), the President has full discretion to appoint the reporting judge. In the lower-level General Court (GC), the President assigns cases to chambers, while the Vice President reviews and authorizes final judgments before they are issued.

Mid-level leadership includes the Presidents of five-judge chambers, who hold significant influence over case outcomes. They preside over chamber deliberations, determine when debates conclude, and decide whether to call a vote. They are also responsible for ensuring consistency in the Court's case law. Chamber Presidents typically participate in all panel deliberations under their purview, while rank-and-file judges rotate. Their guaranteed presence in major cases, such as Grand Chamber deliberations, further underscores their pivotal role in shaping court outcomes. Finally, in the GC, mid-level leaders also select the reporting

judge. Just as in the US Supreme Court, we may assume that the leadership's designation of the reporting judge is central to their up-stream influence over the ideological direction of Court decisions (Hermansen, 2020; Lax and Cameron, 2007), while chamber presidents also gain sway from their overview over parallel debates in different cases.

Overall, these positions illustrate why governments would seek judges that pair power with preferences, allowing them to influence case law through their appointees. In the next subsection, we argue why some positions are more informative than others about judges' future influence.

How positions are acquired (H_{2b})

The degree of peer selection for positions of influence has varied over time and between the two formations of the Court. We leverage this variation to test the intuition that the method of obtaining positions affects governments' selection of judges in two different ways.

First, the rationale behind delegations to the reporting judge differs between the CJ and GC. Observers have noted that hard-working judges are often replaced at the whim of new governments, resulting in higher turnover at the GC than at the CJ (Dehousse, 2011, 7-8 and 16-17). We argue that this is because judges' personal qualities are central to case allocations at the CJ, while effort – which a newcomer can also provide – plays a larger role at the GC. Accordingly, when analyzing judges' past performance, we examine the two formations separately, expecting an effect only in the CJ.

Specifically, allocations in the CJ follow a logic of selection, where the reporting judge enjoys considerable autonomy. Once the reporting judge is appointed, the President delegates all monitoring to the checks and balances of the General Meeting and chamber deliberations. Judges' competences are highly relevant to the cases they are assigned (Cheruvu, 2019). In office, case-by-case policy specialization authorized by the President allows some judges to exert disproportionate influence over certain issue areas (Hermansen, 2020). By appointing

judges perceived as competent, governments seize an opportunity to shape case law. Past allocations in the CJ thus provide governments with relevant information on the continued influence of incumbent judges.

In contrast, case allocations in the GC follow a logic of monitoring. Cases are assigned to chambers on a rotational basis, and the reporting judge is appointed by the Chamber President. The GC leadership remains informed throughout deliberations. Once the reporting judge prepares a final draft of the judgment, it is reviewed by the Vice-President, who provides feedback to the author, with the rest of the chamber's judges copied. In short, reporting judges in the GC are treated as more interchangeable, with less autonomy than their CJ counterparts. Their case assignments are less selective and therefore less indicative of future influence. To conclude, while judicial records from the two courts may appear similar, we only expect that past case allocations have a bearing on reappointments to the CJ.

Second, the procedure for acquiring leadership positions has varied over time. The President of the Court has always been elected by peers through a secret ballot for a three-year renewable term. In the Court's early decades, however, this was largely a formality, with appointments driven by intergovernmental bargains. Similarly, before 2003, presidencies of five-judge chambers were distributed on a rotational basis. Since then, these positions have been filled through competitive elections. Chamber Presidents serve three-year terms and can renew their mandate once. Crucially for our analysis, elected positions signal peer endorsement, unlike the non-elected roles of the old system. Thus, we expect that only selective leadership positions will influence governments' decisions to replace judges.

Empirical strategy

Our empirical analyses draw on original data covering all 371 appointment decisions to the CJEU from its inception in 1952 through 2021. Judges exit the Court for various reasons. A substantial portion (51%) of exits coincide with the end of a mandate, often leading to reappointment. However, 37% of judges resigned before completing their term.

Our main analysis focuses on potential reappointments, retaining only the 268 exit decisions that occur after the expiration of a mandate. This focus is motivated by two reasons. First, we are interested in governments' selection criteria but lack data on alternative candidates. For each decision, we measure the preference difference between the appointing and reappointing government. This approach tests whether two successive governments from the same Member State have different preferences regarding the same judge.

Second, we aim to isolate governments' reappointment decisions from judges' voluntary departures from the Court. In particular, we might expect that a judges' influence increases as they gain in tenure, while the probability of a voluntary exit at the end of their mandate increases as their career progresses. To address this, we control for judges' career stage and validate our findings with a placebo test. The placebo compares judges' voluntary resignations during their term to governments' reappointment decisions at the end of a term. We expect that our explanatory variables– government preferences and judges' performance – will have no effect on decisions where governments are not involved (the placebo).

	Min.	1st Qu.	Median	Mean	3rd Qu.	Max.
Replacement	0	0	0	0.28	1	1
Preference distance (economic issues)	0	0.07	0.24	0.35	0.46	2.59
Preference distance (integration issues)	0	0.04	0.12	0.19	0.25	1.63
Preference distance (general left-right issues)	0	3.56	9.22	12.77	20.06	58.58
Performance (cases in larger panels)	-1	-0.07	-0.01	-0.03	0.05	0.74
Performance (cases of interest to the legal community)	-5.61	-0.74	-0.12	-0.2	0.25	4.55
Performance (selective leadership positions)	0	0	0	0.28	1	1
Non-selective leadership positions	0	0	0	0.26	1	1
Change of prime minister	0	0	1	0.52	1	1
Age	37.72	54.61	60.29	60.27	65.95	83.82
Length of tenure	1	3.87	6	7.8	11.18	32.1
Change in attendance	-49	-9	2	5.25	18	72

Table 1: Descriptive statistics

Variables

Our dependent variable, *Replacement*, captures all government decisions that could lead to a judge's reappointment and flags those resulting in a replacement. As shown in Table 1, governments retain their judge in most cases (72%) when given the opportunity.

To test the expectation that the probability of replacement increases with the distance between successive governments (H_1), we place governments in a single policy space using party manifestos (Döring and Manow, 2018; Lehmann et al., 2023). *Preference distance - economic left-right issues* measures the absolute distance between the appointing and reappointing governments on economic left-right issues, calculated from factor scores estimated from the parties' electoral manifestos. The bivariate statistics suggest that economic policy preferences influence reappointment: the median distance between governments that prefer the same judge is 0.17, compared to 0.41 when the incumbent is replaced (Pearson's R $= 0.27; t = 4.45$). In the Appendix, we report two alternative measures of policy preferences: divisions along a general left-right axis and preferences regarding EU integration.

We test the hypothesis that judges' performance reduces their probability of replacement (H_{2a}) using three measures of influential positions. For each, we compare the effects of selective and non-selective allocations (H_{2b}).

Performance - selective leadership positions identifies the Court's President, Vice President, and Presidents of five-judge chambers after 2003. This variable is included in a separate model alongside an indicator for judges who held these positions before the reform (*non-elective leadership positions*).

The reporting judge is the most influential member of the Court in each case. We approximate the impact of judges' case portfolios in two ways. *Performance - cases of interest to the Court* measures the proportion of a judge's cases decided by a chamber of more than three judges, while *Performance - cases of interest to the legal community* reflects the av-

erage number of academic annotations (i.e., journal articles) a judge's case portfolio has attracted since their last appointment. Important Court judgments are regularly debated in the legal community (Hermansen, Pavone, and Boulaziz, 2023), making these annotations indicative of the academic salience of a judge's portfolio. The general level of these two measures has changed over time and may vary with the length of each judge's term. To account for this, both variables are included as ratios of similar cases handled by the Court during the judge's term, allowing us to compare each judge's impact to that of their peers. This approach approximates the benchmarking that governments can reasonably perform.

There is substantial variation in individual judges' influence on the Court (Krenn, 2022). Our measure of performance varies more in the GC ($\sigma^2 = 0.84$) compared to the CJ ($\sigma^2 = 0.25$), suggesting that governments may find it easier to identify high performers in the GC. We have nevertheless hypothesized that the distribution of tasks in the GC limits the relevance of such information. The bivariate relationship between performance and a judge's replacement is as expected: as the ratio of cases of court interest in a judge's portfolio increases, the probability of replacement decreases in the CJ (Pearson's R $= -0.07; t = -0.93$), while it increases in the GC (Pearson's R $= 0.06; t = 0.65$). However, neither relationship reaches statistical significance. In the multivariate regressions, we control for the judges' career stage.

Controls

Other factors might affect either judges' decisions to leave the CJEU or governments' assessments of the incumbent. First, judges might complete their term but choose not to continue. There are few positions more appealing to European judges than serving on the CJEU, and very few alumni pursue high-ranking, work-intensive jobs after their exit. Aside from government de-selection, the most likely reason for a judge to leave the Court is retirement. We therefore control for the judge's career stage and judicial behavior immediately prior to the

reappointment decision.

Length of tenure approximates the judge's career stage. The average tenure upon exit is 10 years, with the median judge serving two 6-year terms. Similarly, we control for a judge's *Age* at the time of the reappointment decision. The average age of judges who left the court is 65 years. A judge reappointed at this stage would be 71 years old at the end of the next term, exceeding the retirement age in most Member States.

Second, we control for changes in a judge's investment in their mandate. A judge planning an exit may reduce their participation in Court activities. *Change in attendance* measures the difference in the number of deliberations a judge participated in during the year preceding the official exit decision, compared to the previous year.

Third, the models include an indicator for whether there was a change in the prime minister's party between appointments (*Change in PM*). This variable accounts for the possibility that the ruling party uses appointments to distribute spoils to political allies or coalition partners. A spoils system might influence both the preference distance between successive governments and the decision to replace an incumbent judge. New spoils are unlikely to be distributed unless there is a change in the prime minister's office.

Finally, we include an indicator for whether the judge held the position of President or Vice-President at the time of reappointment (*(Vice-)President*). These positions clearly confer influence, although the division of labor implies that these judges handle fewer cases themselves.

Given that our dependent variable is binary, we use a binomial logistic model. The results are obtained from Bayesian models with Markov chain Monte Carlo (MCMC) estimation. Some observations lack information on governments' preferences, which are imputed in parallel with the estimation of the main model. In the Appendix, we confirm that the results are robust to alternative modeling strategies.

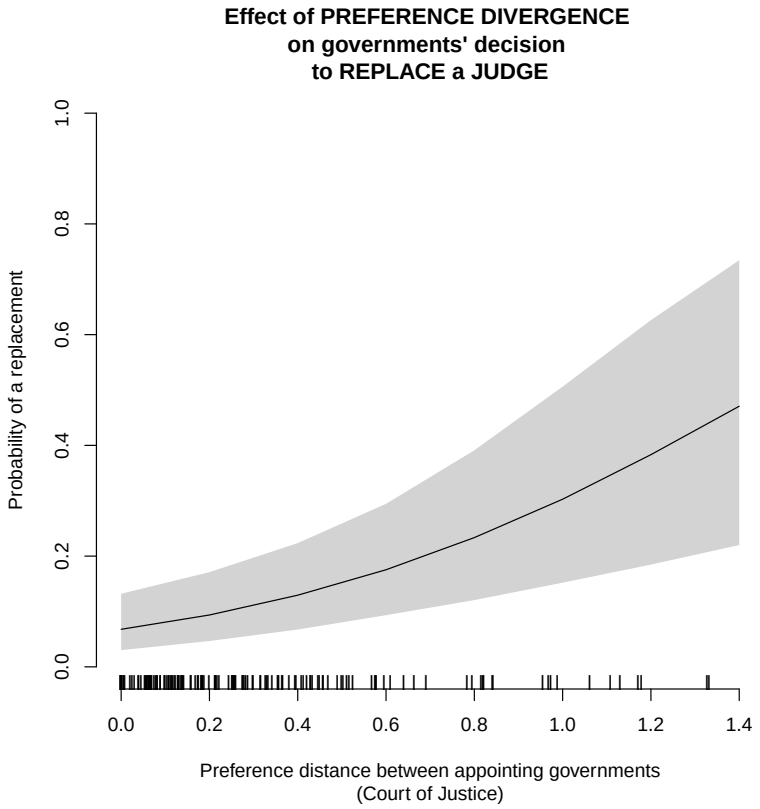

Figure 1: Predicted probability of replacement when there is a change in the appointing government's economic left-right ideology.

Results

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

The probability that a judge will be replaced increases as the political distance between successive governments grows (H_1). This effect is observed in both courts, as shown in Table 2. The magnitude of the effect is illustrated for the CJ in Figure 1 and is not trivial. Even a median change in government ideology increases the odds of a replacement by 53%. A typical shift from a conservative to a social democratic prime minister more than doubles the odds of a replacement. In the Appendix, we explore alternative measures of government ideology. Divisions along a general left–right dimension produce similar but more moderate effects compared to economic left–right issues. However, we find no support for earlier suggestions that preferences regarding national sovereignty are of relevance.

Dependent variable: 'Replacement'	Court of Justice	Court of Justice	General Court	General Court
Intercept	-0.48	-1.44	-1.89	-1.79
	(-2.12,1.24)	(-2.54,-0.4)	(-3.12,-0.83)	(-3.24,-0.48)
H1: Preference distance (economic issues)	1.77	1.75	1.57	1.61
	(0.68,2.94)	(0.68,2.91)	(0.1,3.12)	(0.14,3.19)
H2: Performance (cases of court interest)	-2.14		-0.3	
	(-4.06,-0.38)		(-1.03,0.39)	
H2: Performance (cases of interest to legal community)		-1.17		-0.31
		(-2.25,-0.23)		(-1.42,0.62)
Change of PM party	0.66	0.62	0.8	0.76
	(-0.3,1.66)	(-0.32,1.59)	(-0.32,2.01)	(-0.34,1.94)
(Vice-)President	1.11	1.46	-3.87	-3.89
	(-0.51,2.73)	(-0.16,3.17)	(-8.26,-0.88)	(-8.35,-0.94)
Length of tenure	0.02	0.02	0.15	0.16
	(-0.08,0.12)	(-0.08,0.12)	(0.01,0.31)	(0.01,0.31)
Age	0.18	0.18	0.07	0.07
	(0.11,0.26)	(0.11,0.26)	(0,0.16)	(-0.01,0.15)
Change in attendance	-0.02	-0.02	-0.03	-0.03
	(-0.04,-0.01)	(-0.04,-0.01)	(-0.07,0.01)	(-0.07,0.01)
Number of observations	162	162	106	106
Proportion of correct predictions	0.75	0.75	0.75	0.77
... correct positive predictions	0.74	0.78	0.76	0.86
... correct negative predictions	0.76	0.74	0.75	0.74

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

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

We have argued that governments favor judges who are likely to translate preferences into influence (H_{2a}). Additionally, governments base their decisions on relevant information about judges' past performance (H_{2b}). We find support for both statements.

First, handling high-impact cases as a reporting judge in the CJ – where such positions are selective – significantly reduces a judge's odds of replacement. This relationship holds regardless of how we measure the importance of their portfolios (Models 1 and 2). By contrast, we find no evidence of a similar effect in the GC, where reporting judges are treated as interchangeable (Models 3 and 4).

Model 1 shows that, all else equal, a judge whose portfolio contains 10 percentage points more large-chamber cases than the court average has 90% lower odds of replacement. Model 2 reports the effect of academic articles discussing cases for which the judge was the reporting judge. If we compare a typical underperforming judge (20^{th} percentile) to a typical overperforming judge (80^{th} percentile), the higher-performing judge has a 57% higher probability of retaining their seat.

Second, Table 3 and Figure 3 report the effect of being trusted with a leadership position in either of the two formations of the Court. As before, the effect of past influence is sizable,

Dependent variable: 'Replacement'	Both courts
Intercept	-2.17
	(-2.97,-1.46)
H1: Preference distance (economic issues)	1.3
	(0.31,2.34)
H2: Elected leadership	-0.73
	(-1.65,0.13)
Non-elected leadership	0.47
	(-1.1,1.9)
Change of PM party	0.92
	(0.14,1.73)
Length of tenure	0.07
	(-0.01,0.15)
Age	0.08
	(0.03,0.14)
Change in attendance	-0.02
	(-0.04,0)
Number of observations	217
Proportion of correct predictions	0.7
... correct positive predictions	0.76
... correct negative predictions	0.68

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

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

though less precise ($p < 0.04$). The odds of replacing an elected leader are 52% lower than those of a judge who has not been elected to a leadership position. Conversely, the effect for non-elected leaders is indistinguishable from zero.

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

Second, the presence of easy-to-access, relevant indicators about judges' performance makes accountability possible. However, the effect is conditional on the Court's procedures for distributing influential positions. Only judicial records that reflect peer selection – and thus potential future influence – inform governments' choices.

Third, selectors balance ideology and impact. Both criteria are important, and there are few indications that the effect of one influences the effect of the other. We show in the Appendix that including an interaction effect between the two yields a statistically

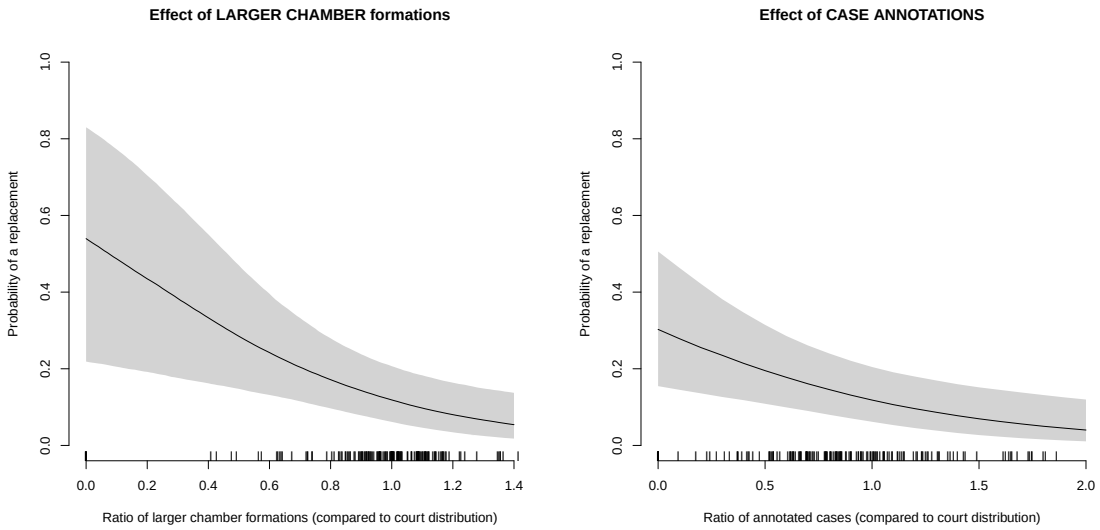

Figure 2: Predicted probability of replacement as a function of case portfolio among judges in the Court of Justice.

insignificant effect.[2] The results thus suggest that governments may be willing to forego some ideological congruence to retain influence on the Court. Conditional on positions being selective, high-performing judges are partly shielded from politically motivated deselection. For example, when government preferences shift from a social democratic to a conservative prime minister, a *high*-performing judge has a lower probability of replacement (23%) than a *low* performer facing a more moderate (i.e., median) change in government preferences (34%). However, when preference distance becomes sufficiently high, performance can no longer compensate. A *low*-performing judge facing no change in government preferences has the lowest probability of replacement overall (15%).

Our results highlight the opportunity cost governments face when replacing an experienced judge with a newcomer. The Court tends to reserve the most influential positions for senior judges. For example, in our data, most high-performing judges were in their second term. Furthermore, case allocations allow judges to specialize, giving members disproportionate influence over certain policy areas – influence that governments would lose if the judge is

[2]Following a reasoning that governments discount performance for ideologically distant judges, we might have expected a positive interaction.

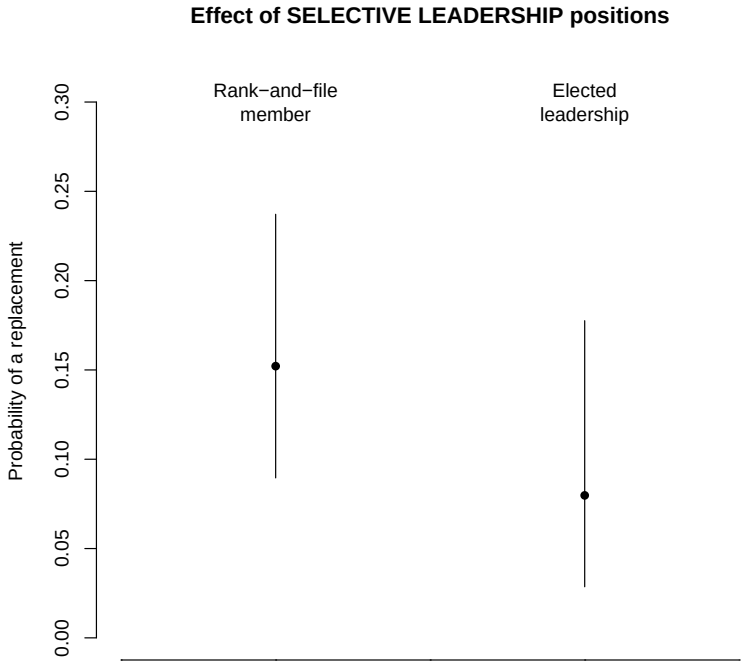

Figure 3: The effect of elected and non-elected leadership positions on governments' choice to replace their incumbent judge.

replaced. The importance of seniority in gaining influential positions helps to explain why replacing a judge is relatively rare. Reappointing governments must weigh the immediate gains of selecting a new judge with preferences closer to their own against the probability that it may take several years before their investment pays off.

Robustness tests

The models provide a fair description of the data, with an in-sample correct prediction rate of 75%. They are also robust to several alternative specifications, including variation over time and between Member States (reported in the Appendix). However, three potential challenges to our claims merit discussion here.

First, it could be that our findings are not related to governments' deselection of judges

but are instead driven by the incumbent judges themselves. Table 4 reports the results of a placebo test in which we substitute occasions when a judge was replaced at the end of a term with instances where a judge left the Court for other reasons. As expected, we find an effect of ideology and impact in the CJ only when governments were involved in the exit decision. Career-related predictors, however, have a bearing on both types of exits: older judges, judges with long tenure, and judges whose attendance levels have decreased are more likely to leave the Court.

Dependent variable: 'Replacement'	CJ: Mandate expired	CJ: Resignation	GC: Mandate expired	GC: Resignation
Intercept	-0.48	-0.76	-1.89	-2.16
	(-2.12,1.24)	(-2.42,0.77)	(-3.12,-0.83)	(-3.26,-1.21)
Preference distance (economic issues)	1.77	0.09	1.57	-0.21
	(0.68,2.94)	(-1.22,1.29)	(0.1,3.12)	(-2.56,1.73)
Performance (cases of interest of court interest)	-2.14	-0.91	-0.3	0.19
	(-4.06,-0.38)	(-2.5,0.73)	(-1.03,0.39)	(-0.36,0.71)
Change of PM	0.66	-0.17	0.8	-0.16
	(-0.3,1.66)	(-1.13,0.77)	(-0.32,2.01)	(-1.38,1)
(Vice-)President	1.11	-0.09	-3.87	-0.85
	(-0.51,2.73)	(-1.98,1.6)	(-8.26,-0.88)	(-3.2,1.22)
Length of tenure	0.02	0.1	0.15	0.14
	(-0.08,0.12)	(0.01,0.19)	(0.01,0.31)	(-0.01,0.29)
Age	0.18	0.14	0.07	0.09
	(0.11,0.26)	(0.06,0.23)	(0,0.16)	(0.01,0.18)
Change in attendance	-0.02	0	-0.03	0
	(-0.04,-0.01)	(-0.02,0.02)	(-0.07,0.01)	(-0.04,0.04)
Number of observations	162	154	106	117
Proportion of correct predictions	0.75	0.73	0.75	0.74
... correct positive predictions	0.74	0.7	0.76	0.56
... correct negative predictions	0.76	0.74	0.75	0.77

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

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

Second, there is the possibility that governments use appointments to distribute political spoils. While this would align with the observed effect of ideology, it is contradicted by our findings on judges' performance. One might imagine two alternative rationales dominating judicial appointments: either governments distribute spoils (explaining the effect of ideology) or they select judges based on competencies (linked to performance). If this were the case, we would expect a negative interaction effect between preferences and performance. However, as already mentioned, the results do not support such a division. Both predictors retain

their hypothesized direction across the range of the moderating variable. Although some judges may have been appointed on these grounds, this does not dominate reappointments in the EU.

Third, a challenge to the claim that deselection is the prerogative of governments comes from a recent reform of the Court. Since 2010, the appointment procedure includes an intermediate stage in which new and incumbent nominees are screened by an advisory merit selection committee (the Article 255 Committee). Although the committee has warned that it can advise governments to deselect incumbent candidates, it has not yet done so (Panel, 2022, p. 10). The reform initially led some commentators to hope that the committee would check governments' political influence (Pérez, 2015). However, governments retained the prerogative to deselect any incumbent judge and are gatekeepers to new nominees. Others hoped for increased performance accountability (Dehousse, 2011). To flag manifest shirking, the committee has devised quantifiable measures of judges' case-management expediency but has avoided assessments that could be construed as political (7th Activity Report, 2022 pp. 12–14). Interestingly, there are indications that judges responded by increasing their efforts in office, particularly in the GC (Cheruvu et al., 2022), where, as we have shown, government-enforced accountability is minimal. We demonstrate in the Appendix that the emphasis on ideology and impact has – if anything – increased after the reform.

Conclusion

We have argued that policy-seeking actors involved in judicial appointments base their decisions on both ideology and the predicted impact of candidates on a court's case law. Our study of EU governments' reappointment decisions to the CJEU demonstrates that transparency about judicial behavior alone is insufficient for accountability. Selectors must also perceive accessible information as relevant for a candidate's future influence.

Secret voting may protect judicial autonomy, but it does not shield judges from ideologically motivated deselection. Our analysis shows that a shift from a social democratic to a conservative prime minister more than doubles the probability of a replacement. With secret votes, judges have limited ability to avoid deselection by pandering to selectors' policy preferences.

However, because policy-seekers value impact, ideological deselection carries an opportunity cost that may benefit incumbent judges. Judges' personal standing and seniority likely enhance their ability to influence case law, leading selectors to trade some ideological proximity for retaining an influential judge. Our findings reveal that judges can be reappointed despite substantial shifts in government preferences if they hold central roles on the Court. The weight governments place on potential influence helps explain the high retention rate in the CJEU, even when ruling parties have the prerogative to nominate ideologically aligned judges.

The result is 'performance accountability': accountability based on perceived ability to impact case law. This concept implies a redistribution of power. From governments' perspective, performance accountability allows them to use appointments to exert more effective influence on judicial decision-making. However, it also makes governments dependent on the Court's own assessment of incumbent candidates. From judges' perspective, greater independence from governments fosters a new dependence on the internal hierarchy within the court, as many influential positions are controlled by the Court's leadership. Judges thus become agents of two principals: their leaders within the court and their political selectors in the Member States.

Importantly, we find that the way positions of influence are obtained determines the political rewards selectors can reap if they consider more than judges' ideological congruence. This insight has significant implications for academic studies of judicial selection and courts' institutional design.

First, our study establishes that a court's procedure for case allocation shapes selectors' beliefs about candidate judges. Delegating the preparation of cases to a single judge ("judge rapporteur") is a common feature in many courts (K. Kelemen, 2016). American scholars, in particular, have noted that if the majority opinion writer disproportionately influences court decisions, expectations about the qualities required for such positions should inform the selection of Supreme Court judges (Lax and Rader, 2015). However, empirical evidence supporting this claim has been lacking.

Second, we encourage scholars of judicial selection to move beyond selection procedures and examine the incentive structures embedded in courts' institutional arrangements. Judges persuade each other (Sunstein, Schkade, and Ellman, 2006). In international courts, this implies that appointing a judge with the right qualities may give governments an edge in the competition for influence over court decisions.

This article offers new insights into the long-standing debate on balancing judicial independence, accountability, and transparency. We argue that judicial selection aims to shape case law through judges' ideology and ability to exercise influence, and we have shown how courts' internal organization can both constrain and empower judges. While renewable terms are often seen as a constraint on judicial independence, we demonstrate that selectors' need for information also makes governments responsive to the court's priorities.

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Appendix

Description of variables

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

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

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

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

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

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

"per414", "per415" and "per416").

- "per401": Favourable mentions of the free market and free market capitalism as an economic model.
- "per402": Favourable mentions of supply side oriented economic policies (assistance to businesses rather than consumers).
- "per403": Support for policies designed to create a fair and open economic market.
- "per404": Favourable mentions of long-standing economic planning by the government.
- "per405": Favourable mentions of cooperation of government, employers, and trade unions simultaneously. The collaboration of employers and employee organisations in overall economic planning supervised by the state.
- "per406": Favourable mentions of extending or maintaining the protection of internal markets (by the manifesto or other countries).
- "per409": Favourable mentions of demand side oriented economic policies (assistance to consumers rather than businesses).
- "per410": The paradigm of economic growth.
- "per412": Support for direct government control of economy.
- "per413": Favourable mentions of government ownership of industries, either partial or complete; calls for keeping nationalised industries in state hand or nationalising currently private industries. May also include favourable mentions of government ownership of land.
- "per414": Need for economically healthy government policy making.

In the fourth step, we average the estimated preferences over all parties in government and link this to the appointing and reappointing governments in the main data

frame. In the main text these preferences are weighted by the party size of each government coalition partner in parliament. To check the robustness of these results we also caclulate an alternative variable where preferences are not weighted.

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

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

- *Economic left-right preferences* (`lrecon`) ranges from 0 (extreme left) to 10 (extreme right) and classifies parties in terms of their ideological stance on economic issues. Parties on the economic left want government to play an active role in the economy. Parties on the economic right emphasize a reduced economic role for government: privatization, lower taxes, less regulation, less government spending, and a leaner welfare state.
- *Economic deregulation* (`deregulation`) ranges from 0 (strongly favors deregulation) to 10 (strongly opposes deregulation) and classifies parties in terms of their position on deregulation.

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

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

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

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

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

- *General left-right* (`lrgen`) ranges from 0 (extreme left) to 10 (extreme right) and reports the overall ideological stance of the party leadership.
- *Redestribution preferences* (`redestribution`) ranges from 0 (strongly favors redestribution) to 10 (strongly opposes redestribution) and classifies parties in terms of their position on redistribution of wealth from the rich to the poor.

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

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

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

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

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

Description of the statistical model

All models are Bayesian, estimated using MCMC in JAGS (Plummer, 2003). The Bayesian approach has two compelling features: First, unobserved information can be estimated in parallel to the main regression, possibly by inserting information from other sources (Gill,

2002, p. 43). Second, Bayesian models also provide a more robust approach to multilevel non-linear regressions (such as our logistic regressions), in particular when the number of countries (or time periods) is low (Stegmueller, 2013). While the results reported in the article are produced by a pooled model, we verify the results in this appendix using random intercepts.

In the following, we examplify with the estimation of the model using economic left-right preferences and performance measured as portfolio of cases of interest to the academic community. It is a binomial logistic regression:

$$
\begin{aligned}
Pr(Replacement_i = 1) \sim & Bernouilli(\pi_i) \\
logit(\pi_i) = & \alpha + \\
& \beta_1 \times |Preferences\ gvt\ 1_i - Preferences\ gvt\ 2_i| + \\
& \beta_2 \times (Annotations_i - Avg.\ Annotations_i) + \\
& \beta_3 \times Change\ in\ Prime\ Minister_i + \\
& \beta_4 \times (Vice-)President + \\
& \beta_5 \times Tenure_i - mean(Tenure) + \\
& \beta_6 \times Age_i - mean(Age) + \\
& \beta_7 \times Change\ in\ Attendance_i
\end{aligned}
\tag{1}
$$

The regression parameters have relatively vague prior distributions:

$$
\begin{aligned}
\alpha &\sim N(0, 10) \\
\beta_k &\sim N(0, 10) \\
\gamma_k &\sim N(0, 10) \\
\delta_k &\sim N(0, 10)
\end{aligned}
\tag{2}
$$

We let the model run through 500 iterations in adaptation mode to set the Monte Carlo

step size and another 10 000 iterations of burn-in before starting the sampling. We then sample every 10^{th} iteration for the next 20 000 simulations. The final sample shows no signs of no-convergence.

Imputation of missing information

Our estimation of political preferences contains missing observations. Thus, we sometimes lack information on the party positions of the appointing (4 observations, 2.5%) and the reappointing governments on economic issues (7 observations, 4.3%). In these cases, we impute values relying on information provided by the "state_market" variable provided in the ParlGov data (no missing data) as well as the Chapel Hill expert survey trend file (Bakker et al., 2015; Polk et al., 2017). While only available from 1998, this second supplementary data source nevertheless covers a substantial part of the missing observations (25% and 57% respectively). Missing information on government preferences is thus imputed through an ordinary linear model:

$$\begin{aligned} Preferences\ gvt\ 1_i \sim & N(\mu 1_i, \tau_i) \\ \mu 1_i = & \gamma 1_1 + \\ & \gamma 1_1 \times Economic\ left - right 1_i + \\ & \gamma 1_2 \times Economic\ deregulation 1_i \end{aligned} \tag{3}$$

$$\begin{aligned} Preferences\ gvt\ 2_i \sim & N(\mu 2_i, \tau_i) \\ \mu 2_i = & \gamma 2_1 + \\ & \gamma 2_1 \times Economic\ left - right 2_i + \\ & \gamma 2_2 \times Economic\ deregulation 2_i \end{aligned} \tag{4}$$

Results from these secondary regression models are reported in Table 5, while the two

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

Predictors	Model 1
Intercept (appointing gvt)	-0.77
	(-1.12,-0.45)
Economic left-right preferences (appointing gvt)	-0.05
	(-0.11,0.01)
Economic deregulation (appointing gvt)	0.2
	(0.16,0.25)
Intercept (reappoiting gvt)	-0.39
	(-0.83,-0.01)
Economic left-right preferences (reappointing gvt)	-0.08
	(-0.15,0.02)
Economic deregulation (reappointing gvt)	0.17
	(0.11,0.22)
Number of observations	162

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

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

Predictors	w/imputations	listwise exclusion
Intercept	-0.48	-0.21
	(-2.12,1.24)	(-1.96,1.56)
H1: Preference distance (economic issues)	1.77	1.92
	(0.68,2.94)	(0.82,3.12)
H2: Performance (court interest)	-2.14	-2.43
	(-4.06,-0.38)	(-4.36,-0.67)
Change of PM	0.66	0.44
	(-0.3,1.66)	(-0.56,1.47)
(Vice-)President	1.11	1.18
	(-0.51,2.73)	(-0.58,2.93)
Length of tenure	0.02	0.01
	(-0.08,0.12)	(-0.1,0.11)
Age	0.18	0.2
	(0.11,0.26)	(0.12,0.29)
Change in attendance	-0.02	-0.02
	(-0.04,-0.01)	(-0.04,-0.01)
Number of observations	162	154
Proportion of correct predictions	0.75	0.78
... correct positive predictions	0.74	0.76
... correct negative predictions	0.76	0.79

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

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

Alternative operationalizations of political preferences

In this subsection, we verify whether the effects reported in the main article hold for different operationalizations of preferences. For brevity, we focus on a single model for both courts, as preferences have an effect on reappointments in both venues.

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

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

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

Dependent variable: 'Replacement'	model 1a	model 1a	model 1a
Intercept	-1.67	-1.62	-1.4
	(-2.46,-0.92)	(-2.4,-0.88)	(-2.15,-0.69)
Preference distance (economic left-right)	0.61		
	(0.28,0.95)		
Preference distance (general left-right)		0.37	
		(0.04,0.7)	
Preference distance (European integration)			0.18
			(-0.14,0.49)
Performance (cases of court interest)	-0.31	-0.25	-0.24
	(-0.67,0.02)	(-0.59,0.06)	(-0.59,0.07)
Change of PM party	0.65	0.74	0.86
	(-0.02,1.35)	(0.08,1.43)	(0.23,1.53)
(Vice-)President	-0.13	-0.22	-0.4
	(-1.37,1.05)	(-1.44,0.91)	(-1.64,0.73)
Length of tenure	0.28	0.27	0.29
	(-0.08,0.66)	(-0.08,0.63)	(-0.06,0.64)
Age	0.92	0.86	0.85
	(0.55,1.33)	(0.5,1.27)	(0.5,1.25)
Change in attendance	-0.47	-0.4	-0.42
	(-0.85,-0.12)	(-0.77,-0.06)	(-0.78,-0.07)
Number of observations	268	268	268
Proportion of correct predictions	0.72	0.72	0.7
... correct positive predictions	0.72	0.72	0.68
... correct negative predictions	0.72	0.72	0.71

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

Table 7: The models explore DIFFERENT OPERATIONALIZATIONS of PREFERENCES at both courts. Coefficients are standardized for comparability.

What are the bivariate correlations?

In the main paper, we argue that judges' past performance decreases their likelihood of being replaced at the end of their mandate. However, judges tend to acquire more important cases as their career progresses. At the same time, their likelihood of exiting the Court at the end of their mandate due to retirement is also higher. Our models therefore control for judges' career state: their length of tenure, age and relative investment in the mandate.

Table 8 reports the results from a series of models of reappointments where the effect of performance is estimated *without* control variables. They make it clear that while the direction of the effect remains the same, our results pertaining to performance are only statistically significant once we control for confounders.

The opposite is true for the effect of preferences. Table 9 reports bivariate models for the effect of the preference distance between successive governments. Here, we see that the bivariate correlation is visible alread in the bivariate. This is consistent with what we might expect. There are few reasons to believe that the distance between successive governments increases as the judge approaches retirement/gains in tenure.

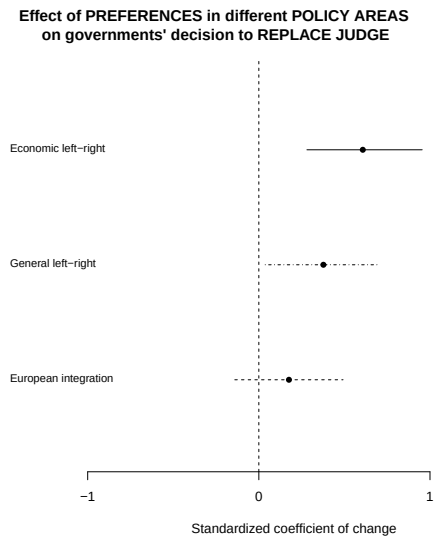

Figure 4: Different operationalizations of government preferences.

Dependent variable: 'Replacement'	Court of Justice	Court of Justice	General Court	General Court
Intercept	-0.5	-0.61	-1.12	-1.03
	(-1.8,0.7)	(-1.29,0.08)	(-1.78,-0.51)	(-1.79,-0.28)
Performance (cases of academic interest)		-0.36		0.05
		(-1.08,0.3)		(-0.58,0.6)
Performance (cases of court interest)	-0.46		0.15	
	(-1.71,0.86)		(-0.36,0.66)	
Number of observations	162	162	106	106
Proportion of correct predictions	0.57	0.5	0.55	0.6
... correct positive predictions	0.35	0.54	0.41	0.17
... correct negative predictions	0.66	0.48	0.6	0.77

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

Table 8: Bivariate model of judges' performance

Are the effects constant over time?

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

Dependent variable: 'Replacement'	Court of Justice	General Court
Intercept	-1.4	-1.74
	(-1.91,-0.93)	(-2.48,-1.08)
Preference distance (economic issues)	1.23	2.01
	(0.39,2.12)	(0.78,3.39)
Number of observations	162	106
Proportion of correct predictions	0.67	0.75
... correct positive predictions	0.5	0.66
... correct negative predictions	0.73	0.79

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

Table 9: Bivariate model of judges' preferences

Has there been a trend over time?

Figure 5 illustrates the proportion of replacement decisions following the expiration of mandate over time. The overall propensity to replace incumbents has remained low. Due to increases in the membership following successive EU enlargements, most of the observations were made in the period after 1990 (81%). The results will therefore be driven by selection in the last three decades.

To verify that the selection criteria have not changed substantially over time, we divide the data into four separate time periods and estimate separate models. As is clear from the results reported in Table 10, the effects remain essentially the same over the seven decades. The exception is the period around the Eastern enlargement around 2004 where preferences have no effect.

Dependent variable: 'Replacement'	1952-1980	1980-2000	2000-2010	2010-2021
Intercept	-1.42	-0.39	-0.18	-2.95
	(-4.37,1.46)	(-4.36,3.24)	(-3.21,2.89)	(-6.74,0.45)
Preference distance (economic issues)	4.73	2.29	-0.37	4.21
	(2.06,8.3)	(0.55,4.43)	(-3.42,2.14)	(0.73,7.94)
Performance (cases of court interest)	-1.6	-1.93	-2.55	-3.73
	(-4.56,1.24)	(-5.71,1.9)	(-6.05,0.67)	(-7.24,-0.56)
Change of PM party	-0.58	-0.09	1.87	3.45
	(-2.74,1.5)	(-2.4,2.1)	(-0.17,4.23)	(1.1,6.39)
(Vice-)President	0.02	-0.67	0.37	0.43
	(-3.8,3.66)	(-4.4,2.79)	(-3.42,3.95)	(-3.09,4.19)
Length of tenure	0	0.22	0.15	0.04
	(-0.28,0.28)	(-0.11,0.65)	(-0.07,0.38)	(-0.18,0.26)
Age	0.46	0.2	0.1	0.25
	(0.23,0.79)	(0.05,0.39)	(-0.07,0.29)	(0.07,0.49)
Change in attendance	-0.12	-0.03	-0.03	-0.08
	(-0.23,-0.04)	(-0.08,0.02)	(-0.06,0)	(-0.16,-0.01)
Number of observations	51	38	38	51
Proportion of correct predictions	0.9	0.82	0.74	0.9
... correct positive predictions	0.88	0.77	0.8	0.92
... correct negative predictions	0.91	0.84	0.71	0.89

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

Table 10: Replacement of judge in the Court of Justice where DIFFERENT TIME PERIODS are analyzed separately.

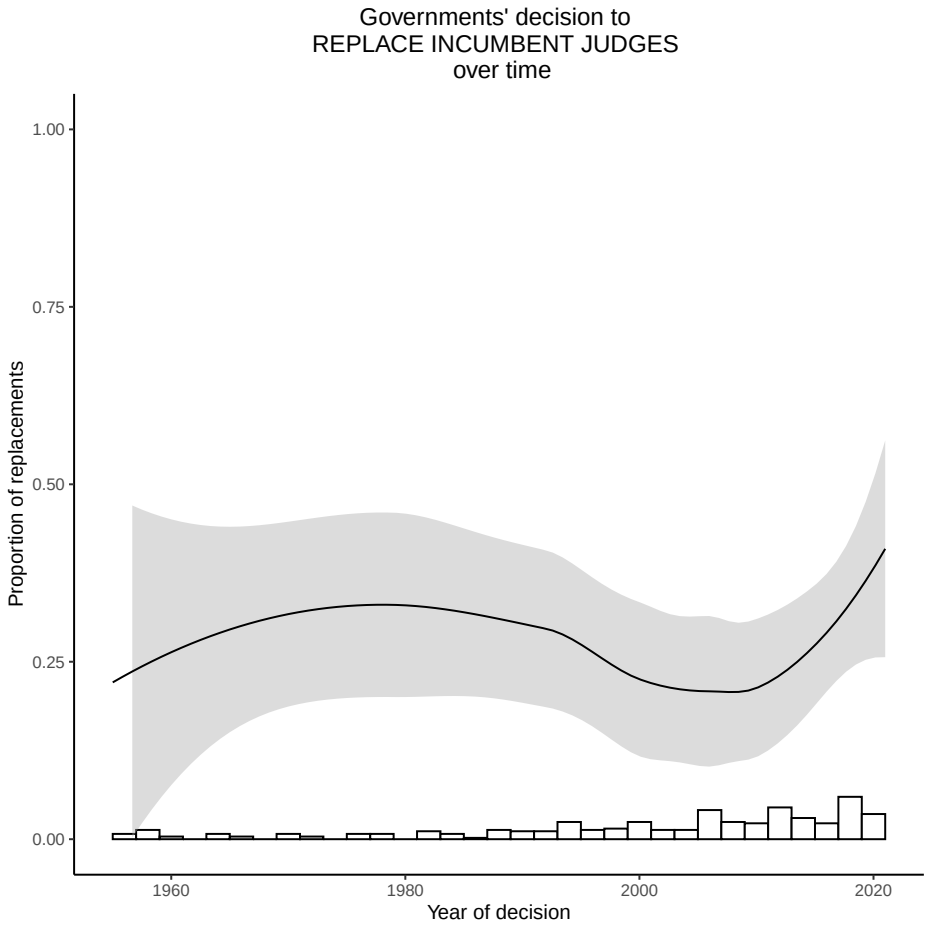

Figure 5: Governments' decision to replace an incumbent judge has remained relatively low (Locally estimated scatter plot smoothing overlaid by a histogram showing the number of observations over time).

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

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

Here, we test whether the selection criteria identified in the main article have changed substantially following the panel's introduction through a set of interaction effects. Table 11 reports the change in the effect of governments' preferences after 2010. As is evident from both the direction and the precision of these interactions, there is no consistent evidence of any alteration in governments' retention choices that affect the generality of our argument.

One explanation may be that the committee is an additional informational tool for governments to gauge judges' competence and efforts in office, but not their impact. It decreases the cost of screening, but does not run counter to governments' policy seeking. Central to our argument about political deselection, governments also retain the possibility to deselect any incumbent judge, since only their nominees are screened by the committee.

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

All new judicial nominees are screened on the basis of their legal and linguistic compe-

Dependent variable: 'Replacement'	CJ	GC
Intercept	-0.01	-2.68
	(-1.84,1.83)	(-4.7,-0.91)
Preference distance (economic issues)	1.46	1.11
	(0.29,2.63)	(-0.78,2.98)
255 Panel * preference distance	2.01	2.16
	(-1.03,5.27)	(-0.83,5.2)
255 Panel	-1.54	0.53
	(-4.67,1.43)	(-1.59,2.76)
Performance (court interest)	-2.23	0.24
	(-4.16,-0.32)	(-1.41,1.74)
255 Panel * performance	-0.43	-0.6
	(-3.52,2.56)	(-2.27,1.16)
Change of PM	0.86	0.88
	(-0.11,1.9)	(-0.27,2.16)
(Vice-)President	0.82	-4.05
	(-0.87,2.49)	(-8.44,-1)
Length of tenure	0.07	0.14
	(-0.04,0.18)	(-0.01,0.3)
Age	0.19	0.06
	(0.12,0.28)	(-0.02,0.15)
Change in attendance	-0.03	-0.03
	(-0.05,-0.01)	(-0.07,0)
Number of observations	162	106
Proportion of correct predictions	0.79	0.78
... correct positive predictions	0.8	0.76
... correct negative predictions	0.78	0.79

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

Table 11: Selection criteria before and after the introduction of an ADVISORY SELECTION COMMITTEE in 2010.

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

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

personal qualities.

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

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

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

We argue that governments seek to satisfy two selection criteria: political preferences and impact on court decision making. We then provide evidence that both criteria guide judicial reappointments. A relevant question is whether these findings are descriptive for judicial selection within all member states or whether our findings are driven by cross-national differences. This subsection provides descriptive statistics that decomposes the selection criteria by judges' nationality. We find that our results reflect variation in appointment decisions within as well as between member states.

Table 10 reports the average left-right political preferences of governments and the share of overperformers (share of large chamber decisions higher than the court average) in the group of retained and replaced judges, respectively. For comparability, we only consider potential retention decisions when the incumbent judge is below retirement age (< 65 years)

and is not the current president of the Court. The statistics on performance only includes the Court of Justice, as per our argument.

Table 12: Bivariate statistics: Appointment decisions in each member state

		Avg. political distance			Avg. overperformers			N observations	
	Nationality	Retention	Replacement	Difference	Retention	Replacement	Difference	Retention	Replacement
1	Austria	0.48	0.26	-0.23	1.00	1.0	0.00	5	1
2	Romania	0.27	0.06	-0.21	0.50	0.0	-0.50	2	2
3	Netherlands	0.39	0.25	-0.14	0.14	0.0	-0.14	10	2
4	Slovakia	0.33	0.36	0.04	1.00	1.0	0.00	2	1
5	Germany	0.17	0.23	0.06	0.33	0.5	0.17	9	4
6	Greece	0.25	0.32	0.07	0.00			3	3
7	Lithuania	0.07	0.19	0.12	1.00			2	1
8	Spain	0.34	0.45	0.12	0.00			6	4
9	Poland	0.28	0.45	0.17				1	1
10	Portugal	0.23	0.49	0.26	0.50	0.0	-0.50	5	2
11	Belgium	0.18	0.46	0.28	0.62	0.0	-0.62	11	2
12	Latvia	0.11	0.45	0.34	0.67			6	1
13	Sweden	0.15	0.52	0.37	1.00	1.0	0.00	4	1
14	France	0.51	1.48	0.97	0.17	1.0	0.83	7	6
15	Bulgaria	0.11			1.00			4	
16	Croatia	0.03			0.50			3	
17	Cyprus	0.22			1.00			6	
18	Czech Republic	0.21			0.50			5	
19	Denmark	0.52			0.20			8	
20	Estonia	0.07			0.67			7	
21	Finland	0.52			0.33			7	
22	Hungary	0.67						1	
23	Ireland	0.53			0.67			7	
24	Italy	0.23			0.50			5	
25	Luxembourg	0.19			0.60			13	
26	Malta				1.00			2	
27	Slovenia	0.22			1.00			2	
28	United Kingdom	0.35			0.75			7	

There are two main takeaways from these statistics. First, replacement decisions are a rare event. Yet 14 out of 28 member states have opted to replace at least one judge who could have remained in office, given his/her age. Out of these – and in accordance with our hypothesis – 11 member states had a higher average political distance between successive governments when the judges were replaced compared when they were retained (column 4). Figure 6 illustrates these effects by member states.

Second, 14 member states have yet to replace a judge who could have remained in office. However, their group of incumbent judges also contains a higher share of overperformers. The direction of the causality goes, in our argument, both ways. On the one hand, we argue that – all else equal – governments prefer to retain a high-performing judge. These governments may simply have appointed judges with higher potential to begin with, and therefore have not seen the need to replace them. However, given the role of experience in the allocation of influence within the CJEU, the choice of retaining an incumbent judge also means that the government may expect the reappointed judge to perform better than a freshman with an equal skill set. Over time, these governments will find themselves represented by higher-performing judges.

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

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

It could be that smaller member states see judicial appointments to the CJEU as an opportunity to "punch above their waist" compared to the political negotiations in the Council where all government votes are weighted according to their size. Table 13 therefore explores whether the selection criteria are substantially different between larger member states (France, Germany, Italy, Spain, Poland and United Kingdom) and the rest. As is clear, we

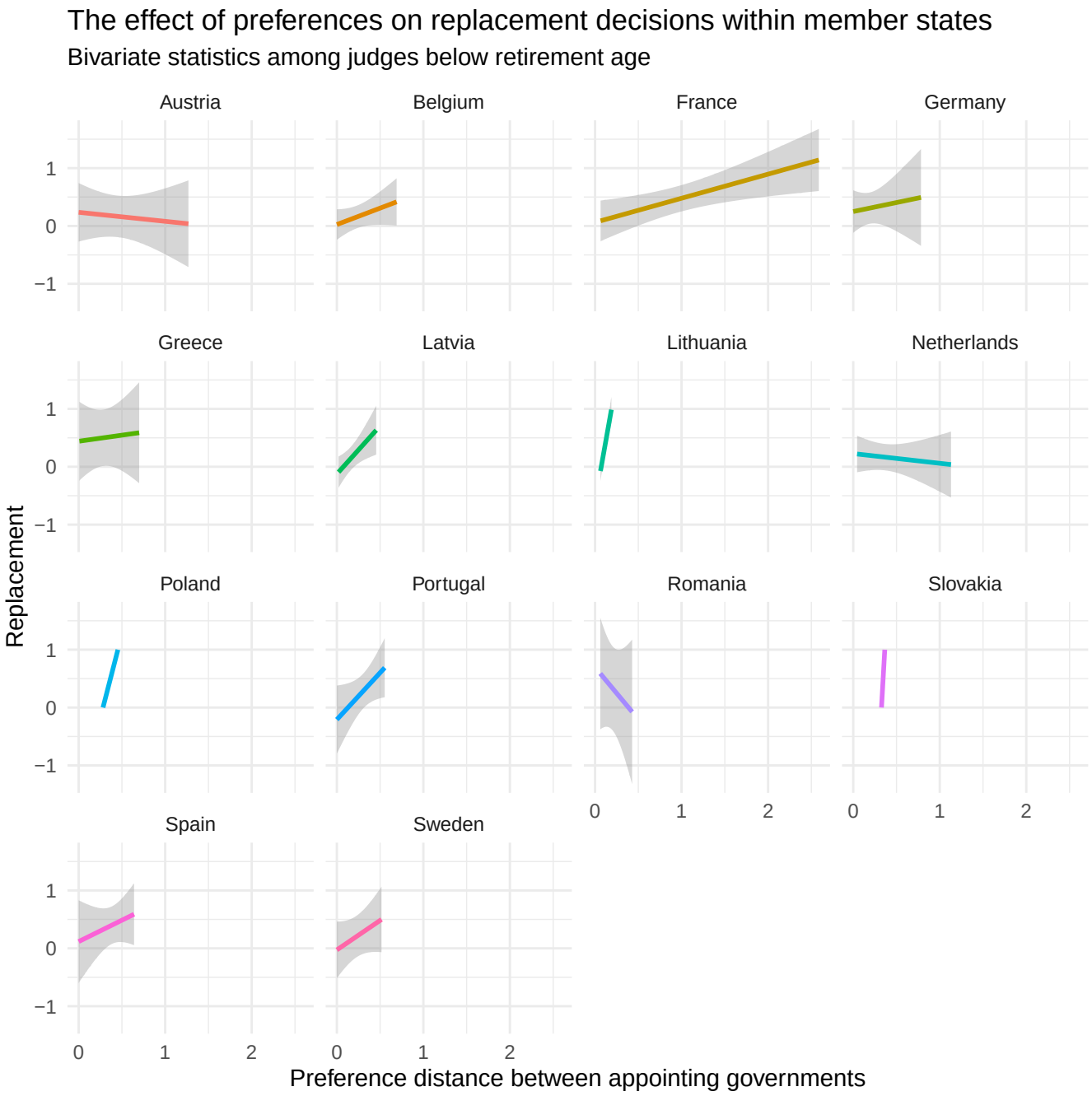

Figure 6: Effect of preferences on governments' retention decision by member state.

find no indication to that effect.

Dependent variable: 'Replacement'	Court of Justice
Intercept	-3.06
	(-4.39,-1.96)
Preference distance (economic issues)	2.05
	(0.13,4.06)
Preference distance (economic issues) * Large member state	-0.36
	(-2.75,2.06)
Performance (cases of court interest)	-1.84
	(-5.07,1.39)
Performance (cases of court interest) * Large member state	-1.66
	(-6.5,2.89)
Change of PM party	0.69
	(-0.3,1.7)
(Vice-)President	0.89
	(-0.87,2.68)
Length of tenure	0.04
	(-0.07,0.15)
Age	0.19
	(0.11,0.28)
Change in attendance	-0.02
	(-0.05,0)
Large member state	0.95
	(-0.52,2.44)
Number of observations	162
Proportion of correct predictions	0.78
... correct positive predictions	0.78
... correct negative predictions	0.78

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

Table 13: Is there a difference of emphasis between large and medium/small member states?

Is there an interaction effect between ideology and impact?

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

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

Furthermore, we believe this mechanism is weaker at the international level, where appointment processes are less visible to the broader public, compared to domestic appointments

(Elsig and Pollack, 2014). In the main text, we draw on the differences between the selection procedures within the Court to bolster our claim that the effect of performance stems from governments' expectation about future influence and not for reputational reasons. If reputation is a primary motivator, we would expect governments to retain high-performing judges even in the event that it doesn't speak to the judge's future performance.

The effect of ideology could be explained by patronage appointments, but a spoils system cannot explain the effect of performance. Specifically, we could imagine that the parties in government reward members for past services by allocating judgeships. If so, the effect of ideology that we find would be explained by changes in governmental coalitions rather than policy seeking. However, we find no effect of changes in the prime minister party, which we would expect if it is party affiliation rather than ideology that matters. We would also need a separate explanation for why performance matters. Often we think of patronage appointments as antithetical to selection based on how candidates would perform on the job. We could potentially conceive of a system in which member states consistently either care about performance or distribute spoils; possibly due to national culture or national rules for the initial nomination of judges. If so, we might expect an interaction effect between ideology and preferences: When governments emphasize ideology, the effect of performance is minimal and vice versa.

The effect of performance could be explained by the desire to retain judges that protect governments against adverse rulings. However, this account cannot explain the consistent effect of ideology. As we argue in the main text, the CJEU's internal organization also limits the possibility for judges to protect their governments against adverse rulings.

Is the effect of performance conditional on the preference distance between the judge and the appointing government? This would be observable through an interaction effect between the two selection criteria. An intuitive expectation could be that governments see high-performing judges appointed by the opposition as a worst-case scenario such that performance is valued less (or negatively) when preference distance is high. Thus, we might expect that judges' performance only matters when the preference distance is fairly low and that ideology only matters when performance is sufficiently high that governments would consider retaining the judge (i.e. a positive interaction term).

Table 14 reports the findings from a model that includes an interaction between ideology and performance. As is clear, we find no trace of any such effect. Building on our theory, we thus argue that the two selection criteria to have a additive effects on governments' choice of judge; both criteria matter.

Dependent variable: 'Replacement'	Court of Justice
Intercept	-2.7
	(-3.76,-1.8)
Preference distance (economic issues)	1.91
	(0.81,3.11)
Preference distance * Performance	-0.07
	(-8.84,8.68)
Performance (cases of court interest)	-2.65
	(-5.51,0.17)
Change of PM party	0.67
	(-0.31,1.68)
(Vice-)President	1.21
	(-0.53,2.98)
Length of tenure	0.02
	(-0.08,0.12)
Age	0.19
	(0.11,0.27)
Change in attendance	-0.02
	(-0.04,-0.01)
Number of observations	162
Proportion of correct predictions	0.76
... correct positive predictions	0.74
... correct negative predictions	0.77

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

Table 14: Is there an interaction effect between governments' preferences and judges' performance?