STATUTORY CONSTRAINT ON THE SEVENTH CIRCUIT: EXAMINING CONGRESSIONAL INFLUENCE*

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> *Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first spoke or wrote them.*[1]

The above quotation raises an important question about the development of law in the United States: from where does the law emerge? As Corwin observed, the Constitution creates an "invitation to struggle" among the branches of government, with each vying to expand its sphere of influence.[2] Following Corwin's lead, many scholars focused on one particular struggle: between Congress and the President. Yet, the constitutional struggle between Congress and the courts is of equal importance, particularly if one is interested in determining who makes the law–the Congress that writes statutes, or the courts that interpret them?

Given the overlapping authority of each branch to determine 'the law,' it is important for scholars to understand whether judges respond to potential influences from Congress. Previous research recognizes that judges respond to a myriad of legal considerations out of "a sense of duty or obligation to follow particular legal principles, rights, and norms;"[3] and this leads to the conclusion that judges are sensitive to the language of Congressional statutes.

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1. Benjamin Hoadly, quoted in WILLIAM B. LOCKHART ET AL., CONSTITUTIONAL LAW: CASES-COMMENTS-QUESTIONS 1 (6th ed. 1986) (1964).
2. EDWARD S. CORWIN, THE PRESIDENT: OFFICE AND POWERS, 1787–1984 (5th ed. 1957).
3. THOMAS HANSFORD & JAMES F. SPRIGGS, II, THE POLITICS OF PRECEDENT ON THE U.S. SUPREME COURT 9 (2006).

Yet, other scholars contend that judges make decisions based on their individual ideological preferences;[4] and this leads to the conclusion that Congressional statutes exert no influence on judicial behavior.

"While many (if not most) scholars recognize that [judges] probably respond to both of these concerns [ideology and the law], the literature nonetheless tends to present them as competing explanations."[5] Consequently, a more robust and dynamic theoretical model is needed that integrates both ideological and legal factors, thereby allowing researchers of the judiciary to fully integrate both Congress and the courts into a single model of judicial behavior. The main reason for this lack of integration is that while scholars possess viable measures of judicial ideology[6] to support theories of attitudinal voting, similar empirical measures of legal concepts have been less forthcoming.

This article provides a model that dynamically integrates ideological and legal factors and offers an empirical measure of legal influence with which to examine the impact of law on judicial behavior. In so doing, it extends previous research by Randazzo, Waterman, and Fine[7] and Randazzo and Waterman[8] that develops a measure of statutory constraint which is tested on the Courts of Appeals, generally, and the U.S. Supreme Court. This measure examines how much discretion Congress provides in the statutes it enacts into law. The basic argument is that judges will render decisions according to their ideological preferences *contingent on the level of discretion* afforded by the law. For those statutes containing vague or ambiguous language, judges will possess more discretion to vote according to their individual preferences. However, for statutes containing more detailed language, judges will have less discretion and consequently will be constrained from ideological voting.[9] This

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4. JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL, REVISITED (2002).
5. *See* HANSFORD & SPRIGGS, *supra* note 3, at 9–10.
6. *See* Jeffrey A. Segal & Albert D. Cover, *Ideological Values and the Votes of U.S. Supreme Court Justices*, 83 AM. POL. SCI. REV. 557 (1989); Micheal W. Giles, Virginia A. Hettinger & Todd Peppers, *Picking Federal Judges: A Note on Policy and Partisan Selection Agendas*, 54 Pol. Res. Q. 623 (2001); and Andrew D. Martin & Kevin Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999*, 10 POL. ANALYSIS. 134 (2002).
7. Kirk A. Randazzo, Richard W. Waterman & Jeffrey A. Fine, *Checking the Federal Courts: The Impact of Congressional Statutes on Judicial Behavior*, 68 J. POL. 1003 (2006).
8. Kirk A. Randazzo & Richard W. Waterman, The U.S. Supreme Court and the Model of Contingent Discretion (August 2007) (unpublished manuscript presented at the annual meeting of the American Political Science Association in Philadelphia, PA), on file with author.
9. By articulating this argument, one should not interpret the statements to claim that other legal factors do not matter. Obviously, judges experience additional legal constraints, namely precedent. However, the focus of this examination is on the measurement and influence of statutory language on judicial behavior.

article extends the theoretical argument by specifically examining decision-making in the Seventh Circuit Court of Appeals and comparing the results to the remaining circuits.

INTERACTIONS BETWEEN THE LEGISLATIVE AND JUDICIAL BRANCHES

The political science literature on legislative-judicial interactions contains numerous examples of empirical studies focused on the nomination process[10] or congressional overrides of judicial decisions.[11] Yet, these studies ignore an important area where the Constitution creates the "invitation to struggle" between Congress and the courts; the realm of statutory creation and interpretation.

Among the empirical studies which examine this area are those that rely on separation-of-powers (SOP) models.[12] Though the SOP models generate powerful insights into legislative-judicial behavior based on preferences over policy outcomes, they neglect the specific language through which legislative policy is dictated. Yet, while "Congress enacts statutes and [the] courts interpret them, but Congress is not always silent on how its actions are to be interpreted."[13] Consequently, SOP models overlook the range of options available to Congress to specifically describe policy outcomes. "These details may describe policy outcomes in vague terms, leaving the courts with large amounts of discretion to interpret statutes according to their ideal points; or, the policy outcomes may be the result of extremely specific statutory language which constrains the abilities of judges to alter the status quo points based on

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10. *See* Jeffrey A. Segal, Charles M. Cameron & Albert D. Cover, *A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations*, 36 AM. J. POL. SCI. 96 (1992); DEBORAH J. BARROW, GARY ZUK & GERALD GRYSKI, THE FEDERAL JUDICIARY AND INSTITUTIONAL CHANGE (1996); and Byron J. Moraski & Charles R. Shipan, *The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices*, 43 AM. J. POL. SCI. 1069 (1999).

11. *See* William N. Eskridge, Jr., *Overriding Supreme Court Statutory Decisions*, 101 YALE L. J. 331 (1991); Jeffrey A. Segal, *Separation-of-Powers Games in the Positive Theory of Congress and Courts*, 91 AM. POL. SCI. REV. 28 (1997); and Lori Hausegger & Lawrence Baum, *Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation*, 43 AM. J. POL. SCI. 162 (1999).

12. *See* William N. Eskridge, Jr., *Reneging on History? Playing the Court/Congress/President Civil Rights Game*, 79 CAL. L. REV. 613 (1991); John Ferejohn & Barry R. Weingast, *Limitation of Statutes: Strategic Statutory Interpretation*, 80 GEO. L. J. 565 (1992); McNollgast, *Politics and the Courts: A Positive Theory of Judicial Doctrine and the Rule of Law*, 68 S. CAL. L. REV. 1631 (1995); and Pablo T. Spiller & Emerson H. Tiller, *Decision Costs and the Strategic Design of Administrative Process and Judicial Review*, 26 J. LEGAL STUD. 347 (1997).

13. Ferejohn & Weingast, *supra* note 12, at 567.

their individual ideological preferences."[14] It therefore becomes incumbent upon students of the judiciary to examine Congress's ability to limit judicial discretion (whether intentional or not) or provide courts with wide leeway to interpret congressional statutes.

This is especially important because scholars often examine legislative-judicial interactions in terms of a tradeoff between judicial attitudes and legal constraints.[15] Yet, "few studies have been undertaken by empirically oriented scholars to examine the effects of traditional legal concepts on case outcomes or judicial votes."[16] In part, this lack of empirical analysis on legal influences arises because of the difficulty inherent in measuring concepts such as plain meaning, legislative intent and precedent. Some scholars rely on strategies which examine progeny cases from landmark decisions.[17] Other scholars employ a series of binary variables to capture the presence or absence of specific case facts or legal doctrine.[18] The argument contends that a more continuous measure, grounded within an applicable theoretical framework, is essential to understanding the potential legal constraints judges encounter when adjudicating disputes.

THE MODEL OF CONTINGENT DISCRETION

A key step in developing and testing the model of contingent discretion involves the development of a suitable measure representing legal or statutory influence. In a recent study of the bureaucracy, Huber and Shipan argue, "[L]egislation is potentially the most definitive set of instructions that can be given to bureaucrats with respect to the actions they must take during policy implementation."[19] In their examination of the implementation of Medicaid laws, they discover the impact of statutes on the discretion of bureaucrats.

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14. *See* Randazzo, Waterman & Fine, *supra* note 7, at 1007.
15. C.K. Rowland & Robert A. Carp, *A Longitudinal Study of Party Effects on Federal District Court Policy Propensities*, 24 Am. J. Pol. Sci. 291 (1980).
16. Donald R. Songer & Susan B. Haire, *Integrating Alternative Approaches to the Study of Judicial Voting: Obscenity Cases in the U.S. Courts of Appeals*, 36 AM. J. POL. SCI. 963, 979 (1992).
17. *See* HAROLD J. SPAETH & JEFFREY A. SEGAL, MAJORITY RULE OR MINORITY WILL: ADHERENCE TO PRECEDENT ON THE U.S. SUPREME COURT (Cambridge Univ. Press 1999).
18. *See* Jeffrey A. Segal, *Predicting Supreme Court Cases Probabilistically: Search and Seizure Cases, 1962-1981*, 78 AM. POL. SCI. REV. 891 (1984); Tracey E. George & Lee Epstein, *On the Nature of Supreme Court Decision Making*, 86 AM. POL. SCI. REV. 323 (1992); and Donald R. Songer, Jeffrey A. Segal & Charles M. Cameron, *The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions*, 38 AM. J. POL. SCI. 673 (1994).
19. JOHN D. HUBER & CHARLES R. SHIPAN, DELIBERATE DISCRETION? THE INSTITUTIONAL FOUNDATIONS OF BUREAUCRATIC AUTONOMY 31 (2002).

> Legislative statutes are blueprints for policymaking. In some cases, legislatures provide very detailed blueprints that allow little room for other actors . . . to create policy on their own. In other cases, legislatures take a different approach and write statutes that provide only the broad outlines of policy, which gives bureaucrats the opportunity to design and implement policy.[20]

Clearly, judges are not the same as bureaucrats, whose role is to administer or implement the law. Bureaucrats do not have the authority to determine which laws are constitutional, nor can they strike down specific provisions within statutes. Yet, the key concept captured by Huber and Shipan is the *level of discretion* provided by congressional legislation. Randazzo, Waterman, and Fine and Randazzo and Waterman demonstrate that levels of discretion within statutes significantly affect the behavior of federal appellate judges; laws with more detailed language provide less discretion, and thereby constrain appellate judges from rendering decisions according to their individual ideological preferences.[21] Yet, the previous analyses operate under the assumption that all circuits in the Courts of Appeals behave in a similar fashion. If one relaxes this assumption, it is plausible to discover effects of statutory constraint operating at various levels of influence.

Therefore, the question addressed here is whether a similar effect occurs specifically in the Seventh Circuit Court of Appeals. According to a report by the Administrative Office of the U.S. Courts, the Seventh Circuit has the second highest proportion of cases terminated after oral hearings (46.6%); the remaining circuits terminate a substantially higher proportion of cases after submission of briefs.[22] This difference helps set the Seventh Circuit apart from the remaining circuits, and reinforces my argument that the Seventh Circuit is a good candidate for separate examination. Are judges on the Seventh Circuit affected by the model of contingent discretion? If so, then one should expect to observe judges voting according to their ideological preferences when they interpret vague or ambiguous statutes that provide high levels of discretion. Conversely, when the Seventh Circuit encounters statutes which prescribe more detailed outcomes, and therefore reduce the level of discretion, then one should expect the ability of judges to decide cases attitudinally will be constrained. Stated this way, the model of contingent discretion is formulated as a tradeoff between ideology and the law. Yet, one

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20. *Id.* at 76.
21. Op. Cit., *supra* notes 7–8.
22. Administrative Office of the U.S. Courts, *Report on the Judicial Business of the U.S. Courts* Table S–1, 50 (2006).

should not expect all judges to encounter similar constraints from any particular statute; and, the findings demonstrate that an additional dimension exists to the model of contingent discretion. Not only can legal factors constrain ideological decision-making, they can also enhance and support attitudinal outcomes. Therefore, the model of contingent discretion captures a vibrant and dynamic interaction between law and ideology in its influence on judicial behavior.

To measure the effects of the model of contingent discretion, a measure of statutory constraint is borrowed from the literature on bureaucratic politics. Huber, Shipan and Pfahler[23] and Huber and Shipan[24] develop a measure of statutory constraint based upon the length of congressional statutes. As they indicate,

> Our qualitative and quantitative investigation of a huge number of statutes suggests that the more words a legislature puts into legislation on the same issue, the more it constrains other actors who will implement policy on that issue. Similarly, the fewer words it writes, the more discretion it gives to other actors.[25]

After conducting a series of validity tests on this measure for Medicaid statutes, their analyses reveal that the length of statutes successfully accounts for variation caused by fairly meaningless generalizations, situations where legislators deliberately pass vague consensus statutes, and instances where legislators move beyond mere platitudes to enact statutes containing specific details designed to affect implementation and interpretation.

In a similar vein, a series of validity tests were conducted to determine whether longer statutes contained more detailed language that might limit the discretion of judges. For each issue area a sample of statutes is examined: some with shorter word lengths, some with lengths near the overall mean for that issue, and some with longer word lengths. It is apparent that statutes with higher word counts contained more detailed language pertaining to its legal implications. For example, the criminal statute 18 U.S.C. 658 contains 128 words succinctly describing illegal activities related to a specific type of property fraud. In contrast, 18 U.S.C. 844 contains 1801 words listing various penalties associated with illegal possession and/or transportation of explosives. This variation in overall length directly affects the degree of detail

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23. John D. Huber, Charles R. Shipan & Madelaine Pfahler, *Legislatures and Statutory Control of Bureaucracy*, 45 AM. J. POL. SCI. 330 (2001).

24. HUBER & SHIPAN, *supra* note 19.

25. *Id.* at 73.

included in the statute. Additionally, the criminal statutes 18 U.S.C. 2510 and 18 U.S.C. 921 provide definitions of illegal activities related to recording and/or intercepting communications and possession of firearms, respectively. The former contains 1213 words describing various types of 'communication' that are included in the statute while the latter contains 2922 words pertaining to possession of firearms. While both statutes provide descriptions of the various activities deemed criminal by Congress and definitions of various technical terms, the reader has a better understanding of the intent of Congress (including the desired outcomes of the legislators) in the latter statute than the former.

In making this observation, one must recognize that Seventh Circuit may be called upon to examine only a specific section of the statute rather than the entire law. However, it is difficult to determine with certainty whether the judges also reference the remaining portions of the bill in order to obtain contextual information on the intended effect or purpose of the legislation passed by Congress. If the judges examine other portions, then relying on the overall word count of the statute as a measure of constraint does not systematically bias the analysis. Yet, if the judges only examine the specific section under dispute, then the inclusion of the overall word count poses a higher threshold for determining a statistically significant relationship. For example, if a dispute occurs involving a large statute, the theory predicts that the behavior of the judges will be constrained by the statute's language. However, if the judges only examine a specific section of that statute and ignore the remaining language, then their behavior will not be affected according to the prediction.

RESEARCH METHODOLOGY AND EMPIRICAL RESULTS

Data for this article come from the U.S. Courts of Appeals Database compiled by Donald R. Songer.[26] Though the original data contain a random sample[27] of cases from 1925–1996, this analysis is limited to those cases after 1960 that include the interpretation of a congressional statute.[28] Additionally, the recent update compiled by Ashlyn Kuersten and Susan Haire, which includes cases through 2002, is included. Consequently, there are

26. The Songer database is archived at the S. Sidney Ulmer Project for Research in Law and Judicial Politics at the University of Kentucky (www.as.uky.edu/polisci/ulmerproject).

27. Technically, the Songer database is a stratified random sample, stratified across circuits by year, and random within each circuit year.

28. I also exclude cases before 1961 because the Songer database reduces the random sample to 15 cases per circuit per year from 1925–1960, and I wish to keep the sample size consistent throughout the analysis.

approximately 4900 cases from 1960–2002 in the dataset, of which 410 were adjudicated in the Seventh Circuit. Since this examination focuses on the behavior of individual judges, the data are transposed to make the unit of analysis focus on individual judges, which subsequently changes the number of observations to approximately 1230 judge votes.

The initial analysis examines whether increases in statutory constraint influence the likelihood of unanimous voting by appellate panels (and the results from the Seventh Circuit are compared to the remaining circuits). The dependent variable for this analysis is binary–whether the appellate panel's decision was unanimous or not–and the independent variable is the measure of *Statutory Constraint*. Following the Huber and Shipan methodology,[29] the model examines the length of congressional statutes. Information on statute length is obtained using the Songer database to identify the statute in question,[30] and subsequently employing Lexis-Nexis and the 'word count' feature in the web browser Firefox. While this strategy provides a raw count of the number of words per statute, there is an important reason why the raw number is not useful in an empirical model. From a methodological standpoint using the raw number of words is problematic both because of the inherent noise associated with a raw count and the considerable skewness in the measure. Consequently, because the examination is interested in constraint brought by substantial differences among statutes, it is reasonable to take the natural log[31] of each statute as the operationalization of the variable *Statutory Constraint*. Taking the natural log allows one to minimize the noise associated with raw counts and reduce the variable's skewness, while preserving the expected theoretical relationship.

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29. *See* HUBER & SHIPAN, *supra* note 19.

30. This is accomplished using the USC1 variable recorded in the Appeals Court Database, which records the most frequently cited statute litigated in a particular case (since the vast majority of cases include references to a single statute, citations to multiple statutes were excluded). There are approximately 2800 different statutes, from all areas of the law, under consideration in the sample. It should be noted that the vast majority of statutes appear in the dataset only once or twice. A small minority of statutes is litigated multiple times; the most frequent of which is 42 U.S.C. § 1983–litigated approximately 100 times across all of the circuits (which represents 4% of the total sample).

31. The natural log of a number is an adjusted figure used to take account of orders of magnitude (which are normally represented by exponents).

Table 1: Statutory Constraint and Unanimous Decisions

	Seventh Circuit		Remaining Circuits	
	Non-Unanimous Decision	Unanimous Decision	Non-Unanimous Decision	Unanimous Decision
Low Constraint	7.1% (6)	92.9% (79)	18.3% (165)	81.7% (735)
Medium Constraint	7.3% (29)	92.7% (368)	9.2% (353)	90.1% (3505)
High Constraint	2.4% (5)	97.6% (204)	7.3% (215)	92.7% (2746)

(Number of Observations in parentheses)

The results of the comparison between *Statutory Constraint* and a *Unanimous Decision* are reported in Table 1. As seen in the table, Seventh Circuit panels are more likely to render unanimous decisions (92.9%) than panels from other Circuits (81.7%) when adjudicating federal statutes with low levels of constraint.[32] When adjudicating statutes with medium levels of constraint, the likelihood of a unanimous decision remains consistent for Seventh Circuit panels (92.7%) but increases noticeable for the remaining Circuits (90.1%). Yet, when Seventh Circuit panels encounter federal statutes with high levels of constraint, the likelihood of a unanimous decision increases substantially (97.6%), whereas panels from the other Circuits remain relatively consistent (92.7%). The results lead one to conclude initially that the probability of a *Unanimous Decision* is more sensitive to small changes in constraint levels for panels in the other Circuits; but that judges on the Seventh Circuit alter behavior only when they encounter federal statutes containing high levels of constraint. Thus, judges on the Seventh Circuit initially seem more resistant to levels of statutory constraint.

32. The three categories of *Statutory Constraint* were constructed by calculating the mean of the variable (11.469) and subtracting one standard deviation (1.790) for the *low constraint* category; adding one standard deviation to the mean for the *high constraint* category; and reserving the area around the mean as the *medium constraint* category.

While this initial conclusion is noteworthy, a more interesting question is whether individual judge votes are affected by varying levels of statutory constraint. Examining this question empirically requires a suitable measure of ideological preferences for individual judges. Fortunately, recent research in political science has focused on developing such measures. At the appellate level Giles, Hettinger, and Peppers created a measure that relies on ideological measures of the appointing president combined with ideological measures of home state Senators, when senatorial courtesy is present.[33] These scores represent a continuous measure of ideology and, as the authors demonstrate in their article, substituting the appropriate score–based on a judge's appointing president and confirming senator–offers a suitable surrogate for judicial ideology.[34] Thus, judges appointed by more liberal presidents, from states with more liberal senators, will possess more liberal ideology scores and vice versa.

33. *See* Giles, Hettinger & Peppers *supra* note 6.

34. These ideology scores have a range from –.784 (most liberal) to .656 (most conservative), with a mean of .024 and standard deviation of .372.

Table 2: Influence of Statutory Constraint and Ideology on Individual Vote

	Seventh Circuit		Remaining Circuits	
	Conservative Vote	Liberal Vote	Conservative Vote	Liberal Vote
Low Constraint				
Liberal Ideology	66.7% (14)	33.3% (7)	53.3% (123)	46.8% (108)
Moderate Ideology	91.3% (42)	8.7% (4)	63.4% (321)	36.6% (185)
Conservative Ideology	66.7% (12)	33.3% (6)	62.8% (152)	37.2% (90)
Medium Constraint				
Liberal Ideology	62.3% (76)	37.7% (46)	58.1% (572)	41.9% (413)
Moderate Ideology	64.1% (152)	35.9% (85)	61.7% (1540)	38.3% (956)
Conservative Ideology	61.8% (34)	38.2% (21)	67.4% (650)	32.6% (314)
High Constraint				
Liberal Ideology	73.4% (146)	26.6% (53)	57.7% (1163)	42.3% (852)
Moderate Ideology	70.3% (286)	29.7% (121)	61.6% (2663)	38.4% (1661)
Conservative Ideology	79.6% (82)	20.4% (21)	66.9% (1589)	33.1% (786)

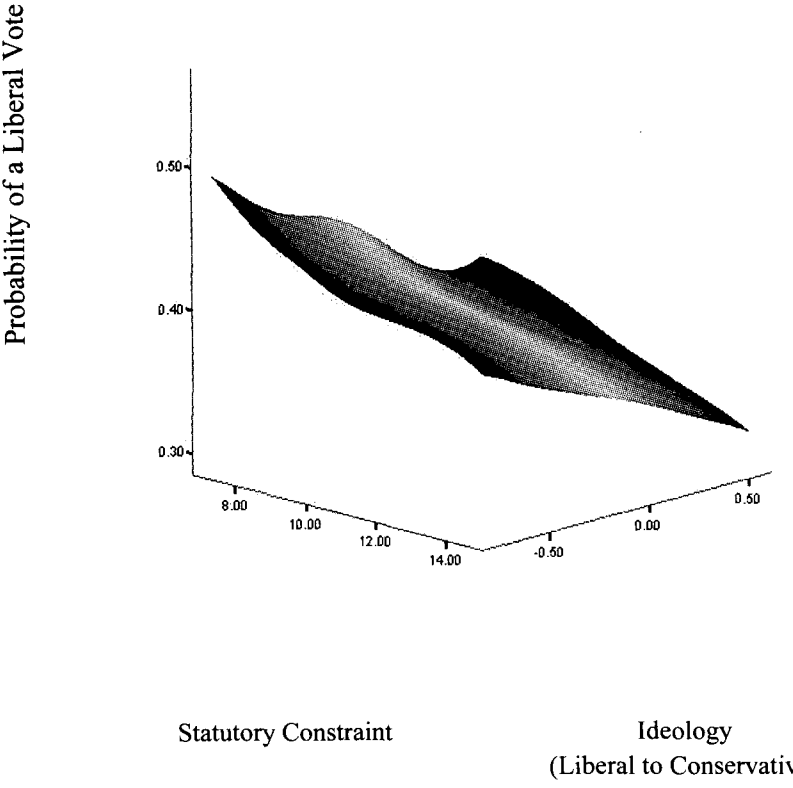
(Number of Observations in parentheses)

If the language of Congressional statutes affects judicial voting behavior, then one should expect to observe changes based on various levels of constraint; these results are reported in Table 2. Examining the results in Table 2 reveals that liberal and conservative judges behave in a similar manner when adjudicating federal statutes that provide low levels of constraint.[35] Judges possessing liberal *and* conservative ideologies are less likely to cast liberal votes (33.3% for each category) whereas the moderate judges cast substantially less liberal votes (8.7%) than either previous category.[36] This initial result is noteworthy since judges in the remaining Circuits display a different pattern of voting for statutes containing low levels of constraint–liberal judges cast liberal votes in 46.8% of their cases, and moderate/conservative judges cast liberal votes approximately 37% of the time. When adjudicating statutes containing medium levels of constraints, judges on the Seventh Circuit behave similarly regardless of ideological preference–each category casts liberal votes in approximately 37% of the cases. In comparison, judges in the remaining Circuits continue to display different patterns of behavior–liberal and moderate judges cast liberal votes approximately 40% of the time while conservative judges cast liberal votes only in 32.6% of the cases. Finally, when adjudicating federal statutes containing high levels of constraint, Seventh Circuit judges possessing a more liberal ideology cast votes in the same direction approximately 26% of the time; more moderate judges cast liberal votes approximately 30% of the time; and conservative judges cast liberal votes in approximately 20% of the cases. This is a substantially lower rate of liberal votes than judges in the remaining Circuit–where liberal judges cast liberal votes approximately 42% of the time, moderate judges approximately 38% of the time, and conservative judges approximately 33% of the time.

35. The three categories of individual ideology were constructed by calculating the mean of the Giles, Hettinger, Peppers measure (.0249) and subtracting one standard deviation (.372) for the *Liberal Ideology* category; adding one standard deviation to the mean for the *Conservative Ideology* category; and reserving the area around the mean as the *Moderate Ideology* category.

36. The ideological directionality of individual votes is recorded in the Songer dataset.

Figure 1: Constraint and the Likelihood of Voting in the Seventh Circuit



To further explore how the effects of statutory constraint and ideology interact and influence judicial behavior, the probability of an individual judge from the Seventh Circuit casting a liberal vote is calculated; the results of which are reported in Figure 1.[37] This graph visually demonstrates how individual judges are affected simultaneously by the language of congressional statutes and their own ideological preferences. The near edge of the hyper-plane represents judges who possess extreme liberal ideologies; note that when statutory constraint is low, these judges have a probability of casting a

37. These results are based on a logistic regression model, which is reported in Appendix A.

liberal vote of .500. Yet, as statutory constraint increases the likelihood of these judges casting liberal votes decreases to approximately .380. Consequently, this figure demonstrates that liberal judges experience substantial limitations in their ability to vote ideologically in the presence of high levels of statutory constraint. However, what is more remarkable about the results in Figure 1 is that conservative judges display a similar pattern of behavior. The far edge of the hyper-plane represents these judges; note that when statutory constraint is relatively low they have a .450 probability of casting a liberal vote. As the language of congressional statutes becomes more detailed, though, the likelihood of these judges casting a liberal vote decreases to approximately .333. This means that conservative judges are relying on the detailed language of congressional statutes to support voting conservatively. Stated another way, conservative judges in the Seventh Circuit experience a facilitating effect from detailed congressional statutes rather than the constraining effect encountered by their more liberal colleagues. The graph in Figure 1 therefore demonstrates an asymmetric impact of congressional statutes on judicial behavior. Though the liberal judges experience significant constraints to their ideological voting when adjudicating statutes possessing detailed language, conservative judges encounter an opportunity to enhance their ideological voting.

Further exploration reveals a potential reason for this asymmetric effect. Examining the data indicates that a large portion of the statutes adjudicated by Seventh Circuit judges, in this sample, involve criminal activities and areas where the federal government exerts its authority over individuals. As such, these statutes prescribe relatively conservative outcomes. Consequently, it is reasonable to expect liberal judges to encounter more difficulty in casting liberal votes when interpreting statutes that prescribe conservative outcomes in large detail. At the same time, conservative judges can employ the conservative language in the statute to facilitate more ideological voting.

CONCLUSIONS

The remarkable findings concerning the effects of *Statutory Constraint* and its interaction with individual ideology suggests a potentially new alternative with which to conceptualize legal influences. Conventional wisdom supports the notion that legal influences often operate in contrast to ideological influences. That is, judges either vote according to their ideological preferences or they are constrained by the law. Yet, the results provided offer empirical support that the *model of contingent discretion* influences judicial behavior on the Seventh Circuit Court of Appeals. Even when judges are influenced by their ideological preferences, this influence is

contingent on the level of discretion afforded by the law; it can facilitate the expression of ideological voting among some while also constraining ideological voting among others.

The potential tension between Congress and the courts caused by the constitutional "invitation to struggle" over the meaning of the rule of law has profound implications for democratic theory and the separation of powers. Though scholars have examined whether the judges issue decisions against the preferences of Congress, there has been little focus on whether the language included within the statute influences judicial behavior. These findings demonstrate that members of Congress can constrain judicial decision making over the long term by enacting detailed legislation. Whether this result occurs because of an intentional congressional objective or is an unintended outcome, the final product is that Congress possesses an ability to limit judicial discretion in the Seventh Circuit through statutory language.

In sum, it is apparent that Congress can constrain the courts. The measure of statutory constraint reveals that more detailed language (resulting in statutes with higher word counts) significantly limits the discretion afforded to Seventh Circuit judges to rule ideologically. More importantly, the analysis provides empirical evidence to support a new theoretical conceptualization of judicial behavior, the model of contingent discretion. If everything else is held equal, judges will render decisions according to their ideological preferences. Yet, all things are not equal, and the presence of legal factors, such as statutory constraint, limits the ability of some judges to rule ideologically. However, the story does not end here. The presence of detailed statutory language can also facilitate the expression of ideological voting among other judges. Thus, while some judges experience significant constraint from the presence of detailed statutory language, others experience an enhancement of their ideological preferences and are more likely to vote according to those preferences. Based on this dynamic interaction between political attitudes and statutory influences, one should not think of the legal model only as a set of forces that operates in contrast to ideological attitudes. Consequently, a more complete model of judicial decision making should include measures of both political preferences and statutory influences, and account for the differential impact of these measures.

Appendix A: Results of Logistic Regression Analysis on Seventh Circuit Judges

	Coefficient	Robust Standard Error	*t*-Score
Individual Ideology	-.176	.477	-0.37
Statutory Constraint	.107	.054	1.97*
Unanimous Decision	-.539	.345	-1.56
Constant	-1.35	.687	-1.96*
N	548		
Log-Likelihood	-349.742		
LR Test (χ^2)	16.59		
Probability > (χ^2)	.016		
Pseudo R^2	.009		

* $p < .05$ Dependent Variable = probability of a liberal vote