

# Congress and the Political Expansion of the U.S. District Courts

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Expanding the number of U.S. district judgeships is often justified as a response to expanding caseloads. Increasing judgeships during unified government, however, allows Congress and the President to engage in political (patronage and ideological) control of the federal district courts. This paper examines empirically the relative importance of caseload pressure and political motives for Congress to expand the number of federal district judgeships. We demonstrate that politics dominates the timing of judgeship expansion in the U.S. District Courts. We also show that both politics and caseload affect the actual size of those timed expansions. In particular, we find that before 1970, Congress seemed to have strong political motivations for the size of an expansion. After 1970, Congress became much more attentive to caseload considerations.

## 1. Introduction

The legislative and executive branches of government hold considerable power over the federal judiciary, whether it be through budget restrictions (Toma, 1991), appointment powers (Barrow, Zuk, and Gryski, 1996; Cameron, Cover, and Segal, 1990; Epstein, 1995; Segal, 1987), or legislative overrides (Eskridge, 1991; Spiller and Gely, 1992; Spiller and

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The authors would like to thank Pablo Spiller, Scott Stern, and Oliver Williamson for helpful comments.

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Tiller, 1996).<sup>1</sup> Recently, scholars have considered whether the creation of judgeships is also a product of partisan efforts to control the judiciary rather than a public-spirited attempt to satisfy the growing caseload pressures on courts. There is now some evidence, both at the appellate and Supreme Court levels, that partisan politics do influence the timing and size of federal judicial expansions by Congress (de Figueiredo and Tiller, 1996; Bond, 1980; McNollgast, 1995, 1998; Barrow et al., 1996). One finding of a recent study by de Figueiredo and Tiller found that the timing of congressional decisions to expand the judiciary was a function of unified government (partisan alignment among the legislative and executive branches of government) (de Figueiredo and Tiller, 1996). More specifically, they found that the creation of judgeships was more likely to occur under periods of partisan alignment among the sitting President, House, and Senate (along with the expected appointing President and confirming Senate, if appointments were to straddle election cycles) than when divided government existed. The logic underpinning that study was that if politics mattered in judicial expansion decisions, the enacting House and Senate would be more inclined to pass expansion legislation when they knew the President and confirming Senate would appoint and confirm like-minded partisans. There is good reason to believe that such partisan court packing efforts by Congress and the President would pay off in terms of policy outcomes (ideological control). There are numerous studies showing that Democratic appointees produce more liberal decisions and Republican appointees produce more conservative decisions, (Aliotta, 1988; Cross and Tiller, 1995; Epstein, 1995; Grossman, 1966; Schultz and Petterson, 1992).<sup>2</sup>

It is not clear, however, that the same forces driving circuit and Supreme Court expansion efforts would affect decisions about district court expansion. First, caseload may play a more important role in district court expansion than in appellate court expansion for electoral reasons. District courts interface most directly with constituents. If constituents

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1. There is also research showing that partisan political maneuvering takes place from the bench through strategic retirement by sitting judges. See Spriggs and Wahlbeck (1995).

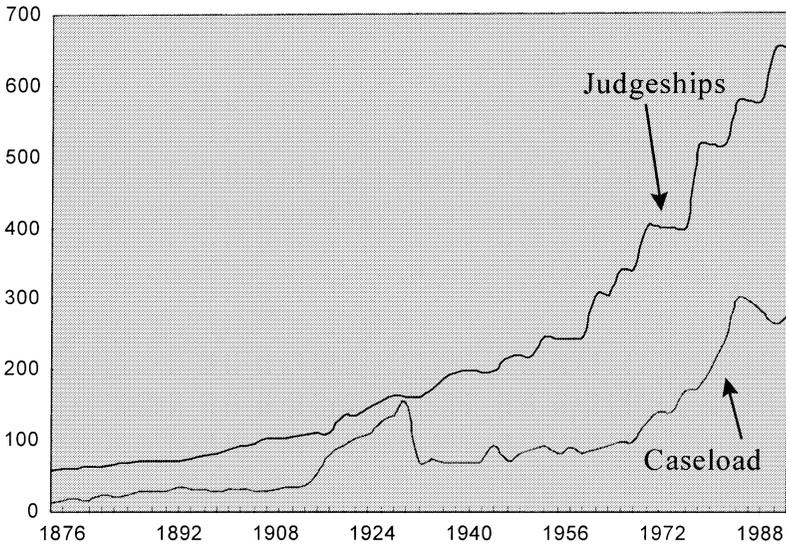
2. See, however, Ashenfelter, Eisenberg, and Schawb (1995), arguing that the political aspects of judicial decision making may not filter down to the mass of cases when one considers settlement aspects of litigation.

cannot obtain a timely trial on their initial claims, they may exert more pressure on their legislators to provide more judges and courts to hear cases. Moreover, because only a fraction of cases heard in the district courts are appealed to the circuit and Supreme courts, legislators may feel less constituent pressure to provide new judges on appellate levels than they would for district courts. Second, the partisan policy benefits resulting from court packing may be greater for appellate and Supreme Court decision making than for district courts. District courts fall within the lower rung of a judicial hierarchy and are generally constrained by the higher-level, broader-reaching circuit and Supreme courts. This means that legislators might be more committed to partisan control at these higher-level courts than they would be for district courts. Accordingly, caseload pressure should have a comparatively larger effect on district court expansion decisions than appellate court expansion decisions, where policy concerns are more concentrated.

In addition to the policy reasons for expansion, patronage may play a role. Due to the local nature of the courts and the potential for larger numbers of judgeships, expansion of the district courts offers legislators considerably more opportunities for patronage appointments than would expansion slots available at the circuit court and Supreme Court levels. There is also some reason to believe that legislators might actually have greater incentives to expand district courts than circuit courts during unified government. Partisan alignment among the House, Senate, and President helps to ensure that the legislators will be able to make patronage choices, as Presidents generally draw from the recommendations of same-party legislators in the state acquiring a new judgeship. We thus have competing rationales for expansion: caseload pressure versus policy-patronage concerns.

## **2. Caseload vs. Politics: Some Evidence**

Congress has passed legislation changing the size of the federal district courts more than 150 times since 1789. The district bench has expanded steadily from 13 judges in 1789 to more than 650 today. As noted above, the main contenders for explaining this federal judgeship growth are (1) constituent pressure from growing caseloads (resulting perhaps from legislative measures granting new actionable rights to citizens or a growing



**Figure 1.** Judgeships and caseload (1,000's) in the federal district courts, 1875–1993.

citizenry more generally) and (2) partisan politics (resulting from congressional desires for partisan policy control of the judiciary or from patronage opportunities for legislators). Consider total caseload pressure first.<sup>3</sup> That the number of cases filed in federal district courts (caseload) and the number of federal district judgeships have both been increasing over time suggests a relationship between caseload pressure and more judgeships. Indeed, as Figure 1 shows, other than during Prohibition (1919–33), the trends in caseload and judgeship growth appear to track each other quite well. This might suggest that Congress is responsive to the increasing caseloads facing the district courts, adding judgeships when and in the amount needed to maintain a smooth running judiciary.

However, if we examine caseload per judgeship, the story is not so clear.<sup>4</sup> While Figure 1 shows an upward trend in the number of both judge-

3. References to caseload as the main determinant of judicial expansion are plentiful in both the legal and the social science literature. Former circuit judge Kenneth Starr, for example, has stated, “[t]he driving reason [for judgeship] expansion has been... the expansion of caseload itself” (Starr, 1992).

4. Caseload per judgeship was determined by dividing the number of cases for a given year by the number of judgeships in that year. The number of cases filed in the

ships and cases filed in the federal district courts, Figure 2 reveals that the actual caseload per judge, although increasing, has fluctuated greatly, from as little as 228 to as many 515 cases per judgeship (excluding the Prohibition period).<sup>5</sup> We would not expect this level of fluctuation if Congress were efficiently maintaining the judiciary with judgeships.<sup>6</sup>

Another telling piece of evidence is that official requests from the Judicial Conference of the United States for more judgeships—requests supposedly based upon maintaining an efficiently operating judiciary when considering, among other factors, caseload—have been given inconsistent treatment by Congress (see Table 1).<sup>7</sup> Since the landmark 1922 Federal Judiciary Act, judgeship increases have been called for by the Judicial Conference on more than 70 occasions.<sup>8</sup> Congress, however, has authorized increases in judgeships only 20 times between 1923 and 1992. Moreover, the number, type (i.e., permanent or temporary), and location of judge-

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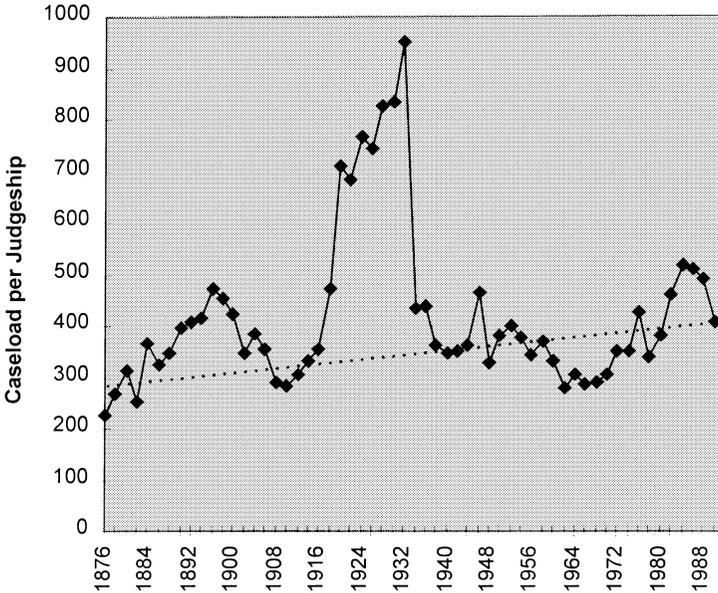
federal district courts was drawn from Posner (1985) and the U.S. Census Bureau. In order to estimate the number of cases filed from 1875 to 1903, we used the Annual Reports of U.S. Attorney General, Summary Tables (1932). The number of civil cases pending in the district courts is available during this time period. From 1904 to 1913, the average number of total cases filed was 62% of the number of civil cases pending. Using this number, we interpolated backwards to obtain an estimate of the number of cases filed from 1875 to 1903.

5. Temporary increases in workload might not result in increases in permanent judgeships. For example, during Prohibition, Congress did not appreciably increase the size of the judiciary, perhaps because it anticipated repeal of the 18th Amendment. However, in general it may be difficult for Congress to anticipate when a substantial workload increase is temporary.

6. The caseload per judgeship has increased approximately 85% from the year 1875 (228 cases/judgeship) to 1992 (421 cases/judgeship). There are a number of reasons for this overall increase. First, the support staff attached to each judge (e.g., law clerks) has increased over time. Second, technology and other productivity factors have been introduced during this time period, especially beginning in the 1960s. Third, more time is demanded of judges now than in the past (Posner, 1985).

7. Presided over by the Chief Justice and attended by the chief judges of each circuit, the Judicial Conference collects and maintains information on judicial business in the federal courts and makes recommendations to Congress on the need for additional judgeships. See Fish (1973) for a discussion of the origin, evolution, and role of the Conference in federal judicial administration.

8. Since the mid-1960s, the Judicial Conference has determined requests through a careful and considered calculation based on caseload, case content, case delay, and other factors. While this may mitigate the opportunism by the judiciary in requesting judgeships, the methodology for requests does not exclude the possibility of strategic action by the Third Branch.



**Figure 2.** Caseload per judgeship in the federal district courts, 1875–1993.

ships created on those occasions often varied from the requests of the Judicial Conference (Bermant et al., 1993).<sup>9</sup>

Now consider politics more directly. If politics matter, we would expect Congress to be more likely to expand the number of district court judgeships (and be responsive to the recommendations of the Judicial Conference) when the enacting House, Senate, and President were in partisan alignment (unified government) than when not (divided government). The logic here is that the House, having no formal control over nominations and confirmations, will be most concerned about increasing the number of judgeships because it retains no veto right over eventual nominees. Once it agrees to the creation of new judgeships, the House must accept the

9. President Jimmy Carter's judgeship bill, for example, authorized a record 152 new positions in total (at all levels of the judiciary), 22 more than requested by the Judicial Conference. The total number of judgeships authorized but not requested by the Conference, or requested by the Conference but not authorized, was 25. Another judgeship bill gave President George Bush 85 new positions at all levels of the judiciary. The disconnect between authorizations and requests in that case was 31. The bill pared nine appellate and 12 district lines from the Conference's request and added ten seats to the district bench outside of that the Conference requested.

**Table 1.** Requests of the Judicial Conference for District Court Judgeships and Subsequent Authorizations by Congress, 1924–92

Year	Congress	Requested	Authorized <sup>a</sup>
1924	68	5	3
1926	69	10	8
1928	70	6	11
1930	71	5	8
1932	72	9	0
1934	73	4	0
1936	74	8	10
1938	75	12	18
1940	76	9	8
1942	77	4	2
1944	78	3	0
1946	79	4	3
1948	80	16	18
1950	81	10	2
1952	82	20	0
1954	83	30	27
1956	84	34	0
1958	85	40	1
1960	86	49	2
1962	87	59	62
1964	88	0	0
1966	89	31	37
1968	90	66	0
1970	91	67	60
1972	92	51	0
1974	93	1	0
1976	94	106	0
1978	95	107	117
1980	96	29	0
1982	97	51	0
1984	98	0	62
1986	99	55	0
1988	100	58	0
1990	101	75	74
1992	102	16	0

<sup>a</sup>Year of authorization often comes one time period after request.

candidates nominated and confirmed by the President and Senate. If the House has ideological and patronage concerns about who gets placed on the bench, then it has little incentive to pass expansion legislation unless it knows that like-minded judges or valued supporters will be nominated and confirmed. When the Senate and President are of the same political party as the House, the House can rest assured that the “right” judges will

end up on the bench. Consequently, expansion is more likely to occur during periods of unified than divided government.<sup>10</sup>

There is evidence to support the political expansion hypothesis. Consider Table 2, on political alignments and judicial expansion. Between 1875 and 1993, 39 of 59 congresses authorized expansion of the federal district courts.<sup>11</sup> Of these 39 expansions, 28 occurred during the 34 periods of unified government; only 11 occurred during the 25 periods of divided government. We conducted a chi-square ( $\chi^2$ ) test, which allows us to reject the hypothesis that expansion is independent of political alignment at the 95% level of confidence. In addition, 387 (65%) new judgeships were authorized by unified governments during this time period, while only 206 (35%) were authorized during nonaligned governments.

We also considered the relationship of unified government to requests from the Judicial Conference. From the inception of the Judicial Conference in 1922 through 1993, when government was unified, Congress authorized 80% of the Conference's requests, as compared to but 31% under divided government.<sup>12</sup>

While this preliminary evidence suggests politics play a role in district court expansion decisions of Congress, we still are left with the question of how much it matters in comparison with caseload pressure. It may be that while partisan alignment significantly affects both the timing and size of the district court expansions, caseload plays an even more dominant role. Or, it may be that partisan alignment creates the opportunity for judicial expansion, but the size of that expansion is determined primarily

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10. Despite a recent spate of scholarly works on divided government, the role of united and divided government on judicial growth has generally received little attention. But see Mayhew (1991); Thurber (1991); Kelly (1993); Barrow, Zuk, and Gryski (1996); de Figueiredo and Tiller (1996); and Bond (1980).

11. In order to test the model, we examine as the dependent variable whether or not there has been an expansion of the federal district courts. We define an expansion as an increase in the number of permanent judgeships authorized by Congress during a two-year session. Our unit of observation is the two-year congressional session. Note that if a particular Congress passed more than one expansion, it still receives only one data point. The rationale for treating the data in this way is that the institutional alignment of the actors does not change within a congressional period. Limits on caseload data necessarily restricts our examination to the expansions that occurred between 1875 and 1993.

12. A correlation test indicates that this is statistically significant at the 95% level.

**Table 2.** Political Alignments and Judicial Expansions, 1875–1993 (59 Two-Year Congressional Terms)

	Expansion	No Expansion	Total Periods
Unified Government	28	6	34
Divided Government	11	14	25
Total Periods	39	20	59

by caseload pressure. For a better understanding of these relationships, we turn to other empirical techniques.

### 3. Econometric Analysis

#### 3.1. Method

To measure the effect of both politics (partisan alignment of the branches) and caseload on district court expansion decisions, we use a two-stage Heckman model (Maddala, 1983).<sup>13</sup> In the first stage probit equation, we examine what affects the *timing* of district court expansion. In the second stage OLS equation, we examine the determinants of the *size* of a an expansion.<sup>14</sup> Including the inverse Mills ratio in the OLS equation allows us to control for the cross-correlation effects between first-stage (timing of expansion) and second-stage (size of expansion) errors, yielding unbiased parameter estimates in the second stage.

#### 3.2. The Timing of Judicial Expansion

*3.2.1. The Data.* The dependent variable in the probit timing model is JUDICIAL EXPANSION, which is equal to 1 if there is an increase in judgeships during the congressional term, and 0 if there is no increase. The first independent variable of interest is CASELOAD PER JUDGESHIP, which measures the average annual caseload per judgeship (in thousands)

13. The Heckman model corrects for bias that may exist in testing for effects on both timing and size of expansion as the latter (size) is dependent in part on the former (timing).

14. Alternative methods were considered, including a count model and a tobit model. The Heckman model seems to be superior because it allows a separation of the size and timing effects. A discussion of these other methods can be found in de Figueiredo (1997a).

during the previous two-year congressional period. If caseload is the primary determinant of the timing of expansion, then we would expect the coefficient on this variable to be positive and significant.

The second independent variable of interest is UNIFIED GOVERNMENT. This dummy variable is equal to 1 if the House, Senate, and President are held by the same political party (unified government) and equal to 0 if one or more of these political institutions is held by an opposing party (divided government). This is the same as the political alignment variable in the previous study. A positive coefficient on this variable would indicate a political motive to expand, consistent with the partisanship-patronage explanation.

We also include five control variables. The first two control variables are designed to remove time trends from the data. TIME SINCE LAST EXPANSION is a count variable that counts off the number of congressional periods since the last expansion. It controls for the accumulation of demand for judges since the last expansion. TREND, which counts the passage of time from the beginning of the sample, controls for the unobserved variables that change regularly over time, such as technology, population, and the like. Specification tests indicate that these two variables also remove time trends in the data that would otherwise cause incorrect estimation of parameters.<sup>15</sup>

The third control variable is BUDGET GROWTH, which measures the percentage growth of the nondefense, noninterest, portion of the federal budget in the last time period.<sup>16</sup> As the United States federal government has more money, one might expect a higher propensity for Congress to allocate new judgeships. The fourth control variable is PROHIBITION, which controls for any direct judgeship expansion effects during Prohibition and is equal to 1 during PROHIBITION and 0 otherwise.<sup>17</sup> During Prohibition, the number of criminal cases in the district courts soared almost 500%, primarily due to litigation regarding the illegal production, consumption, and transportation of spirits. Between 1933 and 1934, the

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15. Specification tests indicate that these variables are necessary because there are two time trends in the data. In de Figueiredo and Tiller (1996), these same specification tests indicated that there was no need for a TREND variable, but there was a need for TIME SINCE LAST EXPANSION.

16. Over 25% of the observations are negative during the time period examined.

17. A large number of temporary judgeships were authorized in 1922 to help with the increase in cases during Prohibition.

last year of prohibition and the first year of legalization of alcohol, the number of criminal cases filed in the district courts plummeted from over 80,000 to about 33,000.

A final control variable, NEW GOVERNMENT, is a dummy variable that indicates the first congressional term of a unified government for a given political party. Studies by McNollgast (1998) and de Figueiredo and Tiller (1996) show that initial periods of unified government are more likely to see an expansion in the appellate courts. If this variable affects the timing of new judgeships, NEW GOVERNMENT should have a positive and significant coefficient.<sup>18</sup>

*3.2.2. Specification and Results.* We run two regressions to examine the effects of caseload pressure and politics on the timing of district court expansion decisions. In the first, Timing Model 1, we examine a base model including only the caseload factors and the control variables. In Timing Model 2, we include UNIFIED GOVERNMENT as a proxy for partisan-patronage politics. Table 3 reports the results of these regressions. A log-likelihood ratio test allowed us to reject the hypothesis that both models have the same explanatory power at the 99% level of confidence; Timing Model 2 performs significantly better than Timing Model 1. A positive coefficient on the variable indicates a higher probability of an increase in the number of judgeships. The standard errors are listed in parenthesis below the variables. All significance tests are two-sided asymptotic *t*-tests that are consistent in the presence of AR(1) autocorrelation and heteroskedasticity.<sup>19</sup>

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18. McNollgast examines the first four years of the new regime, instead of the first two years, which we examine here (McNollgast, 1998). We follow our methodology because there is no guarantee that a newly unified government will remain in power for four years. For example, the first Eisenhower and Clinton administrations had unified government during their first two years and divided government during their second two years. Our variable also codes every new unified government regime change. That is, if there is a unified Republican government, then a period of divided government, and a return to unified government, each initial period of unified government receives a 1 dummy, while all other periods received a 0. This is consistent throughout the data set.

19. Given that this is a time-series probit, it would be reasonable to expect some form of autocorrelation may exist. To correct for this possibility, we use a method devised by de Figueiredo to correct the variance-covariance matrix of a probit by extending the Newey-West variance-covariance transformation to the nonlinear case. This

**Table 3.** Results of Probit Analysis for Timing of Judicial Expansion of the Federal District Courts, 1875–1993

Dependent Variable: = 1 if judicial expansion, = 0 if no judicial expansion

Independent Variable	Timing Model 1	Timing Model 2
CONSTANT	2.662*** (1.078)	2.090* (1.087)
CASELOAD PER JUDGESHIP	-1.873 (1.878)	-2.429 (1.968)
TIME SINCE LAST EXPANSION	0.687* (0.346)	1.164*** (0.463)
TREND	-0.036*** (0.013)	-0.042*** (0.015)
BUDGET GROWTH	0.088 (0.152)	0.029 (0.158)
PROHIBITION	0.882 (0.912)	0.959 (0.958)
NEW GOVERNMENT	0.816 (0.720)	-0.053 (0.827)
UNIFIED GOVERNMENT		1.471*** (0.496)
Log-Likelihood	-30.31	-25.09
<i>n</i>	59	59

Note: AR(1) and heteroskedastic consistent standard errors in parentheses.

\*Significant at the 10% level.

\*\*\*Significant at the 1% level.

In Timing Model 1, only the parameter estimates on the CONSTANT and the two time-dependent variables, TIME SINCE LAST EXPANSION and TREND, are significant at the 90% level. Moreover, the positive coefficient on TIME SINCE LAST EXPANSION and the negative coefficient on TREND indicate together that as time has progressed, Congress waits longer between decisions to expand. That is, with each new Congress, there is a lower probability of an expansion, but as the time between expansion increases, Congress is more likely to authorize an expansion, all other things equal.

Caseload pressure appears to offer little in the way of explaining the timing of district court expansion. In Timing Model 2, the coefficient on

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method produces consistent standard errors for a probit in the presence of a specified autocorrelation structure and heteroskedasticity. We posit AR(1) autocorrelation and correct the standard errors using this method. See de Figueiredo (1997b) and Newey and West (1987). Tests indicate there is little multicollinearity between the independent variables.

CASELOAD PER JUDGESHIP remains insignificant, allowing us to reject the hypothesis that judicial caseload has an effect on the timing of district court expansion. The coefficient on UNIFIED GOVERNMENT, however, is positive and significant as hypothesized by the partisan-patronage explanation. Indeed, unified government increases the probability of an expansion by 39 percentage points (from 55% probability to 94%) from the mean values of the variables when compared to divided government, controlling for other factors.

The coefficients on CONSTANT, TIME SINCE LAST EXPANSION, and TREND remain significant in Timing Model 2, as they were in Timing Model 1. The significance of the parameter of the TREND variable suggests that growth in population, expansion of technology, and other annual effects can have an impact on the timing of expansions of the federal district courts. The statistically significant parameter estimate of TIME SINCE LAST EXPANSION suggests that there is some pent-up demand for judgeships as time passes that is not explained by increasing caseload. The coefficient on BUDGET GROWTH is not statistically significant, suggesting that the government expands the judiciary without much concern for a federal budget constraint. The same is true for PROHIBITION. Finally, the coefficient on NEW GOVERNMENT is close to zero in Timing Model 2 and not statistically significant. This indicates that Congress does not expand the district court with higher probability in its first term of unified government than in later terms of unified government.

### 3.3. The Size of Judicial Expansion

*3.3.1. The Data.* In this second stage, we examine the size of a judicial expansion—that is, how many judgeships are added during an expansion. The partisanship-patronage rationale would expect larger increases during unified government expansions than during divided government expansions. The caseload hypothesis would expect the increases to be tied to judicial workload. The dependent variable is NEW JUDGESHIPS, which is defined as the number of new judgeships created in each Congress from 1875 to 1993, given that there was an expansion ( $n = 39$ ). As in the timing models, the two primary independent variables of interest are CASELOAD and UNIFIED GOVERNMENT. CASELOAD measures the change in cases filed since the last expansion (in thousands). If caseload pressure drives the size of an expansion, we would expect the coefficient

on this variable to be positive and significant. UNIFIED GOVERNMENT is defined as before. If the partisanship-patronage explanation is correct, the coefficient on this variable should be positive and significant.

We introduce three control variables. The first, BENCH ALIGNMENT, controls for the political profile of the current district courts by measuring the percentage of the sitting bench that belongs to the party of the controlling president during that congressional term. If the current ideological make-up of the bench affects the size of an expansion, then we might see a statistically significant coefficient on this variable. The second control variable is NEW GOVERNMENT. It could be that the first period in a new government's tenure will be the time of the largest expansion because of the need to redirect judicial ideology. If so, we should expect a positive and significant coefficient on the NEW GOVERNMENT variable. A final control variable is MILLS, which is the inverse Mills ratio described earlier.

*3.3.2. Specification and Results.* Table 4 provides the results of the selection-corrected OLS estimation procedure. All standard errors, in parentheses below the estimated coefficients, are heteroskedastic-consistent estimates.<sup>20</sup> All *t*-statistics are reported for the two-tailed test. Both models in this section have been examined for multicollinearity and autocorrelation, and neither appears problematic.<sup>21</sup> Size Model 1, which explains 25% of the variance in the data, is the baseline model and includes the variables using all 39 observations of expansion. The coefficient on CASELOAD is positive and significant at the 90% level of confidence. The coefficient suggests that every 365 cases results in an additional judge. All other parameter estimates, including UNIFIED GOVERNMENT, are insignificant.

If we were to stop with Size Model 1, we might conclude that the timing of judicial expansion was determined by political concerns, while the actual number of judges added was determined by the amount of caseload pressure that had built up over time. One concern that may arise, however, is that the steep rise in caseload beginning in about 1970 (see

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20. There is no Granger causality from judgeships to caseload (see McNollgast, 1998).

21. A Breusch-Godfrey test for autocorrelation of the error terms rejects the hypothesis of an AR(1), AR(2), and AR(3) process at the 95% level of confidence.

**Table 4.** Results of a Two-Stage OLS Analysis of Size of Expansion of the Federal District Court, 1875–1993

Dependent Variable: Number of New Judgeships

Independent Variable	Size Model 1 (1875–1993)	Size Model 2 (1875–1970)
CONSTANT	–10.474 (13.797)	–5.137 (7.543)
CASELOAD	0.365* (0.209)	0.053 (0.153)
UNIFIED GOVERNMENT	3.772 (10.651)	9.733** (4.322)
MILLS	12.910 (11.132)	16.387 (11.283)
BENCH ALIGNMENT	–6.388 (14.167)	–2.652 (7.335)
NEW GOVERNMENT	16.570 (11.216)	8.679 (7.858)
R <sup>2</sup>	.25	.24
<i>n</i>	39	35

Note: Heteroskedastic-consistent standard errors in parentheses.

\*Significant at the 10% level.

\*\*Significant at the 5% level.

Figure 1) may have an effect on the stability of the coefficients. In order to examine the stability of the coefficients, we conducted a Chow prediction test on the sample, separating out the earlier years from the years of substantial caseload growth beginning in the 1970s (Greene, 1992).<sup>22</sup> The result of the test is that we cannot reject the hypothesis that a different model is operating before 1970 and after 1970.

Thus, we separate out the expansions before 1970 ( $n = 35$ ) and repeat the econometric specification. The results are reported in Size Model 2. The coefficient on CASELOAD is positive but not significant. However, the coefficient on UNIFIED GOVERNMENT is positive and significant. It indicates that political alignment will result in 9.73 additional judge-

22. Additional cutting points were examined for the sample. The year 1970 was selected because of its intuitive appeal (beginning of the substantial rise in caseload) and because the specification tests have indicated that this is the point where the difference in sum of squared residuals (adjusting for degrees of freedom) of the sub-samples is the greatest.

ships' being created in each expansion in the period prior to 1970.<sup>23</sup> The coefficients on all other control variables are not significant.<sup>24</sup>

### 3.4. Discussion

The timing of the district court judicial expansion appears to be closely tied to politics. Indeed, there is a 39 percentage point higher probability of an expansion in the district court during times of unified government than during times of divided government. This result is consistent, although not the same magnitude, with the findings of de Figueiredo and Tiller (1996), who have shown that in the appellate courts, caseload has no effect on the timing of expansion and that unified government increases the probability of an expansion by 53 percentage points.

Real differences between the appellate courts and district courts seem to occur, however, in the size of an expansion—that is, how many judges are added in an expansion. In their 1996 study, de Figueiredo and Tiller showed that both caseload and political factors concurrently drive the size of an expansion in the appellate courts. This does not appear to be the case for federal district court expansion. Taken together, the results of Size Model 1 and Size Model 2 indicate that before 1970, Congress seemed to be most concerned about ideology or patronage, letting the size of the bench be determined primarily by these political factors. As caseload was relatively stable prior to 1970, it was easy for Congress to mete out ideological and patronage agendas through partisan expansion and appointments with little concern for caseload pressures on the district courts. By

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23. We have run the statistical tests using Judicial Conference requests from 1922 to 1993. The Judicial Conference requests judgeships during every Congressional period, so it is not clear that the actual request affects timing of judicial appointments. In a regression with the Judicial Conference variable, we do get a positive and significant coefficient on the size of requests. However, the coefficient is very unstable and the model fails most specification tests because there are only 21 observations of expansion during this time period.

24. Note, however, that the coefficients on BENCH ALIGNMENT and NEW GOVERNMENT have the signs hypothesized but have large standard errors. One reason for this insignificant result of BENCH ALIGNMENT may be the measurement of the variable (judge party affiliation). Merely looking at party affiliation, although a good measure for ideological leanings of legislators who must be re-elected each term, may be a poor measure of judicial ideology, where individual judges are appointed for life. Another possible reason for these results is that judicial make-up of the bench does not matter. Only a better measure of ideology will be able to distinguish between these two explanations.

1970, however, Congress had switched its focus from political concerns toward caseload pressures. With the dramatic rise in caseload occurring in the 1970s, it appears that Congress became more concerned about the efficient processing of cases rather than ideological or patronage gains. One source of this shift may be that between 1970 and 1992, there was only one four-year period (1977–1980 inclusive) during which government was politically unified. Therefore, there have been few opportune moments for Congress to expand the judiciary for political reasons. Facing enormous caseload, Congress had to respond to the crisis in the district courts by adding more judgeships.

#### **4. Conclusion**

Expanding the number of judgeships during unified government allows Congress and the President to engage in patronage and policy control of the federal district courts. During periods of divided government, an expansion could leave the House vulnerable since the President and Senate, who retain *ex post* power over the appointment and confirmation processes for the newly created judgeships, could install judges politically at odds with the House. Unified government ensures the House that like-minded judges will be appointed and confirmed by the President and Senate, all hailing from the same party that dominates the House. This political explanation for district court expansion conflicts with the view that only caseload pressures drive the expansion of the judiciary.

In this article, we demonstrated that politics affects the timing of an expansion in the U.S. district courts. This is consistent with earlier research on the expansions of the Supreme Court and appellate courts, where politics was found to drive the timing of expansion. However, both politics and caseload have affected the size of district court expansion. Before 1970, Congress seemed to have strong political motivations for how many judges would be added during an expansion. After 1970, Congress became much more attentive to caseload considerations. These results differ from those of an earlier analysis performed on the circuit courts that showed that politics and caseload determines the size of expansion over the entire time period.

## References

- Aliotta, Jilda M. 1988. "Combining Judges' Attributes and Case Characteristics: An Alternative Approach to Explaining Supreme Court Decisionmaking," 71 *Judicature* 277–81.
- Ashenfelter, Orley, Theodore Eisenberg, and Stewart J. Schawb. 1995. "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes," 24 *Journal of Legal Studies* 257–81.
- Barrow, Deborah, Gary Zuk, and Gerald Gryski. 1996. *The Federal Judiciary and Institutional Change*. Ann Arbor: University of Michigan Press.
- Bermant, Gordon, W. Schwarzer, E. Sussman, and R. Wheeler. 1993. *Imposing a Moratorium on the Number of Federal Judges*. Washington DC: Federal Judicial Center.
- Bond, Jon R. 1980. "The Politics of Court Structure: The Addition of New Federal Judges, 1949–1978," 2 *Law and Politics Quarterly* 181–88.
- Cameron, Charles M., Albert D. Cover, and Jeffery A. Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model," 84 *American Political Science Review* 525–34.
- Cross, Frank B., and Emerson H. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeal," 107 *Yale Law Journal* 2155–76.
- de Figueiredo, John M. 1997a. *The Politics of the Court and the Strategy of the Firm*. Ph.D. dissertation, University of California, Berkeley, Haas School of Business.
- de Figueiredo, John M., and Emerson H. Tiller. 1996. "Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion of the Federal Judiciary," 39 *Journal of Law and Economics* 435–62.
- de Figueiredo, Rui J. P., Jr. 1997b. "Political Uncertainty, Policy Insulation and Endogenous Budgetary Institutions: Why States Adopt the Line Item Veto." Manuscript, University of California, Berkeley.
- Epstein, Lee. 1995. *Contemplating Courts*. Washington, DC: Congressional Quarterly Press.
- Eskridge, William N., Jr. 1991. "Overriding Supreme Court Statutory Interpretation Decisions," 101 *Yale Law Journal* 331–450.
- Fish, Peter G. 1973. *The Politics of Federal Judicial Administration*. Princeton, NJ: Princeton University Press.
- Greene, William H. 1992. *Econometric Analysis*. New York: MacMillan.
- Grossman, Joel B. 1966. "Social Backgrounds and Judicial Decisionmaking," 79 *Harvard Law Review* 1551–64.
- Kelly, Sean Q. 1993. "Divided We Govern? A Reassessment," 25 *Polity* 475–84.
- Maddala, G. S. 1983. *Limited-Dependent and Qualitative Variables in Econometrics*. Cambridge: Cambridge University Press.

- Mayhew, David R. 1991. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–1990*. New Haven, CT: Yale University Press.
- McNollgast. 1995. "Politics and the Courts: A Positive Theory of Judicial Doctrine and the Rule of Law," 68 *Southern California Law Review* 1631–83.
- . 1998. "Packing the Courts: The Politics of Creating Federal Judgeships," Manuscript, Stanford University, Institute for Economic Policy Research.
- Newey, Whitney K., and Kenneth D. West. 1987. "A Simple, Positive Semi-Definite Heteroskedasticity and Autocorrelation Consistent Covariance Matrix," 55 *Econometrica* 703–8.
- Posner, Richard A. 1985. *The Federal Courts: Crisis and Reform*. Cambridge, MA: Harvard University Press.
- Schultz, Vicki, and Stephen Petterson. 1992. "Race, Gender, Work, and Choice: An Empirical Study of the Lack of Interest Defense in Title VII Cases Challenging Job Segregation," 59 *University of Chicago Law Review* 1073–180.
- Segal, Jeffery A. 1987. "Senate Confirmation of Supreme Court Justices: Partisan and Institutional Politics," 49 *Journal of Politics* 998–1015.
- Spiller, Pablo T., and Rafael Gely. 1992. "Congressional Control or Judicial Independence: The Determinant of Supreme Court Labor-Relations Decisions, 1949–1988," 23 *Rand Journal of Economics* 463–92.
- Spiller, Pablo T., and Emerson H. Tiller. 1996. "Invitations to Override: Congressional Reversals of Supreme Court Decisions," 16 *International Review of Law and Economics* 503–21.
- Spriggs, James F., and Paul Wahlbeck. 1995. "Calling It Quits: Strategic Retirement on the Federal Courts of Appeals, 1983–1991," 48 *Political Research Quarterly* 573–97.
- Starr, Kenneth. 1992. "The Supreme Court and the Federal Judicial System," 42 *Case Western Reserve Law Review* 1209–22.
- Thurber, James A., ed. 1991. *Divided Democracy*. Washington, DC: Congressional Quarterly Press.
- Toma, Eugena F. 1991. "Congressional Influence and the Supreme Court: The Budget as a Signaling Device," 20 *Journal of Legal Studies* 131–46.
- U.S. Attorney General Office. 1932. *Annual Reports of U.S. Attorney General*, Summary Tables and various.