# Jobs for Justice(s): Corruption in the Supreme Court of India

Madhav S. Aney[1], Shubhankar Dam[2], and Giovanni Ko*[3]

[1]*School of Economics, Singapore Management University*
[2]*School of Law, University of Portsmouth*
[2]*Columbia Law School*
[3]*School of Social Sciences, Nanyang Technological University Singapore*

November 30, 2017

**Abstract**

We investigate whether judges respond to pandering incentives by ruling in favour of the government in the hope of receiving jobs after retiring from the Court. We construct a dataset of all Supreme Court of India cases involving the government from 1999 till 2014, with an indicator for whether the decision was in its favour or not. We find that pandering incentives have a causal effect on judicial decision-making, where we define pandering incentives as being jointly determined by 1) the salience of the case (exogenously determined by a system of random allocation of cases) and 2) whether the judge retires with enough time left in a government's term to be rewarded with a prestigious job (since the date of retirement is exogenously determined by law to be their 65th birthday). We also find that authoring judgements in favour of the government is positively associated with the likelihood of being appointed to a prestigious post-Supreme Court job. These findings suggest the presence of corruption in the form of government influence over judicial decisions that seriously undermines judicial independence.[1]

*Keywords*: judicial decision-making, corruption, separation of powers, career concerns, public sector incentives

*JEL codes*: D73, H11, K40

*Corresponding author. gko@ntu.edu.sg. +65 6790 6736. 14 Nanyang Drive, Singapore 637332.

[1]We thank Konrad Burchardi, Parkash Chander, Davin Chor, Dhammika Dharmapala, Steven Durlauf, Alexander Christoph Fischer, Tom Ginsburg, William H.J. Hubbard, Brian P. Kennedy, Nuarpear Lekfuangfu, Lin Feng, Vikramaditya Khanna, Lawrence Lessig, Anirban Mitra, Omer Moav, Abhiroop Mukhopadhyay, Mark Ramseyer, Yona Rubinstein, Tom Sargent, Prakarsh Singh, Sujata Visaria, Yasutora Watanabe and seminar participants at Singapore Management University, City University of Hong Kong, Hong Kong University of Science and Technology, IDC Herzliya, Bar-Ilan University, Australasian Public Choice Conference, and the ISI Annual Conference on Growth and Development, Colloquium on the Supreme Court of India organised by Jindal Global Law School, ISI Delhi, American Law and Economics Association Conference, and one anonymous referee for valuable comments and suggestions. We also thank our project manager Dominic Liew and research assistants Alwyn Loy, Chong Shou Yu, Charlene Chow, Glenda Lim, Kartik Singh, Nicole Chan, Nicole Ann Lim, Persis Hoo, Shirlene Leong and Teo Ting Wei. The views expressed here are solely those of the authors.

# 1 Introduction

The fact that many public servants have careers after their tenure in public service has long been thought to create conflicts of interest.[2] In response to this concern, many countries constrain former public servants by requiring a cooling-off period after retirement before they seek fresh employment. However, such constraints rarely apply to retired judges.[3] In countries with term limits for judges, it is common for retired judges to go on to have careers in the public and private sectors. This practice raises the possibility that the prospect of post-retirement appointments influences judicial decision making. If true, this compromises the idea of a fair and independent judiciary,[4] a critical feature of a well-functioning representative democracy. In this paper, we investigate the practice of awarding government jobs to retired judges, and show that the concerns surrounding it are in fact valid.

We examine this practice in the context of India. Over the last 15 years, it has become increasingly common for retiring Supreme Court Justices in India to be appointed to prestigious government positions. This has been criticised as leading to a bias in favour of the government when judges decide cases with high stakes that are important to the government.[5] In this context, critics allege that corruption takes the form of the following quid-pro-quo: judges *pander* to the government by ruling in its favour and in exchange, the government *rewards* judges who have done so with jobs. This raises a natural question that we confront in this paper: do judges actually respond to pandering incentives by ruling in favour of the government to secure post-retirement jobs? In this paper, we answer this question in the affirmative.

To do so, we constructed a novel dataset of cases decided by the Supreme Court of India between 1999 and 2014 involving the government. We analysed the full text of the judgements and coded whether the government won or lost the case.

The key identification challenge is that a correlation between favourable judicial decisions and government appointments after retirement may be driven simply by characteristics of judges such as, for example, their suitability for particular appointments or their ideology, rather than by manipulation of judicial decisions to secure such appointments. As such, judicial decision-making may be invariant to incentives and may merely reveal a judge's "type" rather than indicate the presence of corruption. To address this concern it is necessary

[2]There is an emerging empirical literature that suggests that individuals with government experience derive substantial value as lobbyists from their connections to serving politicians. See for example Bertrand, Bombardini, and Trebbi (2014) and Vidal, Draca, and Fons-Rosen (2012). It is therefore plausible that the prospect of such lobbying roles affects their behaviour when they serve in government. See Dal Bó (2006) for a review of the literature on revolving doors and regulatory capture.

[3]See chapter 3 of Garupa and Ginsburg (2015) for an extensive discussion of the practice of awarding jobs to judges across different countries.

[4]Judicial independence is typically defined as independence from the parties to the dispute, that is, the judge does not expect his welfare to be affected by whether he decides in favour of one party or the other. More specifically it is also seen as independence from government influence when it comes to judicial decision making. See Ramseyer (1998) for a discussion of the idea of judicial independence and a survey of the literature.

[5]We present some of the public discourse surrounding this issue in section 7.

to isolate the causal effect of pandering incentives on judicial decision making.

In our framework, the exposure of a judge to *pandering incentives* in a case is jointly determined by 1) whether the case is salient and 2) whether the judge retires with enough time (at least one year) left in a government's term to be rewarded with a prestigious job. The institutional architecture of the Supreme Court of India has two unique features that ensure that these pandering incentives are plausibly exogenous. First, salience, i.e., whether the case is of special importance to the government, is plausibly exogenous because cases are randomly assigned to judges. Second, the time between the retirement of a judge and the date of the next election is exogenous in our sample for two reasons: all judges retire on their 65th birthday; all governments served their full terms and elections were regularly held at 5-year intervals.

We therefore use a difference-in-differences approach where the two dimensions of variation are the salience of a case and the time between a judge's retirement and the next election. We can think of benches with judges retiring long before an election as "treatment" benches and those with judges retiring shortly before an election as "control" benches. Our identification strategy relies on the assumption that, although there could be differences between salient and non-salient cases due to factors other than pandering incentives, these differences do not vary between treatment and control benches.

Using this methodology, we find that judges who have *pandering incentives* are more likely to rule in favour of the government. We interpret this result as the causal effect of pandering incentives on judicial behaviour.

Furthermore, we attempt to characterise the channel through which pandering incentives work and find that the mechanism consists of actually being the author of judgements rather than simply being on a bench that decides the case in favour of the government. On the "rewards" side, we show that authoring decisions in salient cases in favour of the government is positively correlated with whether or not the judge is appointed to prestigious post-Supreme Court jobs. Similar to the results on the nexus between bureaucrats and politicians in India presented in Iyer and Mani (2012), these results suggest that pandering to the government may be a path to a post-retirement appointment.

A large literature analyses the question of judicial independence. In the context of the US, Ashenfelter, Eisenberg, and Schwab (1995) find that there is no effect of the ideology of the president who appoints a judge on judicial decisions in federal trial courts. Ramseyer and Rasmusen (1997) present evidence suggesting that in Japan, where judges are appointed to the national judiciary and not to specific courts, deciding against the ruling party leads to worse assignments when judges are transferred. In Argentina, Iaryczower, Spiller, and Tommasi (2002) find that although judges do decide against the government, the likelihood of doing so is higher when the government is unlikely to survive. Helmke (2002) also finds similar results that suggest there is a strategic dimension to judicial decision making. Black and Owens (2016) show that US circuit judges, who have a good chance of being appointed to the US Supreme Court, are more likely to decide in line with the president's ideology

when a vacancy arises on the Supreme Court. Similar results are documented in Epstein, Landes, and Posner (2013). On the other hand Salzberger and Fenn (1999) find that in the UK, reversing favourable lower court decisions does not harm the chances of promotion to the House of Lords from the Court of Appeal. Our paper adds to this literature by using the combination of random allocation of cases and fixed retirement dates to rule out ideology-based explanations of judicial behaviour and isolate the causal effect of incentives on judicial decisions.

Our paper also contributes to the growing empirical literature on legal realism that examines how judicial decisions are affected by factors unrelated to legal reasoning. Lim, Snyder, and Strömberg (2015) show that sentence lengths are increased significantly by newspaper coverage of the case. Chen, Moskowitz, and Shue (2016) document a negative autocorrelation in refugee asylum court cases unrelated to their merits, suggesting that the gambler's fallacy is at work – judges underestimate the likelihood of sequential streaks occurring by chance. Boyd, Epstein, and Martin (2010) document the existence of systematic differences in decisions of male and female judges. Danziger, Levav, and Avnaim-Pesso (2011) show that the likelihood of a favourable parole decision sharply increases after a judge's lunch break. Our paper adds economic incentives in the form of career concerns to the list of the factors that may affect judicial decisions. In attempting to understand of how career concerns affect outcomes in the public sector, our paper complements the empirical literature on career concerns which focuses mostly on incentives within the firm, such as executive compensation.[6]

Finally, our paper is related to the empirical literature on identifying and measuring corruption at an aggregate institutional level.[7] More specifically, our paper is related to the literature on corruption that seeks to understands the determinants of corruption and what can be done about it. Bobonis, Fuertes, and Schwabe (2016) document how variation in the time at which a municipal government in Puerto Rico is audited, relative to the date of election, enables voters to identify corruption and select responsive politicians. Similar results are seen in Ferraz and Finan (2008).[8] As highlighted in an insightful survey by Olken and Pande (2012), this literature reinforces the centrality of incentives in shaping corruption. Since corruption in these settings arises from poorly designed incentives, a strength of this literature is the existence of clear policy implications.

[6]Notable exceptions are Schneider (2005) and Li and Zhou (2005). For an insightful discussion of incentive reforms in the public sector, see Mookherjee (1997). For theoretical work on the effect of career concerns of judges and lawyers on litigation see Levy (2005) and Ferrer (2015).

[7]Surveys include Banerjee, Hanna, and Mullainathan (2012), Pande (2007), and Sukhtankar and Vaishnav (2015). See Lessig (2013a) and Lessig (2013b) for a discussion of the idea of institutional corruption in law. The notion of institutional corruption was originally developed by Thompson (1995) to explain the US Congress' deviation from its proper purpose because of the influence of several systemic features of the legislative process. Applications include Williams (2013) in the context of dissemination of research for the benefit of funders; Youngdahl (2013) and Fox (2013) in the context of misalignment of incentives in the design and sale of financial products; Rodwin (2013) in the context of the interaction between pharmaceutical firms and prescribing physicians; Mendonca (2013) and Laver (2014) in the context of judicial independence in Latin America.

[8]See Callen and Long (2015), Ferraz and Finan (2011), and Niehaus and Sukhtankar (2013) for more examples of settings where corruption is identified as arising from specific incentives.

In line with the empirical literature on corruption, we present *statistical* evidence of corruption, that is, we find that the existence of corruption is the most parsimonious and compelling explanation that fits the data at an aggregate level. Given the statistical nature of our study we are unable to identify the presence of corruption in a particular case or by a particular judge. Therefore, our use of the term corruption should not be understood to refer an individual instance of corruption by a particular judge. It is also important to note that the incentives that shape judicial behaviour in our setting are not necessarily financial in nature: the attraction of these jobs may be largely due to the influence the holders continue to wield on policy matters, rather than the salary and perks associated with these jobs.[9]

Our paper is of interest for three reasons. First, our paper identifies the causal effect of career-concern incentives on judicial decision making. Second, we identify corruption in a very high-profile institution subject to intense public scrutiny, where one would expect it to be subtle and hard to detect. Finally, the kind of corruption we uncover is systemic in nature and shaped by incentives, rather than being a "type"-based phenomenon that is created by bad behaviour of some "rotten apples". Hence, our findings suggest a clear role for institutional reform in addressing the problem.

The rest of the paper is organised as follows. We describe the institutional background of the Supreme Court of India in section 2, the data in section 3 and the empirical strategy in section 4. In section 5, we present our main results about the presence of pandering, together with robustness checks. In section 6, we explore the channels through which pandering occurs. In section 7, we present evidence that the government rewards pandering with post-Supreme Court jobs. We provide concluding remarks in section 8.

# 2 Institutional background

The Supreme Court of India is the apex court for the largest common law judicial system in the world (Chandra, Hubbard, and Kalantry 2017). It decides both appeals from lower courts and fresh petitions. Compared to supreme courts in other countries, it has a very high case load. For example, in 2009, 77,151 cases were filed and 71,179 were decided. This makes the Supreme Court of India an outlier when compared to Supreme Courts of other countries, when it comes to access and the number of decisions (Green and Yoon 2016).

In response to perceived inaction by the executive and the legislature, the Supreme Court has expanded its remit to matters traditionally within the purview of those branches of government. It routinely strikes down actions by government agencies at all levels and issues orders on policy matters as diverse as pollution, sexual harassment, etc. As noted by Robinson (2013), "despite the range of matters, or perhaps partly because of this diverse and heavy

[9]We follow the Bardhan (1997) definition of corruption as the use of public office for private gain rather than the narrower definition in Shleifer and Vishny (1993) of corruption as the sale of government property for personal gain. Moreover, the term corruption used in this article should not be read as meeting the *legal* standards prescribed in the Prevention of Corruption Act, 1988, India. Instead, it is intended to be understood in the way it is ordinarily used in the English language.

workload, the Indian Supreme Court has become well known for both its interventionism and creativity." Unlike the US Supreme Court, which is chiefly concerned with norm elaboration, Chandra, Hubbard, and Kalantry (2017) show that the Indian Supreme Court also emphasises the goal of correcting errors case-by-case and thus regularly overturns lower court decisions. As such the court is relatively unconstrained in how it decides cases and this discretion potentially creates an opening for other factors, such as pandering incentives, to play a role in decision making.

Since 2008, the Constitution of India provides for up to 31 Supreme Court Justices.[10] Between 1986 and 2008, the number was limited to 26. However, the actual number of judges has always been less than 31, with the number in January 2017 being 23. The Chief Justice of India (henceforth CJI) is the most senior Justice of the Court with additional powers in the appointment of Justices and the allocation of exceptional cases, as discussed below.

## 2.1 Allocation of cases

In the Supreme Court of India, a *bench* is a group of judges who jointly hear and decide a case. Benches are always composed of at least two judges. Ordinarily, a case is heard by a two-judge bench, but in the uncommon occasions when the two judges disagree or the case is of exceptional importance, the CJI constitutes a larger bench of three or more judges to hear that particular case.

Before 1994, the allocation of cases to benches was at the discretion of the Registry of the Supreme Court. There was widespread suspicion that this discretion led to "bench-hunting", i.e., colllusion between lawyers and the Registry to manipulate the allocation of cases to more favourable benches. In response to this problem, the Supreme Court switched to a system of random computerised allocation of cases to benches. In private correspondence with the authors, a former Registrar General of the Supreme Court who was in service when the new system was introduced, described the change as follows:

> Computerized system of filing and processing with random system of allocation of petitions to different benches was done with that end that is to save on manual labour, bring more speed and efficiency. [...] At the same time it also eliminated the possibility of "forum shopping" or in other words "bench hunting" by lawyers.

The Handbook of the Supreme Court also emphasises that the allocation of cases to benches by the current system is manipulation-proof, stating that

> Since the allocation is made by computer, [...] there is no scope for any Bench-Hunting. (Section VI.A.i)

Since benches composed of three or more judges are constituted by the Chief Justice to hear particular cases, the composition of the benches in these cases is endogenous to case

[10] See Robinson (2013) and Chandra, Hubbard, and Kalantry (2017) for an insightful exposition of the institutional background of the Supreme Court of India.

characteristics and we drop such cases from our analysis. Therefore, our sample is composed solely of cases decided by two-judge benches.[11]

## 2.2 Appointment and retirement of judges

Since the mid-1990s, in response to calls for increased judicial independence, the appointment of judges to the Supreme Court has been the exclusive prerogative of the Supreme Court itself.[12] The CJI, heading a panel composed of other Supreme Court Justices, appoints new Justices from a pool of (state-level) High Court judges and, in exceptional cases, eminent Supreme Court lawyers. Therefore, unlike courts such as the US Supreme Court, the executive and legislative branches of government play no active role in the appointment process. The appointment of the CJI is mechanical by convention: at any given time, he is the judge with the longest tenure in the Supreme Court.[13]

According to Article 124 of the Indian constitution, Supreme Court Justices must retire from the Court on their 65th birthday. Hence, their retirement date is exogenously determined by their date of birth.[14]

After retiring from the Supreme Court, judges are constitutionally barred from practising law in any Indian court. Many continue to work as arbitrators in private disputes or as members of government commissions. The largest employer of ex-Supreme Court judges is the Union government of India (henceforth government). Appointments to government positions are considered prestigious and desirable by judges, as these enable them to continue influencing policy. Due to their prestige, competition for these positions is fierce. These appointments are made by the executive and are consequently politically driven. This appointment process is not transparent and is widely believed to be subject to lobbying by judges and internal machinations within the government.

Hence, although the government has no active role in appointing judges to the Supreme Court, it wields substantial influence over them by controlling their post-Supreme Court job prospects, as we demonstrate in later sections. This is in contrast to the US, where the appointment process to the Supreme Court is heavily politicised but the government wields little influence over judges once their appointment is finalised. The two systems differ in how

[11] One potential concern is that cases decided during our sample period were actually allocated to benches before the randomisation system was introduced in 1996. This is not a concern for our sample since, in every case, at least one judge was appointed after 1996, so that the bench must have been constituted after the change.

[12] This change was enacted by the Supreme Court itself in its decision on the Supreme Court Advocates-on Record Association vs Union of India case of 1993. In 2015 the government amended the Indian Constitution to wrest some of the power of judicial appointment from the Supreme Court. However, in a case where this constitutional amendment was challenged, the Supreme Court struck it down as being unconstitutional. As a result the court continues to fully control the appointment of judges.

[13] Since the Supreme Court Advocates-on Record Association vs Union of India case of 1993, there has been no deviation from this convention. Note that although there have been female Supreme Court Justices, we use masculine pronouns throughout when referring to judges since the court has been overwhelmingly composed of men.

[14] In principle, judges could choose to retire earlier than this, but this only happened for one judge in our sample period. We discuss our treatment of this case in section 3.

the government tries to influence the Supreme Court: in the US, it does so by manipulating the *type* of judges who are appointed to the Court; in India, it does so by incentivising judges to manipulate their *actions* through control of post-retirement job prospects.

# 3 Data

In this section, we describe the sources and features of the data we use in this paper. We use three kinds of data: information about cases decided by the Supreme Court, information about judges' tenures in the Court and information on the jobs they received after retirement from the Court.

## 3.1 Case data

The Supreme Court of India has a very high case load. In the 15 years between 1999 and 2014, there were 957,085 cases instituted and 848,808 cases decided by the court.[15] Most of these case (over 88% in the 15 years in our sample) are disposed of at the admission stage, in a process that is analogous to desk rejection from a journal. Even most cases that pass the admission stage are not reported in publicly available databases since they only report important decisions that involve at least some determination on a procedural or substantive legal matter. In this section, we describe the restrictions we place on the *reported* cases for generating our sample.

Using the SCC Online database, we collected the decisions of the Supreme Court between 1999 and 2014.[16] We use this time period since the governments elected between 1999–2014 have served out their full terms and elections have occured every five years in this period, and this will be a key part of our identification strategy.[17]

Our sample is composed of all cases that satisfy the following criteria:

- We only focus on judgements and orders where the "Union of India" appears as one of the parties. The phrase "Union of India" is how the Union government of India is identified in court cases. This leaves us with the full text of 2,605 decisions involving the government.
- We further restrict our attention to cases officially classified as *judgements*, not orders. This is because it is difficult to pander through orders for two reasons. First, a judgement is a decision on a point of law whereas an order is a procedural or summary decision. As such, orders are of minor importance relative to judgements and are unlikely to be noticed by the government.[18] Second, the name of the judge writing a judgement is

[15] See the Indian Judiciary Annual Report 2015-16.

[16] SCC Online is widely acknowledged to be the most comprehensive database of Supreme Court of India cases, used by lawyers and legal scholars.

[17] There were 3 elections between 1996 (when the randomisation of case allocation was introduced) and the start of our sample in 1999 with none of the governments serving their full term.

[18] Examples of orders are joining several cases into one, remanding a case to a lower court, etc.

always explicitly identified but this is almost never the case for orders. Hence, in most cases, it is not possible for the government to pinpoint the judge who wrote a favourable order. This also presents the empirical problem of identifying orders with the judges who made them. This leaves us with 941 judgements.

- As discussed in section 2.1, we only consider cases decided by a two-judge bench since only these cases are randomly assigned to benches. This reduces the sample to 742.
- We only consider cases where both judges retired before March 2015, the beginning of data collection. This leaves us with 687 cases.
- We only include cases where the decision was unambiguously for or against the government, as described below (although we test for robustness of our results to varying this criterion). There were 20 cases where the winner could not be unambiguously identified. This leaves us with a sample of 667 cases.
- We further restrict our sample to cases where only one of the two judges wrote a judgement (although our results remain unchanged to varying this criterion since there are only 6 cases with 2 judgements). Our sample is composed of the 661 cases that satisfy these criteria.

For each case, we wrote a computer program to parse the full text of the judgement to extract information on the date of the judgement, word count of the judgement, whether the case was an appeal or a fresh petition, whether the government was an appellant/petitioner or respondent, the names of judges deciding the case, the name of the judge who wrote the judgement, whether the CJI was one of the judges, and whether the Attorney General of India, the Solicitor General of India, or an Additional Solicitor general of India represented the government in the case. We also extracted information on the number of Senior Advocates and the number of lawyers that appeared in the case.

Finally, a key case-level variable is whether the government won or lost. We hired second- and third-year law students as research assistants (RAs). Their task was to read the full text of each judgement and input whether the government won or lost. Data entry was carried out through an online platform we designed.[19] The interface allowed for three options, namely, the government won, the government lost or the winner was not unambiguously identifiable. Each case was initially randomly assigned to two RAs. If the two RAs disagreed in their coding, the case was randomly assigned to a third RA.[20] This happened in less than 10% of the cases. The interface also allowed RAs to rate their confidence (high/low) in their own coding of each case. This was consistently high except for those cases with disagreements. The summary statistics for these case level variables is are reported in table 1.

[19]Screenshots of the online platform and instructions to the RAs are available upon request.

[20]Since there were three options, it is possible that disagreements persist even with three RAs, but this never occurred in our sample.

Table 1: Case summary statistics

| | Mean | Std. Dev. | Min | Max | Factor loading |
|---|---|---|---|---|---|
| UOI won | 0.604 | 0.490 | 0 | 1 | |
| Number of judges retiring far | 1.396 | 0.658 | 0 | 2 | |
| Appeal (1) Petition (0) | 0.841 | 0.366 | 0 | 1 | |
| UOI role: Appellant/petitioner (1) Respondent (0) | 0.404 | 0.491 | 0 | 1 | |
| CJI present in case | 0.0182 | 0.134 | 0 | 1 | |
| Senior judge's tenure at case decision date | 4.440 | 1.293 | 0.784 | 9.816 | |
| Junior judge's tenure at case decision date | 1.507 | 0.943 | 0 | 5.052 | |
| Years from decision to election | 2.356 | 1.349 | 0.00274 | 5.036 | |
| Number of Attorneys General | 0.0242 | 0.154 | 0 | 1 | 0.1090 |
| Number of Solicitors General | 0.0424 | 0.202 | 0 | 1 | 0.2406 |
| Number of Additional Solicitors General | 0.461 | 0.554 | 0 | 3 | 0.2338 |
| Number of Senior Advocates | 1.457 | 1.952 | 0 | 22 | 0.6716 |
| Number of Advocates | 11.89 | 16.96 | 0 | 186 | 0.6516 |
| Salience | 0 | 1.000 | -0.927 | 11.04 | |
| Observations | 661 | | | | |

The factor loading column displays the factor loadings of the 5 measures of salience for the first principal component. The eigenvalue of the first principal component is 1.78.

## 3.2 Judge data

For each Justice of the Supreme Court, we collected information on their date of birth, date of appointment to the Supreme Court, date of retirement from the Court and date of elevation to the office of Chief Justice, if ever.

Using this information, we define the variable "*retired long before*" as a dummy that takes value 1 if the judge retired at least one year before the next general election, 0 otherwise. During our sample period 1999–2014, elections occurred at regular five-year intervals as all governments served their full term. Since, as discussed in section 2.2, the retirement date of judges in our sample is their 65th birthday, the "retired long before" variable is mechanically determined by their date of birth and the date of the next election after retirement.[21]

The tenures of all judges in our sample are depicted in fig. 2 in appendix A.1. The black bars represent the tenures of judges who retired long before an election, while the hatched ones represent the tenures of judges who retired shortly before an election. The vertical lines represent general election dates, with the blue lines representing elections won by the UPA (2004 and 2009) and saffron representing the NDA (1999 and 2014).

[21]The only exception was Justice Dalveer Bhandari, who retired on the day he was elected to the International Court of Justice (ICJ), six months before his 65th birthday. We code his "retirement date" as his 65th birthday, as his appointment to the ICJ was unforeseen during almost all of his tenure on the Supreme Court. In any case, we repeat our analysis excluding the 64 cases decided by him in our sample and our results remain unchanged. Another exception was Justice M. Srinivasan who died on 25 February 2000 before his 65th birthday but did not decide any cases in our sample.

## 3.3 Jobs data

We collected information on government positions taken up by Supreme Court Justices after their retirement from the Court. In particular, we collected information on the position and the date of appointment to that position. Whenever possible, we obtained this information from notifications published in the official Gazette of India. However, as the archives of the Gazette are incomplete, we supplemented this with an extensive search of newspaper reports and of the archives of bodies to which ex-Supreme Court Justices are commonly appointed. Since these are prominent positions, we are confident that our search was exhaustive.

We define a *post-Supreme Court (post-SC) job* as one awarded by the Union government to a retired Supreme Court Justice. Examples include Chairman or Member of the National Human Right Commission, Competition Appellate Tribunal, Law Commission of India and Press Council of India. We provide a full list in table 11 in appendix A.1. For a judge who is appointed to several post-SC jobs over time, we consider the first job as his post-SC job, since appointment to later jobs is likely to be affected by his performance in previous post-SC jobs rather than pandering while being an active judge.

From time to time, the Supreme Court constitutes committees to investigate issues that arise in specific cases and appoints ex-SC judges to these committees. We exclude these jobs since they are not awarded by the executive and are therefore unrelated to the type of corruption we investigate here. The summary statistics for judge level variables are reported in table 2.

Table 2: Judge summary statistics

| | Mean | Std. dev. | Min | Max |
|---|---|---|---|---|
| Number of cases | 18.361 | 18.918 | 1 | 132 |
| Number of cases, UOI won, salient (75th pctile), author | 1.278 | 1.944 | 0 | 9 |
| Number of cases, UOI won, salient (75th pctile), non-author | 1.278 | 1.213 | 0 | 4 |
| Number of cases, UOI lost, salient (75th pctile), author | 1.000 | 1.695 | 0 | 11 |
| Number of cases, UOI lost, salient (75th pctile), non-author | 1.000 | 1.210 | 0 | 5 |
| Number of cases, not salient | 13.806 | 15.696 | 0 | 109 |
| Number of cases, UOI won, AG or SG, author | 0.458 | 0.934 | 0 | 4 |
| Number of cases, UOI won, AG or SG, non-author | 0.458 | 0.670 | 0 | 2 |
| Number of cases, UOI lost, AG or SG, author | 0.153 | 0.494 | 0 | 3 |
| Number of cases, UOI lost, AG or SG, non-author | 0.153 | 0.433 | 0 | 2 |
| Number of cases, AG or SG not present | 17.139 | 18.039 | 0 | 127 |
| Obtained a job from government in power at retirement | 0.361 | 0.484 | 0 | 1 |
| Years from retirement until post-SC job | 1.340 | 2.379 | -0.885 | 8.633 |
| Tenure (years) | 5.078 | 1.604 | 3.000 | 9.929 |
| Was CJI | 0.153 | 0.362 | 0 | 1 |
| Observations | 72 | | | |

The statistics for "Years from retirement until post-SC job" are only computed for the 26 judges who obtained a job from the government in power at the time they retired.

# 4 Empirical strategy

We focus on corruption in the form of *pandering*, i.e., judges manipulating decisions in salient cases in favour of the government in order to increase the likelihood of obtaining a post-SC job. At the case level, pandering occurs if the judges decide in favour of the government when, based on the merits of the case, the opposite decision should have been made.[22] Unfortunately, as any assessment of the merits of a case is inherently subjective, it is practically infeasible to use this approach to identify pandering in our sample of 661 cases.

Instead, we can *statistically* identify the presence of pandering by comparing benches composed of judges who have stronger incentives to pander to those who have weaker incentives to pander. We define pandering incentives as being jointly determined by

1. the salience of the case, *and*
2. whether the judge retires long enough before an election.

Our measure for the *salience* of a case is an index comprising the five following variables: the number of 1) Attorneys General, 2) Solicitors General, 3) Additional Solicitors General, 4) Senior Advocates, and 5) Advocates that appeared in the case. The Attorney and Solicitor

[22]We use this dichotomous definition as we only observe whether the government has won or lost a case, without any information on how favourable the judgement was for the government.

General are the primary and secondary lawyers of the government, respectively. Both appointments are political, with the Attorney General being a constitutional position equivalent in rank to a cabinet minister. As such, these lawyers only appear in cases of great importance to the government. There are also a few (seven, as of 2016) Additional Solicitors General who represent the government in the Supreme Court, who appear in around half of the cases involving the government. Depending on the importance of a case, it is possible for more than one of the above to represent the government in the same case. These three variable therefore proxy for the value of winning the case for the government.

The number of Senior Advocates appearing in a case is our fourth proxy for its salience.[23] Senior Advocates are lawyers who specialise in appearing before the High Courts and the Supreme Court and "represent the scarcest and priciest legal talent in India" (Chandra, Hubbard, and Kalantry 2017). The government and other litigants often hire them in cases that are important enough to justify their high fees. Finally, we also proxy for salience using the number of advocates appearing in a case. This reveals the importance of the case for the litigants as it measures the amount of resources they are willing to spend on winning it. Hence, these two variable proxy for the sum of efforts exerted by litigants in a case, and are therefore proxies for the value that the government places on winning the case.[24]

We compute the first principal component of these five variables, normalise it to have zero mean and unit standard deviation and use that as the index of salience.[25] The summary statistics for these five variables and their factor loadings in the index are presented in table 1. We expect that pandering, if it exists, will manifest itself in cases with high salience.

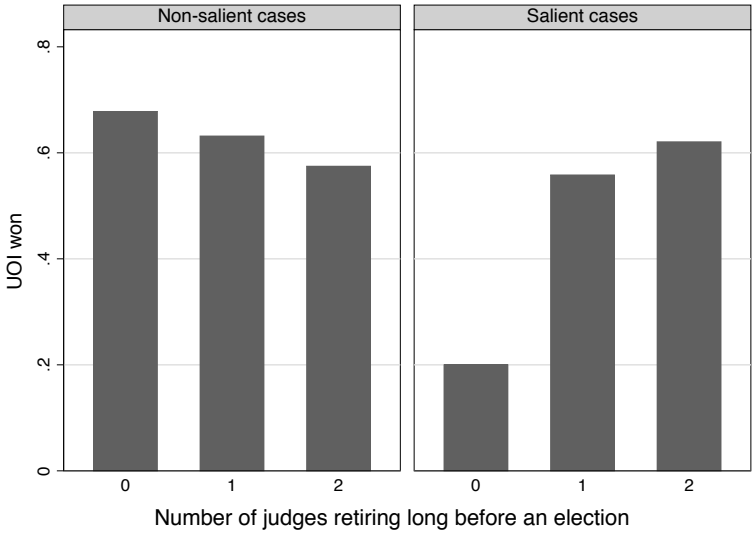
Whether a judge retired long before an election or not is captured by whether the judge retired from the Supreme Court at least one year before an election. We choose a threshold of one year because, as seen in the summary statistics presented in table 2, it takes on average a little over one year to secure a post-SC job from the government in power, conditional on securing it at all. Judges who retire less than one year before the next election have much weaker incentives to pander to the government in power at the time of their retirement, as they are unsure about whether that government will still be in power after the election. To transform this variable into pandering incentives at the bench level, we simply construct two dummy variables that indicate whether the bench is composed of one or both judges retiring long before an election. The omitted category is composed of the benches in the "control group" with neither of the two judges retiring long before an election. In section 5.2.6 we show that our results are robust to alternative specifications for this variable.

[23]Senior Advocate is the Indian designation that is equivalent to Senior Counsel in Commonwealth jurisdictions or Queen's Counsel in the UK.

[24]Because of limitations in our data, our measure is the total number of advocates (senior and non-senior) for the government and all other litigants, rather the ideal measure of the number of advocates appearing for the government only. Nevertheless, the number of advocates appearing for the government is very likely to be highly correlated with the total number of advocates for all parties. Hence, our measure is a reasonable proxy for the importance of a case.

[25]We show the robustness of our results to using the proxies separately in table 15 in appendix A.2. These results are discussed in section 5.2.3.

Figure 1: Probability of case being decided in favour of UOI by salience and number of judges retiring long before an election




As described in section 2.2 and section 3.2, the date of retirement of judges is mechanically determined by their date of birth, and furthermore, elections occurred at regular five-year intervals. Hence, whether a judge is going to retire long before an election is predictable while he is deciding cases and, moreover, exogenous. Consequently the number of judges on the bench who retire long before an election is also exogenous.

We identify pandering using difference-in-differences, where the two dimensions of variation are the salience of a case and whether judges retired long before an election. We can think of benches with two judges retiring long before an election as the "high treatment group", those with just one judge retiring long before an election as the "low treatment group" and those with both retiring shortly before an election as the "control group". We compare the salient–non-salient difference in decisions between the two treatment groups and the control group to obtain our estimates of the effect of pandering incentives. Our identifying assumption is that the difference in the merits between salient and non-salient cases does not vary based on the composition of the bench deciding the cases, in particular, based on how many judges on the bench retire long before an election. This assumption is predicated on the practice of random allocation of cases to benches described in 2.1.

The basic idea behind the identification strategy is illustrated by the simple three-by-two bar chart in Figure 1. The three bars in the left-hand panel show the proportion of non-salient cases (bottom 75% in terms of the salience index) decided in favour of the government by benches with zero, one, and two judges retiring long before an election respectively. The three bars in the right-hand panel show the same proportions for salient cases (top 25% in terms of salience index). We see that the difference in the likelihood of the government winning a salient relative to a non-salient case increases as the number of judges on the bench that retire long before an election increases.

## 4.1 Random allocation of cases

The key to our identification strategy stated above is that the two-judge bench cases, which constitute our sample, were randomly allocated to benches. As stated in section 2.1, this is the Supreme Court's stated policy and is confirmed by practitioners. Nevertheless, one may be concerned that benches were allocated in a non-random way for some cases in our sample. Although we cannot test the assumption of random allocation of cases directly, we can investigate whether observed covariates differ by the number of judges retiring long before an election. The results of tests of such differences are reported in table 3.

Most observed case characteristics do not appear to vary monotonically as the number of judges retiring long before an election increases. However, there are some differences. For example, we find that the the number of cases where the government is the respondent (rather than the appellant or petitioner), appears to increase as the number of judges retiring long before an election increases. To account for these differences, we control for these variables in all our regressions.

Since the raw differences in salience between cases decided by the three types of benches are significant, we investigate this further by regressing the salience index on dummies for benches with one and two judges retiring long before an election. The results of such regressions are shown in table 4. We observe that once we control for other case characteristics, the correlation between salience and bench retirement characteristics becomes insignificant.

Finally, in section 5.2.2 we test the robustness of our results to controlling for interactions of these variables with salience or retirement characteristics.

# 5 Pandering incentives and judicial decisions

In this section, we present our main results about the presence of pandering. We also test them for robustness and address potential concerns about bias. We implement our empirical strategy through the following regression specification:

$$\begin{aligned} won_{ik} = \alpha_0 + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \beta\, salience_i \\ + \lambda_1\, salience_i \times one\ retired\ long\ before_k \\ + \lambda_2\, salience_i \times both\ retired\ long\ before_k + \mathbf{X}'_{ik}\eta + \varepsilon_{ik} \end{aligned} \tag{1}$$

where $won_{ik}$ is an indicator for whether the Union government won case $i$ decided by bench $k$. The variables on the right-hand side of eq. (1) capture pandering incentives, while the dependent variable captures the behaviour induced by them. The key parameters of interest are $\lambda_1$ and $\lambda_2$. Since our salience index is normalised to have mean 0 and standard deviation 1, $\lambda_1$ measures the increase in the likelihood of a salient case, i.e., a case that is one standard deviation above the mean, being decided in favour of the government when it is decided by a bench with one judge retiring long before rather than a bench with both judges retiring shortly before an election; similarly, $\lambda_2$ measures the difference between benches with both

Table 3: Sample balance

| | (1) 0 | (2) 1 | (3) 2 | (4) 1–0 | (5) 2–0 | (6) 2–1 |
|---|---|---|---|---|---|---|
| Appeal (1) Petition (0) | 0.922 | 0.841 | 0.825 | -0.0805* | -0.0967* | -0.0162 |
| | (0.270) | (0.366) | (0.380) | (0.0486) | (0.0499) | (0.0307) |
| UOI role: Appellant/petitioner (1) Respondent (0) | 0.562 | 0.432 | 0.350 | -0.131* | -0.213*** | -0.0820** |
| | (0.500) | (0.496) | (0.478) | (0.0691) | (0.0658) | (0.0400) |
| CJI present in case | 0.0156 | 0.0221 | 0.0153 | 0.00652 | -0.000288 | -0.00680 |
| | (0.125) | (0.147) | (0.123) | (0.0199) | (0.0169) | (0.0111) |
| Senior judge's tenure (at case decision date) | 4.616 | 4.507 | 4.349 | -0.108 | -0.267 | -0.159 |
| | (1.179) | (1.311) | (1.295) | (0.179) | (0.175) | (0.107) |
| Junior judge's tenure (at case decision date) | 1.316 | 1.746 | 1.345 | 0.430*** | 0.0289 | -0.401*** |
| | (0.946) | (1.007) | (0.842) | (0.138) | (0.118) | (0.0757) |
| Years from decision to election | 2.587 | 2.098 | 2.525 | -0.489*** | -0.0618 | 0.427*** |
| | (1.167) | (1.269) | (1.413) | (0.174) | (0.188) | (0.111) |
| Number of Attorneys General | no cases | 0.0148 | 0.0368 | – | – | 0.0220* |
| | | (0.121) | (0.189) | | | (0.0133) |
| Number of Solicitors General | no cases | 0.0554 | 0.0399 | – | – | -0.0155 |
| | | (0.229) | (0.196) | | | (0.0174) |
| Number of Additional Solicitors General | 0.547 | 0.483 | 0.426 | -0.0635 | -0.120 | -0.0570 |
| | (0.561) | (0.557) | (0.548) | (0.0775) | (0.0753) | (0.0454) |
| Number of Senior Advocates | 0.875 | 1.458 | 1.571 | 0.583** | 0.696*** | 0.113 |
| | (1.047) | (2.077) | (1.964) | (0.268) | (0.252) | (0.166) |
| Number of Advocates | 9.672 | 12.12 | 12.14 | 2.450 | 2.466 | 0.0163 |
| | (11.24) | (18.00) | (17.02) | (2.352) | (2.218) | (1.436) |
| Salience | -0.240 | 0.0209 | 0.0297 | 0.260* | 0.269** | 0.00881 |
| | (0.571) | (1.077) | (0.996) | (0.139) | (0.129) | (0.0850) |
| Observations | 64 | 271 | 326 | 335 | 390 | 597 |

Columns (1)–(3) report the means of the variables for benches with zero, one and two judges retiring long before an election. Columns (4)–(5) report the difference between such benches. Standard errors in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 4: Correlation between salience and bench retirement characteristics

| | (1) | (2) | (3) |
|---|---|---|---|
| One judge retired long before | 0.260** | 0.130 | 0.151 |
| | (0.113) | (0.0986) | (0.0941) |
| Both judges retired long before | 0.269*** | 0.158* | 0.167 |
| | (0.0879) | (0.0880) | (0.102) |
| Case controls | No | Yes | Yes |
| Year dummies | No | No | Yes |
| Observations | 661 | 661 | 661 |
| $R^2$ | 0.006 | 0.112 | 0.142 |

Dependent variable is the salience index. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

judges retiring long before and both retiring shortly before an election. We interpret positive and significant estimates of $\lambda_1$ and $\lambda_2$ as evidence of the behavioural response to pandering incentives.

The matrix $\mathbf{X}_{ik}$ consists of case and bench characteristics, namely whether the case was an appeal or fresh petition, whether the government was the appellant/petitioner or respondent, the tenures of the two judges on the bench, and whether the CJI was one of the judges on the bench. The indicators $b_{jk}$ capture whether judge $j$ was part of bench $k$, so that $\sum_j \alpha_j b_{jk}$ are essentially judge dummies. Note that there are two judge dummies that are active in every case since each case in our sample is decided by a bench composed of two judges. Similarly, $y_{it}$ is an indicator for whether case $i$ was decided in year $t$ and $\sum_t \delta_t y_{it}$ are therefore year dummies. Note that in any specification that includes judge dummies we cannot estimate the effect of one and both judges retiring long before since these two variables are a sum of the two judge-specific dummies that indicate whether each judge retires long before the election, so that they are fully determined by the judge dummies.

## 5.1 Main results

The results from regressing our main specification (1) using OLS are reported in table 5. We cluster the standard errors at the bench level to account for possible correlation of the error term across cases decided by the same bench.[26] We observe that the estimates of the key parameters $\lambda_1$ and $\lambda_2$ are positive, stable and significant in all specifications, indicating that judges do engage in corruption by favouring the government when the case is salient *and* the

[26] An alternative choice would be two-way clustering at the judge level since a judge's ideological alignment with the government may induce a correlation across cases he decides. However, such a within-cluster common shock would be absorbed by the judge dummies, and is unlikely to cause the error term to be correlated across cases for a judge. See Cameron and Miller (2015) for a discussion of clustering when the model includes cluster-specific fixed effects.

Table 5: Effect of pandering incentives on decisions.

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| Salience | -0.329*** | -0.334*** | -0.327*** | -0.278*** | -0.287*** |
| | (0.0647) | (0.0701) | (0.0693) | (0.0874) | (0.0868) |
| One judge retired long before | 0.0595 | 0.0769 | 0.0537 | | |
| | (0.0826) | (0.0773) | (0.0698) | | |
| Both judges retired long before | 0.0200 | 0.0244 | 0.00837 | | |
| | (0.0806) | (0.0768) | (0.0735) | | |
| One judge retired long before × Salience | 0.269*** | 0.276*** | 0.270*** | 0.233** | 0.245*** |
| | (0.0672) | (0.0723) | (0.0718) | (0.0915) | (0.0908) |
| Both judges retired long before × Salience | 0.366*** | 0.364*** | 0.353*** | 0.301*** | 0.315*** |
| | (0.0701) | (0.0739) | (0.0728) | (0.0939) | (0.0939) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.026 | 0.037 | 0.059 | 0.205 | 0.223 |
| Mean of dependent variable | 0.562 | 0.552 | 0.570 | 0.597 | 0.597 |
| $p$-value $H_0 : \lambda_1 = \lambda_2$ | 0.00282 | 0.00734 | 0.0125 | 0.107 | 0.110 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. The mean of the dependent variable the probability that the government wins a case with mean salience when it is decided by a control group bench. Standard errors reported in the parentheses are clustered at the bench level. $^{*}$ $p < 0.1$, $^{**}$ $p < 0.05$, $^{***}$ $p < 0.01$

judges retire long before an election.

To establish the presence of pandering, that is, to show that there is a causal effect of incentives on judicial decisions, we need to rule out the possibility that our results are driven by ideological alignment of judges with political parties. For example, judges who are ideologically aligned with the ruling party could be more likely to decide in favour of the government. Although undesirable, we do not consider this pandering. Instead, we define pandering as behaviour that arises in response to extrinsic incentives rather than intrinsic motivations such as ideology or innate characteristics. Ideological alignment or other unobservable time-invariant judge characteristics are unlikely to introduce bias in our regressions because they are unlikely to be correlated with our regressors. First, as discussed in section 2.1, the allocation of cases to judges is random, so that whether a judge is assigned a salient case or not is uncorrelated with his personal characteristics. Second, whether a judge retires long before an election or not is decided solely by his date of birth and the date

of the next election, both of which are exogenous.[27]

Nonetheless, to rule out the possibility of any bias caused by unobservable judge characteristics, we include judge dummies in eq. (1). These results are reported in columns (4)–(5). The estimates of the key parameters of interest $\lambda_1$ and $\lambda_2$, continue to be positive and significant. Note that the presence of judge dummies does not rule out all type-based explanations of our results. It is possible that not all judges respond to pandering incentives. In particular, perhaps only a subset of judges retiring long before an election who are corruptible actually respond to pandering incentives by deciding in favour of the government. This would imply that there are heterogeneous effects of pandering incentives and that we are estimating the average treatment effect.

Furthermore, to control for time-specific effects, we also include dummies for the year in which the case was decided. These absorb any changes in the decisions induced by political and institutional changes over time, for e.g., the increase in the number of judges in 2008.

The estimated values for the interaction term from columns (1)–(5) indicate that for a case that is one standard deviation higher than the mean in salience, the probability of the government winning is about 24 to 27 percentage points higher when the case is decided by a bench with one judge retiring long before an election relative to a bench composed of judges both of whom retire shortly before an election. Similarly, the likelihood of the same case being decided in favour of the government is 30 to 36 percentage points higher when the case is decided by a bench with both judges retiring long before an election relative to both judges retiring shortly before.

We also test the hypothesis that pandering increases as the number of judges retiring long before an election increases from one to two. The $p$-value for the test of the hypothesis that $\lambda_1 = \lambda_2$ is small and this suggests that the effect of pandering incentives is monotonically increasing in the number of judges retiring long before an election.

Based on the mean of the dependent variable and the effect of salience we observe that the government has a 23–31% chance of winning a case that is one standard deviation higher than mean salience that is decided by a bench with both judges retiring shortly before an election. Our estimates imply that the probability of the government winning such a case more than doubles when it is instead decided by a bench with both judges retiring long before an election.

## 5.2 Robustness

In this section, we test the robustness of our results to perturbing different elements of the baseline specification.

[27] In our sample period, elections occurred regularly every five years.

### 5.2.1 Disaggregated effects of election-retirement distance

The regression specification in (1) assumes that pandering incentives are active when a judge retires more than one year before the next election and inactive otherwise. It is possible however that even among judges retiring more than one year before the next election, pandering incentives vary based on how long before the next election they retire. In this section, we estimate the heterogenous effect of pandering incentives separately for benches based on which year before the next election the judges retire. Since there are two judges in each bench and they can retire in one of five years, there are 15 possible combinations which we call retirement categories. We therefore estimate

$$won_{ik} = \alpha_0 + \sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \beta\, salience_i + \mathbf{X}_i'\eta + \sum_{\ell=1}^{14} \gamma_\ell\, retirement\ category_{\ell k} + \sum_{\ell=1}^{14} \lambda_\ell \left(salience_i \times retirement\ category_{\ell k}\right) + \varepsilon_{ik}\,, \tag{2}$$

where $retirement\ category_{\ell k}$ is a dummy taking value 1 if the judges in bench $k$ belong to retirement category $\ell$ and 0 otherwise. Our base is retirement category 0 which corresponds to both judges retiring shortly (0–1 years) before an election. The correspondence between the other categories and the number of judges retiring in each year is shown in table 6, together with the estimates of $\lambda_\ell$.

We can interpret the coefficient estimate for an interaction term, for example $\lambda_3$, as the change in the probability that the government wins a salient case (that is, a case with one standard deviation higher than mean salience) when we replace one judge from a bench with both judges retiring close to an election such that one retires between 2–3 years before the next election. Similarly $\lambda_{14}$ is the change going from a bench with both judges retiring shortly before to both judges retiring between 4-5 years before the next election.

All the estimates of $\lambda_\ell$ are positive and almost all are significant at 1% indicating that all benches pander more than benches where both judges retire shortly before an election. We cannot estimate $\lambda_9$, capturing the effect of both judges retiring 3–4 years before an election, because there is only one case in our sample decided by a bench where this occurs.

Finally, we also test the robustness of our results to perturbing the threshold for when a judge is considered to have retired long before an election. In particular, our results are robust to choosing thresholds of 6 months, 18 months and 24 months as shown in table 12 in appendix A.2. We note that the estimates of $\lambda_1$ and $\lambda_2$ in columns (5) and (6) for a threshold of 2 years are smaller in magnitude than the corresponding ones in the main results. Moreover, the estimates of $\lambda_1$ are statistically insignificant, as expected, since many judges in the treatment groups are now included in the control group, thereby attenuating the difference in behaviour between the groups.

Table 6: Disaggregated effects of election-retirement distance

| | Number of judges retired between years | | | | | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|---|---|---|---|---|
| $\ell$ | 4–5 | 3–4 | 2–3 | 1–2 | 0–1 | | | | | |
| 0 | 0 | 0 | 0 | 0 | 2 | base category: both judges retired shortly before an election | | | | |
| 1 | 0 | 0 | 0 | 1 | 1 | 0.268*** | 0.269*** | 0.255*** | 0.221** | 0.221** |
| | | | | | | (0.0731) | (0.0767) | (0.0780) | (0.0876) | (0.0922) |
| 2 | 0 | 0 | 0 | 2 | 0 | 0.231* | 0.238 | 0.252** | 0.265** | 0.303*** |
| | | | | | | (0.124) | (0.146) | (0.125) | (0.110) | (0.106) |
| 3 | 0 | 0 | 1 | 0 | 1 | 0.252*** | 0.259*** | 0.256*** | 0.245*** | 0.247*** |
| | | | | | | (0.0705) | (0.0761) | (0.0785) | (0.0895) | (0.0938) |
| 4 | 0 | 0 | 1 | 1 | 0 | 0.440*** | 0.437*** | 0.428*** | 0.385*** | 0.377*** |
| | | | | | | (0.0772) | (0.0825) | (0.0845) | (0.0928) | (0.100) |
| 5 | 0 | 0 | 2 | 0 | 0 | 0.0420 | 0.0406 | 0.0216 | 0.0935 | 0.0736 |
| | | | | | | (0.220) | (0.218) | (0.219) | (0.209) | (0.206) |
| 6 | 0 | 1 | 0 | 0 | 1 | 0.634*** | 0.686*** | 0.669*** | 0.499*** | 0.498*** |
| | | | | | | (0.153) | (0.128) | (0.119) | (0.119) | (0.125) |
| 7 | 0 | 1 | 0 | 1 | 0 | 0.423*** | 0.420*** | 0.381*** | 0.348*** | 0.346*** |
| | | | | | | (0.0855) | (0.0886) | (0.0959) | (0.104) | (0.109) |
| 8 | 0 | 1 | 1 | 0 | 0 | 0.454*** | 0.455*** | 0.510*** | 0.618*** | 0.600*** |
| | | | | | | (0.174) | (0.164) | (0.168) | (0.183) | (0.185) |
| 9 | 0 | 2 | 0 | 0 | 0 | (cannot be estimated) | | | | |
| 10 | 1 | 0 | 0 | 0 | 1 | 0.272*** | 0.284*** | 0.304*** | 0.357*** | 0.375*** |
| | | | | | | (0.0782) | (0.0837) | (0.0816) | (0.103) | (0.103) |
| 11 | 1 | 0 | 0 | 1 | 0 | 0.274*** | 0.261*** | 0.278*** | 0.227** | 0.248** |
| | | | | | | (0.0769) | (0.0791) | (0.0809) | (0.0966) | (0.102) |
| 12 | 1 | 0 | 1 | 0 | 0 | 0.377*** | 0.376*** | 0.358*** | 0.302*** | 0.297*** |
| | | | | | | (0.0784) | (0.0810) | (0.0828) | (0.107) | (0.109) |
| 13 | 1 | 1 | 0 | 0 | 0 | 0.374 | 0.355 | 0.384* | 0.342* | 0.340 |
| | | | | | | (0.239) | (0.218) | (0.226) | (0.198) | (0.215) |
| 14 | 2 | 0 | 0 | 0 | 0 | 0.373*** | 0.382*** | 0.380*** | 0.399*** | 0.447*** |
| | | | | | | (0.0872) | (0.0971) | (0.0880) | (0.0878) | (0.0901) |
| Case controls | | | | | | No | Yes | Yes | Yes | Yes |
| Year dummies | | | | | | No | No | Yes | No | Yes |
| Judge dummies | | | | | | No | No | No | Yes | Yes |
| Observations | | | | | | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | | | | | | 0.071 | 0.087 | 0.108 | 0.239 | 0.258 |

Dependent variable is whether government won. The coefficients reported in the table are the estimates of $\lambda_\ell$, $\ell = 1 \ldots 14$, the coefficients of interactions between salience and the retirement category dummies. The interaction term for both judges retiring 3–4 years before an election cannot be estimated because there is only one case in our sample where this occurs. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

### 5.2.2 Controlling for other interactions

One concern with our results is that the interaction terms that capture pandering incentives are potentially proxying for some other variables that affect the outcome of the case. In particular, we saw in table 3 that some case characteristics were significantly different between the treatment and control groups. Although we include case controls in our regressions, it is possible that the true effect of these controls on decisions is through an interaction with salience or retirement distance. In this section, we address this concern by separately interacting the controls that were significantly different across our "treatment" and "control" groups with the two variables that together make up pandering incentives.

The results are presented in table 7. In the first column, we present our baseline results for comparison. In column (2) we consider whether the two treatment groups rule cases differently when UOI is appellant/petitioner relative to when UOI is the respondent. Similarly, in column (3) we control for the interaction of salience with the role of the UOI. In columns (4) and (5) we do the same with the years between the decision date of the case and the next election date. Finally, in columns (6) and (7) we repeat this exercise with the length of the tenure of the senior judge at the time of the decision.

We observe that the coefficients on pandering incentives continue to be robust to the inclusion of these interactions, and the coefficient estimates in table 7 are very similar in magnitude to our baseline specification reported in the first column, suggesting that the results are unlikely to be driven by the interaction of treatment benches or salience with other case characteristics.

### 5.2.3 Different proxies for salience

In this section, we test the robustness of the results with respect to varying the proxy for salience. So far, we have used the normalised first principal component of the five different proxies presented in section 4 as our index for salience.

We first present results using the different proxies that make up our salience index. Results are reported in table 15 in appendix A.2. To begin with, we use the presence of Attorney or Solicitor or Additional Solicitor General as a proxy for salience.[28] We see in columns (1) and (2), that the estimates for the interaction term are positive.

In columns (3) and (4), we use the number of Senior Advocates appearing in the case as a proxy for its salience. In columns (5) and (6) we use the number of advocates, that is, junior advocates with no special designation, as our proxy for salience. Finally, in columns (7) and (8) we interact the two treatment groups with all of these proxies. We observe that the estimates for the interaction terms remain positive and mostly significant across these specifications. We observe that the results are qualitatively similar regardless of the particular

[28] In principle, we could run separate regressions for these. However, the Attorney and Solicitor General did not appear in any cases decided by a bench with both judges retiring close to an election in our sample. Hence we combine the three proxies for important government lawyers into one indicator.

Table 7: Controlling for other interactions

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) |
|---|---|---|---|---|---|---|---|
| Salience | -0.307*** | -0.313*** | -0.280*** | -0.302*** | -0.380*** | -0.300*** | -0.379*** |
| | (0.0789) | (0.0802) | (0.0836) | (0.0788) | (0.0908) | (0.0783) | (0.116) |
| One judge retired long before | 0.0636 | 0.0718 | 0.0644 | 0.0871 | 0.0584 | -0.0264 | 0.0641 |
| | (0.0534) | (0.0774) | (0.0532) | (0.116) | (0.0534) | (0.200) | (0.0533) |
| One judge retired long before | 0.267*** | 0.270*** | 0.248*** | 0.263*** | 0.280*** | 0.262*** | 0.277*** |
| × Salience | (0.0827) | (0.0841) | (0.0863) | (0.0826) | (0.0818) | (0.0824) | (0.0874) |
| Both judges retired long | 0.333*** | 0.340*** | 0.319*** | 0.327*** | 0.329*** | 0.326*** | 0.341*** |
| before × Salience | (0.0863) | (0.0880) | (0.0897) | (0.0860) | (0.0866) | (0.0858) | (0.0877) |
| UOI role | | -0.0191 | -0.0170 | | | | |
| | | (0.141) | (0.0460) | | | | |
| UOI role × One | | 0.00668 | | | | | |
| judge retired long before | | (0.155) | | | | | |
| UOI role × Both | | 0.0575 | | | | | |
| judges retired long before | | (0.154) | | | | | |
| UOI role × Salience | | | -0.129 | | | | |
| | | | (0.0797) | | | | |
| Years from decision to election | | | | 0.0440 | -0.00739 | | |
| | | | | (0.0742) | (0.0256) | | |
| One judge retired long before | | | | -0.0403 | | | |
| × Years from decision to election | | | | (0.0717) | | | |
| Both judges retired long before | | | | -0.0646 | | | |
| × Years from decision to election | | | | (0.0710) | | | |
| Years from decision to election × | | | | | 0.0304 | | |
| Salience | | | | | (0.0199) | | |
| Senior judge's tenure | | | | | | -0.0440 | 0.0148 |
| | | | | | | (0.0870) | (0.0419) |
| One judge retired long before | | | | | | 0.0532 | |
| × Senior judge's tenure | | | | | | (0.0692) | |
| Both judges retired long before | | | | | | 0.0714 | |
| × Senior judge's tenure | | | | | | (0.0765) | |
| Senior judge's tenure × | | | | | | | 0.0155 |
| Salience | | | | | | | (0.0175) |
| Observations | 661 | 661 | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.225 | 0.225 | 0.229 | 0.227 | 0.229 | 0.226 | 0.226 |

Dependent variable is whether government won. All specifications include judge dummies, year dummies and the following case controls: type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

proxy used. These results support our strategy of collapsing these five variables into one index using the first principal component.

So far we have assumed that pandering incentives increase linearly with salience. We next construct an indicator for whether the case was in the 75th percentile (top 25% of cases) of salience. Results are reported in columns (1) and (2) of table 16 in appendix A.2. We find that the estimates of the two interaction terms are large and significant. This is also robust to repeating the exercise with the 90th percentile of salience, as reported in in columns (3) and (4).

Finally, we disaggregate our salience measure into quintiles. The lowest quintile of cases (0–20th percentile of salience) forms the omitted category. In columns (5) and (6), we observe that the estimates of the interaction terms increase in magnitude with the quintiles of salience. The estimates for 60–80th and 80–100th percentiles are mostly significant.

### 5.2.4 Cases with no clear winner

In our data collection interface, we gave three options for coding the outcome of a case: government won, government lost, and winner not identifiable. The last option was to allow for cases where it was not clear if the government won or lost. This could happen when, for example, some of the points in dispute in a case were decided in favour of the government but others were decided against the government. There were only 20 cases where the outcome of a case was coded as not identifiable, and as described in section 3.1, these were dropped from our analysis.

We now include these 20 cases and code them in different ways to see whether our results are robust to their inclusion. Results are reported in table 17 in appendix A.2. In columns (1) and (2) we include these cases among the ones that the government lost. In columns (3) and (4) we do the opposite and include these cases among the ones that the government won. Finally in columns (5) and (6), to allow for the possibility that the decision in these cases was partly in favour of the government and partly against it, we construct a dependent variable that takes value 1 for the cases where the government won, -1 for the cases where the government lost, and 0 for these 20 cases where the winner was not identifiable. The estimates of our coefficients of interest remain positive indicating that the inability to determine clearly whether the government won or lost in a subset of cases does not affect our results.

### 5.2.5 Alternative functional forms

So far we have used the linear probability model. Next we rerun our baseline specification using logit and probit instead. We observe that the coefficient estimates of $\lambda_1$ and $\lambda_2$ remain positive and significant. The results are reported in table 18 in appendix A.2.

### 5.2.6 Constant marginal effects and average treatment effects

In all the specifications so far, we used factor variables to indicate the three kinds of benches, that is, those with zero, one, or two judges retiring long before an election. In this section we consider two restrictions.

First, we run a restricted version of eq. (1) by imposing linearity on the effect of pandering incentives in the number of judges retiring long before an election. We estimate

$$\begin{aligned} won_{ik} = \alpha_0 + \beta\, salience_i + \lambda\, salience_i \times num\ retired\ long\ before_k \\ + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}. \end{aligned} \tag{3}$$

This specification uses the number of judges retiring long before an election as the interacting variable with salience. This variable takes values 0, 1, and 2. We find that the estimates for $\lambda$ are positive, significant, and stable across all specifications.

The results of estimating eq. (3) are shown in table 13 in appendix A.2. The specification in eq. (3) imposes the restriction on eq. (1) that the marginal effect of the number of judges retiring long before an election is constant, that is $\lambda_2 = 2\lambda_1$. This restriction is rejected by an F-test, whose $p$-values reported in the last row of table 13.

Second, we also run

$$\begin{aligned} won_{ik} = \alpha_0 + \beta\, salience_i + \lambda\, salience_i \times at\ least\ one\ retired\ long\ before_k \\ + \gamma\, at\ least\ one\ retired\ long\ before_k + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}\,. \end{aligned} \tag{4}$$

The results are reported in table 14 in appendix A.2. This specification pools the benches with one or two judges retiring long before an election. This is a special case of eq. (1) as it forces the restriction $\lambda_2 = \lambda_1$. Although all our results are robust to using this as our baseline specification, we use eq. (1) as our baseline since the restriction above is not supported empirically, as shown by the $p$-values for the F-test of this restriction reported in the last row of table 5.

All the results shown so far are robust[29] to imposing either of the restrictions considered above.

## 5.3 Potential sources of bias

We now discuss possible sources of bias in our results. We show that these sources either lead to no bias or a downward bias in our estimates. As such, the estimates we presented are lower bounds of the effect of pandering incentives on judicial decisions.

[29] Results are available on request.

### 5.3.1 Incentives for the "control" group

It is possible that the "control" benches, that is, benches where both judges retire shortly before an election, have *some* rather than *no* incentives to pander. In that case, the comparison between "treatment" and "control" benches is not a comparison between benches with and without incentives, but rather a comparison between benches with stronger and weaker incentives to pander. Therefore, our estimates of this difference are lower bounds on the true effect of pandering incentives on judicial decisions.

### 5.3.2 Greater scrutiny for salient cases

It is possible that salient cases receive more scrutiny and therefore judges are less likely to decide in favour of the government when such cases favour the other litigant on merits, relative to non-salient cases. If true, this would only make the difference-in-differences smaller as it reduces the difference between "treatment" and "control" benches in how they decide salient cases, again, making our estimates lower bounds.

### 5.3.3 Settlement of cases

A key concern with the literature on published judgements is selection bias – judgements may not be a representative sample of all cases since a significant fraction of cases are actually settled before they are decided by the court. In fact, there may be differences in the likelihood of out-of-court settlement between cases assigned to "treatment" and "control" benches. This point is discussed extensively in Ashenfelter, Eisenberg, and Schwab (1995), who point out that random allocation of cases to judges means that any differences in the probability of the government winning a case must be due to differences in judicial behaviour rather than unobservable case characteristics. As such, the observed differences reflect the effect of pandering incentives on judicial decisions.

### 5.3.4 Beliefs about elections

It is possible that pandering incentives are affected by a judge's beliefs about elections. For example, a judge retiring shortly before an election may pander if he believes that the government in power will be reelected and he would be rewarded after election. It is also possible that a judge retiring long before an election only begins to pander after the last election before his retirement. Note that in any of these scenarios, where a particular configuration of beliefs leads to pandering by judges who retire shortly before an election, or leads to weaker pandering by judges who retire long before one, there will be *downward* bias in the difference-in-differences estimator. The reason why the effect of pandering incentives will be underestimated is that for at least some part of their tenure there will be little difference between the judges in our "treatment" and "control" benches, i.e., judges who retire long

and shortly before an election, in their pandering incentives.[30]

Another possibility is that judges retiring shortly before an election systematically decide salient cases against the government in power at the time of retirement. This could happen if these judges believe that the government at the time of retirement will lose the next election and the opposition party at the time of retirement would reward them once they form the next government. Although this is unlikely to be the full story since the incumbent lost only one of two elections that occurred in our sample period, this is certainly consistent with our results. Note that such behaviour is nonetheless an effect of pandering incentives on judicial decision-making, albeit one where the judges retiring shortly before an election pander to a potential future government rather than the current one.

To be precise, our estimates are based on the following two assumptions: 1) judges who retire long before an election pander to the *government in power at the time of their retirement* in all cases they decide on throughout their tenure, even before that government's term; 2) judges who retire shortly before an election do not pander to the *government in power at the time of their retirement* in all cases they decide on throughout their tenure, even before that government's term. Any deviation from these assumptions, e.g., if a judge in the treatment bench sometimes does not pander to the government in power at the time of his retirement or a judge in the control bench sometimes does, will lead to an attenuation of the difference between treatment and control benches. Therefore, the effect of pandering incentives are bounded below by the positive and significant estimates in table 5.

### 5.3.5 Endogenous litigant response

We have seen that treatment group benches tend to favour the government in salient cases. This leads to the natural question of whether litigants are aware of this and alter their behaviour in response. For instance, it is possible that the expectation of pandering leads to the government spending less effort when a case is listed before a bench composed of judges retiring long before an election. Moreover, such a response could affect our estimation strategy and introduce bias. In this section, we discuss and attempt to rule out this possibility.

To begin with, note that although table 3 suggests that there is some evidence that the salience index is higher for cases decided by the two treatment groups, this difference disappears once we control for case characteristics, as shown in table 4. Moreover, this difference is mainly driven by the inclusion in the salience index of the number of senior advocates appearing in the case. However, our results are robust to excluding senior advocates from the index as shown in columns (1)–(2) and (5)–(8) of table 15, and consequently, there does not appear to be compelling evidence that salience varies systematically across the "treatment" and "control" benches.

Nonetheless, we argue that the possible systematic differences in salience among the "treatment" and "control" benches are unlikely to introduce bias in our setting. To see this, note

[30]This downward bias is even stronger in the unlikely event that judges who retire shortly before an election have *stronger* pandering incentives than those retiring long before, as this would lead to a negative estimate of the effect.

that in our framework, the index for salience captures the intensity of effort exerted by litigants in a case. Given random allocation of cases to benches, there should be no systematic differences in the "true salience", that is, the importance of the outcome of the case for the litigants, based on the composition of the bench deciding the case. However, if litigants choose their litigation effort after observing bench composition, then the observed salience will depend not only on "true salience" but also on the composition of the bench. To see that this does not introduce bias in our estimation, let the observed salience be

$$salience_{ik} = \zeta_1 one\ retired\ long\ before_k + \zeta_2 both\ retired\ long\ before_k + true\ salience_i, \quad (5)$$

where the true salience of the case is idiosyncratic and unobserved. In this case, (1) can be rewritten as

$$\begin{aligned} won_{ik} &= \alpha_0 + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \lambda_1\zeta_1 one\ retired\ long\ before_k^2 + \lambda_1\zeta_2 both\ retired\ long\ before_k^2 \\ &\quad + \lambda_1\ true\ salience_i \times one\ retired\ long\ before_k + \lambda_2\ true\ salience_i \times both\ retired\ long\ before_k \\ &\quad + (\lambda_1\zeta_2 + \lambda_2\zeta_1) both\ retired\ long\ before_k \times one\ retired\ long\ before_k + \mathbf{X}'_{ik}\eta + \varepsilon_{ik} \\ &= \alpha_0 + \textstyle\sum_j \tilde{\alpha}_j b_{jk} + \sum_t \delta_t y_{it} + \beta\ true\ salience_i + \lambda_1\ true\ salience_i \times one\ retired\ long\ before_k \\ &\quad + \lambda_2\ true\ salience_i \times both\ retired\ long\ before_k + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}\,, \end{aligned} \quad (6)$$

where all the effects of one and both judges retiring long before are absorbed in the judge dummies, since retirement characteristics are fixed for a judge over his tenure. Moreover, the interaction of both judges and one judge retiring long before is always zero since each indicator is active only when the other is inactive. This shows that as long as the effect of the true salience and number of judges retiring long before on observed salience is additively separable, the specification in (1) will still yield consistent estimates of $\lambda$.

# 6 Pandering: A closer look

In this section, we examine pandering more closely and explore the channels through which pandering occurs. In particular, we investigate three things. First, in section 6.1, we examine how pandering manifests itself through writing favourable judgements rather than simply being on a bench that decides in favour of the government. Second, in section 6.2, we examine whether pandering occurs through strategically delaying unfavourable decisions or expediting favourable ones. Finally, in section 6.3 we investigate whether the effect of pandering incentives is stronger for the senior judge on the bench, relative to the junior judge.

## 6.1 Pandering incentives and judgement authorship

Although the allocation of a case to a bench is randomised, the authorship of the judgement is not. Once the two judges decide on the outcome of the case, they also jointly decide which

one of the two writes the judgement.[31] The name of the judge writing the judgement is always identified when a judgement is delivered. In this section we explore the choice of judgement authorship to shed more light on the mechanism through which pandering occurs.

We expect that rather than simply *sitting on a bench* that decides in favour of the government, pandering may manifest itself in actually *writing* judgements that are favourable to the government. There are two reasons for this. First, being the author of a favourable judgement is more visible, and consequently more likely to be rewarded, compared to just sitting on the bench in a case that is decided in favour of the government. Conversely, the judge not writing the judgement is less likely to be noticed and therefore less likely to be rewarded for favourable judgements and punished for unfavourable ones. Second, the literature on signalling shows that costly actions are an effective form of communication in environments where talk is cheap. Since a judge's reputation depends on the judgements he has written, committing to written judicial reasoning for favouring the government may be a more credible way for a judge to signal his willingness to conform to the government's preferences in his role after retirement in case he receives a post-SC appointment. As such we believe that writing favourable judgement may be more important than simply deciding in favour of the government when it comes strengthening the prospects of receiving post-SC appointments. This hypothesis is supported by the results in section 7, where we will see that writing favourable judgements rather than simply deciding in favour of the government is positively associated with securing post-SC appointments.

If this is true, we expect to see a pattern in judgement writing. In particular, judges that retire long before an election should be more likely to write judgements in cases that are salient and where the government wins. To test this we run the following specification:

$$\textit{author retired long before}_{ik} = \alpha + \beta\, \textit{salience}_i + \gamma\, won_{ik} + \lambda\, \textit{salience}_i \times won_{ik} + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}. \tag{7}$$

We restrict our attention to the subsample of cases where one of the judges on the bench retired long before an election and the other retired shortly before an election. Our dependent variable is an indicator of whether the author of the judgement retires long before an election. If judges with pandering incentives want to be noticed by the government when they decide in its favour in salient cases, we would expect $\lambda$ to be positive. To control for the possibility that the senior judge's retirement-election distance may affect who writes the judgement, because there may be a seniority norm in judgement writing, we include an indicator for whether the senior judge on the bench retires long before an election among our case controls.[32]

The results are reported in table 8. We observe the estimates for $\lambda$ are positive and

[31] In principle both of them could write separate judgements. This rarely occurs – we only observe this happening in 6 of the 667 cases, and these are left out of our sample. In general the rarity of all judges writing separate judgements in the same case is something of a puzzle. See Posner (2010) and Epstein, Landes, and Posner (2013) for explanations of this phenomenon based on the ideas of effort aversion and dissent aversion.

[32] As we explain in section 6.3, we cannot include an indicator for each of the senior and junior judge retiring long before, due to collinearity with the judge dummies.

Table 8: Pandering incentives and judgement authorship

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| Salience | -0.000962 | -0.0203 | -0.0164 | -0.00992 | -0.00343 |
| | (0.0380) | (0.0349) | (0.0368) | (0.0402) | (0.0350) |
| UOI won | -0.157** | -0.161** | -0.172** | -0.0776 | -0.0692 |
| | (0.0680) | (0.0708) | (0.0689) | (0.0692) | (0.0703) |
| UOI won × Salience | 0.156*** | 0.161*** | 0.148*** | 0.144*** | 0.160*** |
| | (0.0480) | (0.0431) | (0.0472) | (0.0519) | (0.0543) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 271 | 271 | 271 | 271 | 271 |
| $R^2$ | 0.069 | 0.174 | 0.236 | 0.500 | 0.531 |
| Mean dep. var. | 0.534 | 0.537 | 0.543 | 0.484 | 0.480 |

Dependent variable is an indicator for whether the judge retiring long before wrote the judgement. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision and whether the senior judge retired long before an election. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

significant across all specifications even after controlling for case characteristics, and judge and year dummies. Note that the sample size drops compared to our main results, as we focus on the sub-sample of cases where one of the two judges retired long before an election and the other retired shortly before an election. The mean of the dependent variable is close to one half in all columns, indicating that when the case is decided against the government and is not salient, the judge who retires long before an election is as likely to write the judgement as the judge who retires shortly before an election. The estimates of the interaction coefficient indicate that in salient cases that the government wins, the judgement is more likely to be authored by the judge who retired long before an election.

It may seem that a judge-by-case-level specification, where we regress whether judge $j$ in case $i$ authored the judgement on $salience_i \times won_{ik} \times retired\,long\,before_j$ would allow us to expand our sample of cases beyond just those that were decided by one judge retiring long before. However, since there is only one author per case, the outcome variable will always sum to one across the two observations per case, and this induces a correlation in the error term across the two observations in each case. More generally, the explanatory power of pandering incentives on authorship should only be active in those cases where one of the judges retires long before and the other retires shortly before an election, since pandering incentives are equal for two judges when they both retire long or shortly before an election.

## 6.2 Strategic delay or hastening of decisions

In this section, we examine whether there is any evidence that pandering occurs through judges delaying unfavourable decisions and/or expediting favourable ones. A possible pandering mechanism is that judges retiring long before an election pander by strategically delaying those decisions that are unfavourable to the government. This strategic behaviour would lead to our sample being censored, since judges retiring long before an election would delay making unfavourable decisions in salient cases. Once they retire, such cases would then be reassigned to other judges. Although this mechanism is consistent with the idea of pandering incentives having an effect on judicial behaviour, it nonetheless may have different welfare implications from the channel where the actual decision in the case is affected by pandering incentives.

Unfortunately, we cannot directly observe cases that judges never decide on if the case is delayed beyond retirement. However, we can test whether pandering incentives affect how quickly judges decide cases that are in our sample. In our data, we observe the year in which the case was filed in the Supreme Court. Subtracting this from the date on which the case was decided, we can measure how long it took for the case to be decided.[33] To test whether treatment benches delay salient cases where the government loses we run

$$\begin{aligned} \textit{time to decision}_{ik} = {} & \alpha_0 + \beta_0\, \textit{salience}_i + \beta_1 won_{ik} + \beta_2\, \textit{salience}_i \times won_{ik} \\ & + \gamma_1\, \textit{salience}_i \times \textit{one retired long before}_k + \gamma_2\, \textit{salience}_i \times \textit{both retired long before}_k \\ & + \lambda_1\, won_{ik} \times \textit{salience}_i \times \textit{one retired long before}_k + \psi_1 won_{ik} \times \textit{one retired long before}_k \\ & + \lambda_2\, won_{ik} \times \textit{salience}_i \times \textit{both retired long before}_k + \psi_2 won_{ik} \times \textit{both retired long before}_k \\ & + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}\,. \end{aligned} \tag{8}$$

If treatment benches strategically delay unfavourable decisions in salient cases, we would expect $\gamma_1$ and $\gamma_2$ to be positive. This would be a test of the hypothesis described above under the assumption that treatment benches attempt to delay unfavourable decisions in salient cases relative to control benches, and that not all such cases are delayed beyond the retirement of the judges in the bench. The latter is a reasonable assumption since our sample does contain salient cases that were decided against the government by treatment group benches. The estimates for $\gamma_1$ and $\gamma_2$ essentially test for the presence of delay in these cases.

The results are reported in table 19 in appendix A.2. All estimates of $\gamma_1$ and $\gamma_2$ are insignificant and show no pattern across the columns. Moreover, this specification also allows us to test whether treatment benches strategically expedite decisions in salient cases that are in favour of the government. If this occurs we would expect the estimates for $\lambda_1$ and $\lambda_2$ to be negative. We find no such effect. Strategic delay or hastening of decisions does not appear

[33] Unlike the exact date of decision, which we observe, we only observe the year in which the case was filed. We therefore treat all cases as being filed on the 1st of January of the year of filing. This measurement error in the dependent variable is likely to increase our standard errors but unlikely to introduce any bias as we do not expect case characteristics to be systematically correlated with whether a case is filed early or late in a calendar year.

Table 9: Disaggregated effects of pandering incentives based on judge seniority

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| Salience | -0.193*** | -0.183*** | -0.186*** | -0.158*** | -0.163*** |
| | (0.0483) | (0.0478) | (0.0477) | (0.0560) | (0.0583) |
| Senior retired long before | -0.00607 | -0.0102 | -0.00548 | | |
| | (0.0440) | (0.0456) | (0.0498) | | |
| Junior retired long before | -0.0353 | -0.0376 | -0.0462 | | |
| | (0.0511) | (0.0499) | (0.0504) | | |
| Salience × | 0.113** | 0.106** | 0.119*** | 0.105** | 0.117** |
| Senior retired long before | (0.0440) | (0.0429) | (0.0422) | (0.0474) | (0.0487) |
| Salience × | 0.123*** | 0.113*** | 0.102*** | 0.0845* | 0.0827* |
| Junior retired long before | (0.0348) | (0.0356) | (0.0360) | (0.0466) | (0.0488) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.023 | 0.032 | 0.056 | 0.203 | 0.221 |
| $p$-value $H_0 : \lambda_S = \lambda_J$ | 0.837 | 0.875 | 0.711 | 0.677 | 0.510 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. The mean of the dependent variable the probability that the government wins a case with mean salience when it is decided by a control group bench. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

to be the channel through which pandering occurs.

## 6.3 Pandering incentives and seniority

A seniority norm may be at work in the Supreme Court with regard to authorship of judgements. According to the norm, the senior judge on the bench has the authority to decide who authors the judgement: the senior judge may do it himself, or assign it to his junior on the bench. Seniority in the Supreme Court is based purely on the tenure on the Court which, as discussed in section 2.2, is determined by the date of appointment to the Court. In this section, we attempt to test whether there is a differential effect of the senior judge's

pandering incentives on judicial decisions relative to that of the junior judge. We run

$$\begin{aligned} won_{ik} = \alpha_0 + \textstyle\sum_j \alpha_j b_{jk} + \sum_t \delta_t y_{it} + \beta\ salience_i + \gamma_S\ senior\ retired\ long\ before_k \\ + \lambda_S\ salience_i \times senior\ retired\ long\ before_k \\ + \lambda_J\ salience_i \times junior\ retired\ long\ before_k + \mathbf{X}'_{ik}\eta + \varepsilon_{ik}\,. \end{aligned} \tag{9}$$

The results of estimating this specification are reported in table 9. Note that in columns (4) and (5) we cannot estimate the effect of the junior judge retiring long before an election since the sum of the dummies for senior and junior judge retiring long before are equal to the number of judges retiring long before. This in turn is fully determined by judge characteristics and hence perfectly collinear with the judge dummies. The estimates for $\lambda_S$ and $\lambda_J$ are positive and significant across all specifications. This suggests that the pandering incentives of both the senior and the junior judge have an effect on the decision in the case. The estimates for $\lambda_S$ and $\lambda_J$ are similar in magnitude suggesting that there is no differential effect of pandering incentives of the senior judge. We test for the equality of $\lambda_S$ and $\lambda_J$ and find that we cannot reject this hypothesis. This suggests that a seniority norm, even if it exists, does not appear to mediate the effect of pandering incentives on judicial decision making.

# 7 Rewards for pandering

Having identified the presence of corruption on the "supply" side in the form of pandering by judges, we now focus on the "demand" side in the form of rewards by governments. In principle, there could be many ways in which the government rewards judges who rule in its favour. We explore whether there is any evidence that pandering is actually rewarded by the government in a particular form, namely post-Supreme Court jobs.

Before discussing our results we note that practice of awarding post-SC jobs has been widely criticised in India.[34] For example, Indira Jaising, former Additional Solicitor General of India, commenting on the appointment of former Chief Justice of India (CJI) H. L. Dattu to Chairperson of the National Human Rights Commission, said that "Independence can be undermined in different ways and one of them is offering post retirement benefits immediately upon retirement".[35] Arun Jaitley, current Finance Minister, while in opposition, said that "Pre-retirement judges are influenced by a desire for post-retirement jobs".[36] Even R. M. Lodha, a former CJI, on the day of his retirement from the Supreme Court, said "I hold the view that the CJI, judges of the Supreme Court, Chief Justice of High Courts and judges of High Courts should not accept any constitutional position or assignment with gov-

[34]See for example Sangai et al. (2016), a report by an independent Indian think tank that highlights, among other challenges facing the Indian judiciary, the issue of post-SC jobs.

[35]Live Law, 27 Nov 2015, *CJI Dattu may be offered the post of NHRC Chairperson; Ms. Indira Jaising says independence of judiciary undermined by post retirement benefits*

[36]NDTV, 1 Oct 2012, *Judges' verdicts are influenced by post-retirement jobs: Arun Jaitley*

Table 10: Rewards for pandering

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| | 75th percentile of salience | | | Attorney or Solicitor General | | |
| Number of cases (UOI won, salient, author) | 0.0632* | 0.113** | 0.115** | 0.149** | 0.153** | 0.204** |
| | (0.0361) | (0.0441) | (0.0459) | (0.0699) | (0.0722) | (0.0802) |
| Number of cases (UOI won, salient, non-author) | | -0.00592 | -0.00581 | | 0.00194 | 0.00644 |
| | | (0.0548) | (0.0553) | | (0.0966) | (0.0959) |
| Number of cases (UOI lost, salient, author) | | -0.0855* | -0.0812 | | -0.0431 | 0.00146 |
| | | (0.0460) | (0.0558) | | (0.131) | (0.134) |
| Number of cases (UOI lost, salient, non-author) | | 0.0617 | 0.0636 | | 0.172 | 0.240 |
| | | (0.0558) | (0.0578) | | (0.138) | (0.146) |
| Number of cases (non-salient) | | | -0.000837 | | | -0.00607 |
| | | | (0.00597) | | | (0.00437) |
| Observations | 72 | 72 | 72 | 72 | 72 | 72 |
| $R^2$ | 0.098 | 0.152 | 0.152 | 0.118 | 0.141 | 0.168 |

Standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Dependent variable is 1 if the judge obtained post-SC job from the government that was in power when he retired. In columns (1) – (3) the number of salient cases is measured by the number of cases in the top 25 percent of the salience index and in columns (4) – (6) it is the cases where either the Attorney or the Solicitor General represented the government. All regressions control for the length of the judge's SC tenure, whether he was ever CJI, and a set of dummies for indicating the judge's religion. Standard errors reported in the parentheses.

ernment".[37] and "The idea is to insulate judges from the lure of post-retirement jobs. Judges don't have to run after politicians for lucrative posts after retirement if they get a salary".[38]

In this section, we investigate this issue by examining whether post-SC job prospects of a judge vary with his judicial behaviour. In particular, in section 6.1 we have established that the mechanism through which pandering occurs is judgement authorship in salient cases decided in favour of the government. To investigate whether this behaviour is rewarded we estimate

$$job_j = \pi_0 + \pi_1 \, num\ salient\ cases\ UOI\ won\ as\ author_j + \mathbf{Z}_j'\zeta + \varepsilon_j \,. \tag{10}$$

The dependent variable is an indicator for whether the judge received a post-SC appointment from the government in power at the time of his retirement. The results are reported in table 10.

We find that the estimates for $\pi_1$ are positive and significant across all specifications, indicating that authoring judgements in salient cases decided in favour of the government is indeed positively associated with securing a post-SC job. We control for the length of the judge's tenure and whether he was ever CJI to proxy for his experience. We also include dummies that indicate the judges' religion. In column (2) we control for the number of salient cases decided in favour of the government where the judge was not the author. Similarly, we also include the number of salient cases where the government lost and the judge was the author, and those where the government lost and the judge was not the author. Finally, in column (3) we control for the number of non-salient cases decided by the judge. In columns (1) – (3) we use the cases in the top 25% of the salience index to compute the number of salient cases. Instead, in columns (4) – (6) we use the presence of the Attorney or Solicitor General to proxy for salience and find that our results remain robust.

If interpreted causally, the estimates suggest that authoring the judgement in one salient case decided in favour of the government increase the likelihood of being appointed to a post SC job by between 15 to 20 percent. It is striking that the equilibrium relationship between pandering and rewards can be detected statistically using a sample of only 72 observations. This is surprising because we would expect any corruption at such a high level to be subtle and hard to detect. However, although suggestive, the relationship between post-SC jobs and authoring favourable decisions need not be causal evidence of corruption. Even though we control for observable judge characteristics, this correlation could be explained by the unobservable "type" of judges, e.g., political ideology or pro-/anti-government bias, driving both their rulings and their likelihood of obtaining a post-SC job. Nonetheless, since we have previously established that judges respond to pandering incentives by ruling in favour of the government, the correlations presented in this section would seem, at least in part, to be

[37] Live Law, 27 Sep 2014, *There should be a cooling off period of 2 years for judges to accept any appointment after retirement; Justice Lodha*

[38] Indian Express, 25 Oct 2015, *As CJI, I told PMs of way to insulate judges from lure of post-retirement jobs: Lodha*

driven by rewards for actual pandering.

Finally, we should emphasise that we cannot observe the motives of the government: it is possible that awarding post-SC jobs to judges who pander is simply a way of selecting those judges who will comply with the government's preferences in their post-SC job. Nonetheless, regardless of whether the government intends to reward judges or whether it simply uses authorship of favourable decisions as a mechanism to identify compliant judges, award of post-SC jobs will have the same effect on judicial behaviour. Hence our use of the phrase "rewards for pandering" should be seen as how these jobs are perceived by the judges rather than representing the intention of the government that hands them out.

# 8 Conclusion

We find that judges respond to pandering incentives by ruling in favour of the government. Moreover, judges who have authored favourable judgements in important cases are more likely to receive prestigious government jobs. Furthermore, we characterise two channels through which pandering occurs. First, pandering occurs through actively writing favourable judgements rather than passively being on a bench that decides the case. Second, pandering works through potentially harmful manipulation of actual decisions in favour of the government rather than through more benign means, such as strategic delay of unfavourable decisions. Our results are not driven by "rotten apples", i.e., *type* differences in the integrity of judges, but rather by a rational *behavioural response* to perverse institutional incentives in the form of career concerns.

The findings we report are important because this kind of corruption suggests the possibility of a serious miscarriage of justice, with far-reaching welfare implications. However, we note that the welfare implications depend on whether the "correct" rulings, i.e., the ones judges would make in the absence of pandering incentives, are welfare-maximising. For instance, pandering could lead to a welfare gain if the Supreme Court is otherwise biased against the government, and pandering incentives help steer the Court towards "better" decisions. This is related to the idea, found in Huntington (1968) and Bardhan (1997), that the presence of corruption can improve outcomes in a second-best world with many distortions already present. Evaluating whether pandering reduces or increases welfare faces two problems. First, identifying anything about the "correctness" of a ruling requires deep textual analysis, which is infeasible on a large scale. Second, there is no natural way of identifying the welfare-maximising ruling when it requires taking sides between, for example, a pro-free speech Court and a pro-security government.

Nevertheless, regardless of the welfare implications on litigants, our results have implications on institutional design. Separation of powers, foundational to modern democratic institutions, is not as clear in practice as it is in theory. Our analysis suggests that the prospect of being appointed to goverment positions after retirement could be a way in which the executive exercises control over an otherwise independent judiciary, in countries with

judicial term limits.

# References


Ashenfelter, Orley, Theodore Eisenberg, and Stewart J. Schwab (1995). "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes". *Journal of Legal Studies* 24 (2), pp. 257–281.

Banerjee, Abhijit, Rema Hanna, and Sendhil Mullainathan (2012). "Corruption". In: *Handbook of Organizational Economics*. Princeton, NJ: Princeton University Press.

Bardhan, Pranab (1997). "Corruption and Development: A Review of Issues". *Journal of Economic Literature* 35, pp. 1320–1346.

Bertrand, Marianne, Matilde Bombardini, and Francesco Trebbi (2014). "Is It Whom You Know or What You Know? An Empirical Assessment of the Lobbying Process". *American Economic Review* 104 (12), pp. 3885–3920.

Black, Ryan C. and Ryan J. Owens (2016). "Courting the President: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court". *American Journal of Political Science* 60 (1), pp. 30–43.

Bobonis, Gustavo J., Luis R. Cámara Fuertes, and Rainer Schwabe (2016). "Monitoring Corruptible Politicians". *American Economic Review* 106 (8), pp. 2371–2405.

Boyd, Christina L., Lee Epstein, and Andrew D. Martin (2010). "Untangling the Causal Effects of Sex on Judging". *American Journal of Political Science* 54 (2), pp. 389–411.

Callen, Michael and James D. Long (2015). "Institutional corruption and election fraud: Evidence from a field experiment in Afghanistan". *American Economic Review* 105 (1), pp. 354–381.

Cameron, A. Colin and Douglas L. Miller (2015). "A practitioner's guide to cluster-robust inference". *Journal of Human Resources* 50 (2), pp. 317–372.

Chandra, Aparna, William H.J. Hubbard, and Sital Kalantry (2017). "The unintended consequences of case-by-base rescue: An empirical study of Indian Supreme Court cases from 2010 to 2014". *Working Paper*.

Chen, Daniel L, Tobias J Moskowitz, and Kelly Shue (2016). "Decision Making Under the Gambler's Fallacy: Evidence from Asylum Judges, Loan Officers, and Baseball Umpires". *Quarterly Journal of Economics* 131 (3), pp. 1181–1242.

Dal Bó, Ernesto (2006). "Regulatory capture: A review". *Oxford Review of Economic Policy* 22 (2), pp. 203–225.

Danziger, Shai, Jonathan Levav, and Liora Avnaim-Pesso (2011). "Extraneous factors in judicial decisions". *Proceedings of the National Academy of Sciences of the United States of America* 108 (17), pp. 6889–6892.

Epstein, Lee, William M. Landes, and Richard A. Posner (2013). *The behavior of federal judges: A theoretical and empirical study of rational choice*. Cambridge, Massachusetts: Harvard University Press.

Ferraz, Claudio and Frederico Finan (2008). "Exposing corrupt politicians: the effects of Brazil's publicly released audits on electoral outcomes". *Quarterly Journal of Economics* 123, pp. 703–745.

— (2011). "Electoral accountability and corruption: Evidence from the audit reports of local governments". *American Economic Review* 101, pp. 1274–1311.

Ferrer, Rosa (2015). "The effect of lawyers' career concerns on litigation". Available at SSRN: https://ssrn.com/abstract=1138370 or http://dx.doi.org/10.2139/ssrn.1138370.

Fox, Zachary (2013). "Tax-Exempt Corruption: Exploring Elements of Institutional Corruption in Bond Finance". *Edmond J. Safra Working Papers* (12).

Garupa, Nuno and Tom Ginsburg (2015). *Judicial Reputation: A Comparative Theory*. The University of Chicago Press.

Green, Andrew and Albert Yoon (2016). "Triaging the law: Developing the common law on the Indian Supreme Court". Available at SSRN: http://ssrn.com/abstract=2816666.

Helmke, Gretchen (2002). "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy". *American Political Science Review* 96 (2), pp. 291–303.

Huntington, Samuel P. (1968). *Political Order in Changing Societies*. New Haven: Yale University Press.

Iaryczower, Matías, Pablo T. Spiller, and Mariano Tommasi (2002). "Judicial Independence in Unstable Environments, Argentina 1935-1998". *American Journal of Political Science* 46 (4), pp. 699–706.

Iyer, Lakshmi and Anandi Mani (2012). "Traveling Agents: Political Change and Bureaucratic Turnover in India". *Review of Economics and Statistics* 94 (3), pp. 723–739.

Laver, Roberto (2014). "Judicial independence in Latin America and the (conflicting) influence of cultural norms". *Edmond J. Safra Working Papers* (35).

Lessig, Lawrence (2013a). "Foreword: "Institutional Corruption" Defined". *Journal of Law, Medicine & Ethics* 41 (3).

— (2013b). "Institutional Corruptions". *Edmond J. Safra Working Papers* (1).

Levy, Gilat (2005). "Careerist Judges and the Appeals Process". *Rand Journal of Economics* 36 (2).

Li, Hongbin and Li-An Zhou (2005). "Political turnover and economic performance: the incentive role of personnel control in China". *Journal of Public Economics* 89 (9-10), pp. 1743–1762.

Lim, Claire S.H., James M. Snyder, and David Strömberg (2015). "The Judge, the Politician, and the Press: Newspaper Coverage and Criminal Sentencing across Electoral Systems". *American Economic Journal: Applied Economics* 7 (4), pp. 103–135.

Mendonca, Jose Vicente (2013). "Brazil's Case Against Private-Sponsored Events for Judges: A Not-Yet-Perfect Attempt at Fighting Institutional Corruption". *Edmond J. Safra Working Papers* (24).

Mookherjee, Dilip (1997). "Incentive Reforms in Developing Country Bureaucracies: Lessons from Tax Administration". In: *Annual World Bank conference on development economics*. Ed. by Boris Pleskovic and Joseph Stiglitz. The World Bank.

Niehaus, Paul and Sandip Sukhtankar (2013). "Corruption dynamics: The golden goose effect". *American Economic Journal: Economic Policy* 5 (4), pp. 230–269.

Olken, Benjamin A. and Rohini Pande (2012). "Corruption in Developing Countries". *Annual Review of Economics* 4 (1), pp. 479–509.

Pande, Rohini (2007). "Understanding Political Corruption in Low Income Countries". *Handbook of Development Economics* 4, pp. 3155–3184.

Posner, Richard A. (2010). *How judges think*. Harvard University Press.

Ramseyer, J. Mark (1998). "Judicial independence". In: *The New Palgrave Dictionary of Economics and the Law*. Macmillan.

Ramseyer, J. Mark and Eric B. Rasmusen (1997). "Judicial independence in civil law regimes: The evidence from Japan". *Journal of Law Economics & Organization* 13, pp. 259–286.

Robinson, Nick (2013). "Structure matters: The impact of court structure on the Indian and US Supreme Courts". *American Journal of Comparative Law* 61 (1), pp. 101–138.

Rodwin, Mark (2013). "Rooting out institutional corruption to manage inappropriate off-label drug use". *Journal of Law, Medicine & Ethics* 41 (3), pp. 654–664.

Salzberger, Eli and Paul Fenn (1999). "Judicial independence: Some evidence from the English Court of Appeal". *Journal of Law and Economics* 42, pp. 831–847.

Sangai, Ajey et al. (2016). *Law in numbers: Evidence-based approaches to legal reform*. Tech. rep. Vidhi centre for legal policy.

Schneider, Martin R. (2005). "Judicial Career Incentives and Court Performance: An Empirical Study of the German Labour Courts of Appeal". *European Journal of Law and Economics* 20 (2), pp. 127–144.

Shleifer, Andrei and Robert W. Vishny (1993). "Corruption". *Quarterly Journal of Economics* 108 (3), pp. 599–617.

Sukhtankar, Sandip and Milan Vaishnav (2015). "Corruption in India: Bridging Research Evidence and Policy Options". *Brookings-NCAER India Policy Forum 2014*.

Thompson, Dennis F. (1995). *Ethics in Congress: From Individual to Institutional Corruption*. Washington: Brookings Institution.

Vidal, Jordi Blanes I, Mirko Draca, and Christian Fons-Rosen (2012). "Revolving door lobbyists". *American Economic Review* 102 (7), pp. 3731–3748.

Williams, Brooke (2013). "Influence Incognito". *Edmond J. Safra Working Papers* (3).

Youngdahl, Jay (2013). "Investment Consultants and Institutional Corruption". *Edmond J. Safra Working Papers* (7).

# A For Online Publication

## A.1 Data appendix

| Position | Institution | Frequency |
|---|---|---|
| Chairperson | Appellate Tribunal for Electricity | 1 |
| Chairperson | Armed Forces Tribunal | 1 |
| Chairperson | Competition Appellate Tribunal | 3 |
| Governor | Government of Kerala | 1 |
| President | National Consumer Disputes Redressal Commission | 2 |
| Chairperson | National Forest Commission | 1 |
| Chairperson | National Green Tribunal | 2 |
| Chairperson/Member | National Human Rights Commission | 5 |
| Chairperson | Press Council of India | 2 |
| Chairperson | Telecom Disputes Settlement and Appellate Tribunal | 4 |
| Judge | International Court of Justice | 1 |
| Chairperson | Cauvery Water Dispute Tribunal | 1 |
| Chairperson | Krishna Water Disputes Tribunal | 1 |
| Chairperson | Mahadayi Water Disputes Tribunal | 1 |
| Chairperson | Vamsadhara Water Disputes Tribunal | 1 |
| Chairperson | Law Commission of India | 4 |
| Chairperson | Pay Commission | 1 |
| Chairperson | M. B. Shah Commision of Inquiry on Illegal Mining | 1 |
| Chairperson | Nanavati Commission | 1 |
| Chairperson | S. Saghir Ahmed Commission | 1 |
| Chairperson | U.C Banerjee Commission on the Godhra riots | 1 |
| Chairperson | Central University of Jharkhand | 1 |
| Professor | National University of Juridical Sciences | 2 |
| Chancellor | Sikkim University | 1 |

Table 11: Post-SC jobs and frequencies

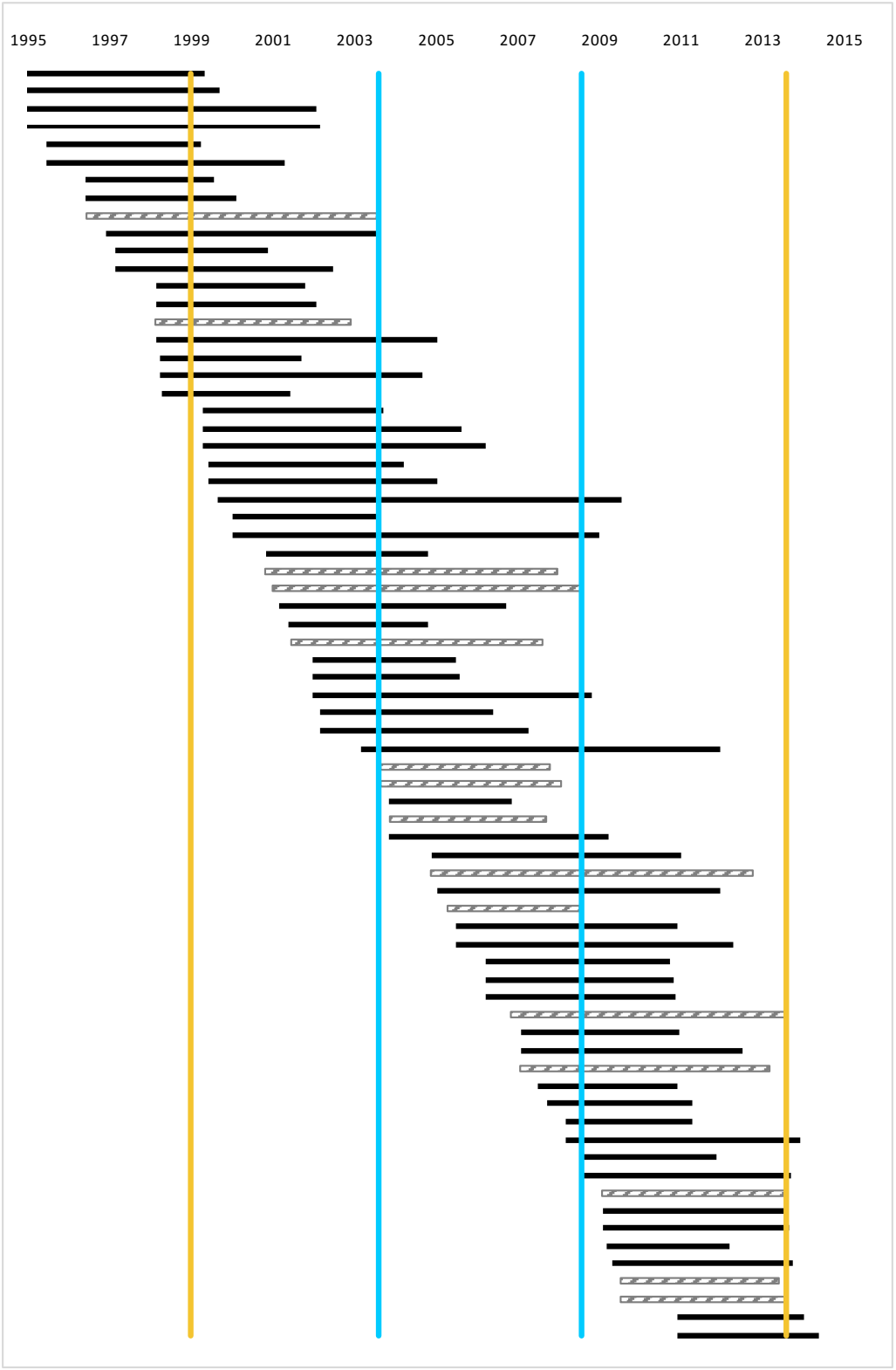



Figure 2: Judge tenures.
Each bar represents the tenure of a judge. Solid bars are for judges who retire at least one year before an election, while hatched bars are for judges who retire less than one year before an election. The saffron line represent elections won by the NDA while the light blue lines represent elections won by the UPA. The bars are sorted by the date of appointment to the Supreme Court. The last two judges are classified as retiring long before the election that is likely to occur in 2019.

## A.2 Additional results

Table 12: Different thresholds for retired long before

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Threshold | 6 months | | 18 months | | 2 years | |
| Salience | -0.359*** | -0.354*** | -0.336*** | -0.282*** | -0.116* | -0.119* |
| | (0.00552) | (0.0641) | (0.0552) | (0.0683) | (0.0614) | (0.0611) |
| One judge retired long before | -0.0718 | | 0.0741 | | -0.0209 | |
| | (0.0640) | | (0.0713) | | (0.0546) | |
| Both judges retired long | -0.164*** | | 0.0419 | | -0.0981* | |
| before | (0.0600) | | (0.0707) | | (0.0567) | |
| One judge retired long before | 0.252*** | 0.239*** | 0.297*** | 0.258*** | 0.0897 | 0.105 |
| × Salience | (0.0447) | (0.0778) | (0.0586) | (0.0727) | (0.0658) | (0.0663) |
| Both judges retired long | 0.371*** | 0.365*** | 0.386*** | 0.323*** | 0.174** | 0.181** |
| before × Salience | (0.0258) | (0.0695) | (0.0607) | (0.0745) | (0.0692) | (0.0709) |
| Case controls | No | Yes | No | Yes | No | Yes |
| Year dummies | No | Yes | No | Yes | No | Yes |
| Judge dummies | No | Yes | No | Yes | No | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.036 | 0.226 | 0.027 | 0.225 | 0.021 | 0.221 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 13: Constant marginal effects for retired long before

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| Salience | -0.194*** | -0.183*** | -0.182*** | -0.154*** | -0.157** |
| | (0.0460) | (0.0458) | (0.0467) | (0.0579) | (0.0609) |
| Number of judges who retired | -0.0189 | -0.0227 | -0.0257 | | |
| long before | (0.0322) | (0.0323) | (0.0336) | | |
| Salience × Number of | 0.119*** | 0.110*** | 0.109*** | 0.0932** | 0.0976** |
| judges who retired long before | (0.0317) | (0.0318) | (0.0320) | (0.0402) | (0.0419) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.022 | 0.032 | 0.055 | 0.203 | 0.221 |
| $p$-value $H_0 : \lambda_2 = 2\lambda_1$ | 0.0311 | 0.0258 | 0.0288 | 0.122 | 0.101 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. The mean of the dependent variable the probability that the government wins a case with mean salience when it is decided by a control group bench. Standard errors reported in the parentheses are clustered at the bench level. $^{*}$ $p < 0.1$, $^{**}$ $p < 0.05$, $^{***}$ $p < 0.01$

Table 14: At least one retired long before

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| Salience | -0.329*** | -0.334*** | -0.329*** | -0.301*** | -0.308*** |
| | (0.0646) | (0.0701) | (0.0695) | (0.0782) | (0.0791) |
| At least one retired long | 0.0383 | 0.0493 | 0.0363 | 0.140 | 0.139 |
| before | (0.0786) | (0.0734) | (0.0680) | (0.104) | (0.108) |
| At least one retired long | 0.318*** | 0.320*** | 0.313*** | 0.288*** | 0.299*** |
| before × Salience | (0.0676) | (0.0720) | (0.0714) | (0.0808) | (0.0819) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.015 | 0.027 | 0.051 | 0.204 | 0.222 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether government was appellant/petitioner, whether CJI was one of the judges, the tenures of the senior and junior judge at the time of decision. The mean of the dependent variable the probability that the government wins a case with mean salience when it is decided by a control group bench. Standard errors reported in the parentheses are clustered at the bench level. $^{*}$ $p < 0.1$, $^{**}$ $p < 0.05$, $^{***}$ $p < 0.01$

Table 15: Using different proxies for salience

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|---|---|---|---|---|---|---|---|
| One judge retired long before | -0.143 | -0.0316 | -0.0961 | 0.0214 | -0.116 | -0.0000474 | -0.254** | -0.0755 |
| | (0.115) | (0.0746) | (0.127) | (0.0733) | (0.0956) | (0.0595) | (0.114) | (0.0760) |
| Both judges retired long before | -0.173 | | -0.203 | | -0.204** | | -0.355*** | |
| | (0.106) | | (0.126) | | (0.0933) | | (0.106) | |
| AG, SG or Add. SG | -0.134 | -0.153 | | | | | -0.0839 | -0.0930 |
| | (0.0895) | (0.117) | | | | | (0.0821) | (0.106) |
| One judge retired long before × AG, SG or Add. SG | 0.238** | 0.239* | | | | | 0.218** | 0.209* |
| | (0.112) | (0.135) | | | | | (0.107) | (0.127) |
| Both judges retired long before × AG, SG or Add. SG | 0.233** | 0.188 | | | | | 0.194** | 0.133 |
| | (0.104) | (0.130) | | | | | (0.0966) | (0.121) |
| Number of Senior Advocates | | | -0.143** | -0.103 | | | -0.101* | -0.0537 |
| | | | (0.0627) | (0.0729) | | | (0.0537) | (0.0549) |
| One judge retired long before × Number of Senior Advocates | | | 0.109* | 0.0852 | | | 0.0831 | 0.0606 |
| | | | (0.0639) | (0.0750) | | | (0.0576) | (0.0594) |
| Both judges retired long before × Number of Senior Advocates | | | 0.156** | 0.116 | | | 0.128** | 0.0802 |
| | | | (0.0641) | (0.0757) | | | (0.0571) | (0.0620) |
| Number of Advocates | | | | | -0.0149*** | -0.0155*** | -0.0103*** | -0.0128*** |
| | | | | | (0.00260) | (0.00364) | (0.00308) | (0.00405) |
| One judge retired long before × Number of Advocates | | | | | 0.0109*** | 0.0117*** | 0.00703* | 0.00788* |
| | | | | | (0.00276) | (0.00390) | (0.00367) | (0.00444) |
| Both judges retired long before × Number of Advocates | | | | | 0.0151*** | 0.0154*** | 0.00803** | 0.0107** |
| | | | | | (0.00305) | (0.00404) | (0.00375) | (0.00477) |
| Case controls | No | Yes | No | Yes | No | Yes | No | Yes |
| Year dummies | No | Yes | No | Yes | No | Yes | No | Yes |
| Judge dummies | No | Yes | No | Yes | No | Yes | No | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.013 | 0.216 | 0.021 | 0.218 | 0.022 | 0.228 | 0.043 | 0.236 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 16: Disaggregated effects by quintiles of salience

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| | Salience 75th pctile | | Salience 90th pctile | | Salience quintiles | |
| Salient case | -0.522*** | -0.477** | -0.661*** | -0.762*** | | |
| | (0.160) | (0.195) | (0.0922) | (0.221) | | |
| One judge retired long before | -0.0670 | 0.0242 | -0.0246 | 0.0342 | -0.165 | -0.0195 |
| | (0.105) | (0.0622) | (0.0993) | (0.0550) | (0.132) | (0.0853) |
| Both judges retired long before | -0.160 | | -0.0904 | | -0.302** | |
| | (0.102) | | (0.0972) | | (0.121) | |
| Salient case × One judge retired long before | 0.382** | 0.381* | 0.486*** | 0.632*** | | |
| | (0.174) | (0.208) | (0.122) | (0.241) | | |
| Salient case × Both judges retired long before | 0.599*** | 0.553*** | 0.766*** | 0.820*** | | |
| | (0.173) | (0.204) | (0.120) | (0.247) | | |
| Salience pctile 20–40 | | | | | -0.128 | -0.157 |
| | | | | | (0.0952) | (0.120) |
| Salience pctile 40–60 | | | | | -0.199 | -0.196 |
| | | | | | (0.138) | (0.160) |
| Salience pctile 60–80 | | | | | -0.478** | -0.357 |
| | | | | | (0.238) | (0.221) |
| Salience pctile 80–100 | | | | | -0.509*** | -0.473** |
| | | | | | (0.191) | (0.230) |
| One judge retired long before × Salience pctile 20–40 | | | | | 0.136 | 0.195 |
| | | | | | (0.130) | (0.150) |
| Both judges retired long before × Salience pctile 20–40 | | | | | 0.0782 | 0.0651 |
| | | | | | (0.126) | (0.150) |
| One judge retired long before × Salience pctile 40–60 | | | | | 0.147 | 0.114 |
| | | | | | (0.168) | (0.179) |
| Both judges retired long before × Salience pctile 40–60 | | | | | 0.259* | 0.193 |
| | | | | | (0.156) | (0.181) |
| One judge retired long before × Salience pctile 60–80 | | | | | 0.436* | 0.359 |
| | | | | | (0.257) | (0.243) |
| Both judges retired long before × Salience pctile 60–80 | | | | | 0.557** | 0.451* |
| | | | | | (0.250) | (0.231) |
| One judge retired long before × Salience pctile 80–100 | | | | | 0.304 | 0.325 |
| | | | | | (0.213) | (0.248) |
| Both judges retired long before × Salience pctile 80–100 | | | | | 0.620*** | 0.542** |
| | | | | | (0.207) | (0.244) |
| Case controls | No | Yes | No | Yes | No | Yes |
| Year dummies | No | Yes | No | Yes | No | Yes |
| Judge dummies | No | Yes | No | Yes | No | Yes |
| Observations | 661 | 661 | 661 | 661 | 661 | 661 |
| $R^2$ | 0.025 | 0.225 | 0.014 | 0.220 | 0.033 | 0.231 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 17: Including cases with no clear winner

| | (1) Lost | (2) Lost | (3) Won | (4) Won | (5) Ternary | (6) Ternary |
|---|---|---|---|---|---|---|
| Salience | -0.160*** | -0.174*** | -0.0569* | -0.0681** | -0.217*** | -0.242*** |
| | (0.0239) | (0.0232) | (0.0343) | (0.0276) | (0.0576) | (0.0498) |
| One judge retired long before | 0.0175 | 0.0450 | -0.0193 | 0.0460 | -0.00174 | 0.0910 |
| | (0.0894) | (0.0509) | (0.0955) | (0.0536) | (0.183) | (0.103) |
| Both judges retired long before | -0.0120 | | -0.0659 | | -0.0780 | |
| | (0.0880) | | (0.0935) | | (0.180) | |
| One judge retired long before × Salience | 0.0971*** | 0.141*** | 0.0112 | 0.0421 | 0.108 | 0.183*** |
| | (0.0292) | (0.0305) | (0.0401) | (0.0362) | (0.0665) | (0.0636) |
| Both judges retired long before × Salience | 0.190*** | 0.194*** | 0.0962** | 0.0948** | 0.286*** | 0.289*** |
| | (0.0360) | (0.0428) | (0.0430) | (0.0429) | (0.0774) | (0.0836) |
| Case controls | No | Yes | No | Yes | No | Yes |
| Year dummies | No | Yes | No | Yes | No | Yes |
| Judge dummies | No | Yes | No | Yes | No | Yes |
| Observations | 681 | 681 | 681 | 681 | 681 | 681 |
| $R^2$ | 0.022 | 0.219 | 0.012 | 0.209 | 0.016 | 0.214 |

Dependent variable is whether government won, except in columns (5) and (6) where it takes three values: government won (1), government lost (-1), and no clear winner (0). Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 18: Logit and probit

| | (1) Logit | (2) Logit | (3) Logit | (4) Logit | (5) Probit | (6) Probit | (7) Probit | (8) Probit |
|---|---|---|---|---|---|---|---|---|
| Salience | -1.922** | -1.845** | -1.553** | -1.629*** | -1.153** | -1.102** | -0.948*** | -0.980*** |
| | (0.895) | (0.827) | (0.642) | (0.629) | (0.490) | (0.450) | (0.360) | (0.350) |
| One judge retired long before | 0.378 | 0.415 | 0.294 | 0.317 | 0.225 | 0.247 | 0.204 | 0.210 |
| | (0.363) | (0.364) | (0.275) | (0.282) | (0.221) | (0.220) | (0.157) | (0.162) |
| Both judges retired long before | 0.214 | 0.192 | | | 0.123 | 0.107 | | |
| | (0.352) | (0.360) | | | (0.214) | (0.216) | | |
| One judge retired long before × Salience | 1.641* | 1.576* | 1.327** | 1.393** | 0.979** | 0.934** | 0.809** | 0.838** |
| | (0.903) | (0.836) | (0.659) | (0.646) | (0.495) | (0.455) | (0.370) | (0.361) |
| Both judges retired long before × Salience | 2.086** | 1.977** | 1.642** | 1.743*** | 1.251** | 1.181*** | 0.992*** | 1.044*** |
| | (0.905) | (0.836) | (0.665) | (0.653) | (0.496) | (0.455) | (0.371) | (0.364) |
| Case controls | No | Yes | Yes | Yes | No | Yes | Yes | Yes |
| Year dummies | No | No | No | Yes | No | No | No | Yes |
| Judge dummies | No | No | Yes | Yes | No | No | Yes | Yes |
| Observations | 661 | 661 | 644 | 641 | 661 | 661 | 644 | 641 |

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 19: Pandering incentives and delay or hastening

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| UOI won | 0.213 | 0.406 | 0.632 | 0.589 | 0.623 |
| | (0.513) | (0.507) | (0.470) | (0.498) | (0.492) |
| Salience | 0.102 | -0.0341 | -0.207 | -0.539 | -0.577 |
| | (0.613) | (0.611) | (0.530) | (0.428) | (0.446) |
| UOI won × Salience | -1.180 | -1.172 | -0.951 | -1.475 | -1.399 |
| | (1.479) | (1.485) | (1.502) | (1.558) | (1.594) |
| One judge retired long before | 0.648 | 0.723 | 0.579 | 0.566 | 0.511 |
| | (0.663) | (0.682) | (0.708) | (0.451) | (0.446) |
| Both judges retired long before | 0.0223 | 0.00278 | -0.300 | | |
| | (0.586) | (0.570) | (0.636) | | |
| UOI won × One judge retired long before | -0.710 | -0.929 | -1.143* | -1.157* | -1.126* |
| | (0.676) | (0.700) | (0.659) | (0.609) | (0.596) |
| UOI won × Both judges retired long before | 0.0867 | -0.0913 | -0.391 | -0.367 | -0.358 |
| | (0.619) | (0.606) | (0.571) | (0.582) | (0.576) |
| One judge retired long before × Salience | -0.372 | -0.285 | -0.0739 | 0.00948 | 0.0701 |
| | (0.624) | (0.622) | (0.540) | (0.494) | (0.497) |
| Both judges retired long before × Salience | -0.179 | -0.156 | -0.105 | 0.129 | 0.124 |
| | (0.691) | (0.679) | (0.578) | (0.472) | (0.496) |
| UOI won × One judge retired long before × Salience | 1.374 | 1.322 | 1.166 | 1.957 | 1.846 |
| | (1.507) | (1.508) | (1.506) | (1.565) | (1.594) |
| UOI won × Both judges retired long before × Salience | 1.089 | 1.169 | 0.966 | 1.668 | 1.575 |
| | (1.522) | (1.522) | (1.517) | (1.586) | (1.617) |
| Case controls | No | Yes | Yes | Yes | Yes |
| Year dummies | No | No | Yes | No | Yes |
| Judge dummies | No | No | No | Yes | Yes |
| Observations | 660 | 660 | 660 | 660 | 660 |
| $R^2$ | 0.011 | 0.038 | 0.089 | 0.252 | 0.275 |

Dependent variable is the time from the year the case was filed to the date the case was decided. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$