

Why do lawmakers seek to sanction state courts?

Online Appendix

Table A.1. State-Level Judicial Selection and Retention Mechanisms

		Mode of Selection		
		Appointments	Nonpartisan Elections	Partisan Elections
Mode of Retention	Life*	MA, NH, RI	-	-
	Nonpartisan Elections	-	AR, GA, ID, KY, MI, MN, MS, MT, NV, ND, OH, OR, WA, WV, WI	-
	Partisan Elections	-	-	AL, LA, NC, TX
	Co-Branch Reappointments	CT, DE, HI, ME, NJ [◇] , NY, SC**, VT**, VA**	-	-
	Retention Elections	AK, AZ, CA, CO, FL, IN, IA, KS, MD, MO, NE, OK, SD, TN, UT, WY	-	IL, NM, PA

* Life tenure and uninterrupted tenure until mandatory retirement at 70 are combined into one category.

** Legislative Reappointment are placed within the reappointment category.

◇ After an initial seven-year term, judges may be reappointed by the governor and are then granted tenure.

Explaining Ideology Measures

Here, I address potential methodological issues arising from my choice of ideology measures. Creating inter-institutional measures of ideology that are comparable across both institutions and time is a challenging endeavor. Many research projects and agendas center on inter-institutional exchanges, and systematic ways to comparably assess actor preferences across institutions are needed. Scholars interested in federal institutional dynamics have options available to them, and much has been written about the validity and robustness of these measures.¹ Unfortunately, the daunting task of generating comparable measures across state institutions has left inter-institutional research at the state-level somewhat hindered. Three important, but distinct, measures of state-level ideology do exist. The first, "State Ideology Data" compiled by Berry, Ringquist, Fording, and Hanson (2012) measures state citizen and government ideology. The second, measures state legislative ideology, which was created and maintained by Shor and McCarty (2011). The final measure, assessing the ideology of state supreme court justices, was developed by Windett, Harden, and Hall (2015). Although each measure is useful on its own, they are not on similar scales, thus hampering research exploring inter-institutional dynamics.

Bonica and Woodruff (2014) attempt to fill this void by generating comparable estimates across institutions. Using campaign finance contribution data, they estimate the ideology of state judges, legislators, and governors. Here, the bridging assumption is that contributions to state campaigns have the same ideology as contributions to federal campaigns. Bailey, best characterizes the underlying logic: "if a state judge ran for election (as a judge or any other

¹ For a great summary of cross-institutional ideology scores and well as a discussion of the benefits and drawbacks of each see Bailey (2016).

office), then he or she is scaled as any candidate based on scaling donors (based in turn, on scaling of candidates to whom they gave money)" (2016, 24). Judges who did not run for office, but who made campaign contributions are scaled with donors based on the recipients of their donations. Judges who are appointed are scaled based on their appointing governor or legislative body. There are, of course, problems with this approach.

First, the bridging assumption rest on the belief that donors "have the same ideal points whether they are giving to state or federal candidates" (Bonica and Woodruff 2014, 447). Although Bonica and Woodruff show campaign contributions to be a useful source of information, additional sources of information - specifically judicial decisions - offer improved estimates of ideology (see Windett, Harden, and Hall 2015). Second, the ideal point estimates for legislators rely on a paucity of data for the number of observations; that is, the number of legislators far exceeds the number of donors. Third, CFscores assume that the ideal points are static, in effect claiming that judges maintain consistent preferences over time. Given previous research finding that judicial preferences change over time (Epstein and Knight 1998; Martin and Quinn 2002) static ideal points not only ignore a potentially important source of variation in judicial behavior, but potentially fail to accurately capture judicial preferences over a judge's tenure.

Despite potential problems with the impressive contributions made by Bonica and Woodruff (2014), I nevertheless rely on their ideology scores in this paper. I do this for two reasons, one practical the other methodological. Practically, as I have shown above, no other cross institutional measure exists. Given that the other measures of institutional ideology at the state-level are on varying scales no direct comparisons can be made. CFscores are simply the only option when it comes to exploring inter-institutional political dynamics at the state-level.

Methodologically, my interest is modeling how the interactions between legislatures and courts influence institutional behavior. To do so I aggregate individual ideal point estimates for legislators and judges to create chamber, overall legislature, and overall court ideology scores. Although this does not remove the inherent flaws in Bonica and Woodruff's measures, aggregating may ameliorate some of these issues, allowing for reliability of results despite existing margins of error. In effect, I rely on the wisdom of King Solomon who wrote in the Book of Proverbs: "...there is salvation in the multitude of counselors" (11:14).

Additional Tables and Results

Table A.2. Summary Proportions of Legislative Sanctions using ReadMe (2008-2012)

Retention System	<i>ReadMe Results</i>			<i>Human Coded Results</i>		
	Sanction	Not Sanction	Total	Sanction	Not Sanction	Total
Life or Uninterrupted Tenure	133 40.5%	195 54.4%	328 100%	135 41.2%	193 58.8%	328 100%
Nonpartisan Elections	280 23.7%	901 76.3%	1181 100%	297 25.2%	884 74.8%	1181 100%
Partisan Elections	100 21.6%	362 78.4%	462 100%	98 21.2%	364 78.8%	462 100%
Reappointments	302 30.0%	704 70.0%	1006 100%	269 26.7%	737 73.3%	1006 100%
Retention Elections	742 35.7%	1336 64.3%	2078 100%	745 35.9%	1333 64.1%	2078 100%

Presented here is a comparison between the results returned by *ReadMe* and those from the hand coding process. Although there are differences, overall the raw numbers and percentages are quite similar suggesting that both processes are capture the same phenomenon.

Figure A.1. Yearly comparison between number of introduced bills to introduced sanction bills

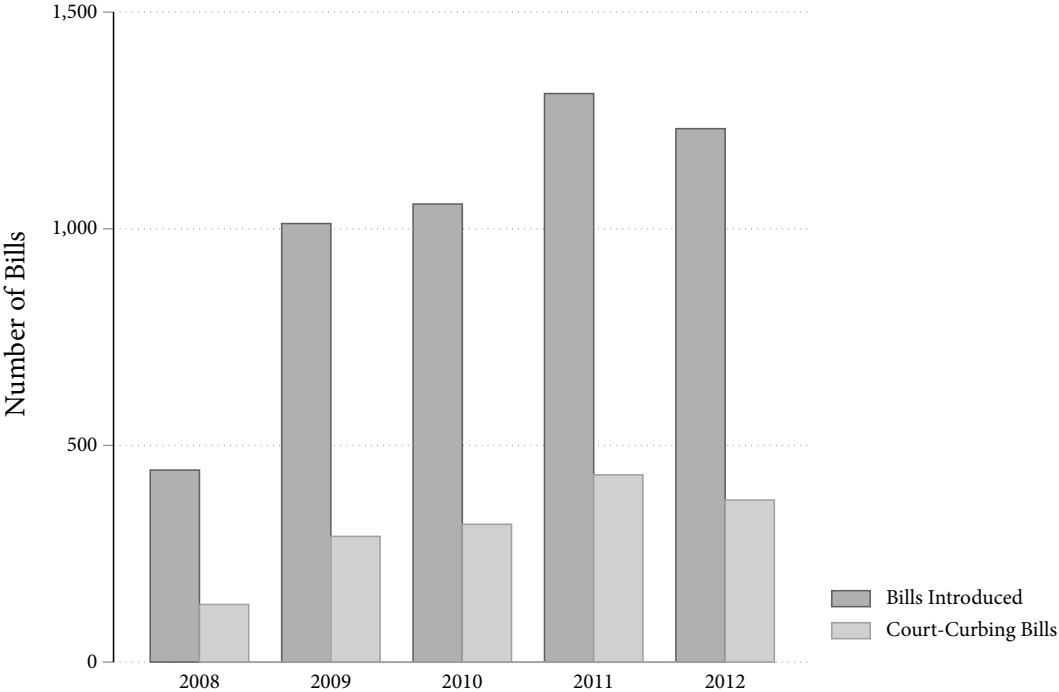
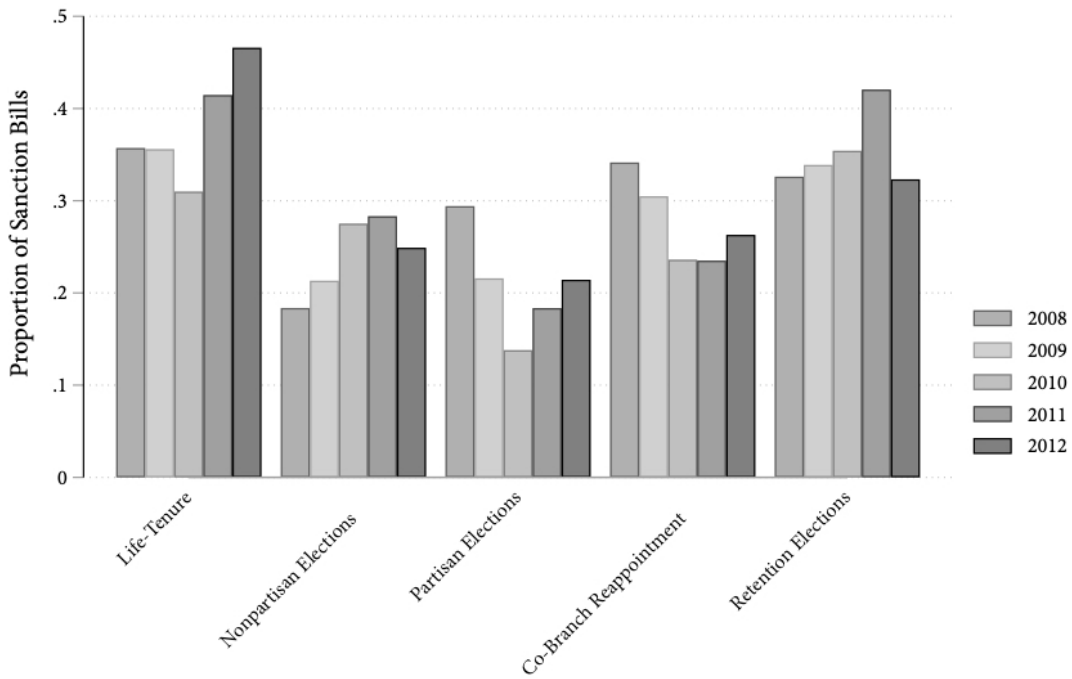
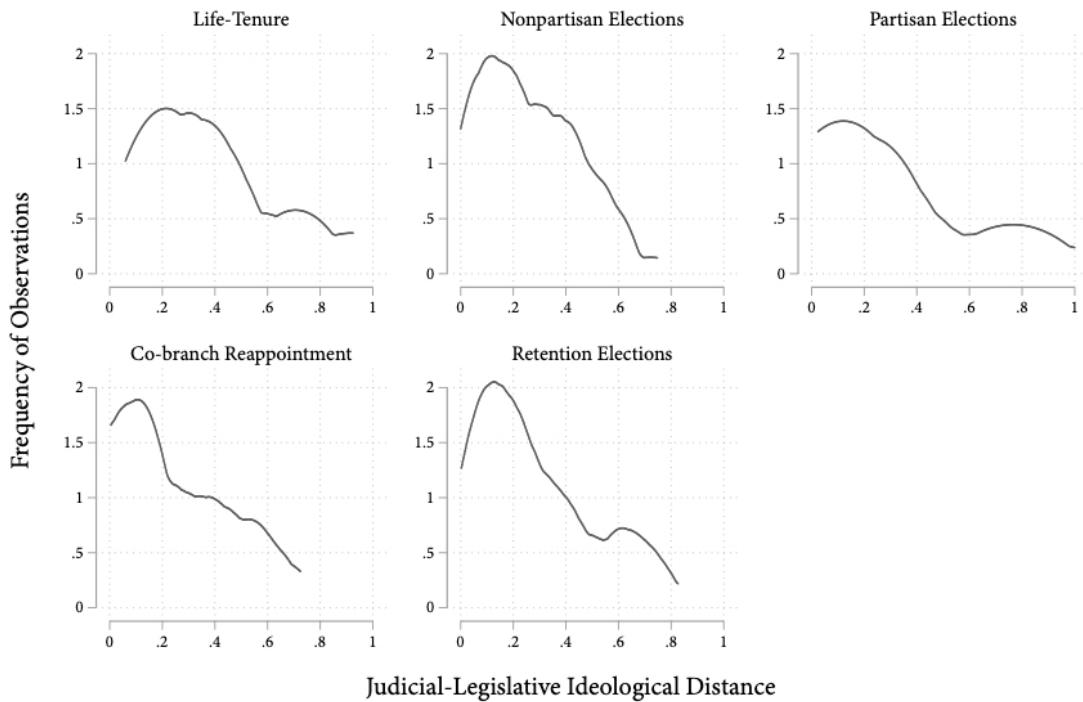


Figure A.2. Proportion of sanction bills by retention mechanism, yearly



This figure shows the proportion of the judicial-related workload seeking to sanction courts across all modes of retention for each year under analysis. The graph suggests that legislative sanctioning varies by retention mechanism, providing initial support for the notion that oversight and accountability dynamics shape decisions to introduce sanction measures. As hypothesized, states without retention mechanisms (i.e., life-time tenure) generally have the highest rates of bills introductions seeking to constrain court power.

Figure A.3. Distribution across Judicial-Legislative Ideological Distance by Retention Mechanism



As the ideological composition of institutions diverges, greater confrontation is possible. This expectation rests on the assumption that ideological differences exist between state high courts and their legislatures. Figure A.3 shows the distribution of these data across judicial-legislative ideological distance, by retention mechanism. A value of zero indicates that a court and legislature are ideologically aligned, a value of 1 indicates that these institutions are ideologically polarized. In general, courts and legislatures do not differ greatly ideologically; most observations lie somewhere between distance values of zero and 0.3. However, both appointments with life tenure and partisan elections present the largest ideological differences between a court and a legislature.

Table A.3. Explores Effects of Institutional Ideological Distance

	Model 1: Unconditional Model	Model 3 Conditional Model
Legislative Ideology	-0.622* (0.14)	-0.519* (0.14)
Judicial-Legislative Distance	0.866* (0.35)	0.209 (0.88)
Legislative Professionalism	0.164* (0.05)	0.179* (0.05)
Nonpartisan Elections	-1.055* (0.32)	-1.298* (0.53)
Partisan Elections	-0.833* (0.41)	-0.562 (0.60)
Co-branch Reappointment	-0.480 (0.32)	-0.478 (0.50)
Retention Elections	-0.906* (0.32)	-1.485* (0.50)
Law Invalidated (previous year)	0.246* (0.08)	0.250* (0.07)
Nonpartisan Elections x Judicial-Legislative Distance	-	0.935 (1.25)
Partisan Elections x Judicial-Legislative Distance	-	-0.813 (1.17)
Co-branch Reappointments x Judicial-Legislative Distance	-	-0.447 (1.13)
Retention Election x Judicial-Legislative Distance	-	1.976* (1.00)
Intercept	2.028* (0.32)	2.211* (0.46)
lnalpha	-0.153 (0.12)	-0.229 (0.12)
Variance Constant [year]	0.034 (0.04)	0.047 (0.05)
Observations	225	225

Note: Random effects negative binomial coefficients. *p < 0.05, or stricter. Baseline category is Life Time Tenure.

Table A.4. Explores Effects of Directional Ideological Distance

	Model 2 Unconditional Model	Model 4 Conditional Model
Directional Distance	-0.96* (0.38)	-1.37 (0.90)
Nonpartisan Elections	-0.68* (0.31)	-0.75* (0.31)
Partisan Elections	-0.34 (0.40)	-0.40 (0.39)
Co-branch Reappointment	-0.34 (0.32)	-0.62 (0.33)
Retention Elections	-0.45 (0.31)	-0.61* (0.30)
Judicial Review	0.26* (0.08)	0.26* (0.08)
Legislative Professionalism	0.09 (0.05)	0.13* (0.05)
Nonpartisan Election x Directional Distance	-	1.21 (1.15)
Partisan Elections x Directional Distance	-	2.44 (1.36)
Co-branch Reappointment x Directional Distance	-	2.24 (1.21)
Retention Elections x Directional Distance	-	-1.25 (1.05)
Intercept	2.04* (0.31)	2.08* (0.31)
lnalpha	-0.06 (0.11)	-0.17 (0.12)
Variance Constant [year]	0.07 (0.06)	0.08 (0.07)
Observations	225	225

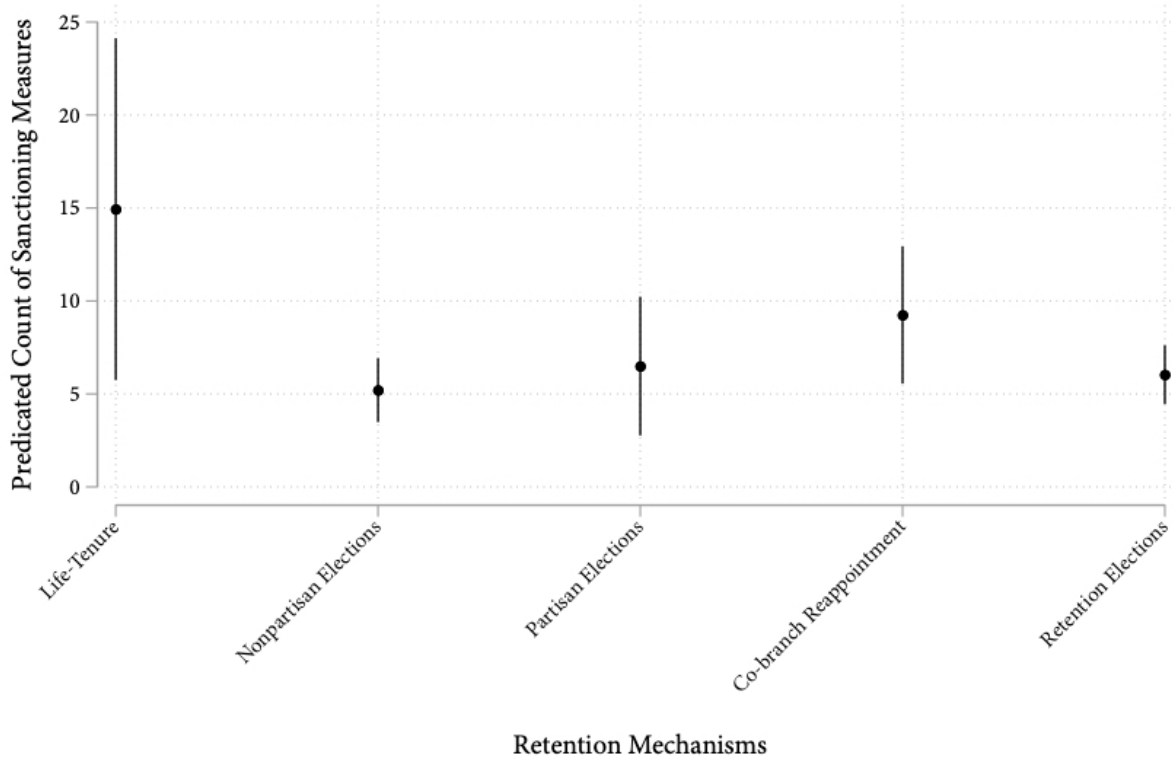
Note: Random effects negative binomial coefficients * $p < 0.05$, or stricter. Baseline category is Life Time Tenure.

Table A.5. Legislative Sanctions Introduced by State and Year

	2008	2009	2010	2011	2012	Total
Tennessee	10	53	62	50	54	229
Oklahoma	4	8	19	23	33	87
New Jersey	11	14	20	7	23	75
Minnesota	2	11	16	18	20	67
Missouri	10	12	12	18	15	67
New Hampshire	5	6	10	14	23	58
Pennsylvania	3	8	12	19	14	56
South Carolina	4	12	13	11	15	55
Georgia	4	7	13	13	14	51
Arizona	8	8	7	21	5	49
New York	0	7	12	16	14	49
Florida	1	5	8	23	10	47
Massachusetts	0	9	7	15	14	45
Iowa	0	1	4	18	19	42
Hawaii	6	3	10	7	11	37
Mississippi	1	6	10	13	7	37
Texas	-	20	-	16	-	36
Kansas	3	4	11	7	10	35
Rhode Island	5	6	8	7	6	32
Alabama	5	8	2	4	10	29
California	4	5	7	9	2	27
Illinois	8	8	4	3	2	25
Wisconsin	1	5	5	2	10	23
Indiana	2	6	2	6	6	22
Montana	-	4	-	18	-	22
Maryland	2	4	4	9	2	21
Kentucky	2	4	6	5	3	20
Connecticut	3	9	2	4	1	19
Michigan	3	1	3	5	6	18
North Carolina	1	4	1	10	1	17
Louisiana	10	0	5	0	1	16
Virginia	2	7	3	0	3	15
Arkansas	0	4	0	9	0	13
Maine	0	4	0	5	3	12
West Virginia	4	4	1	1	2	12
Washington	0	4	3	1	2	10
Ohio	0	2	2	4	1	9

Utah	2	0	4	2	1	9
New Mexico	0	2	1	2	2	7
Oregon	0	1	1	5	0	7
South Dakota	1	0	0	3	2	6
Vermont	1	1	1	1	2	6
Alaska	1	1	1	1	1	5
Idaho	1	0	3	1	0	5
Nebraska	0	0	1	2	2	5
Colorado	2	0	0	1	0	3
Nevada	-	2	-	1	-	3
Wyoming	0	0	0	2	1	3
Delaware	1	0	0	0	0	1
North Dakota	-	0	-	0	-	0
Total	133	290	316	432	373	1544

Figure A.4. Comparing the influence of retention mechanisms on sanctioning behavior



I find little support for my expectation that retention mechanisms influence legislative decisions to introduce sanctioning measures. In general, states that grant judges life (or near life) tenure, see the largest predicted count of sanction bills. In other words, without a retention mechanism, legislators rely more heavily on sanction measures to constrain judicial behavior. A pairwise comparison indicates a statistical difference between life (or near life) tenure and nonpartisan elections ($p = 0.03$) and between nonpartisan elections and co-branch reappointments ($p = 0.03$). However, these results are barely conclusive and generalizing from them is ill-advised. In the appendix I plot and compare these retention categories.

Figure A.5. Marginal Effects of Directional Ideology on Predicted Count of Sanctioning Bills

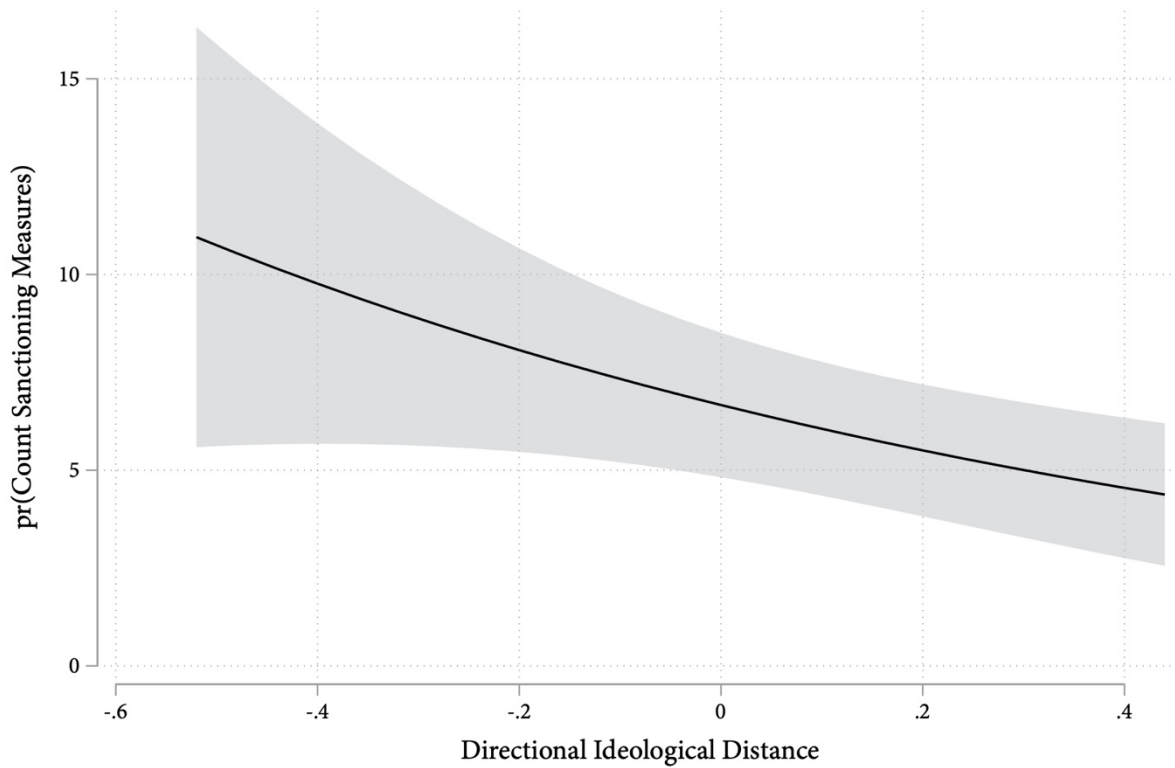


Figure A.7. plots the marginal effects of directional ideology on the predicted count of sanction measures. The mean for this measure is 0.01. Thus, a value of 0 approximates a situation where a court and legislature are ideologically identical. At a value of 0.47 – a liberal legislature relative to its court – a legislature is predicted to introduce approximately 4 sanction measures. At a value of -0.52 – a conservative legislature relative to its court – a legislature is predicted to introduce approximately 11 sanction measures. At a value of 0 – ideologically similar – a legislature is predicted to introduce approximately 7 sanction measures. A pairwise comparison uncovers no statistical difference in the predicted number of sanction bills between an ideological value of -0.52 and 0. The other comparisons reach statistical significance.