

Supply-Side Dynamics of the US Supreme Court Docket:

The Spatial-Temporal Landscape of Writ of Cert Petitions

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A The Process of Granting Writ of Certiorari

A writ of certiorari—commonly a cert petition—allows litigants to ask the U.S. Supreme Court to review a lower court’s judgment. Each Term the Court receives thousands of petitions and grants review in only a small fraction, roughly on the order of a hundred cases.

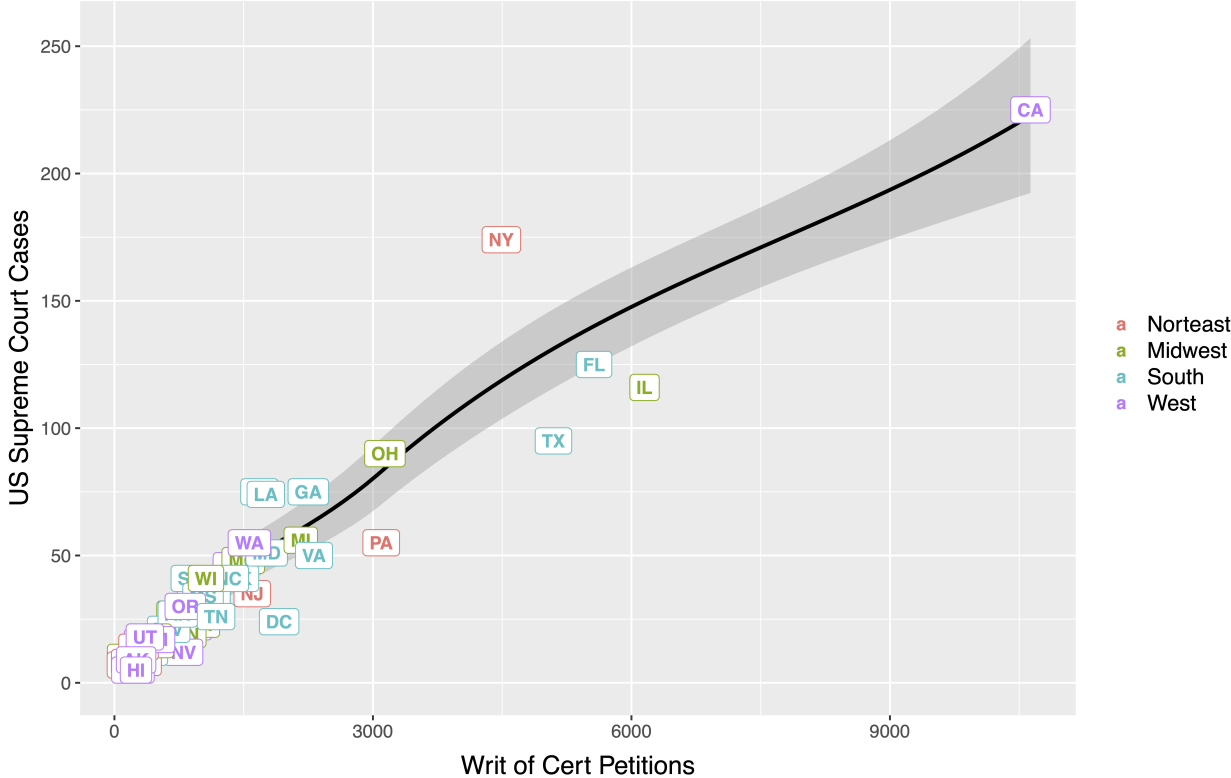
With the passage of the Judiciary Act of 1925 (the Judges’ Bill), the Court has largely set its own agenda. Supreme Court agenda-setting follows a simple binary procedure where the Court as an integral body decides whether to alter the status quo or not, at both the certiorari and on the merits stage. At the certiorari stage, the question is whether to hear the case at all; at the merits stage, the Court resolves the legal questions presented. Upon receiving petitions, the Court creates a “discuss list,” automatically rejecting any cases not considered cert-worthy without discussion or any formal record of the vote. The discuss list is created and circulated by the Chief Justice, to which the other justices attach a list of additional cases they think worthy of consideration during the Court’s weekly conference meetings. This part of the agenda-setting process is the first time that justices deliberate and record their preferences about a case. Here, the justices discuss and vote on petitions during conference. A case is granted review when four of the nine justices vote in favor—the familiar Rule of Four ([Ward and Weiden, 2006](#)).

In deciding whether to grant or deny cert, the justices weigh multiple considerations in combination—such as conflict among lower courts, the presence of dissents or en-banc treatment below, and other indicators of certworthiness ([Perry, 1994](#); [Caldeira, Wright and Zorn, 1999](#); [Caldeira and Wright, 1988](#)). Although the Court rarely explains its reasons for granting or denying review, those gatekeeping choices carry broad public and doctrinal consequences. Once the Court grants certiorari, it decides the case on the merits, addressing the questions presented and the issues preserved in the record rather than any broader policy debate in the abstract.

Beyond the importance of this agenda-setting power, scholars have pointed out that this aspect of judicial decision-making provides “maximum discretion, based on very little collegial deliberation, with virtually no public disclosure or explanation of their actions and subject to no precedential constraints” ([Cordray and Cordray, 2004](#)). Hence, choosing to elevate (or not) the prominence of an issue may be the Court’s most consequential action when agreeing to review a case—independent of the final decision on its merits—while the decision-making process behind such action is shrouded in secrecy.

B State Petitions versus State-Origin Cases (1946–2019)

Figure B.1 provides a compact benchmark of representation conditional on filings by comparing, for each state, the volume of petitions originating in its courts to the number of state-origin cases ultimately heard on the plenary docket. Interpreted this way, points above the informal proportionality line signal states whose pipelines deliver vehicles that convert to review at higher rates, i.e., New York, Louisiana, Georgia, and Ohio, while points below the line indicate pipelines that, conditional on filing volume, convert less frequently, i.e., Illinois, Florida, Texas, Pennsylvania, Virginia, and DC. Because the vast majority of states generate relatively few petitions in any given year, dispersion near the origin is expected; what matters for interpretation is the pattern—a small set of states with thicker pipelines lying visibly above the cloud and many states clustered close to proportionality. The figure’s purpose is descriptive rather than causal, by flagging where geographic features of supply appear to shape the conversion from petitions to argued cases.



C Ideologically Distant Courts

Theories of strategic behavior suggest that the Supreme Court is more likely to review decisions rendered by ideologically distant lower courts (Cameron, Segal and Songer, 2000). We provide some descriptive illustrations for federal and state courts and find that lower ideological alignment between the Supreme Court and the lower courts is associated with less petitions filed, and more cases granted review, with important variation between federal and state supreme courts.

In addition to the cues available to the justices, theories of judicial agenda-setting behavior emphasize ideological disagreement between the Supreme Court and lower courts as a factor shaping the Court’s docket. Litigants are strategic actors who weigh the potential costs and benefits of appealing to the Supreme Court. When lower court decisions reflect an ideological stance that diverges significantly from the Supreme Court’s known preferences, litigants may anticipate a greater likelihood of the Supreme Court overturning the lower court’s decision (Yates, Cann and Boyea, 2013), consequently increasing the incentive for the losing party to file a certiorari petition. Hence, petitioners are more likely to seek certiorari if they perceive the Court as ideologically aligned with their position (Yates, Cann and Boyea, 2013; Hinkle, 2024). Although imperfectly, litigants aim to avoid the costs of pursuing cases with predictable negative outcomes.¹ This process results in a nonrandom pool of cases being presented to the Court, reinforcing the ideological feedback loop and affecting the Court’s docket composition. This is further supported by the observation that cases appealed to the higher court tend to exhibit a higher degree of ideological voting (Songer, Segal and Cameron, 1994; Songer, Cameron and Segal, 1995).

The Supreme Court’s decision to grant certiorari is also influenced by ideological considerations. Cameron, Segal and Songer (2000) highlight that the Supreme Court’s certiorari process operates as a selective auditing mechanism, where the Court focuses its review on cases that have significant doctrinal implications or potential ideological conflicts. Hence, greater ideological distance between the lower court and the Supreme Court increases the likelihood of a grant. However, there is an exception to this. When the ideological distance between the Supreme Court and the lower courts is substantial, the informational value of reviewing such cases may be diminished due to asymmetries in fact patterns and doctrinal framing. Hence, the Court may choose to allocate limited resources to cases with more immediate relevance to its doctrinal agenda, thereby also decreasing the likelihood of granting cert in cases originating from an ideologically distant lower courts.

This section offers supplemental time-series overlays of ideological distance between the

¹Imperfectly, because the decision to grant cert is also contingent on justice and case-specific attributes.

Supreme Court and selected lower courts alongside two supply-side outcomes: (i) petitions filed and (ii) grant rates. Figures C.1 (Fifth and Ninth Circuits) and Figures C.2 (California and Texas) plot ideological distance together with petitions or grant rates over several decades. Ideological distance is calculated by taking the median ideology for the US Supreme Court and the median ideology for each Circuit Court of Appeals or state supreme court, respectively. Then we take the absolute difference between these medians for each term. The data is structured in the aggregate where each observation is the court-year.² The panels are descriptive illustrations of co-movement rather than estimates of causal response.

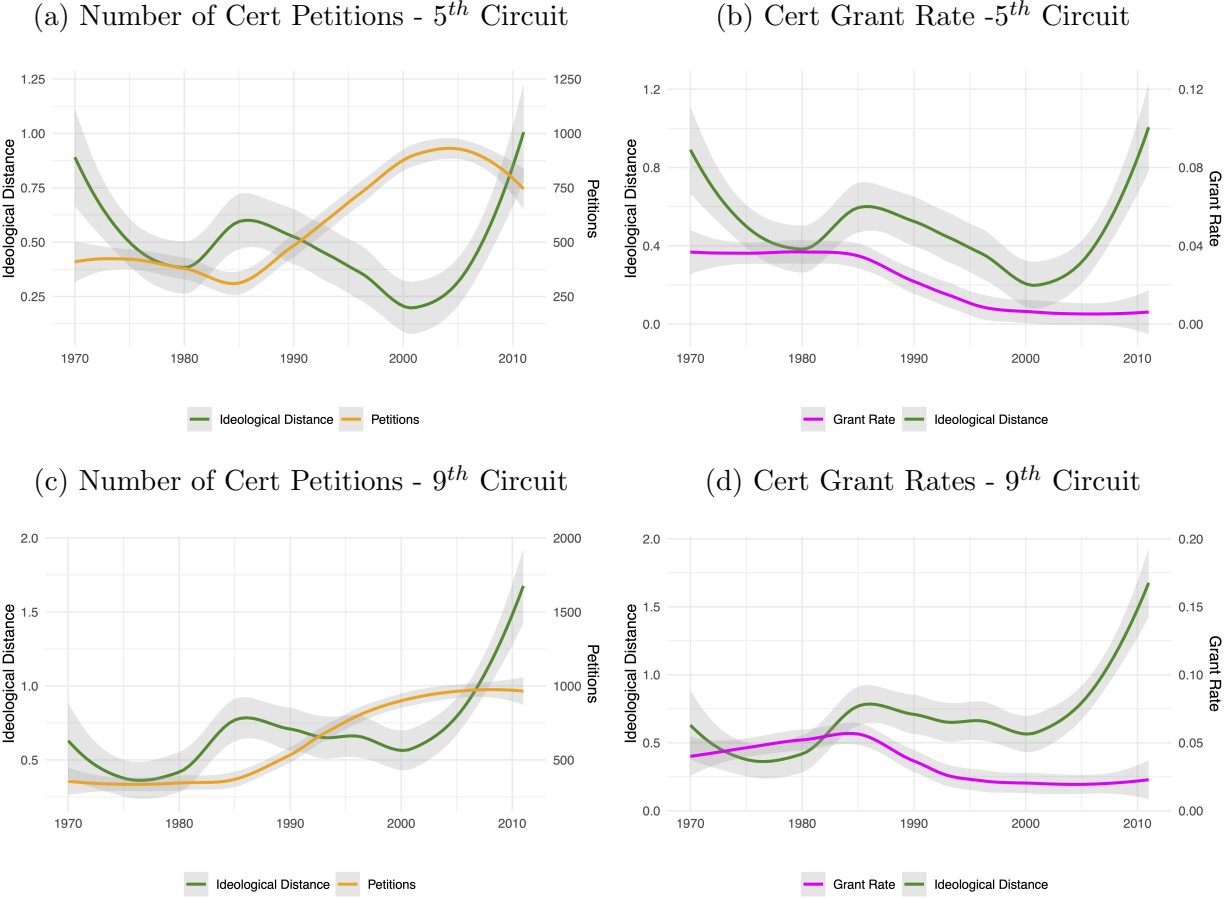


Figure C.1: Ideological Distance vs Petitions and Grant Rates for Fifth & Ninth Circuit Court of Appeals

For the Fifth Circuit, the petitions panel (Figure C.1a) shows a long-run increase in filings from the 1970s through the 2000s, during which ideological distance first declines

²The US Supreme Court median ideology is taken from [Martin and Quinn \(2002\)](#). The median ideology for the Circuit Courts of Appeal is taken from [Epstein et al. \(2007\)](#). The median ideology for state supreme courts is taken from [Hughes, Wilhelm and Wang \(2023\)](#). This is why the panels only go back to 1970, as we are constrained by the range of these data.

and later rises. The salient feature is not a single monotonic relationship, but alternating intervals of divergence and partial convergence: early on, petitions climb as distance falls; later, both series trend upward. In contrast, the Fifth Circuit grant-rate panel (Figure C.1b) exhibits a gradual downward drift over the period, even as distance moves through distinct phases, underscoring that the contraction of grants is not mechanically tethered to ideological proximity in these decades.

For the Ninth Circuit, petitions (Figure C.1c) follow a broadly rising trajectory with two intervals where distance and filings both increase, again pointing to co-movement that is not uniform across eras. The grant-rate panel (Figure C.1d) shows a clearer divergence: as ideological distance increases from the 1990s forward, grant rates trend downward, consistent with the idea that, in a capacity-constrained Court, changing pipelines and case mix can dominate any simple proximity heuristic. These descriptive patterns visually demonstrate that the ideological backdrop can correlate with petitioning and granting, but not in a single, term-invariant way.

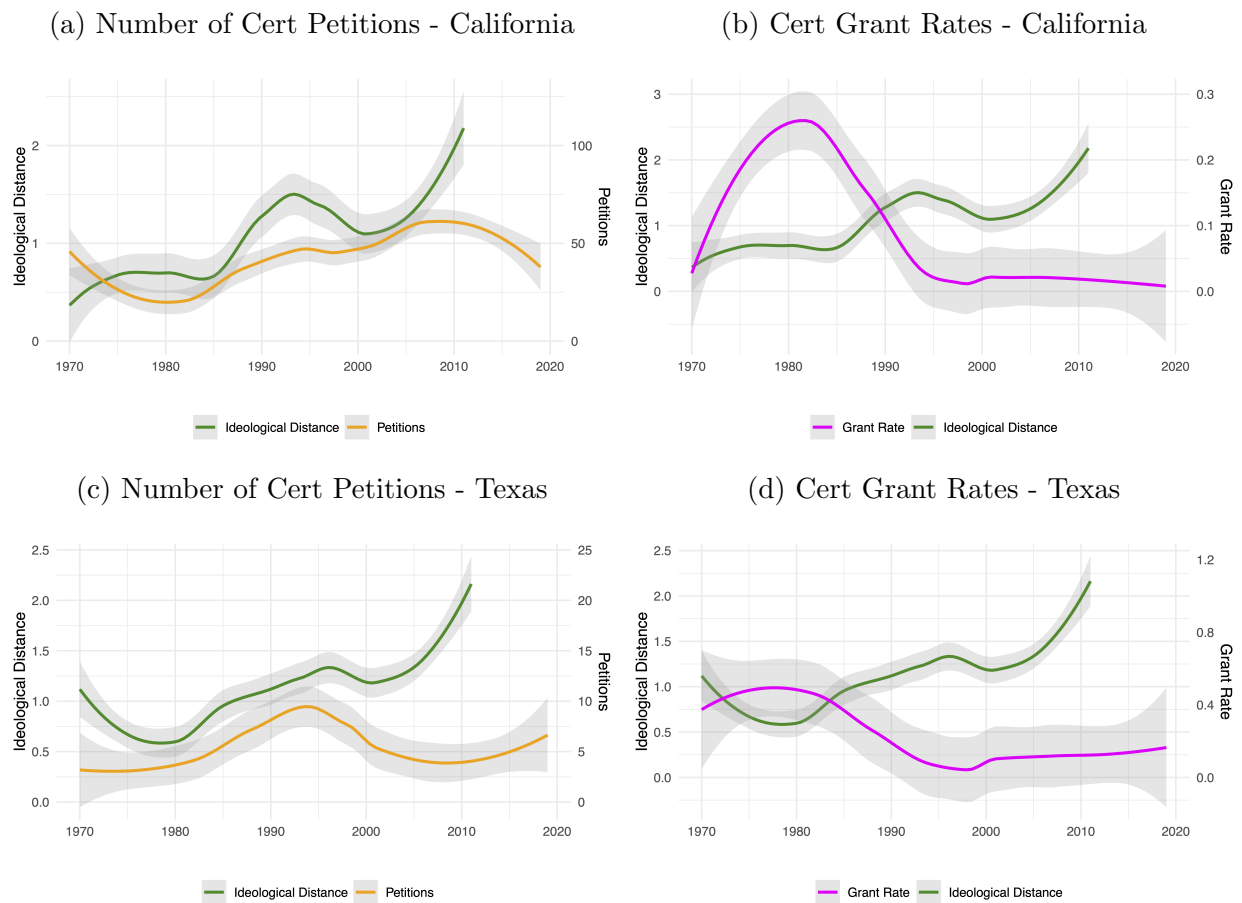


Figure C.2: Ideological Distance vs Petitions and Grant Rates for the Texas and California Supreme Court

The state panels replicate the federal overlays while highlighting small-N volatility. For California, petitions remain modest and relatively stable as ideological distance rises in the 2000s (Figure C.2a), while grant rates trend gently downward over the long run (Figure C.2b). For Texas, petitions increase gradually from low baselines while distance rises in the 1990s-2010s (Figure C.2c), while grant rates display notable swings in earlier years before settling into a low, stable baseline thereafter (Figure C.2d). Because state-origin grants are rare, the grant-rate series are intrinsically noisy; the figures should be read as directional context rather than as precise elasticities.

Taken together, these overlays reinforce two themes developed in the main paper. First, that petition growth and grant contraction are durable long-run features of the period. Second, that composition and vehicle quality—not counts alone—shape which cases cross the Court’s grant frontier.

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