

**The Conditional Effectiveness of Legislative Threats:  
How Court-curbing Alters the Behavior of (Some) Supreme Court Justices**

Alyx Mark

North Central College  
30 N Brainard St.  
Naperville IL 60604  
630-637-5366  
[admark@noctrl.edu](mailto:admark@noctrl.edu)

Michael A. Zilis

University of Kentucky  
1651 Patterson Office Tower  
Lexington, KY 40506  
859-257-7030  
[michael.zilis@uky.edu](mailto:michael.zilis@uky.edu)

**Online Appendix for *Political Research Quarterly***

## **Section A: Topic-specific Median Justice**

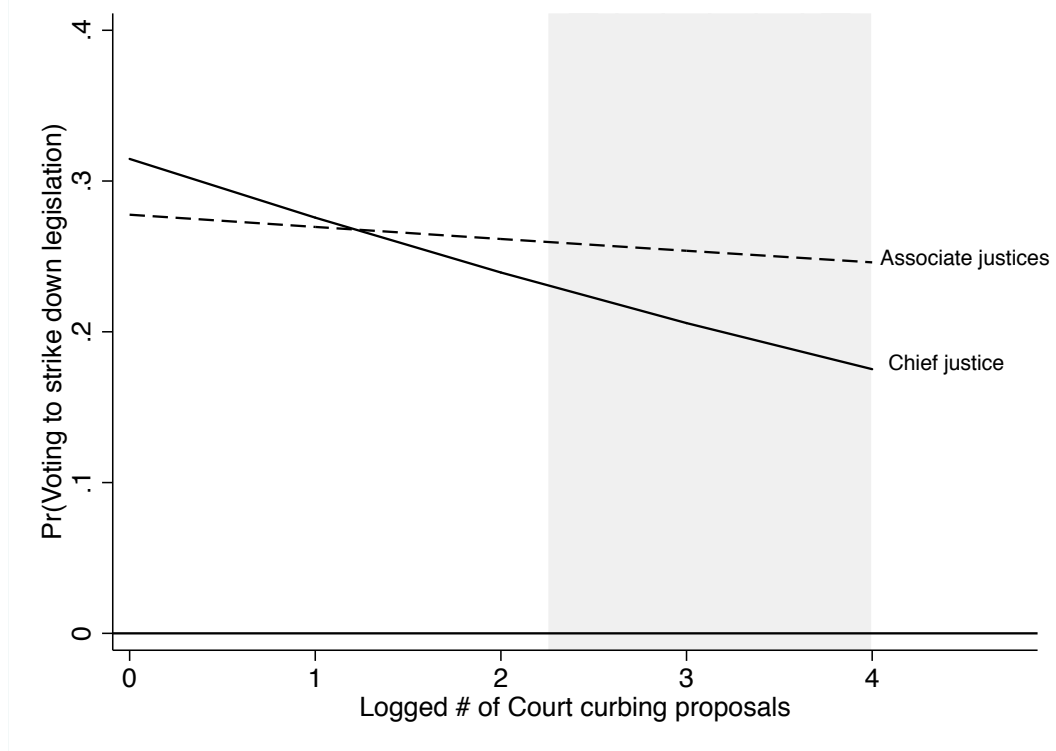
Here, we explore the robustness of our results using a topic specific median rank for the justices (Lauderdale and Clark 2014). These estimates are derived, in part, by drawing on textual data that allows for the identification of many more issue dimensions than is common in the literature. Table A1 presents the model and Figures A1 and A2 substantively interpret the results. The former shows the responsiveness of the chief justice. The latter shows that, while Court curbing slightly decreases the use of judicial review for the median justice, she is consistently less likely to strike down legislation than her colleagues overall.

Table A1. Voting to Strike Down Legislation Using Topic Specific Median Rank

Main Model	
Responsiveness variables	
<i>Court curbing<sub>t-1</sub></i>	-0.07 (0.12)
<i>Chief Justice</i>	0.33 (0.36)
<i>Topic specific swing justice</i>	-1.02 (0.45)
<i>Court curbing<sub>t-1</sub></i>	-0.27
<i>*Chief Justice</i>	(0.17)
<i>Court curbing<sub>t-1</sub></i>	-0.07
<i>*Swing justice</i>	(0.21)
Control variables	
<i>Issue-specific ideology</i>	-0.13 (0.04)
<i>Justice-statute inconsistency</i>	2.95 (0.19)
<i>Justice-House constraint</i>	-0.15 (0.78)
<i>Justice-Senate constraint</i>	-0.20 (0.82)
<i>Court-House constraint</i>	0.02 (1.92)
<i>Court-Senate constraint</i>	1.64 (1.96)
<i>Public opposition</i>	0.03 (0.02)
Issue area-fixed effects?	Yes
Natural Court-fixed effects?	Yes
Log pseudolikelihood	-2322.28
N	5769

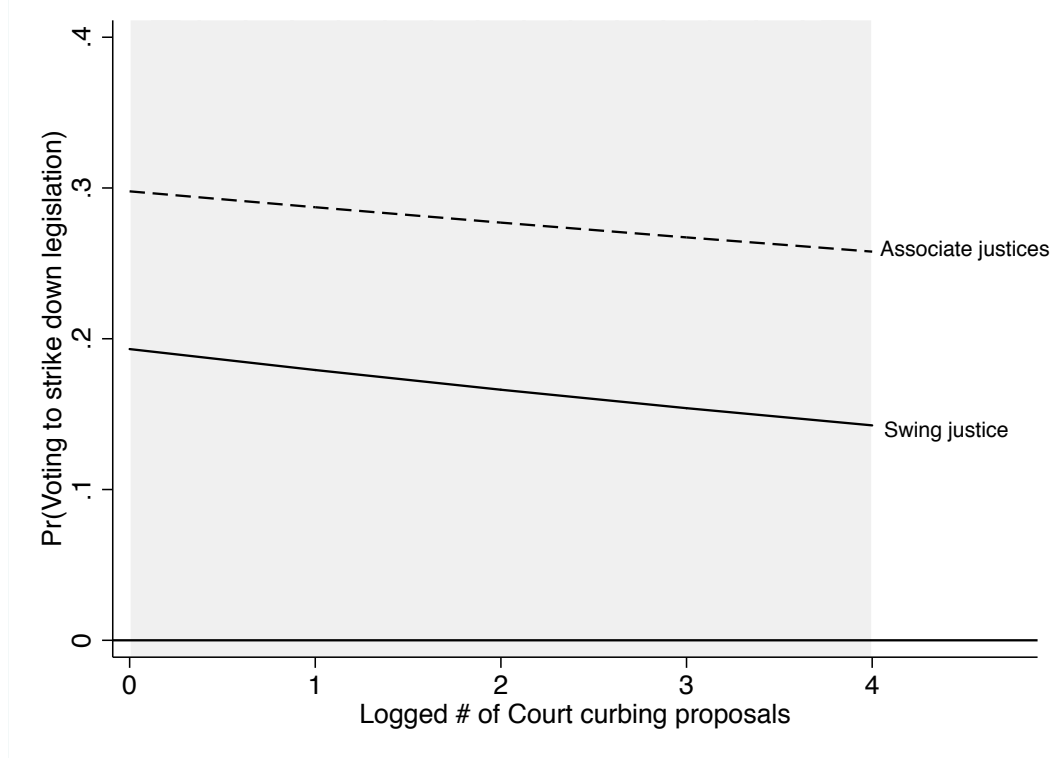
Results are estimated coefficients from a multilevel logistic regression with random effects by case and standard errors clustered by year. See Figures A1 and A2 for substantive and statistical interpretations.

Figure A1. Chief Justice



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the chief justice and associate justices, based on the model from Table A1. The shaded region represents a significant difference between the chief and associate justices' propensities to strike down legislation. Substantively, this demonstrates that the chief justice is consistently less likely than her colleagues to vote to strike down legislation as Court curbing increases.

Figure A2. Topic Specific Swing Justice



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the swing justice and associate justices, based on the model from Table A1. The shaded region represents a significant difference between the swing and associate justices' propensities to strike down legislation. Substantively, this demonstrates that the swing justice is consistently less likely than her colleagues to vote to strike down legislation.

## **Section B: Different Pivotal Actors in Congress**

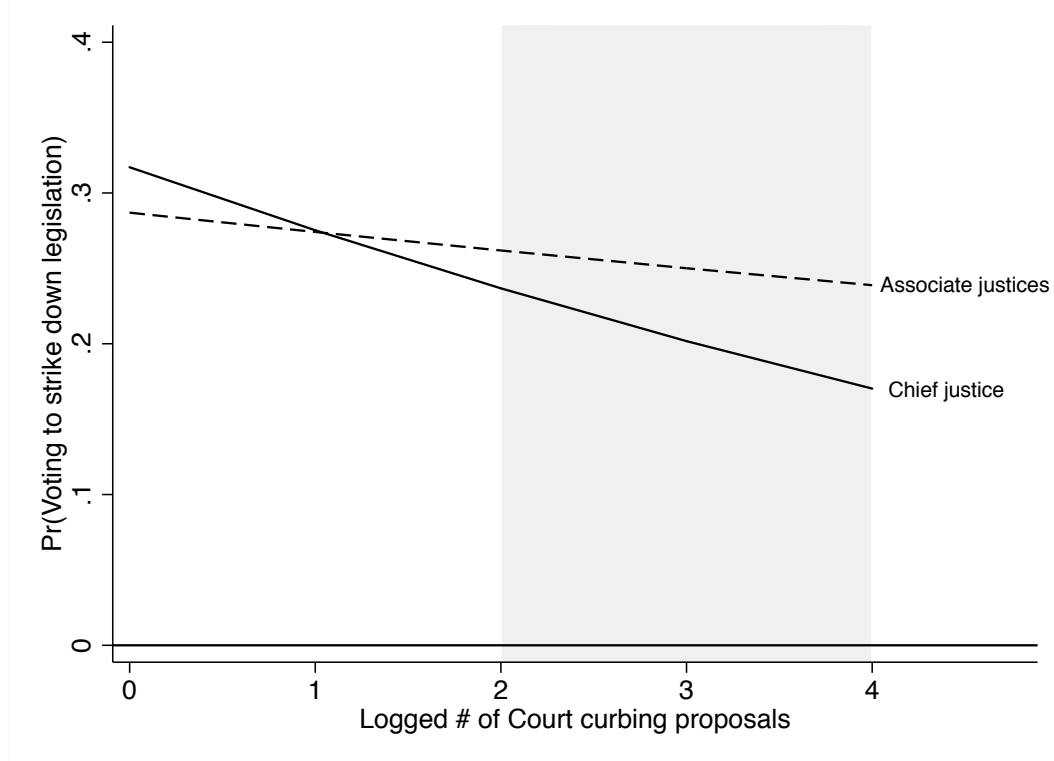
In this section, we consider the possibility that different pivotal actors in Congress may shape inter-institutional responsiveness. In the main text, we focused on the median member of each chamber, but here we draw on Mark and Zilis (2018), who show the important role that the majority party plays in Court curbing. We therefore control for congressional constraint as measured by the justice's and Court median's ideological distance to the majority party median in each chamber, using Judicial Common Space scores. Table B1 presents our model and Figures B1 and B2 our results, which are substantively similar to those using chamber medians. Our main findings regarding swing and chief justice responsiveness hold.

Table B1. Voting to Strike Down Legislation, Majority Party Median Model

Main Model	
Responsiveness variables	
<i>Court curbing</i> <sub>t-1</sub>	-0.10 (0.10)
<i>Chief Justice</i>	0.26 (0.37)
<i>Swing justice</i>	-0.88 (0.54)
<i>Court curbing</i> <sub>t-1</sub>	-0.25
* <i>Chief Justice</i>	(0.17)
<i>Court curbing</i> <sub>t-1</sub>	-0.28
* <i>Swing justice</i>	(0.26)
Control variables	
<i>Issue-specific ideology</i>	-0.11 (0.04)
<i>Justice-statute inconsistency</i>	2.99 (0.19)
<i>Justice-House constraint</i> (majority party model)	0.03 (0.33)
<i>Justice-Senate constraint</i> (majority party model)	-0.82 (0.32)
<i>Court-House constraint</i> (majority party model)	-1.10 (1.40)
<i>Court-Senate constraint</i> (majority party model)	1.57 (1.20)
<i>Public opposition</i>	0.02 (0.02)
Issue area-fixed effects?	Yes
Natural Court-fixed effects?	Yes
Log pseudolikelihood	-2314.80
N	5769

Results are estimated coefficients from a multilevel logistic regression with random effects by case and standard errors clustered by year. See Figures B1 and B2 for substantive and statistical interpretations.

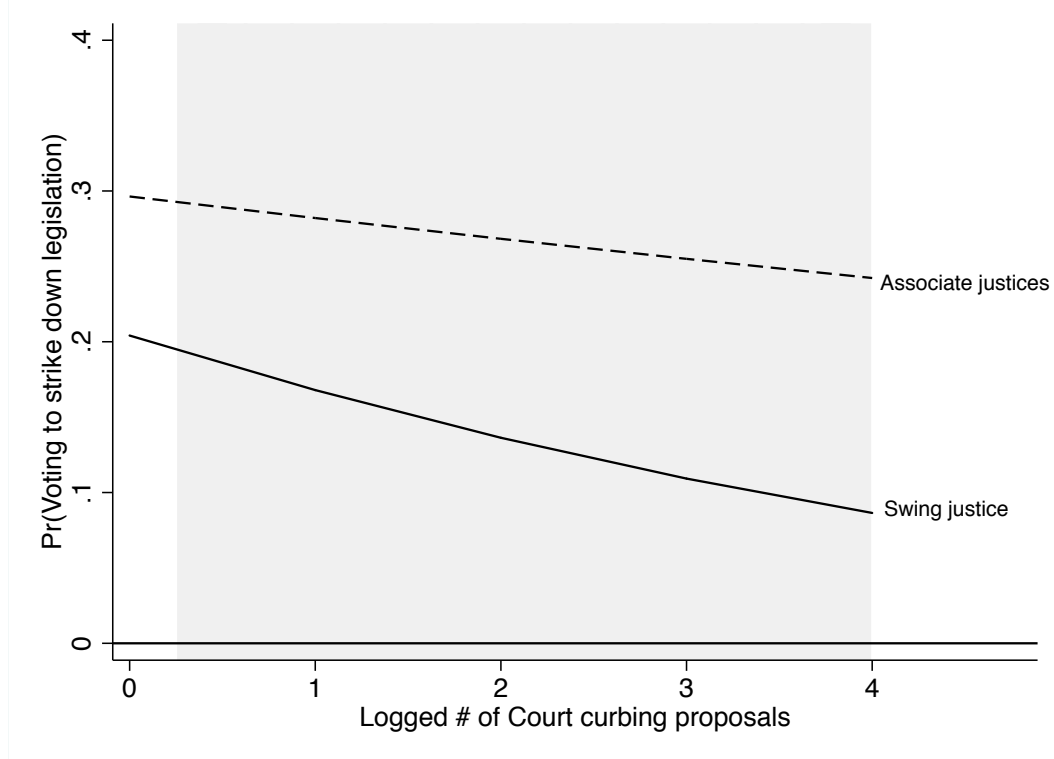
Figure B1. Chief Justice Average Marginal Effect of Court Curbing on Voting to Strike Down Legislation, Majority Party Median Model



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the chief justice and associate justices, based on the model from Table B1. The shaded region represents a significant difference between the chief and associate justices' propensities to strike down legislation. Substantively, this demonstrates that the chief justice is less likely than his colleagues to vote to strike down legislation as Court curbing increases.



Figure B1. Swing Justice Average Marginal Effect of Court Curbing on Voting to Strike Down Legislation, Majority Party Median Model



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the swing justice and associate justices, based on the model from Table B1. The shaded region represents a significant difference between the swing and associate justices' propensities to strike down legislation. Substantively, this demonstrates that the swing justice is less likely than his colleagues to vote to strike down legislation as Court curbing increases.

## **Section C: Public Opposition**

Drawing on Court curbing work that discusses the role of public opposition in how the Supreme Court responds to legislative threat (Clark 2009), we consider here more fully the role of public opinion. In particular, we specify a fully interactive model that interacts Court curbing, justice position, and public opinion in order to explore whether heightened opposition exacerbates the effect of Court curbing on our responsive justices. We find modest evidence that it does, for the chief justice alone. This can be seen in Figure C1, which demonstrates that the chief justice becomes significantly less likely to strike down legislation as court curbing increases, but specifically when the Court diverges from the public's policy mood. One substantive interpretation of this result is that the chief justice cares about the legitimacy of the Court and takes steps to protect it when Congress and the public are aligned against it. However, we do not find a similar pattern for the swing justice – public opposition does not condition her responsiveness to Court curbing.

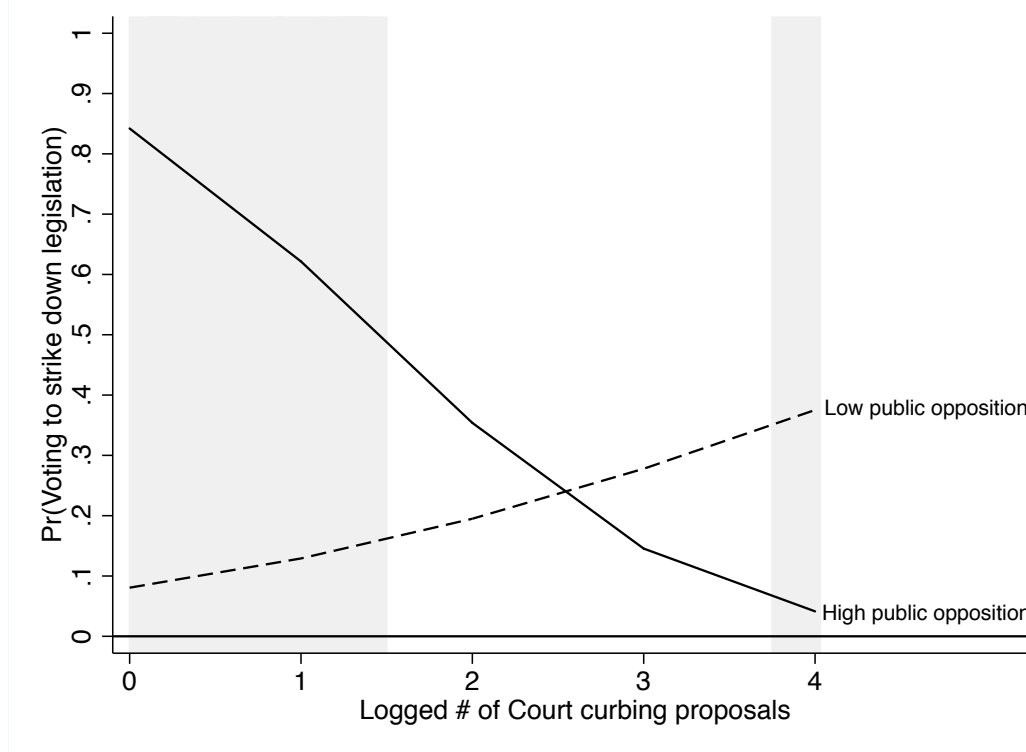
Table C1. Voting to Strike Down Legislation With Public Opinion Interaction

Main Model	
Responsiveness variables	
<i>Court curbing<sub>t-1</sub></i>	-0.25 (0.16)
<i>Chief Justice</i>	0.92 (0.54)
<i>Swing justice</i>	-2.16 (1.22)
<i>Court curbing<sub>t-1</sub></i>	-0.56
* <i>Chief Justice</i>	(0.24)
<i>Court curbing<sub>t-1</sub></i>	0.04
* <i>Swing justice</i>	(0.63)
Public opinion variables	
<i>Public opposition</i>	0.07 (0.04)
<i>Public opposition</i>	-0.02
* <i>Court curbing<sub>t-1</sub></i>	(0.01)
<i>Public opposition</i>	0.09
* <i>Chief Justice</i>	(0.05)
<i>Public opposition</i>	-0.14
* <i>Swing Justice</i>	(0.09)
<i>Public opposition</i>	-0.05
* <i>Court curbing<sub>t-1</sub></i>	(0.02)
* <i>Chief justice</i>	
<i>Public opposition</i>	0.03
* <i>Court curbing<sub>t-1</sub></i>	(0.05)
* <i>Swing justice</i>	
Control variables	
<i>Issue-specific ideology</i>	-0.12 (0.04)
<i>Justice-statute inconsistency</i>	2.96 (0.19)
<i>Justice-House constraint</i>	-0.17 (0.81)
<i>Justice-Senate constraint</i>	-0.27 (0.85)
<i>Court-House constraint</i>	0.67 (2.02)
<i>Court-Senate constraint</i>	1.23 (1.85)
Issue area-fixed effects?	Yes
Natural Court-fixed effects?	Yes

Log pseudolikelihood	-2317.88
N	5769

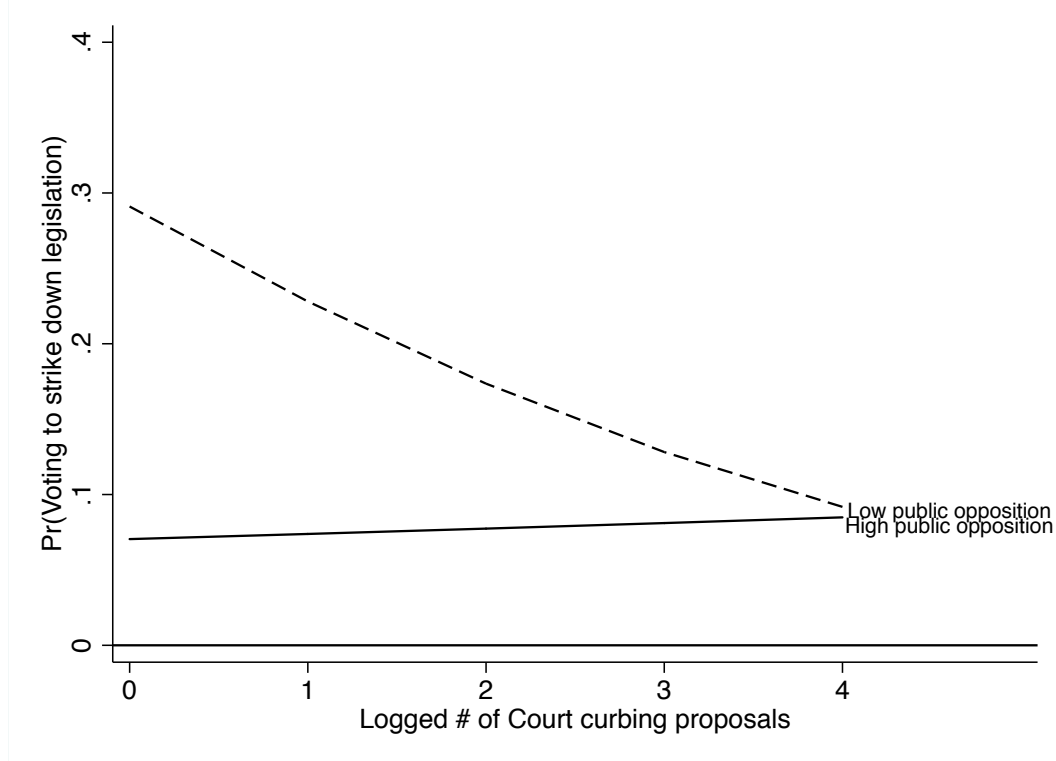
Results are estimated coefficients from a multilevel logistic regression with random effects by case and standard errors clustered by year. See Figures C1 and C2 for substantive and statistical interpretations.

Figure C1. Average Marginal Effect of Court Curbing on Voting to Strike Down Legislation, Chief Justice Conditional on Public Opposition



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the swing justice based on the model from Table 2. The solid line represents the case when public opposition to the Court is high (maximum), the dashed line when public opposition is low (minimum). The shaded region represents a significant difference between propensities to strike down legislation. Substantively, this demonstrates that chief justice is more likely to strike down legislation when faced with high public opposition but few threats from Congress, indicating that his primary attention is on the congressional Court curbing environment.

Figure C2. Average Marginal Effect of Court Curbing on Voting to Strike Down Legislation, Swing Justice Conditional on Public Opposition



Note: The figure displays the likelihood of voting to strike down legislation at various levels of Court curbing for the swing justice based on the model from Table 2. The solid line represents the case when public opposition to the Court is high (maximum), the dashed line when public opposition is low (minimum). There is no significance difference in the effect of Court curbing conditional on variation in public opposition.