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

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Abstract

We investigate whether judicial decisions are affected by career concerns of judges by analyzing two questions: Do judges respond to incentives to pander by ruling in favor of the government in the hope of receiving jobs after retiring from the Supreme Court? Does the government reward judges who rule in its favor with prestigious jobs? We construct a data set of Supreme Court of India cases involving the government for 1999–2014. We find that incentives to pander have a causal effect on judicial decision-making, and they are jointly determined by the importance of the case and whether the judge retires with enough time left in a government's term to be rewarded with a prestigious job. We also find that authoring favorable judgments increases the likelihood of being appointed to prestigious post–Supreme Court jobs. This suggests the presence of corruption in the form of government influence over judicial decisions.

We thank Konrad Burchardi, Parkash Chander, Davin Chor, Dhammika Dharmapala, Steven Durlauf, Lin Feng, Alexander Christoph Fischer, Tom Ginsburg, William Hubbard, Brian P. Kennedy, Vikramaditya Khanna, Nuarpear Lekfuangfu, Lawrence Lessig, Anirban Mitra, Omer Moav, Abhiroop Mukhopadhyay, Mark Ramseyer, Yona Rubinstein, Tom Sargent, Shekhar Shah, 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, the London School of Economics, the National University of Singapore, Interdisciplinary Center Herzliya, Bar-Ilan University, the National Council of Applied Economic Research, the Delhi School of Economics, the Australasian Public Choice Conference, the 2016 Indian Statistical Institute Annual Conference on Growth and Development, the Colloquium on the Supreme Court of India, Indian Statistical Institute Delhi, the 2017 American Law and Economics Association conference, Empirical Enquiries into the Indian Judicial System, the 2018 Asia Law and Economics Association Conference, Singapore Management University Economics 204 students from the 2017 and 2018 cohorts, and a referee for valuable comments and suggestions. We also thank our project manager, Dominic Liew, and research assistants Nicole Chan, Charlene Chow, Persis Hoo, Shirlene Leong, Glenda Lim, Nicole Ann Lim, Alwyn Loy, Kartik Singh, Teo Ting Wei, and Chong Shou Yu. The views expressed here are solely those of the authors.

[*Journal of Law and Economics,* vol. 64 (August 2021)]
 0022-2186/2021/6403-0016$10.00

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.[1] 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 (see Garupa and Ginsburg 2015, chap. 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 postretirement appointments influences judicial decision-making. If true, this compromises the idea of a fair and independent judiciary.[2] In this paper, we investigate the practice of awarding government jobs to retired judges and show that the concerns surrounding it are valid.

We examine this practice in the context of India. Over the last 2 decades, it has become common for retiring Supreme Court justices to be appointed to prestigious government positions. This practice has been criticized as leading to a bias in favor of the government when judges decide cases with high stakes.[3] 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 favor, and in exchange the government rewards judges with jobs. This raises two natural questions that we confront in this paper. First, do judges respond to incentives to pander (hereafter, pandering incentives) by ruling in favor of the government? Second, does the government reward judges who rule in its favor with prestigious jobs? In this paper, we answer both questions in the affirmative.

To do so, we construct a novel data set of cases decided by the Supreme Court of India between 1999 and 2014 involving the government. We analyze the full text of the judgments and code whether the government won or lost each case. We also collect data on the post–Supreme Court appointments and find that getting one is positively correlated with decisions in favor of the government.

The key identification challenge is that this correlation between favorable judicial decisions and government appointments after retirement may be driven simply by characteristics of judges such as their suitability for particular appointments or their ideology rather than by manipulation of judicial decisions to secure such appointments. As a result, judicial decision-making may be invariant to

[1] 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 Blanes i Vidal, Draca, and Fons-Rosen (2012). It is therefore plausible that the prospect of such lobbying roles affects their behavior when they serve in government. See Dal Bó (2006) for a review of the literature on revolving doors and regulatory capture.

[2] 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 favor of one party or the other. More specifically, it is also seen as independence from government influence in decision-making. See Ramseyer (1998) for a discussion of the idea of judicial independence and a survey of the literature.

[3] We present some of the public discourse surrounding this issue in Section 7.

incentives and may merely reveal a judge's type rather than indicate the presence of corruption. To address this concern, we focus on judicial behavior and attempt 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 whether the case is important and whether the judge retires with enough time (at least 47 weeks) 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, importance—that is, 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 because judges must retire on their 65th birthday, all governments served their full terms, and elections were regularly held at 5-year intervals.

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 important and nonimportant cases because of 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 favor of the government. We interpret this result as the causal effect of pandering incentives on judicial behavior.

Furthermore, we attempt to characterize the channel through which pandering incentives work and find that the mechanism consists of being the author of judgments rather than simply being on a bench that decides a case in favor of the government. On the rewards side, we show that authoring decisions in important cases in favor of the government is positively correlated with the judge being appointed to prestigious post–Supreme Court jobs. This correlation remains robust to instrumenting favorable decisions authored in important cases with the number of important cases decided by the judge. 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 analyzes the question of judicial independence. In the context of the United States, 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 judges do decide against the government, and the likelihood of doing so is higher when the government is unlikely to survive. Helmke (2002) finds similar results that suggest that 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 United Kingdom, reversing favorable 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 behavior 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 a case. Chen, Moskowitz, and Shue (2016) document a negative autocorrelation in refugees' asylum court cases unrelated to the merits, which suggests that the gambler's fallacy is at work: judges underestimate the likelihood of sequential streaks occurring by chance. Boyd, Epstein, and Martin (2010) document systematic differences in the decisions of male and female judges. Eren and Mocan (2018) find that unexpected losses by a prominent college team increase sentence lengths of juvenile offenders in cases handled in the week following the loss, especially if the judge received his bachelor's degree from that college. In a similar vein, Shayo and Zussman (2011) document the presence of judicial bias in Israel in favor of defendants who have the same ethnicity as the judge, and Abrams, Bertrand, and Mullainathan (2011) show the presence of judicial bias against African-American defendants in the United States. Geerling et al. (2018) document the effect of political ideology on judicial decisions in Nazi Germany. 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 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.[4]

Finally, our paper is related to the empirical literature on identifying and measuring corruption at an aggregate institutional level (for surveys, see Banerjee, Hanna, and Mullainathan 2013; Pande 2007; Sukhtankar and Vaishnav 2015; on institutional corruption, see Lessig 2013a, 2013b). More specifically, our paper is related to the literature on corruption that seeks to understand the determinants of corruption and what can be done about it.[5] In particular, this paper supports a

[4] 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).

[5] See Callen and Long (2015), Ferraz and Finan (2008, 2011), Niehaus and Sukhtankar (2013), and Bobonis, Fuertes, and Schwabe (2016) for more examples of settings where corruption is identified as arising from specific incentives. See Fisman and Miguel (2007) for an example of how both social norms and incentives in the form of legal enforcement may shape corruption, and see Olken (2007) on the effectiveness of government audits and grassroots participation on corruption in road projects in Indonesia.

view of corruption as a phenomenon arising from and shaped by incentives that could be eliminated by concrete measures (such as mechanical rules for the allocation of postretirement jobs) rather than more general institutional failures that may not have obvious remedies. As highlighted in Olken and Pande (2012), this literature reinforces the centrality of incentives in shaping corruption.

It is important to note that the incentives that shape judicial behavior 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.[6] This is different from the type of corruption that arises from bribes from the private sector documented, for example, by Fisman, Schulz, and Vig (2014), who show that political candidates who win elections in India experience an increase in asset growth relative to the runners-up. Instead, the type of corruption we analyze differs from this in two ways: the reward is mainly in the form of power and influence rather than money, and the corruption arises from one part of the government trying to influence the other, namely, the executive trying to influence judicial decision-making rather than a private party.

Our paper is of interest for three reasons. First, it identifies the causal effect of career-concern incentives on judicial decision-making. Second, we identify the presence of 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 pandering is systemic in nature and shaped by incentives, which suggests a clear role for institutional reform in addressing the problem.

The rest of the paper is organized 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 for the presence of pandering, together with robustness checks. In Section 6, we examine how pandering manifests itself through writing favorable judgments rather than simply being on a bench that decides in favor of the government. 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 with supreme courts in other countries, it has a very heavy case load, which makes it an outlier in access and the number of decisions (Green and Yoon 2017).

In response to perceived inaction by the executive and the legislature, the Supreme Court has expanded its remit to matters traditionally within the purview

[6] 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 paper should not be read as meeting the legal standards prescribed in India's 1988 Prevention of Corruption Act. Instead, it is intended to be understood in the way it is ordinarily used in the English language.

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 and sexual harassment. As noted by Robinson (2013, p. 176), "[d]espite this range of matters before it, or perhaps partly because of this diverse and heavy workload, the Indian Supreme Court has become well known for both its interventionism and creativity." Chandra, Hubbard, and Kalantry (2017) show that the Indian Supreme Court, unlike the US Supreme Court, which is chiefly concerned with norm elaboration, also emphasizes the goal of correcting errors case by case and thus regularly overturns lower-court decisions. As a result, it is relatively unconstrained in how it decides cases. 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 has provided for up to 31 Supreme Court justices (for the Court's institutional background, see Robinson 2013; Chandra, Hubbard, and Kalantry 2017). Between 1986 and 2008, the number was limited to 26. However, the actual number has always been less than 31, with 25 judges in September 2018. The chief justice of India (CJI) is the most senior justice and has additional powers in the allocation of exceptional cases.

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 (except during court vacations, when single judges may hear urgent matters for temporary relief). 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 assigns a larger bench of three or more judges to hear that 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, direct collusion between lawyers and the registry to manipulate the allocation of cases to more favorable benches.

In response to this problem, in 1996 the Supreme Court switched to a system of random computerized allocation of cases to benches. Judges are assigned subject-matter specializations by the CJI according to their work experience. When a case is filed, it is tagged with a specialization and then assigned to one of the benches composed of judges who have that specialization. The mapping between specializations and benches is many to many so that each bench has several specializations, but more importantly each specialization has several benches. The latter feature allows the random allocation of cases to benches. Supreme Court of India (2009, sec. VI.A.i) emphasizes that the allocation of cases to benches by the current system is manipulation proof, stating that "[s]ince the allocation is made by computer, [. . .] there is no scope for any Bench-Hunting."

This practice was confirmed by a former registrar general who was in service when the new system was introduced. He describes the new system 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 labor, 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."[7]

Since benches with three or more judges are created by the CJI to hear particular cases, their composition is endogenous to a case's characteristics, and we exclude such cases from our analysis. Therefore, our sample is composed solely of cases decided by two-judge benches.[8]

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 Court itself.[9] The CJI, heading a panel of other Supreme Court justices, appoints new justices from a pool of (state-level) high-court judges and, occasionally, 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 on the Supreme Court.[10]

According to article 124 of the Indian Constitution, Supreme Court justices must retire on their 65th birthday. Hence, their retirement date is exogenously determined by their date of birth.[11]

After retiring from the Supreme Court, judges are constitutionally barred from practicing law in any Indian court. Many continue to work as arbitrators in private disputes or as members of government commissions. The union government of India is the largest employer of former Supreme Court judges. Appointments to government positions are considered prestigious and desirable by judges, as these enable them to continue influencing policy. Appointments are made by the

[7] Anonymous former registrar general of the Supreme Court of India, e-mail correspondence with the authors, July 4, 2016.

[8] One potential concern is that cases decided during our sample period were allocated to benches before the randomization 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 the bench must have been constituted after the change.

[9] This change was enacted by the Supreme Court in its 1993 decision in *Supreme Court Advocates-on-Record Ass'n v. Union of India* (AIR 1994 SC 268). In 2015 the government amended the Constitution to wrest some of the power of judicial appointment from the Supreme Court. However, in a case in which this amendment was challenged (*Supreme Court Advocates-on-Record Ass'n v. Union of India,* [2016] 5 SCC 1), the Supreme Court struck it down as being unconstitutional. As a result the Court continues to control the appointment of judges.

[10] Since *Supreme Court Advocates-on-Record Ass'n v. Union of India,* 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.

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

executive and are consequently politically driven. The appointment process is not transparent and is widely believed to be subject to lobbying by judges and internal machinations in the government (see, for example, Dastidar 2015).

Hence, although the government has no active role in appointing judges to the Supreme Court, it wields substantial influence by controlling post–Supreme Court job prospects, as we demonstrate below. This is in contrast to the United States, where the appointment process is heavily politicized but the government wields little influence over judges once their appointment is finalized. The two systems differ in how the government tries to influence the Supreme Court: in the United States, it does so by manipulating the type of judges who are appointed; in India, it does so by controlling postretirement job prospects to incentivize judges to manipulate their actions.

3. Data

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

3.1. Data on Cases

The Supreme Court of India has a very heavy case load. In the 15 years between 1999 and 2014, the Court delivered approximately 22,500 decisions that were reported.[12] In this section, we describe the restrictions we place on reported cases for generating our sample.

Using the database SCC Online, we collected decisions between 1999 and 2014.[13] We use this time period since the governments elected between those years served their full terms, and elections occurred every 5 years. This is a key part of our identification strategy.[14]

First, we search for decisions in which the phrase "Union of India" appears as a party. This identifies 2,605 cases involving the government of the approximately 22,500 reported cases, constituting about 12 percent of reported cases. These decisions come in two forms: orders and judgments. Orders almost always are short, interim, and procedural in nature. They are used, for example, to set dates of hearings and summon documents. Judgments contain the final deci-

[12] In our sample period, 114,448 cases were admitted for full hearing (see Supreme Court of India 2016, pp. 54–55). The number of reported decisions is lower than this since each decision may resolve multiple cases admitted for full hearing. This is because cases involving similar facts and legal questions are often consolidated, heard by the same bench, and resolved with one decision. The rest of the paper uses "case" to collectively refer to all cases consolidated in a decision. In addition, not all decisions are reported by SCC Online, such as those involving short orders or insignificant discussions of the law.

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

[14] There were three elections between 1996 (when the randomization of case allocation was introduced) and the start of our sample in 1999, with none of the governments serving a full term.

sions. The name of the judge writing a judgment is 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 favorable order. This also presents the empirical problem of identifying an order with the judge who authored it. We therefore restrict our attention to judgments. This leaves us with 941 cases. Next, as discussed in Section 2.1, we consider only cases decided by a two-judge bench since those cases are randomly assigned to benches. This reduces the sample to 742 cases. Next, we consider only cases in which both judges retired before March 2015, when we began collecting our data.[15] This leaves us with 687 cases. Next, we restrict our sample to cases in which only one of the two judges wrote a judgment (although the results remain unchanged if this criterion is dropped since there are only six cases with two judgments). This leaves us with 681 cases. Last, we include only cases in which the decision was unambiguously for or against the government, as described below (we test for robustness of our results to varying this criterion). This leaves a sample of 652 cases, which is 25 percent of the 2,605 reported cases involving the Union of India.

We wrote a computer program to parse the full text of the judgment for each case to extract the date of the judgment, the word count of the judgment, whether the case was an appeal or a fresh petition, whether the government was an appellant/petitioner or a respondent, the names of the judges, the name of the judge who wrote the judgment, 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. We also extracted the number of senior advocates and the number of lawyers who appeared.

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 judgment and record whether the government won or lost. The data were entered using an online platform we designed.[16] The interface allowed for three options, namely, the government won, the government lost, or the winner is not unambiguously identifiable. Each case was initially randomly assigned to two RAs. If the RAs disagreed in their coding, the case was randomly assigned to a third RA.[17] This happened in fewer than 10 percent of the cases. The interface also allowed RAs to rate their confidence (high or low) in their coding of each case. The ratings were consistently high except for cases with disagreements. The summary statistics for the case-level variables are reported in Table 1.

[15] We could in principle include cases decided by judges who had not retired by this date since their retirement dates are known. However, we exclude those cases for consistency with our sample of retired judges in Section 7. Nonetheless, the inclusion of those cases does not affect the results. See Table OB14.

[16] Screenshots of the online platform and instructions to the research assistants (RAs) are available from the authors on request.

[17] Since there were three options, it is possible that disagreements could persist even with three RAs, but this never occurred.

Table 1
Summary Statistics: Cases

	Mean	SD	Min	Max	Factor Loading
Government won	.586	.493	.000	1.000	
Retired long before an election	1.454	.644	.000	2.000	
Attorneys general	.025	.155	.000	1.000	.0897
Solicitors general	.041	.199	.000	1.000	.0358
Senior advocates	1.420	1.913	.000	22.000	.7046
Advocates	11.933	15.65	.000	186.000	.7030
Importance	.006	1.033	−.848	12.502	
Appeal	.842	.365	.000	1.000	
Government appellant/petitioner	.405	.491	.000	1.000	
Chief justice present	.018	.135	.000	1.000	
Senior judge's tenure	1.561	1.096	.000	5.310	
Junior judge's tenure	3.935	1.654	.181	9.258	
Years from decision to election	2.360	1.353	.003	5.036	

Note. Factor loadings are for the measures of importance for the first principal component. The eigenvalue of the first principal component is 1.73; the first principle component explains 43 percent of the variation in the four measures' importance. $N = 652$.

3.2. Data on Judges

For each justice of the Supreme Court, we collected date of birth, date of appointment to the Supreme Court, date of retirement, and date of elevation to CJI, if ever. Using this information, we define the variable Retired Long Before as a dummy that takes the value of one if the judge retired at least 47 weeks before the next general election and zero otherwise. Since the retirement date is the judge's 65th birthday, Retired Long Before is mechanically determined by date of birth and the date of the next election after retirement. This approach is justified by the near absence of voluntary retirement in our sample. Because Supreme Court judgeships are the most prestigious judicial offices in the country, judges desire to maximize their tenure and rarely retire early. The only exception in our sample is Justice Dalveer Bhandari, who retired on the day he was elected to the International Court of Justice, 6 months before his 65th birthday.[18] The tenures of the judges in our sample are shown in Figure OA1 in the Online Appendix.

3.3. Data on Jobs

We collected information about government positions accepted by Supreme Court justices after their retirement and the date of appointment to the position. Whenever possible, we obtained this information from notifications published in the *Gazette of India*. However, as the archives of the *Gazette* are incomplete, we

[18] We code his retirement date as his 65th birthday to avoid the potential endogeneity of his actual date of retirement. In any case, we reestimate our main results from Table 3 excluding the cases decided by him, and the results are unchanged (see Table OB15). Another exception is Justice Madhavachari Srinivasan, who died on February 25, 2000, which was before his 65th birthday, but he did not decide any cases in our sample.

supplemented with an extensive search of newspaper reports and the archives of bodies to which former 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 OA1 in the Online Appendix. 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 and pandering as an active judge.

We note that the jobs are necessarily after retirement. In the Indian system, judges do not simultaneously hold other remunerated government positions. Governments may, in rare cases, announce appointments while judges are in office, but appointments take effect only when they resign or retire.

From time to time, the Supreme Court forms committees to investigate issues that arise in particular cases and appoints former judges to them. 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.

4. Empirical Strategy

We focus on corruption in the form of pandering, that is, judges manipulating decisions in favor of the government to increase the likelihood of obtaining a post-SC job. At the case level, pandering occurs if a judge decides in favor of the government when, on the basis of the merits of the case, the opposite decision should have been made.[19] 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 652 cases. Instead, we can statistically identify the presence of pandering by comparing benches composed of judges who have stronger incentives to pander with those who have weaker incentives to pander.[20]

At the judge level, a judge has incentive to pander if he retires long before an election. Whether a judge retired long before an election is captured by whether he retired from the Supreme Court at least 47 weeks (.904 year) before an election. We use this threshold because, as seen in Table 2, it takes on average about 47 weeks to secure a post-SC job from the government, conditional on secur-

[19] We use this dichotomous definition, as we observe only whether the government won or lost a case without any information about how favorable the judgment was for the government.

[20] 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 make no claims about 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 to an individual instance of corruption by a particular judge or to imply that all judges are corrupt.

Table 2
Summary Statistics: Judges

	Mean	SD	Min	Max
Cases	19.53	18.88	1	130
Author on important cases government won	2.944	3.801	0	23
Nonauthor on important cases government won	2.778	2.183	0	10
Important cases government lost	4.208	4.145	0	20
Important cases	0	8.392	−9.931	37.07
Author on highly important cases government won	.486	.949	0	4
Nonauthor on highly important cases government won	.458	.691	0	2
Highly important cases government lost	.306	.642	0	3
Highly important cases	0	1.422	−1.250	5.750
Obtained a job from government in power at retirement	.361	.484	0	1
Tenure	5.078	1.604	3	9.929
Productivity	3.762	2.918	.140	17.19
Cases relevant to post–Supreme Court jobs	17.79	16.65	1	109
Was chief justice	.153	.362	0	1
Years from retirement until post–Supreme Court job	.904	1.88	−.885	7.4
Retired long before an election	.819	.387	0	1

Note. Important cases are of median importance. Values for important cases and highly important cases are demeaned; values for years from retirement are computed only for judges who obtained a job from the government in power after retirement. $N = 72$.

ing one at all.[21] Judges who retire less than 47 weeks 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 whether that government will still be in power after the election. In Section 7, we show that judges who retired at least 47 weeks before an election are indeed more likely to obtain a post-SC job from the government in power at the time of their retirement.

To transform this variable into pandering incentives at the bench level, we construct two dummy variables that indicate whether the bench is composed of one or two judges retiring long before an election. The omitted category is benches in the control group with neither judge retiring long before an election. In Section OD3 in the Online Appendix, we show that our results are robust to alternative specifications for this variable.

As described in Sections 2.2 and 3.2, whether a judge is going to retire long before an election is predictable and exogenous. Consequently, the number of judges on the bench who retire long before an election is also exogenous. Using these two variables, we regress

$$\begin{aligned}\text{Won}_{ikt} = {} & \alpha_0 + \delta_t + \lambda_1 \text{One Retired Long Before}_k \\ & + \lambda_2 \text{Both Retired Long Before}_k + \mathbf{X}_{ik}'\eta + \varepsilon_{ikt}.\end{aligned} \tag{1}$$

[21] Values for years from retirement to appointment are positively skewed. See Table OA2 in the Online Appendix for the percentiles of the distribution. In Table OB18 we assess the sensitivity of our results to changes in this threshold.

The matrix $\mathbf{X}_{ik}$ consists of case and bench characteristics, namely, whether the case was an appeal or a fresh petition, whether the government was the appellant/petitioner or respondent, and whether the CJI was on the bench. The term δ_t includes year dummies. More importantly, we also include the time left in the tenures of the senior and junior judges on the bench and the time left in the tenure of the government in power. With these variables included as controls, we aim to show that the effect of pandering incentives holds after conditioning on the time the judges have left before retirement and the time the government has left in power. This amounts to comparing trends in decision-making between judges who retire shortly and long before an election while controlling for the timing of the case relative to an election and the length of judges' tenures.

Another more interesting possibility is that the effect of the distance between retirement and election varies with the importance of a case. To explore this, we treat pandering incentives as being jointly determined by whether the judge retires long enough before an election and the importance of the case.

Our measure for the importance of a case is an index of the numbers of attorneys general, solicitors general, senior advocates, and advocates who appear in the case. The attorney general and the solicitor 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, they appear only in cases of great importance to the government, and it is possible for more than one to represent the government in the same case. These two variables therefore proxy for the value of winning the case for the government.

The number of senior advocates appearing in a case is our third proxy for its importance.[22] Senior advocates specialize in appearing before the high courts and the Supreme Court and represent the scarcest and priciest legal talent in India (Dam 2017). The government and other litigants often hire them for cases important enough to justify their high fees. Finally, we also proxy for importance using the number of advocates appearing in a case, as a measurement of resources that litigants are willing to spend on winning it. Hence, these two variables proxy for the sum of efforts exerted by litigants in a case and are therefore indicative of the value the government places on winning.[23]

We compute the first principal component of these four variables, normalize it to have a mean of 0 and a standard deviation of 1, and use that as the index of importance.[24] The summary statistics for these four variables and their factor load-

[22] Senior advocate is the Indian designation that is equivalent to senior counsel in Commonwealth jurisdictions or queen's counsel in the United Kingdom.

[23] The numbers of advocates (senior and nonsenior) for the government and all other litigants are combined in our data, and we use this as our measure. The ideal measure would focus on the number of advocates appearing for the government only. In Section 5.2.3 we restrict our sample to the cases in which we observe the senior and nonsenior advocates appearing for the government only and show that our results remain robust.

[24] We show the robustness of our results to using the proxies separately in Table OB6. These results are discussed in Section 5.2.3. Figure OA2 in the Online Appendix shows the distribution for the index of importance.

ings in the index are included in Table 1. We expect that pandering, if it exists, will manifest itself in cases with high importance.

We regress

$$\begin{aligned}\text{Won}_{ikt} = \alpha_0 + \sum_j \alpha_j b_{jk} + \delta_t + \beta \text{Importance}_i \\ + \lambda_1 \text{Importance}_i \times \text{One Retired Long Before}_k \\ + \lambda_2 \text{Importance}_i \times \text{Both Retired Long Before}_k + \mathbf{X}_{ik}'\eta + \varepsilon_{ikt},\end{aligned} \tag{2}$$

where Won_{ikt} is an indicator for whether the union government won case i decided by bench k. The indicator b_{jk} captures whether judge j was part of bench k, so $\Sigma_j \alpha_j b_{jk}$ is essentially judge dummies. Two judge dummies are active in every case since each case in our sample is decided by a bench of two judges.

The variables on the right-hand side of equation (2) capture pandering incentives, while the dependent variable captures the behavior induced by them. The key parameters of interest are λ_1 and λ_2. Since our importance index is normalized to have a mean of 0 and a standard deviation of 1, λ_1 measures the increase in the likelihood of an important case—that is, a case that is 1 standard deviation above the mean—being decided in favor of the government when it is decided by a bench with one judge retiring long before an election rather than a bench with both judges retiring shortly before one; similarly, λ_2 measures the difference between benches with both judges retiring long before an election and both retiring shortly before one. We interpret positive and significant estimates of λ_1 and λ_2 as evidence of a behavioral response to pandering incentives.

We identify pandering using two dimensions of variation: the importance of a case and whether judges retired long before an election. Benches with two judges retiring long before an election are in the high treatment group, those with just one judge retiring long before an election are in the low treatment group, and those with both retiring shortly before an election are in the control group. We compare the difference between important and unimportant 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, conditional on judge dummies, the time left to retirement for each judge on the bench, and the time left in the tenure of the government, the difference in the merits between important and unimportant cases does not vary on the basis of the composition of the bench and, in particular, 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 Section 2.1 and discussed further in Section OC1 in the Online Appendix.

From the discussion in Section 2.1, we know that assignment is random conditional on judges' specialization. Changes to the distribution of judges' characteristics over time are absorbed by δ_t, the year effects. However, to fully account for this conditionality, we should include judge dummies in our specification. In addition to absorbing any differences in specialization, these would also absorb differences in judges' ideologies and preferences. Unlike equation (1), equation

(2) allows us to include judge dummies. This is because in equation (1) they cannot be estimated along with the effect of one judge and both judges retiring long before an election, since these two variables are a sum of the two judge-specific dummies that indicate whether each judge retires long before the election. Consequently, both variables are fully determined by the judge dummies.

5. Pandering Incentives and Judicial Decisions

In this section, we present our main results for the presence of pandering. We also test them for robustness and address potential concerns about bias.

First, the results of estimating equation (1) are reported in Table OB1 in the Online Appendix. Estimates of λ_1 and λ_2 are close to 0 and statistically insignificant across all specifications. This suggests that on average there is no effect of distance between retirement and election on judicial decisions.

Next, the results from regressing specification (2) using ordinary least squares (OLS) are reported in Table 3. We cluster the standard errors at the judge-dyad level to account for possible correlation of the error term across cases decided by the same judge.[25] The estimates of the key parameters λ_1 and λ_2 are positive, stable, and significant in all specifications, which indicates that judges do engage in corruption by favoring the government when the case is important and they 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 these results are driven by the 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 favor of the government. Although this behavior is undesirable, we do not consider this pandering. Instead, we define pandering as behavior that arises in response to extrinsic incentives rather than intrinsic motivations such as ideology or innate characteristics. Ideological alignment or other unobservable time-invariant characteristics of judges are unlikely to introduce bias in our regressions because they are unlikely to be correlated with our regressors. First, because the allocation of cases to judges is random, whether a judge is assigned an important case is uncorrelated with his personal characteristics. Second, whether a judge retires long before an election is decided solely by his date of birth and the date of the next election, both of which are exogenous.[26]

Nonetheless, to rule out the possibility of any bias caused by judges' unobservable characteristics, we include judge dummies in equation (2). These results are reported in columns 4–5 of Table 3. The estimates of λ_1 and λ_2 continue to be positive and significant.

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

[25] To implement the dyad-robust clustering proposed in Cameron and Miller (2014), we wrote a Stata program that is available on request. This form of clustering subsumes two-way clustering by judge and bench-level clustering. We discuss this in Online Appendix OF.

[26] The three elections during our sample period occurred in 2004, 2009, and 2014.

Table 3
Effect of Pandering Incentives on Decisions

	(1)	(2)	(3)	(4)	(5)
Importance (β)	−.285**	−.294**	−.375**	−.278**	−.287**
	(.0516)	(.0557)	(.0651)	(.0441)	(.0450)
One Retired Long Before × Importance (λ_1)	.244**	.248**	.303**	.237**	.244**
	(.0704)	(.0801)	(.0884)	(.0671)	(.0745)
Both Retired Long Before × Importance (λ_2)	.290**	.304**	.392**	.285**	.299**
	(.0745)	(.0834)	(.0703)	(.0682)	(.0706)
One Retired Long Before			.0407		
			(.0405)		
Both Retired Long Before			.00456		
			(.0781)		
Judge dummies	Yes	Yes	No	Yes	Yes
Case controls	No	No	No	Yes	Yes
Year dummies	No	Yes	No	No	Yes
R^2	.195	.210	.025	.205	.220
Mean of dependent variable	.576	.576	.554	.576	.576
P-value:					
$\lambda_1 = \lambda_2$	.411	.376	.029	.400	.371
$\beta + \lambda_1 = 0$	.457	.416	.040	.483	.487
$\beta + \lambda_2 = 0$	.903	.816	.598	.871	.803

Note. The dependent variable is whether the government won. Case controls are the type of case (appeal or petition), whether the government was the appellant/petitioner, whether the chief justice was a judge, days from the case to the next election, and tenure left of the senior and junior judges at the time of the decision. The mean of the dependent variable is the probability that the government wins a case with mean importance when it is decided by a control group bench. Standard errors, in parentheses, are clustered at the judge-dyad level. $N = 652$.

** $p < .01$.

induced by political and institutional changes over time such as the increase in the number of judges in 2008. In Section 5.2.2 we show the robustness of our results to including other interactions to check whether they are driven by, for example, changes in how judges decide important cases over their tenure.

The estimated values for the interaction terms in Table 3 indicate that for a case that is 1 standard deviation higher than the mean in importance, the probability of the government winning is about 24–30 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 two judges who retire shortly before an election. Similarly, the likelihood of the same case being decided in favor of the government is 29–39 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. We note that the estimate for λ_2 is always greater than that of λ_1. However, in most specifications we fail to reject the null hypothesis that $\lambda_1 = \lambda_2$. We discuss the tests of these hypotheses in Section OC2 in the Online Appendix.

Using the mean of the dependent variable and the effect of importance, we observe that the government has a 18–30 percent chance of winning a case that is 1 standard deviation higher than mean importance and 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. The coefficient of importance is negative and significant in all specifications. We discuss pandering in depth in Section OE1 in the Online Appendix.

It is possible that the control benches 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.

In Online Appendix OC, we consider how litigants may respond to the presence of pandering incentives. In Section OC1, we investigate bench hunting. In Section OC2, we check whether the government varies its litigation effort in response to the retirement characteristics of the bench to which the case is assigned. We also analyze the effect of such a response on our estimates. In Section OC3, we discuss the effects of the settlement of cases on our estimates.

5.1. Pandering Close to Retirement

The results so far do not allow a judge's incentive to pander to vary over his tenure. However, it is natural to expect that these incentives would become stronger when the judge is close to retirement. To investigate this possibility, we define a new case-judge-level variable for retiring soon to denote whether a case is decided during the term of the government under which the judge retires.

To clarify, consider the example shown in Figure 1. Numbers 1–4 represent the four elections in our sample, and the intervals between them represent the terms of the governments. The bars represent the tenures of two hypothetical judges. Judge A retires long before election 4, during the term of government Z, whereas Judge B retires shortly before election 3, during the term of government Y. We may expect the pandering incentives of Judge A to be stronger in the period between elections 3 and 4 (the white area of his tenure), that is, during Z's term. Similarly, even though Judge B retires shortly before an election, he could face different incentives when deciding cases during X's term (black area) and during Y's term (white area).

We interact the variable for retiring soon with pandering incentives as defined in equation (2). The results are reported in Table OB2 in the Online Appendix. Note that because not all the possible combinations of retirement timing are populated in our sample, not all coefficients can be estimated.

Our estimates of λ_1 and λ_2 remain positive, although the estimates of λ_1 are no longer significant. The estimates of the coefficients of the interaction of One Retired Long Before with Both Retiring Soon and Importance are consistently

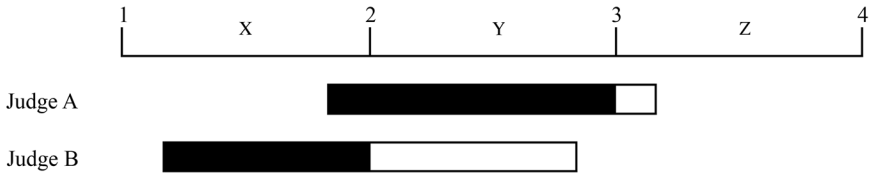

Figure 1. Elections and retirement timing

positive, and the coefficient is significant in the specification without judge dummies. This offers some weak evidence that judges retiring long before an election pander more in important cases when they are close to retirement.

For completeness, we also estimate specification (1) with the addition of an indicator for a judge retiring soon and its interactions. The results are reported in Table OB3, and they are qualitatively similar to those reported in Table OB1.

5.2. Robustness

In this section, we test the robustness of our results to perturbing different elements of the baseline specification. We also show that the results are robust to alternative functional forms (logit and probit), inclusion of cases with no clear winner, and estimation with different restrictions on the effect of the number of judges retiring long before an election. These results are included in Online Appendix OD.

5.2.1. Disaggregated Effects of Distance from Retirement to Election

The regression specification in equation (2) assumes that pandering incentives are active when a judge retires more than 47 weeks before the next election and inactive otherwise. It is possible, however, that even among judges retiring more than 47 weeks before the next election, pandering incentives vary according to how long before the next election they retire. In this section, we estimate the heterogenous effect of pandering incentives separately for benches on the basis of which of the four 47-week periods before the next election the judges retire. Since there are two judges on each bench, and they can retire in one of four such periods, there are 10 possible combinations, which we call retirement categories. We therefore estimate

$$\begin{aligned}\text{Won}_{ikt} = {} & \alpha_0 + \sum_j \alpha_j b_{jk} + \delta_t + \beta\,\text{Importance}_i \\ & + \sum_{\ell=1}^{9} \lambda_\ell (\text{Importance}_i \times \text{Retirement Category}_{\ell k}) + \mathbf{X}_i'\eta + \varepsilon_{ikt},\end{aligned} \tag{3}$$

where $\text{Retirement Category}_{\ell k}$ is a dummy that equals one if the judges on bench k belong to retirement category ℓ and zero otherwise. Our base is retirement category 0, which corresponds to both judges retiring shortly (0–1 year) before an

election.[27] The estimates of λ_ℓ and the correspondence between the other categories and the number of judges retiring in each year are shown in Table OB5.

We can interpret the coefficient estimate for an interaction term, for example λ_3, as the change in the probability that the government wins an important case (that is, a case with importance 1 standard deviation higher than mean importance) when we replace one judge from a bench with both judges retiring close to an election such that one retires between 32 and 48 months before the next election. All the estimates of λ_ℓ are positive, and almost all are significant at the 1 percent level, which indicates that all benches pander more than benches on which both judges retire shortly before an election.

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. Our results are robust to choosing thresholds of 6, 12, 18, and 24 months, as shown in Table OB9. We note that the estimates of λ_1 and λ_2 for a threshold of 2 years are markedly smaller in magnitude than the corresponding ones in the main results. This is as expected, since many judges in the treatment groups are now included in the control group, which attenuates the difference in behavior between the groups.

Finally, we use scatterplots to show the probability of deciding in favor of the government against the distance from retirement to election. We do this by focusing on authors of judgments and using their retirement-to-election distance. These plots are presented in Figures OB1 and OB2 in the Online Appendix. The plots for important cases are suggestive of a positive relationship between distance to retirement and the probability of deciding in favor of the government between 0 and 2 years. A similar pattern does not emerge from a visual inspection of the plots with all and unimportant cases.

5.2.2. Controlling for Other Interactions

One concern with our results is that the interaction terms that capture pandering incentives may proxy for other variables that affect the outcome of a case. 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 importance or distance to retirement. In this section, we address this concern by separately interacting the controls that are significantly different across our treatment and control groups with the two variables that make up pandering incentives.

The results are presented in Table 4. The baseline results are presented for comparison. In column 2 we consider whether the two treatment groups rule on cases differently when the government is the appellant/petitioner relative to when it is the respondent. Similarly, in column 3 we control for the interaction of importance with the role of the government. 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,

[27] For simplicity we round up .904 years to 1 year so that we can estimate the specification with retirement categories of equal lengths.

Table 4
Controlling for Other Interactions

	Baseline	Government Role		Years from Decision to Election		Tenure
	(1)	(2)	(3)	(4)	(5)	(6)
Importance	−.287**	−.277**	−.275**	−.294**	−.336**	−.308**
	(.0450)	(.0530)	(.0483)	(.0466)	(.0810)	(.0466)
One Retired Long Before × Importance	.244**	.229**	.239**	.252**	.241**	.280**
	(.0745)	(.0819)	(.0750)	(.0756)	(.0720)	(.0795)
Both Retired Long Before × Importance	.299**	.290**	.292**	.306**	.300**	.317**
	(.0706)	(.0745)	(.0724)	(.0690)	(.0694)	(.0694)
Government Role		.201*	.0901+			
		(.0866)	(.0517)			
Government Role × One Retired Long Before		−.0189				
		(.0838)				
Government Role × Importance			−.0597			
			(.0623)			
Years from Decision to Election				.0108	−.0123	
				(.0704)	(.0336)	
One Retired Long Before × Years from Decision to Election				−.00602		
				(.0377)		
Both Retired Long Before × Years from Decision to Election				−.0329		
				(.0684)		
Years from Decision to Election × Importance					.0223	
					(.0280)	

Junior Judge's Tenure						.0389
						(.149)
One Retired Long Before × Junior Judge's Tenure						−.0750
						(.134)
Both Retired Long Before × Junior Judge's Tenure						−.0762
						(.133)
Senior Judge's Tenure						.00306
						(.0522)
One Retired Long Before × Senior Judge's Tenure						.0617+
						(.0349)
Both Retired Long Before × Senior Judge's Tenure						.0686
						(.0443)
Junior Judge's Tenure × Importance						
Senior Judge's Tenure × Importance						
Constant	2.589**	2.437**	2.579**	2.516**	2.607**	1.830*
	(.793)	(.821)	(.812)	(.814)	(.800)	(.779)
R^2	.220	.223	.222	.221	.223	.232

Note. The dependent variable is whether the government won. All specifications include judge and year dummies and the following case controls: type of case (appeal or petition), whether the government was the appellant/petitioner, whether the chief justice was a judge, and the tenures of the senior and junior judges at the time of decision. Standard errors, in parentheses, are clustered at the judge-dyad level. $N = 652$.

$^{+}$ $p < .1$.

* $p < .05$.

** $p < .01$.

in columns 6 and 7 we repeat the exercise with the length of the tenure of the junior judge at the time of the decision.

The coefficients on pandering incentives continue to be robust to the inclusion of these interactions, and the estimates in Table 4 are very similar in magnitude to our baseline specification. These findings suggest that the results are unlikely to be driven by the interaction of treatment benches or importance with other case characteristics.

5.2.3. Different Proxies for Importance

In this section, we test the robustness of the results with respect to varying the proxy for importance. So far, we have used the normalized first principal component of the four proxies presented in Section 4 as our index for importance. These include the total number of senior and junior advocates appearing in the case, since in general we do not separately observe the senior and junior advocates appearing for the government. To test the robustness of our results to using only the advocates appearing for the government, we restrict our attention to cases in which the senior and junior advocates for the government are explicitly enumerated. We report the results in Table OB7. Although the magnitude of the estimates is lower, the results are qualitatively similar.

We also present results using the different proxies that make up our importance index in Table OB6. To begin, we use the presence of attorney general or solicitor general as a proxy for importance.[28] The estimates for the interaction term are positive.

We also use the number of senior advocates appearing in the case and the number of junior advocates with no special designation as our proxies for importance. The estimates for the interaction terms are positive and mostly significant across these specifications. The results are qualitatively similar regardless of the proxy used. These results support our strategy of collapsing the four variables into one index using the first principal component.

We have assumed that pandering incentives increase linearly with importance. We disaggregate our importance measure into quartiles and report the results in Table OB8. The lowest quartile of cases by importance forms the omitted category. The estimates of the interaction terms increase in magnitude with the quartiles of importance and are significant for the highest quartiles.

5.2.4. Appeals

In this section, we restrict our attention to appeals, which allows us to control for the decision of the lower court. Note that the respondent in the appealed case is the party that won in the lower court. We may naively expect the respondents to have a higher likelihood of winning in the Supreme Court compared with the appellants. However, this ignores the fact that this subsample suffers from selec-

[28] We use the presence of either attorney general or solicitor general, as there are only 17 cases in our sample in which only the attorney general appears.

tion bias because appellants choose whether to appeal on the basis of their assessment of the likelihood of the appeal being successful. Therefore, it is possible that the appellant has a stronger case than the respondent.

We run specification (2) with the addition of an indicator for the government winning in the lower court, and the coefficient is consistently negative and statistically significant. This is consistent with the discussion above that, conditional on being appealed, the appellant has a stronger case in the Supreme Court. If we assume that this negative correlation arises as a result of the losing party in the lower court appealing only cases that are likely to be overturned by the Supreme Court on merits, then, the government winning in the lower court is a good (inverse) proxy for the merits of the case.

One concern with the baseline results is that our importance measure correlates with the merits of the case. To address this, we include a variable for the government winning in the lower court and its interactions with bench retirement characteristics and importance. Table OB18 reports the results when running the original specification on the subsample of appeals for comparison. We find that the estimates of the two coefficients of interest remain positive in all specifications. Moreover, they are similar to the baseline results in the restricted sample. This suggests that our main results are not driven by the correlation between merits and pandering incentives.

6. Pandering Incentives and Authorship of Judgments

In this section, we examine how pandering manifests itself through writing favorable judgments rather than simply being on a bench that decides in favor of the government. The allocation of a case to a bench is randomized, but the authorship of the judgment is not. Once the two judges decide on the outcome of the case, they also jointly decide who writes the judgment. By convention, the senior judge decides who (either himself or the junior judge) should author the first judgment. However, in case of disagreement, the judge who did not author the first judgment has discretion to author a second judgment. However, this happened in only six cases in our sample.[29] The name of the judge writing the judgment is always identified. In this section we explore the choice of authorship to shed more light on the mechanism through which pandering occurs.

We expect that pandering may manifest itself in writing judgments that are favorable to the government. There are two reasons for this. First, being the author of a favorable judgment is more visible, and consequently more likely to be rewarded, than sitting on the bench in a case decided in favor of the government. Conversely, the judge not writing the judgment is less likely to be noticed and therefore less likely to be rewarded for favorable judgments and punished for unfavorable ones. Second, the literature on signaling shows that costly actions are

[29] In general, the rarity of each judge writing a separate judgment 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 effort and dissent aversion.

an effective form of communication in environments where talk is cheap. Since a judge's reputation depends on the judgments he writes, committing in writing to judicial reasoning favoring 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 job. As a result, we believe that writing favorable judgments may be more important than deciding in favor of the government for strengthening the prospects of receiving post-SC jobs. This hypothesis is supported by the results in Section 7.

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

$$\begin{aligned}\text{Author Retired Long Before}_{ikt} = \alpha + \sum_j \alpha_j b_{jk} + \delta_t + \beta \text{Importance}_i + \gamma \text{Won}_{ik} \\ + \lambda \text{Importance}_i \times \text{Won}_{ik} + \mathbf{X}_{ik}'\eta + \varepsilon_{ikt}.\end{aligned} \tag{4}$$

We restrict our attention to cases in which one judge on the bench retired long before an election and the other retired shortly before an election. This is because only in this sample is there variation in the dependent variable Author Retired Long Before.

Our dependent variable is an indicator for whether the author of the judgment retires long before an election. If judges with pandering incentives want to be noticed by the government when they decide in its favor in important cases, we would expect λ to be positive. To control for the possibility that the senior judge's distance from retirement to election may affect who writes the judgment, because there may be a seniority norm in judgment writing, we include an indicator for whether the senior judge on the bench retires long before an election among our case controls.[30]

The results are reported in Table 5. The estimates for λ are positive across all specifications even after controlling for case characteristics and judge and year dummies with this small subsample. The mean of the dependent variable is close to one-half in all columns, which indicates that when the case is decided against the government and is not important, the judges are equally likely to write the judgment. The estimates of the interaction coefficient indicate that in important cases that the government wins, the judgment is more likely to be authored by the judge who retired long before an election.

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

[30] As we explain in Section OE3 of the Online Appendix, we cannot include an indicator for each of the senior and junior judges retiring long before an election because of collinearity with the judge dummies.

Table 5
Pandering Incentives and Authorship of Judgments

	(1)	(2)	(3)	(4)	(5)
Importance	−.0695+	−.0775+	−.0528	−.0870*	−.0926+
	(.0377)	(.0391)	(.0481)	(.0384)	(.0474)
Won	−.0505	−.0194	−.199*	−.0374	−.0166
	(.0722)	(.0697)	(.0776)	(.0779)	(.0759)
Won × Importance	.222**	.214*	.237**	.240**	.223**
	(.0747)	(.0820)	(.0681)	(.0763)	(.0831)
Senior Retired Long Before				−.280	−.437*
				(.210)	(.204)
Judge dummies	Yes	Yes	No	Yes	Yes
Case controls	No	No	No	Yes	Yes
Year dummies	No	Yes	No	No	Yes
R^2	.561	.603	.111	.592	.626
Mean of dependent variable	.452	.433	.543	.446	.432

Note. The dependent variable is an indicator for whether the judge retiring long before an election wrote the judgment. Case controls are the type of case (appeal or petition), whether the government was the appellant/petitioner, whether the chief justice was a judge, the tenures of the senior and junior judges at the time of decision, and whether the senior judge retired long before an election. The mean of the dependent variable is the probability with which the judge retiring long before an election writes the judgment in a case with mean importance that is decided against the government. Standard errors, in parentheses, are clustered at the bench level. $N = 248$.

+ $p < .1$.
* $p < .05$.
** $p < .01$.

from the government. In principle, there could be many ways in which the government rewards judges who rule in its favor. We explore whether there is any evidence that pandering is rewarded by the government in a particular form, namely, post-SC jobs.

Before discussing our results, we note that the practice of awarding post-SC jobs has been widely criticized in India (see, for example, Vidhi Centre for Legal Policy 2016). For example, Indira Jaising, former additional solicitor general of India, commented on the appointment of former CJI Handyala L. Dattu as chairperson of the National Human Rights Commission: "Independence can be undermined in different ways and one of them is offering post retirement benefits immediately upon retirement" (Mandhani 2015). Senior counsel Arun Jaitley, former finance minister, commented that "[p]re-retirement judges are influenced by a desire for post-retirement jobs" (NDTV 2012). Even Rajendra 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 government" (Pathak 2014), and "[t]he 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" (Dastidar 2015).

In this section, we investigate this issue by examining whether post-SC job prospects vary with judicial behavior. We have established that a mechanism

through which pandering occurs is authorship of judgments in important cases decided in favor of the government. To investigate whether this behavior is rewarded, we estimate

$$\text{Job}_j = \pi_0 + \pi_1 \text{Author on Important Cases Government Won}_j + \mathbf{Z}_j'\varsigma + \varepsilon_j. \quad (5)$$

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.

7.1. Baseline Results

We first estimate equation (5) with an OLS model and report the results in Table 6. The estimates for π_1 are positive across all specifications and significant when using the presence of the attorney general or solicitor general as a proxy for importance, which indicates that authoring judgments in important cases decided in favor of the government is indeed positively associated with securing a post-SC job. All specifications include an indicator for whether the judge was ever the CJI and dummies that indicate the judge's religion. If interpreted causally, the estimates in columns 5–8 suggest that authoring the judgment in one important case decided in favor of the government increases the likelihood of being appointed to a post-SC job by 13–17 percent.

A potential concern is that a judge's experience-related characteristics such as tenure, expertise in legal areas relevant to post-SC jobs, and productivity could affect the probability of obtaining a post-SC job but are also correlated with the number of decisions authored in favor of the government in important cases. To address this issue, we include the judge's tenure and productivity, measured by the ratio of total cases decided in our sample and tenure. We constructed a proxy for legal expertise relevant to post-SC jobs as follows. For the 2,605 cases involving the Union of India, we extract the descriptive key words from the database. We focus on key words that appear at least 10 times, of which there are 664. We then identify a subset of 198 key words associated with legal areas relevant to at least one post-SC job in our sample. (The list of key words is shown in Section OA3 in the Online Appendix.) For each judge we use the number of cases he decided that feature at least one of the key words as a measure of his legal expertise relevant to post-SC jobs.

In column 7 we include the experience controls and find that the coefficient estimate of π_1 remains positive and significant. In column 8, in addition to our main explanatory variable, we include the number of important cases decided in favor of the government for which the judge was not the author and the number of important cases decided against the government. The coefficient estimates are small and insignificant, which suggests that indeed authoring favorable judgments in important cases is rewarded with post-SC jobs.

We repeat this analysis using the years from retirement to election instead of an indicator for having retired long before an election. The results reported in Table OB22 are similar to those in Table 6. Furthermore, we explore whether

Table 6

Rewards for Pandering: Ordinary Least Squares Model

	Median Importance				Attorney General or Solicitor General			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Author on important cases government won	.00461	.00894	.000503	.00723	.145**	.132*	.162*	.168*
	(.0169)	(.0139)	(.0328)	(.0352)	(.0503)	(.0498)	(.0669)	(.0684)
Nonauthor on important cases government won				.0162				−.0121
				(.0358)				(.102)
Important cases government lost				−.00797				.0389
				(.0325)				(.0942)
Retired long before an election		.282*	.295*	.287+		.234+	.202	.206
		(.134)	(.140)	(.145)		(.132)	(.139)	(.145)
Tenure			.0426	.0407			.0628	.0621
			(.0785)	(.0802)			(.0775)	(.0784)
Cases relevant to post–Supreme Court jobs			−.00385	−.00344			−.0131	−.0139
			(.0159)	(.0177)			(.0121)	(.0122)
Productivity			.0300	.0236			.0565	.0556
			(.0681)	(.0689)			(.0643)	(.0629)
Constant	.326	.0360	−.237	−.254	.333	.0998	−.174	−.152
	(.290)	(.326)	(.526)	(.526)	(.284)	(.315)	(.529)	(.557)
R^2	.026	.075	.083	.088	.088	.122	.137	.139

Note. The dependent variable is an indicator for whether the judge obtained a job from the government in power when he retired. All regressions control for whether the judge was ever the chief justice and a set of dummies for the judge's religion. Robust standard errors are in parentheses. $N = 72$.

$^{+}$ $p < .1$.

* $p < .05$.

** $p < .01$.

there exists a time gradient in these effects. In particular, we examine whether the impact of authoring a favorable judgment in an important case on the likelihood of a job is increasing in the size of the reward window, that is, the distance from retirement to election. To do so, we interact the number of favorable judgments authored in important cases with the years from the time the judge retires to the next election. The results are reported in Table OB23. There does appear to be some evidence for a time gradient: in the regressions in which importance is measured using our index, the interaction coefficient is positive and significant. This suggests that authoring favorable judgments in important cases leads to a greater increase in the likelihood of a post-SC job when there is more time between the judge's retirement and the next election.

Finally, we regress equation (5) using logit and probit models and find that the effect of authoring favorable judgments in important cases is qualitatively similar. These results are reported in Tables OB24 and OB25.

7.2. Instrumental Variables Estimation

Although we control for judges' observable characteristics, the positive relationship between authoring favorable judgments in important cases and obtaining post-SC jobs could be explained by unobservable characteristics, such as political ideology, that drive their rulings and their likelihood of obtaining a post-SC job. In an attempt to address this possibility, we estimate equation (5) with a two-stage least squares (2SLS) model. Our empirical analysis for the case-level regressions suggests an instrument for the number of favorable judgments authored in important cases, namely, the interaction of the variable for having retired long before an election with the number of important cases decided. We report the results in Table 7. The second-stage results are consistent with the OLS ones in that the estimates of π_1 are positive and significant for the same specifications. Moreover, we test the hypothesis of equality of the OLS and 2SLS estimates, and we fail to reject it for all specifications as shown by the *p*-values of the Hausman test. Under the assumption that the instrument is valid, this suggests that the OLS estimates are consistent.

We naturally expect our instrument to be correlated with the number of favorable decisions authored in important cases. This is because in Section 6 we found that judges retiring long before an election are more likely to author judgments in cases that are important and decided in favor of the government. This is confirmed by the first-stage results reported in Table 7. Moreover, we believe that both variables whose product constitutes the instrument are exogenous. First, the number of important cases decided is exogenous because, conditional on expertise, the allocation of cases is random and therefore uncorrelated with judges' unobservable characteristics. Judges also do not appear to strategically manipulate the number of important cases decided (of those allocated to them), as we show in Section OE2 in the Online Appendix. Second, the indicator for having retired long before an election is exogenous because a judge's retirement is solely deter-

Table 7
Rewards for Pandering: Two-Stage Least Squares Model

	Median Importance			Attorney General or Solicitor General		
	(1)	(2)	(3)	(4)	(5)	(6)
Ordinary least squares model:						
Author on Important Cases Government Won	.00461	.00894	.000503	.145**	.132*	.162*
	(.0169)	(.0139)	(.0328)	(.0503)	(.0498)	(.0669)
Second-stage results:						
Author on Important Cases Government Won	.0213	.0242	.154	.149*	.153*	.200+
	(.0250)	(.0233)	(.361)	(.0720)	(.0689)	(.102)
Retired Long Before		.304*	.188		.228+	.181
		(.136)	(.286)		(.125)	(.136)
Constant	.298	−.0111	−.0793	.333	.105	−.160
	(.289)	(.323)	(.663)	(.272)	(.296)	(.492)
First-stage results:						
Importance × Retired Long Before	.345**	.342**	.0357	.487**	.489**	.399**
	(.0449)	(.0476)	(.0564)	(.0862)	(.0834)	(.0859)
Retired Long Before		−1.123	.630		.308	.450**
		(1.823)	(.580)		(.204)	(.136)
Constant	.837	1.969	−.619	−.203	−.511	−.438
	(.883)	(2.025)	(1.798)	(.370)	(.431)	(.552)
Reduced-form model:						
Importance × Retired Long Before	.00736	.00827	.00551	.0727+	.0746+	.0796+
	(.00948)	(.00894)	(.0113)	(.0415)	(.0393)	(.0468)
Retired Long Before		.277*	.285*		.275*	.271*
		(.130)	(.138)		(.129)	(.135)
Constant	.316	.0365	−.175	.303	.0273	−.247
	(.288)	(.318)	(.543)	(.340)	(.367)	(.558)
Experience controls	No	No	Yes	No	No	Yes
First-stage *F*-test	59.08	51.44	.400	31.86	34.30	21.60
Hausman test *p*-value	.447	.441	.622	.952	.753	.711

Note. The dependent variable is an indicator for whether the judge obtained a job from the government in power when he retired. All regressions control for whether the judge was ever the chief justice and a set of dummies indicating the judge's religion. The experience controls are tenure, number of job-related cases, and productivity. Robust standard errors are in parentheses. $N = 72$.

+ $p < .1$.
* $p < .05$.
** $p < .01$.

mined by his date of birth and electoral cycles, and we control for its direct effect in the second stage.

We repeat the 2SLS analysis using the continuous measure of years from retirement to election instead of an indicator for having retired long before an election. The results reported in Table OB26 are qualitatively similar.

Our maintained hypothesis in the case-level analysis that judges who retire long before an election have stronger incentives to pander is supported by the reduced-form results in Table 7. Retiring long before an election significantly increases the likelihood of securing a post-SC job, holding the number of important cases decided at its mean value. Moreover, an additional important case disproportionately increases the likelihood of a job for a judge who retires long before an election.

Overall, the results in this section suggest that authoring favorable judgments in important cases does indeed increase the probability of obtaining a post-SC job. There are two potential explanations for this. One possibility is that the government intentionally rewards judges for pandering, and this creates an incentive for judges to alter their decisions. Another possibility is that the government merely selects judges who are more likely to comply with its preferences during their post-SC careers. In the second case, pandering could arise in a nonpooling equilibrium in which authoring favorable judgments is an informative signal of a judge's willingness to comply. Since they both generate incentives to pander, and since we cannot discern the government's motives, these two explanations are observationally equivalent. Consequently, post-SC jobs are rewards for pandering because they act as carrots, regardless of the government's intentions.

8. Conclusion

We find that judges respond to pandering incentives by ruling in favor of the government. Moreover, judges who author favorable judgments in important cases are more likely to receive prestigious government jobs. Pandering occurs through two channels. First, it occurs through actively writing favorable judgments rather than passively being on a bench that decides a case favorably. Second, it works through potentially harmful manipulation of decisions in favor of the government rather than through more benign means, such as strategic delay of unfavorable decisions. Our results show a rational behavioral response to institutional incentives in the form of career concerns.

These findings are important because this kind of corruption suggests the possibility of serious miscarriage of justice, with far-reaching welfare implications. However, the welfare implications depend on whether the correct rulings—that is, the ones judges would make in the absence of pandering incentives—are welfare maximizing. 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 toward 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 to identify the welfare-maximizing ruling when it requires taking sides between, for example, a pro-free-speech Court and a prosecurity government.

Nevertheless, regardless of the welfare implications for litigants, our results have implications for 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 government positions after retirement could be a way in which the executive exercises control over an otherwise independent judiciary in countries with judicial term limits.

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