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Statutory battles and constitutional wars: Congress and the supreme court

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Abstract

How does the separation of powers influence Supreme Court justices when they vote on the merits of cases? The standard claim is that if justices do vote strategically, they are most likely to do so when interpreting statutes. This paper challenges this view. It demonstrates that strategic judicial behavior occurs in constitutional cases. Evidence from a large sample of civil rights and civil liberties cases shows that when prescribing constitutional standards, Supreme Court justices respond strategically to the separation-of-powers system. Thus, while the attitudinal model underlying the conventional view seems to hold for statutory interpretation, the strategic explanation holds in constitutional decisions. This institutional structure, designed by the Founders, anticipates the possibility of differences in preferences between the separated powers, thereby producing a check on each while creating at the same time institutional incentives for the Supreme Court to diminish the antidemocratic effects of its decisions when Court preferences differ from the other branches. © 2006 by the Rector and Visitors of the University of Virginia.

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