Appendix for Setting the Supreme Court's Policy Agenda

Our appendix contains the results of several supplementary analyses. In this appendix, we present three regressions. First, we present the results of a logistic regression at the level of the intercircuit split. Second, we present a linear probability model that uses Judicial Common Space scores rather than the party of the appointing president. For this measure, we used the difference in mean JCS score between the two sides of the intercircuit split. Finally, we present a linear probability model where granting certiorari (rather than actually resolving the intercircuit split) is the dependent variable. N=119 in each of these.

A Logistic regression results

We present results from a logistic regression in Table A1 and Figure A1.

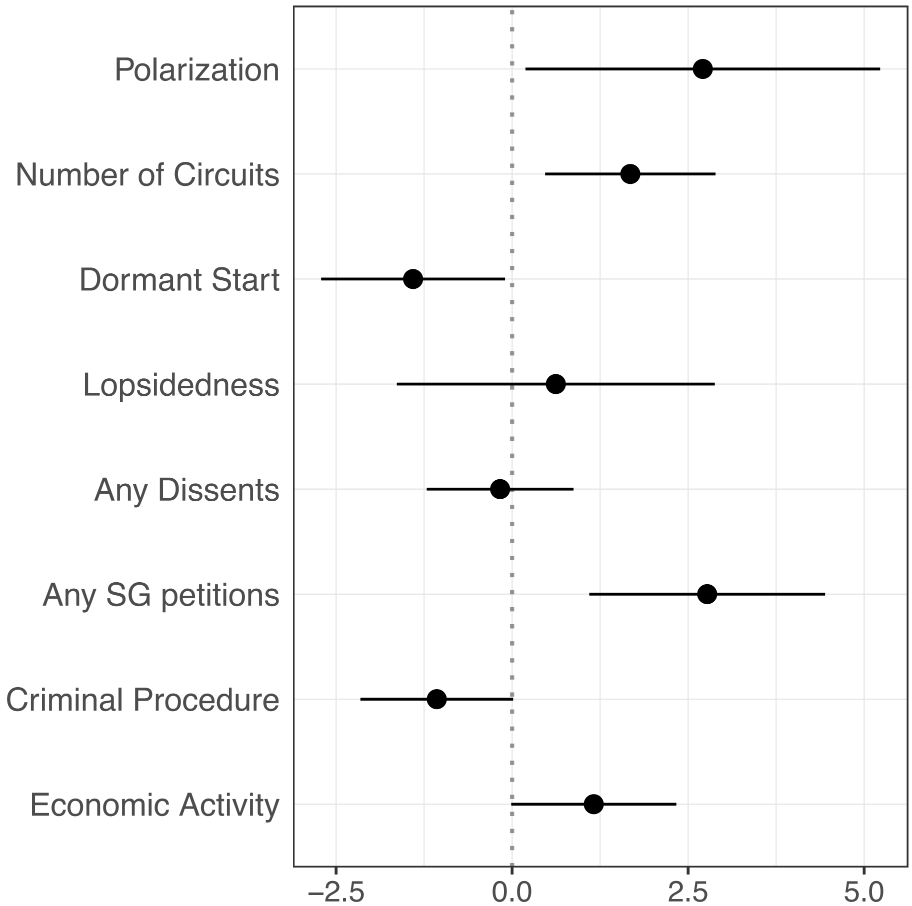

Figure A1: *Polarization and resolution.* Coefficients and 95% confidence intervals from a logistic regression predicting whether the Supreme Court resolves an intercircuit split. Unit of analysis is the intercircuit split. $N = 119$. Intercept not shown. See Table A1 for more details.

	Dependent variable:
	Split Resolved
Split Polarization	2.71**
	(1.29)
Number of Circuits	1.68**
	(0.62)
Dormant Start	−1.41**
	(0.67)
Lopsidedness	0.62
	(1.15)
Any Dissents	−0.17
	(0.53)
Any SG petitions	2.77**
	(0.85)
Criminal Procedure	−1.07*
	(0.55)
Economic Activity	1.16*
	(0.60)
Intercept	−1.49*
	(0.81)
Observations	136
Log Likelihood	−62.80
Akaike Inf. Crit.	143.61

Notes: *p<0.1; **p<0.05; Number of Circuits is standardized.

Table A1

B Judicial Common Space Scores

We present results using Judicial Common Space Scores (instead of party of the appointing president) in Table A2. The Judicial Common Space Score polarization measure is the absolute value of the distance between the mean Judicial Common Space score of the judges who signed on to each side of the intercircuit split.

	Dependent variable:
	Split Resolved
Split Polarization, JCS	0.41
	(0.28)
Number of Circuits	0.26**
	(0.11)
Dormant Start	−0.15*
	(0.09)
Lopsidedness	0.002
	(0.19)
Any Dissents	−0.02
	(0.08)
Any SG petitions	0.49**
	(0.13)
Criminal Procedure	−0.14*
	(0.08)
Economic Activity	0.25**
	(0.12)
Intercept	0.27**
	(0.12)
Observations	136
R^2	0.27
Adjusted R^2	0.23
Residual Std. Error	0.41 (df = 127)
F Statistic	6.00** (df = 8; 127)

Notes: *p<0.1; **p<0.05; Number of Circuits is standardized. HC3 robust standard errors shown.

Table A2

C Results on certiorari petitions

In Table A3 we show that litigants and would-be petitioners are not influenced by our measure of polarization. When we predict petitions for certiorari, the coefficient on polarization is small, negative, and statistically indistinguishable from zero.

	Dependent variable:	
	Cert Petition	
Split Polarization	−0.14	−0.07
	(0.15)	(0.15)
Number of Circuits		−0.001
		(0.06)
Dormant Start		−0.20**
		(0.09)
Lopsidedness		−0.08
		(0.13)
Any Dissents		0.17**
		(0.07)
Any SG petitions		0.09
		(0.06)
Criminal Procedure		0.09
		(0.07)
Economic Activity		0.09
		(0.09)
Intercept	0.91**	0.81**
	(0.04)	(0.10)
Observations	136	136
R^2	0.01	0.19
Adjusted R^2	0.001	0.14
Residual Std. Error	0.33 (df = 134)	0.31 (df = 127)
F Statistic	1.10 (df = 1; 134)	3.71** (df = 8; 127)

Notes: *p<0.1; **p<0.05; Number of Circuits is standardized. HC3 robust standard errors shown.

Table A3

D Discrete time proportional hazard model results

In this appendix, we present the results of a discrete time proportional hazard model, which accounts for right censoring in the data. In that model, the unit of analysis is the "active year"—those years in which at least one decision was issued in a given split. The first active year is the year the split began—that is, the first year in which an appellate decision departed from a previously issued decision on the same legal question. Each subsequent active year is a year in which there was at least one case decided in a split. For resolved splits, the last active year is the year in which the case that the Supreme Court used to resolve the split was decided in the appellate court. For unresolved splits, the last active year is the last year in which we observed a case (prior to the truncation of our study in 2016). Thus, we capture every year in which the Supreme Court could have resolved the split. We exclude years with no case (both intervening and prior to truncation), since the Supreme Court had no opportunity to resolve the split in those years, even if it had wanted to. N=119. Coefficients for the discrete time proportional hazard model are on the logit scale.

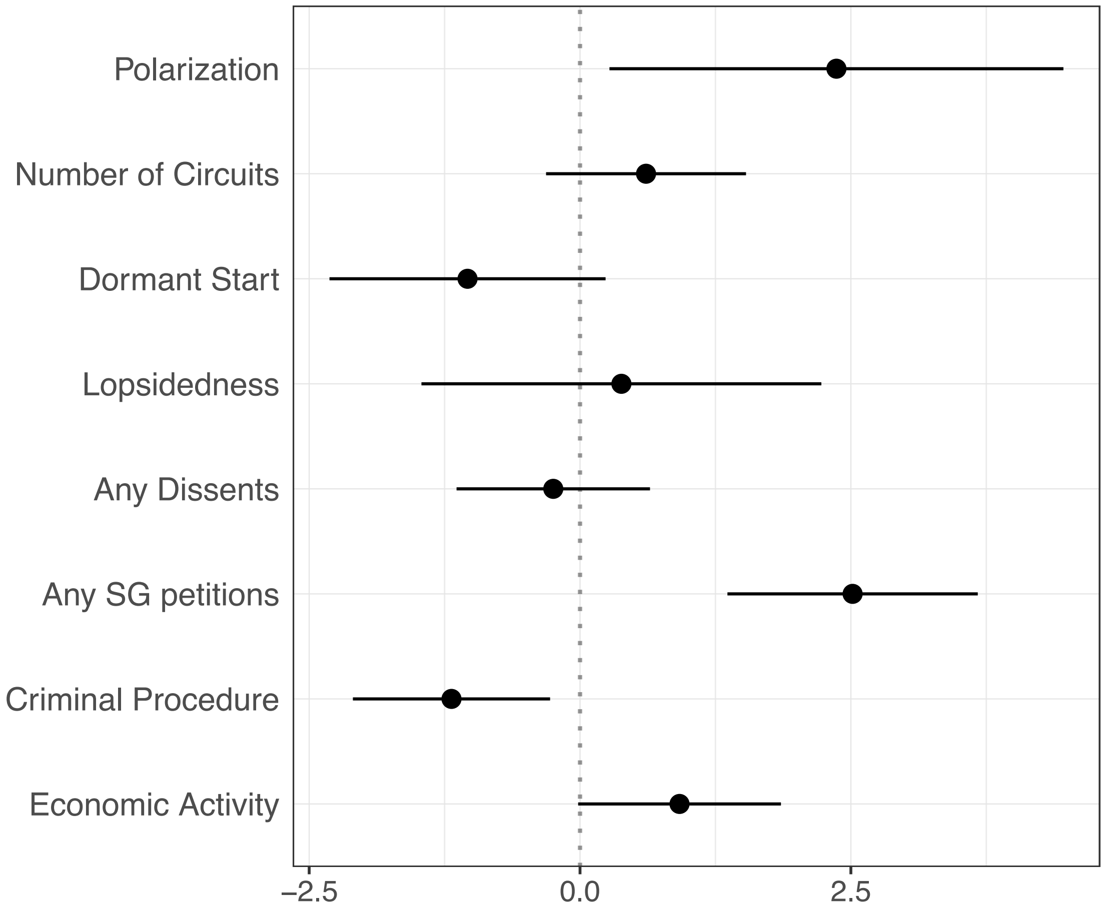

Figure A2: *Polarization and resolution.* Coefficients and 95% confidence intervals from a discrete time proportional hazard model predicting whether and when the Supreme Court resolves an intercircuit split. Units of analysis are active years in which there was a case in a split. Coefficients are on the logit scale. $N = 409$. Year indicators not shown. See Table A4 for more details.

	Dependent variable:
	Split Resolved
Split Begins	−2.27**
	(0.71)
Active Year 2	−2.04**
	(0.71)
Active Year 3	−4.44**
	(1.21)
Active Year 4	−3.29**
	(1.00)
Active Year 5	−2.92**
	(1.03)
Active Year 6	−3.47**
	(1.27)
Active Year 7+	−2.52**
	(1.05)
Polarization	2.21**
	(1.07)
Number of Circuits	0.67
	(0.47)
Dormant Start	−1.29**
	(0.61)
Lopsidedness	0.21
	(0.93)
Any Dissents	−0.10
	(0.45)
Any SG petitions	2.57**
	(0.59)
Criminal Procedure	−1.01**
	(0.46)
Economic Activity	1.10**
	(0.47)
Observations	409
Log Likelihood	−108.96
Akaike Inf. Crit.	247.92

Notes: Piecewise proportional hazard model predicting whether and when the Supreme Court resolves a split. Units are active years in which there was a case in a split. Coefficients are on the logit scale. *p<0.1; **p<0.05; Number of Circuits is standardized.

Table A4

E Does polarization merely measure importance

In Table A5 we show that polarization does not predict whether the Solicitor General files a petition for certiorari. In Table A6 we show that polarization does not predict circuits taking up issues *en banc* nor does polarization predict judges dissenting. All three of these results are meant to illustrate that polarization is a meaningful independent concept—not merely reflective of divisiveness or importance.

	Dependent variable:	
	SG Petition	
Split Polarization	−0.14	−0.13
	(0.10)	(0.13)
Number of Circuits		0.04
		(0.09)
Dormant Start		-0.11^{**}
		(0.06)
Lopsidedness		−0.25
		(0.17)
Any Dissents		−0.02
		(0.07)
Criminal Procedure		0.02
		(0.06)
Economic Activity		-0.07^{*}
		(0.04)
Intercept	0.12^{**}	0.27^{**}
	(0.04)	(0.12)
Observations	136	136
R^2	0.01	0.08
Adjusted R^2	0.004	0.03
Residual Std. Error	0.28 (df = 134)	0.28 (df = 128)
F Statistic	1.57 (df = 1; 134)	1.60 (df = 7; 128)

Notes: *p<0.1; **p<0.05; Number of Circuits is standardized. HC3 robust standard errors shown.

Table A5

	Dependent variable:	
	Any Dissent	Any En Banc
Split Polarization	0.03	−0.04
	(0.30)	(0.23)
Lopsidedness	0.44*	0.04
	(0.24)	(0.17)
Polarization*Lopsidedness	0.59	0.05
	(0.76)	(0.63)
Intercept	0.42**	0.13
	(0.12)	(0.09)
Observations	136	136
R^2	0.08	0.002
Adjusted R^2	0.06	−0.02
Residual Std. Error (df = 132)	0.47	0.35
F Statistic (df = 3; 132)	3.86**	0.09

Notes: *p<0.1; **p<0.05; HC3 robust standard errors shown.

Table A6

F Measure validation using Supreme Court votes

The three equivalent regressions that each use a different measure of Supreme Court ideology. First, we created a continuous measure of Supreme Court polarization that is analogous to our measure of polarization among lower court judges. Specifically, we measure Supreme Court polarization as the absolute value of the difference between the proportion of Democratic-appointed justices who took one side and the proportion of Republican-appointed justices who took that same side. (We count unanimous decisions as a polarization score of 0. Interestingly, 47% of Supreme Court decisions resolving intercircuit splits are unanimous. This is equal to the average rate of unanimity over all decisions (SCOTUSblog 2020)).[24]

We also present two analyses using more familiar measures, derived from Martin-Quinn scores (Martin and Quinn 2002). We use the absolute value of the difference in mean Martin-Quinn scores between the majority and minority coalitions. Again, we assign a value of 0 for unanimous decisions for this measure. This too is a continuous measure.

Finally, we create a dichotomous measure of whether the majority coalition is "connected" (see Beim, Cameron and Kornhauser 2012). We rank the justices according to their Martin-Quinn scores and observe whether the justices' votes map neatly to their ideology or whether the coalitions were more disorganized, with some liberals voting with some conservatives.[25] Here we include unanimous decisions in the unconnected category, and so we predict which decisions are non-unanimous but connected.

[24] Between 2010 and 2018 48% of the Supreme Court's decisions were unanimous. Note that neither split polarization nor lopsidedness at time of resolution (nor both) predicts whether or not a Supreme Court decision will be unanimous. The covariance between polarization in the lower courts and unanimity at the Supreme Court is -.002.

[25] For example, a majority coalition that included Justices Roberts, Thomas, Alito, Scalia, and Ginsburg would be coded "0" for not connected.

	Dependent variable:		
	Analogous polarization measure	Difference in mean Martin-Quinn score	Connected coalitions
Split Polarization	0.44	1.93	0.65**
	(0.26)	(1.26)	(0.27)
Number of Circuits	0.13	0.60	0.02
	(0.14)	(0.67)	(0.14)
Dormant Start	−0.03	−0.08	−0.06
	(0.21)	(1.00)	(0.21)
Lopsidedness	0.03	0.18	−0.23
	(0.23)	(1.12)	(0.24)
Any Dissents	0.11	0.54	0.05
	(0.13)	(0.61)	(0.13)
Any SG petitions	−0.08	−0.02	−0.24*
	(0.14)	(0.66)	(0.14)
Criminal Procedure	−0.08	−0.21	0.16
	(0.15)	(0.70)	(0.15)
Economic Activity	−0.17	−0.45	−0.11
	(0.14)	(0.68)	(0.14)
Intercept	0.12	0.54	0.04
	(0.19)	(0.90)	(0.19)
Observations	43	43	43
R^2	0.16	0.13	0.33
Adjusted R^2	−0.03	−0.08	0.17
Residual Std. Error (df = 34)	0.31	1.52	0.32
F Statistic (df = 8; 34)	0.83	0.61	2.05*

Notes: *p<0.1; **p<0.05; Number of Circuits is standardized.

Table A7