

Supplement to “The Role of Constitutional Features in Judicial Review”

This supplement contains additional material as referenced in the text. To begin, Figures A1, A2, and A3 present scatterplots of the article’s primary dependent variable against each of the independent variables (on a log scale), along with a simple linear regression line. Only one state (Illinois) stands out as a possible weak outlier (in Figures A1 and A2), but whatever influence it has appears to bias the regression lines toward zero rather than enhancing them, rendering it of little concern here. Two of these scatterplots (Figures A1 and A3) depict a clear relationship in the expected direction. The third (Figure A2) does not, apparently reflecting the reverse causation problem discussed in the main manuscript. Figure A4 adds a scatterplot of judicial invalidations against the ideological distance control.

Table A1 presents pairwise correlation coefficients among the dependent and constitutional variables; for control variables, coefficients are presented only for correlations with these key variables. Table A2 replicates Table 1 from the main manuscript but with the controls included in all specifications; Table A3 does the same for Table 2. Adding these controls does not meaningfully change any conclusions. Table A4 replicates the Poisson specifications from Table 1, but with constitution length and amendment rates measured only from 1992-95—that is, during a period preceding rather than overlapping measurement of the dependent variables; the conclusions are the same.¹ These three tables demonstrate the resilience of the main manuscript’s findings to the most plausible measurement and specification concerns.

Table A5 presents another approach to assessing the robustness of the main manuscript’s results. If it is true that the state constitution’s length, age, and amendment rate affect the state

¹ Some observations are missing data on control variables in this earlier period, reducing the number of observations when controls are included.

supreme court's behavior when interpreting the state constitution, these variables should nevertheless not affect the state court's interpretation of the federal constitution. But if the findings in Table 1 and Table 2 are spurious, so that variance in the dependent variable is actually being driven by varying legislative propensities to pass poorly considered legislation or some other unobserved variable, then these variables should correlate with state court decisions that strike down state actions for violating the federal constitution as much as they correlate with decisions that strike down state actions for violating the state constitution.

To test this possibility, consider the Poisson models in Table A5. Model (A5a) parallels (1d) from Table 1 in the main manuscript, but with a twist; it models the number of state actions struck down in the state supreme court, but for violations of the federal (rather than state) constitution. Likewise, Model (A5b) parallels (2d) from Table 2 in the main manuscript, but with the same twist; it models the number of claims raised against state actions in the state supreme court, but only claims based on violations of the federal (rather than state) constitution.

[Table A5 here]

The coefficients in (A5a) and (A5b) are much smaller and weaker than the corresponding Poisson coefficients reported in Table 1 and Table 2, suggesting that the effects reported earlier are indeed driven by features of the state constitution. That the coefficients in Table A5 nevertheless attain statistical significance requires some additional thought, though. These unexpectedly significant results may reflect some effects of state constitutional features on state judicial culture. Nationwide, Brace and Hall count 1,074 total cases from 1995-1998 in which state actions were challenged in a state supreme court under a state constitution; in 35% of these cases, plaintiffs simultaneously raised a challenge under the federal constitution. Evidently, attorneys

who raise state constitutional claims routinely add federal constitutional claims in hopes of bolstering their arguments. As a result, the total number of state supreme court cases striking down a state action for violating the state constitution (the dependent variable from Table 1) correlates with the number striking down an action for violating the federal constitution (the dependent variable from Model A5a) at $r=0.52$ ($p<0.01$). Moreover, the total number of cases featuring claims rooted in the state constitution (the dependent variable from Table 2) correlates with the number featuring claims rooted in the federal constitution (the dependent variable from Model A5b) at $r=0.74$ ($p<0.01$).

In states where the constitution's length, age, or amendment rate provokes an increased number of (state) constitutional claims, it seems the state's legal culture becomes so accustomed to raising constitutional claims that federal constitutional claims increase also. Models (A5c) and (A5d) provide evidence supporting this logic. Model (A5c) replicates (A5a); the dependent variable is the number of state actions struck down in state court for violating the federal (not state) constitution. Unlike (A5a), though, (A5c) controls for the number of state actions struck down for violating the state constitution. Inserting this control renders every constitutional coefficient statistically null. Likewise, (A5d) replicates (A5b), but controlling for the number of state supreme court cases where a claim was raised against a state action based on the state constitution. Once again, inserting this control renders every coefficient statistically null.

By contrast, adding federal constitutional controls to the main manuscript's analysis does not render coefficients statistically null in the same way. Table A6 presents these results. The first two models, (A6a) and (A6b), duplicate results presented in the main manuscript. The next two models add relevant controls based on invalidations (A6c) or claims (A6d) rooted in the federal constitution. Inserting these controls weakens the constitutional variables' coefficients modestly,

which is unsurprising given the strong correlation between these controls and the dependent variable, and it does cause constitution age to lose statistical significance in (A6c). On the whole, though, the effects reported in the main manuscript persist despite this test. Moreover, there is far less theoretical justification for employing these controls based on the US Constitution than for employing the analogous control in Table A5, since every state court is subject to the same federal Constitution. The resilience of the main manuscript's findings to this test further bolsters confidence in their robustness. On balance, the checks presented in this supplement favor the conclusion that state supreme courts are indeed influenced by the length, amendment rate, and age of their respective state constitutions.

Table A1: Pairwise Correlations

| | Invalidations | Amendments (ln) | Length (ln) | Age (ln) |
|-----------------------------------|----------------------|----------------------------|--------------------|-----------------|
| Invalidations (ln), 1995-98 | -- | | | |
| Amendments (ln), 1994-97 | 0.14 (0.32) | -- | | |
| Constitution length (ln), 1994-97 | 0.40 (0.00) | 0.54 (0.00) | -- | |
| Constitution age (ln), 1996 | -0.16 (0.28) | -0.25 (0.09) | 0.05 (0.71) | -- |
| Partisan judicial elections | 0.33 (0.02) | 0.20 (0.17) | 0.19 (0.20) | -0.22 (0.12) |
| Total caseload, 1995-98 | 0.16 (0.26) | -0.08 (0.60) | 0.07 (0.63) | 0.02 (0.89) |
| Mean ideological distance | 0.15 (0.31) | -0.01 (0.93) | -0.22 (0.14) | 0.01 (0.95) |
| Mean session length, 1994-97 | -0.06 (0.66) | -0.12 (0.41) | 0.08 (0.60) | -0.06 (0.68) |

Pairwise correlation coefficients shown with probabilities in parentheses.

Table A2: Replicating Table 1 with Controls in All Specifications

| | (1a) | (1b) | (1c) | (1d) |
|--|---------------------|---------------------|---------------------|-----------------------|
| Specification | OLS | 2SLS | LIML | Poisson |
| Total amendments adopted (ln), 1994-97 | -1.4 (0.84) | -6.9* (3.0) | -7.4* (3.2) | -1.6* (0.40) |
| Constitution's mean length (ln), 1994-97 | 4.0* (1.1) | 8.6* (2.7) | 9.0* (2.9) | 2.2* (0.54) |
| Constitution's age (ln), 1996 | -1.1 (0.70) | -2.7* (1.2) | -2.8* (1.3) | -0.37 (0.20) |
| Partisan judicial elections | 2.6* (1.4) | 2.8 (1.8) | 2.8 (1.9) | 0.40 (0.34) |
| Total caseload | 0.0016 (0.0029) | -0.0025 (0.0043) | -0.0029 (0.0045) | -0.00074 (0.00084) |
| Ideological distance | 3.3* (1.4) | 4.8* (2.0) | 4.9* (2.1) | 0.99* (0.32) |
| Session length | -0.0040 (0.0052) | -0.014 (0.0084) | -0.014 (0.0089) | -0.0033 (0.0019) |
| Constant | -31* (10) | -58* (19) | -61* (20) | -16* (4.5) |
| Observations | 49 | 49 | 49 | 49 |

The dependent variable is the total number of state actions struck down by each state's supreme court for violating the state constitution from 1995 through 1998. Rounding to two significant digits. Standard errors in parentheses. * $p \leq 0.05$ (two-tailed).

Table A3: Replicating Table 2 with Controls in All Specifications

| | (2a) | (2b) | (2c) | (2d) |
|--|-------------------|--------------------|---------------------|----------------------|
| Specification | OLS | 2SLS | LIML | Poisson |
| Total amendments adopted (ln), 1994-97 | -4.2 (2.7) | -24* (10) | -27* (12) | -1.2* (0.30) |
| Constitution's mean length (ln), 1994-97 | 11* (3.7) | 27* (9.5) | 30* (11) | 1.4* (0.36) |
| Constitution's age (ln), 1996 | -6.1* (2.3) | -12* (4.2) | -13* (4.6) | -0.48* (0.12) |
| Partisan judicial elections | 6.6 (4.5) | 7.2 (6.2) | 7.3 (6.7) | 0.24 (0.29) |
| Total caseload | 0.016 (0.0093) | 0.00092 (0.015) | -0.00092 (0.016) | 0.00015 (0.00054) |
| Ideological distance | 6.1 (4.6) | 11 (6.8) | 12 (7.4) | 0.62* (0.29) |
| Session length | -0.010 (0.017) | -0.045 (0.029) | -0.049 (0.032) | -0.0022* (0.0011) |
| Constant | -65 (33) | -164* (66) | -176* (73) | -6.9* (3.0) |
| Observations | 49 | 49 | 49 | 49 |

The dependent variable is the total number of cases heard in state supreme courts from 1995 through 1998 wherein petitioners raised claims that the state constitution had been infringed. Rounding to two significant digits. Standard errors in parentheses. * $p \leq 0.05$ (two-tailed).

Table A4: Replicating Table 1 (Poisson) while Limiting Independent Variables to 1992-95

| | (1a) | (1b) |
|--|------------------|--------------------|
| Specification | Poisson | Poisson |
| Total amendments adopted (ln), 1992-95 | -2.6* (1.2) | -4.1* (1.9) |
| Constitution's mean length (ln), 1992-95 | 2.6* (1.1) | 4.0* (1.6) |
| Constitution's age (ln), 1995 | -0.84* (0.30) | -0.99* (0.42) |
| Partisan judicial elections | | 0.77 (0.94) |
| Total caseload, 1995-98 | | 0.0015 (0.0011) |
| Mean ideological distance, 1995-98 | | 1.0* (0.44) |
| Mean session length, 1992-95 | | 0.0017 (0.0017) |
| Constant | -16* (7.8) | -28* (11) |
| Observations | 49 | 46 |

The dependent variable is the total number of state actions struck down by each state's supreme court for violating the state constitution from 1995 through 1998. Rounding to two significant digits. Standard errors in parentheses. * $p \leq 0.05$ (two-tailed).

Table A5: State Actions Challenged under the US Constitution, 1995-98

| | (A5a) | (A5b) | (A5c) | (A5d) |
|---------------------------------------|------------------|------------------|------------------|--------------------|
| Dependent variable | Decisions | Claims | Decisions | Claims |
| Specification | Poisson | Poisson | Poisson | Poisson |
| Amendments (ln), 1994-97 | -0.80* (0.39) | -1.0* (0.36) | -0.31 (0.39) | 0.0099 (0.26) |
| Constitution length (ln), 1994-97 | 0.88* (0.37) | 1.2* (0.42) | 0.26 (0.39) | 0.048 (0.29) |
| Constitution age (ln), 1996 | -0.38* (0.18) | -0.46* (0.10) | -0.15 (0.22) | -0.085 (0.12) |
| Decisions based on state constitution | | | 0.12* (0.040) | |
| Claims based on state constitution | | | | 0.028* (0.0055) |
| Constant | -5.2 (2.9) | -5.4 (3.5) | -1.5 (2.9) | 1.8 (2.0) |
| Observations | 49 | 49 | 49 | 49 |

The dependent variable in (A5b) and (A5d) is the total number of cases heard in state supreme courts from 1995 through 1998 wherein petitioners raised claims that a state action violated the US Constitution; in (A5a) and (A5c), it is the number of cases where a state action was actually struck down for violating the US Constitution. Rounding to two significant digits. Standard errors in parentheses. * $p \leq 0.05$ (two-tailed).

Table A6: State Actions Challenged under the State Constitution, 1995-98

| | (A6a) | (A6b) | (A6c) | (A6d) |
|------------------------------------|------------------|------------------|------------------|--------------------|
| Dependent variable | Decisions | Claims | Decisions | Claims |
| Specification | Poisson | Poisson | Poisson | Poisson |
| Amendments (ln), 1994-97 | -1.2* (0.39) | -1.1* (0.23) | -0.94* (0.28) | -0.73* (0.20) |
| Constitution length (ln), 1994-97 | 1.7* (0.42) | 1.3* (0.31) | 1.5* (0.32) | 0.85* (0.25) |
| Constitution age (ln), 1996 | -0.44* (0.19) | -0.48* (0.12) | -0.21 (0.21) | -0.28* (0.13) |
| Decisions based on US constitution | | | 0.19* (0.079) | |
| Claims based on US constitution | | | | 0.031* (0.0011) |
| Constant | -12 (3.7) | -6.0 (2.8) | -12 (2.9) | -3.4 (1.9) |
| Observations | 49 | 49 | 49 | 49 |

The dependent variable in (A6b) and (A6d) is the total number of cases heard in state supreme courts from 1995 through 1998 wherein petitioners raised claims that a state action violated the state constitution; in (A6a) and (A6c), it is the number of cases where a state action was actually struck down for violating the state constitution. Rounding to two significant digits. Standard errors in parentheses. * $p \leq 0.05$ (two-tailed).

Figure A1: Invalidations and Constitution Length

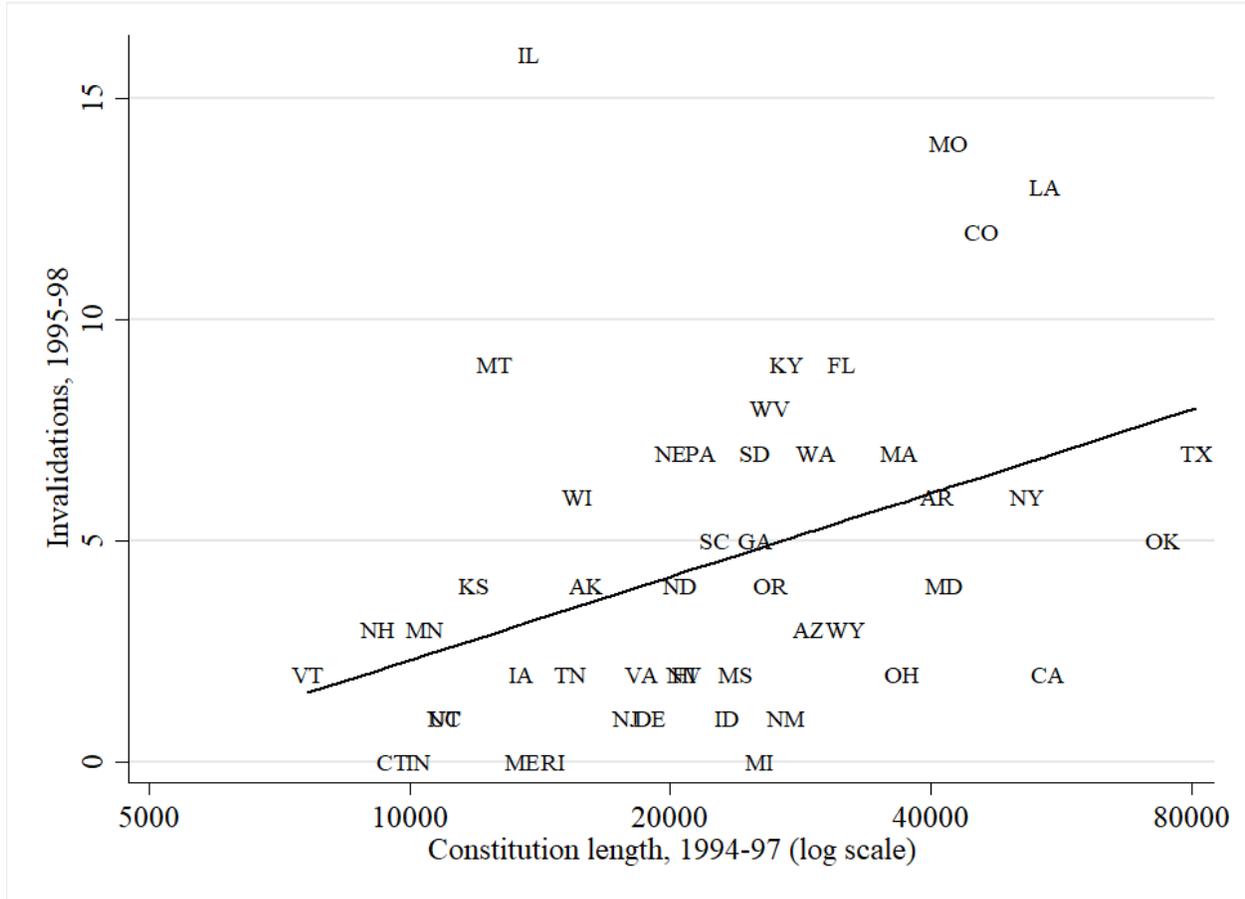


Figure A2: Invalidations and Constitutional Amendments

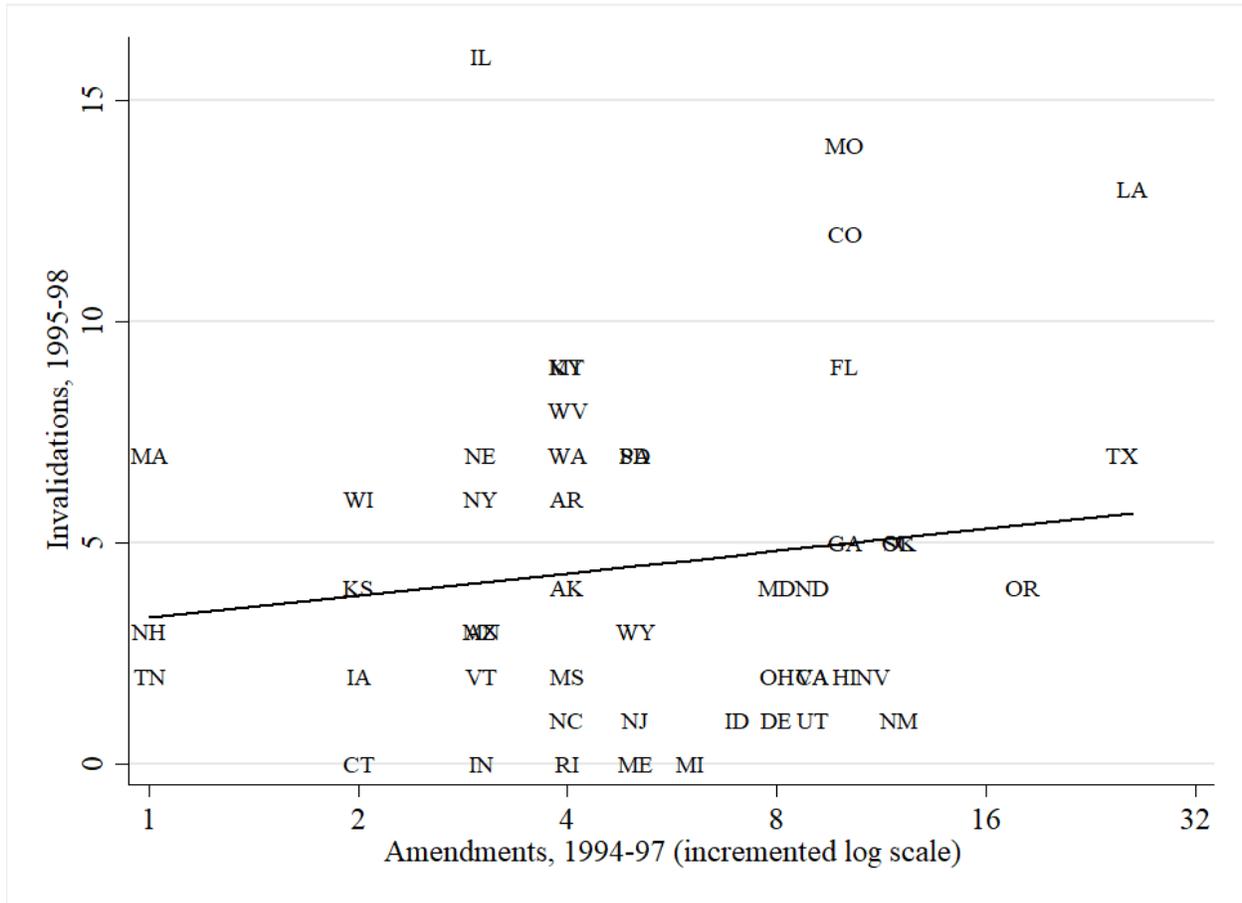


Figure A3: Invalidations and Constitution Age

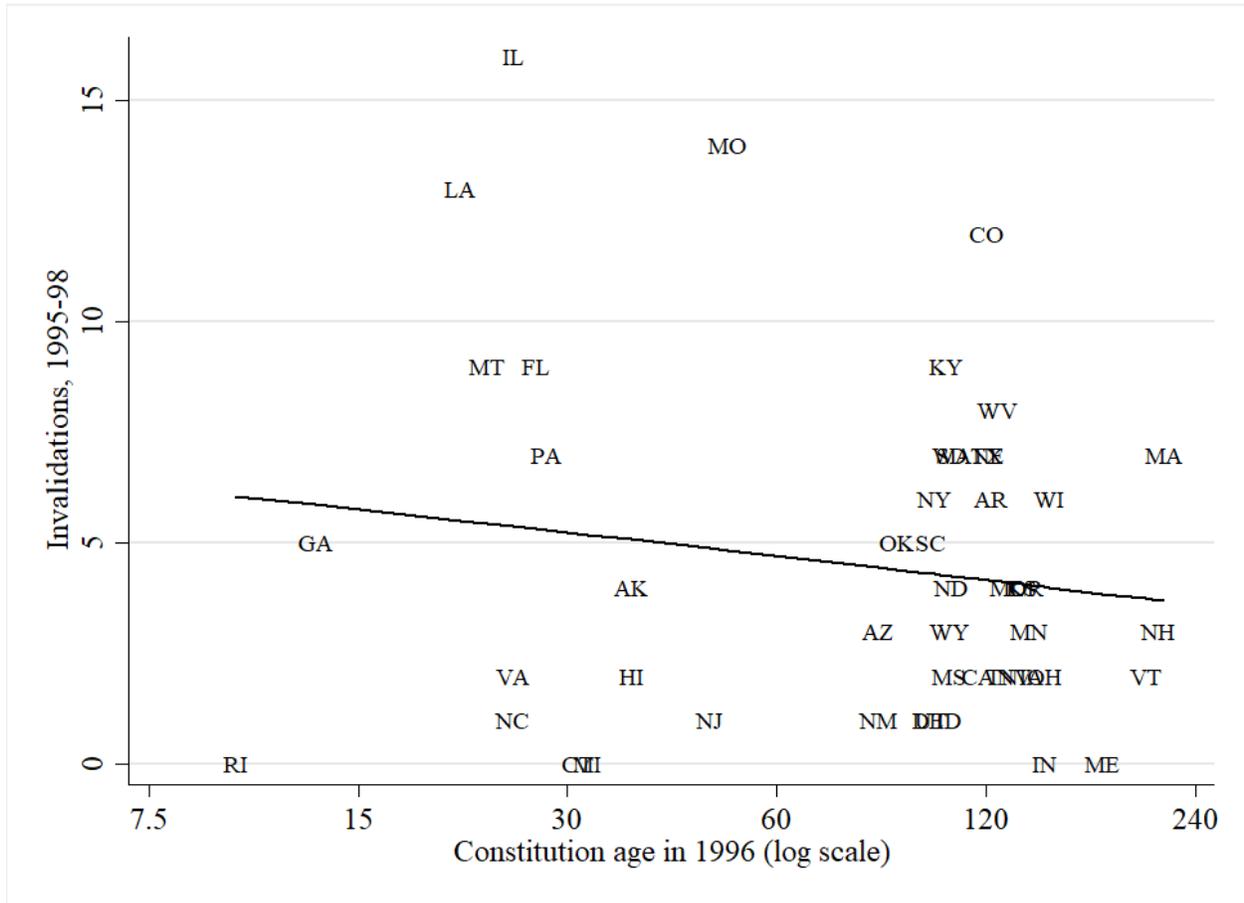


Figure A4: Invalidations and Ideological Distance

