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PIERCING THE VEIL OF THE PANEL: THE POWER OF THE JUSTICE REFEREE IN THE GERMAN CONSTITUTIONAL COURT

Piercing the Veil of the Panel: The Power of the Justice Referee in the German Constitutional Court

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Abstract

In apex and constitutional courts, decisions are typically taken by a panel. If the panel decides per curiam, decisions can at most be explained by the fraction of panel members that share some demographic marker. Using this approach, in the German Constitutional Court outcomes are not significantly explained by the policy preferences of the political party that has nominated the majority of the justices on the panel. This paper puts the non-result to a harder test. It exploits the fact that justices have fixed dockets, defined by subject matter. It uses a hybrid approach, combining a rich dictionary of keywords with a large language model as the umpire for the residual uncertainty, to infer the identity of the justice referee. As, for a small number of cases, the court publicizes the name of the referee, the accuracy of the method can be evaluated, and is acceptable (78.26%). Yet also the preferences of the political party that has nominated the justice referee only explain success with a request for a preliminary ruling, not success on the merits.

Keywords: judicial politics, influence of nominating political party, panel, justice referee, German Constitutional Court, topic modelling, dictionary, large language model, hybrid approach

JEL: C45, C52, C81, D02, D71, D73, K40, K41

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1. Introduction

Apex courts typically decide in panels. A large literature investigates "panel effects", and in particular the effect of panel composition on the disposition. If individual votes are reported, the panel context is just a moderator. It potentially affects how characteristics of panel members play themselves out. Judge ideology has attracted particular interest. Yet the panel may also decide *per curiam*, and then conceal the positions of individual panel members. In such instances, outside observers, including the parties to the case, only learn the majority decision, and the reasons the panel formulates to justify the decision. Judge characteristics can only be observed at the panel level. If all judges on the bench share the same characteristic, the effect of this characteristic becomes visible. But if panels are mixed (for instance consist of two male and one female judge), all one may record is the relationship between the fraction of judges holding the characteristic (are female) and the outcome variable of interest (for instance success of the plaintiff on the merits).

For the German Constitutional Court, these considerations are of particular relevance. At the Constitutional Court, concealment is the rule. In principle, individual votes can only be inferred if a minority submits a dissenting or concurring opinion. This is the rare exception. More than 90% of all cases are decided by chambers of three. Those chambers lose jurisdiction if they do not decide unanimously. The case would be propelled to the full senate of eight. The norms of the court make this a very rare event. Effectively, chambers of forced to agree on the disposition.

At face value, the institutional make-up of the German Constitutional Court and of the US Supreme Court are very similar. A small number of justices, defined in the constitution, are openly selected by the political parties. In the US, tenure is even for life. In Germany, justices are on the court for 12 years, or until they reach mandatory retirement. But the long tenure also gives them plenty of opportunities to take political influence. Yet however I analyse the panel data, in Germany I do not find that loyalty with the nominating political party predicts the decisions of the court.

While this null result is striking in comparison with the US, one may still wonder whether the actual influence of the nominating political party is obscured by the imperviousness of the respective panel. This is where the present project comes in. It starts from the hypothesis that one panel member has exceptional influence: the justice referee. This hypothesis is not only consistent with theory. I also find multiple signs of referee power. This is why it is meaningful to revisit the potential influence of the nominating political party. Yet even through this micro lens, I still do not establish a meaningful effect of loyalty with the nominating political party. The earlier result still stands: the justices at the Constitutional Court do not seem to follow the respective party line.

The remainder of the paper is organised as follows: in the next section, I situate the paper in the literature. Section 3 explains the design of the German Constitutional Court and formulates the hypothesis I set out to test. In section 4, I tackle the critical empirical challenge. The German Constitutional Court does not disclose the identity of the justice referee. I develop and test a methodology for reconstructing her identity from the data. In section 5 I demonstrate

that the identity of the referee matters greatly for the way how the court handles a case, and for its disposition. In section 6 I turn to my main research question. I recap the methodology for relating cases to the policy preferences of political parties. I use this methodology to test whether the disposition of the case is systematically more likely to be in line with the policy preferences of the political party that has nominated the justice referee. Section 7 concludes with discussion.

2.   Literature

Judicial policy making. A large literature interprets the judiciary, and apex courts in particular, as policy makers (classic studies include Dahl 1957, Segal and Cover 1989, Segal, Epstein et al. 1995, Epstein and Knight 1997). This literature increasingly focuses on jurisdictions other than the US (Epstein, Grendstad et al. 2024). One strand of this literature interprets individual judges as rational agents who either maximise personal interests (Posner 1993, Schauer 1999), or their individual ideology (Segal and Cover 1989, Segal and Spaeth 1993, Segal, Epstein et al. 1995, Quinn 1996, Segal and Spaeth 2002, Sunstein, Schkade et al. 2007). While this view rightly guards against simply equating the attitude of a judge with the preferences of the nominating political party (Epstein, Martin et al. 2023), the nominating party remains a reasonably good proxy for a judge's political orientation (Pinello 1999). The competing view stresses that judges basically define themselves as faithful agents of the law, at least as a regulative ideal (Morell 2023). Institutionalists argue that either view is too extreme (Clayton and May 1999, Richards and Kritzer 2002, Weinshall-Margel 2011). Even if they are not immune to personal advantage and personal conviction, whatever judges can achieve is constrained by rather rich arrangements of formal and informal institutions (Epstein and Knight 1997, Hettinger, Lindquist et al. 2004, Garoupa, Gomez-Pomar et al. 2013, Epstein and Weinshall 2021).

Panel effects. One such constraint is the composition of the decision-making body. In apex courts, rarely a single judge alone has decision-making power. She must convince others on the bench. Another fairly rich literature has investigated the moderating effect of panel composition (Ostberg and Wetstein 2024) on ideological (Miles and Sunstein 2006, Kastellec 2011), gender (Boyd, Epstein et al. 2010) or racial bias (Kastellec 2021). The moderating effect tends to be even stronger if panel composition is stable over time (Hinkle, Nelson et al. 2022, Hazelton, Hinkle et al. 2023), as then short-term calculation tends to be replaced by a long-term mutual relationship, shaped by familiarity (for a review of the literature in psychology and management see Engel 2022).

Referee, opinion writer, presiding judge. The moderating effect of panel composition may, however, be counteracted by the fact that individual panel members have asymmetric influence. In this respect, institutional detail matters. In ideal terms, there are two models, which have been called ex ante and ex post deliberation (Cohen 2014). The ex post model is characteristic for the common law jurisdictions, as most prominently the US Supreme Court. The judges on the bench only start deliberating among themselves after all of them have heard the complete evidence. By contrast, on the European continent, and in the German Constitutional

Court in particular, the panel deliberates before it hears the parties (if this is happening at all), based on the exchange of written briefs.

In courts that follow the ex post model, the presiding judge (in the US: if she is part of the majority) only selects the judge who writes the opinion after the end of the deliberations. Both judges have a special role. The presiding judge chairs oral arguments (Bentsen, Skiple et al. 2025, 115), opens the conference and summarizes the facts (Cohen 2014, 986), which gives her a first mover advantage (Bentsen, Skiple et al. 2025, 115), agenda setting power, by framing the issues to be decided (Cross and Lindquist 2005, 1668, Cohen 2014, 992), anchoring the debate, and choosing when to call a vote (Cross and Lindquist 2005, 1669, Johnson, Spriggs II et al. 2005). But presiding judges may feel managerial urges (Ura and Flink 2016) like fostering cohesion of the panel (Cross and Lindquist 2005, 1677 f., Hemel and Rozema 2021), or preserving the perception that the court is fully functional (Maltzman and Wahlbeck 1996, 422f.). There are also cultural channels of influence like setting the tone (Bentsen, Skiple et al. 2025, 119) or defining the court's norms (Cross and Lindquist 2005, 1681). Most importantly, the presiding judge assigns the opinion writer, which she can use strategically to either pick a judge with an ideological position close to her own, or with a position that buttresses the majority against opposition from the minority (King and Schoenherr 2024).

In courts following the ex post model, the second judge with special influence is the opinion writer (Maltzman, Spriggs et al. 2000) (for a formal model see Bonneau, Hammond et al. 2007). This influence results from the desire for a unanimous decision (Kim 2008, 1332f., Cohen 2014, 1004), or at least for reasons that are unanimously supported by the majority (meaning that there is no plurality decision) (Bonneau, Hammond et al. 2007, 892). Non-writers may also show deference to the opinion writer (Bonneau, Hammond et al. 2007, 903, Cohen 2014, 982) out of collegiality, or in respect for their expertise (Eisenberg, Fisher et al. 2013, 283), or may shy away from the extra effort for writing a dissenting or concurring opinion (Bonneau, Hammond et al. 2007, 892, Lax and Cameron 2007, 277). Opinion writers chiefly exert influence by the way how they present the court's argument (Cross and Lindquist 2005, 1673, Farhang, Kastellec et al. 2015, S65), its "persuasiveness, clarity, and craftsmanship" (Lax and Cameron 2007, 277), may "persuade one another through the exchange of information and the power of reasoned argument" (Kim 2008, 1325) and determine which precedential value the ruling will have (Hinkle 2017).

Hence in courts following the ex post model, the impact of the presiding judge is substantial. She is at least no less influential than the opinion writer. If the court follows the ex ante model, the presiding judge is also powerful if she is free to select the referee as, notoriously, in the European Court of Justice (Kalbheim 2016, Hermansen 2020, Kovalčík 2023, Cheruvu 2024, 188). But under the ex ante model, many of the influence channels shift to the referee. She sets the agenda (Kovalčík 2023, 4), collects information (Kelemen 2016, 20f.), suggests the production of evidence (Kalbheim 2016, 438f.), interacts with the parties (Krenn 2020, 4), "has a near monopoly over the facts of the case" (Cheruvu 2024, 186), drafts a preliminary report for discussion with the panel (Krenn 2020, 4, 13), has the "opportunity to present her analysis in the best light so as to win her colleagues" (Cohen 2014, 967), and writes the final opinion (Cheruvu 2024, 186).

3.　German Constitutional Court

The social-science literature on the German Constitutional Court is still relatively small. After two prominent earlier contributions (Vanberg 2004, Kranenpohl 2010), the recent literature focuses on applying advanced methods to parts of the court's jurisprudence, like network analysis (Coupette 2019, Rönneburg 2020), citation analysis (to define canonical rulings) (Ighreiz, Möllers et al. 2021), or discrete-choice experiments, to relate the selection of justices to public opinion (Engst, Gschwend et al. 2020) (also see Sternberg, Gschwend et al. 2015). Three books by former justices about their time at the court are also worth mentioning (Grimm 2021, Lübbe-Wolff 2022, Baer 2025). In an earlier paper, I have causally identified the effect of familiarity among justices, resulting from having been jointly on the bench, on case outcomes (Engel 2022). This paper builds on my former attempt at tracing influence of the nominating political party at the panel level (Engel 2026).

The German Constitutional Court consist of two "senates." Each senate is composed of eight justices. For decisions on constitutional complaints, senates split into chambers of three justices each (§ 93b, 1 BVerfGG). Half of the members of each senate are elected by the *Bundestag*, i.e., by Parliament. The other half are elected by the *Bundesrat*, i.e. by the representatives of the Länder (§ 5 I 1 BVerfGG). Effectively, both bodies are governed by political parties. Every candidate needs a supermajority of two-thirds (§§ 6 V, 7 BVerfGG). In political practice, candidates are selected in negotiations between a representative of the left-wing political spectrum and a representative of the right-wing spectrum. It is firmly established practice that, in each of the two senates, half of the justices are nominated by the parties on the left-wing of the political spectrum, and the other half by the right-wing (Kischel 2005, § 69, R 21-26). Justices leave the court after 12 years, or if they reach the official retirement age of 68 (§ 4 BVerfGG).

Justices have a portfolio that is defined by substance matter. Every year, each senate defines the portfolio of each justice, and the composition of its chambers (§ 15a II BVerfGG). In practice, both regularly change, chiefly for two reasons: A justice leaves the court, and another joins; recomposition allows the case load to be better balanced out across the eight justices in the senate. In composing chambers, the senates aim at political balance between judges appointed by the left-leaning and right-leaning parties; in general, chambers will have two judges nominated by the right-leaning parties and one by the left or vice versa, but rarely three from either wing. The court also tries to achieve balance in other respects, including gender, seniority, and professional background (for example, career judges versus law professors).

German law has a functional equivalent of the US *certiorari* procedure. A constitutional complaint "must be accepted for the decision on the merits". This requires that the case has general relevance or that the complainant has suffered particularly serious harm (§ 93a I BVerfGG), a standard that effectively allows the Court to pick the cases it wants to decide. The chamber has power not to grant review (§ 93b, 1 BVerfGG), to reject the case on the merits, or to accept the case on the merits (§ 93c I 1 BVerfGG). If the chamber fails to reach a unanimous decision the case is propelled to the complete senate (§ 93d III 1 BVerfGG). But this is a very rare event.

The chamber has power to decide without giving written reasons (§ 93d I 3 BVerfGG), and the court decides most cases this way. However the chamber only has power to decide the case if its decision is unanimous (§ 93d III 1 BVerfGG). Between Jan 1, 1998 (when the court has started posting decisions online), and Dec 31, 2024, the court posted 8,872 rulings, including 7,794 decided by a chamber; yet, between 1998 and 2020, 125,513 cases were filed.[1] The unpublished cases are also cases without written reasons.[2] Because this study uses data only from published cases (a small minority of all cases), one reason for caution in interpreting its results is that they may not be representative of all cases, and that they constitute a selected sample. My interviews with former Constitutional Court clerks confirm that the process for deciding unpublished cases is the same as the process for deciding published cases up until after the court has decided either to deny certiorari or accept or reject the case on the merits. Only after that decision has been made does the chamber elect not to publish the case, which it usually does due to time constraints; producing a polished justification entails considerable extra work. No interviewee suggested that partisan considerations (including worries about the perceived partisanship of the decision) influence the decision not to publish.[3] In another paper, I have correlated the fact that cases are published with case and judge characteristics. I find pronounced variance, but no systematic effects. This suggests judge and panel idiosyncrasies, rather than strategic publication decisions (Engel 2025).

The internal regulations of the Court define the powers of the referee. She interacts with the parties, public authorities, and potentially external experts (§§ 22, 41 GOBVerfG). She prepares the deliberations among the members of the panel by a written brief and writes the final opinion (§ 23 GOBVerfG). She controls in which ways the decision is promulgated to the wider public (§ 32 GOBVerfG). Hence the German Constitutional Court follows the ex ante model. As the justices have stable dockets defined by substance matter, the influence of the presiding justice is small as well (cf. § 20 GOBVerfG). Referees have maximum power. This paper investigates whether referees exploit their strong position to further decisions in line with the policy preferences of the political parties that have nominated them.

4.   Identifying the Justice Referee

Answering this question faces a critical empirical challenge. In some jurisdictions, including the US Supreme Court (King and Schoenherr 2024) and the European Court of Justice (Krenn 2020), the identity of the referee is routinely published (for an overview see Kelemen 2016, 22f.), except if the court elects to decide *per curiam* (Li, Azar et al. 2012, Cheruvu 2024). Yet the German Constitutional Court follows the tradition of most ex ante jurisdictions (Cohen 2014, 1002). As a rule, it keeps the identity of the justice referee confidential.[4] To make my investigation meaningful, I need a methodology for inferring the identity.

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1   https://www.bundesverfassungsgericht.de/DE/Verfahren/Jahresstatistiken/2020/gb2020/A-I-2.pdf?__
    blob=publicationFile&v=2. The numbers are available for the moment in time when cases have been filed, not when they have been decided. This is the last available document with rich statistics.
2   This information comes from an interview with Justice Susanne Baer on Feb 23, 2022.
3   Because proceedings of the Court are confidential, these former clerks spoke to me anonymously.
4   On the occasional exceptions see below after Figure 1.

This empirical challenge has triggered a small literature at the intersection of law and computer science. First generation contributions used classic natural language processing techniques to associate authors with their characteristic styles, relying on function words (Rosenthal and Yoon 2010, Rosenthal and Yoon 2011) or n-grams, i.e. characteristic sequences of words (Li, Azar et al. 2012). In keeping with the evolution of the field, a second generation contribution added the power of neural networks and embeddings and trained a classifier, based on the signed opinions of a single judge (Chandler, Muenster et al. 2023). The most recent contribution exploits the power of large language models to probabilistically infer the authors of unsigned opinions at the US Supreme Court (Avraham, Nasser et al. 2025).

All these contributions had one advantage over the German Constitutional Court, and one disadvantage. On the positive side, all these exercises had a sufficiently rich set of signed opinions that they could use for training. By contrast, for cases decided by the German Constitutional Court the identity of the justice referee is only known in a fairly small number of cases, and only for a small number of justices (I will use these cases as a hold-out dataset for testing my methodology). On the negative side, all these earlier attempts could exploit was style. This in particular made it challenging to trace authors if the actual text was likely written by a justice's clerks (Li, Azar et al. 2012, 525 ff.). By contrast, at the German Constitutional Court each justice, at each point in time, has a publicly known docket that is defined by subject matter. Very few exceptions notwithstanding,[5] these dockets are mutually exclusive. Before the beginning of the year, the court publishes the dockets on its website. If during the year a member of the senate reaches the end of her term, or retires, the court updates this document.[6] Information about the composition of the docket of each justice is what I exploit for identification.

I want to infer the author of a decision by its topic. This invites a well-established method in natural language processing, an author-topic model (Rosen-Zvi, Griffiths et al. 2012), as an extension of Latent Dirichlet Allocation (Blei, Ng et al. 2003). The method seemed appealing for two reasons. First it is unsupervised. I do not need a rich enough set of labelled data (which I do not have). Rather the method organizes the data. Second the method precisely matches the granularity of my data. It is two-dimensional. I know that all cases assigned to a certain domain must have been written by the same author. But my initial attempts quickly convinced me that I do just not have enough data. I have 8872 decisions, but 169 different dockets/topics.[7] Had the topics been equally distributed, I would on average have 53 cases per topic (and by design per author-topic pair). But arguably topics are very asymmetrically distributed. It for instance stands to reason that there are a lot of cases on social security or on the rights of prisoners, and much less on the constitutional right to file a petition with Parliament, or on hunting rights.

This is why I have turned to a hybrid approach. In the first step, I am developing and iteratively refining a dictionary. The final version of the dictionary consists of 460 dummy variables that

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5   As most notoriously for private law, and for multiple years also for asylum cases.
6   https://www.bundesverfassungsgericht.de/DE/GrundgesetzRechtsgrundlagen/Geschaeftsverteilung/ geschaeftsverteilung_node.html.
7   The complete list of topics is in Appendix A3.

are 1 if the text of a decision uses the respective term(s). As this method was often overinclusive, in a second iteration I have constrained the definition, e.g. by requiring that, in addition, a pertinent provision of the constitution is discussed. Most importantly, I have excluded candidate domains if no justice on the decision making body had this domain in her docket.

As the left panels of Figure 1 show, this first step is helpful, but for a fair number of cases not conclusive. For the first senate, using my dictionary I isolate a single referee in 2152 cases decided by a chamber of 3, and in 62 cases decided by the complete senate of 8. For the second senate, I can finally determine the referee in 1322 chamber and 357 senate cases.
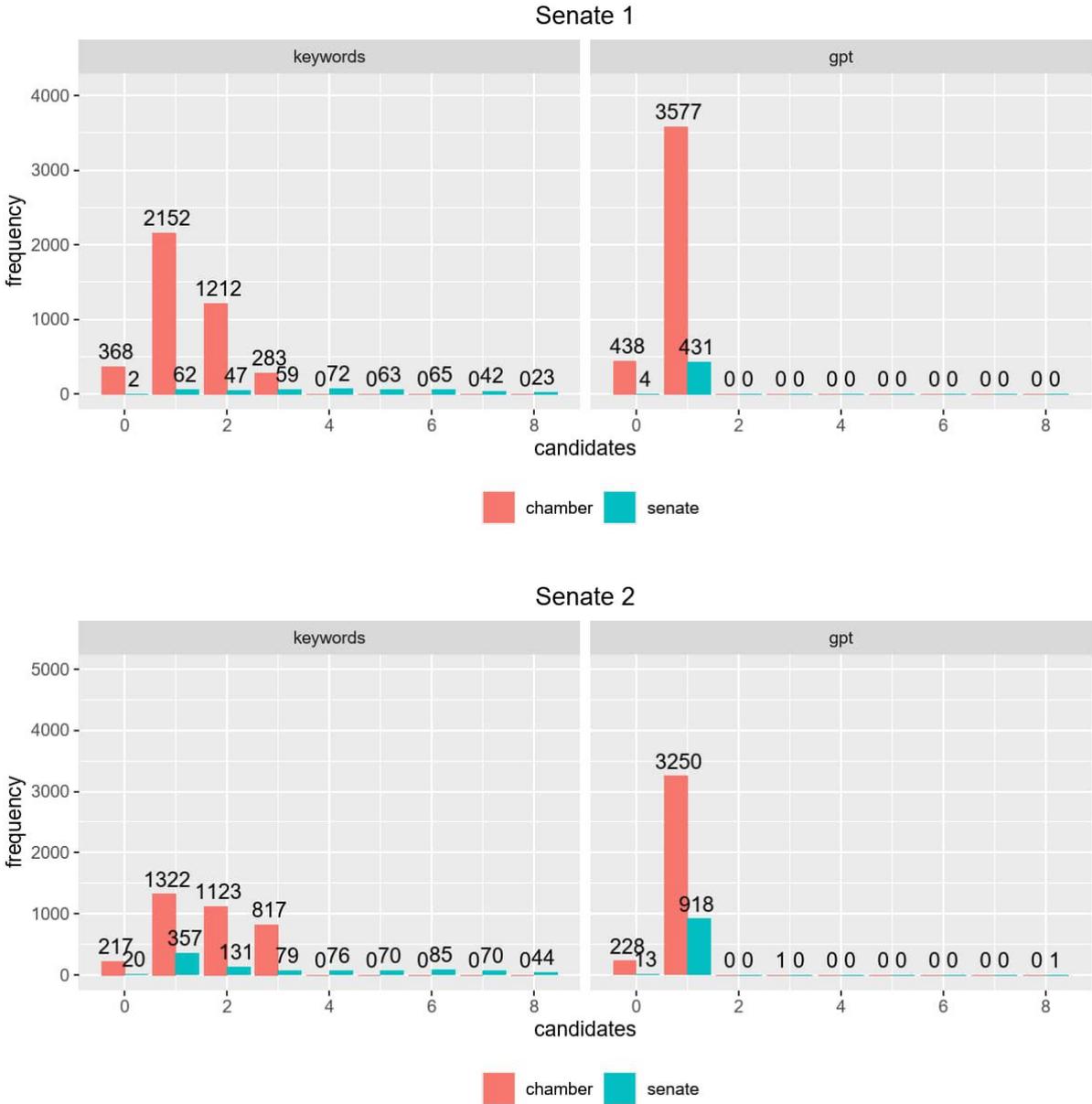

Figure 1
Identification of Referee

This is why, in the second step, I rely on the large language model GPT 4. I am giving the LLM the complete text of the decision, and the definitions of the candidate domains that still remain after applying the dictionary. I ask the LLM to define the most likely of these domains. Using this response, I infer the identity of the referee. Results are in the right panels of Figure 1.

Rare exceptions notwithstanding, I now have a unique referee. Two special cases bear explanation. There is a certain number of cases in which I cannot identify the referee at all. These are cases (almost all of them chamber rulings) in which the court exclusively discusses procedural issues, e.g. admissibility conditions. This holds for 442 cases decided by the First Senate, and 241 cases decided by the Second Senate. In the Second Senate, I also have one chamber decision in which even GPT cannot discriminate between three candidate referees, and one senate decision in which it cannot discriminate between all 8 members of the Senate. Both these cases concern a conflict about the interpretation of private law. This topic is simultaneously in the docket of multiple justices.

I have checked a larger number of the LLM responses, and of the justifications it gives for its decision. I have never found one that I did not consider convincing. Yet happily, my personal professional expertise is not the only way how I can validate my method. Since 2014, the court has published a *Jahresvorschau*, i.e. selective information about cases it intends to decide during the year. In these bulletins, the court also mentions that cases are "from the docket of justice X". Hence for these cases I know ground truth. The prediction generated using my method had been correct in 234 of these 299 cases, i.e. in 78.26%. This is of course short of 100%. This suggests that, using my method I only observe the identity of the justice referee with error. But the degree of error is small enough to nonetheless make my methodology meaningful.

Figure 2 breaks results down by justice. In all panels, justices are ordered by the moment in time when they joined the court. As one should expect, all panels look like pyramids. There are multiple sources of variation: some domains (like the various criminal justice domains) draw more cases; some justices are more inclined towards publication (Engel 2025). But the dominant source of variation is the non-renewable term of 12 years (§ 4 I BVerfGG). Consequently in the beginning of the time series, I observe multiple justices who have already completed part of their term. In the end of the time series, I observe multiple justices who have only recently joined the court. It is also expected that many more cases in which I directly observe the referee have been decided by the respective senate, not a chamber. After all the court lists cases in the *Jahresvorschau* that it considers to be of particular interest for a wider audience. Actually the fact that most cases in which I observe (rather than merely infer) the referee have been decided by the full senate is fortunate. Effectively, this puts my method to a harder test: not only two other chamber members could have been the referee; this holds for seven other senate members. It is comforting that, even with this harder test, the accuracy rate is shy of 80%.
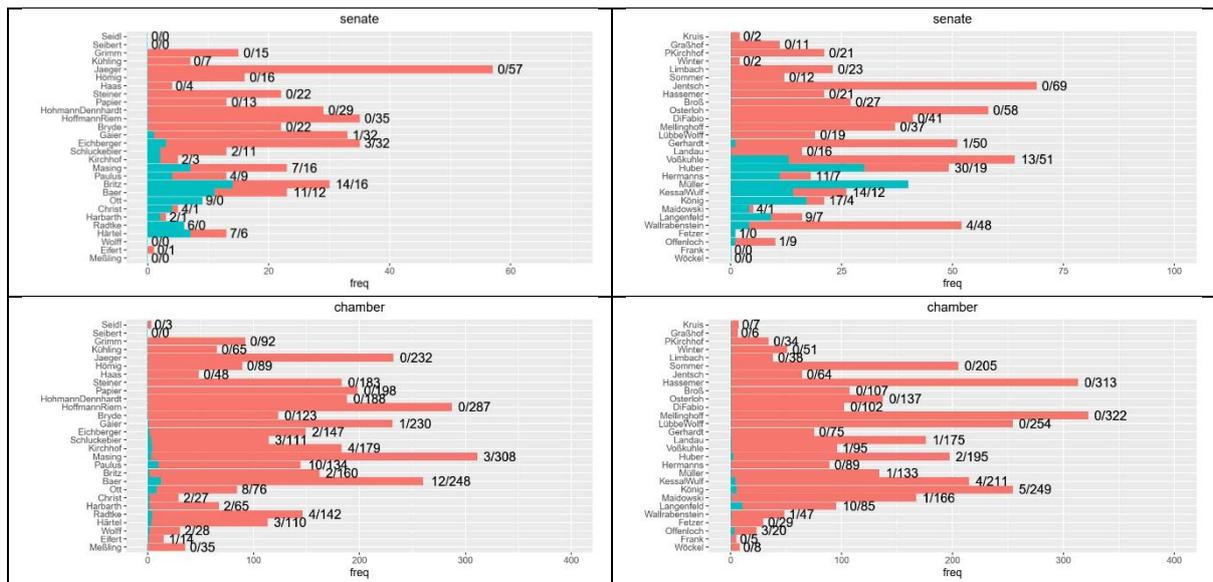
Figure 2
Observed and Inferred Identity of the Justice Referee
justices ordered by moment in time when they joined the court
turquoise/first number: observed; red/second number: inferred

5.   The Power of the Justice Referee

The literature expects the referee to be influential (Section 2). Before I turn to my main research question – the potential influence of the political party that has nominated the justice – I present four other indicators of referee power.

The length of the ruling, measured by the number of characters, is a proxy for the writing style of the referee: does she lean towards terse or verbose rulings? Figure 3 shows huge variance in this respect. The average ruling for which the former president of the Court, Justice Voßkuhle, was the referee has almost 40,000 characters. The average ruling for which Justice Meßling was the referee only has 7561 characters. Hence the rulings that have arguably been written by Justice Voßkuhle are more than five times longer. Now one may wonder whether the comparison is biased by the fact that some justices have not been observed for the full time they have been on the court. It might, for instance, be that the earlier cases that they finish have been less complex. This is why, in Figure 3, justices who have not been observed for their full time on the court are represented with lighter grey bars. If one constrains the comparison to justices who have been observed for their full term, the justice with the smallest average length of the rulings is Justice Kirchhof. The rulings for which he is inferred to be the referee have on average 12,858 characters, i.e. less than a third of the average length of the rulings for which Justice Voßkuhle is inferred to be the referee.
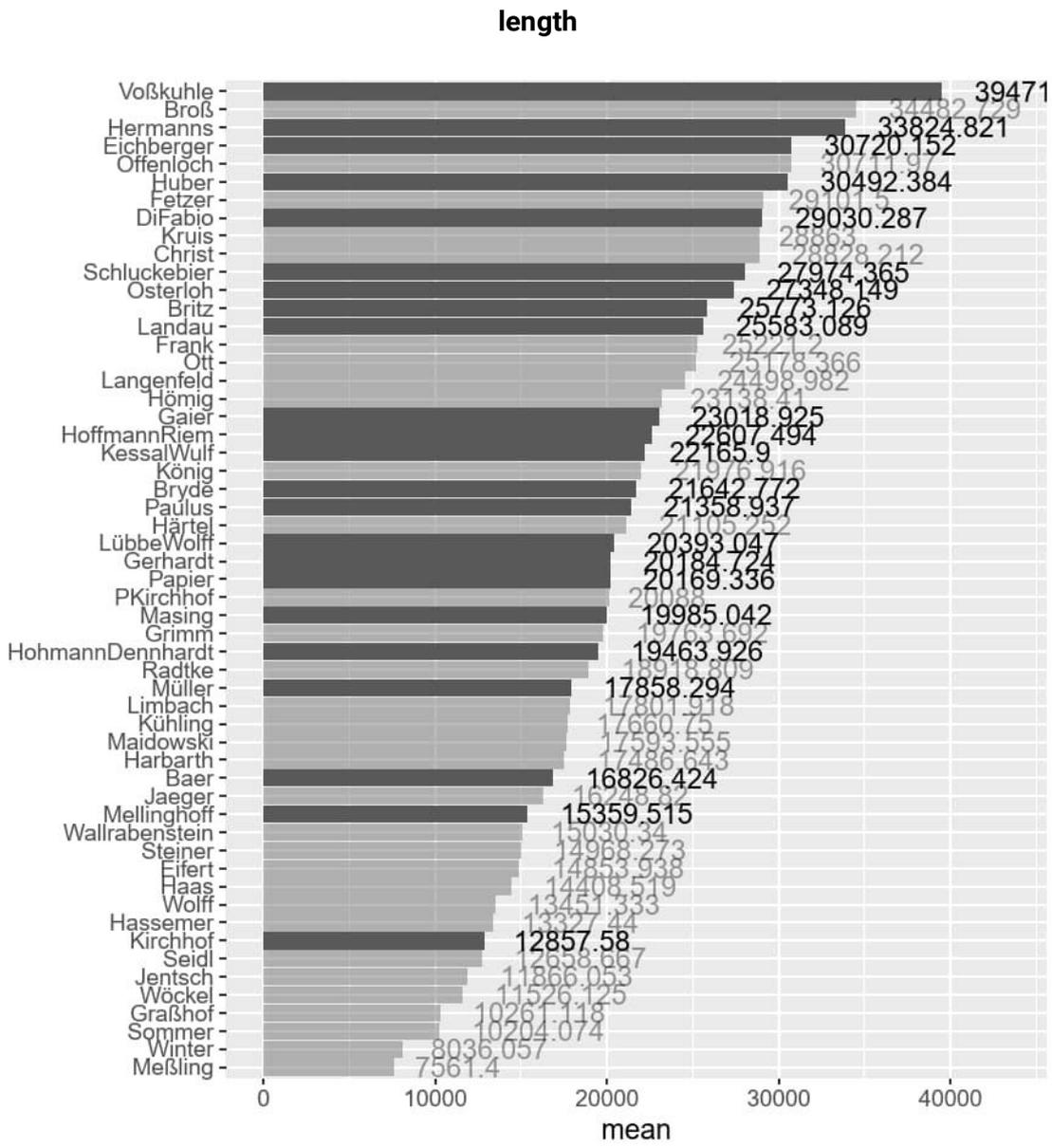
Figure 3
Mean Number of Characters, by Referee
dark bars: referee has been observed for full tenure

The average duration of the procedure (Figure 4) of course also depends on the complexity of the case. But arguably, the ability of the justice to handle the procedure, to draft a brief that flies with the other justices on the bench, and to write the final decision, also contributes to the time it takes for the case to be closed. It would be intuitive that justices try to clear their docket before they leave the court. For that reason one may suspect that the average time required by justices who leave the court soon thereafter is biased upwards. Focusing on referees who have been observed for their complete term, the one who has taken most time is Justice Osterloh (on average nearly two and a half years), while Justice Gerhardt on average needed less than a year, which is not much more than a third.
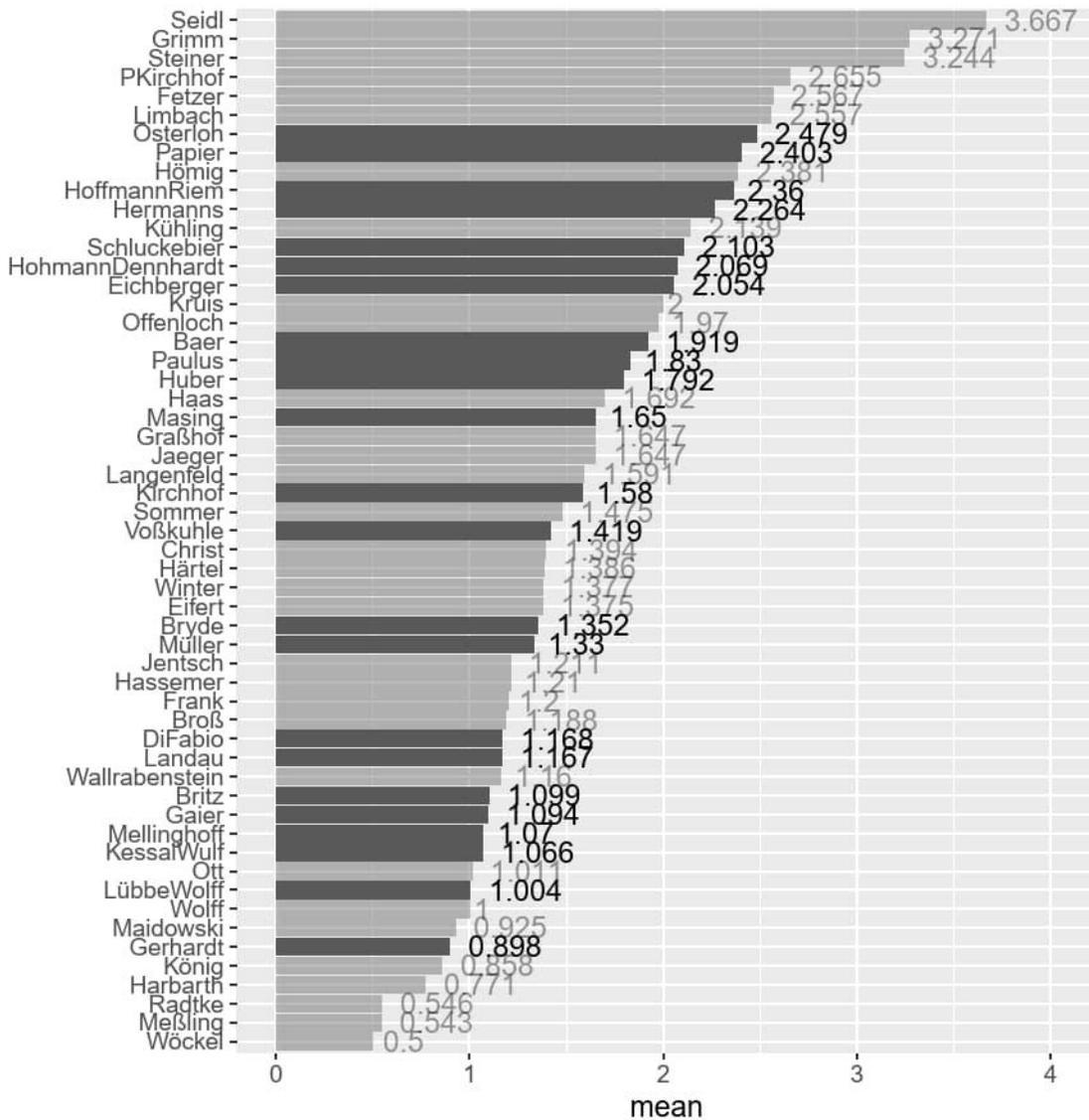
Figure 4
Mean Years Until Final Disposition, by Referee
dark bars: referee has been observed for full tenure

If the decision comes with a press release, this signals that the referee considers the decision to be of particular interest to a wider public. Again referees exhibit pronounced variance (Figure 5). Of justices who have been observed for their complete term, Justice Masing almost published a press release in one out of 2 cases (that get published in the first place), while Justice Kessal-Wulf only published a press release in one out of 6 cases. As dockets are defined by subject matter, the low number by Justice Kessal-Wulf may reflect that she was responsible for criminal law, with many important, but few far-reaching decisions. By contrast Justice Masing was responsible for freedom of speech and the media, which may have sug-

gested more active press coverage. But it is unlikely that all differences result from the composition of the respective docket. At least part of the differences likely results from a personal style of adjudication.
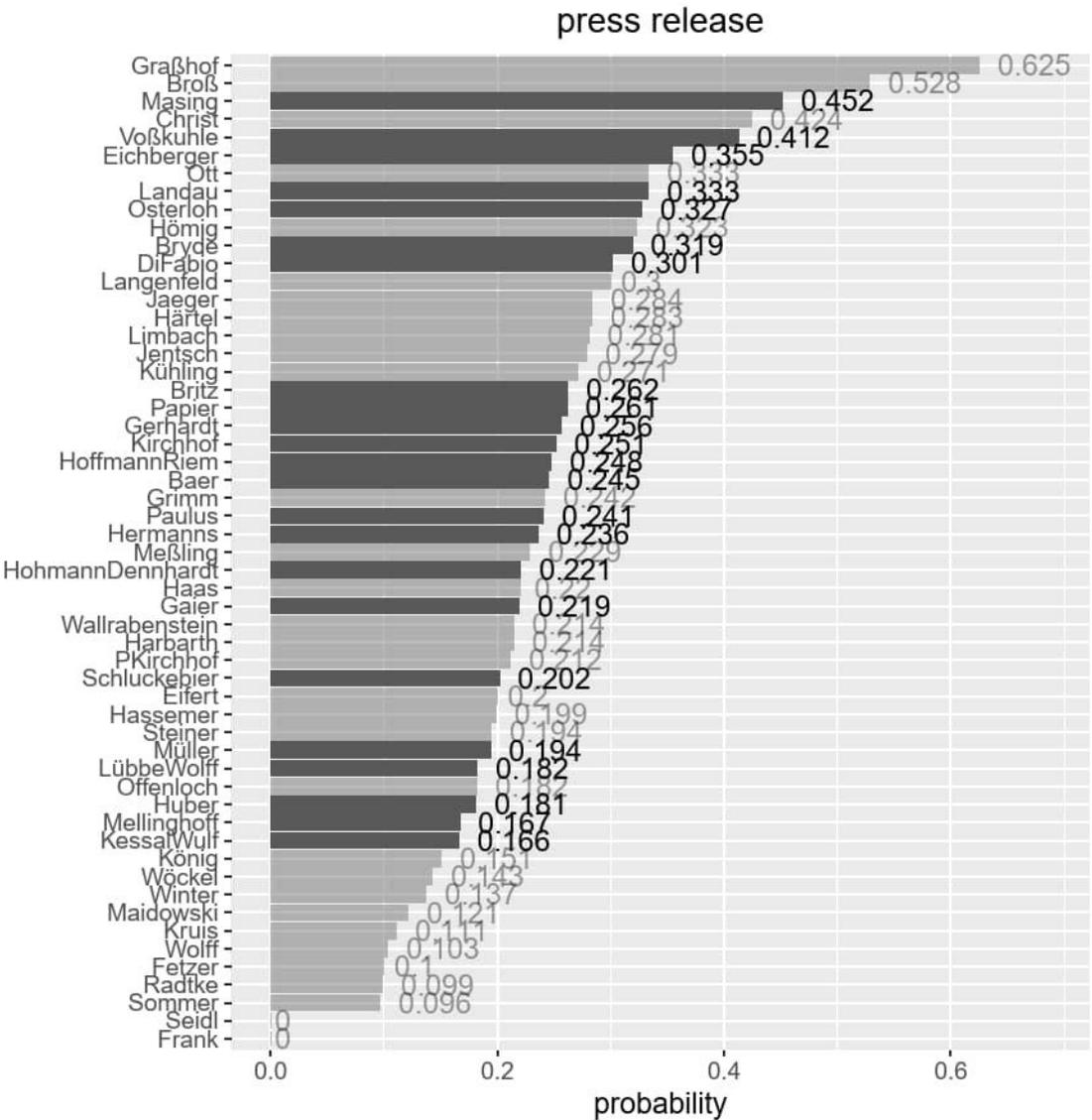

Figure 5
Probability of Promulgating a Press Release, by Referee
dark bars: referee has been observed for full tenure

Another option is for the justice referee to add "Leitsätze" to the publication. With such black letter law, the Court tries to guide the reception of the decision. She wants to make sure that, in future cases, what she considers to be the critical clarifications is not overlooked. Again variance across referees is pronounced (Figure 6). Justice Voßkuhle has done so in nearly one out of 4 cases for which he assumed the role of referee, while Justice Kirchhof has only done so in one out of 37 cases.
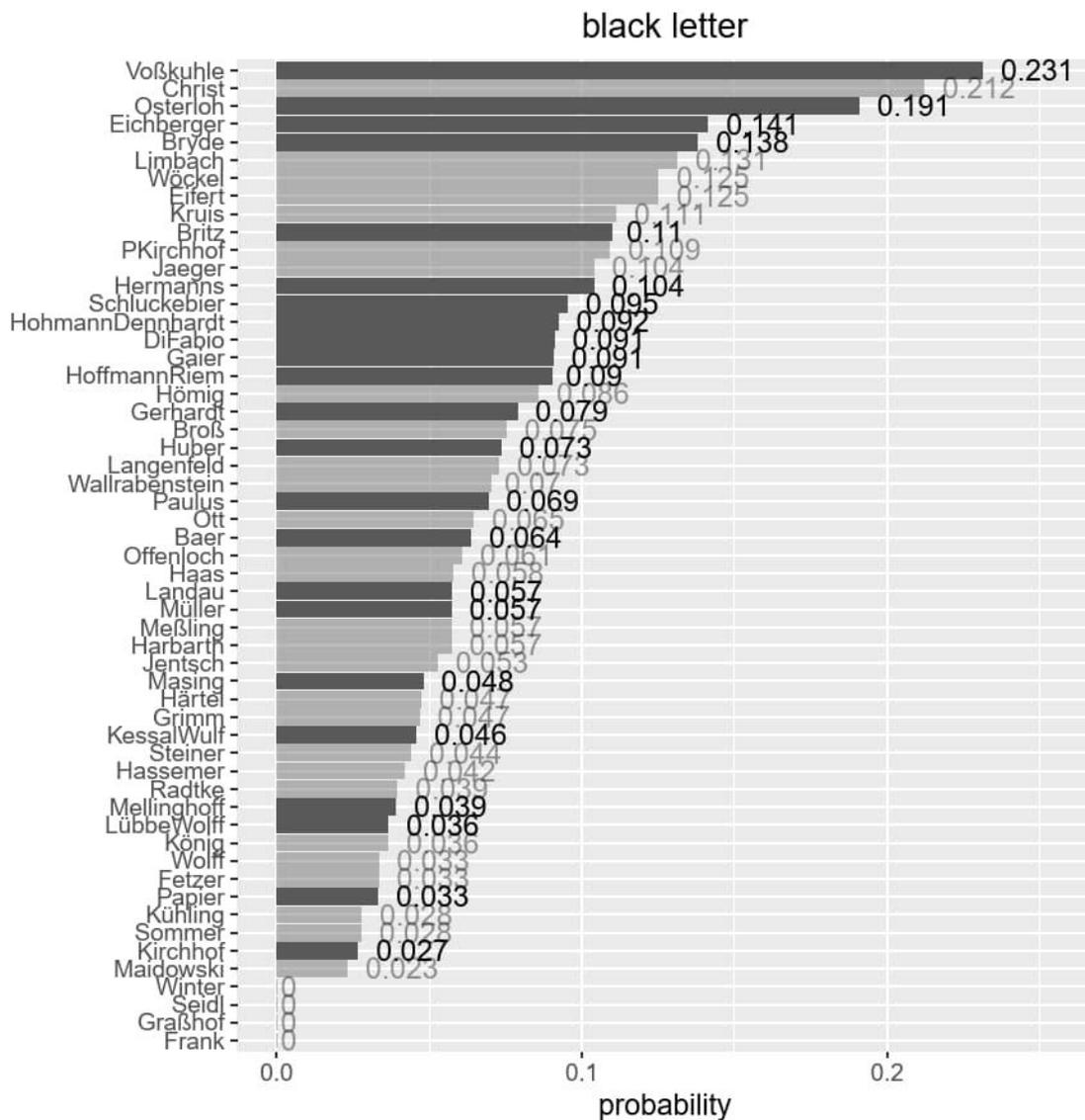
Figure 6
Mean Probability of Prefacing the Ruling by Black Letter Law, by Referee
dark bars: referee has been observed for full tenure

6.   Are Referees Loyal to the Nominating Political Party?

Sections 2 and 3 show: referees in general, and referees at the German Constitutional Court in particular, wield considerable power. Section 4 shows: the power of the referee leaves discernible traces in the way how they handle cases. This makes my main research question meaningful: do referees exploit this power to decide in line with the policy preferences of the political parties that have nominated them?

Success measures. The dependent variables are four measures of the applicant's success, which are summarized in Table 1. Applicants are of course primarily interested in success on the merits, but to achieve it, they must first get through the more daunting hurdle of *certiorari* (a term I borrow from U.S. law, to which the German system is in this respect analogous), and

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then convince the court on the merits. Of all constitutional complaints decided by a published chamber decision, only 6.37% clear both these hurdles (Row 1). This is mainly because the court only grants *certiorari* in 25.12% of the reported decisions (Row 2). Among cases in which the court does grant *certiorari*, the applicant is successful on the merits 25.35% of the time (Row 3). Meanwhile, requests for a preliminary injunction are successful in 30.46% of the cases in which such a request is filed (Row 4).

		all			reliable proxy for preferences of nominating political parties available		
		Failure	Success	% Success	Failure	Success	% Success
1.	*certiorari* and merit	5868	399	6.37%	2652	228	7.92%
2.	*certiorari*	4693	1574	25.12%	2320	560	19.44%
3.	Merit conditional on *certiorari*	1175	399	25.35%	332	228	40.71%
4.	Preliminary injunction	1235	541	30.46%	439	184	29.54%

Table 1
Success Measures

Preferences of nominating political parties. To define the policy preferences of the nominating parties, I exploit data from the *Manifesto* project.[8] It codes party positions as expressed in publicly distributed party manifestos (Lehmann, Burst et al. 2022). A graphical representation is in Figure 7. As one sees, the divergence is clearest with respect to economic justice issues, which are the issues that define the fundamental left-right divide in German politics. The parties on the left (the Green Party and the Social Democratic Party (abbreviated SPD, following the German) put much more stress on economic justice and tend to push for an extension of the welfare state than the parties on the right (the Christian Democratic Union (CDU) and the Free Democratic Party (FDP)), which are more in support of business interests. Meanwhile, the Christian Democrats have a pronounced appreciation for law and order, distinguishing them from all three other parties. With civil rights, there is a different divide: The Greens, and even more strongly the FDP, place a lot of value on them, while neither the CDU nor the SPD do. Finally, the Greens, the SPD and the FDP put more stress on democratic participation than the CDU does.[9]

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8   https://manifesto-project.wzb.eu. The exact wording of the variables in the Manifesto dataset that I am exploiting is in Appendix A1.
9   For a more elaborate discussion of the methodology, and alternative measures of party preferences, see (Engel 2026).
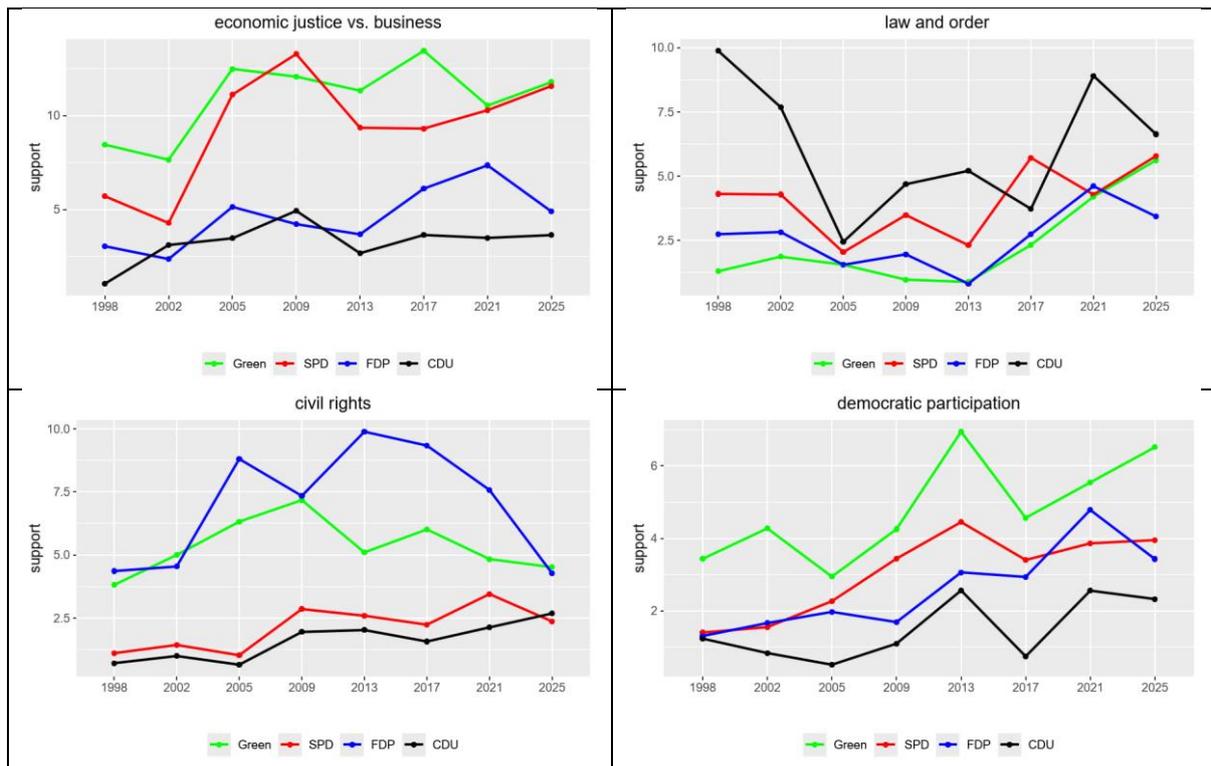
Figure 7
Preferences of Nominating Political Parties Over Time and Across Policy Areas
Data from Manifesto Project

Mapping cases to party preferences. For inferring the identity of the justice referee, I had to build a large dictionary, and had to use GPT 4 as a tie-breaker. It would be tempting to map these definitions of the substance matter of the case to preferences of the political parties. But recall that I have 169 distinct domains. The evidence about party preferences is by far not that granular. I must therefore content myself with mapping the four broad issue areas described in Figure 7 to case content. Happily there is a reasonably reliable proxy. Constitutional complaints must claim the violation of a fundamental freedom. For instance, if the claimant posits a violation of property, as protected by Art. 14 Basic Law, arguably the CDU and the FDP would find it more desirable that she wins, compared with the SPD and the Greens. This is also the approach I have used in the earlier paper that works with the political party that has nominated the majority of the justices on the panel (Engel 2026). In Appendix A2, I list the fundamental freedoms that can with sufficient confidence be mapped to one of the four policy areas.[10] While I would argue that this list is defensible, I pay a price in terms of data. I can only map desirable case outcomes to the policy preferences of the nominating parties in 4085 cases. Hence I can only use 46.04% of all cases that the Court has posted on its website. The right-most columns of Table 1 summarize how the four success measures are distributed in this subsample.

Main result. The right panel of Figure 8 collects descriptive results. On two of the four success measures, results run counter the policy preferences of the political party that has nominated

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10   For more discussion of the approach, and robustness checks, see Engel (2026).

the justice referee: if success for the applicant would be in line with the policy preferences of the nominating party, success is less, not more likely. This holds for what typically applicants are most interested in: certiorari has been granted, and the applicant was successful on the merits. It also holds for the most prevalent decision, namely granting certiorari. However, if certiorari has been granted, the probability of also winning on the merits is slightly higher if success is in line with the preferences of the political party that has nominated the justice referee. Finally obtaining a preliminary injunction is considerably more likely if the justice referee has been nominated by a political party that favors success.
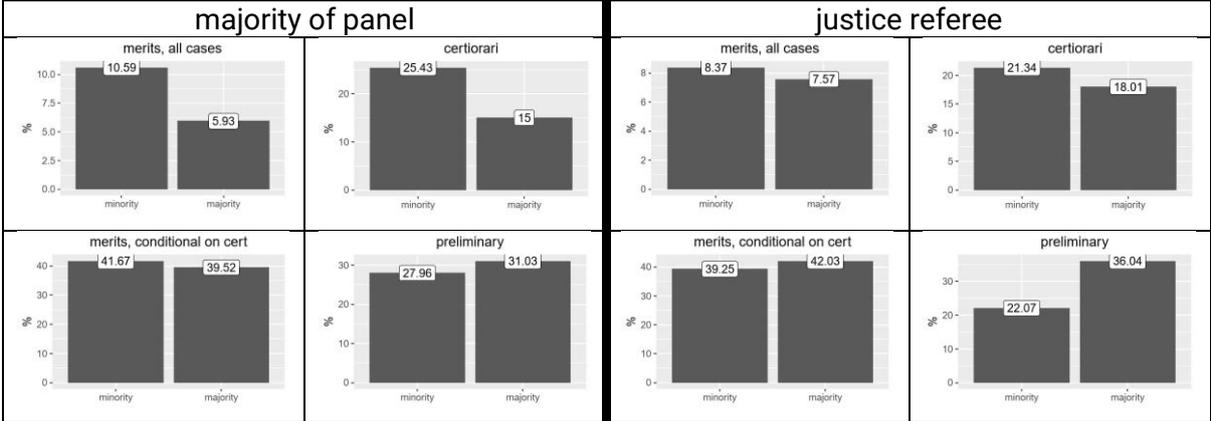

Figure 8
Relationship Between Preferences of Nominating Political Party and Outcomes

It is elucidating to compare the results at the level of the justice referee with the results at the level of the panel. At the panel level, I must work with the political parties that have nominated the majority of justices. One might wonder whether these results suffer from measurement error. For this interpretation one does not need the strong assumption that the preferences of the justice referee determine the outcome. The considerably weaker, and much more plausible, assumption suffices that the justice referee has asymmetric impact on the decision. On the latter assumption, if the referee is with the majority, and if justices have a propensity to be loyal with the nominating party, the preferences of this party should be more likely to affect the decision. Yet the estimations at the panel level do not take the identity of the justice referee into account.

This is why it is useful to compare the results at the level of the justice referee with results at the panel level. The latter results are reported in the left panel of Figure 8. Interestingly for overall success, and for granting certiorari, the direction of the effect is the same when zeroing in on the justice referee. The magnitude of the effect is however smaller, which suggests that measurement error might indeed play a role. At the panel level, the only expected effect concerns request for a preliminary ruling. This effect not only replicates at the level of the justice referee; it also has a considerably larger magnitude. This finding is also consistent with the measurement error explanation. Finally, and again in line with this interpretation, descriptively for decisions on the merits provided certiorari had been granted, the effect even swaps signs.

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While at the panel level, the policy preferences of the nominating political parties go against the decision, at the level of the justice referee, there is the expected effect (but it is very small).

Significance and robustness. At the panel level, only the negative effects of the policy preferences of the nominating political party on success on both certiorari and the merits, and merely on certiorari, turn out significant (Engel 2026). Hence there is no sign of a loyalty effect. At the level of the justice referee, there are no significant effects on what applicants are arguably most interested, i.e. success on both certiorari and the merits (Table 2). The policy preferences of the nominating political party are significantly associated with decisions on only certiorari, but in all models this association is negative, i.e. the opposite of what party loyalty would predict (Table 3). While the coefficients are always positive for success on the merits, provided certiorari had been granted, these effects are never significant (Table 4). The only positive and significant association is found with requests for a preliminary ruling (Table 5).

	model 1	model 2	model 3	model 4	model 5	model 6	model 7	model 8
ideology	-.008 (.010)	-.006 (.010)	-.006 (.009)	-.002 (.010)	-.006 (.010)	-.008 (.010)	-.005 (.009)	-.003 (.010)
senate			.375*** (.014)	.373*** (.014)	.342*** (.016)	.632*** (.087)	.369*** (.014)	.622*** (.088)
econ				-.034** (.012)				-.039** (.013)
crim				-.012 (.013)				-.018 (.013)
person				-.068** (.022)				-.073** (.022)
polit				.009 (.056)				.009 (.016)
domain FE					Y			
justice FE						Y		Y
year FE							Y	Y
cons	.084*** (.008)	.080*** (.008)	.036*** (.007)	.056*** (.013)	.037** (.013)	.216*** (.055)	.035 (.023)	.018* (.070)
N	2880	2880	2878	2878	2878	2878	2878	2878

Table 2
Success on Certiorari and the Merits
linear probability models
models 2-8: weighted with estimated probability that domain is correctly identified
dv: dummy that is 1 if applicant has been successful
ideology: dummy that is 1 if applicant winning would be in line with preferences of political party that has nominated the justice referee
senate: dummy that is 1 if decision has been taken by full senate, 0 if decision has been taken by chamber,
two decisions omitted that have been decided by plenary and complaints chamber, respectively
econ, crim, person, polit: dummies that are 1 if court discusses fundamental freedom that is indicative of domain (see Appendix A2)
domain FE: dummies that are 1 if the case falls into one of 222 domains in the official docket of one justice
justice FE: dummies that are 1 if a justice has been on the panel
year FE: dummies that are 1 if the decision has been taken in the respective year
Y: respective dummies are included
standard errors in parenthesis
*** p < .001, ** p < .01, * p < .05, + p < .1

	model 1	model 2	model 3	model 4	model 5	model 6	model 7	model 8
ideology	-.033* (.015)	-.030* (.015)	-.028** (.010)	-.028** (.011)	-.040*** (.012)	-.036** (.011)	-.025* (.010)	-.032** (.012)
senate			.870*** (.016)	.848*** (.017)	.869*** (.018)	.758*** (.099)	.861*** (.016)	.731*** (.100)
econ				-.058*** (.014)				-.050*** (.014)
crim				-.019 (.014)				-.022 (.015)
person				-.056* (.025)				-.047+ (.025)
polit				.082*** (.017)				.069*** (.018)
domain FE					Y			
justice FE						Y		Y
year FE							Y	Y
cons	.213*** (.011)	.208*** (.011)	.105*** (.008)	.131*** (.015)	.123*** (.015)	.077 (.063)	.101*** (.026)	.040 (.079)
N	2880	2880	2878	2878	2878	2878	2878	2878

Table 3
Success with Certiorari
linear probability models
models 2-8: weighted with estimated probability that domain is correctly identified
dv: dummy that is 1 if applicant has been successful
ideology: dummy that is 1 if applicant winning would be in line with preferences of political party that has nominated the justice referee
senate: dummy that is 1 if decision has been taken by full senate, 0 if decision has been taken by chamber, two decisions omitted that have been decided by plenary and complaints chamber, respectively
econ, crim, person, polit: dummies that are 1 if court discusses fundamental freedom that is indicative of domain (see Appendix A2)
domain FE: dummies that are 1 if the case falls into one of 222 domains in the official docket of one justice
justice FE: dummies that are 1 if a justice has been on the panel
year FE: dummies that are 1 if the decision has been taken in the respective year
Y: respective dummies are included
standard errors in parenthesis
*** p < .001, ** p < .01, * p < .05, + p < .1

	model 1	model 2	model 3	model 4	model 5	model 6	model 7	model 8
ideology	.028 (.042)	.033 (.042)	.025 (.042)	.039 (.045)	.028 (.054)	.032 (.049)	.032 (.044)	.066 (.057)
senate			.051 (.042)	.084+ (.046)	-.005 (.055)	.437* (.213)	.036 (.044)	.398+ (.217)
econ				-.051 (.057)				-.091 (.068)
crim				-.002 (.056)				-.081 (.063)
person				-.226* (.100)				-.258* (.106)
polit				-.064 (.059)				-.040 (.066)
domain FE					Y			
justice FE						Y		Y
year FE							Y	Y
cons	.392*** (.030)	.384*** (.030)	.359*** (.038)	.385*** (.059)	.334*** (.078)	.635*** (.137)	.366*** (.100)	.124 (.357)
N	560	560	558	558	558	558	558	558

Table 4
Success on the Merits Conditional on Certiorari
linear probability models
models 2-8: weighted with estimated probability that domain is correctly identified
dv: dummy that is 1 if applicant has been successful
ideology: dummy that is 1 if applicant winning would be in line with preferences of political party that has nominated the justice referee
senate: dummy that is 1 if decision has been taken by full senate, 0 if decision has been taken by chamber, two decisions omitted that have been decided by plenary and complaints chamber, respectively
econ, crim, person, polit: dummies that are 1 if court discusses fundamental freedom that is indicative of domain (see Appendix A2)
domain FE: dummies that are 1 if the case falls into one of 222 domains in the official docket of one justice
justice FE: dummies that are 1 if a justice has been on the panel
year FE: dummies that are 1 if the decision has been taken in the respective year
Y: respective dummies are included
standard errors in parenthesis
*** p < .001, ** p < .01, * p < .05, + p < .1

	model 1	model 2	model 3	model 4	model 5	model 6	model 7	model 8
ideology	.140*** (.036)	.136*** (.036)	.138*** (.036)	.156*** (.037)	.117* (.047)	.082* (.041)	.147*** (.038)	.094* (.045)
senate			.246*** (.051)	.228*** (.053)	.380*** (.066)	.554 (.398)	.235*** (.053)	.512 (.407)
econ				.040 (.055)				-.030 (.060)
crim				-.121* (.057)				-.069 (.060)
person				-.096 (.086)				-.091 (.088)
polit				-.084 (.060)				-.128+ (.066)
domain FE					Y			
justice FE						Y		Y
year FE							Y	Y
cons	.221*** (.027)	.224*** (.027)	.188*** (.027)	.275*** (.057)	.152** (.059)	.399 (.249)	.439** (.160)	.979* (.413)
N	623	623	623	623	623	623	623	623

Table 5
Success with the Request for a Preliminary Ruling
linear probability models
models 2-8: weighted with estimated probability that domain is correctly identified
dv: dummy that is 1 if applicant has been successful
ideology: dummy that is 1 if applicant winning would be in line with preferences of political party that has nominated the justice referee
senate: dummy that is 1 if decision has been taken by full senate, 0 if decision has been taken by chamber,
econ, crim, person, polit: dummies that are 1 if court discusses fundamental freedom that is indicative of domain (see Appendix A2)
domain FE: dummies that are 1 if the case falls into one of 222 domains in the official docket of one justice
justice FE: dummies that are 1 if a justice has been on the panel
year FE: dummies that are 1 if the decision has been taken in the respective year
Y: respective dummies are included
standard errors in parenthesis
*** p < .001, ** p < .01, * p < .05, + p < .1

For each of the four outcomes, I am reporting a series of robustness checks. Recall that, except for the 299 cases in which the court has disclosed the referee on its website, I must infer the identity of the referee from the domain of the case, using a combination of keywords with LLM estimations. From the cases in which I know ground truth, I learn that these estimates are correct in 78.26% of all cases. This makes the estimates usable. But there is clearly residual measurement error. To estimate the relevance of this error, when calling on the LLM GPT 4, I have not only elicited the predicted domain, but also the logprob of the domain. I am translating this logarithm back into a probability. In models 2-8 I use this probability for weighted estimation. As the comparison of models 1 (unweighted) and 2 (weighted) in Table 2, Table 3, Table 4 and Table 5 shows, this precautionary step has very little effect. Apparently the necessity to infer the identity of the referee from the data does not importantly reduce the validity of the estimation.

For the large majority of cases, in particular for constitutional complaints brought by citizens and municipalities, the chambers work as a filter. It is a rather rare event that the complete senate decides about such cases. It only does so if it considers the case to be of particular importance. This explains why the coefficient of the case being decided by the complete senate is almost always positive, strong, and significant.

As Figure 7 shows, the preferences of the nominating political parties for outcomes are very differently pronounced across policies. Models 4 and 5 capture these differences in a coarser and in a more finegrained way, controlling either for the four issue areas covered by Figure 7 (Model 4) or for the 169 domains that are defined as dockets for the 16 justices. For no success variable does controlling for substance matter have a substantial effect on the main variable of interest, i.e. the potential effect of referee loyalty with the nominating political party. As Figure 7 shows, in the German polity, the biggest divide concerns business vs. labour ("econ"), with the parties on the political right favouring business, and the parties on the left favouring equality. Whenever this coefficient turns out significant, it is negative. The fact that the case is about this most contested topic makes success even less likely. The only policy area in which cases are, at least for some specifications, more likely to be successful are cases revolving around political participation.

Figure 3, Figure 4, Figure 5 and Figure 6 show pronounced variance in the way how individual justices handle cases when assuming the role of referee. It is not unlikely that personal style also affects how sensitive justices are to the preferences of the political party that has nominated them. Yet as Models 6 show, adding justice fixed effects has little effect on estimations, and never changes either the direction or the significance of the ideology measure. In the US, the politisation of the Supreme Court has grown over time. Year fixed effects in Models 7 control for the equivalent possibility in Germany. Yet this too does not lead to major changes in the estimation of ideology. This also holds for Models 8 that simultaneously control for the policy domain, the identity of the justices on the bench, and time.[11]

Identification. At the German Constitutonal Court, justices have fixed dockets, defined by substance matter. I can therefore not exploit random assignment to cases for identification (for a critical perspective on the assumption of random assignment see Chilton and Levy 2015). Yet the dockets of justices do not so rarely change during their tenure. Technically, every year (and if needed even more often) each of the senates defines the composition of the docket of every justice. Practically, justices tend to keep a docket for a longer period, but not necessarily for their entire time on the court. The most important reason is the fixed term limit (after 12 years, or when the justice turns 68, which one comes first, § 4 BVerfGG). The court strives at balancing the composition of chambers of three in multiple dimensions: nominating political party, professional background, tenure, gender and age. This balance can often only be reached by recomposing dockets, also of the justices already on the court. Figure 9 illustrates the variance with an example from the first senate. Variance differs across domains (and there are also domains in which party affiliation was constant over the complete period of observation). But it is not unlikely that it switches from one political party to another. Now Models 5 in Table 2, Table 3, Table 4 and Table 5 control for the complete list of dockets defined by the court. Still the coefficients for the match between success and the policy preferences of the nominating political party ("ideology") do not differ pronouncedly from the remaining specifications. This observation does of course not give me causal identification in the strict sense. But it is best I can achieve with the available data.

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11   In these models, I use the coarser definition of 4 domains, rather than 169 different finer-grained domains, as otherwise the number of controls would become excessively large.
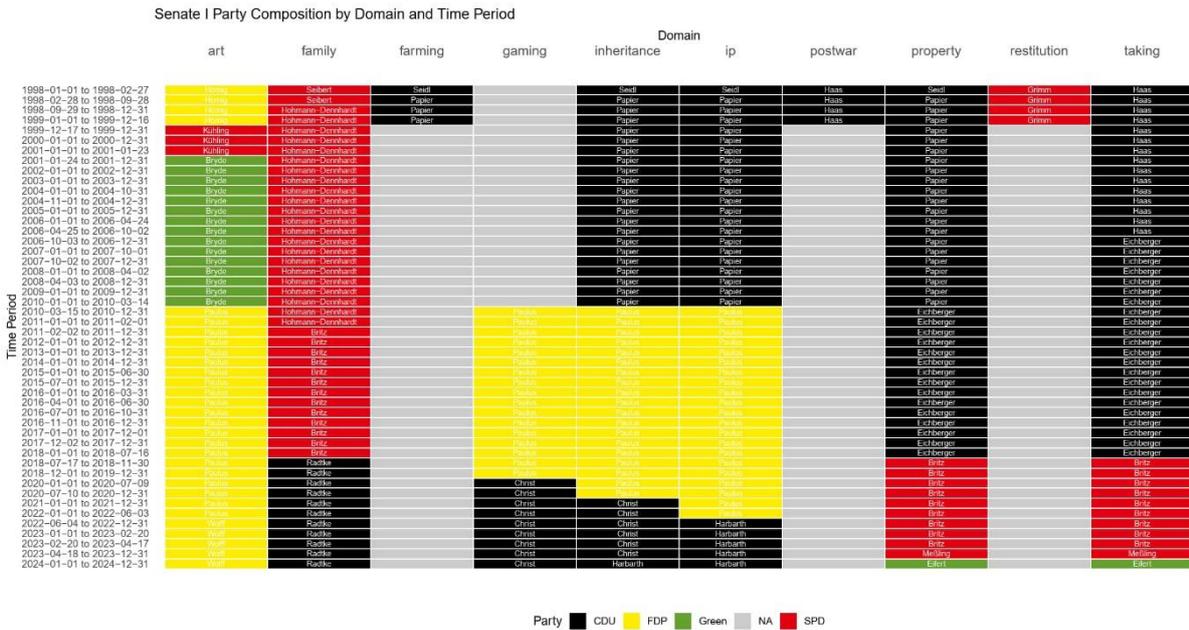
Figure 9
Change of Nominating Political Party over Time, by Docket

Referee vs. majority. The main result considers the referee in isolation. Yet all her power notwithstanding, the referee is not a single judge. In conclusion, in Table 6 I therefore also report a specification that interacts the ideology of the referee with the ideology of the majority. The interaction effect requires that both dummies are positive: the justice referee has been nominated by a political party that would want the applicant to win, and so does the majority of the justices on the panel. The interaction effect is never significant. Yet except for the request for a preliminary ruling, the interaction effect is always negative. If the referee is with the majority, this does not make it more likely that the court decides in line with the preferences of the nominating political party.

However all main effects of referee ideology are positive. Due to the interaction effect, they have a clear interpretation. They are the prediction for a setting in which the majority of the panel has been nominated by political parties that do not favor the complainant, while the referee does. Hence these main effects show that if the preferences of the nominating parties suggest a normative conflict, the referee has an independent effect. There is a sign of referee power. The effect is sizeable and significant at conventional levels if the applicant has requested a preliminary ruling. There is also a small (2.7 percentage points), weakly significant (p = .095) effect on success on certiorari and the merits.

	Certiorari and Merits	Certiorari	Merits Conditional on Certiorari	Preliminary
referee ideology	.027[+] (.016)	.016 (.024)	.081 (.059)	.122* (.055)
majority ideology	-.034* (.016)	-.098*** (.023)	.020 (.072)	-.058 (.058)
referee ideology* majority ideology	-.024 (.022)	-.006 (.032)	-.087 (.094)	.053 (.079)
cons	.091*** (.009)	.241*** (.014)	.379*** (.035)	.241*** (.032)
N	2880	2880	560	623

Table 6
Referee vs. Majority
linear probability models
dv: dummies that are 1 if applicant has been successful
referee ideology: dummy that is 1 if applicant winning would be in line with preferences of political party that has nominated the referee
majority ideology: dummy that is 1 if applicant winning would be in line with preferences of political parties that have nominated the majority of justices on the panel
standard errors in parenthesis
*** $p < .001$, ** $p < .01$, * $p < .05$, [+] $p < .1$

7.   Discussion

Summary. The institutional setting of the US Supreme Court and of the German Constitutional Court are very similar. The Supreme Court is widely considered to be under the control of the political parties. In stark contrast, in the German public debate the justices are almost never accused of following the respective party line. In an earlier paper I have shown that, in the published jurisprudence of the court, there are only negligible traces of loyalty with the nominating political parties. Yet that earlier contribution could only exploit the fraction of justices nominated by one party on the panel. It is not implausible that the measurement of party loyalty was just too coarse, and concealed the actual effect. This is where the present project starts. It exploits the fact that, in Germany, the justice referee is in a strong position, and checks whether success in court is associated with the preferences of the political party that has nominated the justice referee.

Now, except for little more than 3% of all published cases, the identity of the referee is not made public. This is the major technical challenge this paper tries to tackle. It exploits the fact that each justice has a fixed docket, defined by subject matter. Brute force NLP models do not work, chiefly because there is too little data, given the large number of domains that the court assigns to its justices. The way out is a hybrid approach between a large and iteratively refined dictionary of keywords arguably associated with the respective domain, and the call to an LLM to discriminate between the candidate domains that remain after the keyword step. I use the 299 cases where I know ground truth to validate my method. Predictions are correct in 78.26% of these cases, which makes the approach meaningful.

If I try to explain decisions with the policy preferences of the political party that has nominated the justice referee, I find the expected loyalty effect for requests for a preliminary ruling. For success on the merits, provided certiorari had been granted, coefficients are positive, but very small and never significant. For success both with certiorari and on the merits (which is what a political party should chiefly care about), the effect is negative, but small and insignificant. For the hurdle at which most constitutional complaints fail, i.e. at the decision about certiorari, the effect is strongly negative and significant. Hence even with much cleaner measurement there is very little, if any, sign of party loyalty.

Limitations. The German Constitutional Court only publishes cases very selectively. Since 1998, it posts cases on its website. But even now, in no individual year 10% of all cases have been published, and it could have been as little as 3% (Engel 2025). One may therefore wonder whether my null result is explained by selection, not by substance matter. Yet for the concrete research question, this is a very implausible concern. If they keep the decision confidential, the justices could at most achieve the outcomes desired by the nominating political party for the individual case. Yet the main impact of constitutional court rulings on policy making is through future, related cases, or through putting a new normative concern on the political agenda. Moreover in another paper I have tried to correlate the published cases with topics and justice demographics. I find multiple effects. But none of the effects suggests systematic political influence. The variance is much better explained by (pronounced!) idiosyncrasy of individual justices and individual panels (Engel 2025).

The main point of the paper is measurement. Arguably it is easier for a nominating political party to channel its influence on the jurisprudence of the court through the justice referee, rather than merely the majority of the justices on the bench. Yet except for the 299 cases where the court discloses the referee, I must infer the identity of the referee from the substance matter of the case. Hence effectively I swap one measurement problem for a new one. Yet arguably the new measurement is considerably more precise. This assumption is supported by the fact that the counterintuitive negative effects are less pronounced when using the justice referee, rather than the majority of the panel. Moreover for this new measure I have limited ground truth which I can use for evaluation. I also have an estimate of the precision of each individual measure, which I can use for weighted evaluation.

Another measurement problem is constant across both investigations: I can only use a proxy to match the policy preferences of political parties to the decisions of court cases. In the earlier paper, I provide data from two alternative sources for the preferences of political parties: a tool offered by a public agency that is meant to help voters find a party that is aligned with their individual preferences, and a poll by a public broadcaster (Engel 2026). These alternative proxies are less encompassing. But the available measures largely coincide with the *Manifesto* data used in this paper, which is why, in this paper, I only use the latter.

Finally, and obviously, not finding an effect is not the same as finding that there is no effect. This reminder is particularly warranted for decisions on the merit provided certiorari has been granted. For these estimations I only have 558 observations. With much more data, I might

have been able to identify the effect. But even if it were significant, the effect would be minuscule (at most 6.6% in Model 8 of Table 4).

Explanations. Even taking all limitations into account, the difference between the US and Germany is striking. Why is that? There are institutional differences. In Germany, each individual justice needs a two thirds majority in Parliament (§§ 6 V, 7 BVerfGG). This requirement might force the parties to nominate individuals who are acceptable to the other side of the political spectrum. Within the court, the large majority of cases are decided by chambers of three. As several thousand cases are submitted to the court, it could not handle the caseload if more than a few very select cases were propelled to the full senate. Yet chambers lose jurisdiction if they do not decide unanimously (§ 93d III 1 BVerfGG). The court makes sure chambers are almost never composed with only justices nominated by a single political party. These features breed a culture of compromise. Moreover the court is a staggered board. This provides scope for familiarizing new justices with the culture of the court. Finally, the court benefits from very strong public support.[12] This empowers the court to make impactful decisions. Yet arguably the considerable power of the court would be in danger, were the public to lose faith in its impartiality. Consequently counteracting the suspicion that justices are puppets of the nominating political parties can be understood as a public good of the court at large. It has been shown experimentally that the willingness to contribute to the production of public goods is even pronounced among total strangers (see only Ledyard 1995, Zelmer 2003). It is all the more plausible that 16 individuals who know they will have to collaborate for multiple years are able to sustain a good that is to the clear benefit of all of them.

Conclusion. Richard Posner once asked: "What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)" (Posner 1993). The Practice of the US Supreme Court suggests that he is right. In public perception, the German Constitutional Court is very different. I cannot go as far as claiming that public perception gets it right. But at least the evidence that I have been able to generate does not show a smoking gun. Good news for the German polity.

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12   https://www.infratest-dimap.de/fileadmin/_processed_/9/b/csm_Glaubwuerdigkeit_der_
        Medien_2020_16_55f0a258ef.png. This is in line with earlier survey data from Sternberg, Gschwend et al.
        (2015). Also see Lembcke (2006).

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1. **social justice vs. business**

per503: „Concept of social justice and the need for fair treatment of all people. This may include:
- special protection for underprivileged social groups
- removal of class barriers
- need for fair distribution of resources
- the end of discrimination (e.g. racial or sexual discrimination)"

2. **law and order**

per605: "Favorable mentions of strict law enforcement, and tougher actions against domestic crime. Only refers to the enforcement of the status quo of the manifesto country's law code. May include:
- increasing support and resources for the police
- tougher attitudes in court
- importance of internal security"

3. **civil rights**

per201: "Favorable mentions of importance of personal freedom and civil rights in the manifesto and other countries. May include mentions of:
- the right to the freedom of speech, press, assembly etc.
- freedom from state coercion in the political and economic spheres
- freedom from bureaucratic control
- the idea of individualism"

4. **democracy**

per202: "Favorable mentions of democracy as the 'only game in town'. General support for the manifesto country's democracy. May also include:
- democracy as method or goal in national, international or other organisations (e.g. labor unions, political parties etc.)
- the need for the involvement of all citizens in political decision-making
- support for either direct or representative democracy
- support for parts of democratic regimes (rule of law, division of powers, independence of courts etc.)"

issue area		fundamental freedom	subject	frequency
(social justice vs.) business interests	**strong**[13]	Art. 12 I	freedom of profession	456
		Art. 14 I, II	property	455
		Art. 19 III	corporation	81
	weak	Art. 2 I	general freedom	624
		Art. 3 I	equality	1132
		Art. 9 III	labour coalitions	49
law and order	**strong**	Art. 10	interception	17
		Art. 13	search and seizure	99
		Art. 16 II	extradition	13
		Art. 101	right to a lawful judge	433
		Art. 103 I	due process	896
		Art. 103 II, III	nullum crimen, ne bis in idem	145
		Art. 104	habeas corpus	129
	weak	Art. 2 II	life and limb, integrity	322
		Art. 11	freedom of movement	7
		Art. 19 IV	access to justice	745
civil rights	**strong**	Art.4 I, II	religion	53
		Art. 16a	asylum	47
		Art. 140	religious communities	8
	weak	Art. 6	family	275
		Art. 7	school	19
democratic participation		Art. 5 I, II	speech	206
		Art. 5 III	art and research	56
		Art. 8	manifestation	15
		Art. 9 I, II	association	26
		Art. 28 II	municipalities	28
		Art. 33 II-V	public service	153
		Art. 38	elections	30

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13 All fundamental freedoms classified as strong favor business interests. Hence there is no need for reversely coding cases.

Öffentliches Umweltschutzrecht, Öffentliches Umweltrecht

Verfahren über Beeinträchtigungen von Grundstückseigentum (mit Ausnahme finanzieller Lasten), die sich auf öffentliches Recht stützen; sonstiges grundstücksbezogenes Eigentumsrecht (außer privatem Grundstücksrecht)

Enteignungsrecht

Höferecht (britische Zone)

Wiedergutmachungsrecht (Entschädigungs- und Rückerstattungsrecht)

Kriegsfolgenliquidation

Recht des geistigen Eigentums

Erbrecht

Kunstfreiheit

Glücksspielrecht

Familienrecht

Namensrecht

Personenstandsrecht

Transsexuellenrecht

Kinder- und Jugendhilferecht

Elterngeld, Erziehungsgeld

Betreuungsrecht

Unterhaltsrecht

Sonstiges Kindschaftsrecht

Adoptionsrecht

Recht der eingetragenen Lebenspartnerschaft

Gewaltschutzrecht

Ausländerrecht, Asylrecht

Staatsangehörigkeitsrecht

Bau- und Bodenrecht (mit Ausnahme von Erschließungs- und sonstigen Beitragsangelegenheiten)

Bau- und Bodenrecht (mit Ausnahme von Erschließungs- und sonstigen Beitragsangelegenheiten)

Raumordnungs- und Fachplanungsrecht

Bergrecht

Naturschutz- und Landschaftspflegerecht

Denkmalschutzrecht

Rundfunkrecht

Presserecht

Telekommunikationsrecht

Versammlungsrecht

Vereinsrecht

Religionsverfassungsrecht, Kirchenrecht

Staats- und Verfassungsrecht (soweit nicht andere Sachgebiete betroffen sind)

Parlamentsrecht

Wahlrecht

Staatsanwaltschaftliches Recht

Justizverfassungsrecht

Richterrecht

Staatsprüfungswesen

Notarrecht

Rechtsanwaltsrecht

Recht der sonstigen Rechtsberatung

Wehrrecht (mit Ausnahme des Wehrstrafrechts)

Recht des Zivildienstes

Wiedergutmachungsrecht (Entschädigungs- und Rückerstattungsrecht)

Kriegsfolgenrecht (mit Ausnahme von Wiedergutmachungs- und Vertriebenenrecht)

Wiedergutmachungsrecht (Entschädigungs- und Rückerstattungsrecht)

Vertriebenen- und Spätaussiedlerrecht

Beamtenrecht (mit Ausnahme des Disziplinarrechts)

Richterrecht

Disziplinarrecht

Personalvertretungsrecht

Arbeitsrecht (einschließlich Kollektivarbeitsrecht)

Tarifvertragsrecht

Betriebsverfassungsrecht

Arbeitskampfrecht

Sozialversicherungsrecht (einschließlich Beitragsrecht)

Gesetzliche Krankenversicherung

Gesetzliche Rentenversicherung

Gesetzliche Unfallversicherung

Gesetzliche Pflegeversicherung

Arbeitsförderungsrecht (Arbeitslosenversicherung)

Recht der sozialen Sicherung

Kinder- und Jugendhilferecht

Rehabilitation und Teilhabe behinderter Menschen (Schwerbehindertenrecht)

Soziales Entschädigungsrecht (Kriegsopferversorgung etc.)

Grundsicherung für Arbeitssuchende (Hartz IV)

Sozialhilfe

Wohngeldrecht

Ausbildungsförderungsrecht (BAföG etc.)

Bildungsrecht (Schul-, Hochschul- und sonstiges Ausbildungsrecht)

Schulrecht

Hochschulrecht

Disziplinarrecht

Wirtschaftsverwaltungsrecht

Gewerberecht (einschließlich Gaststättenrecht)

Handwerksrecht

Kammerrecht (Wirtschaftskammern)

Wirtschaftsförderungs- und Subventionsrecht

Außenwirtschaftsrecht

Preisrecht

Bergbau-, Energie- und Wasserwirtschaftsrecht

Energiewirtschaftsrecht

Wasserrecht

Verkehrswirtschaftsrecht (einschließlich Personen- und Güterbeförderungsrecht)

Personenbeförderungsrecht

Güterkraftverkehrsrecht

Postrecht

Seeverkehrsrecht

Luftverkehrsrecht

Landwirtschafts- und Weinbaurecht (einschließlich Beitragsrecht)

Jagd- und Fischereirecht

Forstrecht

Tierseuchen- und Pflanzenschutzrecht

Lebensmittelrecht

Zwangsversteigerungsrecht

Zwangsversteigerungsrecht

Insolvenzrecht

Freiwillige Gerichtsbarkeit

Finanzverfassungs- und Haushaltsrecht

Abgaben- und Steuerrecht, einschließlich Verfahrensrecht

Abgaben- und Steuerrecht, einschließlich Verfahrensrecht

Körperschaftssteuerrecht

Kommunalrecht

Kommunalrecht

Kommunalabgabenrecht

Erschließungs- und sonstige Beitragsangelegenheiten (soweit nicht andere Sachgebiete betroffen sind)

Sparkassenrecht

Polizei- und Ordnungsrecht

Datenschutzrecht

Sicherheitsrecht

Waffenrecht

Straßen- und Wegerecht

Straßenverkehrsrecht

Fahrerlaubnisrecht

Verkehrshaftungsrecht

Seerecht

Binnenschifffahrtsrecht

Gesundheits- und Arzneimittelrecht

Arzneimittelrecht

Apothekenrecht

Arztrecht (einschließlich Berufsrecht)

Krankenhausrecht

Psychiatrierecht (Unterbringungsrecht)

Haftpflichtrecht der Heilberufe (Arzthaftung)

Infektionsschutzrecht

Sonstiges Verwaltungsrecht

Recht der Ordnungswidrigkeiten

Strafrecht

Strafprozessrecht

Strafvollzugsrecht

Rechtshilfe in Strafsachen

Zivilrecht

Zivilprozessrecht

Haftpflichtrecht

Versicherungsrecht (Privatversicherung)

Bank- und Börsenrecht

Handelsrecht

Gesellschaftsrecht

Wettbewerbsrecht (lauterer Wettbewerb)

Kartellrecht

Urheberrecht

Gewerblicher Rechtsschutz (Patent-, Markenrecht etc.)

Internationales Privatrecht

Europarecht

Völkerrecht

Sonstiges Recht

Verfassungsrechtliche Prüfung einer Norm (Art. 100 Abs. 1 GG, § 13 Nr. 11 BVerfGG)

Verfassungsrechtliche Prüfung einer Norm (Art. 100 Abs. 1 GG, § 13 Nr. 11 BVerfGG)

Verfassungsrechtliche Prüfung einer Norm (Art. 100 Abs. 1 GG, § 13 Nr. 11 BVerfGG)

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Straf- und Strafvollzugsrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Zivilrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Verwaltungs- und sonstigen öffentlichen Recht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Arbeitsrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Sozialrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Finanz- und Steuerrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Familienrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Ausländer- und Asylrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Disziplinar-, Standes- und Berufsrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Beamten- und sonstigen öffentlichen Dienstrecht

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG) gegen Entscheidungen im Rechtsschutz gegen überlange Verfahren

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG), sofern sie überwiegend den Schutz von Grundrechten im Strafvollzug betreffen

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG), sofern sie überwiegend den Schutz von Grundrechten in Untersuchungshaft betreffen

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG), sofern sie überwiegend den Schutz von Grundrechten im Maßregelvollzug betreffen

Verfassungsbeschwerden (§ 13 Nr. 8a BVerfGG), sofern sie überwiegend den Schutz von Grundrechten bei sonstiger Freiheitsentziehung betreffen

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG)

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG)

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten des Bundestages oder seiner Organteile betreffen

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten des Bundesrates oder seiner Organteile betreffen

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten anderer Bundesorgane oder ihrer Organteile betreffen

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG), sofern sie den verfassungsrechtlichen Status politischer Parteien betreffen

Organstreitverfahren nach Artikel 93 Abs. 1 Nr. 1 GG (§ 13 Nr. 5 BVerfGG), sofern sie das Wahlrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 und 2a GG (§ 13 Nr. 6 und 6a BVerfGG)

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG)

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2a GG (§ 13 Nr. 6a BVerfGG)

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Straf- oder Strafprozessrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Zivil- oder Zivilprozessrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Verwaltungsrecht oder sonstiges öffentliches Recht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Arbeitsrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Sozialrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Finanz- oder Steuerrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Familienrecht betreffen

Abstrakte Normenkontrollverfahren nach Artikel 93 Abs. 1 Nr. 2 GG (§ 13 Nr. 6 BVerfGG), sofern sie überwiegend Ausländer- oder Asylrecht betreffen

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG)

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG)

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG), sofern sie Finanzverfassungs- und Haushaltsrecht betreffen

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Regierungen und ihrer Organteile betreffen

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG), sofern sie das Wahlrecht betreffen

Bund-Länder-Streitigkeiten nach Artikel 93 Abs. 1 Nr. 3 GG (§ 13 Nr. 7 BVerfGG), sofern sie andere verfassungsrechtliche Fragen betreffen

Sonstige öffentliche-rechtliche Streitigkeiten nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG)

Sonstige öffentliche-rechtliche Streitigkeiten nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG)

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie Finanzverfassungs- und Haushaltsrecht betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Regierungen und ihrer Organteile betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie den verfassungsrechtlichen Status politischer Parteien betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie das Wahlrecht betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG),

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG),

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie Finanzverfassungs- und Haushaltsrecht betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie den verfassungsrechtlichen Status politischer Parteien betreffen

Öffentlich-rechtliche Streitigkeiten innerhalb eines Landes nach Artikel 93 Abs. 1 Nr. 4 GG (§ 13 Nr. 8 BVerfGG), sofern sie Finanzverfassungs- und Haushaltsrecht betreffen

Bund/Länderstreitigkeiten nach Artikel 84 Abs. 4 Satz 2, Artikel 93 Abs. 1 Nr. 3 und 4 GG (§ 13 Nr. 7 und 8 BVerfGG),

Verfassungsstreitigkeiten innerhalb eines Landes nach Artikel 99 GG (§ 13 Nr. 10 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Verfassungsstreitigkeiten innerhalb eines Landes nach Artikel 99 GG (§ 13 Nr. 10 BVerfGG), sofern sie überwiegend den Umfang der Rechte und Pflichten der Parlamente und ihrer Organteile betreffen

Verfassungsstreitigkeiten innerhalb eines Landes nach Artikel 99 GG (§ 13 Nr. 10 BVerfGG), sofern sie den verfassungsrechtlichen Status politischer Parteien betreffen

Verfassungsstreitigkeiten innerhalb eines Landes nach Artikel 99 GG (§ 13 Nr. 10 BVerfGG), sofern sie das Wahlrecht betreffen

Verfassungsstreitigkeiten innerhalb eines Landes nach Artikel 99 GG (§ 13 Nr. 10 BVerfGG)

Völkerrechtsqualifizierungsverfahren nach Artikel 100 Abs. 2 GG (§ 13 Nr. 12 BVerfGG)

Verfahren zur Feststellung des Fortgeltens von Recht als Bundesrecht nach Artikel 126 GG (§ 13 Nr. 14 BVerfGG)

Ordnungswidrigkeitenrecht