

THE POLITICIZATION OF THE VENEZUELAN SUPREME TRIBUNAL DURING THE BOLIVARIAN REVOLUTION: AN EMPIRICAL ANALYSIS (2000-2009)

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Abstract

In this paper, I offer a preliminary empirical analysis of the politicization of the Venezuelan Supreme Tribunal during the first decade of the Bolivarian Revolution. I focus on the High Court's Constitutional Chamber, an institution that seemed truly powerful in paper but which, unfortunately, was never able to fulfill its accountability mission due to the politicized nature of its composition and the resulting Chamber's disposition to adjudicate high-profile conflicts in favor of the regime. To assess the Chamber's proclivity to favor the regime or rule against the opposition, I conducted a quantitative analysis of constitutional review cases through logistic regressions on an original dataset, measuring the likelihood of the Tribunal's decision to strike down or suspend legislation on the basis of a host of relevant variables, including the presence of relevant political actors in the case in question. The results illustrate a significant gap between government and opposition partisans: The commitments between the justices and the governing coalition seem to push justices affiliated with the government to consistently vote *against* the opposition and *for* Chávez's political affiliates across a variety of cases. Additional analyses based on qualitative evidence should be able to further buttress this claim.

Introduction

The politicization of courts, and the subsequent use of judicial institutions to circumvent constitutional or legal commitments, has become a growing concern for scholars and state reform practitioners alike (Popova 2012; Kapiszewski 2012; Hammergren 2007). Contrary to the expectations of those who once placed unlimited faith on the use of judicial institutions to constraint political elites and safeguard the rights of citizens, there have been numerous instances of courts behaving in exactly the opposite way; this is, as loyal allies of the regime, willing to bend the rule of law for reasons of political expediency. This is in particular the case of mega-political cases – situations in which judicial intervention and adjudication are sought to solve high-profile political questions that have not been duly resolved by other political institutions (Hirschl 2008).

Thus, whenever the formal conditions of judicial power do not lead towards its emergence in practice, a number of questions arise: Is it possible for a High Court to evolve into a truly influential institution in those polities where judges are meant to represent, at all costs, the interests of their political allies? Can courts become influential actors at all, in contexts where judges are expected to be loyal and, if so, under what conditions? As other scholars have been exploring recently in the context of new democracies (e.g. Gloppen et al 2004, 2010), or even in authoritarian regimes (Ginsburg et al 2008; Hilbink 2007), understanding the factors that explain the rise (or demise) of judicial power is essential in order to appreciate the real significance of the Court's work, the limits of constitutionality and legality, and the importance of judicial institutions as accountability mechanisms.

This paper is part of ongoing work focusing on the politicization of courts, and their consequences for the role of courts in weak democracies. Here, I explore the performance of a formally powerful High Court in a shifting political context: the Constitutional Chamber of

the Venezuelan Supreme Tribunal during the first decade of the Bolivarian Revolution (2000-2009). Adopted as the country's most important judicial institution in Venezuela's 1999 Constitution, the Chamber is an institutionally powerful judicial body in paper – in fact, as powerful as any such institution could be in the Latin American context (Navia and Rios-Figueroa 2005). However, it has only been partially able to exert its accountability mission vis-à-vis the political establishment, in a context of growing contestation between the government and the opposition (Perez Perdomo 2005; Sanchez-Urribarri 2011).

Across the board, in an overwhelming majority of cases, justices have been expected to act loyally and side with the individuals or groups who backed their appointment (and they are affiliated with) –first and foremost, the President, as the most important actor in Venezuelan politics, but also other politicians who have been influential at a given point in the country's evolving political scene in recent times. In Venezuela's current polarized context, this means siding with the government or with the opposition – a contest that the government has invariably won.

To test this thesis, in this paper I offer a quantitative analysis of judicial outcomes of constitutional review cases handed down by the Venezuelan Constitutional Chamber during the period of interest (2000-2009). I conducted a logistic regression analysis of these cases on an original dataset purposefully compiled to this effect. I assessed the likelihood of the Tribunal's decision to strike down or suspend legislation on the basis of a host of relevant variables, including the presence of key political actors in the case in question. This analysis provides a clear depiction of the Chamber's complacent relationship with the political class, and the extent to which this translated into a pattern of judicial submissiveness (or lack of judicial independence). It is the first systematic quantitative analysis of its kind in the Venezuelan context, following the lead of other quantitative studies of judicial behavior in Latin America (*see* Taylor and Kapiszewski 2008; Helmke and Rios-Figueroa, 2010).

Finally, it provides a privileged viewpoint to reflect about a critical aspect of the performance of Venezuela's democratic regime: If the judiciary is supposed to furnish citizens with a valuable mechanism to control politicians, can we expect this to take place in a context where judges are strongly tied to the political class?

A Primer on the Constitutional Chamber of the Venezuelan Supreme Tribunal

The Constitutional Chamber of the Venezuelan Supreme Tribunal is arguably the most important innovation with respect to the judiciary established in the 1999 Constitution – proposed by President Hugo Chavez in April 1999, subsequently elaborated by the 1999 Constituent Assembly, and approved via Referendum in December 1999 (Ellner 2001; Pastor and Martínez Dalmau, 2001; McCoy 2006). Although the Venezuelan judiciary already counted with vast constitutional and judicial review prerogatives prior to the 1999 Constitution (*see* Brewer-Carias 1989), the new Constitutional Chamber was supposed to become a *Super Sala* (or ‘Super-Chamber’), a judicial institution that effectively concentrated all the powers of a Constitutional Court – like the German Constitutional Court (Vanberg 2005; the Russian Constitutional Court (Trochev 2008), or the Colombian Constitutional Court (Navia and Rios Figueroa 2005) – but within the framework of a unified court of last resort (like its Costa Rican or Paraguayan counterparts), that is, without going as far as creating a body apart from the judicial branch. The Chamber's faculties encompass the revision of federal and sub-national statutes, executive decrees, and other acts directly enacted by the other four branches of power established in the Constitution (the Executive, Legislative, Citizen and Electoral branches); several mechanisms to review the decisions of the lower courts, and even the sister chambers of the Supreme Court; and a number of other prerogatives, as interpreted by the Chamber itself (see article 336 of the Venezuelan Constitution).

With respect to its staff composition, the Chamber was composed of five (5) justices since its first designation in December 1999, until the expansion of the Chamber in 2004, when it was increased to seven (7) justices, following the approval and entering into force of the new legislation of the Venezuelan Supreme Court (Sanchez-Urribarri 2011, *See* Table 1).

[Table 1 About Here]

The justices' appointment has always been considered controversial (Human Rights Foundation 2012). Although the Constitution clearly establishes a selection mechanism of an inclusive nature (defined in principle in article 264 of the 1999 Constitution), that seeks to prevent overt political manipulation, reduce the role of the Executive branch (long considered the dominant force in judicial appointments in Venezuela), enhance the participation of civil society forces, and choose justices on the basis of a transparent and public discussion of their credentials and suitability for the role; the appointments have been largely dominated by Chavez's ruling coalition, and has been marred by all sorts of problems. More importantly, the end result of the different appointment sessions that have taken place in the past decade has been a Court with a configuration dominated by justices who reflect the composition of the ruling coalition of the time.

As a result, it should not be surprising that, since the Chamber's creation, the general perception is that a majority of justices in the Constitutional Chamber predominantly voted *against* the opposition and *for* Chávez's political affiliates in the most salient cases. This a trend that became even more acute as the regime consolidated and, more specifically, after the Chamber was packed with loyalists shortly before the 2004 recall referendum against the president (Sanchez-Urribarri 2011). In a context of growing populist discourse and exclusionary politics, judges who sided with the opposition were publicly rebuked and openly

casted as traitors to the Revolution, this is, disloyal to the regime and unworthy of remaining at the Court (Brewer-Carias 2010). Although no open actions have been filed against the members of the Constitutional Chamber who sided with the opposition at a given time, the administration's lack of interest in fostering judicial independence (and lack of tolerance with dissent) in a variety of circumstances have been well documented (Consortio Justicia 2008; Human Rights Watch 2004, 2008) – including the dismissal of former Vice-President of the Court Franklin Arrieche (the opposition's strongest ally in the Court until 2004), and the indefinite imprisonment of trial-court Judge Maria Afiuni (Human Rights Foundation 2012).

Despite the dimmed prospects for judicial action against the regime – based on the already politicized nature of the Venezuelan judicial system, and the repeated lack of interest of the Court in challenging the regime's decisions – the Court, especially the Constitutional Chamber, became a hub for litigation against the regime. This is an interesting research question on itself. After all, why would anyone bother wasting valuable resources in going to Court, if the prospects of winning are notoriously meager? However, during the first years of the Bolivarian revolution, the opposition and the government had several reasons to bring cases to the courts, especially to the country's High Court. For opposition actors, the Supreme Tribunal offered several advantages: It was a visible venue, where political opposition against the regime could be quickly noticed by its followers; it offered an additional mechanism to tie the regime to the liberal values established in the new Constitution, in the terms previously understood under the 1961 Constitution and a global approach based on human rights; and, in cases of high political significance, it allowed the opposition to count with the presence of justices who had political ties with them, sometimes with the expectation of swaying enough votes to win the case. For some time, the opposition's expectations of succeeding at the Constitutional Chamber had strong grounds and its representatives could not rule out the possibility that they might succeed in court.

This was partly a consequence of the opposition occasional success in annulment cases and stand-alone constitutional *amparos*, including the highly publicized cases of the suspension of the May 2000 elections against the CNE, and the August 2002 decision by the Plenary Chamber that refused to authorize trial against military generals who were allegedly responsible for the April 11, 2002 coup (*See* Pérez Perdomo 2005; Sanchez-Urribarri 2011). Moreover, the general judicialization of politics that took place in the mean time across a variety of cases also increased the opposition's perception that they could win at the Supreme Tribunal. Conversely, from the government's viewpoint, a supportive Supreme Tribunal, employed by government allies or the Solicitor General (the 'Executive's Attorney' according to the Venezuelan Constitution, see article 247 ss.), potentially offered a series of advantages. For instance, it could become a device to shift unpopular or controversial political issues to the judicial arena. If justices consistently support the government's preferences, politicians would be less worried about shifting important political decisions to the Tribunal. Additionally, the Supreme Tribunal could also offer a venue to solve inter-elite disagreements, and thus avoid conflicts that might jeopardize the unity of the ruling coalition, including intractable political issues. Lastly, and most importantly, the Supreme Tribunal could enhance the legitimacy of the regime, by reasserting its commitment to the rule of law and helping to reject claims that Chávez and his political allies govern in an authoritarian fashion.

Thus, from the preceding discussion, a major thesis about the role of the judiciary and the Constitutional Chamber in particular emerges: A powerful institutional responsibility in the context of the country's liberal democratic framework established in the 1999 Constitution, that was stifled due to the politicized nature of the selection of the judicial body and the recurring use of the Court by the government and the opposition alike to solve

political questions. As a result, the Court became a faithful ally of the regime, well beyond what constitutional interpretation imperatives or ideological beliefs suggested.

Data, Methods, and Theory Propositions

In order to illustrate the Chamber's politicization and its effect on the institution's constitutional accountability role, I measured the relative effect of the presence of both pro-government and pro-opposition actors in constitutional review cases before the Court, whilst holding a series of relevant variables constant. To this end, I analyzed data compiled on decisions and votes of the Constitutional Chamber, thus developing a pilot database for systematic, empirical assessment of constitutional review cases decided by the Venezuelan Supreme Court.¹ I assembled data for a total of 478 cases, including a total of 262 definitive decisions on constitutional annulment cases, and 216 cases of constitutional interim *amparos*, or interim relief measures originally filed together with the constitutional annulment petitions. I coded outcomes for each category separately, and also combined them in a separate 'joint' category, to capture both instances of decision-making – all as separate measures of judicial assertiveness vis-à-vis the government. Separate variables were created for the justices' votes to determine patterns of dissent in subsequent work.

The database includes information on the following variables: a) Characteristics of the cases in question, including official numbers of the file and decision, as assigned by the Constitutional Chamber; b) The name of the *ponente*, that is, the Justice in charge of writing the opinion; c) The name of the case; d) The law, decree, ordinance or, in general, the governmental act against which the petition of unconstitutionality was filed; e) The type of petitioner and the supposedly offending authority; f) The dates when the case was officially

¹ I coded this data directly from the Supreme Tribunal's website at www.tsj.gov.ve, which contains the universe of cases decided by the Chamber since its creation. It is an intuitive site that can be easily used to expand this database or create other databases in the other chambers of the Court.

received by the Chamber and subsequently decided; and, g) The outcome (whether it was ruled for or against the claimant). I also created a series of dummy variables to single out those petitions that were filed by or against any representative of the Citizens Branch of Power (which includes the Attorney General, the Ombudsman's and the Comptroller General's Office); the *Procurador General* (Solicitor General); President Chávez himself; the presence of a pro-Chávez politician (a determination made on the basis of newspapers, secondary sources and prior awareness of the political environment); and whenever the petitioner is an opposition politician or figure. I also created another set of dichotomous variables to distinguish cases elevated to nationwide, federal authorities, from those filed against regional and municipal authorities (which were also collapsed on a single category). Additionally, I created additional dichotomous categories for different types of legislation (Organic Law, Law, Decrees and 'others'); and a dummy variable for whether the annulment or *amparo* requested was total or partial, additional variables to capture whether there are dissenting opinions and, if this was the case, how many.

Finally, based on a preliminary database for salient cases under construction, I distinguished cases that have high political prominence from those that are less relevant. To these ends, I included cases dealing with prominent subject matters, or filed by prominent political actors, that appeared in *El Nacional*, an influential newspaper based in Caracas with circulation across the country, either on the front page or that were repeatedly mentioned over the course of several days. I sought as much information as possible from a second newspaper of national reach, *El Universal*, which had a more limited database available online. The information contained in the database can be used, not only for this study, but also to test other theories of judicial decision-making in the Venezuelan context. The database is still a work in progress, but with the dataset at hand it is already possible to conduct the purported analysis.

My basic prediction, based on the theoretical arguments explained above is that, controlling for different relevant factors, *the presence of pro-government and pro-opposition litigants in constitutional review proceedings has significant positive and negative effects, respectively, on the likelihood of declaring a law unconstitutional or suspending it.* To empirically assess these phenomena, I developed a multivariate model of constitutional review outcomes in the Venezuelan Supreme Tribunal. I obtained maximum likelihood estimates of the contribution of different competing explanations on the probability of a court's decision in favor of the petitioner. This is a dichotomous variable, coded as 0 for a negative (the legislation in question is considered constitutional and stands or is not suspended), or a 1 for a positive decision for the claimant (i.e. the legislation is struck down). As a rule, I coded "1" decisions in which only part of the legislative act is struck down, with the exception of those cases in which the Court clearly failed, to a large extent, to favor the claimant. I calculated separate models for the annulment decisions (NULCON), the interim *amparo* decisions (AMPCON) and both sets of decisions combined (COMBINED).

Due to its dichotomous nature, a multivariate maximum likelihood (*logit*) model (Long 1997; Long and Freese 2005) is the appropriate tool to explore the influence of these variables on the likelihood of a decision for the petitioner. I modeled the probability of a decision that strikes down or suspends legislative activity via *amparo*, vis-à-vis the following competing explanations: Whether the case was filed by an opposition politician, an opposition affiliate or someone noticeably allied with opposition forces (OPPOPET). Out of 478 decisions analyzed, opposition petitioners filed constitutional review annulment claims in 62 cases (12.97%). As discussed above, during the period following Hugo Chávez's arrival in power and, in particular, the years following the creation of the Constitutional Chamber, the country became politically polarized and ongoing political confrontation ensued between the government and the opposition. The Constitutional Chamber was created by the

Constituent National Assembly in late 1999, and it *always* remained in control of justices who were largely perceived as pro-government. Additionally, the increasingly polarized political spectrum meant mounting political pressure to rule against the opposition. As a result, the presence of an opposition claimant becomes a powerful signal for pro-*Chavista* justices that, *ceteris paribus*, the case should be decided against the petitioner. Thus, the variable OPPOPET was coded 1 if the petitioner is affiliated with the opposition, and 0 if not.

Additionally, I also modeled the presence of the opposition as defendant, and created a dichotomous category in this regard (OPPORESP, opposition respondent, coded 1 for its presence as respondent and 0 otherwise). I could only identify three cases in which the opposition was in the position of respondent, showing that the Court's use as an proactive instrument of the regime was limited, at least with respect to constitutional review cases (this is understandable, since the presence of the opposition as a government actor, especially at the subnational level, has been relatively limited during the Bolivarian Revolution).

Conversely, I also modeled the effect of the participation of pro-government litigants in the process, whether as petitioners or defenders. In the dataset, there were relatively few instances of pro-Chávez politicians filing constitutional review petitions against governmental legislation (CHAVISTAPET, only nine cases, that is, 1.88% of the total docket; respectively coded 1 and 0 if not). This was legislation that was, for the most part, carried over from the previous regime. There were no examples in the database of cases directly filed by President Chávez, and only five cases attributed to the *procurador*, or solicitor general as petitioner (PROCUPET). I combined these two variables into a single variable to symbolize pro-government representatives in court, into a variable known as PROGOVPET. Again, I did this in a dichotomous fashion, assigning 1 if a pro-government litigant was present and 0 if not.

Additionally, I coded the government's presence in the case as respondent. Thus, I included the presence of a pro-Chávez actor as respondent (CHAVISTARESP, including 18 cases, for 3.77% of the docket); and the presence of the Executive branch as respondent (EXECRESP), located in 65 cases (about 13.60% of the docket). For purposes of parsimony, I combined these two categories into a single variable capturing overt pro-government respondents (PROGOVRESP), coded 1 for the presence of a pro-government respondent, and 0 if not.

I also added a combined category for the presence of a representative of the Citizens' branch of power – the Attorney General, the Ombudsman and the Comptroller General – as petitioner (PODCIUDPET), or respondent (PODCIUDRESP). Combining the participation of these organizations into a single category might be controversial because they are different institutions. Sometimes their interests will be aligned, whilst in other situations they might conflict. However, I am trying to make a distinction between the direct participation of the government in constitutional review proceedings, from bodies that *in practice* are affiliated with it but *in theory* have, as an additional accountability function vis-à-vis other branches of power, for unconstitutional or illegal actions. For the most part, these institutions never openly confront each other – only in one case in the docket this situation happened (No. 303, case *Ciro Ramón Araujo, Coordinador de la Defensa Pública*, February 27, 2007). These variables are also given a 1 in the case they are filing proceedings or defending the constitutionality of the law, as cited, and 0 otherwise.

I also introduced in the model several relevant strategic considerations, related specifically to the Venezuelan context, which might also explain variation in constitutional review outcomes. I modeled whether the case involved national legislation (including federal laws, decrees, rules, legislative *acuerdos* and others) *versus* sub-national legislation (i.e. State and Municipal Law), through a dichotomous variable NATIONAL, which thus takes the

value of 1 if the case is about national legislation, and 0 otherwise. The idea here is that invalidating national legislation involves, *ceteris paribus*, a higher cost for the Chamber, for a variety of reasons: It pits the Court against another branch at the national level (a strong Executive branch, then headed by Hugo Chavez, or the National Assembly), with the power to react against the justices, whether it is through reenacting the offending legislation or even punishing the judges through a variety of measures (Helmke 2005).

On the other hand, I distinguished total from partial annulment or partial suspension petitions (TOTAL, which takes a value of 0 if the constitutional review seeks the law's partial annulment or suspension, and 1 otherwise). Once again, the idea here is that other things equal, a total annulment involves a more prominent confrontation with the government than a partial annulment. Lastly, I added a variable to distinguish if the case in question is politically salient. I selected the cases via a thorough search in a major newspaper in Venezuela, *El Nacional*. My main criterion was that the case in question appears on the front-page of the newspaper or was extensively reported for more than a single day, therefore allowing me to create a separate set from the broader docket of anti-governmental cases. In case of doubt about whether the case was salient or not, I coded it as non-salient, therefore erring on the side of the case's lack of saliency (for further discussion of what is a salient case, see Kapiszewski 2012). Accordingly, I computed different models for salient v. non-salient cases (SALIENT, which takes a value of 1 if the case is politically salient or 0 otherwise). On one hand, we could expect that, in salient cases, courts are more inclined to rule for the petitioner, since popular awareness and support for such claims allow the Chamber to receive additional support to check political authority (Vanberg 2005; Staton 2010). On the other hand, a pressing political environment can lead judges to duck the cases and avoid confrontation, especially in politically salient cases. Thus, from the start, I deem both hypotheses as plausible.

By including all these variables, I am able to offer a comprehensive model of judicial decision-making in the Constitutional Chamber that assesses the probability of a decision in favor of the petitioner, which can be best summarized in the following form:

$$\mathbf{P}(Y_i=1) = \beta_0 + \beta_1 (\text{PODCIU DPET}) + \beta_2 (\text{PODCIU DRESP}) + \beta_3 (\text{PROGOVPET}) + \beta_4 (\text{PROGOVRESP}) + \beta_5 (\text{OPPOPET}) + \beta_6 (\text{OPPORESP}) + \beta_7 (\text{NATIONAL}) + \beta_8 (\text{TOTAL}) + \beta_9 (\text{SALIENT})$$

In a multivariate *logit* model, a positive coefficient for any of the independent variables implies that an increment on the relative value of such condition *increases* the probability of a ruling declaring the unconstitutionality of the law in question or suspending the law's application, whereas a negative coefficient implies that an increment of the relative value of the variable *decreases* the probability of an unconstitutionality ruling. Based on the hypotheses explained above, I make the following predictions:

- 1) The coefficient of OPPOPET (participation of opposition petitioner) should be negative, since in the politicized Venezuelan Supreme Tribunal, staffed with justices who are, for the most part, affiliated with *Chavismo*, the presence of a litigant identified with the opposition should decrease the likelihood of a constitutional review ruling.
- 2) Conversely, the presence of pro-opposition group or bodies as respondents (OPPORESP) should increase the likelihood of annulment or suspension, therefore leading to positive coefficients.

- 3) On the other hand, the presence of the government or pro-government political allies as either petitioners or respondents (PROGOVPET and PROGOVRESP, in this order), should respectively lead to positive and negative coefficients.
- 4) The presence of the *Poder Ciudadano* as petitioner (PODCIUDPET) should lead to positive coefficients, and therefore a higher probability that the legislation questioned be declared unconstitutional or suspended; whereas if the *Poder Ciudadano* (PORCIUDRESP) appears as respondents this should decrease, *ceteris paribus*, the likelihood of activist constitutional rulings and thus result in coefficients with negative signs.
- 5) A petition filed against national legislation (NATIONAL) should lead to negative coefficients, and the same prediction operates for constitutional review petitions that seek the suspension of the totality of the legislation, as opposed to just a provision or a set of specific provisions in the law (TOTAL).
- 6) Lastly, the presence of a salient (SALIENT) case should lead to greater exposure, an effect that, in principle, should lead to a greater probability of constitutional review because the case is under higher public attention and, therefore, is more transparent, a condition that has already been considered a positive condition of constitutional review (though, as explained below, the opposite result is also likely).

Before running the models along the lines described above, I ran pair-wise correlations among the covariates of interests, in order to check if any two variables were highly correlated among themselves (and therefore should be left out of each model). This was not the case, lending credence to the model's specification.

Summary of Results

Table 2 summarizes the results of the logistic regression models for the combined results of definitive rulings and interim *amparos* on constitutional annulment proceedings between 2000 and 2009. *This is the main model.* It also includes results focused only on constitutional annulment and interim *amparo* cases:

[Table 2 About Here]

The results are largely consistent throughout the alternative models employed, and most variables behave as expected. The presence of a pro-government petitioner (including both solicitor general and petitioners considered affiliates of the government) increases the likelihood of the Chamber striking down or suspending the legislation. The coefficients in the table in the predicted positive direction, and appear either highly significant (in the combined model) or otherwise significant (in the annulment and *amparo* models). In a similar fashion, the coefficients for the presence of representatives of the Citizen Branch of power as petitioners were also positive and significant (*highly significant* in the case of the combined model), with figures similar to the pro-government petitioners, meaning that their presence is highly correlated with the Constitutional Chamber's proclivity to strike down legislation in a given case.

Conversely, as predicted, pro-opposition petitioners face dismal prospects at the Venezuelan Constitutional Chamber. In the combined model, the coefficient for the presence of the opposition as petitioner is negative and significant. A more intriguing finding is the Chamber's difference of treatment for annulment and *amparos*. The apparent bias against pro-opposition actors in the Chamber does not seem relevant in annulment cases. This is an interesting phenomenon, since annulling a law should be a more important decision than

suspending it and, therefore, the predicted negative effect of pro-opposition justices in annulments should be higher. However, while the coefficient for the presence of a pro-government petitioner in annulment cases was insignificant, the variable was dropped for *amparos*. Out of 28 *amparo* petitions filed by pro-opposition claimants in annulment proceedings in our database, *the Chamber did not grant temporal relief in a single case*.

The other variables incorporated in the model to account for the characteristics of the case, and the strategic circumstances surrounding the decisions, behaved as expected. The NATIONAL coefficients were particularly impressive, and were highly significant in all three different models configurations. On the other hand, as predicted, the Chamber is more prone to declare a specific provision of a law unconstitutional or suspend it if it is called to declare the unconstitutionality of the entire statute or legislation (the coefficients for TOTAL were negative and significant). Finally, the coefficient for SALIENT cases was significant across all model configurations, as initially predicted.

Judging the relative impact of the *logit* coefficients quoted above can be difficult because they are not immediately intuitive (beyond the direction and levels of significance). Therefore, I obtained *logistic* coefficients, and subsequently developed predicted probabilities (expressed as odd-ratios), to get a clearer picture of the impact of the different variables on the Constitutional Chamber's probability of annulling or suspending a law. They are reported in the table below:

[Table 3 About Here]

For the standard COMBINED model, we can now infer that the odds of a constitutional review decision striking down or suspending a statute or other legislation increases by a factor of 3.999 if the litigant is identified as representing government interests;

3.798 if a representative of the *Poder Ciudadano* files the unconstitutionality petition, and 2.792 if the case is identified as salient vis-à-vis the average probability. On the other hand, the odds of an unconstitutionality ruling decrease by a factor of 0.365 if the petitioner is affiliated with the opposition; 0.155 if the petition was filed against a national (*i.e.* federal) statute or other legislation, and 0.515 if the petition requests the total annulment of the legislation questioned. All these variables appear significant in the model. On the other hand, the presence of representatives of the *Poder Ciudadano* (usually cases filed against the Attorney General or the Comptroller General's office); pro-government, or opposition actors as respondents did not seem to have a significant effect on the Chamber's likelihood to suspend or strike down a law.

Lastly, to make this picture even clearer, I calculated predicted probabilities for the variables of interest for the model, while holding all other variables in the model constant at their mean. In this sense, if we focus on the two main hypotheses of this analysis – the Court's proclivity to favor pro-government or opposition forces as petitioners – the probability of constitutional review (annulment or interim *amparo*) increases from 0.259 if the litigant is not a pro-government actor, to 0.582 when it is a pro-government petitioner; whereas the probability of constitutional review decisions decreases from 0.292 to 0.131 in the event the case was filed by a political actor affiliated with the opposition. These figures were calculated while holding the rest of the covariates constant at their mean.

Discussion – What Kind of Politicization is Observed?

The results explained above provide ample support for our original model across several variables, and some of these results were remarkably consistent across a variety of specifications. Yet, some critical observations need to be made.

First, notice that the Constitutional Chamber's reaction to the presence of governmental and opposition petitioners was exactly as expected. With respect to the presence of a pro-government petitioner, it is one of the most powerful predictors of constitutional annulment in both *annulment* and *amparo* cases. Interestingly, the relative influence of pro-government petitioners is much stronger in *amparo* cases than in *annulment* cases. This disparity can be interpreted as further evidence of the particular importance that the solidly pro-*Chavista* Chamber gives to the petitions by pro-governmental actors in cases of urgent or interim relief. The comparison with cases filed by pro-opposition litigants is very instructive: To put it simply, after controlling for a series of other variables, pro-opposition litigants face exactly the opposite luck than pro-government litigants, since they are significantly less likely to win in constitutional review cases. When disaggregated by annulment and *amparo* cases, the distinction speaks further about what lies behind this scenario: An anti-opposition bias does not appear on annulment cases, but it is clear in *amparo* cases. Not a single *amparo* case filed with constitutional annulment petitions was decided in favor of litigants that were identifiable as pro-opposition (a total of 28 cases filed by opposition forces, up to 12.84% of the *interim amparo* docket under analysis). All in all, it points to a Chamber that provides a useful helping hand to the regime in case of trouble, even if this is achieved at the expense of their own policy or legal beliefs, or the reputation of the Court (a topic addressed in a separate analysis).

On the other hand, alternative explanations other than the Justices' political bias could be offered to explain the disparity between pro-government and pro-opposition success at the Chamber. A thorough analysis of this question should also take into account the legal nature of the constitutional litigation cases filed by both the government and the opposition; to what extent political affiliation offers additional – and distinctive – explanatory value over the justices' ideological proclivities, and the extent to which the political environment (especially

the President's popularity) constrains the justices and force them to decide on behalf of the government and against the opposition. Each of these alternatives (legal, ideological and additional strategic considerations) needs to be meticulously addressed to offer a full picture of the impact of political commitments on judicial decision-making in Venezuela. Although I did not do so to the fullest extent in our theoretical model above, this may be achieved via additional qualitative inquiry and discussion.

For instance, a good alternative explanation to our high correlation between political affiliation and judicial outcomes may lie on differences on the *kind* of legislation that both sets of actors are challenging, and even on the *viability* of the claims made through constitutional litigation. In short, it is possible to suggest that an honest interpretation of the law is what drives judges to side with the government and disdain the opposition's attempts to undermine the government's legislation. Thus, the government might be attacking laws, decrees and ordinances that are *clearly* at odds with the new Constitution, in an honest effort to root out unconstitutional legislation in the context of the new 'Bolivarian' constitutional and legal order, and therefore ensuring its cohesive and coherent development. Theoretically, this could be the case of the representatives of the *Poder Ciudadano* who, as mentioned above, enjoy the advantage of having well-trained, full-time constitutional litigation teams, who can detect potential unconstitutionality in old or new legislation and take these cases to the Court. If this were the case, we should expect to see that the types of cases filed for unconstitutionality would tend to have certain features. For instance, they would include cases against legislation enacted prior to the approval of the 1999 Constitution, and which could be at odds with the new constitutional framework, either as a matter of textual interpretation or by offending its inspiring principles.

A good example is a string of cases filed by the Ombudsman's office against the codes of police behavior enacted by several states prior to the entering into force of the

Bolivarian Constitution (as perceived in the dataset). These cases have consistently been decided in favor of the Ombudsman's office (including cases filed by former Ombudsman Germán Mundaraín, such as No. 1789 on November 18, 2008; No. 493 on April 30, 2009; and No. 1053 on July 29, 2009, among others). These laws have been recognized as unconstitutional and have little broader political significance, so their decisions in favor of the Ombudsman's office cannot and should not be interpreted as politically motivated. These cases, and others of a similar kind, might not pursue political ends as such, but only the adjustment of the legislation to the rules of the new constitutional regime.

However, with respect to opposition actors, it is hard to imagine that their consistent failure to succeed at the Constitutional Chamber stems from a chronic misunderstanding of the law. Though certain claims could admittedly be considered a stretch and may be employed with the sole purpose of seeking political support from the public, many (if not most) cases filed by the opposition are based on legitimate constitutional arguments, often based on longstanding doctrinal understandings and established precedent. Additional qualitative research may bring further light on this point.

Another possibility is that the judges are not consistently deciding for the opposition or for the government mainly on the basis of political affiliations, but rather out of sincere ideological agreement or disagreement with the petitioners. As I have explained elsewhere (Sanchez-Urribarri 2012), my central proposition – that judges follow their political commitments in salient cases – does not exclude the possibility that judges might also take into account their ideological proclivities. In this case, the court's agreement with the petitioners would only be a function of their own views. Pinning down the justices' ideology in Venezuela can be particularly difficult for a variety of reasons (and already demonstrated in other works carried out in other Latin American countries, such as Basabe Serrano 2008; Helmke 2005).

On the other hand, generally speaking, party affiliation might not be considered a surrogate for ideology in Venezuela. Despite the well-defined distinctive positions of the *Chavista* and opposition political coalitions in a variety of issue areas, such as the state's need for intervention on the economy, nationalistic foreign policy, greater regulation of the private sector and expansive presidential power, there are at least two problems that make the task of defining the ideological composition of Venezuela's volatile party system: Chávez's changed quickly its ideological profile over the course of the decade (rapidly becoming increasing nationalist and progressive), and this has also involved several changes in the composition of his supporting political coalition, both with respect to parties and specific politicians. Additionally, as I also mentioned above, it is incorrect to assume that the justices of Venezuela's High Court are appointed *solely* or even *mostly* on the basis of their ideological consistency with their appointers. Politicians might have other motivations when appointing justices, including extending their own capacity and leverage to influence decision-making or obtain advantages in the system (Helmke and Sanders 2006). This should affect the government's ability to place ideologically aligned justices on the Court.

In any event, for the purpose of illustrating the practical differences between political affiliation and ideology as predictors of judicial decision-making, the docket analyzed in this paper shows two kinds of cases that highlight the importance of distinguishing particularistic loyalties from programmatic stances or ideologies. On one hand, there are several cases of strictly political nature in which the ideological component is relatively meager, and in which the Court consistently sided against the opposition. Some of these cases involve strict political contestation about different electoral processes, including the suspension of the May 2000 general elections, the recall referendum against President Chávez in 2004, the controversial elections of the National Assembly in 2005, the presidential election in 2006, the attempted constitutional reform in 2007 and the successful

constitutional amendment of 2009 (all included in the database and discussed via qualitative inquiry in a separate analysis). Other important cases are related to institutional modifications or measures taken by Chávez's government that control or redefine the opposition's capacity to contest policy. Examples of this kind of cases include challenges against the constitutionality of the national strike against the government in December 2002 – January 2003; the new Organic Law of the Supreme Tribunal of Justice (LOTSJ); the closure of opposition-leaning TV station RCTV in 2007, and the opposition's protests against the refusal of several pro-government authorities to authorize demonstrations against the government in recent years. It is in these cases of high political saliency in which the effect of political connections is most clear, propping pro-government justices to solidly back the government's preferred outcome, and leading pro-opposition justices to break the usual unanimity of the Court and file dissents.²

In any case, it is hard to argue that political connections do not matter when *all* interim *amparo* cases filed by pro-opposition political actors against legislation have been rejected. This is just too high a threshold not to be genuinely concerned that these decisions and their divided outcomes are rooted purely on political considerations, and do not obey ideological, strategic or legal variables.

² As Gillman (2001) noticed about *Bush v. Gore*, in order to make the claim that a given outcome is politically motivated, we need to rule out all other considerations – including ideological motivations. For example, imagine the situation in which a judge with well-known progressive proclivities, and identified with the ruling political party (with a leftwing policy platform), votes to uphold the constitutionality of the government's decision to bar certain opposition candidates to run for office in a coming election, without a previous definitive judicial decision ordering so. Though contingent on the circumstances, it is safe to assume that an ideologically driven progressive vote would rule against the government in these circumstances, and in favor of the petitioner's right. Yet, an account based on particularistic political links might explain why otherwise progressive judges would anyway vote for the government's preferred outcome in this situation. This is not a hypothetical example. For instance, in the Venezuelan case, it actually happened in decision No. 1265, on August 5, 2008, when the Constitutional Chamber upheld the constitutionality of article 105 of the Organic Law on the Comptroller General's Office, which allows the Comptroller General to declare individuals ineligible to hold public office for a maximum of fifteen years through an administrative proceeding, instead of a judicial trial.

On the other hand, the effect of pro-governmental or pro-opposition actors as respondents on the likelihood of constitutional review decisions is not significant. This is at odds with our theory and therefore deserves further explanation. Part of the problem lies on the limited nature of the data. As mentioned above, there are only six cases where I identified opposition as respondents: Three of the cases were rejected, while in three cases constitutional review was granted. However, the model clearly suggests that other reasons account for this higher-than-average result more successfully. Interestingly, the three petitions that were rejected were decided in 2003 and 2005; whereas the three cases that were decided against the opposition were decided in the last two years in the data under study. Once again, the limited nature of the data does not allow us to make further inferences in this respect. Yet, when the government or pro-government actors face constitutional review petitions as respondents, it is clearer that *other* reasons seem to drive judicial decision-making. I ran a logistic regression of PROGGOVRESP on COMBINED cases without all the control cases and the results were in the direction originally predicted and significant (odds ratio=0.418; S.E.=0.135, significant at the $p<.05$ level). However, this relationship gets blurred when all the different control variables are introduced. Additional studies in the future will allow us to further assess the robustness of this relationship.

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Table 1: *Venezuelan Supreme Tribunal, Constitutional Chamber (2000-2009)*
 Characteristics of the Justices

Justice	Tenure	Law Prof	Law School	Judicial Experience	Graduate Studies
Rincón Urdaneta	2000-2005	Yes	LUZ	Yes	Doctorate
Cabrera Romero	2000-2008	Yes	UCV	No	None
Delgado Ocando	2000-2004	Yes	LUZ	No	Doctorate
Peña Torrelles	2000	No	UCV	No	Specialty
Troconis Villarroel	2000	Yes	ULA	No	Doctorate
García-García	2000-2004	Yes	LUZ	Yes	Doctorate
Zuleta de Merchán	2004-Current	Yes	LUZ	No	Doctorate
Velásquez Alvaray	2004-2006	Yes	ULA	No	None
Carrasquer o López	2004-Current	Yes	LUZ	Yes	Doctorate
Dugarte	2005-Current	No	UCAB	No	Specialty
Rondón Haaz	2000-2009	Yes	UCV	No	Doctorate
Delgado Rosales	2000-Current	Yes	LUZ	No	Doctorate
Morales Lamuño	2004-Current	No	UCV	Yes	Doctorate

Table 2: Venezuelan Supreme Tribunal, Constitutional Chamber (2000-2009): Results of the Logistic Regression Models for Combined, Annulments and Amparo Proceedings

Variable	Combined	Annulments	Amparos
Poder Ciudadano (Petitioner)	1.334*** (0.419)	1.213** (0.623)	1.422** (0.567)
Poder Ciudadano (Respondent)	0.150 (0.731)	0.476 (1.107)	0.309 (0.985)
Pro-Government Petitioner	1.386** (0.598)	1.461* (0.879)	1.822** (0.817)
Pro-Government Respondent	-0.053 (0.386)	-0.131 (0.491)	0.009 (0.676)
Opposition Petitioner	-1.007* (0.578)	-0.610 (0.737)	<i>Dropped: No cases in favor of petitioner</i>
Opposition Respondent	-0.439 (0.935)	<i>Dropped for collinearity</i>	-0.060 (0.960)
National Case	-1.862*** (0.259)	-2.378*** (0.366)	-1.603*** (0.421)
Total Annulment	-0.663** (0.263)	-0.590* (0.341)	-1.044** (0.515)
Salient Case	1.026*** (0.463)	1.177* (0.686)	1.330** (0.661)
Constant	0.307 (0.199)	0.845** (0.322)	-0.143 (0.282)
<i>N</i>	461 cases	251 cases	181 cases
Chi-Sq.	98.53***	64.74***	36.04***
- Log-pseudo likelihood	-227.049	-119.602	-93.925

Notes: Robust Standard Errors between parentheses.

***Significant at $p < .01$

** Significant at $p < .05$

* Significant at $p < .10$

Variable	Combined	Annulments	Amparos
<i>Poder Ciudadano</i> (Petitioner)	3.798*** (1.593)	3.364** (2.097)	4.144** (2.349)
<i>Poder Ciudadano</i> (Respondent)	1.162 (0.849)	1.557 (1.781)	1.363 (1.342)
Pro-Government Petitioner	3.999** (2.392)	4.310* (3.789)	6.187** (5.052)
Pro-Government Respondent	0.948 (0.366)	0.877 (0.430)	1.009 (0.682)
Opposition Petitioner	0.365* (0.211)	0.543 (0.401)	<i>Dropped: No cases in favor of petitioner</i>
Opposition Respondent	0.645 (0.603)	<i>Dropped due to collinearity</i>	0.942 (0.904)
National Case	0.155*** (0.04)	0.093*** (0.034)	0.201*** (0.085)
Total Annulment	0.515** (0.135)	0.554* (0.189)	0.352** (0.181)
Salient Case	2.792*** (1.292)	3.245* (2.227)	3.782** (2.499)
<i>N</i>	461 cases	251 cases	181 cases
Chi sq.	98.53***	64.74***	36.04***
- Log-pseudo likelihood	-227.049	-119.602	-93.925

Table 3: Venezuelan Supreme Tribunal, Constitutional Chamber (2000-2009): Results of the Logistic Regression Models for Combined, Annulments and Amparo (Odds-Ratios)

Notes: Robust Standard Errors between parentheses.

***Significant at $p < .01$

** Significant at $p < .05$

* Significant at $p < .10$