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ARTICLE

Reviewing fast or slow: A theory of summary reversal in the judicial hierarchy

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Abstract

Appellate courts with discretionary dockets have multiple ways to review lower courts. We develop a formal model that evaluates the trade-offs between "full review"—which features full briefing, oral arguments, and signed opinions—versus "quick review," where a higher court can summarily reverse a lower court. We show that having the option of costless summary reversal can increase compliance by lower courts but also distorts their behavior compared to relying only on costly full review. When the higher court is uncertain about the lower court's preferences, the threat of summary reversal can lead an aligned lower court to "pander" and issue the opposite disposition to that preferred by the higher court. Access to summary reversal can therefore harm the higher court in some circumstances. Our analysis provides a theoretical foundation for growing concern over the U.S. Supreme Court's "shadow docket"—of which summarily reversals are a component—which has been empirically focused to date.

Superiors in hierarchical organizations must often decide how much time, energy, and expense to invest in reviewing the decisions made by their agents before attempting to revise them (Laffont & Martimort, 2001). Given the potential for noncompliance by agents, principals face a trade-off. By taking the time needed to learn the specific circumstances surrounding an agent's decision, a principal can ensure that any revisions she makes will improve that decision. By foregoing these steps, a principal can economize on her time and energy—but doing so increases the risk that she will revise the agent's decision in error.

In this paper, we develop a formal model to evaluate such "full" versus "quick" reviews in the context of judicial hierarchies.[1] The availability of expedited procedures is a general phenomenon across judicial institutions. Trial courts in most common law systems have the option to end a legal dispute via summary judgment, whereby a judge declares one party a winner before trial.[2] On the U.S. Courts of Appeals, only a minority of cases are granted the "full review" of oral arguments; the remainder are decided based on the litigants' briefs. Finally, many apex courts in the United States and other countries have a procedure to summarily rule on a lower court decision without a full rehearing on appeal.[3] The key insight of our

[1] While our focus is on governmental institutions, the choice of full versus quick review also arises constantly in academia—journal editors often must decide whether to exercise quick review by desk rejecting a paper they believe has little to no chance of publication versus the "cost" of seeking out full review in the form of peer reviews. For an interesting back-and-forth on the value of desk rejection and the incentive it creates for editors and authors, see Gibson (2021) and Bonneau and Kanthak (2021).

[2] See Federal Judicial Center (2025) for a helpful review of civil litigation procedures in comparative perspective.

[3] On the use of summary reversals in the American states, see Long (2023). To give three comparative examples, litigants in Canadian federal courts can request to a court that their motion "be decided on the basis of written representations" (i.e., forgoing oral arguments), which the Court may grant; see Rule 369 at Canada, Department of Justice (1998). Next, cases in the European Court of Human Rights are usually heard by a panel of five judges, but its rules allow for swift disposal of a petition by a single judge "where the material submitted by the applicant is on its own sufficient to disclose that the application is inadmissible or should be struck out of the list"—see Rule 49 at European Court of Human Rights (2023). Finally, the French Court of Cassation (the country's highest court) allows for the dismissal of an appeal without any reasoning "where the appeal is inadmissible or where it is mani-

analysis is that a principal's mode of review does not just implicate the aforementioned benefits and costs. Rather, it also meaningfully affects the incentives of a better-informed agent to decide in accordance with the principal's preferences. In particular, a reliance on quick versus full review can *distort* an agent's incentives sufficiently to outweigh the efficiency benefits, an insight with far-reaching implications across judicial institutions.

Our particular focus is the U.S. Supreme Court. Since gaining nearly full discretion over its docket in 1925, the Court has adjudicated the vast majority of cases in which litigants seek the justices' review in two ways: by denying certiorari ("cert"), which results in the lower court's decision remaining in place, or through its "merits" docket, which involves full consideration by the Court, including oral arguments and (usually) signed opinions. The emergence of a lopsided 6-3 conservative court following President Trump's three appointments in his first term (Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett), however, has placed a critical spotlight on the expedited procedure of *summary reversals*, whereby the Court grants cert and reverses the lower court without written briefs on the merits or full arguments.[4] Summary reversals are a critical element of the Court's broader "shadow docket," which describes all the decisions the Court makes other than through the merits docket (Baude, 2015; Vladeck, 2023). While the Court has always conducted much of its work through the shadow docket, many commentators and critics have argued that the Court has increasingly used it to make legal policy in ways that earlier courts had shied away from (see, e.g., Hartnett, 2016; Chen, 2020; Baum, 2020).

In our model, a lower court (the agent) initially hears a case and decides whether to make a judgment in line with a higher court's known preferences. The higher court (the principal) observes the decision of the lower court, but not the specific case facts. If she believes that the lower court's decision may have been in error, she has two options to modify it. She can engage in a costly full review, thereby learning the specific case facts and reversing the lower court if warranted. Alternatively, she can simply summarily reverse the lower court, avoiding the cost of a full review, but risking reversal of a correct decision given the unknown case facts. Finally, a crucial feature of our model is that the higher court is uncertain about the lower court's exact preferences on the particular case, and specifically entertains the possibility that he is either *aligned* (i.e., shares her preferences given the case facts) or *misaligned* (i.e., has differing preferences). Since the higher court does not precisely know the lower court's "type," she cannot fully base her review strategy on it.

The central distinction between reversal after a full review and a summary reversal—that the latter is done with *less information* about the case—turns out to crucially affect the incentives of a reversal-averse lower court. Both tools can discourage noncompliance by the lower court, which we define as ruling in accordance with his own preferences rather than the higher court's. However, only summary reversal creates a risk that the lower court will be punished via reversal for doing exactly what it should have done—making a difficult decision that goes against the higher court's *prior* beliefs, but is actually consistent with her true preferences given the case facts. This distinction lies at the heart of our results about the surprising effects of summary reversal on lower court behavior.

Our first main result is that summary reversal can indeed reduce noncompliance by the lower court, in the sense of reducing the set of case facts where he will rule in accordance with his own preferences rather than the higher court's. Since summary reversal is costless, a minimum level of compliance is necessary (in expectation) to ensure that the higher court will not just summarily reverse any suspicious disposition. In the equilibrium of our model, the lower court must always meet this threshold—this effectively acts as an additional constraint on lower court behavior relative to the "standard" judicial oversight model that lacks a summary reversal option. Access to summary reversals, therefore, generates weakly more compliance than what is elicited when the higher court can only employ full review.

Second, and more surprisingly, summary reversal can induce *pandering* by the lower court. Pandering in this context means choosing a disposition in line with the higher court's *prior* beliefs about the case facts, but inconsistent with her actual preferences if the actual case facts were known. One consequence of this pandering is the disappearance of the well-known "Nixon goes to China" result in the formal theory literature on judicial auditing, which states that a higher court should never review a lower court disposition that goes against its ex ante bias because it is sure to be compliant—e.g., a conservative higher court should never review a conservative decision by a more liberal lower court (Cameron, Segal, and Songer, 2000). In the presence of pandering, the higher court can no longer be sure that such "counter-bias" decisions are in fact compliant; it may, therefore, still review such dispositions, albeit less often than it reviews "pro-bias" ones.

Third and most importantly, since summary reversal may trigger pandering, access to it may not

festly not such as to result in cassation" (i.e., reversal); see Article 1014 of the French Code of civil procedure at Petroff Law Firm (2023).

[4] Summary reversals are usually accompanied by opinions, but they are typically much shorter than merits opinions and are usually issued as a "per curiam" opinion (i.e., in the name of the Court overall), rather than as a signed opinion by an individual justice.

actually benefit the higher court. On the one hand, such access will always weakly reduce noncompliance by the lower court. On the other hand, it may also sometimes induce pandering by the lower court. In fact, it is *precisely when* summary reversal strictly reduces noncompliance in expectation (because it is sometimes being used) that it *also* triggers pandering in expectation—in our model, summary reversal's beneficial and perverse effects are inextricably linked. As a result, the higher court can be worse off overall by having access to summary reversal despite her full control over when to use it.

Interestingly, the preceding result is *not* because the pandering that summary reversal elicits is somehow "greater than" the noncompliance that it reduces; in equilibrium, their direct effects on the higher court's utility perfectly balance each other out. Rather, it is because this increase in both compliance and pandering also makes the lower court's decisions *more informative* about the underlying case facts, which paradoxically *degrades the value of full review*. This degradation is worsened when full reviews are a more valuable tool because they are "cheaper" to conduct in expectation. It is also worsened when the higher court's prior dispositional preferences are relatively moderate as compared to the lower court; this causes her to "overuse" summary reversal relative to its modest corrective benefit.

The preceding raises the question of why the higher court does not simply reduce its use of summary reversal if it triggers excessive pandering. As in many political agency models, the answer is that the higher court has a commitment problem. Specifically, at the time the higher court decides whether to summarily reverse a suspicious disposition, she already knows that pandering has not occurred; she, therefore, cannot internalize the effect of her decision on the lower court's *ex ante* incentive to pander. This observation suggests that the higher court may benefit from the presence of rules or norms that directly constrain her use of summary reversal, or more broadly discourage overtly "ideological" behavior.

Lastly, our model yields predictions about when lower court pandering will be more severe. If such pandering is already occurring, then increasing the ideological distance between the higher and lower courts (in expectation) will only make it worse. A "busier" higher court more reliant on summary reversal will also elicit more pandering. Finally, it is tempting to conjecture that increasing the sanctions that lower courts experience from reversal can help. However, we show that doing so is a double-edged sword. Increasing reversal sanctions can indeed reduce pandering by making the threat of reversal via full review more effective at limiting noncompliance. However, it can also worsen pandering by making the lower court even more fearful that "suspicious" but correct decisions will be summarily reversed. Collectively, these results have important implications for understanding the use and consequences of summary reversals by the Supreme Court and point towards a broader theoretical understanding of the importance of the shadow docket.

RELATED LITERATURE

Our theory can be situated in three distinct but overlapping literatures on oversight within principal–agent relationships. We first connect to a broad literature that spans across political science, economics, finance, and accounting that examines models in which a principal can "audit" the actions or information of her agent at some cost. Graetz, Reinganum, and Wilde (1986), for example, developed one of the earliest formal theories of tax auditing, in which the threat of a costly audit by the IRS can deter noncompliance by taxpayers. In the realm of bureaucratic politics specifically, several models allow principals (e.g., Congress and/or the president) to audit a bureaucrat's decision at some cost, which is typically found to induce better behavior from the agency (see, e.g., Banks, 1989; Acs, 2019; Gailmard, 2009; Prendergast, 2003; Ting, 2001).

We next contribute directly to a literature in judicial politics on "strategic auditing," which examines how higher courts in the judicial hierarchy (e.g., the Supreme Court) can use their discretionary docket to target cases for review, thereby improving the incentives of lower courts (see Cameron, Segal, and Songer, 2000; Spitzer & Talley, 2000). The structure of these models has been extended to examine different aspects of decision-making in the judicial hierarchy such as the role of whistleblowing (Beim, Hirsch, & Kastellec, 2014); how combining rule development and dispositions affects the interaction of lower and higher courts (Carrubba & Clark, 2012); and how the Supreme Court's "rule of four" —under which it takes only four justices to grant cert—affects compliance (Lax, 2003).

While the questions asked and structures invoked in these papers differ in important ways, they share two common features: (1) the higher court must first pay some cost in order to gain the *ability* to reverse the lower court and (2) paying this cost is "bundled with" learning the case facts. Given that the certiorari process has motivated the strategic auditing literature, these initial assumptions made sense. After all, the modern Supreme Court now hears fewer than 70 cases per term (out of the thousands of cert petitions filed each term), so the opportunity cost of granting cert is high, and a grant allows the justices (and their clerks) to devote considerable time and effort to a case. The availability of summary reversal, however, renders

these foundational assumptions suspect. Stepping back from the judicial hierarchy and thinking more generally about the Supreme Court's oversight of lower courts as a principal–agent problem, the limitations of this approach become clear. In most hierarchical organizations, bosses can outright reject proposals from their subordinates without due diligence or explanation. When engaging in summary reversal, the Supreme Court justices do the same; our model allows for this action, while existing models do not.

Finally, our finding that lower courts may pander connects to the sizable literature studying the accountability relationship between voters and incumbents using principal–agent models (see Ashworth, 2012, for a review). Such models typically combine "moral hazard" (i.e., the voters not seeing everything that the incumbent does or knows) with "adverse selection" (i.e., the voters not knowing whether the incumbent is the sort of "type" that they wish to reelect), and examine how an incumbent's incentive to signal that he is a desirable type distorts his policymaking. The term pandering typically describes a particular type of distortion—an incumbent (i.e., the agent) selecting the action initially favored by "popular opinion" (the voter's prior) despite privately knowing that it does not serve the voter's best interests, so as to signal he is the sort of incumbent the voter should wish to retain (e.g., Canes-Wrone, Herron, & Shotts, 2001; Maskin & Tirole, 2004).

The pandering in our model has both similarities and differences with this traditional sort. Our theory also involves an agent (a lower court) who sometimes distorts his choice in the direction of the principal's prior in order to achieve a desirable end. However, our agent cannot be replaced, so pandering is not driven by his "career concerns" vis-a-vis the principal—rather, he is reversal-averse, as is typical in judicial hierarchy models. In addition, summary reversal distorts the behavior of both the "bad" type of agent (a misaligned lower court) and the "good" type of agent (an aligned lower court)—and, unusually, simultaneously *improves* the behavior of the bad type, while *worsening* the behavior of the good type.

THE MODEL

There are two players in the model: a higher court (H) and a lower court (L); we refer to the lower court as "he" and the higher court as "she." The play of the game determines the outcome of a case. Following other models of the judicial hierarchy (most closely Beim, Hirsch, and Kastellec, 2014), we assume that the facts of the case map onto a single, continuous dimension X that determines the extent to which the liberal outcome is more appropriate; x denotes the case's location on X. A court makes either a "liberal" or "conservative" disposition decision d, denoted by ℓ (for liberal) and c (for conservative), respectively.

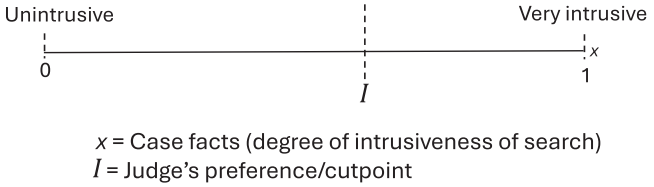

FIGURE 1 Illustration of the case space. *Notes*: The figure shows cases and preferences in the case space, in the context of search-and-seizure cases.

The players care about the final outcome of the case. We assume that each player's preferences are described by a cutpoint $I \in [0, 1]$ such that for $x < I$ the player prefers the conservative outcome and for $x \geq I$ the player prefers the liberal outcome. More specifically, all players derive utility from the final disposition of the case, and we let $u(x, I, d)$ denote the utility of a player with cutpoint I for disposition d given case facts x, where x is assumed to be uniformly distributed over [0,1]. Without loss of generality, the utility from the conservative disposition is normalized to $u(x, I, c) = 0$ and the utility from the liberal disposition is assumed to be $u(x, I, \ell) = x - I$. A player's net benefit from the final disposition matching her preferences is thus $|x - I|$.[5]

To provide more intuition for the case space, it is often presented in the context of search-and-seizure cases (see, for instance, Beim, Hirsch, & Kastellec, 2014; Cameron, Segal, & Songer, 2000; Kastellec, 2007; Lax, 2003). As shown in Figure 1, in this issue area, the case space captures the degree of intrusiveness of a search, where cases further to the left are less intrusive, and vice versa. For instance, a very intrusive search would be the police breaking down someone's door in the middle of the night without a warrant, while an unobtrusive search would be briefly stopping someone on the street to ask them a question. In terms of dispositions, a search is either held reasonable (the "conservative" outcome) or unreasonable (the "liberal" outcome). This formulation means that as x increases, any judge's relative benefit for the liberal versus the conservative outcome increases. Note that this also means that as a judge's preferences become more conservative (i.e., as I increases), that judge will prefer more cases be decided in the conservative direction. Thus, given the structure of the case space, cases and preferences can be thought of as moving in "opposite" directions.[6]

[5] This is isomorphic to payoff formulation with a net benefit of $|x - I|$ for ruling correctly.

[6] This preference structure is also a reduced form for a setting in which players have quadratic utility for policy $y \in \mathbb{R}$ given "state" $x \in \mathbb{R}$ of the form $u_I(y; x) = -(x_I - (y - x))^2$ (as is conventionally assumed in many models of bureaucratic

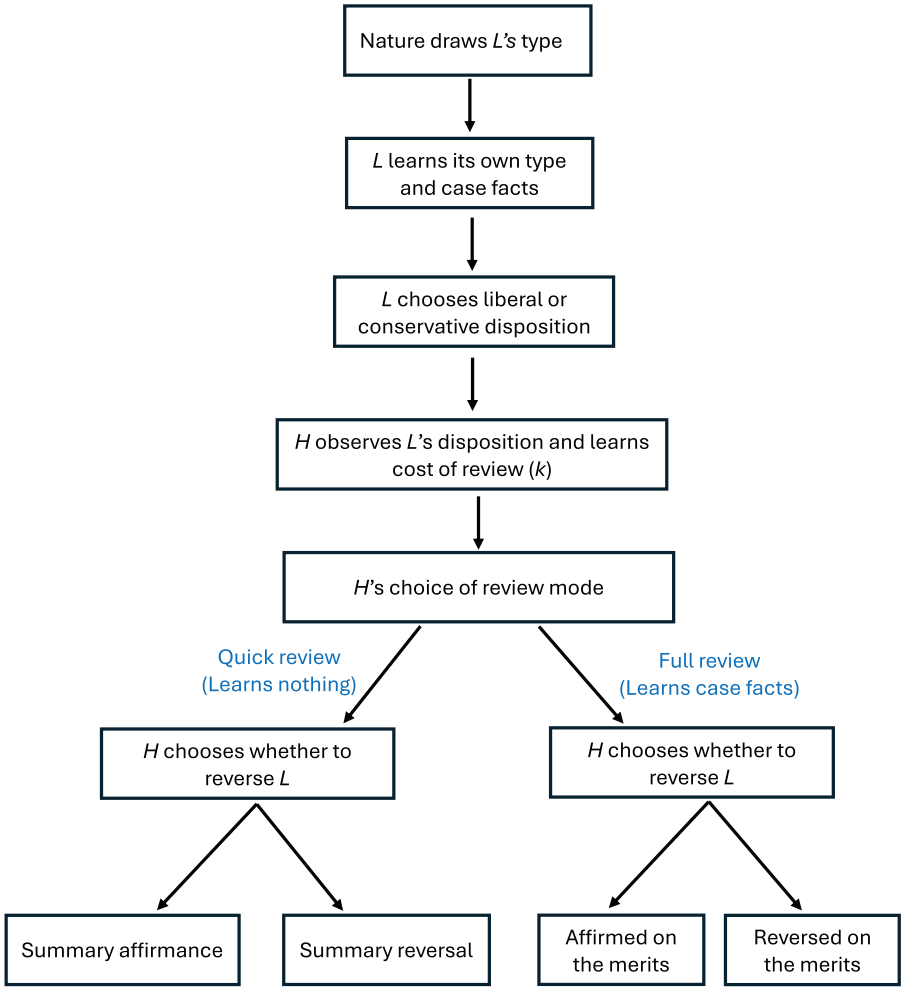

FIGURE 2 Sequence of play. *Notes*: The figure summarizes the sequence of the play.

In a slight abuse of notation, we denote the higher court's cutpoint by H and the lower court's cutpoint by L. The higher court's cutpoint H is common knowledge at the start of the game; we further assume her ex ante optimal disposition is conservative ($H > \frac{1}{2}$). In contrast, the lower court's cutpoint L is initially *unknown* to the higher court and may take one of two values $\{A, M\}$, where A denotes "aligned" and M denotes "misaligned." At the start of the game, nature selects the lower court's preferences to be aligned ($L = A$) with probability p and misaligned ($L = M$) otherwise. An aligned-type lower court has an ideal cutpoint equal to the higher court ($A = H$), but a misaligned-type lower court is more liberal ($M < H$).[7] The higher court is thus certain that the lower court is *at least weakly* more liberal, so that in equilibrium a liberal disposition is considered more suspect. To simplify the analysis, we further assume M is sufficiently liberal that it is optimal for the higher court to summarily reverse the liberal disposition if she believes the lower court to be ruling sincerely (and does not know her type).[8]

The sequence of play is summarized in Figure 2. Nature first draws the lower court's type L and the case facts x; for simplicity, we say that the case facts are conservative or liberal when that is the higher court's ideal disposition. The lower court type and case facts are then revealed to the lower court (but not the higher court), after which the lower court chooses a liberal or conservative disposition $d \in \{\ell, c\}$, which H observes.

The game then moves to the higher court. Like most models of the judicial hierarchy, we abstract away from litigants' choice of appeals and assume that all lower

politics), and a liberal versus conservative ruling implements the policy $y_\ell < y_C$. An individual's threshold for preferring the liberal outcome in x-space is then $I = \frac{y_\ell + y_c}{2} - x_I$.

[7] From this point forward, we use "aligned lower court" and "misaligned lower court" as shorthand for aligned-type lower court and misaligned-type lower court.

[8] The exact condition is $\max\{M, 0\} < H - \frac{1-H}{\sqrt{1-p}}$. All results are symmetric to the opposite ordering of H and M; that is, assuming both that $H < \frac{1}{2}$ and that M is sufficiently conservative that H would summarily reverse a sincerely issued conservative disposition.

court decisions are available for review. The higher court first decides whether to engage in quick review or full review, which we label the "mode of review." She then decides whether to uphold or reverse the lower court. Full review involves learning the true case facts x before this reversal decision, while quick review involves making it under uncertainty. A reversal or affirmance after quick review is a "summary reversal" and "summary affirmance," respectively.[9] The decision to conduct a full review in our model is *purely informational*, in contrast to standard judicial hierarchy models where full review combines acquiring information (about the case facts) with acquiring the freedom to reverse the lower court.

Finally, two other parameters affect the players' utility. First, following Beim, Hirsch, and Kastellec (2014) H's cost of full review k is probabilistic and distributed uniformly over $[0, \bar{k}]$ with the cumulative distribution function (CDF) $G(k) = \frac{k}{\bar{k}}$, where $\bar{k} \geq 1$. This cost is known to H when she is deciding whether to conduct a full review, but unknown to L when choosing a disposition. Intuitively, L is uncertain about how much H cares about the case ending in its preferred disposition relative to the costs of hearing the case. Second, if the lower court is reversed he suffers a sanctioning cost $\epsilon_L > 0$, regardless of whether he is reversed after full or quick review (recalling that $L \in \{A, M\}$ denotes the lower court's type). Table 1 summarizes the notation in the model.

TABLE 1 Summary of Notation.

Variable	Definition
Parameters	
H	Ideal cutpoint of the higher court
$L \in \{M, A\}$	Ideal cutpoint (i.e., type) of the lower court
M	Ideal cutpoint of "misaligned"-type lower court
A	Ideal cutpoint of "aligned"-type lower court
k	Higher court cost of review
p	Probability lower court is aligned type
ϵ_L	Sanction cost of being reversed for the lower court of type L
Quantities of interest	
x_L	Cutpoint used by the lower court of type $L \in \{A, M\}$
ϕ_d	Cost threshold for reviewing a disposition $d \in \{\ell, c\}$
α	Probability of summarily reversing a liberal disposition conditional on choosing not to review it
β	Probability of summarily reversing a conservative disposition conditional on choosing not to review it
$\Lambda_H(x_A, x_M)$	Higher court net benefit of choosing ℓ (liberal) conditional on the lower court choosing ℓ

The top section summarizes parameters in the model, while the bottom section summarizes quantities of interest (many of which we introduce below). We note that a $*$ in the text below denotes an equilibrium quantity of interest.

Interpreting preference uncertainty

Because the assumption that lower court preferences are not perfectly known is unusual in the judicial hierarchy literature, a discussion is warranted; we offer three interpretations.

One interpretation is literal; the higher court simply does not know the lower court's exact underlying legal ideology, in the sense of knowing exactly how it would rule under all conceivable circumstances. The Supreme Court oversees hundreds of lower federal court judges and also reviews the decisions of state courts. While the justices surely come to have a general sense of the underlying preferences of judges on the Court of Appeals (whose cases the Supreme Court is most likely review), the sheer number of judges in the American judicial system, combined with the regularity of turnover across lower federal and state courts, means that there will always be some sets of case facts where the justices are uncertain about the exact sincere ideal disposition of the judges they are reviewing.

A second relates to the fact that the Supreme Court almost always directly reviews the decisions of *multimember* appellate courts. The "panel effects" literature documents that the rulings of three-judge panels differ systematically from what a median-voter model would predict (see, e.g., Fischman, 2015; Hinkle, 2017; Kastellec, 2011; Sunstein et al., 2006); an ideologically diverse panel (e.g., with one Republican appointee and two Democratic appointees) is more likely to make a decision against the ex ante majority preference than an ideologically homogeneous panel (e.g., an all-Democratic panel). Our assumption that the higher court is uncertain about the lower court's preferences may be alternatively interpreted as an assumption that she is uncertain about the specifics of intra-panel bargaining, and thus the extent of these "panel effects."

[9] In substantive terms, the sequence of play abstracts away a bit from actual practice on the U.S. Supreme Court, in which summary reversals technically come after a grant of cert. In addition, both denial of cert and "DIGs" (i.e., to dismiss a case as improvidently granted, which occurs after cert is granted) fall into the model's "summary affirmance" bucket, despite looking qualitatively different in practice. These differences in sequencing are irrelevant for our analysis because we have modeled the higher court as a unitary actor, but could matter meaningfully in a more complex model that explicitly treats H as a collective-choice body and incorporates the "Rule of Four" for cert—see, e.g., Lax (2003) and Sasso and Judd (2022). For example, a submajority of four justices may anticipate that granting cert would make a subsequent summary affirmance via a DIG costlier than an up-front denial of cert, which would distort the cert decision. Similarly, the cert pivot and the overall median justice who prefer the same outcome might have different views about whether to use summary reversal or full reversal to dispose of a case, which would complicate the analysis.

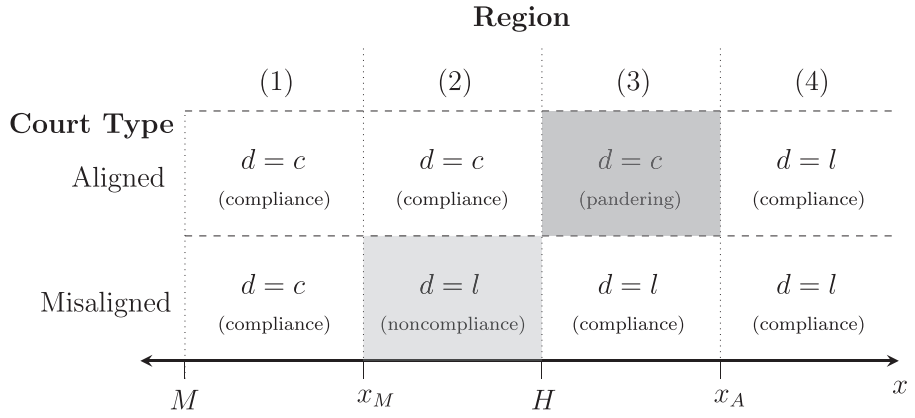

FIGURE 3 The form of the lower court's strategy. *Notes*: In Region 2, the misaligned lower court does not comply with higher court preferences and chooses *lib*. In Region 3, the aligned lower court panders and chooses *con* despite both he and the higher court preferring *lib*.

A third is that the facts of some cases are "multidimensional," leading to uncertainty about the degree to which a case implicates issues that divide the higher and lower courts. For example, the higher court may be more tolerant of intrusive searches when certain national security issues are implicated, but uncertain about the extent to which this is true absent a full rehearing. This sort of "case" uncertainty is actually isomorphic to our assumption that the higher court is uncertain about the lower court's preferences because we only model the interaction over a single case.

PRELIMINARY ANALYSIS

Our solution concept is Perfect Bayesian Equilibrium (PBE). At the most general level, summary reversal increases compliance by a misaligned lower court and incentivizes a kind of pandering by an aligned lower court, in which he sometimes chooses the less suspect disposition to avoid being summarily reversed. The probability of summary reversal required to keep a misaligned lower court adequately compliant incentivizes an aligned lower court to pander on cases where the losses from an incorrect ruling are not too great.

Formally, a strategy for the lower court is a mapping from his privately known preferences and the set of possible case facts to the set of dispositions $\{A, M\} \times X \to \{c, \ell\}$. The higher court's strategy consists of two parts. First, she must decide whether to conduct a full review of the case after observing the lower court's disposition, through which the exact case facts x will be learned; this choice is described as a mapping from the set of lower court dispositions and review costs to a review decision $k \times \{c, \ell\} \to \{\text{Review, Don't Review}\}$. If she conducts a full review and learns the true case facts x, she will clearly reverse the lower court's disposition d if and only if it was inconsistent with her ideal cutpoint H. If she does *not* conduct a full review, however, she must decide whether or not to *summarily* reverse the lower court $\{c, \ell\} \to \{\text{Reverse, Uphold}\}$ given the inference about the case facts that she has drawn from the disposition alone.

Despite the potential complexity of these strategies, we can characterize the equilibria of interest using a series of cutpoints and reversal probabilities as follows.

Remark 1. We restrict attention to strategy profiles that can be described by quantities $(x_A, x_M, \phi^\ell, \phi^c, \alpha, \beta)$ as follows:

1. A lower court of type $L \in \{A, M\}$ chooses the liberal disposition ($d = \ell$) if $x \geq x_L$ and the conservative disposition ($d = c$) otherwise.
2. After observing the lower court's disposition $d \in \{c, \ell\}$, the higher court conducts a full review if and only if $k \leq \phi^d$. Upon review, she learns the true case facts x and reverses the lower court's disposition if and only if it is inconsistent with her cutpoint H.
3. If the lower court chooses the liberal (conservative) disposition and the higher court declines to review, then she summarily reverses with probability α (β).

The form of the lower court's strategy is depicted in Figure 3. Given his privately known ideal cutpoint $L \in \{A, M\}$, the lower court chooses the conservative disposition for sufficiently conservative case facts ($x < x_L$); otherwise, he chooses the liberal disposition. We refer to the lower court ruling liberally when he disagrees with the higher court about the ideal disposition ($L < x < H$) as noncompliance, and to the lower court ruling conservatively when he and the higher court agree the ideal disposition is liberal ($L \leq H < x$) as pandering.

The form of the higher court's strategy is depicted in Figure 4. If the lower court ruled liberally ($d = \ell$), the higher court will conduct a full review if her costs are sufficiently low ($k \leq \phi^\ell$); otherwise, she will decline a full review and *summarily reverse* with probability α.

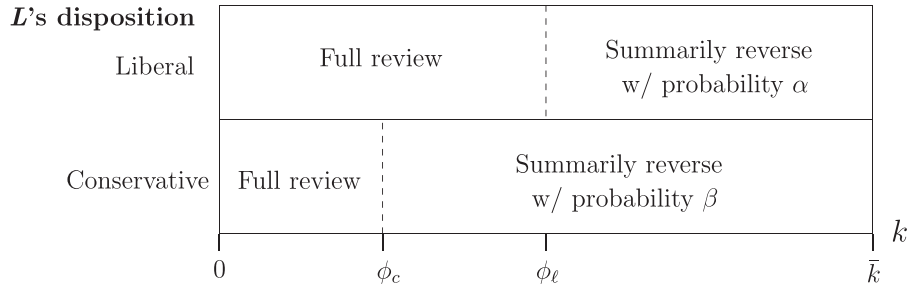

FIGURE 4 The form of the higher court's strategy. *Notes*: The graph shows the higher court's review/summary reversal decision based on the cost of review (k) and the lower court's disposition. In Lemma 1, we show that $\beta = 0$ in equilibrium.

If instead the lower court ruled conservatively ($d = c$), the form of the higher court's strategy is the same but with a distinct review threshold ϕ^c and probability of summary reversal β.

In the Supplemental Appendix (p. SA-8), we show that an equilibrium of the desired form always exists and, in addition, must satisfy a variety of properties.

Lemma 1. *Equilibria of the form in Remark 1 always exist and satisfy these properties.*

1. *An aligned lower court always complies when the case facts are conservative ($x_A \geq H$), and a misaligned lower court sometimes fails to do so ($x_M < H$).*
2. *The higher court never summarily reverses a conservative disposition ($\beta = 0$) and does not always summarily reverse a liberal one ($\alpha < 1$).*
3. *The higher court is strictly more willing to review a liberal disposition ($\phi_\ell > \phi_c$).*

We explain below why these properties must hold; here, we briefly remark on the rationales. First, equilibrium requires an aligned lower court to always comply when the case facts are conservative ($x_A \geq H$) because this is in both her "ideological" and reversal-avoiding interests. Second, equilibrium requires a misaligned lower court to sometimes fail to comply when the case facts are conservative ($x_M < H$); otherwise, the higher court can be certain that a liberal disposition is compliant and would neither review nor reverse it, thereby incentivizing noncompliance. Third, the higher court must be weakly more likely to summarily reverse a liberal disposition than a conservative one ($\alpha \geq \beta$) because it is more suspicious given the configuration of preferences. Finally, she cannot be *certain* to summarily reverse a liberal disposition (i.e., $\alpha < 1$) since otherwise a misaligned lower court would never engage in noncompliance, which is necessary in equilibrium.[10]

The lower court's incentives

To characterize equilibrium strategies, we first analyze lower court incentives. When choosing a disposition, the lower court privately knows both the case facts $x \in [0, 1]$ and his own ideal cutpoint $L \in \{A, M\}$. Should he rule conservatively, his expected utility is

$$\left(\left(1 - G\left(\phi^c\right)\right) + \mathbf{1}_{x \leq H} \cdot G\left(\phi^c\right)\right) \cdot u(x, L, c) + G\left(\phi^c\right) \cdot \left(1 - \mathbf{1}_{x \leq H}\right) \cdot \left(u(x, L, \ell) - \epsilon_L\right), \quad (1)$$

where $\mathbf{1}_{x \leq H}$ is an indicator variable denoting whether the case facts x are conservative (i.e., whether the higher court would prefer the conservative disposition if she knew the case facts). In words, a conservative disposition will be upheld absent review (occurring with probability $1 - G(\phi^c)$) as well as following review (occurring with probability $G\left(\phi^c\right)$) if the case facts are conservative ($x \leq H$), and will be reversed (imposing a reversal cost of ϵ_L) if there is a review (occurring with probability $G(\phi^c)$) and the case facts are liberal ($x > H$).

Should the lower court instead rule liberally, his expected utility is:

$$\left(\left(1 - G\left(\phi^\ell\right)\right) \cdot (1 - \alpha) + G\left(\phi^\ell\right) \cdot \left(1 - \mathbf{1}_{x \leq H}\right)\right) \cdot u(x, L, \ell) + \left(\left(1 - G\left(\phi^\ell\right)\right) \cdot \alpha + G\left(\phi^\ell\right) \cdot \mathbf{1}_{x \leq H}\right) \cdot \left(u(x, L, c) - \epsilon_L\right). \quad (2)$$

In words, the liberal disposition will stand if there is no review (occurring with probability $1 - G\left(\phi^\ell\right)$) *and* he is not summarily reversed (occurring with probability $1 - \alpha$), or if there is a full review (occurring with probability $G(\phi^\ell)$) and the case facts are liberal ($x > H$). It will be *summarily reversed* with probability $(1 - G(\phi^\ell)) \cdot \alpha$, and *reversed on the merits* after a full review (occurring with probability $G(\phi^\ell)$) if the case facts are conservative ($x \leq H$).

[10] Our assumption that $\max\{M, 0\} < H - \frac{1-H}{\sqrt{1-p}}$ rules out inefficient "reversed" equilibria where both dispositions are summarily reversed because the lower court uses the "wrong" disposition to signal the right one. However, there may still exist additional equilibria where a misaligned lower court exhibits *both* noncompliance and pandering.

Taking the difference between Equations (2) and (1) and simplifying yields:

$$\underbrace{\left(\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)(1-\alpha)+\left(\frac{\phi^{\ell}}{\bar{k}}-\frac{\phi^{c}}{\bar{k}}\right)\cdot\mathbf{1}_{x\geq H}\right)}_{\text{increase in Pr of } lib \text{ outcome}}\cdot(x-L)$$

$$-\underbrace{\left(\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)\alpha+\frac{\phi^{\ell}}{\bar{k}}-\left(\frac{\phi^{\ell}}{\bar{k}}+\frac{\phi^{c}}{\bar{k}}\right)\cdot\mathbf{1}_{x\geq H}\right)}_{\text{increase in Pr of reversal}}\cdot\epsilon_{L}. \quad (3)$$

The first term is the "ideological" benefit from choosing the liberal disposition, due to the increased probability that it stands as the final disposition. The second term is the increase in expected reversal costs from choosing the liberal disposition. Worth noting is that lower court's ability to induce the liberal outcome by ruling liberally *increases discontinuously* when the case facts become liberal ($x > H$), while her reversal risk *decreases discontinuously*. The former is because a liberal disposition will no longer be reversed upon review (a conservative one will) and the higher court more frequently reviews liberal dispositions ($\phi^{\ell} > \phi^{c}$). The latter is because a conservative disposition is never summarily reversed.

The preceding has three implications. First, a lower court best-response can be described by a type-specific *cutpoint* $x_L(\cdot)$ that depends on the higher court's strategy. Second, a misaligned lower court always engages in some noncompliance ($x_M(\phi^{\ell};\alpha) < H$), since otherwise the higher court would never review nor summarily reverse the liberal disposition, eliminating his incentive to ever comply. Finally, an aligned lower court always complies ($x_A(\phi^{\ell},\phi^{c};\alpha) \geq H$) since doing so is in both her ideological and reversal-avoiding interest, but may sometimes "pander" by ruling conservatively when the case facts are liberal ($x_A(\phi^{\ell},\phi^{c};\alpha) > H$). Pandering occurs when the probability $(1-\frac{\phi^{\ell}}{\bar{k}})\cdot\alpha$ that a "correct" liberal disposition is *summarily reversed* exceeds the probability $\frac{\phi^{c}}{\bar{k}}$ that an "incorrect" conservative disposition is *reheard and reversed on the merits*.

Lemma 2. *A best response by the lower court is as follows:*

- *A misaligned lower court ($L = M$) uses cutpoint*

$$x_M(\phi^{\ell};\alpha)=\max\left\{M+\left(\frac{\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)\alpha+\frac{\phi^{\ell}}{\bar{k}}}{\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)(1-\alpha)}\right)\epsilon_M,0\right\}.$$

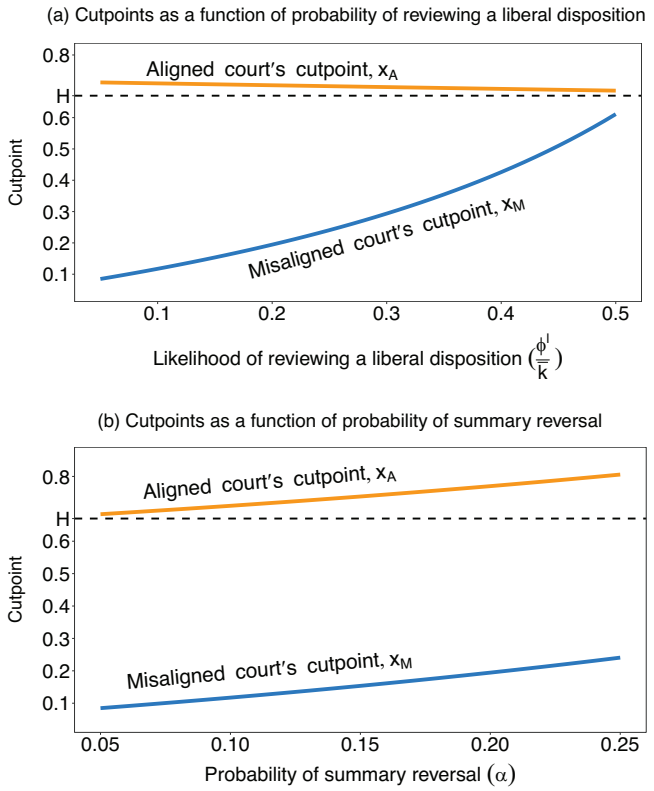

FIGURE 5 The effect of the higher court's strategy on the lower court's cutpoints. *Notes*: The top graph illustrates how the best response cutpoints of an aligned and misaligned lower court change as a function of H's probability of reviewing a liberal disposition (both types comply more as the liberal disposition is more likely to be reviewed). The bottom graph illustrates how these cutpoints change as a function of the probability of summary reversal.

- *An aligned lower court ($L = A = H$) uses cutpoint*

$$x_A(\phi^{\ell},\phi^{c};\alpha)=\max\left\{\min\left\{H+\left(\frac{\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)\alpha-\frac{\phi^{c}}{\bar{k}}}{\left(1-\frac{\phi^{\ell}}{\bar{k}}\right)(1-\alpha)+\left(\frac{\phi^{\ell}}{\bar{k}}-\frac{\phi^{c}}{\bar{k}}\right)}\right)\epsilon_A,1\right\},H\right\}.$$

The effect of the higher court's strategy on these cutpoints illustrates how *review* and *summary reversal* have very different effects on the lower court, as illustrated in Figure 5. *Both* tools increase compliance with a misaligned lower court. However, *only summary reversal* carries the risk of inducing pandering by an aligned lower court.

The higher court's incentives

The higher court makes two decisions after observing the lower court's disposition $d \in \{\ell, c\}$—whether to conduct a full review, and *if not*, whether to summar-

ily reverse. To characterize these decisions, we work backward, analyzing first the decision over summary reversal and then the review decision. As is typical in political agency models, because the higher court cannot commit *ex ante* to her review and reversal strategies, she does *not* take into consideration how the lower court's expectations about her choices might affect and potentially distort his behavior. Rather, she only takes into consideration how her ex post oversight tools can improve final judicial outcomes, given her fixed (equilibrium) beliefs about how much noncompliance or pandering has already occurred.

The summary reversal decision

By Lemma 1, the higher court will never summarily reverse a conservative disposition in equilibrium. After a liberal disposition, she updates her beliefs about *both* the case facts x and the lower court's type L. Recalling that the higher court's net benefit from the liberal outcome is $x - H$, the expected net benefit $\Lambda_H(x_A, x_M)$ of *upholding a liberal disposition* is

$$\begin{aligned}\Lambda_H(x_A, x_M) &= E\left[x - H | d = \ell\right] \\ &= \Pr\left(L = A | d = \ell\right) \cdot E\left[x - H | L = A, d = \ell\right] \\ &\quad + \Pr\left(L = M | d = \ell\right) \cdot E\left[x - H | L = M, d = \ell\right].\end{aligned}$$

The expression has two key ingredients. The first is the probability that the lower court is type $L \in \{A, M\}$ conditional on ruling liberally, $\Pr(L|d = \ell)$. The second is the higher court's expected net benefit from *upholding the liberal disposition* conditional on a lower court of type L having ruled liberally, $E[x - H|L, d = \ell]$. The combination of these factors determines whether summary reversal is a best response. If $\Lambda_H(x_A, x_M) < 0$, the higher court strictly prefers to summarily reverse a liberal disposition. If instead, $\Lambda_H(x_A, x_M) > 0$, summary reversal is *not* a best response for the higher court. Finally, when $\Lambda_H(x_A, x_M) = 0$ the higher court is indifferent.

In the Supplemental Appendix (p. SA-11), we show that $\Lambda_H(x_A, x_M) > (<)(=)0$ if and only if

$$\underbrace{p\left(x_A - H\right)^2}_{\text{pandering effect}} + \underbrace{\left(1 - p\right)\left(H - x_M\right)^2}_{\text{noncompliance effect}} < (>)(=)(1 - H)^2. \tag{4}$$

The higher court's willingness to summarily reverse the liberal disposition is thus determined by the *sum* of the *squared amount* of anticipated noncompliance by the misaligned lower court $(H - x_M)$ and anticipated pandering by the aligned lower court $(x_A - H)$, weighted by the ex ante probability of each type. Thus, the *more* pandering expected from the aligned lower court, the *less* noncompliance the higher court will tolerate from the misaligned lower court. This yields the following best-response characterization.

Lemma 3. *A summary reversal probability, α, is a best response if and only if $x_M < \tilde{x}_M(x_A)$ implies $\alpha = 1$ and $x_M > \tilde{x}_M(x_A)$ implies $\alpha = 0$, where*

$$\tilde{x}_M\left(x_A\right) = H - \left(\frac{(1 - H)^2 - p\left(x_A - H\right)^2}{1 - p}\right)^{\frac{1}{2}} < H,$$

and $\tilde{x}_M(x_A)$ is strictly increasing in x_A.

Lemma 4. *In any equilibrium, $x_M \geq \tilde{x}_M(x_A)$.*

Finally, recall that in equilibrium summary reversal cannot be assured; faced with the certainty of reversal, the lower court would never rule liberally, contradicting equilibrium. This generates a constraint on how much noncompliance can occur in our model as follows.

In contrast to the standard model in which the summary reversal option is absent, in our model the misaligned court must comply at least enough to make the higher court weakly willing to uphold a liberal disposition.

The review decision

Of course, the higher court is not limited to summarily reversing suspicious decisions; she can also conduct a full review by paying a cost k. When doing so, she learns the true case facts, x, and is able to implement her ideal disposition by either affirming or reversing the lower court. What the higher court expects to gain from a full review depends on which disposition the lower court made.

A conservative disposition

A conservative disposition by a *misaligned* lower court will always be compliant, as $x_M < H$ (Lemma 1); any case facts that are sufficiently conservative for him to rule conservatively will be conservative enough for the higher court as well. This property underlies the standard "Nixon goes to China" finding in the judicial auditing literature that the higher court will never review a "counter-bias" decision by the lower court (Cameron, Segal, and Songer, 2000).

This Nixon goes to China result, however, breaks down in our model when an aligned lower court panders $(x_A > H)$. For case facts in $[H, x_A)$, the lower court will rule conservatively—a decision consistent with neither the higher court's preferences nor his own. Pandering thus generates an incentive for the higher

court to sometimes review a conservative disposition as well; the utility from such a review is equal to

$$\phi^c(x_A, x_M) = \Pr\left(x \geq H | d = c\right) \cdot E\left[x - H | x \geq H, d = c\right] = \frac{p\left(x_A - H\right)^2}{2\left(x_A p + x_M(1-p)\right)}.$$

In words, this is the probability that the case facts are actually liberal conditional on a conservative disposition, times the expected net benefit from reversing a conservative ruling under these circumstances. Best response behavior by the higher court requires that she use a review cutpoint $\phi^c = \phi^c(x_A, x_M)$ upon observing a conservative disposition.

A liberal disposition

A liberal ruling by an *aligned* lower court will always be compliant, as $x_A \geq H$ (Lemma 1). The benefit from reviewing a liberal disposition thus derives from the possibility that the lower court is misaligned ($L = M$) and that their decision is noncomplaint ($x \in (x_M, H]$); it is therefore equal to

$$\phi^\ell(x_A, x_M) = \Pr\left(x \leq H | d = \ell\right) \cdot E\left[H - x | x \leq H, d = \ell\right] = \frac{\left(1-p\right)\left(H - x_M\right)^2}{2\left(p(1-x_A) + \left(1-p\right)\left(1-x_M\right)\right)}.$$

This is the probability that the case facts are actually conservative conditional on a liberal disposition, times the expected net benefit from reversing a liberal ruling under these circumstances. Best response behavior by the higher court again requires that she use review cutpoint $\phi^\ell = \phi^\ell(x_A, x_M)$ upon observing a liberal disposition.

RESULTS

We now proceed to the full equilibrium characterization and main results.

Equilibrium without summary reversal

We begin by characterizing necessary and sufficient conditions for an equilibrium in which summary reversal is *not employed* ($\alpha^* = 0$). First observe that $x_A^* = x_A(\phi^\ell, \phi^c; 0) = H$; that is, absent the threat of summary reversal, an aligned lower court never panders. If an aligned court never panders, then the higher court will never review a conservative disposition in equilibrium ($\phi^{c*} = \phi^c(H, x_M^*) = 0$). Her review threshold for the liberal disposition will be determined by the cutpoint $x_M^* < H$ of a misaligned lower court, such that

$$\phi^{\ell *} = \phi^\ell(H, x_M^*) = \frac{\left(1-p\right)\left(H - x_M^*\right)^2}{2\left(p(1-H) + \left(1-p\right)\left(1-x_M^*\right)\right)}.$$

$\phi^{\ell *}$ is strictly decreasing in x_M^*, with $\phi^\ell(H, H) = 0$.

Now recall from Lemma 4 that equilibrium further requires that $x_M^* \geq \tilde{x}_M(H) = H - \left(\frac{1-H}{\sqrt{1-p}}\right)$—that is, a misaligned court lower must comply sufficiently to avoid triggering certain summary reversal of a liberal disposition. This maximum amount of noncompliance then determines the maximum possible review threshold for the liberal disposition, which is $\phi^\ell(H, \tilde{x}_M(H)) = \frac{1-H}{2(1+\sqrt{1-p})}$. Finally, if a misaligned lower court would comply sufficiently to avoid summary reversal at this maximum review threshold, then an equilibrium without summary reversal both exists and is unique; otherwise, it does not. The complete equilibrium characterization is as follows.

Proposition 1. *An equilibrium without summary reversal ($\alpha^* = 0$) exists i.f.f. a misaligned lower court M is more conservative than a threshold $\bar{M} = \tilde{x}_M(H) - \left(\frac{\phi^\ell(H, \tilde{x}_M(H))}{\bar{k} - \phi^\ell(H, \tilde{x}_M(H))}\right) \cdot \epsilon_M$*

$$= \left(H - \frac{1-H}{\sqrt{1-p}}\right) - \left(\frac{1-H}{\bar{k} \cdot 2\left(1+\sqrt{1-p}\right) - (1-H)}\right) \cdot \epsilon_M.$$

Whenever such an equilibrium exists, it is the unique one without summary reversal and satisfies $x_M^* \in (M, H)$, where $x_M^* = M + \left(\frac{\phi^\ell(H, x_M^*)}{\bar{k} - \phi^\ell(H, x_M^*)}\right) \cdot \epsilon_M$.

Intuitively, the existence of an equilibrium without summary reversals depends on whether the ideal cutpoint M of a misaligned lower court is *sufficiently conservative*; this determines how effective full review is at constraining his noncompliance. Notably, whenever an equilibrium without summary reversal exists, it corresponds to the unique equilibrium of the two-player model analyzed in Beim, Hirsch, and Kastellec (2014) without the summary reversal option.[11]

Quite naturally, the required threshold of conservatism $\bar{M}$ increases (i.e., it becomes more difficult to sustain an equilibrium without summary reversal) as H becomes more conservative. It also increases as a misaligned lower court's reversal cost ϵ_M decreases (because full review becomes less effective at constraining his noncompliance), and as $\bar{k}$ increases

[11] This does not preclude existence of additional equilibria in which summary reversal is employed, a point we later return to.

(since full review becomes more expensive in expectation and is therefore employed less). Finally, it is *independent of* the reversal cost ϵ_A of an aligned lower court, since it is the *incentives of a misaligned lower court* that determine whether such an equilibrium exists.

Equilibrium with summary reversal

We now turn to equilibria with summary reversal ($\alpha^* > 0$), beginning with a key result.

Lemma 5. *In any equilibrium with summary reversal ($\alpha^* > 0$), the lower court panders with strictly positive probability.*

The intuition is as follows. If the higher court anticipated no pandering, then she would *never* review a conservative disposition ($\phi^c = \phi^c(H, x_M^*) = 0$). But if the higher court *also* sometimes summarily reverses liberal dispositions ($\alpha^* > 0$) then an aligned lower court will have a strict incentive to pander ($x_A(\phi^\ell, 0; \alpha) > H$), a contradiction.

Summary reversal and pandering are thus inextricably linked in our model; one cannot occur without the other. In a standard judicial auditing model without the summary reversal option, the lower court will *only* be reversed if the higher court learns that his decision was noncompliant via a full review; lower courts, therefore, never face a risk from taking actions *in line* with the higher court's known preferences. Summary reversal introduces the risk that the lower court will be reversed even when he is complying due to the *appearance* that he is not. When the expected sanctions from being summarily reversed outweigh the expected gains from ruling correctly, an aligned lower court will be incentivized to pander.

The construction of equilibria with summary reversal is somewhat more intricate than those without. First, summary reversal cannot be assured ($0 < \alpha^* < 1$); consequently, in any equilibrium with summary reversal, the higher court must be *indifferent* between summarily reversing and upholding a liberal disposition. This constraint pins down all possible pairs of noncompliance and pandering $(x_M^* = \tilde{x}_M(x_A^*); x_A^*)$ with $x_A^* \in (H, 1]$ that are consistent with a summary reversal equilibrium. Finally, both cutpoints must be optimal for the misaligned and aligned-type lower courts, respectively. These constraints yield an equilibrium as follows.

Proposition 2. *An equilibrium with summary reversal and pandering ($\alpha^* > 0, x_A^* > H$) always exists when an equilibrium without summary reversal does not, and may also exist when an equilibrium without summary reversal does. Necessary and sufficient conditions for such equilibria are that $\phi^{\ell *} = \phi^\ell(x_A^*, x_M^*)$, $\phi^{c*} = \phi^c(x_A^*, x_M^*)$, $x_M^* = \tilde{x}_M(x_A^*)$,*

$$x_A^* = \min\left\{H + \left(\frac{\left(1 - \frac{\phi^{\ell *}}{\bar{k}}\right)\alpha^* - \frac{\phi^{c*}}{\bar{k}}}{\left(1 - \frac{\phi^{\ell *}}{\bar{k}}\right)(1-\alpha^*) + \left(\frac{\phi^{\ell *}}{\bar{k}} - \frac{\phi^{c*}}{\bar{k}}\right)}\right)\epsilon_A, 1\right\}, \text{ and}$$

$$x_M^* = M + \left(\frac{\left(1 - \frac{\phi^{\ell *}}{\bar{k}}\right)\alpha^* + \frac{\phi^{\ell *}}{\bar{k}}}{\left(1 - \frac{\phi^{\ell *}}{\bar{k}}\right)(1-\alpha^*)}\right)\epsilon_M.$$

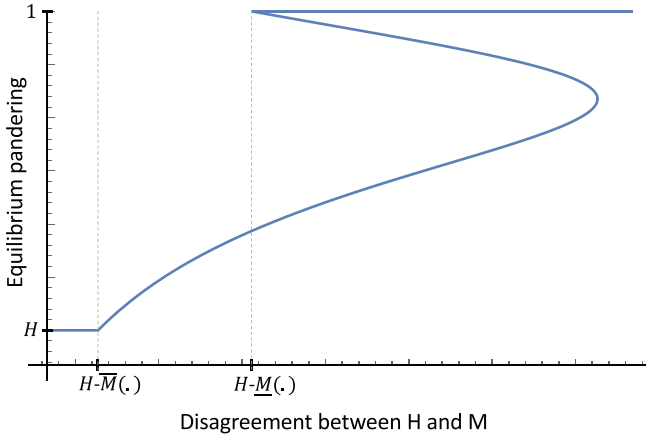

FIGURE 6 Equilibrium pandering cutpoints as a function of M. *Notes*: The line plots levels of pandering consistent with equilibrium; over an intermediate region, three distinct equilibria exist. The figure depicts the (non-singleton) equilibrium correspondence for an example in which $H = \frac{2}{3}$, $p = \frac{3}{4}$, $\bar{k} = \frac{1}{5}$, and $\epsilon_A = \epsilon_M = 1$. The x-axis depicts the level of disagreement between H and M, while the y-axis depicts equilibrium pandering cutpoints.

Equilibria with summary reversal always exist when equilibria without summary reversal do not (i.e., $M < \bar{M}(\cdot)$; see Proposition 1). However, equilibria with and without summary reversal may coexist. Additionally, there may be multiple summary reversal equilibria exhibiting different degrees of pandering.

The reason for this multiplicity is that judicial pandering is potentially *self-reinforcing*. Specifically, more pandering by an aligned lower court triggers more review of conservative dispositions, which disincentives pandering. However, more pandering *also* makes the higher court more willing to summarily reverse a liberal disposition; to avoid guaranteed summary reversal, a misaligned lower court must therefore comply *more*. But this extra compliance can only be incentivized with more summary reversal, which in turn incentivizes yet more pandering. This potential multiplicity is illustrated in an example in Figure 6, which plots the *set* of pandering levels consistent with equilibrium as a function of the *potential disagreement* $(H - M)$ between the higher court and the lower

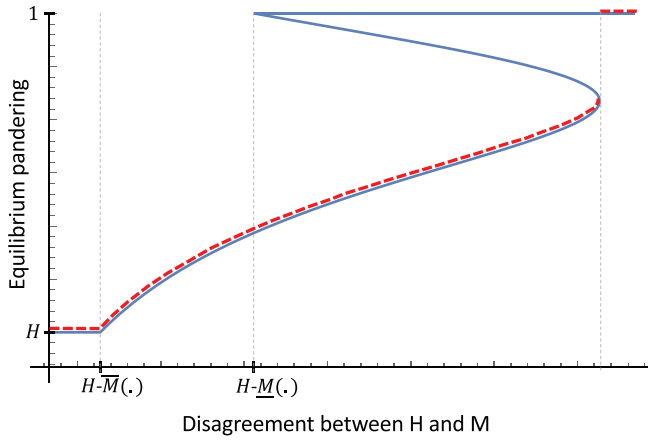

FIGURE 7 Selected equilibrium pandering cutpoints as a function of M. *Notes*: We assume $H = \frac{2}{3}$, $p = \frac{3}{4}$, $\bar{k} = \frac{1}{5}$, and $\epsilon_A = \epsilon_M = 1$. The red (dashed) line indicates our equilibrium selection.

court. For low and high levels of disagreement, there is a single pandering equilibrium. For intermediate levels, there are three distinct pandering equilibria, including one in which an aligned lower court *always* panders.

Comparative statics on pandering

The potential multiplicity of pandering equilibria requires a selection criterion to perform comparative statics; to "stack the deck" against pandering, we henceforth select the equilibrium with the lowest level of pandering in the case of multiplicity. Figure 7 recreates Figure 6 and identifies our equilibrium selection with a red dashed line.

Proposition 3. *Equilibrium pandering x_A^*:*

- increases *when full review becomes costlier in expectation (higher $\bar{k}$),*
- decreases *when a misaligned lower court becomes more conservative (higher M) or experiences higher reversal costs ϵ_M, and*
- increases *when an aligned lower court experiences higher reversal costs ϵ_A.*

We begin with the effect of higher expected review costs (i.e., higher $\bar{k}$). As the expected cost of a full review increases, the higher court becomes less likely to use it and must therefore rely on summary reversal more to ensure adequate compliance. As summary reversal becomes more likely, an aligned lower court will in turn pander more to avoid it. Next, when a misaligned lower court either becomes more conservative (higher M) or fears reversal more (higher ϵ_M), he becomes less willing to engage in noncompliance; in either case, the higher court must rely on summary reversal less to ensure adequate compliance, which in turn disincentivizes pandering by an aligned lower court. Finally, as an aligned lower court fears summary reversal more (higher ϵ_A), he is clearly incentivized to pander more to avoid it.

An interesting implication of the preceding is that equilibrium pandering is affected by the reversal cost of *both* types of the lower court, but in opposite ways. Thus, changing policies or norms on the court to uniformly increase reversal costs (from ϵ_L to $\epsilon_L + \delta$ for $L \in \{A, M\}$) can both *reduce* pandering (when the effect on the misaligned type is dominant) or *increase* it (when the effect on the aligned type is dominant). These competing effects can be seen in Figure 8, which plots equilibrium pandering as a function of a common reversal cost $\epsilon = \epsilon_M = \epsilon_A$ and shows that pandering first increases and then decreases in this cost.

Summary reversal and higher court welfare

Using summary reversal simultaneously improves compliance by a misaligned lower court and exacerbates pandering by an aligned lower court. However, because the higher court lacks the ability to commit ex ante to a "judicial rule" governing her review and reversal strategies, she is unable to internalize the effect of her *ex post* oversight behavior on the lower court's *ex ante* incentives.[12] Given this, it is natural to ask whether the higher court's access to summary reversal can ultimately harm her—and if so, when and why.

The higher court's expected utility in the model both with and without the summary reversal option may be calculated *as if* she will never use it (since in an equilibrium of the model with summary reversal, she will strictly or weakly prefer not to). It is thus

$$EU^H = \Pr(d = \ell) \cdot \left(E[u(x, H, \ell) | d = \ell] + \int_0^{\phi^\ell} (\phi^\ell - k) g(k) dk \right)$$
$$+ \Pr(d = c) \cdot \left(E[u(x, H, c) | d = c] + \int_0^{\phi^c} (\phi^c - k) g(k) dk \right)$$

with the appropriate equilibrium quantities substituted in. It is helpful to decompose this expression into components that derive from *the quality of the lower court's decisions*, and components that derive from the *benefits of employing full review*. Algebraic manipulation (see pp. SA 17–18 in the Supplemental Appendix)

[12] This resembles electoral accountability models where pandering occurs because the representative voter's interim-optimal reelection rule distorts the incumbent's ex ante incentives.

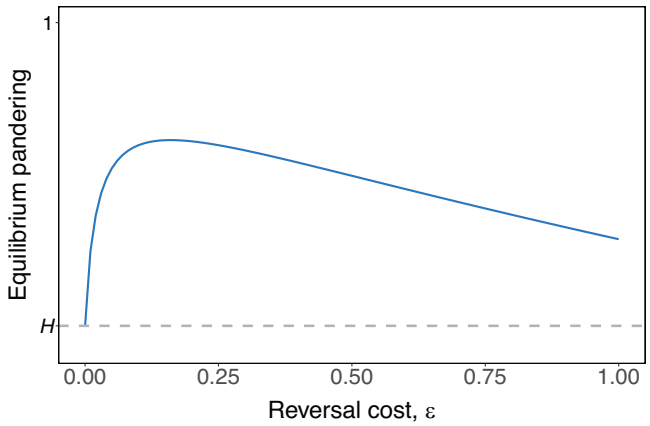

FIGURE 8 Selected equilibrium pandering cutpoint as a function of $\epsilon = \epsilon_A = \epsilon_M$. *Notes*: We assume $H = \frac{2}{3}, p = \frac{1}{2}, \bar{k} = 1,$ and $\epsilon \in [0, 1]$.

yields that EU^H is proportional to

$$\begin{aligned} E\tilde{U}^H &= (1-H)^2 - \left(p(x_A - H)^2 + (1-p)(H - x_M)^2\right) \\ &\quad + H^2 - \left(p(x_A - H)^2 + (1-p)(H - x_M)^2\right) \\ &\quad + \frac{2}{\bar{k}}\left(\Pr\left(d = \ell\right) \cdot \left(\phi^\ell\right)^2 + \Pr\left(d = c\right) \cdot \left(\phi^c\right)^2\right). \end{aligned} \tag{5}$$

The first line is the expected benefit of upholding a liberal disposition and is equal to $2\Pr(d = \ell)\Lambda_H(x_A^S, x_M^S)$. The second line is the expected benefit of upholding a conservative disposition. The final line is the expected benefit from using a full review. To compare equilibrium utility between the two models, we henceforth index quantities as follows: let N denote quantities from the unique equilibrium of the model without the summary reversal option, and let S denote quantities from the lowest pandering equilibrium of the main model.

Clearly, a *necessary* condition for utility to differ between the two models is that summary reversal is actually *used* in the model where it is an option; recall that this is the case if and only if $x_M(\phi^\ell(H, \tilde{x}_M(H)); 0) < \tilde{x}_M(H)$ (i.e., a misaligned lower court's best response to the maximum frequency of review elicits summary reversal). It is then straightforward to show that $x_M^N < \tilde{x}_M(H)$ (i.e., the higher court would actually *want* to employ summary reversal in the equilibrium of the model where it can't), implying that

$$\begin{aligned} &2\Pr_N\left(d = \ell\right) \cdot \Lambda_H(H, x_M^N) \\ &= (1-H)^2 - \left(p(x_A^N - H)^2 + (1-p)(H - x_M^N)^2\right) \\ &= (1-H)^2 - (1-p)(H - x_M^N)^2 < 0. \end{aligned}$$

In contrast, when summary reversal is used in equilibrium, the higher court must be *indifferent* over doing so, implying that $x_M^S = \tilde{x}_M(x_A^S)$ so that

$$\begin{aligned} &2\Pr_S\left(d = \ell\right) \cdot \Lambda_H(x_A^S, x_M^S) = (1-H)^2 \\ &\quad -\left(p(x_A^S - H)^2 + (1-p)(H - x_M^S)^2\right) = 0. \end{aligned}$$

Comparing the preceding expressions yields our first key insight; that the higher court's access to summary reversal *always* results in better lower court decision-making *on average*, because the pandering of an aligned lower court is perfectly counterbalanced by the increased compliance of a misaligned lower court. Any potential harm from summary reversal must therefore derive *not* from worse lower court decision-making, but rather from the effect of pandering on the value of full review. This insight yields the following straightforward result.

Proposition 4. *Holding the other model primitives fixed, the higher court is strictly better off with the summary reversal option if a full review is sufficiently costly ($\bar{k}$ sufficiently high).*

If a full review is sufficiently costly, any potential welfare effects of summary reversal will be dominated by the favorable effect on the expected accuracy of lower court decision-making.

Having established a simple sufficient condition for when access to summary reversal is unambiguously beneficial, we next state a simple sufficient condition for it to be harmful.

Proposition 5. *The higher court is strictly worse off with the summary reversal option when* both *the higher court is not too conservative (low H) and a misaligned lower court is sufficiently liberal (low M).*

The first condition—that the higher court is not too conservative—bounds the harm that the higher court may suffer from worse lower court decision-making absent summary reversal. The second—that a misaligned lower court is sufficiently liberal—ensures that the higher court will use summary reversal "too much" when it is available relative to its limited benefit. Figure 9 compares higher court equilibrium utility in the model with and without access to summary reversal, in an example where H is not too conservative and M is quite liberal.[13] When expected review costs are sufficiently low, the higher court is strictly worse off with access to summary reversal, whereas when they are sufficiently high ($k \to \infty$) she becomes

[13] The parameter values used for lower court cutpoints correspond to a partial pandering equilibrium satisfying our selection criterion.

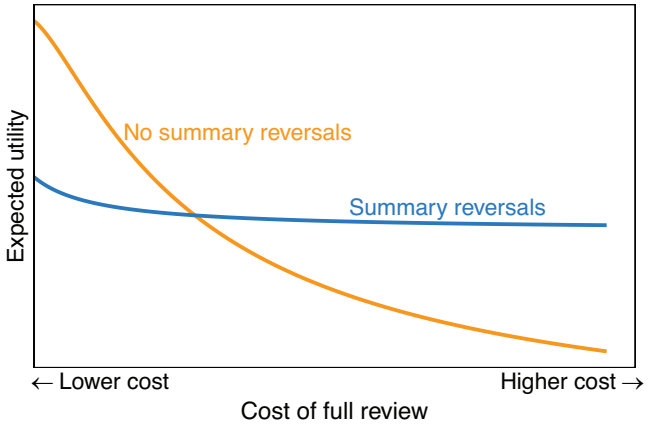

FIGURE 9 Higher court expected utility as a function of $\bar{k}$, with and without access to summary reversal. *Notes*: We assume $H = \frac{2}{3}, p = \frac{3}{4}, M = 0,$ and $\epsilon_A = \epsilon_M = 1$.

strictly better off. Under these conditions, full review becomes relatively ineffective at both improving lower court compliance and at error correction; the benefits of summary reversal, therefore, outweigh the costs of degrading the value of full review.

DISCUSSION AND CONCLUSION

Unlike most superiors in hierarchical organizations, the Supreme Court has very few formal tools with which to compel compliance by lower courts. Given this reality, most existing theories of the judicial hierarchy have focused on the lower courts' fear of reversal, combined with strategic auditing, as the main avenue by which the Supreme Court can instill compliance among their agents in the federal judiciary. To be sure, our theory is an extension of, and not a full departure from, formal theories in this tradition. Our contribution, however, lies in modeling the multiple modes of review that the Supreme Court has in choosing to oversee lower courts—in particular, the availability of summary reversal—and how the choice of these modes may create some unforeseen incentives for lower court judges.

Our specific insights are twofold. First, summary reversal can increase compliance by an ideologically misaligned lower court, on top of what is gained from the threat of granting cert and conducting "full" review. Second, summary reversal can induce pandering by an ideologically aligned lower court. This occurs because the higher court is uncertain of the lower's court exact preferences, and so in some instances may summarily reverse the lower court's decision even though the two actually share the same dispositional preference given the case facts. Accordingly, to head off this possibility, in a subset of cases, an aligned lower court will choose a disposition that neither it nor the higher court prefers.

This pandering effect has important implications for understanding higher court–lower court interactions. A robust finding in the judicial auditing literature is the "Nixon Goes to China" effect, first detailed in Cameron, Segal, and Songer (2000)—that the Supreme Court should never review a "counter-bias" lower court decision because she can infer that it is definitely compliant. In the presence of both summary reversals and uncertainty about the degree of lower court's bias, however, the Nixon Goes to China effect breaks down—the higher court may no longer be sure that counter-bias decisions demonstrate compliance rather than pandering, despite being certain that the lower court is *at least as liberal* as she is.

A secondary consequence of the potential for pandering is that the availability of summary reversal can actually *hurt* the higher court, even though it provides a "cheaper" way to reverse potentially noncompliant decisions. Importantly, pandering does not *directly* harm the higher court via worse lower court decision-making, as any pandering by an aligned lower court is balanced out by increased compliance by a misaligned lower court. Instead, it *indirectly* harms the higher court by degrading the value of full review. As full review becomes a costlier and less valuable tool, access to summary reversal always benefits the higher court. However, when the cost of a full review is relatively low, the higher court is sometimes better off without access to summary reversal.

Turning from the abstraction of the model to the realities of the current-day politics of the U.S. Supreme Court, our model provides micro-foundations for much of the prevailing wisdom of the costs and benefits of the Court's exercise of summary reversals. On the benefits side, the Court's problem when it comes to case selection can be seen as one of management: every year, it is asked to review thousands of cases but has the capacity (or, more accurately, the will) to give full review to fewer than 70 of them each term. At the same time, given preference heterogeneity in the lower courts, a significant amount of those decisions may indeed be noncompliant, thereby increasing the attractiveness of summary reversal. As Hemmer (2013, p. 213) argues, summary disposition "allows the Court … to dispose of more cases with less effort, to correct egregious legal errors when they arise, and to preserve the Court's limited resources for cases that present novel legal problems."

On the costs side, many legal scholars have criticized the Supreme Court's use of summary reversal on the grounds that it leads to suboptimal decision-making. One line of criticism focuses on the Supreme Court's legitimacy; Baude (2015, pp. 4–5), for example, argues that "non-merits orders do not always live up to the high standards of procedural regularity set by its merits." A second line of criticism focuses on the effects of summary reversal on the development of law. Decisions made using the shadow docket

often lack any explanation of the Court's rationale. As some justices now consider these decisions binding precedent, lower courts are tasked with applying the will of the Supreme Court without a full explanation of what the Court wants. Chen (2020, pp. 703–704), for example, argues that when the court engages in summary reversals, it "does so without the benefit of the full adversarial process," as "[c]ertiorari petitions and opposition briefs are supposed to be about whether a case warrants discretionary review and not primarily about the case's merits." Likewise, dissenting in a 2025 shadow docket decision regarding the Trump administration's termination of federal education grants, Justice Kagan wrote, "The risk of error increases when this Court decides cases—as here—with barebones briefing, no argument, and scarce time for reflection."[14]

Indeed, in line with Kagan's criticism, our explanation of the costs of summary reversal is grounded not just in its effect on other actors (as with concerns about legitimacy and lower court implementation) but also on the decision-making of the Court itself. While our model abstracts away from the adversarial process as such, it does illustrate how the Supreme Court will sometimes reach the "wrong" result—from its perspective—because it does not fully learn the case facts when engaging in summary reversal. At the same time, our theory points to a more subtle way in which the presence of summary reversals distorts the incentives of lower court judges. Because lower court judges can never be sure if a given case is one in which the Supreme Court might exercise summary review, they have to weigh that possibility when they make their decision. As we document above in discussing the existence of pandering, the possibility of summary reversal can lead lower court judges to sometimes rule against both their preferred disposition as well as that of the Supreme Court. While, of course, we cannot say whether these costs outweigh the benefits of summary review, our model points to a heretofore unintended mechanism that further adds to the costs ledger.

Looking forward, much work remains to understand the Court's use of the shadow docket more broadly and of summary reversals in particular. Empirically, most work on the shadow docket has focused on one particular type of decision (e.g., summary reversals, stays, injunctions) during the Roberts Court. While this is understandable, it would be worthwhile to take a more longitudinal approach and examine how the quantity and quality of summary reversals have varied over time as the Court has gained more control of its docket.

From a theoretical perspective, there are several opportunities for further research. First, in our model, the higher court effectively "overuses" summary reversal relative to what would be optimal if she took the cost of pandering into consideration, because she lacks the ability to commit *ex ante* to an ex post oversight strategy. It would be interesting to examine how a higher court with such an ability would craft a reversal strategy that optimally balances the benefit of summarily reversing suspicious lower court decisions against the costs of pandering. Further, while higher courts likely lack this ability to fully commit to their future behavior, they certainly appear to try in a limited way by making verbal commitments to certain norms or judicial doctrines, or both. For example, prior Supreme Courts have attempted to obey a norm of "taking at least six votes to agree to such a summary disposition" and to reserve such dispositions "for cases in which the lower court clearly and egregiously erred" (Vladeck, 2023, p. 87). It would be interesting to consider an extension of our model in which the higher court has such tools of limited rather than full commitment through which they can take into account the cost of pandering—perhaps an ability to reverse with respect to a threshold that differs from their underlying ideology, or to limit the frequency of summary reversal. Similarly, it would be interesting to examine a setting of repeated interactions between the higher and lower courts, in which such partial commitments could arise endogenously and be sustained by lower court "punishments" should they be violated.

Second, as discussed earlier, one criticism of summary reversals is that they adversely affect the development of the law. Decisions made using the shadow docket often lack explanation of the Court's rationale—as some justices now consider these decisions binding precedent, lower courts are then tasked with applying the will of the Supreme Court without a full explanation of what it wants (Vladeck, 2023). While such considerations are beyond the scope of our model, it would be interesting to examine the adverse effects of incomplete summary reversal opinions on lower courts' subsequent attempts to faithfully and accurately implement the will of the Supreme Court.

[14] Department of Education v. California et al. (2025).

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