Were the Federal Courts Biased Against Trump? An Analysis of the Trump Administration's Failure through the Courts

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Abstract

This paper will analyze the possible factors of President Donald Trump's low success rate in the federal courts concerning administrative policies. Whereas Trump's predecessors were successful about 70 percent of the time due to the deference courts generally grant administrations, Trump's success rate hovered at approximately 25 percent. The author used a binomial regression to test for bias among the judiciary, finding that even if some bias is present, it is not the only relevant factor. Additional factors are discussed, including the increase in Republican judicial appointments over Trump's term and the Supreme Court's influence on lower courts. The third factor discusses the violation of administrative procedures among Trump's policies, reflective of many of Trump's own behaviors.

Introduction

One of the central underpinnings of American democracy is the concept of checks and balances. A large portion of the U.S. Constitution delineates the powers of the three branches of the federal government, ensuring that no single branch has too much power. The rules set by the Constitution make it clear that no one person, even the President of the United States, can legislate for millions of Americans: Congress produces the rules, the president ratifies them, and the courts determine whether the rules are legal (Cornell).

Upon Donald Trump's ascension to the Oval Office in January 2017, many of the accepted norms were abandoned. From publicly polarizing comments, such as the one in response to the Charlottesville attack (Phelps 2019), to firing multiple inspectors general acting as watchdogs over the administration (Kirby 2020), norms that had governed presidents for decades in the past were disregarded over Trump's four-year reign. However, Trump served as the head of a larger network, the Executive Branch of government, that implemented much of his

vision, or at least attempted to do so. This includes the 15 Cabinet departments and over 200 federal agencies (US Gov't Manual 2015). The president has control over these agencies and leads them, directly or indirectly, in pushing forward policy.

From the outset of the Trump administration, the president made it clear his goal was to deregulate. Within his first month in office, Trump issued an executive order stating that "for every one new regulation issued, at least two prior regulations be identified for elimination (Executive Order 13771)." At the end of that year, he held a red tape event at the White House, promising to reduce the number of federal regulations to 1960 levels, approximately one-ninth of the size at the time (Khimm 2017). Given the polarized and deadlocked state of Congress, controlled by the Republican Party through much of Trump's administration, it seemed that most of the country's legislation would stem from the White House regardless. As it happened, though, the Judicial Branch would have its input, blocking Trump's administrative policies on numerous occasions.

Given Trump's assertion of utilizing his power, along with the notion that there is a certain amount of flexibility afforded to administrative action (Barnett et. al. 2017), the courts' seeming success is striking. Given Trump's substantive media presence, the idea that the media may influence judiciary decisions (Pujol 2016), and the personal and ideological opinions of judges indicate it may be possible that there would be some bias against the Trump administration.

This paper will explore the Judicial Branch's, specifically the federal court system's, response to Trump's administrative policies. It will begin by touching on the background of administrative action and its scope throughout United States history. Following this background will be an analysis of potential bias against the Trump administration, based on party affiliation

and different federal court levels, as well as whether there was any bias in specific policy areas, such as environmental or immigration policy. This study is based on a collection of legislation of over 250 cases against the Trump administration. The results of this study will indicate that although there may have been a bias against Trump on a partisan level, there are other factors, primarily the digression of standard procedure, which ultimately accounted for the administration's failure in the courts.

Together, this narrative will not only paint a picture of the power of the courts in maintaining the system of checks and balances but also provide a clearer picture of the Trump administration and its goals. Both bias and the lack of following procedure have a common cause: Trump's impulsive and impatient behavior that strongly influenced the administrative policies, which ultimately led to his administration's poor record in the courts.

History of Administrative Action

The Executive Branch has extended beyond just the role of the president since the founding of the United States. As part of its Constitutional duty of "organizing the executive and judicial branches", Congress created the Departments of State, Treasury, Navy, and War. Over the course of the next century, as the country grew both geographically and numerically, the government's duties increased as well, leading to a proliferation of departments to report to the president (Center for Effective Government 2015). The formal role these non-presidential Executive Branch actors played in instituting policies, though, is unclear; only upon the creation of regulatory commissions, starting with the Interstate Commerce Commission, was the concept of administrative law— mainly rules, which are utilized by agencies as a way to implement polciies (Thrower 2017)— formalized (Woolhandler 1991). Even before that point, there were limitations to what constituted acceptable behavior from the Executive Branch. The Treasury

Department, for example, began publishing its custom duties in 1868, for public viewing, after accusations of abuse and corruption because of the spoils system (Center for Effective Government 2015). This led to the major reform of administrative action, with two events of the twentieth century becoming key moments in the shaping of such action.

Formation of the APA

The first begins with Franklin Roosevelt's New Deal in the 1930s. In order to effectively and aggressively address the issues brought about by the Great Depression, federal agencies, as part of the Executive Branch, exerted a lot of control over governmental policies, with little given reasoning for their actions. A notable example is when the head of the Federal Emergency Relief Administration, an agency created as part of the New Deal, was asked about the criteria he used to make decisions and allocate funds, he would not disclose the information (McNollgast 1999). This resulted in Roosevelt's Republican rivals utilizing the judiciary to limit the number of administrative proposals enacted, leading to the renowned court-packing controversy at the end of the century (Murphy 1964).

Despite a couple of attempts to reform the procedure of passing administrative laws, it wasn't until 1946— after World War II ended and Harry Truman became president— that the reform would come (McNollgast 1999). With times of major crisis in the past, the Democratic Party did not believe Truman would have the same gravitas as Roosevelt regarding pushing certain policies to the masses (Elias 2016). Additionally, the party was concerned that the Republican Party would take over Congress in the coming year's elections and eventually reclaim the White House. If that was the case, the Democrats believed the Republicans would strip down as much of the New Deal policies as they could (Ibid). This led to the bipartisan support of the Administrative Procedure Act ("APA"), which would formalize the process of

federal government actions, which continues to set the parameters of executive power. By limiting the changes administrations could make on a wide range of policies, the APA served to legitimize administrative action more than before (Ibid). Now, administrative action could be performed within parameters that Congress, the legislative body, theoretically agreed to.

Strong Presidential Power

The second event took place during the administration of President Ronald Reagan. The period following the passing of the APA was a time when, although federal agencies managed to still enact policies, the president's control over such actions was minimal. Over the following decades, presidents gradually started to add controls and review processes to manage the executive rules being set. Notable among these presidents was Richard Nixon, who, for his second term in office, set out to take control over the bureaucratic agencies under him by expanding the number of White House staff, in order to have more politically aligned employees (Nathan 1983).

Reagan, whose presidency spanned almost the entire 1980s, would be the one to truly shift federal agencies into implementing presidential policy. Like Nixon, he appointed staff to bureaucratic agencies that would align with his political and ideological beliefs; the scale at which Reagan would do it was unprecedented, both in size and in success (Kagan 2001). Additionally, Reagan issued two executive orders that would enlarge the president's influence over agency policies. The first, issued less than a month into his first term, was intended to "increase agency accountability for regulatory actions" and "provide for presidential oversight of the regulatory process (Executive Order 12291)." The purpose of this action was to route all proposed administrative action towards the president— specifically, the Office of Management

and Budget— before it was officially established as policy, thereby having the president serve as a filter for policies that he favored.

The second executive order, issued four years later in 1985, required any agency subject to the above requirement to submit each year "a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions underway or planned (Executive Order 12498)." The purpose of such an order was to preempt any issues pertaining to the first executive order: the president could now influence federal agencies in advance of the proposals they submit and keep all agencies in line with their policy agenda (Kagan 2001). Policies that promoted presidential oversight over the federal agencies under their auspices were promoted further by President Bill Clinton. This set the stage for what scholars believe is strong presidential power over the federal agencies and the policies they pass (Ibid).

Judicial Review

The effects of these developments are pertinent to administrative action today. One of the essential aspects of the APA was the formulation of judicial review upon administrative action. Section 10 of the APA states that for any agency action applicable under the APA, "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review (APA 1946)." Although judicial review on administrative action had already existed for decades, this established the protocol as statute. The APA indicated that the final line of defense was not the president, but rather the courts, who could strike down any law they found to be arbitrary and capricious (Elias 2016).

Historically, the practice of judicial review has not proven to be a barricade to presidents in enacting policy. In fact, in the period following the strengthening of the president's effect on administrative action, their administration has succeeded in over 70 percent of court challenges to proposed legislation (Barnett et. al. 2017). A substantial factor in this statistic is the court's heavy usage of the open interpretation allowed to the Executive Branch from the Supreme Court case of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984). The case dealt with an EPA ruling, based on the amended Clean Air Act, that permitted power plants to install new equipment, whether or not it met the Clean Air Act standards, as long as total emissions from the plant did not increase as a result. The question before the Court was whether this was a reasonable interpretation of the term "stationary source", the relevant aspect of the statute. The Court ruled that it was a reasonable interpretation of the statute, reversing the Appeal Court's decision. The premise for this ruling was Justice John Paul Stevens' decision that, if Congress has not directly addressed an issue, "the question for the court is whether the agency's answer is based on a permissible construction of the statute (*Chevron* 1984)." The *Chevron* deference, as this doctrine became known, put aside any interpretation court judges may have regarding any administrative action. Rather, the basis for which courts would judge such proposed statutes, unless Congress addressed the issue, would be based on a reasonable interpretation. For this reason, *Chevron* has been one of the most cited court cases over the past 40 years (Barnes 2015)

Given this deference, it is hard to understand the lack of success that Donald Trump had in the courts. Some counts of his win rate in federal courts deem it to be lower than 20 percent (Pries et. al. 2020). Trump himself conceded his lack of success in the courts, tweeting, "Courts in the past have given 'broad deference'. (sic) BUT NOT ME (Wagner 2020)!" Given the mass

media complaints and accusations against Trump, it may be reasonable to infer that there was a bias toward Trump from the judges throughout the federal court system.

The Trump Effect

An important aspect of this discussion is the degree to which Trump had influence over his administration. While 21st-century presidents have a stronger grip on their administration than their predecessors, the heads of executive departments and federal agencies may be more accustomed to the rules. Potentially, they could write rules that satisfy Trump's agenda while meeting the APA standards. Additionally, many of these federal agencies are independent agencies, which are agencies that do not report directly to the president. As explained by the Supreme Court in the 1935 case *Humphrey's Executor v. United States,* an independent agency "must be free from executive control." Although some independent agencies, such as the EPA (one of the most challenged agencies in federal court), are led by a single, president-appointed head, other independent agencies are typically controlled by a board or commission that equally split the power. This, coupled with the staggered term limits the board or commission members serve, restricts the influence the president has over these agencies (Longley 2021).

However, the evidence points to Trump's heavy influence over the content of administrative policies. Often, cases arose over policies that stemmed from a Trump executive order. For example, Trump issued Executive Order 13942, which directed the Secretary of Commerce to ban any transaction with ByteDance Ltd., the Chinese company that created TikTok, in the interest of national security. The Secretary of Commerce implemented this directive by banning application stores from allowing users to download or update TikTok; this ban was challenged in a district court for violating the APA and another statute, the International Emergency Economic Powers Act, which served as a foundation for the executive order and

subsequent ban. The court subsequently accepted both these challenges and reversed the ban (*Tiktok Inc. v. Trump* 2020).

Additionally, some of Trump's actions outside the official presidential mechanisms served as clear directives to the rest of the Executive Branch, upon which various agencies acted. In granting an injunction against a Department of Homeland Security policy that ended the Temporary Protected Status of individuals from several countries, a district court judge found that Trump put pressure on the department to end the program. Furthermore, the judge found that a motivating factor in this policy was Trump's "animus against non-white, non-European immigrants," evidence that allowed the court to say the policy violated the Equal Protection Clause (*Ramos v. Nielsen* 2018).

Trump's infamous use of Twitter also indicates his heavy involvement in enacting policy. The Department of Defense's policy that banned transgender individuals from enlisting in the military solely based on that status, eventually overturned in *Stockman v. Trump*, was preempted by a Trump tweet stating, "After consultation with my Generals and military experts,...the United States Government will not accept or allow...Transgender individuals to serve in any capacity in the U.S. Military (*Stockman v. Trump* 2017)."

All these episodes serve as evidence that, although this discussion concerns the Trump administration that staffs thousands of individuals, hundreds of whom are involved in making national policy decisions, there is little way to disconnect Trump's effect on each part of the administration. Trump and his administration are interconnected and while Trump's behavior posed a challenge to many norms throughout the country, the judiciary has been accustomed to setting the boundaries on what is considered proper administrative action.

This ability of the court, however, has been balanced by the deference that the courts generally grant to presidential administrations. The anomaly of the Trump administration's success in the courts, compared to other administrations, is too striking to be attributed to happenstance. Compared to other presidents, Trump was unpopular, both among the general population and the media. His average approval rating throughout his presidency was 41 percent, four percentage points lower than any other president over the past 75 years (Gallup 2021). Among the media, approximately 90 percent of their statements on Trump were negative (Perkins 2017). The media's anti-Trump stance was apparent enough that former president Jimmy Carter, himself the victim of the media's disparaging comments, thought that "the media [had] been harder on Trump than any other president (certainly) that [he's] known about (Dowd 2017)."

As the vitriol against Trump existed in substantial and influential portions of the population, perhaps it is the case it existed among the federal judiciary as well. An explanation for Trump's low success rate in the courts could be that there was a bias against Trump in the courts, and just as Trump's reputation among the general population and the media was low relative to his predecessors, his standing among the courts also could have been relatively low.

Study Design

To determine whether a bias among the federal judiciary was the reason for the Trump administration's low success rate in the courts, it is necessary to conclude that certain variables had a demonstrable effect on a case's outcome.

As a base for the data set of federal court litigation against the Trump administration, I used the "Trump-Era Agency Policy in the Courts" roundup published by NYU School of Law's Institute for Policy Integrity ("IPI"), which tracked the Trump administration's record on

litigation throughout his presidency. A couple of modifications were made to support the purposes of this paper, which looked to track the effect of the courts, rather than the litigation. I discounted litigation that was not ruled on in court. On numerous occasions, after being challenged for a given violation, the accused agency would acquiesce and rectify the issue. For example, in the case of the *Natural Resource Defense Council v. Zinke*, the U.S. Fish and Wildlife Services withdrew their rule that reversed a previous standing policy blocking elephant and lion trophy imports, after they were sued by the NRDC. Since the case was not adjudicated, it does not assist our understanding of the court effect.

Conversely, IPI only counted the final decision on a piece of litigation that was made during the Trump administration. This often disregarded the opposing conclusions that the different court levels would reach. For example, IPI includes the case of *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania* (2020), where the Supreme Court ruled in favor of the Department of Health and Human Services' religious and moral insurance exemptions for contraceptives. However, it does not include the lower court case which was reversed, *Pennsylvania v. Trump* (2017). Even regarding the same case, courts ruling different decisions influences the outcome of the study. However, I did not include the same case being ruled in different courts when the outcome was consistent across the courts. Given the strength of precedent and the expectation that a court is unlikely to overturn a decision made on a reasonable basis, it would be difficult to get a realistic view of bias if every decision on a case is counted. There would be little space to differentiate between a decision being made based on fact and a decision skewed by precedent.

Ultimately, the data set included 223 cases ranging from March 2017 to January 2021, the duration of the Trump presidency. Using the aforementioned cases, I performed a binary

linear regression to test the effect certain variables had on the outcome of each federal court decision.

Dependent Variable

Only one dependent variable was necessary for the purposes of the study: whether the Trump administration "won" or "lost" the case. In nearly all cases in the study, Trump or the accused agency served as the defendant of the case.[1] If the court ruled in favor of the defendant, Trump "won" the case; if the court ruled in favor of the plaintiff, he "lost" the case. The decisions made are often more nuanced than an absolute decision in favor of one party. A court can grant some of the plaintiffs' claims while denying others. In such a case, a loss was determined only if the key aspect of the action was struck down, or if the claims in favor of the plaintiffs were claims against specific portions of the action in question. Otherwise, given the deference afforded to federal agencies, the case was designated as a win. Trump was designated to win 56 cases, out of 223, for a court success rate of approximately 25 percent.

To calculate the regression, I marked all cases where Trump lost as a "1" and all cases where Trump won as a "0".

Independent Variables

The main independent variable tested was the party affiliation of the adjudicators in each case. This was determined by the party affiliation of the president that nominated the judge to their post. In the case of magistrate judges, who are voted in by the judges of their district rather than the president,[2] the decision was made either by seeing if they had been elected to a different post by a president or by tallying the majority party of federal district judges in the given district. In cases decided in a district court, where only one judge rules on the case, their party is the sole

[1] The opposite applies in the few cases where Trump or the accused agency served as the plaintiff
[2] For this reason, IPI lists cases decided by magistrate judges as "N/A"

factor involved. In cases on the Appeals Circuit, the determination was made based on the party of the majority of the three judges ruling.[3] In Supreme Court cases, the liberal and conservative factions typically split, so the faction issuing the majority was determined to be the affiliation of that decision.

Given the presumption that a Democratic judge would be more likely to rule against the Trump administration than a Republican, all cases considered to be adjudicated by Democrats were marked as a "1" and all cases considered to be adjudicated by Republicans were marked as a "0". If the regression resulted in a positive number, it would indicate whether a given judge being a Democrat influenced the outcome of the case, and the number would indicate the extent of that effect. A negative result would indicate the opposite.[4]

The study will test to see whether the level of court influenced the decision. At the district court level, where the case is being ruled on by a single judge, it seems more likely that ideological leanings might impede on the decision, as opposed to the Court of Appeals, which has more balance with more judges involved in each case. As the study did not include as many Supreme Court cases as with the other two levels, its effect was excluded from this test. Cases that were adjudicated on the district court level were marked with a "1", while cases adjudicated in the Court of Appeals were marked with a "0".

Finally, the effect of litigation regarding two policy categories were determined as well: environmental policy and immigration policy. By category, the most challenged policy over the course of the Trump administration was environmental policy. There are several reasons for this, ranging from the multiple departments and agencies that handle a wide breadth of cases

[3] There were split cases, where the dissenting judge was a member of the non-majority party. Those dissents were not incorporated into the study.
[4] The applicable standard deviation was added for each outcome in the study

(Crowley 1987) to the issues being consistently "politically salient" (Thrower 2017). While the number of cases related to immigration policy was not as high as environmental policy, the notoriety of such cases eclipsed all other categories. For these cases, I simply tested the percentage, as well as repeated the analyses done above for each categorical subset.

Results

Court Effect on Trump Administration Policy

Tested Variable	Ratio	Percent Win	Decision
Party:	0.6278 (Democrats/ Total)	*N/A*	.2619 (.0604)
Level:	0.7005 (District/Tot-al)	*N/A*	.1316 (.0672)
Envrionment	0.5067 (Env. Cases/Total)	0.3001	*N/A*
Party:	*N/A*	*N/A*	.3951 (.0848)
Level:	*N/A*	*N/A*	—.0882 (.0923)
Immigration	0.1525(/Tot-al Cases)	0.0588	*N/A*
Party:	*N/A*	*N/A*	.0711 (.0934)
Level:	*N/A*	*N/A*	.2155 (.1255)

The study indicates a slight bias in viewing court outcomes both from the perspective of the judges' political alignment and the level of the adjudicating court. There is stronger causation on the party level, which does seem to indicate that there was some degree of Democratic bias against the Trump administration. The data indicates that for every decision that was adjudicated by a Democrat, there was an approximately 26 percent greater chance the decision would go against Trump. The effect of the court level was much less statistically significant, being that a negative result for the Trump administration was 13 percent more likely to come from the district court.

For the two analyzed policy categories, the court's effect, in fact, differed for each category. Although the likelihood of success in environmental policy was close to Trump's overall court success rate, the party alignment effect was just shy of 40 percent, indicating that party alignment had a large effect on environmental policy decision outcomes. For immigration policy, Trump's success rate was a staggeringly low 5 percent and party alignment did not have much of an effect. However, the effect of the court level was higher than any other tested variable.

However, while a case can be made that there was a federal court bias against the Trump administration, particularly on a party level, the evidence does not point to bias being the only factor involved. Presidents, on average, win 70 percent of their cases: if a bias along party lines had a direct 26 percent effect on their win rate, the result would be they would still win 55 percent of their cases, demonstrably higher than Trump's 25 percent success rate. Had bias been the only factor involved, the study would have displayed a much greater effect. While bias is not ruled out, there are other factors present in the Trump administration's poor record in the courts.

Increased Republican Presence

One noticeable trend of the litigation regarding Trump's administrative actions is that most of Trump's successes in the courts came towards the end of his administration. The second half of the administration had a court success rate close to 29 percent, significantly higher than the 12 percent success rate in the first half of Trump's administration. There are three possible causes that play a role in Trump's "increased" second-half success.

The first of these is the greater number of Democratic judges adjudicating at the beginning of Trump's term than at the end. One of the most powerful features of the U.S. president is the Constitutional authority to appoint judges to all levels of the federal judiciary, including the Supreme Court. Particularly in today's modern, hyper-partisan political climate, a key criterion for selecting judges is based on party and ideology, as those judges are more likely to align with their policies (McMillion 2022). As the study indicates, there is a level of bias a more prevalent with judges of the same party as the president.

Predictably, the majority of federal court judges at the outset of Trump's presidency were ideologically liberal. Trump's predecessor, Barack Obama, nominated— with the Senate's confirmation— 334 judges in his eight years as president, all of whom were still serving when Trump began (U.S. Courts). Examining the Circuit Court of Appeals judges in 2017, the majority were appointed by the presidents over the past 25 years, two out of three of whom were Democrats. Thus, the median appeals circuit judge in 2017 had a liberal bend, in contrast with the president.

One of Trump's most impactful legacies in office was his effect on the federal judiciary. With the Republicans controlling the Senate, the body of Congress responsible for judicial confirmations, throughout his presidency, Trump and Senate Majority Leader Mitch McConnell made court appointments a priority (Johnson 2020). Having only served 4 years, Trump

appointed around 100 fewer federal judges than Obama and Bush (U.S. Courts). However, for the Court of Appeals, Trump managed to seat more judges in half of Obama's time in office (Gramlich 2021), including ideologically "flipping" three of the circuit courts (Hurley et. al. 2020).

As Trump's presidency progressed, the possibility of facing a conservative judge greatly increased. The ideology of any judge did not ensure a decision either way: liberal judges ruled in favor of Trump and conservative judges ruled against him. Ideology, though, plays a factor in judicial rulings, and judges who are sympathetic toward administrative policies are more likely to rule in favor of those policies. Trump provided himself with more allies throughout his presidency by exercising his presidential power of appointing judges, and as such, his court success rate likely improved as well.

Supreme Court Ideological Effect

Trump's contributions to the federal judiciary were also noteworthy for the impact he had on the Supreme Court. Having appointed three justices in four years, he appointed more justices to the Court in a four-year span than any president since Richard Nixon's first term (Gramlich 2021). The significance of these appointments, which gave the conservative-leaning justices a 6-3 majority, will be long-lasting, as has already been indicated through decisions, such as the *Roe v. Wade* overturning case, *Dobbs v. Jackson* (2022). However, it may be the case that the conservative shift to the court created ripple waves within the federal court system that served to benefit the Trump administration.

Studies show that the ideological composition of the Supreme Court has a demonstrable effect on the decisions of the lower court. Linda Cohen and Matthew Spitzer theorize that, given the dearth of cases on administrative action taken up by the court, their main function in this area

is to use the few decisions they give to direct the lower courts in giving varying degrees of deference towards the president (Cohen et. al. 1996). Jeffrey Segal and Harold Spaeth believe that there is a strong ideological stamp in each administrative action, based on the president delivering it, and the Supreme Court's response to these actions reflects the Court's attitudes toward the administration (Segal et. al 2002). As the country's highest court, it signals to the courts below the extent of deferential treatment it intends to give administrations. It is unclear whether the reverence lower courts give upper courts is due to deference to a higher authority or rather avoiding a potential reversal of their ruling down the line. This effect is strongest while the president, who proposed the challenged action, is still in office (Smith 2007).

The Supreme Court arguably solidified its conservative stance when the Senate confirmed Brett Kavanaugh to replace the moderate Anthony Kennedy. This took place in September 2018, almost halfway through Trump's presidency. Given Cohen and Segal's theories, it is likely that this makeup of the Supreme Court influenced the ideological direction of the courts below them. Even though the Supreme Court did not uphold most, if not all, of the Trump administration's policies, the perceived ideological alignment between the two branches of government guided lower courts to consider Trump administrative actions with greater leniency.

The ideological effect of the Supreme Court, along with the increased Republican presence throughout the federal judiciary, are good explanators of Trump's success in the second half of his term, relative to the first half. However, his success rate only hovered around 30 percent during this period of relative success, much lower than the typical success rate for presidents and not enough to account for any supposed bias. Therefore, there must be a factor beyond party alliances that affected the Trump administration's success rate in court.

Rulebreaker

Trump has been characterized in many ways during his time as president. He has been called impatient for his swift firings (Rucker et. al. 2017). He has been accused of not considering the consequences of his actions (Gross 2020). Most of all, he has been called a rulebreaker. All these personality traits tie together to indicate a strong factor in the Trump administration's failure against the federal courts: the inability to follow the rules.

In passing the APA, one of the goals of Congress was to limit the Executive Branch's ability to pass legislation. One of the main factors in streamlining the administrative procedure was creating rules and guidelines which all administrative action needed to follow (Elias 2016). There are several standards that each administrative act needs to hold by, and judicial review stands to strike down the action in the event they do not. These actions include rules that are "arbitrary, capricious, [or] an abuse of discretion… contrary to constitutional right, power, privilege, or immunity...[and] unwarranted by the facts (APA 1946)."

The authors of the APA likely could have foreseen the Trump administration 70 years beforehand, as it predicted every type of behavior utilized by the Trump administration in crafting administrative policies. The reason that the administration's low success rate was unprecedented was that its rule-breaking— not following longstanding administrative procedures— was unprecedented.

One prominent example of this type of procedure bending was the violations of notice-and-comment requirements on many administrative acts. The APA requires that a federal agency looking to issue a policy or a rule needs to provide sufficient notice of the proposed action with an opportunity for those interested to comment on said proposal. The purpose of this rule is to

get feedback and a greater perspective before any policy is final, as well as grant the public the ability to participate in the legislative process (Elias 2016).

The notice-and-comment requirement was violated by Trump at least 25 times over the course of his presidency. This violation took place in a multitude of forms. In *American Academy of Pediatrics v. Food and Drug Administration* (2019), it was undisputed that the FDA did not give notice for the delay of a rule that required e-cigarette companies to seek authorization before releasing advertisements to market (a hot button issue that likely would draw comments). The FDA argued this case was not applicable for notice-and comment under the FDA, an argument the court denied. This case contrasts with the case of *R.F.M v. Nielsen*, where the Department of Homeland Security and the U.S. Citizenship and Immigration Services believed that the USCIS Policy Manual, which stated the agency's updated policies towards granting Special Immigrant Juvenile Status, was available and accessible to the public, and therefore met the notice-and-comment requirements. The court would find that, in fact, no such policies were mentioned in the Policy Manual.

The rule-breaking factor can explain many aspects of Trump's low success rate in the courts. Trump was a political novice entering office, as were many on his staff. An explanation of the egregiously low success rate at the beginning of his presidency can be attributed to their lack of understanding of procedural rules. Trump had ambitious, deregulatory goals that he strove to implement at a rapid pace. Trump may have been acting to undo, reverse, or delay many Obama policies (Chill 2021). For example, some of his administration's actions were blatant attempts to roll back parts of the Affordable Care Act (see opinions in *Philbrick v. Azar* and *New York v. Department of Labor*). As the term progressed, the experience and familiarity with the process allowed for a small turnaround in their success rate.

This explanation of Trump's failure in the courts also provides a unique perspective on typical views of Trump. Many of the characteristics that have been attributed to him can be seen in the court decisions that describe the Trump administration's violations. For example, in *Washington v. Department of State* (2019), one of the court's arguments against the State Department's elimination of a licensing requirement that would lead to the release of data files on 3D-printed guns was that, against all the reasons why information on 3D-printed guns could be a major threat, the State Department offered "no analysis of the potential impacts" of such a policy. This, along with several other cases, reflects Trump as a leader who hastens to decisions, acting on his desires rather than trying to determine the possible consequences of his actions. The courts seemingly confirmed Trump to be, as the public labeled him, an impatient, narrow-minded, rule breaker.

Conclusion

While an analysis of the Trump administration's legal battles may indicate some bias that existed against the administration, other factors suggest strategic additions to the judiciary or macro-behavioral issues with practical consequences played a role. Two of these factors are related to Trump's appointment of judges that were sympathetic to his cause, specifically on the circuit courts and the Supreme Court. These additions either sent messages to the judiciary that increased the deference to grant the administration or simply provided more conservative-minded and politically aligned judges. The third factor explains that many of Trump's mannerisms were present in his administration's policy decisions, mannerisms that were incompatible with numerous aspects of the Administrative Procedure Act. These factors are likely the reasons for the massive gap in success rate between Trump and his predecessors, with or without a judiciary bias present.

President Trump was not granted the deference of statute interpretation provided by *Chevron* that other presidents received from the courts. On many occasions, the court struck down administrative policies on the notion that they interpreted a statute differently than the Trump administration (see *Genus Lifesciences, Inc. v. Azar* and *California v. Azar*). The relative infrequency of striking down administrative action puts cases like these under the microscope, opening the possibility that some Trump administration policies are enjoined because of preconceived notions against the administration, rather than the policy. As it turns out, the two go together: the administration with the policy. Trump heavily involved himself in policy agenda, and in turn, his personality and conduct made an impression on such directives. Even if there was animosity against Trump among the judiciary, it stands that that might rightfully appear against his policies as well. It is fitting that the words most used to describe APA violations might describe Trump and his administration's approach to policy: arbitrary and capricious.

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