

## **Will Do? Selecting Judges on the Basis of Policy Preferences or Performance Indicators**

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### **Abstract**

Judicial politics scholars agree that the power to select judges is a key instrument by which representative political institutions may exercise some control over the judiciary. Nevertheless, in spite of its status as the most powerful of international courts, and as the motor of the judicialization of politics in Europe, the EU governments' choices of judges to the Court of Justice of the EU (CJEU) is a blank spot in the research. In this paper, we theorize EU governments' choices as a function of an evaluation of both the will and ability of candidates to move policy in the desired direction. In particular, we study the effect of shifts in governments and judicial candidates' previous performance on the retention of incumbent judges. We rely on original data on appointment decisions to the CJEU over time, biographical information and key performance measures of judges' activities at the Court. Our results speak to the degree of politicization in the selection of judges, but also to the interdependence between member states and the Court's leadership, as de-facto dual principals in relation to the judges.