

NON-LEGAL FACTORS INFLUENCING JUDGING IN UNITED STATES
COURTS OF APPEAL IN HIGHER EDUCATION SEX
DISCRIMINATION IN EMPLOYMENT CASES

by

LEANNE MARIE HUTSON

Presented to the Faculty of the Graduate School of
The University of Texas at Arlington in Partial Fulfillment
of the Requirements
for the Degree of

DOCTOR OF PHILOSOPHY

THE UNIVERSITY OF TEXAS AT ARLINGTON

May 2014

Copyright © by LeAnne M. Hutson, 2014

All Rights Reserved



Acknowledgements

First and foremost, I thank my family. My husband, who without his endless support and encouragement, this dream would not have been possible. To my children, I hope that each of you knows my love and remembers the importance of continued learning throughout your lives. Thank you for your patience during the past four years.

To Dr. Wasserman, thank you for your diligence in providing endless feedback, which was critical in the accomplishment of this study. To my three committee members, I greatly appreciate your time and dedication in participating in this process and aiding in my knowledge of the law and statistics.

There are two women who walked through this fire with me. We shared an enormous amount of laughter and tears on the journey of writing a dissertation. Thank you both so much – you kept me sane through an insane process.

April 17, 2014

Abstract

Non-Legal Factors Influencing Judging In United States

Courts of Appeal in Higher Education Sex

Discrimination in Employment Cases

LeAnne Marie Hutson, PhD

The University of Texas at Arlington, 2014

Supervising Professor: Dr. Lewis Wasserman

Despite the general increase of women in the workforce, there has been an increase in sex discrimination law suits brought in the U. S. every year (Beiner, 2005). Plaintiffs alleging gender-based workplace discrimination use three principal grounds for their claims – the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000), and Title IX of the Educational Amendments of 1972 (20 U.S.C.A. § 1681-1863).

This study examines the important area of employment gender discrimination cases involving higher education institutions rendered in the United States Courts of Appeal between 1964 and 2013. Two separate databases were compiled for analysis, one which examined individual judges' votes and the other which examined case decisional outcomes.

For the individual voting data base, 693 judicial votes were analyzed with the purpose of examining the relationship between variables. Political ideology, judges' gender and appointment era, and gender of the plaintiff served as the independent variables. The dependent variable was the individual judges' votes with a pro-plaintiff vote treated as "liberal" and a pro-defendant one as "conservative".

For the case outcome measure, 231 cases from the U.S. Courts of Appeal were included in determining if composition of the three member panel influenced each case outcome. The independent variables included ideological majority of panel, gender majority of the panel, appointment era majority of the panel, and plaintiffs' gender. The dependent variable was the case decisional outcome, with pro-plaintiff decisions labeled as "liberal" votes, while pro-defendant decisions were categorized as "conservative".

Results revealed that appointment era and plaintiffs' gender were significant variables influencing judicial voting in both data bases. Implications of these findings show the influence of presidential appointments on the U.S. Courts of Appeal.

Table of Contents

Acknowledgements.....	iii
Abstract.....	iv
List of Tables	x
Chapter 1 Introduction	1
Background of the Law.....	4
Fourteenth Amendment	4
Title VII	6
Title IX.....	9
Theoretical Basis for Research	10
Attitudinal Theory.....	10
Legal Model	13
Research Questions and Hypotheses	15
Individual Voting	16
Panel Decisions	17
Significance of Study.....	18
Chapter 2 Review of Literature.....	20
Structure of the Federal Courts System	20
Brief Summary of the United States Courts System.....	20
Federal Courts System	21
State Courts System	22

U.S. Supreme Court and Justices	22
Precedent Supreme Court Cases	26
Overview.....	26
Equal Protection.....	28
Title VII	31
Title IX.....	38
United States Courts of Appeal.....	41
Judges’ Political Ideology.....	45
Sex Discrimination Cases	48
Judges’ Gender	49
Sex Discrimination Cases	51
Plaintiffs’ Gender.....	54
Judges’ Appointment Era.....	55
Gender Panel Majority	56
Ideology Panel Majority	57
Chapter 3 Method	58
Research Design	58
Data Base	58
Individual Voting.....	59
Judge -Level Variables.....	59
Extrinsic Variables	60

Case-Level Variables	60
Panel Decisions	60
Gender Majority of the Panel.....	60
Ideological Majority of the Panel	61
Appointment Era Majority of the Panel.....	61
Dependent Measures.....	62
Individual Voting: Conservative-Liberal	62
Case Outcome: Conservative Liberal	62
Data Collection	62
Data Base Coding	63
Data Analysis	66
Chapter 4 Results	70
Descriptive and Inferential Statistics	70
U.S. Courts of Appeal Individual Voting	70
U.S. Courts of Appeal Decisional Outcomes.....	85
Hypotheses Testing.....	93
Individual Voting	93
Decisional Case Outcomes.....	97
Chapter 5 Discussion	100
Individual Voting.....	101
Political Ideology	101

Appointment Era.....	104
Judicial Gender	108
Plaintiffs' Gender.....	111
Decisional Case Outcomes	115
Panel Ideology Majority	115
Panel Appointment Era Majority	117
Panel Gender Majority	119
Plaintiffs' Gender.....	119
Limitations and Key Assumptions.....	121
Implications	122
Appendix A Definition of Key Terms	125
Appendix B Table of Cases	127
Appendix C List of Supreme Court Cases	148
References.....	151
Biographical Information.....	164

List of Tables

Table 2-1 List of United States Courts of Appeal Circuits 43

Table 4-1 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 for claims brought under the Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges’ Ideology 71

Table 4-2 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges’ Gender 72

Table 4-3 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges’ Appointment Era. 73

Table 4-4 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal by Democratic Judges appointed during the 1980 and earlier era and 1981 and later era. 74

Table 4-5 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeals by Republican Judges appointed during the pre-Reagan and Reagan and later years	75
Table 4-6 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender	76
Table 4-7 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Combined Data Bases for Judges Nominated by Republican and Democratic Presidents.....	79
Table 4-8 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Data Bases for Judges Nominated by Democratic Presidents.....	82
Table 4-9 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Data Bases for Judges Nominated by Republican Presidents	84

Table 4-10 Frequency and Percentage of Conservative Pro-Employer and Liberal Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals as a Function of Panel Gender Majority..... 86

Table 4-11 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal as a Function of a Panel Party Majority..... 87

Table 4-12 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Appointment Era Majority 88

Table 4-13 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Plaintiffs’ Gender 89

Table 4-14 Logit Analysis on the Odds of a Conservative Pro-Employer Panel Decision in the United States Courts of Appeal in Higher Education Gender

Based Employment Discrimination Cases brought under the Equal Protection
Clause, Title VII and Title IX: 1964-2013..... 92

Chapter 1

Introduction

Sex discrimination is a topic that has received much publicity and legal attention during the past 60 years. However, the issue persists as a problem in the workplace. In 1960, approximately 30% of the national workforce was female (http://www.bls.gov/opub/ted/2011/ted_20110105.htm). In contrast, the U.S. Department of Labor now estimates that more women are currently in the workforce than men (http://www.bls.gov/opub/ted/2011/ted_20111223.htm). This is not the case in higher education institutions, where the percentage of female employees has risen in recent years, but males remain the strong majority (Wallace & King, 2013).

Despite the general increase of women in the workforce, there has been an increase in sex discrimination law suits brought in the U. S. every year (Beiner, 2005). Plaintiffs alleging gender-based workplace discrimination use three principal grounds for their claims – the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000), and Title IX of the Educational Amendments of 1972 (20 U.S.C.A. § 1681-1863).

In 1964, Congress enacted Title VII of the Civil Rights Act of 1964, which states that it is “an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any

individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin" (42 U.S.C.A. § 2000). More specifically, the statute works to protect employees from employment sex discrimination and sexual harassment. The U.S. Equal Employment Opportunity Commission (EEOC), the agency charged with enforcing Title VII, defines sex discrimination as treating an individual less favorably because of that person's sex (<http://www.eeoc.gov/laws/types/sex.cfm>).

Title VII, along with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX, create legal footing for plaintiffs who allege employment sex discrimination at education institutions. Since these statutes have been in place, numerous cases have been filed in federal courts alleging employment sex discrimination (Lens, 2003).

Along with the influx of cases, a growing body of research has been conducted examining the relationship between judges' voting and extra-legal factors which may influence this category of cases (Cross, 2003; Goldman, 1975; Kastellec, 2011; Moyer, 2012; Segal & Spaeth, 2002; Shapiro & Murphy, 2012). However, no research has been focused exclusively on sex discriminations cases involving employees at higher education institutions. This research will fill this gap in the research. In furtherance of this goal, this study examined gender discrimination in higher education employment rulings in the United States Courts of Appeal from 1964-2013. Two separate databases were compiled for

analysis, one which examined individual judges' votes and the other which examined case decisional outcomes.

For the individual voting data base political ideology, judges' gender and appointment era, and gender of the plaintiff served as the independent variables. The dependent variable was the individual judges' votes with a pro-plaintiff vote treated as "liberal" and a pro-defendant one as "conservative".

For the case outcome measure, the independent variables included ideological majority of panel, gender majority of the panel, appointment era majority of the panel, and plaintiffs' gender. The dependent variable was the case decisional outcome, with pro-plaintiff decisions labeled as "liberal" votes, while pro-defendant decisions were categorized as "conservative".

The efficacy of two theoretical models vis-à-vis judicial voting and case decisional outcomes were studied - the attitudinal model and the legal model.

The attitudinal theory is the most researched theory and is based on the assumption that a judges' ideology influences their decision making (Moyer, 2012; Segal & Spaeth, 2002; Shapiro & Murphy, 2012). Through this lens, judges' attitudes and values determine whether the decision made is conservative or liberal. In contrast to the attitudinal theory, the legal model holds that judicial decisions are only influenced by the law, without taking into account judicial preferences (Cook, 1977; Kritzer & Richards, 2003; Segal, 1984).

Background of the Law

Fourteenth Amendment

The Constitution was ratified in 1789 and the Bill of Rights was added to the constitution in 1791. Neither the original document nor the 1791 amendments contained Equal Protection provisions. The Fourteenth Amendment was added in 1868 as a post-Civil War Amendment. It contained Equal Protection provisions which applied specifically to the states.

The Fourteenth Amendment states that, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. amend. XIV, § 1).

Even though the amendment called for equal protection, its potential did not begin to be realized until 1954 when *Brown v. Board of Education* was decided at the Supreme Court. The case relied on the Fourteenth Amendment in making unconstitutional the doctrine of separate but equal education in public schools (*Brown v. Board of Education*, 347 U.S. 483). In overturning *Plessey v. Furgerson*, 169 U.S. 537 (1896), the Supreme Court held for the first time that separate schools could never be constitutionally equal, even when they provided

the same facilities, staff and curriculum (*Brown v. Board of Education*, 347 U.S. 483). Even though *Brown v. Board of Education* was the start of realizing the potential of the Fourteenth Amendment, pro-female decisions did not issue on Equal Protection until the 1970's.

In the period between the adoption of the Fourteenth Amendment and the adoption of the Nineteenth Amendment to the constitution in 1920 (U.S. Const. amend. XIX), women did not enjoy the constitutional right to vote. This obviously circumscribed their political power and societal influence.

Despite passage of the Social Security Act of 1935 (42 U.S.C. § 301 et. seq), and the Fair Labor Standards Act of 1938 (29 U.S.C. § 201), women in the United States continued to be discriminated against in the workplace (Hill, 1997). However, some inroads were being made at the Supreme Court. In *West Coast Hotel v. Parrish* 300 U.S. 379 (1937), the Supreme Court upheld a state law that required a minimum wage for female employees thereby overruling *Adkins v. Children's Hospital*, 261 U.S. 525 (1923) and *Morehead v. Tiplado*, 298 U.S. 587 (1936), which declared state laws establishing minimum wage for women unconstitutional on the ground that they constituted an interference with the freedom to contract between an employer and its employees.

Nevertheless, in *Goesaert v. Cleary*, 335 U.S. 464 (1948), the Supreme Court allowed state laws which prohibited women from entering certain occupational fields to continue. Valentine Goesaert was employed as a waitress

at a bar in Michigan, and was seeking a promotion to bartender. She sued her employer because he refused to offer her the promotion on the basis of her sex. The employer's refusal was based on Michigan law which expressly prohibited women from working in the capacity of bartender unless she was "the wife or daughter of the male owner" (Pub. Acts Mich.1945, No. 133, § 19a). The case ended at the United States Supreme Court on December 20, 1948. The Court held that any state can prohibit women from certain professions that could result in moral and social problems, including bartending. In addition, the court found that Michigan's law restricting women from being licensed as bartenders did not violate the Equal Protection Clause of the Fourteenth Amendment. Thus, even in the late 1940's, the Supreme Court countenanced unequal treatment of women relative to their access to certain occupations.

Title VII

The Civil Rights Act of 1964 (42 U.S.C.A. § 2000) addressed discrimination in terms of race, ethnicity, national and religious minorities, and women; sex discrimination was a component of the statute under its Title VII. Among other things Title VII sheltered women from gender discrimination in employment, and created the statutory right to sue employers who unlawfully discriminated against them on the basis of their gender. Title VII also works to ensure a woman's right to equal occupational rights in comparison to male colleagues.

The strength of Title VII was weakened however by the bona fide occupational qualification (BFOQ) section, 42 U.S.C. § 2000e-2(e), which reads that it is not unlawful to hire a worker on the basis of sex in those circumstances where sex is an occupational qualification. There is no such section for race or any other group protected under Title VII. Title VII also established the Equal Employment Opportunity Commission (EEOC), the agency charged with enforcing Title VII's provisions. In the early days of Title VII, the EEOC was under great pressure to justify sex discriminatory practices under the BFOQ section (Hill, 1997).

To assert a claim of discrimination under Title VII, the plaintiff must prove that the alleged discrimination was either the only factor causing the employment decision, or that it was, under the 1991 amendments of the Act, a motivating factor for the adverse action (Beiner, 2005).

In meeting its burden of proof, a Title VII plaintiff [in termination cases and demotion cases, for example] must make a *prima facie* case which consists of evidence that the plaintiff belongs to a protected class, that job duties were being performed satisfactorily, that adverse employment action was taken, and that such action occurred under circumstances that give credence to an inference of unlawful discrimination (Swartz, 2003). Once the plaintiff provides the necessary evidence, the burden of proof shifts to the defendant. Then, it is the defendant's responsibility to provide a legitimate, nondiscriminatory reason for the

employment action. If the defendant satisfies this burden, then the plaintiff must demonstrate by a preponderance of the evidence that the legitimate reasons offered by the defendant are only a ruse for discrimination. This comprehensive level of expectancy was established in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). In this case, the Supreme Court created the procedure of *prima facie* and established the precedent by which all future Title VII cases would be determined. It is important to note that the Supreme Court purposefully left the requirements of *prima facie* vague in an effort to allow courts room to interpret the law as needed (Swartz, 2003).

Under Title VII, there are two types of sexual harassment – quid pro quo and hostile work environment. Quid pro quo means doing or giving something for something else. For example, a supervisor may offer a promotion to a subordinate if they perform a sexual act. The burden of proof in establishing a quid pro quo case is on the employee.

In order to assert a claim of hostile work environment, the plaintiff must prove that the work environment was hostile or abusive, the harassment was severe, the harassment was unwelcome, and that the actions were based on gender (McCarthy, Cambren-McCabe, & Eckes, 2014). The landmark case setting this precedent was *Meritor Savings Bank v. Vinson*, 477 U.S. 57, in 1986. Mechelle Vinson alleged sexual harassment from her supervisor, and the harassment was so severe that it led to the creation of a hostile work environment. This case marked

the first time that the Supreme Court found that a hostile work environment was a form of sexual discrimination under Title VII. This case is discussed in detail later in this paper.

The Supreme Court also addressed this issue in *Harris v. Forklift Systems, Inc.* (515 U.S. 17) in 1993. In this case, Teresa Harris alleged sexual harassment by employer on the basis of gender under Title VII. Harris alleged that the harassment was so severe that it led to an “abusive work environment” (114 S. Ct. 370). The defendant disagreed, claiming that the harassment was not severe enough to inflict psychological harm or create a disruptive environment. The district court and the Sixth Circuit Court of Appeals (976 F. 2d 733) found in favor of the defendant. The Supreme Court, however, found that the lower court erred in their focus on the psychological harm of harassment. The Court established that the focus of harassment cases should be on whether the harassment was hostile or abusive, not on psychological severity (114 S. Ct. 369).

Title IX

In 1972, Title IX was enacted (20 U.S.C.A. § 1681). This law works to guard against discrimination in education institutions receiving federal financial assistance. It covers K-12 and higher education. The law protects individuals in ten areas: higher education access, career education, pregnant and parenting student’s education, employment, learning environment, math and science, sexual harassment, standardized testing, and technology (Wayne, MacKenzie, O’Brien,

& Cole, 1997). The law states that “no person in the U.S. shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid” (20 U.S.C.A. § 1681-1683). In other words, any educational institution receiving federal funding assistance must not discriminate against students or employees on the basis of their sex (*Cannon v. University of Chicago*, 441 U.S. 677).

Although we have seen much improvement during the past 60 years in the legislation protecting employees from sex discrimination, the issue still persists today (<http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>). Women and minorities have gained legal support in the quest for employment equality among all citizens. When cases are brought alleging employment sex discrimination, they make their way through the legal system using Equal Protection (U.S.C.A. Const. Amend. § 1983), Title VII (42 U.S.C.A. § 2000), or Title IX (20 U.S.C.A. § 1681) as the basis for these claims.

Theoretical Basis for Research

Attitudinal Theory

The law is intentionally vague and allows for judicial interpretation (Feldman, 2006). Under the attitudinal theory, this interpretation comes from personal factors as judges attempt to make justifications for legal decisions (Shapiro & Murphy, 2012). The attitudinal model holds that the primary motivation for judicial behavior is ideology (Shapiro & Murphy, 2012). The

theory is based upon the notion that when judges have beliefs and/or attitudes about a case, then the possible outcomes are limited (Moyer, 2012). Whether or not the influence of ideology is a conscious effort on behalf of the judge is a matter of investigation. Gilman (2001) and Shapiro (1994) found that ideological influence was a conscious step on the part of the individual to simplify options. Segal and Spaeth (2002) based their research on the unconscious role of ideological influence among justices of the U.S. Supreme Court, and how (unconsciously) the influence is due to the judges' lifelong term and the lack of superior review from a higher court (p. 94).

The scholars who research attitudinal theory use the term "ideology" in reference to other terms. Segal and Spaeth (2002, 1993) linked ideology to attitudes, while Klein (2002) referred to policy goals, and Schubert (1974) referred to ideal points. Whatever term is used, most researchers agree that the influence of ideology on judicial voting is a complex issue (Moyer, 2012). Without question, judges have attitudes or beliefs about objects or situations. When these attitudes translate to cases, they influence judicial behavior (Segal & Spaeth, 2002).

The attitudinal theory works against a strong norm in the legal community allowing ideology to influence judicial decisions (Moyer, 2012). According to acceptable ethical conduct, judges are to base their judicial decisions on the law and not allow personal feelings to affect decision making (Shapiro & Murphy,

2012). Attitudinal theory holds that judges form a view of the desired outcome, and then use the law to justify their preferences (Robertson, 1998). Judges routinely lie to themselves and others about their personal justifications regarding decision making (Segal & Spaeth, 2002; Shapiro & Murphy, 2012). During Senate confirmation hearings, proposed judges are routinely asked about the influence of their ideology on decision making. To admit that attitudes and beliefs affect judicial voting is not acceptable with United States political culture (Shapiro & Murphy, 2012). A substantial amount of research has been performed showing that legal training and practice does not negate the influence of ideology on decision making (Baum, 1994; Rowland & Carp, 1996; Segal & Spaeth, 2002, 1993).

Much research has been performed investigating attitudinal theory and judicial decision making of federal judges (Boucher & Segal, 1995; Segal & Spaeth, 1993, 2002; Shapiro & Murphy, 2008; Rohde & Spaeth, 1976; Zorn & Bowie, 2010). Segal and Spaeth (1993, 2002) were among the first theorists to apply this theory to the U.S. Supreme Court judicial voting. They found that certain justices voted a particular way due to their ideological attitudes and values. According to Rohde and Spaeth (1976), since federal judges are appointed for life terms on the bench they can determine cases based solely upon their attitudes, beliefs, and policy preferences without the fear of reprisal. Due to the process of judicial appointment, the governmental structure allows justices on

the U.S. Supreme Court to vote along their policy inclinations without significant attention paid to statutes or other constraints (Rohde & Spaeth, 1976; Segal & Spaeth, 1992, 2003). It is generally accepted that U. S. Supreme Court justices rely upon ideology for decision making because “they lack electoral or political accountability, ambition for higher office, and comprise a court of last resort that controls its own jurisdiction” (Segal & Spaeth, 1993, p. 69).

The attitudinal theory is the most accepted theory used to explain judicial decision making (Moyer, 2012). The strength of this theory is associated with the plethora of research and the investigation by scholars.

Legal Model

The most direct and simple theory of judicial voting practices is the legal model (Cross, 2003). The legal model maintains that judges decide cases through a thorough analysis of the law. The model contradicts the attitudinal theory by insisting that judicial decisions are not influenced by judicial ideology, but rather by legal precedents, statutes, and fact patterns (Cook, 1977; Kritzer & Richards, 2003; Segal, 1984).

The model is a product of theory taught to law students – that judicial decisions should be impartial and a product of reasonable legal thought (Cross, 2003). Established in the 1950’s, the legal model stresses the rules and processes of law. In 1959, Herbert Wechsler gave a lecture at Harvard Law School

detailing this model. Wechsler believed that judicial voting must be directed by neutral principles, which strive to provide unbiased justice under the law.

The legal ideal image of decision making involves the law without influence from politics, personal preferences, or belief systems (Moyer, 2012). Under this theory, judges use reason in the application of the law to establish facts of cases in the decision making process. In complex cases, judges may need to be influenced by legislative preferences, but never by personal preferences (Cross, 2003).

The lack of extensive empirical research on the legal model is a hindrance to its acceptance (Cross, 2003; Segal & Spaeth, 1993). Cross (2003) expects that the lack of research is primarily due to the vagueness of the model, which makes close examination difficult. However, some researchers have examined judicial voting over a specific time period to identify adherence with legal precedents and statutes (Cross, 2003).

Sisk, Heise, and Morriss (1998) examined the precedent of federal sentencing guidelines in district courts. They found that the precedent did have a direct influence on district court decisions. Similarly, Klein (2002) examined the adherence of a circuit court precedent regarding environmental law and antitrust issues, and found that the precedent was followed horizontally, that is by circuit courts adhering to the legal principles established in other circuit courts.

Richards and Kritzer (2002) researched Supreme Court decisions and found that changes to the law over time are not due to judicial membership, but rather due to annual analysis of the law (Richards & Kritzer, 2002). They concluded that the “law is a construct created by justices with political values and policy goals, and jurisprudential regimes matter in part because they constitute means of persuading other justices” (p. 28).

In recent years, the legal model has been attacked by researchers due to its broad, ambiguous scope. Perhaps the best supporter of this theory is the American legal system. The process of judicial appointment requires that potential judges denounce any outside influence to their decision making and remain steadfast that all judicial voting be determined by the law.

Research Questions and Hypotheses

The study addresses two broad research questions:

Question 1. What is the relationship among United States Courts of Appeal judges’ political ideology, gender, appointment era, plaintiffs’ gender, and individual voting in higher education employment sex discrimination cases brought under the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972?

Question 2. What is the relationship among United States Courts of Appeal panels' ideological, gender, and appointment era majority, plaintiffs' gender and decisional outcomes in higher education employment sex discrimination cases brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972?

The following hypotheses were developed in response to the corresponding research. Hypotheses one through five pertain to Research Question One and address the relationship between individual judicial voting practices and the study's independent variables. Hypotheses six through eight pertain to Research Question Two and address panel decisional outcomes and the study's independent variables.

Individual Voting

Hypothesis 1. For the entire data base, the odds of judges appointed by Republican presidents voting in a conservative pro-employer direction in higher education gender discrimination in employment disputes for the period 1964-2013 would be greater than that of judges appointed by Democratic presidents.

Hypothesis 2. For the entire data base, the odds of the judges appointed during the 1981 and later years voting in a conservative pro-employer direction in higher education gender discrimination disputes would be greater than the judges voting in that direction during 1980 and earlier years.

Hypothesis 3. The odds of Republican judges appointed during 1981 and later period voting in a conservative pro-employer direction will be greater than Republican judges appointed during 1980 and earlier.

Hypothesis 4. The odds of Democrat judges appointed during the 1981 and later period voting in a conservative pro-employer direction will be greater than Democrat judges appointed during the 1980 and earlier.

Hypothesis 5. For entire period, the odds of a judge voting in a conservative pro-employer direction with a male plaintiff will be greater than a judge voting in a conservative pro-employer direction with a female plaintiff.

Panel Decisions

Hypothesis 6. The odds of a conservative pro-employer outcome with a Republican majority panel will increase as compared to a Democratic majority panel.

Hypothesis 7. The odds of a conservative-pro-employer decision will increase when the panel is comprised of a majority of 1981 and later appointees as compared to a majority of 1980 and earlier appointees.

Hypothesis 8. The odds of a conservative pro-employer outcome will increase when the plaintiffs are males rather than females.

Significance of Study

Since the adoption of Equal Protection, Title VII, and Title IX, women have steadily increased in the total workforce population in the U.S. (http://www.bls.gov/opub/ted/2011/ted_20111223.htm). Previous research has examined the influence of judges' political ideology, gender, and appointment era at the Court of Appeal level on voting (Boyd, Epstein, & Martin, 2010; Cross, 2007; Farhang & Wawro, 2004; Johnson, Songer, & Jilani, 2011; Kestel, 2011). A small but growing number of researchers have examined judicial voting patterns and potential non-legal factors which influence voting in sex discrimination cases in the United States Courts of Appeal (Miles & Sunstein, 2008; Peresie, 2005; Posner, 2008). However, no investigations have focused exclusively on the relationship of non-legal factors to individual voting and decisional outcomes in sex discrimination cases in higher education reaching these courts.

This study examines the important area of employment gender discrimination cases involving higher education institutions rendered in the United States Courts of Appeal between 1964 and 2013. This research will fill the gap of research available regarding judicial voting patterns in higher education employment gender discrimination cases.

Chapter 2

Review of Literature

Structure of the Federal Courts System

Brief Summary of the United States Courts System

The Constitution of the United States was drafted in 1787 and laid the foundation of governance for the United States of America. The Constitution worked to strengthen the powers of national government by establishing a republican form of government consisting of legislative, executive, and judicial branches (Wayne, MacKenzie, O'Brien, & Cole, 1997). The separation of powers between the branches allows for a check and balance system. Legislative power was granted to Congress, executive power to the President, and judicial power to the federal courts, or more specifically, the Supreme Court. The power given to each branch is shared in some degree with another branch. For example, the president has the power to nominate a Supreme Court justice who then needs Senate confirmation in order to take office as a justice in the Supreme Court.

The judicial branch is charged with interpreting the laws through the court system, which consists of the Supreme Court at the top of the pyramid-shaped system. The decisions of the Supreme Court establish precedent which the lower federal courts are bound to follow and the lower courts provide an established method by which a case may move up the pyramid on its way to receive an

ultimate decision by the Supreme Court (Wayne, MacKenzie, O'Brien, & Cole, 1997).

The United States maintains a “federally” structure judicial system. This means that federal courts possess limited subject matter jurisdiction confined principally to cases which arise under United States Constitution or federal statutory law, while state courts preside over cases of state constitutional, statutory or common law as well as federal claims brought to state tribunals over which the state courts have jurisdiction (Wayne, MacKenzie, O'Brien, & Cole, 1997). The authority of federal courts to preside over certain types of cases was established under Article III of the Constitution. If a conflict exists between a state and a valid national law, then the federal law will control. Finally, state courts may decide federal constitutional disputes and federal statutory disputes, where Congress grants that authority within the enabling federal enactment.

Federal Courts System

In the overwhelming majority of cases, federal law suits begin in the United States District Courts. Each state is assigned a minimum of one federal district court, but the number of district courts is mainly dependent upon the population size of the state and the case workload. However, Congress ultimately decides whether to create a district court and how much funding it will receive. As a result, there are currently 94 district courts. An appeal filed from a case decided by a district court will proceed to one of the thirteen Courts of Appeal.

Like with the district courts, Congress created the Courts of Appeal and their subject matter jurisdiction, including from which district courts it will hear appeals. An appeal from the Court of Appeals (or other federal appellate court) may be heard by the U. S. Supreme Court if it agrees to review the Court of Appeals decision.

State Courts System

Cases involving allegations concerning state law are first heard at the State Trial Courts level. If an appeal is filed, the case may be heard by an intermediate appellate court, the State Court of Appeals. A further appeal is sent to the State Supreme Court, which has the final authority on state law issues. If the case raises a United States constitutional question, then a party to the dispute in the State Supreme Courts may seek review in the United States Supreme Court. Since the subject matter jurisdiction of federal courts is limited to United States Constitutional and statutory review, the decision of state Supreme Courts are final as to the meaning of state statutes, constitutions and common law. It is important to note that some states have divided criminal and civil matters to separate court systems (Wayne, MacKenzie, O'Brien, & Cole, 1997).

U.S. Supreme Court and Justices

The United States Supreme Court is the pinnacle of power and prestige at the head of the judicial branch of government. Although the nominations of justices and court proceedings are public knowledge, there is much secrecy

involved in the deliberative process which occurs at the Supreme Court.

Moreover, Supreme Court justices are not only figures of law, but also political figures.

The Court's annual work term begins the first Monday in October and concludes at the end of June. The Court's caseload has grown significantly since 1960, from approximately 2300 cases to over 10,000 cases (<http://www.supremecourt.gov/about/justicecaseload.aspx>). As a result of this expansion, law clerks are used for case screening and memorandum writing. These law clerks are recent law graduates from prestigious law schools and usually serve for only one year (Wayne, MacKenzie, O'Brien & Cole, 1997).

When an appeal or *certiorari* petition arrives at the Court, both parties submit legal briefs and the petitioner can submit a reply brief (<http://www.supremecourt.gov/>). After all documents have been received and appropriate fees paid, a list of cases and related documents are circulated to the justices for consideration. Over 90% of the cases submitted for Supreme Court evaluation are denied without discussion (Wayne, MacKenzie, O'Brien, & Cole, 1997). The remaining ten percent are discussed by the justices to determine whether the case is worthy of review.

Jurisdiction of the U.S. Supreme Court is assigned under Article III of the Constitution or by congressional legislation

(<http://www.supremecourt.gov/about/members.aspx>). Cases brought before the

Supreme Court have either original jurisdiction or appellate jurisdiction. Original jurisdiction is granted by the U.S. Constitution and involves a dispute between two or more states, or in cases of an ambassador of a foreign country against the United States. Original jurisdiction cases originate in the U.S. Supreme Court, rather than federal or state court. In contrast, appellate jurisdiction depends on Congress and involves cases that have made their way up from lower federal or state courts (Wayne, MacKenzie, O'Brien, & Cole, 1997). The vast majority of cases reviewed by the Supreme Court each year are of appellate jurisdiction.

The Court decides most matters by majority rule, except the decision to review a lower court judgment. Review of a case by the U.S. Supreme Court requires the approval of only four justices, termed the rule of four (Wayne, MacKenzie, O'Brien, & Cole, 1997). The rule of four was adopted by the Supreme Court after Congress' decision to expand the Court's power through appellate jurisdiction (Segal & Spaeth, 2002). The intention was to assure Congress that important cases were reviewed, even if less than the majority of justices deemed the case worthy. Most of the time, Supreme Court justices agree on the cases accepted for review. The Supreme Court does not review cases in order to determine questions of fact, rather the Court decides cases that have national scope and involve arguments over law and policy (Wayne, MacKenzie, O'Brien, & Cole, 1997).

When hearing a case, all Supreme Court justices sit together (*en banc*) on a panel, and decisions are determined by the majority of the sitting justices. The U.S. Supreme Court's decisions are final, with no possibility of a further appeal. All courts in the United States must adhere to the decisions of the U.S. Supreme Court. Understandably, this status has led to great political power for members of the U.S. Supreme Court as they have the authority to interpret the Constitution and the national laws enacted by Congress or by the states when the issue involves the application of federal constitutional or statutory law.

The power of judicial review gives the Supreme Court the ability to declare laws and actions unconstitutional (Wayne, MacKenzie, O'Brien, & Cole, 1997). The precedent case establishing this principle is *Marbury v. Madison*, 5 U.S. 137 (1803). In this case, the Supreme Court declared the Judiciary Act of 1789 unconstitutional because it expanded the jurisdiction of the Supreme Court beyond what the constitution conferred upon it. This case helped to establish the boundaries between the branches of government, and made the judicial branch a co-equal to the executive and legislative branches of the federal government. Supreme Court's decisions are closely monitored by Congress, and Congress can overturn a decision interpreting or applying a federal statute by passing a new law. However, Congress may not overrule the Supreme Court on its interpretation of the United States Constitution since the Supreme Court is the final arbiter as to the Constitution's meaning (*Marbury v. Madison*, 5 U.S. 176).

The appointment of a Supreme Court justice requires the nomination of the President and approval by a simple majority of the senators participating in the vote. (Baum, 2010). The President attempts to fill a vacancy with individuals who share his ideological views (Wayne, MacKenzie, O'Brien, & Cole, 1997). In the past, some consideration was given to the nominee's geographical region in an attempt to balance the Court. Currently, more focus is placed on the nominee's religion, race, and gender (Wayne, MacKenzie, O'Brien, & Cole, 1997), but a requirement for such balanced representation appears nowhere in the constitution. Much governmental attention is given to the nomination process, since the nine Supreme Court justices receive a life term and their decisions have great significance towards the development and interpretation of law. The majority of Supreme Court justices are white males who are well-established lawyers from the upper socioeconomic class. To date, there has been the appointment of only four women, two African Americans, and one Hispanic to the Supreme Court (<http://www.supremecourt.gov/about/members.aspx>).

Precedent Supreme Court Cases

Overview

Plaintiffs rely on three principal grounds to establish their sex discrimination claims: the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972.

The Equal Protection Clause contained in the Fourteenth Amendment protects higher education employees from, among other things, sex discrimination. The clause specifically states that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor shall any state deny to any person equal protection of the laws (U.S. Const. Amend. XIV § 1).

The Equal Protection Clause works together with Title VII and Title IX to offer protection for employees against workplace discrimination, including discrimination taking place at public higher education institutions.

Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000) offers employees a more specific legal ground against workplace discrimination. Title VII specifically targets and prohibits the various types of workplace discrimination based on race, sex, color, religion, and national origin. Title VII permits plaintiffs to seek monetary damages for discrimination taken place in private and public employment establishments. Title VII provides protection to employees where:

...he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter (42 U.S.C.A. § 2000e-3).

In 1972, Title IX of the Education Amendments was enacted, Title IX (20 U.S.C.A. §1681) provides specific protection to all individuals against sex discrimination from any educational institution receiving federal financial assistance. The law states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (20 U.S.C.A. § 1681a). The law has repeatedly been revised, most notably in 1994, 2002, and 2006; but, the focus has remained on the protection from sex discrimination occurring at education institutions receiving federal funding (Beiner, 2005).

Precedent legal cases are cases which establish legal clarity for all equal and lower courts to abide. Usually, precedent cases are from the Supreme Court but these important decisions can also be decided by the Courts of Appeal. In the case of Courts of Appeal the decisions are binding on the United States District Courts located in the circuit issuing the decision.

Equal Protection

The first case decided by the Supreme Court involving gender discrimination in employment in education was *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974). In this case, two pregnant school teachers brought suit against the school district challenging the district’s policy of a mandatory leave of absence for pregnant employees. Under the existing policy, an employee

was mandated to take a leave of absence during the last five months of pregnancy, and the employee could not return to employment until the semester after the infant's third month. The case began in District Court in the Northern District of Ohio, 326 F. Supp. 1208, where the district judge upheld the mandatory leave policy. On appeal the United States Court of Appeals for the Sixth Circuit, 465 F. 2d 1184, heard arguments on July 27, 1972, and the three judge panel decided to vacate, remand, and reverse the lower court's decision. *Certiorari* was granted, and the case was argued to the Supreme Court on October 15, 1973. On January 21, 1974 the Supreme Court held that the mandatory leave policy was invalid. Notably, *LaFleur* was decided on Substantive Due Process, not Equal Protection grounds. The Court concluded the policy was irrational as written, thereby substantially broadening pregnant women's workplace rights at the federal constitutional level. "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause" (*Cleveland Board of Education v. LaFleur*, 414 U.S. 639).

A second Supreme Court case *Mississippi University for Women v. Hogan*, 458 U.S. 718, applied Equal Protection principles to college admissions in a way which implicated women's workplace rights, even though the plaintiff was a male applicant. The plaintiff in *Hogan* was denied admission to the university's nursing program solely on the basis of his sex. The case began in District Court

for the Northern District of Mississippi at Aberdeen, and the judge ruled in favor of the defendants. The plaintiff appealed, and the Fifth Circuit Court of Appeals, 646 F. 2d 1116, reversed the ruling of the lower court. *Certiorari* was granted, and the case was argued before the Supreme Court on March 22, 1982. The Supreme Court held that the state-supported university's policy of excluding qualified males from attendance violated the Equal Protection Clause.

The next case heard by the Supreme Court involving Equal Protection in gender employment discrimination was *United States v. Virginia*, 518 U.S. 515. In this case, the United States sued the Commonwealth of Virginia for providing an exclusive male military college, Virginia Military Institute (VMI). The District Court for the Western District of Virginia ruled in favor of the Commonwealth, and the U.S. appealed the verdict. The Fourth Circuit Court of Appeals, 976 F. 2d 890, vacated and remanded the lower court's ruling. Upon remand, the Commonwealth recommended a plan to provide a military college for females at Mary Baldwin College, a private liberal arts college for women. The proposal received the approval of the district judge, and the United States appealed again. The Court of Appeals, 44 F. 3d 1229, affirmed the lower court's decision. *Certiorari* was granted, and the case was argued before the Supreme Court on January 17, 1996. There, the Supreme Court held that VMI's policy to exclude qualified women from admission was unconstitutional and violated the Equal Protection Clause. In addition, the Court also ruled that the proposed

separate college for women did not provide comparable benefits in Equal Protection terms. The Supreme Court affirmed the initial judgment of the Court of Appeals, and required VMI to admit qualified women on an equal basis to men.

Title VII

The first case brought before the Supreme Court involving Title VII employment gender discrimination was *Phillips v. Martin Marietta Corporation*, 400 U.S. 542, 91 S. Ct. 496 (1970). The plaintiff in this case was a female applicant who alleged she was denied employment because of her sex and the fact that she had pre-school age children. The case began in the District Court for the Middle District of Florida which rendered judgment in favor of the defendant. The plaintiff appealed, and the Fifth Circuit Court of Appeals, 411 F. 2d 1 (1969), affirmed the lower court's ruling. *Certiorari* was granted, and the case was heard by the Supreme Court on December 9, 1970. The Supreme Court vacated and remanded the decision of the Court of Appeals. The Court unanimously held that separate hiring policies for men and women who have pre-school aged children could be a basis for discrimination, and sent the case back to the lower court for trial. By sending this case back to the lower court, the Supreme Court left open the question of whether the action of discrimination was justifiable under the bona fide occupational qualifications (BFOQ) exception under Title VII.

The second Title VII case was *City of Los Angeles, Department of Water and Power, et al. v. Manhart*, 435 U.S. 702 (1978). In this case, Marie Manhart

brought suit against her employer alleging sexual discrimination under Title VII, since female employees were required to make a larger contribution to the pension fund than males due to mortality information (98 S. Ct. 1374). The United States Central District Court for California found that the contribution requirement was in violation of Title VII and ordered the defendant to refund all excess contributions. An appeal was taken, and the Ninth Circuit Court of Appeals (553 F. 2d 581) affirmed the decision of the lower court. *Certiorari* was granted, and the U.S. Supreme Court held that the practice was discriminatory, but that retroactive payment was inappropriate.

Gunther v. Washington County, 452 U. S. 161, 101 S. Ct. 2242 (1981), was the next Title VII case brought before the Supreme Court involving employment sex discrimination. In this case, a group of four women alleged sex discrimination against the County of Washington due to substantial pay discrepancies between male and female employees. The case began in District Court for the District of Oregon where the judge rejected the claim and the plaintiffs appealed. The appeal was heard by the Ninth Circuit Court of Appeals, 623 F.2d 1303, on August 16, 1979. The Appellate Court reversed the decision of the lower court. *Certiorari* was granted, and the case was decided by the U.S. Supreme Court on June 8, 1981. The Supreme Court affirmed the decision of the lower court, and held that claims for sex-based wage discrimination under Title VII are not restricted to claims of equality between the sexes. Rather, claims for

sex-based wage discrimination can be brought under Title VII without comparisons made to the opposite sex. This case was important because it expanded the notion of comparable worth as the new standard for evaluating Equal Pay Act claims.

Meritor Savings Bank v. Vinson, 477 U.S. 57, was a landmark case in establishing hostile work environment coverage under Title VII. The plaintiff, Mechelle Vinson, alleged sexual harassment by her supervisor. The harassment was so severe that it created a hostile work environment. The case began in the District Court for the District of Columbia, where the judge found in favor of the defendant. Upon appeal, the Circuit of Appeals for the District of Columbia, 753 F. 2d 141, reversed the decision of the lower court. *Certiorari* was granted, and the U.S. Supreme Court found that hostile work environment is a form of sexual discrimination covered by Title VII (477 U.S. 65). In addition, the Court found that the plaintiff's allegations were sufficient in establishing proof to the unwelcome harassment. The Court also found that the bank's policy against discrimination did not protect the bank from liability.

The fifth Title VII case was *Price Waterhouse v. Hopkins*, 290 U. S. 228 (1988). The plaintiff was a female manager who sued the petitioner in Federal District Court under Title VII of the Civil Rights Act of 1964, charging that Price Waterhouse had discriminated against her on the basis of sex in its partnership decisions. The District Court for the District of Columbia, 618 F. Supp. 1109,

ruled in plaintiff's favor on the question of liability, holding that the defendant had unlawfully discriminated against her on the basis of sex by giving credit to a partners' comments about her that resulted from sex stereotyping. Price Waterhouse appealed, and the Court of Appeals, 825 F. 2d 458, affirmed the lower court's decision. Both courts found that when an employer allows a discriminatory intention to play a role in an employment decision, they must prove by clear and convincing evidence that it would have made the same decision in the absence of that discrimination, and the employer in this case had not carried this burden. *Certiorari* was granted, and the Supreme Court heard the case on October 31, 1988. The Supreme Court held that defendants in Title VII cases may avoid liability by proving by preponderance of evidence that the same decision would have been made without taking into account the individual's gender. Thus, this case established that gender stereotyping is sex discrimination, and helped to clarify the burden of proof in Title VII cases.

The sixth Title VII case was *University of Pennsylvania v. E.E.O.C.*, 493 U.S. 182 (1990). This case involved a female associate professor, Rosalie Tung, at the Wharton School of Business who was denied tenure. She filed a claim of race, sex, and national origin discrimination with the EEOC alleging a violation of Title VII of the Civil Rights Act of 1964. The EEOC requested peer review materials from the university as part of its investigation. The university declined and claimed that university officials enjoy a common-law privilege that permits

them to refuse the release of materials in cases of tenure. The EEOC's director then issued a subpoena requesting Tung's tenure file and the tenure file of five male faculty members – the university refused. After repeatedly refusing to submit documents, the EEOC applied to the United States District Court for the Eastern District of Pennsylvania for enforcement of its subpoena. The court upheld the subpoena, and the university appealed the decision. The Third Circuit Court of Appeals affirmed the decision of the lower court, and the university petitioned for and was granted *certiorari*. On January 9, 1990, the Supreme Court affirmed the decision of the lower courts, and held that common-law freedom did not create a privilege regarding promotion materials and the university did not enjoy First Amendment protection from disclosure of the materials on academic freedom ground. This decision enabled putative plaintiffs' access to materials which might be of assistance in prosecuting Title VII cases which access was heretofore uncertain.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), involved an employee alleging quid pro quo sexual harassment by her supervisor. Kimberly Ellerth claimed that she was sexually harassed from the beginning of her employment and routinely refused her supervisor's advances. She was promoted during the time of her employment, and never filed a sexual harassment report with the EEOC. The question presented was: are employers liable for the conduct of supervisors even if the supervisor's action did not result in adverse

consequences? The Northern District Court of Illinois, 912 F. Supp. 1101, found in favor of the employer. An appeal was taken, and the Seventh Circuit Court of Appeals, 123 F. 3d 490, reversed the judgment of the lower court. *Certiorari* was granted, and the Supreme Court found that employers are liable for the actions of a supervisor if those actions create a hostile work environment. However, in cases when the employee suffers no adverse consequence, then the employer can “raise an affirmative defense” (524 U.S. 745) to claims of liability or damages. To satisfy the requirement of this affirmative defense the employer must prove that it has measures in place to address and correct sexual harassment in the workplace, and that the employee failed to take advantage of these measures and avoid harm.

The eighth Title VII Supreme Court employment sex discrimination case was *Clark County School District v. Breeden*, 532 U.S. 268 (2000). The plaintiff in this case, Shirley Breeden, was a female employee who sued the school district under Title VII, alleging retaliation. Ms. Breeden heard a male colleague making a statement referring to a job applicant that Ms. Breeden claimed to be sexual harassment. Ms. Breeden then reported the incident; and a month later, her position was changed to one of less authority. As a result of the action, Ms. Breeden filed suit alleging retaliation for reporting the incident of sex harassment. The case was first brought before the District Court for the District of Nevada and the judge ruled in favor of the district. The plaintiff appealed, and the case was

brought before the Ninth Circuit Court of Appeals, 232 F. 3d 893, on July 19, 2000. The Appellate court reversed the decision of the lower court. The district petitioned for *certiorari* and it was granted. The Court held that plaintiff failed to state a cause of action for Title VII retaliation. It concluded that in this case the single act of alleged sexual harassment did not violate Title VII, 532 U.S. 268 (2001). Therefore, the Supreme Court reversed the judgment of the lower court and declared that sexual harassment under Title VII is only actionable if the harassment is severe enough to change the working environment into an abusive one. In addition, the allegation of retaliation must be linked to an action of sexual harassment, and a single incident of this kind was not able to change the environment into an abusive one. This case helped to clarify the definition of retaliation and identified the elements of a retaliation claim.

Dukes v. Wal-Mart Stores, Inc, 564 U.S. ___, 131 S. Ct. 2541, was heard by the U.S. Supreme Court on June 20, 2011. The case involved a group of female Wal-Mart employees who sued their employer alleging sex discrimination in pay and promotion employment policies under Title VII. The plaintiff group was also seeking injunctive and declaratory relief, back pay, and punitive damages. The allegation was that Wal-Mart's employment policies were discriminatory to women. Although women were 70 percent of Wal-Mart's hourly workforce, only one-third of its management staff was female and Wal-Mart routinely paid women a wage less than men. The case began in district court, 222 F.R.D. 137,

where the judge ruled in favor of class certification. The defendants appealed and the case was heard by the Ninth Circuit Court of Appeals, 474 F. 3d 1214. The appellate court affirmed the decision of the lower court, and the defendants appealed and requested an *en banc* hearing. Sitting *en banc*, 509 F. 3d 1168, the court upheld the original circuit decision, and the defendants filed for a rehearing *en banc*. On rehearing April 26, 2009, the Ninth Circuit (474 F. 3d 1214) upheld its original *en banc* decision. *Certiorari* was granted, and the case moved to the high court where the justices reversed the decisions made by the lower courts.

The U.S. Supreme Court, 564 U.S. ___, 131 S. Ct. 2541, held that the plaintiffs in this case failed to provide sufficient evidence of discrimination by presenting only statistical data. In addition, the high court found that any Title VII inquiry needs to be anchored to a single employment decision. This standard was not satisfied here since the case was brought as a class action suit. This case was important because it made it extremely difficult to bring class action suits against large employers like Wal-Mart. The requirement to look at individual merits requires an extreme amount of investigation that had not been previously required in the context of class actions.

Title IX

The first case involving employment sex discrimination brought before the Supreme Court under Title IX was *North Haven Board of Education v. Bell*, 456 U.S. 512, 102 S. Ct. 1912. In this case, North Haven Board of Education refused

to rehire a tenured teacher who had taken a one-year maternity leave. The Department of Health, Education and Welfare (HEW) requested documentation from North Haven concerning its policies on hiring, leaves of absence, seniority, and tenure. North Haven refused to submit the requested documentation, claiming that HEW lacked authority to regulate employment practices under Title IX. When the school district was notified that HEW was moving forward with possible enforcement, North Haven filed this claim. The case began in the District Court for the District of Connecticut, where the judge held that regulations issued by the United States Department of Health, Education and Welfare (HEW) governing employment sex discrimination were invalid. The Second Circuit Court of Appeals, 629 F. 2d 773, decided the case on July 24, 1980, and reversed the decision of the lower court. *Certiorari* was granted, and the case was decided by the Supreme Court on May 17, 1982. The Supreme Court held that employment discrimination is covered under Title IX and the regulations in connection with Title IX were valid. Thus, the Second Circuit's decision was upheld and the scope of Title IX's coverage in employment discrimination cases was clarified.

Gebser v. Lago Vista Independent School District, 524 U.S. 274, 188 S. Ct 1998, was heard by the Supreme Court on June 22, 1998. In this case, a high school student and her parents sued the school district because the student was sexually harassed by a teacher, and they sought monetary damages against the

district for the harassment. The case began in the district court for the Western District for Texas where the judge found in favor of the defendants, and the plaintiff appealed. The appeal was heard by the Fifth Circuit Court of Appeals, 106 F.3d 1223 (1997), and the appellate court affirmed the decision of the lower court. *Certiorari* was granted, and the U.S. Supreme Court affirmed the lower court decision. The Court concluded that because the school district did not have knowledge of the harassment from the beginning and when the harassment was made known to the district, the district terminated the employee. As a result, the district could not be held liable for the harassment under Title IX standards. To establish Title IX liability under *Gebser* the plaintiff must prove that the school had actual knowledge of the misconduct and failed to act reasonably to protect the student. This case is important because it established the limits of liability on school institutions for employee behavior.

The third Title IX case brought before the Supreme Court involving employment sex discrimination was *Jackson v. Birmingham Board of Education*, 544 U.S. 167. In this case, Roderick Jackson sued the Birmingham Board of Education alleging retaliation under Title IX. Mr. Jackson, the girls' basketball coach, had complained to supervisors that the girls' team was not receiving equal funding and equal access to equipment and supplies. Shortly thereafter, Mr. Jackson received a negative evaluation, and was removed as coach. The case began in the District Court of the Northern District of Alabama where the

complaint was dismissed. The United States Court of Appeals for the Eleventh Circuit heard the case, 309 F. 3d 1333 (2002), and affirmed the ruling of the lower court. *Certiorari* was granted, and the case was decided by the Supreme Court on March 29, 2005. The Supreme Court held that retaliation against an individual who had complained of sex discrimination was a protected act under Title IX. In addition, the allegation of sex discrimination was also covered under Title IX. Thus, the Supreme Court reversed and remanded the case to the lower court for further proceedings. Jackson is important because it established that not only are the direct victims of sex discrimination covered by Title IX, but that persons who report violations may not suffer adverse employment actions on account of such reports (*Jackson v. Birmingham Board of Education*, 544 U.S. 180).

United States Courts of Appeal

The Judiciary Act of 1789 created three courts of appeal to hear appeals from state or district courts, but did not provide for any appellate judges. Thus, appeals sent to the appellate court were heard by two Supreme Court justices and one district court judge (Wayne, MacKenzie, O'Brien, & Cole, 1997). Over time, this model became inefficient as the workload of the Supreme Court increased. The appellate court model that we know today was created in 1891, when Congress established the United States Courts of Appeal system. This system now hears the majority of appeals from district courts (Wayne, MacKenzie,

O'Brien, & Cole, 1997). Congress also provided for appellate judges who sit in revolving panels of three and the majority opinion rules as the court's decision.

The United States Courts of Appeal system contains 13 courts with each court's jurisdiction determined by regional geographical areas or by legal restriction (Wayne, MacKenzie, O'Brien, & Cole, 1997). These courts of appeal are charged with reviewing the decisions of the lower court in an effort to identify areas of possible legal error. Table 2-1 shows each of the 13 circuits and their assigned jurisdictional region. The United States Court of Appeals for the First Circuit presides over cases from Maine, Commonwealth of Massachusetts, New Hampshire, Commonwealth of Puerto Rico, and Rhode Island. The Second Circuit of the Court of Appeals includes Connecticut, New York, and Vermont. The Third Circuit of the Court of Appeals includes Delaware, New Jersey, and Pennsylvania. The Fourth Circuit of the Court of Appeals includes Maryland, North Carolina, South Carolina, and Virginia. The Fifth Circuit of the Court of Appeals includes Louisiana, Mississippi, and Texas. The Sixth Circuit of the Court of Appeals includes Kentucky, Michigan, Ohio, and Tennessee. The Seventh Circuit of the Court of Appeals includes Illinois, Indiana, and Wisconsin. The Eighth Circuit of the Court of Appeals includes Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. The Ninth Circuit of the Court of Appeals includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The Tenth Circuit of the Court of Appeals

includes Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. The Eleventh Circuit of the Court of Appeals includes Alabama, Florida, and Georgia.

Table 2-1 List of United States Courts of Appeal Circuits

Circuit	Region/Legal Issue assigned
1	Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island
2	Connecticut, New York, and Vermont
3	Delaware, New Jersey, and Pennsylvania
4	Maryland, North Carolina, South Carolina, and Virginia
5	Louisiana, Mississippi, and Texas
6	Kentucky, Michigan, Ohio, and Tennessee
7	Illinois, Indiana, and Wisconsin
8	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota
9	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington
10	Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming
11	Alabama, Florida, and Georgia
District of Columbia	District of Columbia
Federal Circuit	Tax, Patent, and International-trade cases

The District of Columbia has its own circuit assigned to the state. Finally, there is a separate Court of Appeals for the Federal Circuit which hears appeals from cases involving tax, patent, and international-trade issues.

Like Supreme Court justices, judges for the 13 federal courts of appeal are appointed for a life-term by the president and require confirmation from the Senate before assuming office. The judges of the appellate court usually decide cases based solely on written records containing the record of the lower court proceedings and written arguments (or briefs) prepared by the attorneys on either side of the case. The judges sit on rotating panels of three and decide cases by reviewing relevant laws and precedents of the Supreme Court, their own, or other federal courts. They address matters of legal interpretation. Each judge submits a decision on the case before them, and the determination of the court is produced by majority opinion. Usually, the judges are in agreement regarding the final decision of a case. Occasionally, there is a difference between judges regarding the decision which is expressed in a written dissent.

The losing party to the appeal may thereafter apply for a review of the case by the entire court of appeals, termed an *en banc* review. *En banc* cases are rare, and require the approval of the circuit court judges. Most decisions rendered by the Courts of Appeal are final, with the losing party having two options, either to the U.S. Supreme Court or to request an *en banc* hearing.

The Courts of Appeal judges are predominately Caucasian males who have received their education from prestigious institutions (Kaheny, Haire, & Benesh, 2008). However, in recent years there has been a shift to include more minorities and women to the bench (Hurwitz & Lanier, 2008). This acceptance to broaden the makeup of judges has expanded the scholarly research of judicial behavior.

Judges' Political Ideology

The case decision making process differs at each level of the federal court system. At the district court level, each case is decided by a sole judge. The U.S. Supreme Court, at the top of the judiciary system, makes decisions by majority rule of the nine justices or so much of them as participate in a decision. The Courts of Appeal system is different as each case is decided by a different group of three judges who work together on a panel and the majority decision is final (Kastellec, 2011). There is a growing body of research investigating the decision making process of judges at the circuit court level and how politics and other non-legal factors contribute to voting in the circuits.

The appointment of a federal judge is a political matter. A great amount of time and effort on behalf of the president and Senate is given in the selection and screening of federal judges. Presidents strive to appoint judges who share their ideological views as these appointments are opportunities for the Senate and the president to influence national policy (Wayne, MacKenzie, O'Brien, & Cole,

1997). Of course, this approach agrees with the attitudinal theory in that the beliefs of the judges will influence the decision making process. Judicial appointments are important because the political representation remains long after the term of the politician has expired.

According to Sick & Heise (2012), the best measure of judicial ideology is the examination of the political party of the appointing president. Since presidents appoint judges who share their political ideology, this is a reliable and frequently used method of measure (Fischman & Law, 2009).

Since the 1970's, the Republican and Democrat parties have been growing apart as each moves towards opposite ideologies. The Republican Party has supported religious activity and has advocated a conservative viewpoint. On the other hand, the Democratic Party has moved away from traditional religion towards a liberal viewpoint (Sisk & Heise, 2012). This divide has led to a number of research studies performed focusing on the influence of political ideology on judicial voting at the Supreme Court and Courts of Appeal (Cross & Tiller, 1998; Revesz, 1997; Shapiro & Murphy, 2008; Wetstein, Ostberg, Songer & Johnson, 2009). The vast majority of these studies found that political ideology influences judicial voting. The degree to which the influence is felt is one of controversy.

Randazzo, Waterman, and Fine (2006) examined State Supreme Court judges and analyzed the effect of statutory language on judicial voting. The researchers examined 2908 appellate court cases involving the interpretation of a

statute from 1961 to 1996. The researchers found significant differences between Republican and Democrat judges both in terms of ideological voting and interpretation of statutory language. When evaluating cases of civil rights discrimination, they found that political ideology of the judge was significant with Republican judges strongly influenced by statutory verbiage. In other words, when the law statute is vague and allows for judicial interpretation to occur in discrimination cases, then a Republican judge's political ideology may influence the decision making process. In this situation, Republican judges tend to support conservative pro-employer decisions, and Democrats tend to support liberal pro-plaintiff decisions.

Wetstein, Ostberg, Songer and Johnson (2009) addressed the accepted finding by most scholars, that American judges decide cases largely in one liberal-conservative dimension. In this study, the researchers analyzed voting behavior of the Canadian Supreme Court justices from 1992 – 1997 involving economic, criminal, and civil liberties cases. Using factor analysis, they found that the Canadian justices who use a several different forms of ideology (i.e., case scoring, judicial votes, and deference) are not as polarized as their American counterparts who typically use one form of ideology in research (political affiliation). The researchers question whether U.S. judges are as one-dimensional as projected, and urge future scholars to examine elements of the attitudinal theory when researching the influence of political ideology on judicial voting.

Miles and Sunstein (2008) examined all decisions made between 1996 to 2006 on appeal from decisions at the National Labor Relations Board. The researchers refer to judicial political ideology as the “standard pattern” in judicial voting, referring to liberal and conservative ideology. In most cases, judges vote according to stereotypical expectations, meaning that Republicans favor conservative pro-employer decisions, and Democrats support liberal pro-plaintiff decisions.

Sex Discrimination Cases

Kulik, Perry, and Pepper (2003) researched differences in judicial political ideology in sex harassment cases. They hypothesized that Democratic appointees would be more likely to make pro-plaintiff decisions than Republican appointees. These researchers examined 143 cases pertaining to Title VII heard by federal courts between 1981 and 1996 using logistic regression analysis. The results supported their predictions.

Sunstein, Schkade, Ellman, and Sawicki (2006) investigated the influence of political party affiliation on appellate court judges’ decision making. The researchers examined over 19,000 judicial votes from cases covering 23 areas of law, including sex discrimination. The researchers found that when deciding upon a case, judges first consider the law (legal theory). If the law is vague, then political ideology plays a role. Overall, they found that judges appointed by

Democratic presidents vote liberally, in support of the plaintiff, more often than judges appointed by Republican presidents.

As this examination of existing research shows, judicial political ideology is a matter of great significance. The majority of researchers agree that the political ideology of a judge does to some degree influence decision making. This study works to investigate the influence of judicial political affiliation on judicial voting on employment sex discrimination cases of higher education.

Judges' Gender

President Franklin D. Roosevelt was the first to appoint a woman, Florence Allen, to the federal bench in 1934. However, the nominations of women as judges were rare until the late 1970's when President Carter began a trend by appointing 40 women to the federal bench (Songer, Davis, & Haire, 1994; Johnson & Songer, 2009). The trend continued through the 1980's and 1990's as women substantially increased their presence on the U.S. Supreme Court, Courts of Appeal, and District Courts (Scherer, 2011). This change in the representation of women judges has brought much interest from scholars as to the differences between men and women judges and what factors, if any, influence their decision making process.

A significant amount of scholarly research has been previously published examining judicial gender in the Supreme Court and Courts of Appeal systems and the role of judicial gender in decision making (Allen & Wall, 1987; Cox &

Miles, 2008; Davis, 1992; Gruhl, Spohn, & Welch, 1981; Johnson et al., 2008; Martin & Pyle, 2000; McCall & McCall, 2007; Peresie, 2005; Segal, 2000; Sherry, 1986; Smith, 1994; Songer & Crews-Meyer, 2000; Songer, Davis, & Haire, 1994; Walker & Barrow, 1985; Westergren, 2004). The results of these studies have been mixed. Some studies found no significant difference between men and women's voting behavior and others, while others found important differences between the genders' style of voting.

Gruhl, Spohn, and Welch (1981) found that male judges were more likely to be lenient with female defendants than female judges. In contrast, Allen and Wall (1987) found that women jurists were more likely to support female positions in their decision making. In other words, a female judge is more likely to support a pro-plaintiff decision in favor of another female. This comparison of two studies shows the variance found in studies involving gender voting behavior.

Johnson, Songer, and Jilani (2011) conducted a study that examined the effect of judge gender on their decision making at the appellate court level. The researchers analyzed the decision making differences of the Supreme Court of Canada. Using critical mass theory as a lens, the researchers defined "critical mass" as 30% of female judges. The researchers pursued the question of whether there are different patterns of decisions, and if any gender differences exist of a critical mass of female judges. Using the logistic regression model, the researchers found no evidence to support the hypothesis that female judging

would alter upon a critical mass. This suggests that the research could not support the idea that females would vote differently if more females were part of the group.

Songer and Crews-Meyer (2000) investigated gender differences in judges, and the possible corresponding effect on decision making. Data was accumulated from all 52 state supreme courts using logistic regression. The researchers identified one type of criminal case to analyze being death penalty cases, and one type of civil liberties cases being obscenity. The researchers identified the dependent variable as the direction of each judge's vote. The independent variables were the political ideology of the judge, judge's gender, and citizen ideology (a measurement of state values and opinions). They found that the effect of judge gender was significant – female judges were more liberal when deciding obscenity and death penalty cases.

Sex Discrimination Cases

Analyzing the research performed on the decisions of female judges in sex discrimination cases, the results are also mixed. Kulik, Perry, and Pepper's (2003) study was mentioned earlier in regards to political ideology. The researchers in this study also addressed differences between judicial gender and voting in sex harassment cases. They hypothesized that women would be more likely to make pro-plaintiff decisions. The researchers examined 143 cases pertaining to Title VII heard by federal courts between 1981 and 1996. Through

logistic regression analysis, the researchers found no significant difference between male and female judges in the voting patterns of sex discrimination cases.

Segal (2000) researched President Clinton's federal judicial appointees. President Clinton made a deliberate effort to appoint women to the federal bench. The assumption was that these appointees would vote differently than their counterparts. Segal investigated the female judicial appointees by Clinton during his first term in cases involving women's issues (sex discrimination, abortion rights, sexual harassment, and equal pay). Segal found evidence that female judges do not vote differently than male judges.

Peresie (2005) analyzed the voting patterns of judges in sex discrimination cases. She examined all sex harassment and sex discrimination cases decided by the federal courts of appeal between 1999 and 2001. In her data base were 556 total cases and 1666 individual votes. The dependent variable was the decision of the judge (pro-plaintiff or pro-defendant), and the independent variable was the gender of the judge. Control variables were the background, race, ideology, prior employment, experience, and age of the judge. Peresie found that women did vote pro-plaintiff more often than male judges.

Choi, Gulati, Holman, and Posner (2011) examined gender in judicial voting of sex discrimination cases. In their research, they analyzed the judicial performances of 409 state high court judges; 103 were female. The researchers

challenged the findings of previous research that female judges support the rights of women in sex discrimination cases more often than males (Epstein, Martin & Boyd, 2007; Peresie, 2005). Refuting two out of three predictions, the researchers found that women jurists are more independent in their judgments than males, and were not biased on matters of women's rights, like sexual harassment or sex discrimination cases.

Farhang and Wawro (2004) examined 400 U.S. Courts of Appeal employment discrimination cases and analyzed racial and gender influences on judge's voting. The researchers found that female judges tend to vote more liberally than males in cases of employment discrimination.

Boyd, Epstein, and Martin (2010) investigated whether male and female judges decide cases differently. The researchers utilized a previously created data base by Sunstein which contained the decisions of federal courts of appeal judges in 13 areas, including sex discrimination. Using logistic regression, the researchers determined that in cases of sex discrimination, the probability of a female judge voting in favor of the plaintiff is 10% higher than that of a male judge. In other words, the researchers found a difference in male and female judges' voting patterns in sex discrimination cases.

As this overview of previous research reveals, the results from studies on the effects of gender on judicial voting are mixed. Given the varied results of previous research, it should not come as much of a surprise that scholars have

been unable to reach definitive conclusions on the question of whether a jurist's gender influences their decision making. One purpose of this study is to contribute to the literature by examining whether women jurists exhibit behavior that is different from male jurists in higher education employment sex discrimination cases at the United States Courts of Appeal.

Plaintiffs' Gender

Although there is no specific research linking judicial voting to plaintiffs' gender there are a limited number of investigations which examined how others react to the gender of a plaintiff. Most research on plaintiffs' gender focuses on the plaintiff in a generic form without differentiating between male and female plaintiffs. Typically, these studies analyze judicial gender and research how judges treat plaintiffs irrespective of their gender. As previously discussed, Peresie (2005) found that female judges tend to favor plaintiffs. Similarly, Boyd, Epstein, and Martin (2010) found that female judges are more likely to vote in support of a plaintiff than a male judge. On the other hand, Songer and Crews-Meyer (2000) showed that only Republican female judges display a bias in their voting patterns.

A few researchers have laid the groundwork by focusing on plaintiffs' gender and provide an empirical foundation for using this variable as an object of study. Elkins, Phillips, Konopaske, and Townsend (2001) researched plaintiff gender stereotyping using mock jurors from senior-level students at a large

university. The researchers used 120 undergraduate students ranging in age from 22-57 years and created mock juries in the evaluation of employment gender discrimination allegations. The results showed that female mock jurors favored female plaintiffs. The study also showed that male mock jurors did not display a bias towards plaintiffs regardless of their gender. These observations about juror tendencies might apply to the way actual judges behave this investigation included plaintiffs' gender effects as a variable in this investigation.

Judges' Appointment Era

Upon assuming office, Ronald Reagan focused almost immediately upon the selection of conservative judges to the federal bench and the Supreme Court. This was a time following *Roe v. Wade*, and the focus of conservatives was to restore family values to the nation. Reagan accomplished this goal in a methodological and systemic manner (Cross, Smith, & Tomarchio, 2008). First, he centralized the process of nomination by creating the Office of Legal Policy and the President's Committee on Federal Judicial Selection (Neubauer, 1997). These offices were maintained by the highest levels of staff – all for the purpose of refining the process of judicial selection to further the President's ideological goals. Next, he focused on ideology when considering individuals for appointments and ignored the custom of that date to nominate an individual for patronage (Cross, Smith, & Tomarchio, 2008). Reagan's influence on the federal bench and Supreme Court was so profound that his presidency marks a turning

point in U. S. judicial history (Cross, Smith, & Tomarchio, 2008). O'Brien (2005) states that Reagan's impact on the court system was the strongest since Roosevelt.

During Reagan's two terms, he appointed three justices to the Supreme Court including the first woman, and appointed half of all lower court judges. Although not all of Reagan's judicial nominations received Senate approval, his administration is considered successful in its ability to significantly influence the judicial environment for many years (Neubauer, 1997).

Gender Panel Majority

Due to the arrangement of three judges working together to decide a case on the courts of appeals, the influence of judicial gender has been investigated by researchers. Also, with the inclusion of an increasing number of women on the federal bench, researchers are interested in how differences in gender influence judicial decisions.

Farhang and Wawro (2004) examined appellate judges and their motivations practices. The researchers found that panels with a female majority are more likely to favor a pro-plaintiff decision by 20%.

Sunstein, Schakade, and Ellman (2004) did a separate analysis on judicial gender and subsequent panel effects. The results showed that female judges do not favor plaintiffs more often than male judges. In fact, the Sunstein, Schakade,

and Ellman study found no difference between the two sexes in their voting patterns on a panel.

Ideology Panel Majority

Berdejo (2012) researched over 62,000 circuit court cases. He found that panels with a Democratic-majority are more likely to reach a liberal outcome versus a Republican-majority panel. Revesz (1997) researched effects of panel ideology on cases involving environment protection issues. He found that circuit panels have become more ideologically skewed over time with a tendency for Democrat-majority panels to support a pro-plaintiff decision and Republican-majority panels to support a pro-defendant decision.

Miles and Sunstein (2008) closely examined panel composition at the appellate court level and found panels composed of all Republican judges are more likely to support a conservative pro-employer outcome in cases of labor issues. Likewise, when a panel involves three Democrats, then the voting is especially liberal. The researchers argue that three member panels should be monitored so that each panel consists of judges from both parties. They concluded that the presence of a different perspective moderates the case outcome.

Chapter 3

Method

This study investigated the relationship among: (1) individual judicial voting and judges' ideology, gender and appointment era and plaintiffs' gender and (2) decisional outcome and panel ideological, gender and appointment majority and plaintiffs' gender in sex discrimination in higher education rendered in United States Courts of Appeal between 1964 and 2013.

Research Design

Data Base

The data sets for the analyses below were derived from 231 United States Courts of Appeal decisions involving gender based employment discrimination claims brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII and Title IX rendered between 1964 and 2013, emanating from higher education settings.

All decisions meeting these qualifications and published in the Westlaw data bases covering the period of 1964 through 2013 were analyzed (See Appendix C). This means that all published Equal Protection and Title VII gender discrimination decisions issued since 1964, the date of Title VII's enactment, were contained within in the data base. Also included in the data base were all Title IX decisions issued since 1972, the date of Title IX's enactment.

The number of judicial votes included in the data base was 693. Data on the political affiliations of the judges as well as their gender was derived from standard biographic sources such as Judgepedia (http://judgepedia.org/index.php/Main_page), the web-site of the Federal Judicial Center (<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalJudges.aspx>), and the Songer Database located at The Judicial Research Initiative at the University of South Carolina (<http://artsandsciences.sc.edu/poli/juri/sttributes.htm>).

Individual Voting

Judge -Level Variables.

The first independent variable was political ideology, with the party of the nominating president serving as a proxy for the conservative or liberal ideology of each judge. The political ideology predictor was coded “1” and “0” for judges’ nominated by Republican and Democratic presidents, respectively.

The second judge-level variable which was studied is judges’ gender. Female judges were coded “1” and males as “0”. This facilitated an examination of the contribution of judges’ gender to the variation in conservative pro-employer voting of female, as compared to male judges.

Extrinsic Variables .

The third variable was the appointment era of each judge. The judicial appointment era identifies whether the judge was appointed during the Reagan and later period or the pre-Reagan era. Judges appointed during 1981 and later were coded “1”, and those appointed during 1980 and earlier as “0”. This division was selected because of President Reagan’s and Republican Presidents thereafter practice of appointing only judges who agreed with their conservative philosophical standards. As a result of this goal, the Republican Court of Appeals appointments took a markedly conservative turn, and the influence has continued to change the environment of the courts thereafter (O’Brien, 2003; Stidham & Carp, 1987). Because of the apparent effectiveness of the appointment process followed by Republican presidents during the Reagan and later years the impact of this process was examined in this study.

Case-Level Variables

One case level variable was studied: the plaintiffs’ gender. Male plaintiffs were coded with a “0” while female plaintiffs were coded with a “1”.

Panel Decisions

Gender Majority of the Panel

Due to the expansion of empirical research indicating the importance of panel composition, this variable was included as an independent predictor of decisional outcome (conservative or liberal). The structure of the U.S. Courts of

Appeal judicial panels of three judges, allows for a gender majority to occur on each panel. The panel composition for each decision was coded as “0”, indicating a male majority or “1”, a female majority on the panel. *En banc* panels were not included in any analysis of panel composition, since larger panels were not directly comparable to the smaller three judge sets.

Ideological Majority of the Panel

The ideological majority of the panel was examined in a manner similar to that for gender. On a panel of three members, majority Republican panels of two or more Republican appointees were coded as “1” or “0” for a majority of Democrat appointees. This coding allowed a separate examination of panel majority influences on decisional outcome.

Appointment Era Majority of the Panel

The appointment era majority of the panel used the same metric as employed for gender and ideology majority. Panels with a majority of judges appointed during 1980 and earlier were coded as “0”, and panels with a majority of judges appointed during the later era of 1981 and later were coded as “1”. The coding allowed the researcher to examine the effects of appointment era majorities on decisional outcome.

Dependent Measures

Individual Voting: Conservative-Liberal

A binary dependent measure, liberal or conservative vote, was selected for the judges' political ideology and gender, plaintiffs' gender, and appointment era independent variables. A vote that favored the defendant by either dismissing the claim or granting other relief in favor of the defendant was classified as "conservative". A vote that favored the plaintiff in either denial of defendant's claims or granting relief in favor of the plaintiff was identified as "liberal". Conservative votes were coded "1" and liberal votes were coded as a "0."

Case Outcome: Conservative Liberal

The case outcome dependent measure was coded as above with "1" representing a conservative decision and "0" representing a liberal decision. There were 231 decisions included in the analyses, representing all of the cases in the data base except for the *en banc* decisions.

Data Collection

The Westlaw search engine was used in identifying all U.S. Courts of Appeal cases (published and indexed) in higher education employment gender discrimination issued since 1964 in which a gender based Equal Protection Clause, Title VII or Title IX claim was made in a higher education setting and a decision rendered. The search terms were "Equal Protection", "Title VII" or "Title IX", "sex discrimination", "employment", and "university" or "college".

This method eliminated cases other than those inside the higher education area. The UTA library website was used to locate the Westlaw search path as follows on the UTA library web-site : Library Data Base A-Z, Campus Research, Law link [upper left of screen], click key search link [Go], click employment law discrimination, then sex discrimination. On the next screen, click on all U.S. Courts of Appeals and add the search terms of “Equal Protection,” or “Title VII” or “Title IX,” and “university” or “college”. This method was developed to ensure no applicable decisions were missed within the data base.

Another Westlaw search path was used on the UTA library web-site : Library Data Base A-Z, Campus Research, Law link [upper left of screen], key search link [go], civil rights, education, sex discrimination, and then type in entry of terms “Equal Protection,” or “ Title VII” or “Title IX,” and “employment”. This path was used to ensure no applicable decisions were missed within the data base.

All cases were compiled and added in the researcher’s data base spreadsheet. The data base included all decisions rendered by the United States Courts of Appeal for the years selected.

Data Base Coding

A. SPSS “Data Editor Window” [hereafter “Data View Tab] for
INDIVIDUAL JUDGES’ VOTING

In SPSS Data View each row of the data table represented data from one case and each column contains data from one variable. The data view for individual judges' voting was set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Judge's Date of Appointment [1= 1981 and later, 0=1980 and earlier]

Column 4 Judge's Name

Column 5 Number Assigned to Judge

Column 6 Party of the President Appointing that Judge [1=Republican, and 0=Democrat]

Column 7 Judge's Gender [1=female, 0=male]

Column 8 Plaintiffs' Gender [1=female, 0=male]

Column 9 Equal Protection Claim [1=yes, 0=no]

Column 10 Title VII Claim [1=yes, 0=no]

Column 11 Title IX Claim [1=yes, 0=no]

Column 12 Individual Vote [dependent measure] [1=conservative-pro-employer, 0=liberal-pro-employee]

B. SPSS Data Editor Window [hereafter "Data View Tab] for PANEL COMPOSITION AND DECISIONAL OUTCOME

In SPSS each row of the data table represented data from one case and each column contains data from one variable. The data view for panel voting will be set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Panel-Gender Majority [1=female majority, 0= male majority]

Column 4 Panel-Ideology Majority [1= Republican majority, 0= Democrat majority]

Column 5 Appointment Era Majority [1=1981 and later majority, 0=1980 and earlier majority]

Column 6 Plaintiffs' Gender [1=female, 0=male]

Column 7 Equal Protection Claim [1=yes, 0=no]

Column 8 Title VII Claim [1=yes, 0=no]

Column 9 Title IX Claim [1=yes, 0=no]

Column 10 Decisional Outcome [1=conservative-pro-employer, 0=liberal-pro-employee]

In order to have reliability in the coding, doctoral students and co-researchers along with me (the primary researcher) independently cross-checked the accuracy of the accumulated data spread-sheet coding. To gain reliability in the coding, the biographical information collected on each justice was verified with the Songer database. The Songer database includes a set of randomly

selected cases and judicial biographical material from all twelve U.S. Courts of Appeal (Collins, 2010).

Data Analysis

Due to the fact that the dependent variables are dichotomous, ordinary least squares regression is inappropriate, and the parameters of the models were estimated by binary logistic regression techniques (Aldrich & Nelson, 1984). This statistic was selected because it is the most effective statistic for analysis of binary dependent variables, the data satisfies each of the assumptions for this technique, and it is the conventional method of examining judicial voting (Aldrich & Nelson, 1984). With respect to the last basis of selection, this enables comparisons with other studies using this analytic tool.

Logistic regression produces estimates of a model's independent variables in terms of the contribution each makes to the odds that the dependent variable falls into one of the designated categories in this study, either conservative or liberal votes [in that part of the study investigating judges' individual votes] or conservative or liberal case outcome [in that part of the study investigating decisional outcomes]. In essence, this technique allows the researcher to determine whether each independent variable improves the model relative to the model without that independent variable.

Four regression equations were run. In the first equation, the judges' ideology, judges' gender (judge level variables), plaintiffs' gender (case-level

variable), appointment era (1981 and later v. 1980 and earlier)(extrinsic variable), were set up as independent predictors of the dependent binary measure of judges' individual votes rendered in the sex discrimination cases encompassing the combined Republican and Democrat data base. This enabled an assessment of the independent contribution of each of these predictors to the odds of a conservative or liberal individual voting.

The second equation examined the judges' gender, plaintiffs' gender, and appointment era as independent predictors of the dependent binary measure of judges' individual votes for the Democratic appointees only. This enabled an assessment of the independent contribution of each predictor to the odds of a conservative or liberal vote for this group.

The third equation observed the judges' gender, plaintiffs' gender, and appointment era as independent predictors of the dependent binary measure of judges' individual votes rendered by Republican appointees only. This enabled an assessment of the independent contribution of each predictor to the odds of a conservative or liberal vote with this group.

The fourth equation examined the relationship of the panel ideological majority, panel gender majority, appointment era panel majority, and plaintiffs' gender set up as independent variables and case outcome (conservative or liberal) serving as the dependent measure. This enabled an assessment of independent

contribution of each predictor to the odds of a conservative or liberal vote with case decisional outcomes.

For this study, significant differences in the logit output produced by each independent variable were considered at the .10, .05, and .01 levels. Differences were determined to obtain significance when the acquired probabilities were below each of these thresholds.

Before undertaking the logistic regression analyses just described preliminary descriptive tables were developed to inform the analyses. The descriptive tables for the individual voting were comprised of the following:

1. An examination of the frequency and percentage of 693 conservative pro-employer and liberal not pro-employer votes cast as a function of judges' ideology.
2. An examination of the frequency and percentage of 693 conservative pro-employer and liberal not pro-employer votes cast as a function of judges' gender.
3. An examination of the frequency and percentage of 693 conservative pro-employer and liberal not pro-employer votes cast as a function of judges' appointment era.
4. An examination of the frequency and percentage of 282 conservative pro-employer and liberal not pro-employer votes cast as a function of Democrat judges' appointment era.

5. An examination of the frequency and percentage of 411 conservative pro-employer and liberal not pro-employer votes cast as a function of Republican judges' appointment era.
6. An examination of the frequency and percentage of 693 conservative pro-employer and liberal not pro-employer votes cast as a function of plaintiffs' gender

The descriptive tables for the panel decisions consisted of:

7. An examination of the frequency and percentage of 231 conservative pro-employer and liberal not pro-employer case outcomes as a function of panel gender majority.
8. An examination of the frequency and percentage of 231 conservative pro-employer and liberal not pro-employer case outcomes as a function of panel ideology majority.
9. An examination of the frequency and percentage of 231 conservative pro-employer and liberal not pro-employer case outcomes as a function of panel appointment era majority.
10. An examination of the frequency and percentage of 231 conservative pro-employer and liberal not pro-employer case outcomes as a function of plaintiffs' gender.

Chapter 4

Results

An analysis of the relationship of judge-level variables [ideology and gender], extrinsic variable [appointment era], and case-level variable [plaintiffs' gender] and the voting patterns of the U.S. Courts of Appeal judges was investigated descriptively before applying logit analyses on the data sets.

Descriptive and Inferential Statistics

U.S. Courts of Appeal Individual Voting

Table 4-1 shows the frequency distribution of individual voting of US Courts of Appeal judges in higher education employment sex discrimination cases as a function of political ideology. For Democratic judges, 199 (71%) out of 282 votes cast were in a conservative pro-employer direction and 19% were liberal or in support of the employee. For Republican judges, 321 (78%) votes were pro-employer and 90 (22%) out of a total of 411 votes were pro-employee. With a total of 693 individual votes, 520 or 75% were conservative and 173 or 25% were liberal. Although the 7% difference between judges' ideology in a conservative pro-employer direction for Republican appointees was in the direction predicted, it did not appear to be a significant one. Its significance was tested by the logit models as described later in this section.

Table 4-1 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 for claims brought under the Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges’

Party Ideology	Ideology		Total
	Conservative	Liberal	
Democrat	199 (71%)	83 (19%)	282 (41%)
Republican	321 (78%)	90 (22%)	411 (59%)
Total	520 (75%)	173 (25%)	693 (100%)

Table 4-2 shows the frequency distribution and percentage of votes cast categorized as conservative (pro-employer) or liberal (pro-employee) in higher education employment sex discrimination cases by judges’ gender. Of the 693 total votes cast, 520 (75%) were conservative and 173 (25%) liberal. Male judges were in the majority; casting 604 (87%) votes with female judges representing 13% of the total examined votes. The modest difference in voting between male and female judges at 4% (75 versus 79%) does not appear to be meaningful.

Table 4-2 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges' Gender

Judges' Gender	Conservative	Liberal	Total
Male	450 (75%)	154 (25%)	604 (87%)
Female	70 (79%)	19 (21%)	89 (13%)
Total	520 (75%)	173 (25%)	693 (100%)

Table 4-3 shows the distribution of individual voting of US Courts of Appeal judges in cases of higher education employment sex discrimination categorized by the judges' appointment era. Three hundred and seven (44%) of the votes cast were by judges appointed before or during 1980 and 386 (56%) of the total of 693 votes were made by judges appointed during 1981 and later. Overall, the judges appointed during 1981 and later were more conservative in their voting practices (81%) than their predecessor appointees (67%). This information suggests that the selection process for judges appointed during 1981 and later in the aggregate resulted in more conservative voting for this group than during the 1980 and earlier period. The information from this table is examined

further descriptively in Tables 4-4 and 4-5 by disaggregating the votes of Republican and Democrat appointed judges with the judges' appointment era.

Table 4-3 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Judges' Appointment Era.

Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	207 (67%)	100 (33%)	307 (44%)
1981 and later	313 (81%)	73 (19%)	386 (56%)
Total	520 (75%)	173 (25%)	693 (100%)

Table 4-4 shows the frequency distribution of individual voting by Democratic appointees in higher education employment sex discrimination cases by their appointment era. Of the total 282 Democrat votes, 182 (65%) were from judges appointed in 1980 and earlier, and 100 (35%) from judges appointed in 1981 and later. Initial findings show an increase of conservative voting practices over time. Eighty-three (83%) of votes from Democrat judges appointed in 1981 and later were conservative, compared to 116 (64%) conservative votes from

Democrat judges appointed in 1980 and earlier. This relationship was investigated further in the logit analysis discussed below.

Table 4-4 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal by Democratic Judges appointed during the 1980 and earlier era and 1981 and later era.

Democrat Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	116 (64%)	66 (36%)	182 (65%)
1981 and later	83 (83%)	17 (17%)	100 (35%)
Total	199 (71%)	83 (29%)	282 (100%)

Table 4-5 shows the frequency distribution of Republican appointees' categorized by their appointment era. There were 411 Republican votes counted in this study. The Republican judges appointed before 1981 voted in a conservative pro-employer direction 73% of the time, while the Republican judges appointed during the 1981 and later period voted conservative pro-employer 80% of the time. This finding is not surprising given the predicted

greater conservative tendency among the later Republican appointees. The significance of this difference was assessed below when the logits were run and are discussed below.

Table 4-5 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeals by Republican Judges appointed during the pre-Reagan and Reagan and later years

Republican Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	91 (73%)	34 (22%)	125 (30%)
1981 and later	230 (80%)	56 (20%)	286 (70%)
Total	321 (78%)	90 (22%)	411 (100%)

Table 4-6 displays the frequency distribution of the 693 individual votes cast in higher education employment sex discrimination cases and the plaintiffs' gender. When a male was the plaintiff the voting was conservative pro-employer in 93 cases (84%). The numbers for female plaintiffs showed that out of the total

582 votes, 427 (73%) were conservative. The 11% difference suggests that across all judges, female plaintiffs fared better than male plaintiffs in the cases studied. The significance of these differences in individual voting is reviewed below where the logit analyses are discussed.

Table 4-6 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Higher Education Gender Discrimination Cases between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender

Plaintiffs' Gender	Conservative	Liberal	Total
Male	93 (84%)	18 (16%)	111 (16%)
Female	427 (73%)	155 (27%)	582 (84%)
Total	520 (75%)	173 (25%)	693 (100%)

Table 4-7 shows the results of the logit analysis performed on the 693 individual votes for higher education employment sex discrimination cases rendered between 1964 – 2013 for Democrat and Republican judges. A test of the full model against a constant-only model was statistically significant, indicating that the predictors, as a set, reliably distinguished between conservative (pro-employer) and liberal (pro-employee) votes of the individual judges ($X^2 = 21.767$,

$p = .000$ with $df = 4$). Overall, 75.0% of the predictions were accurate.

Variability in the dependent variable accounted for by the independent variables was approximately .046, as measured by the Nagelkerke's R Square. Table 4-7 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that Appointment Era ($p < .01$) and Plaintiffs' Gender ($p < .10$) made significant contributions to the prediction.

For the *appointment era* variable, calculation of the effect size revealed that the odds of a judge appointed during 1981 and later voting conservatively increased using a factor of 1.824 over the odds of an earlier appointed judge voting in a conservative direction, when all other independent variables were held constant (Table 4-7). This is consistent with the relationship shown in descriptive Table 4-1 which showed a 14% difference between judges appointed during 1981 and later and judges appointed during 1980 and earlier. This suggests that the judicial selection process during the 1981 and later period resulted in more conservative voting as compared with the 1980 and earlier period when judges selected by each political party were aggregated.

For *plaintiffs' gender*, the logit output showed that for the entire data base of 693 votes, plaintiffs' status as a female had a negative relationship with conservative pro-employer individual voting as compared to male plaintiffs when all other variables are held constant. Calculation of the effect size revealed that

the odds of a female plaintiff receiving a conservative pro-employer outcome were reduced by a factor of .595 over the odds of a male plaintiff receiving a conservative pro-employer outcome. This equates with the odds of obtaining a conservative vote being about 1.68 times greater for male as compared to female plaintiffs. This suggests that overall male plaintiffs received less favorable treatment in sex discrimination cases than females.

The output indicated that ideology was not strongly related to the voting choices of judges. Republican appointees did not vote more conservatively than Democrat appointees. Further, the output shows judges' gender did not contribute significantly to the odds of obtaining a conservative pro-employer vote. In order to more clearly understand the variables contained in this table, separate logit analysis were performed on the individual votes rendered by Democratic appointees (Table 4-8) and Republican appointees (Table 4-9).

Table 4-7 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Combined Data Bases for Judges Nominated by Republican and Democratic Presidents

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Ideology	.204 (.195)	1.097	1	.295	1.226
Appointment Era	.601 (.196)	9.438	1	.002***	1.824
Judges' Gender	.153 (.289)	.279	1	.597	1.165
Plaintiffs' Gender	-.520 (.278)	3.487	1	.062*	.595
Constant	1.106 (.292)	14.376	1	.000	3.022

* $p < .10$

** $p < .05$

*** $p < .01$

Table 4-8 shows the results of the logit analysis performed on the individual votes of Democrat appointees for higher education employment sex discrimination cases rendered between 1964 - 2013. A total of 282 individual Democrat votes were analyzed. A test of the full model against a constant-only model was statistically significant, indicating that the predictors, as a set, reliably distinguished between conservative (pro-employer) and liberal (pro-employee) votes of the individual Democrat judges ($X^2 = 20.591$, $p = .000$ with $df = 3$). Overall, 70.6% of the predictions were accurate. Variability in the dependent variable accounted for by the independent variables was approximately .100, as measured by the Nagelkerke's R Square. Table 4-8 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that Appointment Era ($p = .004$) and Plaintiffs' Gender ($p = .012$) made a significant contribution to prediction.

In looking at the appointment era of Democrat judges, the output shows that appointment era is related to voting choices. Democrat judges appointed in 1981 and later were significantly more likely to vote in a conservative (pro-employer) direction than Democrat judges appointed during 1980 and earlier. Calculation of the effect size revealed that the odds of a Democrat judge appointed in the 1981 and later period voting in a conservative pro-employer direction increased using a factor of 2.522 over the odds of an earlier appointed Democrat judge voting in a conservative direction, when all of the other

independent variables were held constant. This finding suggests that the judicial selection process for Democrat judges during the 1981 and later period resulted in more conservative voting for that group as compared with the 1980 and earlier period. This finding is examined in the next chapter.

For *plaintiffs' gender*, the output shows that for Democrat judges, the plaintiffs' gender as female had a negative relationship with conservative pro-employer voting as compared to male plaintiffs when all other variables are held constant. In other words, Democrat judges voted more favorably for women plaintiffs over male plaintiffs. Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer vote from Democrat judges was reduced by a factor of .252 over the odds of a male plaintiff receiving a conservative pro-employer outcome from Democrat judges. This roughly equates with a nearly four times greater odds for a female receiving a liberal pro-employee outcome versus a male plaintiff.

In sum, the differences discovered in the descriptive statistics for the Democratic only data base appointment era (19%) and plaintiff gender (11%), each attained statistical significance when examined through logit analysis. The output showed judges' gender did not contribute significantly to the odds of obtaining a conservative pro-employer vote among Democrat judges.

Table 4-8 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Data Bases for Judges Nominated by Democratic Presidents

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Appointment Era	.925 (.324)	8.163	1	.004***	2.522
Judges' Gender	-.038 (.366)	.011	1	.918	.963
Plaintiffs' Gender	-1.380 (.550)	6.297	1	.012***	.252
Constant	1.837 (.543)	11.431	1	.001	6.276

* $p < .10$

** $p < .05$

*** $p < .01$

Table 4-9 shows the results of the logit analysis performed on the 411 individual votes of Republican appointees for higher education employment sex

discrimination cases rendered between 1964 - 2013. A test of the full model against a constant-only model did not show statistical significance, indicating that the predictors, as a set, did not reliably distinguished between conservative (pro-employer) and liberal (pro-employee) votes of the individual Republican judges ($X^2 = 3.671, p = .299$ with $df = 3$). Overall, 78.1% of the predictions were accurate. Variability in the dependent variable accounted for by the independent variables was approximately .014, as measured by the Nagelkerke's R Square. Table 4-9 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that appointment era ($p = .144$) merely approached .10 significance.

Republican judges appointed during 1981 and later showed only a 7% difference between the earlier appointed Republican appointees (Table 4-5). Calculation of the effect size also revealed rather modest differences in that the odds of a Republican judge appointed during 1981 and later voting conservatively increased using a factor of 1.456 over the odds of an earlier appointed Republican judge voting in a conservative direction, when all other independent variables were held constant (Table 4-9).

This output showed that neither plaintiffs' gender, nor judges' gender significantly contributed to the odds of a conservative pro-employer vote with the Republican appointees.

Table 4-9 Logit Analysis on the Odds of a Conservative Pro-Employer Vote Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals in Higher Education Gender Discrimination Cases, Data Bases for Judges Nominated by Republican Presidents

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Appointment Era	.376 (.257)	2.137	1	.144	1.456
Judges' Gender	.429 (.508)	.713	1	.398	1.536
Plaintiffs' Gender	-.066 (.330)	.040	1	.842	.936
Constant	1.044 (.358)	8.484	1	.004	2.840

* $p < .10$

** $p < .05$

*** $p < .01$

U.S. Courts of Appeal Decisional Outcomes

Table 4-10 shows the frequency distribution of decisional outcomes by the three-judge panels in higher education employment sex discrimination cases by the gender majority of panel members. An analysis of the 231 case outcomes showed that 216 (94%) of panels had a male majority with 166 cases (77%) favoring a conservative pro-employer outcome. Panels possessed a female majority in 15 (6%) cases, and these panels favored a conservative pro-employer decision in 80% of the cases measured. Thus, there appears to be no relationship between the gender majority serving on the panel and the decisional outcome. This result will be analyzed further in the logit analysis. For the total 231 cases, the outcome was conservative pro-employer in 183 cases (79%) and liberal in 48 cases (21%).

Table 4-10 Frequency and Percentage of Conservative Pro-Employer and Liberal Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Court of Appeals as a Function of Panel Gender Majority.

Panel Gender Majority	Conservative	Liberal	Total
Male Judge Majority	166 (77%)	50 (23%)	216 (94%)
Female Judge Majority	12 (80%)	3 (20%)	15 (6%)
Total	183 (79%)	48 (21%)	231 (100%)

Table 4-11 shows the frequency distribution of 231 case outcomes in higher education employment sex discrimination cases as a function of the panel ideology majority. Out of the total 231 cases studied, 86 (37%) had at least two Democrat judges sitting on the panel, and a conservative outcome resulted in 64 (74%) of the cases. Sixty-three percent (145) of the 231 cases had at least two Republican judges on the panel, which resulted in a conservative pro-employer decisional outcome in 79% of the cases. Thus, although Republican appointee majority panels voted conservatively more often than Democratic appointee majorities, there was only a 5% difference in conservative voting between the two.

Table 4-11 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964 and 2013 under Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal as a Function of a Panel Party Majority.

Panel Ideology Majority	Conservative	Liberal	Total
Democrat Majority	64 (74%)	22 (26%)	86 (37%)
Republican Majority	114 (79%)	31 (21%)	145 (63%)
Total	183 (79%)	48 (21%)	231 (100%)

Table 4-12 shows a frequency distribution of case outcomes in higher education employment sex discrimination cases and the appointment era majority of judges on the panel. The table show that panels with a majority of judges appointed during 1981 and later were more conservative in their decisional outcomes at 82%, than panels with the majority of judges appointed during the earlier era, at 69%. The majority (64%) of the 231 cases were comprised of panels with a majority of judges appointed during 1981 and later. This 13% difference in case outcomes was tested for significance in the logit reported below.

Table 4-12 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Appointment Era Majority

Appointment Era Majority	Conservative	Liberal	Total
1980 and earlier	58 (69%)	26 (31%)	84 (36%)
1981 and later	120 (82%)	27 (18%)	147 (64%)
Total	178 (77%)	53 (23%)	231 (100%)

Table 4-13 shows a frequency distribution of the 231 case outcomes in higher education employment sex discrimination cases as a function of plaintiffs' gender. The table shows that when the plaintiff was a male, a conservative pro-employer outcome resulted in 90% of the 40 cases in the data base. When the plaintiff was a female, a conservative pro-employer result occurred in 74% of the 191 cases in the data base. The findings suggested a tendency of the judicial panel to support a female over male plaintiff [16% difference] in higher education sex discrimination cases. On the whole, a conservative decision resulted in 178 cases (77%) regardless of plaintiffs' gender.

Table 4-13 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in Higher Education Gender Discrimination Decisions between 1964-2013 under Equal Protection Clause, Title VII, and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender

Plaintiffs' Gender	Conservative	Liberal	Total
Male	36 (90%)	4 (10%)	40 (17%)
Female	142 (74%)	49 (26%)	191 (83%)
Total	178 (77%)	53 (23%)	231 (100%)

Table 4-14 shows the results of the logit analysis performed on the decisional outcomes for higher education employment sex discrimination cases rendered between 1964 - 2013. A total of 231 panel decisions were analyzed. A test of the full model against a constant-only model was statistically significant at the .10 level, indicating that the predictors, as a set, reliably distinguished between conservative (pro-employer) and liberal (pro-employee) votes of the decisional outcomes ($X^2 = 8.932$, $p = .063$ with $df = 4$). Overall, 77.1% of the predictions were accurate. Variability in the dependent variable accounted for by the independent variables was approximately .058, as measured by the Nagelkerke's R Square. Table 4-14 gives the Wald statistic and associated degrees of freedom

and probability values for each of the predictor variables. The Wald criterion demonstrated that plaintiffs' gender ($p = .064$) and appointment era majority ($p = .075$) made a significant contribution to prediction at the .10 significance level.

For plaintiffs' gender, the output shows that plaintiffs' status as a female had a negative relationship with a conservative pro-employer decision by the panel as compared to male plaintiffs when all other variables are held constant. In other words, panels voted more favorably for women plaintiffs over male plaintiffs. Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome were reduced by a factor of .356 over the odds of a male plaintiff receiving a conservative pro-employer outcome. Stated otherwise, this means that the odds were about 2.81 times greater of obtaining a conservative outcome for males as compared to female plaintiffs. The meaning of this difference is examined in the next chapter.

For the appointment era majority variable calculation of the effect size revealed that the odds of a panel with a majority of judges appointed during 1981 and later voting conservatively increased using a factor of 1.846 over the odds of a panel with a majority of earlier appointed judges voting in a conservative direction, when all other independent variables were held constant (Table 4-14).

The logit for individual voting (Table 4-7) revealed significant differences between the judges' voting based on their appointment era ($p = .002$) and an effect size ($\text{Exp}(B) = 1.824$) comparable to that obtained for the appointment era

majority variable ($\text{Exp}(B) = 1.846$). Thus, there appears to be some carry over effect from individual to panel voting on appointment era effects.

The output indicated that neither gender majority nor ideology majority of the panel contributed significantly to the odds of a conservative pro-employer decision.

Table 4-14 Logit Analysis on the Odds of a Conservative Pro-Employer Panel Decision in the United States Courts of Appeal in Higher Education Gender Based Employment Discrimination Cases brought under the Equal Protection Clause, Title VII and Title IX: 1964-2013

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Panel Gender Majority	-.042 (.697)	.004	1	.951	.958
Panel Ideology Majority	.019 (.341)	.003	1	.956	1.019
Plaintiffs' Gender	-1.033 (.558)	3.427	1	.064*	.356
Appointment Era Majority	.613 (.344)	3.178	1	.075*	1.846
Constant	.1.738 (.603)	8.307	1	.004	5.686

* $p < .10$

** $p < .05$

*** $p < .01$

Hypotheses Testing

Individual Voting

The individual voting data base is associated with Research Question One and Hypotheses one – five is set forth in Chapter One. This data base included 693 individual votes from judges presiding on U.S. Courts of Appeal cases involving higher education employment sex discrimination decided between 1964 and 2013.

Research Question 1. What is the relationship among United States Courts of Appeal judges' political ideology, gender, appointment era, plaintiffs' gender, and individual judges' voting in higher education employment sex discrimination cases brought under the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972?

Hypothesis 1. For the entire data base, the odds of judges appointed by Republican presidents voting in a conservative pro-employer direction in higher education gender discrimination in employment disputes for the period 1964-2013 would be greater than that of judges appointed by Democratic presidents.

The issue addressed in hypothesis one was initially investigated in Table 4-1 in the comparison of judicial ideology to conservative or liberal voting. The table showed little difference between Republican and Democrat judges in regards to their tendency to vote conservatively in higher education cases involving employment sex discrimination with 78% of Republican and 71% of Democrat appointees voting conservatively. The investigation continued in the logit analysis of Table 4-7 where logit analysis showed the party of the appointing president was not a significant factor in contributing to conservative pro-employer voting ($p = .295$). There is no evidence found to support the hypothesis that for the entire period the political ideology of the judges influenced their individual voting practices in these cases.

Hypothesis 2. For the entire data base, the odds of the judges appointed during the 1981 and later years voting in a conservative pro-employer direction in higher education gender discrimination disputes would be greater than the judges voting in that direction during 1980 and earlier years.

Hypothesis two was first addressed in Table 4-3 where descriptive statistics showed a tendency for judges appointed during 1981 and later years to vote more conservatively than judges appointed during 1980 and earlier years. When the data was subjected to logit analysis in Table 4-7, the output showed that appointment era attained significance at the .01 level for individual voting ($p =$

.002), and that the odds of a judge appointed during 1981 and later years voting conservatively increased by a margin of 1.824 (Exp B). This hypothesis was supported by the evidence found in this study.

Hypothesis 3. The odds of Republican judges appointed during 1981 and later period voting in a conservative pro-employer direction will be greater than Republican judges appointed during 1980 and earlier.

This hypothesis was preliminarily reviewed in Table 4-5 where it was shown that Republican judges appointed during 1981 and later tended to vote more conservatively than their colleagues appointed during the earlier period (1980 and earlier). The investigation continued in the logit analysis of Table 4-9 where it is revealed that among Republican appointees, the two levels of the appointment era variable did not predict significant differences in the odds of a conservative pro-employer vote ($p = .144$). Thus, evidence did not support this hypothesis. However, given that the significance value is near .10, the differences observed were perhaps meaningful in a practical sense. However, the small effect size of 1.456 associated with this variable suggests otherwise. This line of inquiry will be pursued the next chapter

Hypothesis 4. The odds of Democrat judges appointed during the 1981 and later period voting in a conservative pro-employer

direction will be greater than Democrat judges appointed during the 1980 and earlier.

Appointment era was found significant at the .01 level as shown in Table 4-7 with both Republican and Democrat judges included in the analysis; but when looking at only Republican judges (Table 4-9), appointment era was not found to be significant ($p = .144$). The explanation for this discrepancy was found in Table 4-8, where the logit analysis showed that for Democratic appointees, appointment era was a significant contributor to the odds of a conservative pro-employer vote ($p = .004$). Thus, this hypothesis was supported by the evidence found in this study.

Hypothesis 5. For entire period, the odds of a judge voting in a conservative pro-employer direction with a male plaintiff will be greater than a judge voting in a conservative pro-employer direction with a female plaintiff.

The issue of plaintiffs' gender was first analyzed in Table 4-6 where a male plaintiff received a conservative pro-employer vote (84%) more often than a female plaintiff received a conservative vote (73%). The output of the logit analysis contained in Table 4-7 reveals that plaintiff- gender variable was significant at the .10 level ($p = .062$). Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome was reduced by a factor of .595 over the odds of a male plaintiff receiving a

conservative pro-employer outcome. This means that the odds of a male plaintiff obtaining a conservative vote were about 1.68 times greater than for a female plaintiff. Thus, this hypothesis was supported by the evidence found in this study.

Decisional Case Outcomes

The second data base contained the decisional outcomes of cases presented to the U.S. Courts of Appeal involving higher education employment sex discrimination issues from 1964-2013. The case outcomes database addresses Research Question Two and hypotheses six – eight.

Research Question 2. What is the relationship among United States Courts of Appeal panels' ideological, gender, and appointment era majority, plaintiffs' gender and decisional outcomes in higher education employment sex discrimination cases brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972?

Hypothesis 6. The odds of a conservative pro-employer outcome with a Republican majority panel will increase as compared to a Democratic majority panel.

The descriptive table comparing Republican and Democratic panel majorities (Table 4-11) showed on a mere 5% difference in conservative pro-employer outcomes. The results of the logit analysis contained in Table 4-14 confirmed that panel ideology majority was not a significant factor in influencing panel outcome decisions ($p = .956$). This hypothesis is not supported by the evidence found in this study.

Hypothesis 7. The odds of a conservative-pro-employer decision will increase when the panel is comprised of a majority of 1981 and later appointees as compared to a majority of 1980 and earlier appointees.

The relationship of the appointment era majority of judges on panel case outcomes was analyzed in Table 4-12, where descriptive statistics showed a tendency of panels with a majority of judges appointed after 1981 and later to make more decisions in a conservative pro-employer direction than panel majorities appointed during the earlier period. The logit analysis (Table 4-14) showed that appointment era majority was a significant factor at the .01 level in influencing panel case outcomes ($p = .075$). Calculation of the effect size found that the odds of a panel with a majority of judges appointed during 1981 and later voting conservatively increased using a factor of 1.846 over the odds of a panel with a majority of earlier appointed judges voting in a conservative direction.

Since the requisite significance levels were attained, the hypothesis was supported.

Hypothesis 8. The odds of a conservative pro-employer outcome will increase when the plaintiffs are males rather than females.

The influence of plaintiffs' gender on panel case outcomes was examined in Table 4-13, where it showed a 16% difference between the panel outcomes for male compared to female plaintiffs with the results favoring females. Table 4-14 showed the output for a logit analysis using plaintiff gender as a variable; it revealed that plaintiffs' gender significantly contributed to a conservative pro-employer outcome at the .10 level ($p = .064$). Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome were reduced by a factor of .356 over the odds of a male plaintiff receiving a conservative pro-employer outcome. This meant that the odds of obtaining a conservative pro-employer panel decision when the plaintiff was a male was about 2.81 times greater than when the plaintiff was a female. Thus, the hypothesis was supported by the study.

Chapter 5

Discussion

Although much research has been performed on non-legal factors influencing individual judicial voting and panel effects in sex discrimination cases, there has been little effort to link this research to gender discrimination in employment cases in higher education institutions within the U.S. Courts of Appeal system. The purpose of this study was to fill this gap in the research.

The independent judge-level variables examined for individual voting included judges' political ideology and gender. The independent extrinsic variables for judges' individual voting included plaintiffs' gender and judges' appointment era. Voting, categorized as conservative pro-employer or liberal pro-employee, served as the dependent measure.

For panel decisional outcomes, the independent variables included the political ideology majority of the panel, gender majority of the panel, appointment era majority of the panel, and plaintiffs' gender. Case outcomes, categorized as conservative or liberal, served as the dependent variable. The results of descriptive and logistic regression analyses were applied to the data sets produced in this investigation.

Individual Voting

Political Ideology

In hypothesis one, it was predicted that Republican appointees would vote in a more conservative-pro-employer direction than Democratic appointees. Descriptive statistics (Table 4-1) showed a 7% difference in the conservative pro-employer voting between Republican and Democrat appointees with Republican appointees voting more conservatively. However, the logit analysis revealed in Table 4-7 showed that political ideology was not a significant factor in influencing conservative pro-employer voting ($p = .295$). Therefore, the evidence found in this study did not support the hypothesis.

The current study analyzed 693 individual votes from appellate judges on employment sex discrimination cases involving higher education institutions from 1964-2013. Party-of-the-appointing-president was used as a proxy-for-judges' ideology. According to Sick & Heise (2012), this is the best measure of judicial ideology. Since presidents appoint judges who share their political viewpoint, this is a reliable and frequently used ideological measure. (Fischman & Law, 2009).

In contrast to the current study, Kulik, Perry, & Pepper (2003) using logistic regression, found that political affiliation was a significant contributor ($p < .05$) to conservative voting patterns, finding that judges appointed by

Republican presidents votes more conservatively than Democrat appointees in sex discrimination cases.

Kulik, Perry, and Pepper's investigation covered the period 1981-1996. However, the current study included a larger number of cases for analysis (difference of 550 votes) and included a broader span of time (difference of 34 years). In addition, Kulik, Perry, and Pepper only included votes cast during and after the Reagan era, therefore eliminating the influence of the era before Reagan. These differences in the two studies may account for Kulik, Perry, & Pepper's finding ideological differences in voting and the current study's failure to observe these differences. Moreover, since the Kulik, Perry, and Pepper study focuses on district court voting and this study examined voting in the Courts of Appeal and included only higher education sex discrimination cases, the subject matter variance may account for the differences in results.

Sunstein, Schkade, Ellman, and Sawicki (2006) investigated the influence of political party affiliation on appellate court judges' decision making. The researchers examined over 19,000 judicial votes from cases covering 23 areas of law, including sex discrimination. The output showed that judges appointed by Democratic presidents vote liberally in support of the plaintiff more often than judges appointed by Republican presidents.

The Sunstein, Schkade, Ellman, and Sawicki study (above) and the current study are similar in that they both analyzed sex discrimination cases in the

appellate court system. However, the current study chose to narrow that focus down to employment cases of higher education. The research performed by Sunstein, Schkade, Ellman, and Sawicki included a vast amount of judicial votes, and analyzed many different types of cases; while the current study included 693 individual votes in higher sex discrimination cases only. The differences in results shown could be explained by the variance of elements examined by the two studies.

The current study did not find that political ideology was a significant contributor to a conservative pro-employer individual vote in higher education sex discrimination cases covering a period of almost 50 years. This result is consistent with the legal theory of judicial behavior which insists that decisions are not influenced by judicial ideology, but rather by legal precedents, statutes, and fact patterns (Cook, 1977; Kritzer & Richards, 2003; Segal, 1984). The ideal image of decision making involves the law without influence from politics, personal preferences, or belief systems (Moyer, 2012).

Sunstein, Schkade, Ellman, and Sawicki (2006) found that when deciding upon a case, judges first consider the law before allowing political ideology to play a role in the decision making process. Under legal theory, judges are to use reason in the application of the law to facts of cases in the decision making process.

That said, the current design used only a limited number of independent variables. This might have left a gap in finding other unaccounted for contributors to the variability in voting which, if controlled, would result in ideology playing a more prominent role in voting than indicated here. Whether other attitudinally derived or other factors drive voting is examined by reviewing the results for the remaining variables included in this study.

Appointment Era

Hypothesis two predicted that judges appointed during the 1981 and later era would vote more conservatively than judges appointed during the 1980 and earlier period. Descriptive statistics (Table 4-3) showed the judges appointed during 1981 and later voted conservatively more often than judges appointed during 1980 and earlier (difference of 14%). The logit analysis for the combined database showed that appointment era attained significance at the .01 level ($p = .002$), and that for the entire data base the odds of a judge appointed during 1981 and later years voting conservatively increased by a margin of 1.824 (Exp B) over the earlier period. Thus, the evidence found tends to support hypothesis two. This examination was taken further by separate logit analyses on Republican and Democrat appointees' voting which was driven by hypotheses three and four.

Hypothesis three predicted that Republican judges appointed during the later era would vote more conservatively than Republican judges appointed earlier. Descriptive statistics (Table 4-5) showed that Republican judges

appointed during 1981 and later voted slightly more conservatively than Republican judges appointed during the earlier era (7% difference). However, logit analysis applied to the Republican judge data base showed that appointment era was not a significant contributor to conservative pro-employer voting ($p = .144$). Calculation of the effect size revealed that the odds of a Republican judge appointed in the 1981 and later period voting in a conservative pro-employer direction was increased by a modest factor of 1.456 over the odds of an earlier appointed Republican judge voting in a conservative direction, when all of the other independent variables were held constant. This result is different than predicted and it apparently varies from other research.

Hypothesis four predicted that Democrat judges appointed during 1981 and later would vote in a more conservative direction than Democrats appointed during 1980 and earlier era. Descriptive statistics (Table 4-4) showed that Democratic judges appointed during the 1981 and later era were more likely to vote in a conservative direction than judges appointed by Democrats during the 1980 and earlier era (19% difference). In the separate logit analysis of Democrat individual votes, it was found that appointment era contributed significantly to the odds of obtaining a conservative pro-employer vote ($p = .004$). Calculation of the effect size revealed that the odds of a Democrat judge appointed in the 1981 and later period voting in a conservative pro-employer direction increased using a factor of 2.522 over the odds of an earlier appointed Democrat judge voting in a

conservative direction, when all of the other independent variables were held constant.

The appointment era variable placed judges into two categories, the 1980 and earlier era and 1981 and later era. The date of 1980 was determined due to the election of President Reagan and his effect on the federal court system. About Ronald Reagan, O'Brien (2005) stated that, "no other president has had as great an impact on the federal judiciary since Roosevelt" (p. 69). Reagan began his tenure with a deliberate goal of appointing judges who supported his strong conservative values, and he was very effective (Cross, Smith, & Tomarchio, 2008). By the end of his two terms in office, President Reagan had appointed almost half of all federal judges (Neubauer, 1997). Reagan's successor was President Bush who continued appointing judges from the list of judges created by Reagan (O'Brien, 2005).

Smith (2010) researched the influence of presidential political affiliation on individual judicial voting patterns on the U.S. Courts of Appeal in civil rights cases concerning race and gender. This researcher used information gained from the Sunstein database of 19,224 individual judge votes from cases concerning affirmative action, race discrimination, sex discrimination, and sexual harassment from 1978 - 2004. Smith found a "general conservative trend over time in Circuit Court judicial voting, regardless of the party of the appointing president" (p. 169). He points out that Presidents Reagan, Bush I, and Bush II appointed strong

conservative judges to the court, and President Clinton was less liberal in his ideology than his predecessors. In addition, between 1995 and 2000 President Clinton had to work with a Republican Senate for the confirmation of his appointees. Referring to sex discrimination cases, Smith found that judicial voting, regardless of political affiliation, has become more conservative since 1980.

The findings of the current study suggest that the judicial selection process for Democrat judges during the 1981 and later period resulted in more conservative voting for that group as compared with the 1980 and earlier period. One explanation for this result might lie in Smith's analysis. Since 1980, Democrat presidents (Clinton and Obama) appointed 108 appellate judges. Clinton was challenged by a Republican Senate for six years and was forced to appoint more moderate judges than previous Democratic presidents (Smith, 2010). This, combined with a flood of conservative Republican judges, resulted in a greater conservative-driven focus on the U.S. Courts of Appeal.

The meaning of the current finding for Republican appointees is less clear. The fact that three Republican presidents (Reagan, Bush I and Bush II) appointed 187 appellate judges since 1980 (Smith 2010), was insufficient to produced statistically significant differences between the later and earlier appointed Republicans in the odds of a conservative pro-employer vote . This may be due to the fact it was hard to meaningfully improve upon the already high rate of

conservative voting among Republicans during the earlier period in higher education sex discrimination in employment cases. Perhaps as well, Republican appointees were overall more deferential to institutional employment decisions and this was reflected in their voting across appointment eras.

Judicial Gender

Although no specific hypothesis accompanied this investigation of judicial gender influences, the results are more consistent with researchers who found no significant gender effects on individual voting or panel decisions.

In the current study, of the 693 total votes examined male judges were in the majority casting 604 (87%) votes with female judges representing 89 (13%) of the total. The modest difference in conservative voting between male and female judges (4%) was not assumed to be meaningful. The logit analysis using the combined data base of Republican and Democrat judges showed that with all other variables controlled judicial gender was not a significant contributor for a conservative pro-employer vote ($p = .597$, Table 4-7). Calculation of the effect size revealed that the odds of a female judge delivering a conservative pro-employer outcome were increased by a factor of 1.165. These results indicate that no meaningful differences occurred in individual voting between male and female judges.

Westergren (2004) researched 170 sex discrimination cases from the federal appellate court system from 1994 – 2000. The analyzed cases were filed

under Title VII, the Equal Protection Act, the Pregnancy Discrimination Act, the Equal Pay Act, the Family and Medical Leave Act, and several state statutes. Westergren identified the dependent variable as the pro-plaintiff or pro-defendant decision of the judge, and the independent variables as judicial gender, race, plaintiffs' gender, and political ideology. Through logistic regression, she found that judicial gender was not a significant predictor of a judges' vote (p did not reach the .05 level). Although Westergren linked her study to a broader range of statutes than the current one, both outcomes indicate that judges' gender was not a significant contributor to voting in sex discrimination cases.

Kulik, Perry, and Pepper (2003) examined 143 cases of sex harassment pertaining to Title VII heard by federal district and appellate courts between 1981 and 1996. They analyzed the differences between judicial gender, age, political ideology and race in sex harassment cases. The researchers hypothesized that women, black judges, judges of a younger age, and Democrats would be more likely to make pro-plaintiff decisions. Judges' gender, age, race, and political affiliation were independent variables. Although Kulik et al used only Title VII cases in their data base, their regression results were similar to the current one in finding no significant differences for judges' gender in pro-plaintiff voting.

Even though some variance existed as to the details of measurement, Kulik et al., Westergren's, and the current study indicated that that gender was not a significant factor in the voting patterns of judges.

Peresie (2005) analyzed the voting patterns of judges in sex discrimination cases. She examined 1666 sex harassment and sex discrimination judicial decisions decided by federal appellate judges between 1999 and 2001. In her data base, 11% of decisions were from female judges and 89% were from male judges. The dependent variable was the decision of the judge (pro-plaintiff or pro-defendant), and the independent variable was the gender of the judge. Control variables were the background, race, ideology, prior employment, experience, and age of the judge. Through regression analysis, Peresie found that female judges voted pro-plaintiff significantly more often than male judges.

Peresie (2005) used a broader focus to include all cases of sexual harassment and discrimination, while the current study focused exclusively on employment sex discrimination cases involving higher education institutions. In addition, the current study spans 49 years in time, versus the two year span of Peresie's study. The differences in focus and time could account for the variance in results.

In any event, it appears that assumptions made about judges' voting based on their gender may be erroneous and that to the extent that non-legal judge-level attitudes influence voting, gender is not among those influences, at least in this group of cases.

Plaintiffs' Gender

Hypothesis five predicted that the odds of a judge voting in a conservative pro-employer direction with a male plaintiff would be greater than with a female plaintiff. The issue of plaintiffs' gender was first analyzed by descriptive statistics (Table 4-6) which showed that a male plaintiff was more likely to receive a conservative pro-employer vote than a female plaintiff (difference of 11%). The output of the logit analysis using the combined database of Republican and Democrat judges in Table 4-7 (Chapter 4) revealed that this variable attained significance at the .10 level ($p = .062$). Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome were reduced by a factor of .595 over the odds of a male plaintiff receiving a conservative pro-employer outcome. This equates with the odds of obtaining a conservative vote being about 1.68 times greater for male as compared to female plaintiffs.

Wagar and Grant (1996) examined the variable of plaintiff gender in 367 Canadian appellate court cases involving employee dismissal from 1980 – 1993. Through logistic regression, the research showed that females were more likely to receive a pro-plaintiff decision than male plaintiffs ($p = .01$).

The current study examined employment cases similar to those of Wagar and Grant, but the similarities end there. Wagar and Grant (as noted above) researched Canadian court cases and did not distinguish the types of employee

dismissal cases. The current study examined a specific type of cases at a specific court level. In addition, the current investigation included cases from 1964 – 2013, which is a longer span of time than the Wagar and Grant study. Moreover, unmeasured cultural differences between Canadian and U.S. judges is a possible

The current study further examined plaintiff gender effects in the separate logit analysis of Republican and Democrat judges' individual voting. The results (Table 4-8) revealed that Democrat judges were significantly more likely to favor female than male plaintiffs ($p = .012$), and the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome from Democrat judges was reduced by a factor of .252 over the odds of a male plaintiff receiving a conservative pro-employer outcome from Democrat judges. This roughly equates with a nearly four times greater odds for a female receiving a liberal pro-employee outcome versus a male plaintiff. In contrast, this variable was not a significant factor with Republican judges ($p = .842$), and the effect size showed the odds of a female plaintiff receiving a conservative pro-employer vote from a Republican judge was reduced by a factor of merely .936 over the odds of a male plaintiff receiving a conservative pro-employer vote from Republican judges.

The most prevalent types of cases brought to the courts under Title VII are race and sex discrimination cases (Smith, 2010). Democrats are accustomed to supporting the rights of women under Title VII, but are having a difficult time viewing men as plaintiffs under this statute (Stone, 2011). Moreover, there is an

strong argument that the impetus for enactment of Title VII and Title IX was to level the playing field for woman as against the historic advantage enjoyed by men. Also, Democratic appointees who have traditionally been more sensitive to civil rights issues than Republicans, might have perceived male plaintiffs piggy backing on rights protections aimed principally at women, leading to more skepticism about males' claims than those asserted by females.

The vast majority of current empirical research includes analyses on the generic term of "plaintiff" with very little research performed with the differentiation between male and female plaintiffs. However, there have been evaluations that can shed light on this variable. Stone (2011) stated that women are the typical plaintiff in cases of sex discrimination, and the male plaintiffs were not well-understood by judges. In the same vein, Cunningham-Parmeter (2013) explained that males typically lose sex discrimination cases because of society's stereotype of the strong dominant male. Similarly, Elkins, Phillips, and Konopaske (2002) found a bias against male plaintiffs in cases of sex discrimination.

Elkins, Phillips, Konopaske, and Townsend (2001) researched plaintiff gender stereotyping using mock jurors from senior-level students at a large university. The researchers used 120 undergraduate students ranging in age from 22-57 years and created mock juries to evaluate employment gender discrimination allegations. The results showed that female mock jurors favored

female plaintiffs. On the other hand, male mock jurors did not show bias towards plaintiffs, regardless of gender.

Although the current study examined whether male or female judges differed from each other in their conservative voting, it did not investigate whether they differed from one another in voting for or against male and female plaintiffs, that is, use judges' gender as a predictor of pro-male plaintiff v pro-female plaintiff voting.

The current study found that Democrat judges, in contrast to the Republican appointees, tend to favor female over male plaintiffs. Bornstein (2013) focused on the changing role of men and the stereotype of male employees regarding sex discrimination claims under Title VII. The research showed that men who file sex discrimination claims against their employer typically receive reprimand from their employer and the federal judicial system. This means that judges typically decide against a male plaintiff and support a conservative pro-employer decision. According to Bornstein, the federal court system is challenged to include male plaintiffs in Title VII sex discrimination cases without stereotyping men and therefore casting unlawfully discriminating votes. In other words, judges have a difficult time accepting men as victims in sex discrimination cases without labeling them as weak. This inability to view male plaintiffs without discrimination opens the door to the possibility of biased decisions.

This study showed that plaintiffs' gender was a significant variable in influencing an individual judicial vote in employment sex discrimination cases in higher education. Upon closer analysis, it was determined that Democrat judges are responsible for this variable's significance ($p < .01$) with a nearly four times greater odds for a female receiving a liberal pro-employee outcome versus a male plaintiff, compared to a lack of significance ($p = .842$) with Republican judges. A plausible explanation for this result is that Democrat judges are accustomed to supporting female plaintiffs through Title VII and IX (Stone, 2010). Therefore, when the plaintiff is a male, Democrat judges have a difficult time supporting the plaintiff as a result of gender. This gender-based conflict regarding plaintiffs of sex discrimination cases leads to judicial stereotyping against male plaintiffs, and brings into question the ability of judges to extrapolate Title VII and IX beyond the traditional female plaintiff.

Decisional Case Outcomes

This study included 231 case outcomes from the U.S. Courts of Appeal concerning employment sex discrimination at higher education institutions. For each case brought before the appellate court, a panel of three judges decides the case by a majority vote.

Panel Ideology Majority

Hypothesis six predicted that Republican majority panels would be more conservative in their voting than Democratic majority panels. The 231 cases were

examined through descriptive and inferential statistics and showed that this variable was not a significant contributor to a conservative pro-employer decisional outcome ($p = .956$). Calculation of the effect size revealed that the odds of a case with a Republican majority producing a conservative pro-employer outcome increased using a factor of only 1.019 over the odds of cases with a Democrat majority generating a conservative outcome, when all of the other independent variables are held constant. In essence, ideological panel majority effects were non-existent.

This result conflicts with Moyer and Tankersley (2013) who investigated sex discrimination cases at the appellate court level from two periods of time, 1964 - 1986 and 1988 – 1993 using multivariate analysis. They found that panels with a majority of Democrat judges were more likely to support plaintiffs than panels with a majority of Republican judges.

Sunstein, Schakade, and Ellman (2004) took the same database discussed earlier and found that the votes of judges are influenced by the political ideological majority of the panel. The results showed that the ideology majority on the panel is a significant contributor to the outcome decision of the group. Panels with a majority of Democrat judges tended to vote pro-plaintiff more often (76%) than panels with a majority of Republican judges (32%). This too seems to conflict with the current results.

The difference in time frame, definition of variables, and narrow focus of the current study could account for the variance in outcome of this study compared to the other investigations. Moreover, since the cases included in the current data base came from educational settings it is possible that appointees from both parties are more deferential to employment decisions made in this context thereby narrowing voting differences between party appointees which might occur in other types of conflicts.

Finally legal theory (presented in Chapter 1) maintains that judges decide cases through a thorough analysis of the law. The legal model insists that judicial decisions are not influenced by judicial ideology; but rather by legal precedents, statutes, and fact patterns (Cook, 1977; Kritzer & Richards, 2003; Segal, 1984). From a more optimistic perspective it is possible to interpret the results here as reflecting concordance between Republican and Democratic appointees as a group in interpretation of sex discrimination law on average over time.

Panel Appointment Era Majority

In Hypothesis seven, it was anticipated that the odds of a conservative pro-employer decision would increase with a panel majority of 1981 and later appointed judges compared to a majority of 1980 and earlier appointees. Descriptive statistics revealed a tendency for panels with a majority of judges appointed during 1981 and later to vote more conservatively than panels with a majority of judges appointed during 1980 and earlier [difference of 13%].

The logit analysis (Table 4-14) showed that appointment era majority was a significant factor at the .10 level influencing panel case outcomes ($p = .075$). Calculation of the effect size found that the odds of a panel with a majority of judges appointed during 1981 and later voting conservatively increased using a factor of 1.846 over the odds of a panel with a majority of earlier appointed judges voting in a conservative direction, when all other independent variables were held constant (Table 4-14). This finding suggests that the judicial selection process during the 1981 and later period resulted in more conservative voting as compared with the 1980 and earlier period when judges selected by both political parties were aggregated.

The pendulum of which party has the majority of appellate court judges (Republican or Democrat) has historically swung back and forth depending upon the current president's ideology. After the tenures of President Reagan and Bush I, Republican judges were the strong majority in the appellate court with the addition of 115 judges. President Clinton worked to increase the percentage of Democrat appellate judges to 44% by the end of his terms, but Clinton's appointments were controlled by a Republican Senate (Reeves, 2008; Smith, 2010). By the end of President George W. Bush's tenure, Republican judges were the strong majority of appellate judges (Reeves, 2008). This majority has continued under the two terms of President Obama. As noted earlier, the increasing conservative nature of Democrat appellate judges and the Republican

majority of the appellate judicial pool may have narrowed the differences between political parties leading to the formation of more conservative panels when comprised of 1981 and later appointees compared to panels of earlier appointed majorities.

Panel Gender Majority

The variable of panel gender majority was not supported by a hypothesis in this study due to the specific focus of this research. However, the variable was included in order to examine the possible effects of a gender majority on appellate panels.

The current study's logit analysis (Table 4-14) revealed that panel gender majority did not significantly influence a conservative pro-employer decision ($p = .951$). Therefore, no difference was found in the voting patterns between male and female judges. This suggests that female majority panels behaved no differently than male majority panels and perhaps that in this type of case the law controls more than in other kinds of settings

Plaintiffs' Gender

Hypothesis eight predicted the odds of a conservative pro-employer panel vote outcome increased with a male plaintiff versus a female plaintiff.

Descriptive statistics showed that male plaintiffs received a conservative decision in 90% of the cases researched, compared to cases with a female plaintiff receiving a conservative pro-employer decision in 74% of cases. However, the

number of cases with a male plaintiff only contributed to 17% of the total 231 cases examined in the current study.

The logit analysis revealed that plaintiffs' gender attained significance at the .10 level ($p = .064$). Calculation of the effect size revealed that the odds of a female plaintiff receiving a conservative pro-employer outcome were reduced by a factor of .356 over the odds of a male plaintiff receiving a conservative pro-employer outcome. Stated otherwise, this means that the odds were about 2.81 times greater of obtaining a conservative outcome for males as compared to female plaintiffs.

Bornstein (2012) examined male plaintiffs of sex discrimination cases at the district court level. He found that judges have a difficult time delivering an unbiased decision in cases with a male plaintiff. As discussed previously in this chapter, Cunningham-Parmeter (2013) researched male plaintiffs in cases and sex discrimination and found that men plaintiffs typically lose cases because they work against a strong societal stereotype of the dominant male. Similarly, Elkins, Phillips, and Konopaske (2002) found a bias against male plaintiffs in cases of sex discrimination.

Similar to the research of Bornstein (2012) and Cunningham-Parmeter (2013), the current study found that males are more likely to lose a sex discrimination case with a conservative pro-employer outcome. A plausible explanation for these results is an extension of the bias found by Bornstein (2012)

and Cunningham-Parmeter (2013). There has been an increase in male plaintiff sex discrimination cases during the past 20 years, while society holds to the stereotype of male plaintiffs as weak and wimpy. In addition, it is estimated that approximately 70% of civil liberties cases are meritless (Epstein, Landes, & Posner, 2013). The resulting effect is a tendency for panels to favor conservative pro-employer outcome, especially when the plaintiff is a male.

Limitations and Key Assumptions

One limitation of this study is that the scope of examination is centered on employment sex discrimination occurring at higher education institutions. This focus will not permit for the findings of this study to be extrapolated easily to any other environment.

Another potential limitation is the accuracy of the ideological classifications using party of the appointing president as a proxy for the levels of this variable. Although the use of the appointed President's political affiliation is the most widely used method by researchers, this inference is not always completely accurate. Most researchers agree that a judges' ideological drift will occur over time (Epstein, Landes, & Posner, 2013), and this change is not addressed in the current study.

This study did not take into account the ideology of each circuit, or any potentially external influential factors other than those used in this investigation. Moreover, circuit precedents were not considered in the analyses, thereby

removing from the study a source of explanation of individual and panel voting. The exclusion of these factors limits the application of this study's findings. That said, the size of the data base and the small number of cases appearing in some circuits would make this kind of analysis inappropriate in this study. So too, controlling for time effects by including various decisional periods (in addition to appointment eras) might add to the explanatory understanding of the variables which were employed.

The simplicity of models may have failed to account for other sources of variability in the dependent measures for both the individual and panel voting. Highly specified models with more predictors and control variables could enable more nuanced consideration of the variables under study. Moreover, they might change the significance level observed in this study.

Applying Supreme Court precedents as control variables within the Equal Protection Clause, Title VII and Title IX may also result in more complete understanding of the influence of the independent predictors studied.

Implications

There has not been a previously performed study that examined higher education employment gender discrimination cases pursuant through the Equal Protection Clause, Title VII and Title IX in the Court of Appeals. The principal findings of this study are: (1) for the entire database, judges appointed during 1981 and later do vote more conservatively than judges appointed during 1980

and earlier; (2) Democrat judges appointed during 1981 and later vote more conservatively than Democrat judges appointed during 1980 and earlier; (3) for the entire period, the odds of a male plaintiff receiving a conservative pro-employer vote was greater than with a female plaintiff; (4) the odds of a conservative pro-employer decision did increase when the panel was comprised of a majority of judges appointed during 1981 and later compared to a majority of judges appointed during 1980 and earlier; (5) the odds of a conservative pro-employer outcome did increase when the plaintiffs were males rather than females.

Since this model was not highly specified and did not contain independent variables, which might correlate with the appointment date variable such as decisional era, circuit ideology and law of the circuit, these may be sources of variability in dependent measures unaccounted for in this study. Moreover, they could affect predictors for which significance was found. Future studies may want to include these in the predicted model in accounting for individual voting and case outcomes.

In time, the current population of appellate judges will change and bring new variables to research. This study hopes to encourage more research in this area so that scholars will learn how judges vote and how panels are affected in sex discrimination employment cases from higher education institutions at the appellate court level. This study and future studies will aid education and

political leaders in the development of policy and enhance judgments when analyzing judicial voting of higher education employment gender discrimination cases.

Appendix A
Definition of Key Terms

Brief - Statement setting out the legal contentions of a party in litigation.

Certiorari - A writ issued by an appellate court as a means for a case to be heard in a court of last resort within the jurisdiction.

Citation - Information about a legal document that will enable the researcher to find the document.

Dismissal - Termination of an action or claim without further hearing.

Dissent - A disagreement with a majority opinion especially among judges.

En banc - All judges present and participating in full court.

Gender Discrimination - Discrimination based on an individual's sex.

Holding - Answer to the legal question provided by the court.

Issue - The legal question that is being addressed.

Litigation - The process of carrying on a lawsuit.

Plaintiff (s) - refers to the person or persons who brought a civil law suit in court.

Remand - The act or an instance of sending something back (such as a claims case) by a higher tribunal by a lower tribunal for further action.

Reversal - An appellate court's overturning of a lower court's decision.

Vacate - To nullify or cancel, make void or invalidate.

*These definitions were selected from the 5th and 7th editions of Black's Law

Dictionary by Henry Campbell Black, West Publishing Co. Reprinted with permission of West Publishing Company in earlier editions of this book which was published by West Publishing Company, St. Paul, Minnesota..

Appendix B
Table of Cases

Case #	U.S. Court of Appeals Case	Citation
1	Weatherly v. Alabama State University	728 F. 3d 1263 (11th Cir, 2013)
2	Mills v. Southern Connecticut State University	519 Fed. Appx. 73 (2nd Cir, 2013)
3	Haire v. Board of Supervisors of Louisiana State University Agricultural and Mechanical College	F. 3d, 2013 WL 2211656 (5th Cir, 2013)
4	Johnson v. University of Puerto Rico	714 F. 3d 48 (1st Cir, 2013)
5	Caldwell v. University of Houston System	520 Fed. Appx. 289 (5th Cir, 2013)
6	Summa v. Hofstra University	708 F. 3d 115 (2nd Cir, 2013)
7	Wilder v. Arizona Board of Regents	slip copy, 2013 WL 632377 (9th Cir, 2013)
8	Maron v. Virginia Polytechnic Institute and State University	slip copy, 2013 WL 363510 (4th Cir, 2013)
9	Gerald v. University of Puerto Rico	707 F. 3d 7 (1st Cir, 2013)
10	Blasdel v. Northwestern University	687 F. 3d 813 (7th Cir, 2012)
11	Milligan v. Board of Trustees Southern Illinois University	686 F. 3d 378 (7th Cir, 2012)
12	Shuler v. Board of Trustees of University of Alabama	480 Fed. Appx. 540 (11th Cir, 2012)
13	Drumm v. Suny Geneseo College	486 Fed. Appx. 912 (2nd Cir, 2012)

14	Nigro v. Virginia Commonwealth University	492 Fed. Appx. 347 (4th Cir, 2012)
15	Morales-Cruz v. University of Puerto Rico	676 F. 3d 220 (1st Cir. 2012)
16	Valdes v. Miami-Dade College	463 Fed.Appx. 843 (11th Cir. 2012)
17	Boese v. Fort Hays State University	462 Fed. Appx. 797 (10th Cir. 2012)
18	Frensey v. North Miss. Medical Center, Inc	440 Fed. Appx. 383 (5th Cir, 2011)
19	Prewitt v. Mississippi State University	433 Fed. Appx. 279 (5th Cir. 2011)
20	Wharff v. State University of New York	413 Fed. Appx. 406 (2nd Cir. 2011)
21	Tyler v. University of Arkansas Bd. Of Trustees	628 F. 3d 980 (8th Cir. 2011)
22	Wood v. University of Pittsburgh	395 Fed. Appx. 810 (3rd Cir, 2010)
23	Weber v. Universities Research Ass'n Inc	621 F. 3rd 589 (7th Cir, 2010)
24	Tehan v. Sacred Heart University	388 Fed. Appx. 42 (2nd Cir. 2010)
25	Lockridge v. The University of Maine System	597 F. 3d 464 (1st Cir. 2010)

26	Lindsay v. Pennsylvania State University	367 Fed. Appx. 364 (3rd Cir. 2010)
27	Wallace v. Louisiana Bd. Of Sup'rs for Louisiana State University Agr. And Mechanical College	364 Fed. Appx. 902 (5th Cir. 2010)
28	Simpson v. Vanderbilt University	359 Fed. Appx. 562 (6th Cir. 2009)
29	Leibowitz v. Cornell University	584 F. 3d 487 (2nd Cir. 2009)
30	Jamilik v. Yale University	362 Fed. Appx. 148 (2nd Cir. 2009)
31	Tori v. Marist College	344 Fed. Appx. 697 (2nd Cir, 2009)
32	Schecter v. Georgia State University	341 Fed. Appx. 560 (11th Cir. 2009)
33	Angello v. Northern Marianas College	342 Fed. Appx. 273 (9th Cir. 2009)
34	Oamhiyah v. Iowa State University of Science and Technology	566 F. 3d 733 (8th Cir. 2009)
35	Pemrick v. Stracher	331 Fed. Appx. 17 (2nd Cir, 2009)
36	McCullough v. University of Arkansas for Medical Sciences	559 F. 3d 855 (8th Cir, 2009)
37	Welch v. Mercer University	304 Fed. Appx. 834 (11th Cir, 2008)

38	Waivio v. Board of Trustees of University of Illinois at Chicago	290 Fed. Appx. 935 (7th Cir. 2008)
39	Malacarne v. City University of New York	289 Fed. Appx. 446 (2nd Cir. 2008)
40	Murungi v. Xavier University of Louisiana	313 Fed Appx. 686 (5th Cir. 2008)
41	Henderson v. University of Texas M.D. Anderson Cancer Center	260 Fed. Appx. 741 (5th Cir, 2008)
42	Alverex-Diemer v. University of Texas-El Paso	258 Fed. Appx. 689 (5th Cir. 2007)
43	Peirick v. Indiana University-Purdue University	510 F. 3d 681 (7th Cir, 2007)
44	Edmondson v. Board of Trustees of University of Alabama	258 Fed. Appx. 250 (11th Cir. 2007)
45	Patane v. Clark	508 F. 3d 106 (2nd Cir, 2007)
46	Nicholas v. Board of Trustees of the University of Alabama	251 Fed. Appx. 637 (11th Cir, 2007)
47	Russell v. University of Texas of Permian Basin	234 Fed. Appx. 195 (5th Cir. 2007)
48	Lynch v. Baylor University Medical Center	236 Fed. Appx. 918 (5th, Cir, 2007)
49	Nelson v. Christian Bros. University	226 Fed. Appx. 448 (6th Cir. 2007)

50	Scheidemantle v. Slippery Rock University State System of Higher Education	470 F. 3d 535 (3rd Cir. 2006)
51	Arnold v. Tuskegee University	212 Fed. Appx. 803 (11th Cir, 2006)
52	Atkinson v. LaFayette College	460 F. 3d 447 (3rd Cir, 2006)
53	Leibowitz v. Cornell University	445 F. 3d 586 (2nd Cir., 2006)
54	Palomo v. Trustees of Columbia University in City of New York	170 Fed. Appx. 194 (2nd. Cir, 2006)
55	Hillemann v. University of Central Florida	167 Fed. Appx. 747 (11th Cir, 2006)
56	Samuels v. University of South Alabama	153 Fed. Appx. 612 (11th Cir, 2005)
57	Whittaker v. Northern Illinois University	424 F. 3d 640 (7th Cir, 2005)
58	Farrell v. Butler University	421 F. 3d 609 (7th Cir, 2005)
59	Rudin v. Lincoln Land Community College	420 F. 3d 712 (7th Cir, 2005)
60	Gore v. Indiana University	416 F. 3d 590 (7th Cir, 2005)
61	Ardalan v. Monterey Institute of International Studies	141 Fed. Appx. 536 (9th Cir, 2005)

62	Walker v. Board of Regents of University of Wisconsin system	410 F. 3d 387 (7th Cir, 2005)
63	Olle v. Columbia University	136 Fed. Appx. 383 (2nd Cir, 2005)
64	Parker v. University of Pennsylvania	128 Fed. Appx. 944 (3rd Cir, 2005)
65	Septimus v. University of Houston	399 F. 3d 601 (5th Cir, 2005)
66	Okruhlik v. University of Arkansas	395 F. 3d 872 (8th Cir, 2005)
67	Morrissey v. Luzerne County Community College	117 Fed. Appx. 809 (3rd Cir. 2004)
68	Leadbetter v. Gilley	385 F. 3d 683 (6th Cir, 2004)
69	Czubaj v. Ball State University	107 Fed. Appx. 664 (7th Cir, 2004)
70	Harrison-Pepper v. Miami University	103 Fed. Appx. 596 (6th Cir, 2004)
71	Myklebust v. Medical College of Wisconsin	97 Fed. Appx. 652 (7th Cir, 2004)
72	Smith v. Kentucky State University	97 Fed Appx. 22 (6th Cir, 2004)
73	An v. Regents of University of California	94 Fed. Appx. 667 (10th Cir, 2004)

74	Tran v. Trustees of State Colleges in Colorado	355 F. 3d 1263 (10th Cir, 2004)
75	Royer v. Pennsylvania State University	84 Fed. Appx. 226 (3rd Cir, 2004)
76	Eich v. Board of Regents for Central Missouri State University	350 F. 3d 752 (8th Cir. 2003)
77	Williamson v. Indiana University	345 F. 3d 459 (7th Cir. 2003)
78	Snider v. Jefferson State Community College	344 F. 3d 1325 (11th Cir, 2003)
79	Holly D. v. California Institute of Technology	339 F. 3d 1158 (9th Cir, 2003)
80	Medcalf v. Trustees of University of Pennsylvania	71 Fed. Appx. 924 (3rd Cir, 2003)
81	Cullen v. Indiana University Bd. Trustees	338 F. 3d 693 (7th Cir, 2003)
82	Murphy v. University of Cincinnati	72 Fed. Appx. 288 (6th cir, 2003)
83	Adams v. Washburn University of Topeka	66 Fed. Appx. 819 (10th Cir, 2003)
84	Gustin v. West Virginia University	63 Fed. Appx. 695 (4th Cir, 2003)
85	Hardy v. University of Illinois at Chicago	328 F. 3d 361 (7th Cir, 2003)

86	Druyan v. Hofstra University	57 Fed. Appx. 479 (2nd Cir, 2003)
87	Prentice v. University of Tulsa	50 Fed. Appx. 895 (10th Cir, 2002)
88	Lim v. Trustees of Indiana University	297 F. 3d 575 (7th Cir, 2002)
89	Lamb-Bowman v. Delaware State University	39 Fed. Appx. 748 (3rd Cir, 2002)
90	Geddis v. University of Delaware	40 Fed. Appx. 650 (3rd Cir, 2002)
91	Dains v. Curators of University of Missouri	29 Fed. Appx. 425 (8th Cir, 2002)
92	Taylor v. Union Institute	30 Fed. Appx. 443 (6th Cir, 2002)
93	Markel v. Board of Regents of University of Wisconsin system	276 F. 3d 906 (7th Cir, 2002)
94	Gawley v. Indiana University	276 F. 3d 301 (7th Cir, 2001)
95	Arceneaux v. Vanderbilt University	25 Fed. Appx. 345 (6th Cir, 2001)
96	Hedrich v. Board of Regents of University of Wisconsin System	274 F. 3d 1174 (7th Cir, 2001)
97	Cherry v. University of Wisconsin System Bd. Of Regents	265 F. 3d 541 (7th Cir, 2001)

98	Siler-Khodr v. University of Texas Health Science Center San Antonio	261 F. 3d 542 (5th Cir, 2001)
99	Maitland v. University of Minnesota	260 F. 3d 959 (8th Cir, 2001)
100	Jacobs v. University of Wisconsin Hospital & Clinics authority	12 Fed. Appx. 386 (7th Cir, 2001)
101	Lavin-McEleney v. Marist College	239 F. 3d 476 (2nd Cir, 2001)
102	Madani v. University of Nebraska Bd. Of reagents	242 F. 3d 376 (8th Cir, 2000)
103	Kovacevich v. Kent State University	224 F. 3d 806 (6th Cir., 2000)
104	Weinstock v. Columbia University	224 F. 3d 33 (2nd. Cir, 2000)
105	Bowman v. Shawnee State University	220 F. 3d 456 (6th Cir, 2000)
106	Clinger v. New Mexico Highlands University, Board of Regents	215 F. 3d 1162 (10th Cir, 2000)
107	Johnson v. University of Cincinnati	215 F. 3d 561 (6th Cir, 2000)
108	Gupta v. Florida Bd. Of Regents	212 F. 3d 571 (11th Cir, 2000)
109	Lighton v. University of Utah	209 F. 3d 1213 (10th Cir., 2000)

110	Lawrence v. Curators of University of Missouri	204 F. 3d 807 (8th Cir, 2000)
111	Bickerstaff v. Vassar College	196 F. 3d 435 (2nd. Cir, 1999)
112	Sreeram v. Louisiana State University Medical Center	188 F. 3d 314 (5th Cir, 1999)
113	Amine v. St. Louis University	6 Fed. Appx. 490 (8th Cir, 1999)
114	Minor v. Ivy Tech State College	174 F. 3d 855 (7th Cir, 1999)
115	Hentosh v. Herman M. Finch University of Health Sciences	167 F. 3d 1170 (7th Cir., 1999)
116	Krystek v. University of Southern Mississippi	164 F. 3d 251 (5th Cir, 1999)
117	Maitland v. University of Minnesota	155 F. 3d 1013 (8th Cir, 1998)
118	Gunnell v. Utah Valley State College	152 F. 3d 1253 (10th Cir, 1998)
119	Travis v. Board of Regents of the University of Texas System	122 F. 3d 259 (5th Cir, 1997)
120	Lowrey v. Texas A&M University System	117 F. 3d 242 (5th Cir, 1997)
121	Senner v. Northcentral Technical College	113 F. 3d 750 (7th Cir, 1997)

122	Donnelly v. Rhode Island Bd. Of Governors for Higher Education	110 F. 3d 2 (1st Cir, 1997)
123	Smith v. St. Louis University	109 F. 3d 1261 (8th Cir, 1997)
124	Stevens v. St. Louis University Medical Center	97 F. 3d 268 (8th Cir, 1996)
125	Bryson v. Chicago State University	96 F. 3d 912 (7th Cir, 1996)
126	Roxas v. Presentation College	90 F. 3d 310 (8th Cir, 1996)
127	Long v. Eastfield College	88 F. 3d 300 (5th Cir, 1996)
128	Park v. Howard University	71 F. 3d 904 (C.A.D.C., 1995)
129	Johnson v. University of Wisconsin- Eau Claire	70 F. 3d 469 (7th Cir, 1995)
130	Lakoski v. James	66 F. 3d 751 (5th Cir, 1995)
131	Ellert v. University of Texas at Dallas	52 F. 3d 543 (5th Cir, 1995)
132	Maitland v. University of Minnesota	43 F. 3d 357 (8th Cir, 1994)
133	Lam v. University of Hawaii	40 F. 3d 1551 (9th Cir, 1994)

134	Korbin v. University of Minnesota	34 F. 3d 698 (8th Cir, 1994)
135	Polacco v. Curators of University of Missouri	37 F. 3d 366 (8th Cir, 1994)
136	Karibian v. Columbia University	14 F. 3d 773 (2nd Cir, 1994)
137	Stanley v. University of Southern California	13 F. 3d 1313 (9th Cir, 1994)
138	Wu v. Thomas	996 F. 2d 271 (11th Cir, 1993)
139	Purrington v. University of Utah	996 F. 2d 1025 (10th Cir, 1993)
140	Townsend v. Indiana University	995 F. 2d 691 (7th Cir, 1993)
141	Chance v. Rice University	984 F. 2d 151 (5th Cir, 1993)
142	Wilson v. UT Health Center	973 F. 2d 1263 (5th Cir, 1992)
143	Milligan-Jensen v. Michigan Technological University	975 F. 2d 302 (6th Cir, 1992)
144	Fields v. Clark University	966 F. 2d 49 (1st Cir, 1992)
145	Reise v. Board of Regents of University of Wisconsin System	957 F. 2d 293 (7th Cir, 1992)

146	Silver v. City University of New York	947 F. 2d 1021 (2nd Cir, 1991)
147	Schwartz v. Florida Bd. Of regents	954 F. 2d 620 (11th Cir, 1991)
148	Brousard-Norcross v. Augustana College Association	935 F. 2d 974 (8th Cir, 1991)
149	Sischo-Nownejad v. Merced Community College District	934 F. 2d 1104 (9th Cir, 1991)
150	Villanueva v. Wellesley College	930 F. 2d 124 (1st Cir, 1991)
151	Burns v. Gadsden State Community College	908 F. 2d 1512 (11th Cir, 1990)
152	Jackson v. Harvard University	900 F. 2d 464 (1st Cir, 1990)
153	King v. Board of Regents of University of Wisconsin System	898 F. 2d 533 (7th Cir, 1990)
154	Brown v. Trustees of Boston University	891 F. 2d 337 (1st Cir, 1989)
155	Gray v. University of Arkansas at Fayetteville	883 F. 2d 1394 (8th Cir, 1989)
156	Lamphere v. Brown University	875 F. 2d 916 (1st Cir, 1989)
157	Ottaviani v. State University of New York at New Paltz	875 F. 2d 365 (2nd Cir, 1989)

158	Ford v. Nicks	866 F. 2d 865 (6th Cir, 1989)
159	Moore v. Alabama State University	864 F. 2d 103 (11th Cir, 1989)
160	Gutzwiller v. Fenik	860 F. 2d 1317 (6th Cir, 1988)
161	Lipsett v. University of Puerto Rico	864 F. 2d 881 (1st Cir, 1988)
162	Bruhweiler v. University of Tennessee	859 F. 2d 419 (6th Cir, 1988)
163	Mitchell v. Los Angeles Community College District	861 F. 2d 198 (9th Cir, 1988)
164	Wu v. Thomas	847 F. 2d 1480 (11th Cir, 1988)
165	Willner v. University of Kansas	848 F. 2d 1023 (10th Cir, 1988)
166	Sennewald v. University of Minnesota	847 F. 2d 472 (8th Cir, 1988)
167	Long v. Laramie County Community College District	840 F. 2d 743 (10th Cir, 1988)
168	Sobel v. Yeshiva University	839 F. 2d 18 (2nd Cir, 1988)
169	Fields v. Clark University	817 F. 2d 931 (1st Cir, 1987)

170	Covington v. Southern Illinois University	816 F. 2d 317 (7th Cir, 1987)
171	Dugan v. Ball State University	815 F. 2d 1132 (7th Cir, 1987)
172	Maguire v. Marquette University	814 F. 2d 1213 (7th Cir, 1987)
173	Mabry v. State Bd. Of Community Colleges and Occupational Education	813 F. 2d 311 (10th Cir, 1987)
174	Rios v. Board of Regents of the University of Arizona	811 F. 2d 1248 (9th Cir, 1987)
175	Gottlieb v. Tulane University of Louisiana	809 F. 2d 278 (5th Cir, 1987)
176	Merrill v. Southern Methodist University	806 F. 2d 600 (5th Cir, 1986)
177	Sola v. Lafayette College	804 F. 2d 40 (3rd Cir, 1986)
178	Lamphere v. Brown University	798 F. 2d 532 (1st Cir, 1986)
179	Griffin v. Board of Regents of Regency Universities	795 F. 2d 1281 (7th Cir, 1986)
180	O'Connor v. Peru State College	781 F. 2d 632 (8th Cir, 1986)
181	Anderson v. University of Northern Iowa	779 F. 2d 441 (8th Cir, 1985)

182	Molthan v. Temple University of Commonwealth System of Higher Education	778 F. 2d 955 (3rd Cir, 1985)
183	Soble v. University of Maryland	778 F. 2d 164 (4th Cir, 1985)
184	Namenwirth v. Board of Regents of the University of Wisconsin System	769 F. 2d 1235 (7th Cir, 1985)
185	Joshi v. Florida State University Health Center	763 F. 2d 1227 (11th Cir, 1985)
186	Ende v. Board of Regents of Regency Universities	757 F. 2d 176 (7th Cir, 1985)
187	Merwine v. Board of Turstees for State Institutions for Higher Learning	754 F. 2d 631 (5th Cir, 1985)
188	Lyford v. Schilling	750 F. 2d 1341 (5th Cir, 1985)
189	Palmer v. District Board of Trustees of St. Petersburg Junior College	748 F. 2d 595 (11th Cir, 1984)
190	Lewis v. St. Louis University	744 F. 2d 1368 (8th Cir, 1984)
191	Spaulding v. University of Washington	740 F.2d 686 (9th Cir, 1984)
192	Coser v. Moore	739 F. 2d 746 (2nd Cir, 1984)
193	Craik v. Minnesota State University Board	731 F. 2d 465 (8th Cir, 1984)

194	Zahorik v. Cornell University	729 F. 2d 85 (2nd Cir, 1984)
195	Behlar v. Smith	719 F. 2d 950 (8th Cir, 1983)
196	McMillan v. Rust College Inc	710 F. 2d 1112 (5th Cir, 1983)
197	Hamm v. Members of Board of Regents of State of Florida	708 F. 2d 647 (11th Cir, 1983)
198	Sweeney v. Reasearch Foundation of State University of New York	711 F. 2d 1179 (2nd Cir, 1983)
199	Carpenter v. Stephen F. Austin State University	706 F. 2d 608 (5th Cir, 1983)
200	Jones v. Los Angeles Community College District	702 F. 2d 203 (9th Cir, 1983)
201	Peters v. Wayns State University	691 F. 2d 235 (6th Cir, 1982)
202	Lamphere v. Brown University	685 F. 2d 743 (1st Cir, 1982)
203	Laborde v. Regents of University of California	686 F. 2d 715 (9th Cir, 1982)
204	Duke v. University of Texas at El Paso	663 F. 2d 522 (5th Cir, 1981)
205	Welch v. University of Texas and its Marine Science Institute	659 f. 2d 531 (5th Cir, 1981)

206	Lynn v. Regents of University of California	656 F. 2d 1337 (9th Cir, 1981)
207	Wilkins v. University of Houston	654 F. 2d 388 (5th Cir, 1981)
208	Joshi v. Florida State University	646 F. 2d 981 (11th Cir, 1981)
209	Orahood v. Board of Trustees of University of Arkansas	645 F. 2d 651 (8th Cir, 1981)
210	Heagney v. University of Washington	642 F. 2d 1157 (9th Cir, 1981)
211	Campbell v. Ramsay	631 F. 2d 597 (8th Cir, 1980)
212	Smith v. University of North Carolina	632 F. 2d 316 (4th Cir, 1980)
213	Lieberman v. Gant	630 F. 2d 60 (2nd Cir, 1980)
214	Kunda v. Muhlenberg College	621 F. 2d 532 (3rd Cir, 1980)
215	Jepson v. Florida Board of Regents	610 F. 2d 1379 (11th Cir, 1980)
216	Manning v. Trustees of Tufts College	613 F. 2d 1200 (1st Cir, 1980)
217	Leake v. University of Cincinnati	605 F. 2d 255 (6th Cir, 1979)

218	Shawer v. Indiana University of Pennsylvania	602 F. 2d 1161 (3rd Cir, 1979)
219	Davis v. Weidner	596 F. 2d 726 (7th Cir, 1979)
220	Abramson v. University of Hawaii	594 F. 2d 202 (9th Cir, 1979)
221	Powell v. Syracuse University	580 F. 2d 1150 (2nd Cir, 1978)
222	Sweeney v. Board of Trustees of Keene State College	569 F. 2d 169 (1st Cir, 1979)
223	Christensen v. State of Iowa	563 F. 2d 353 (8th Cir, 1977)
224	Keyes v. Lenoir Rhyne College	552 F. 2d 579 (4th Cir, 1977)
225	Calage v. University of Tennessee	544 F. 2d 297 (6th Cir, 1976)
226	Noble v. University of Rochester	535 F. 2d 756 (2nd Cir, 1976)
227	Board of Regents of University of Nebraska v. Dawes	522 F. 2d 380 (8th Cir, 1975)
228	Weise v. Syracuse University	522 F. 2d 397 (2nd Cir, 1975)
229	Faro v. New York University	502 F. 2d 1229 (2nd Cir, 1974)

- 230 Braden v. University of Pittsburgh 477 F. 2d 1 (9th Cir, 1973)
- 231 Green v. Texas Tech University 474 F. 2d 594 (5th Cir, 1973)
- .

Appendix C

List of Supreme Court Cases

Supreme Court Cases

Adkins v. Children's Hospital, 261 U.S. 525 (1923)

Brown v. Board of Education, 347 U.S. 483 (1954).

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998).

Cannon v. University of Chicago, 441 U.S. 677 (1979).

City of Los Angeles, Department of Water and Power, et al. v. Manhart, 435 U.S. 702 (1978).

Clark County School District v. Breeden, 532 U.S. 268 (2000).

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).

Dukes v. Wal-Mart Stores, Inc, 131 S. Ct. 2541 (2011).

Gebser v. Lago Vista Independent School District, 524 U.S. 274, 188 S. Ct 1998 (1998).

Goesaert v. Cleary, 335 U.S. 464 (1948).

Gunther v. Washington County, 452 U. S. 161, 101 S. Ct. 2242 (1981).

Harris v. Forklift Systems, Inc., 515 U.S. 17 (1993).

Jackson v. Birmingham Board of Education, 544 U.S. 167 (2005).

Marbury v. Madison, 5 U.S. 137 (1803).

McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973).

Meritor Savings Bank v. Vinson, 477 U.S. 57, (1986).

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982).

Morehead v. Tipaldo, 298 U.S. 587 (1936).

North Haven Board of Education v. Bell, 456 U.S. 512, 102 S. Ct. 1912 (1980).

Phillips v. Martin Marietta Corporation, 400 U.S. 542, 91 S. Ct. 496 (1970).

Plessey v. Furgerson, 169 U.S. 537 (1896).

Price Waterhouse v. Hopkins, 290 U. S. 228 (1988).

United States v. Virginia, 518 U.S. 515 (1996).

University of Pennsylvania v. E.E.O.C., 493 U.S. 182 (1990).

West Coast Hotel v. Parrish, 300 U.S. 379 (1937).

References

- Aldrich, J. H., & Nelson, F. D. (1984). *Linear Probability, Logit, and Probit Models*. Newbury Park, CA: Sage Publications, Inc.
- Allen, D. W., & Wall, D. E. (1987). The behavior of women state supreme court justices: Are they tokens or outsiders? *Justice System Journal, 12*, 232–45.
- Baum, L. (1994). What judges want: Judges' goals and judicial behavior. *Political Research Quarterly, 47*(3), 749. doi: 10.2307/448853
- Baum, L. (2010). *The Supreme Court, 10th Ed.* Washington, DC: CQ Press.
- Beiner, T. M. (2005). *Gender Myths v. Working Realities: Using Social Science to Reformulate Sex Harassment Law*. New York, NY: New York University Press.
- Berdejo, C. (2012). It's the journey, not the destination: Judicial preferences and the decision-making process. *University of Louisville Law Review, 51*(2), 271-321.
- Bornstein, S. (2012). The law of gender stereotyping of the work-family conflicts of men. *Hastings Law Journal, 63*, 1297-1346.
- Boucher, R. L., & Segal, J. A. (1995). Supreme Court justices as strategic decision makers: Aggressive grants and defensive denials on the Vinson court. *Journal of Politics, 57*, 824-837.
- Boyd, C. L., Epstein, L., & Martin, A. D. (2010). Untangling the causal effects

- of sex on judging. *American Journal of Political Science*, 54, 389–411.
- Bureau of Labor Statistics, U.S. Department of Labor, The Editor's Desk, *Women in the labor force, 1970–2009* on the Internet at http://www.bls.gov/opub/ted/2011/ted_20110105.htm (visited March 22, 2014).
- Bureau of Labor Statistics, U.S. Department of Labor, The Editor's Desk, *Women in the labor force, 2010* on the Internet at http://www.bls.gov/opub/ted/2011/ted_20111223.htm (visited March 22, 2014).
- Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).
- Choi, S. J., Gulati, M., Holman, M., & Posner, E. A. (2011). Judging Women. *Journal of Empirical Legal Studies*, 8(3), 504-532.
- Clermont, K.M., & Schwab, S. J. (2004). How employment discrimination plaintiffs fare in federal court. *Journal of Empirical Legal Studies*, 1(2), 429-458.
- Collins , P. M. JR, Manning, K. L., & Carp, R. A. (2010). Gender, critical mass, and judicial decision making. *Law & Policy*, 32(2), 260-281.
- Cook, B. B. (1977). Public opinion and federal judicial policy. *American Journal of Political Science*, 21, 567-600.
- Cox, A. B., & Miles, T. J. (2008). Judging the voting rights act. *Columbia Law Review*, 108, 1–54.

- Cross, F. B. (2003). Decisionmaking in the U.S. circuit courts of appeals. *California Law Review*, 91, 1459-1515.
- Cross, F. B. (2007). Decision Making in the U.S. Courts of Appeals. Palo Alto, CA: Stanford University Press.
- Cross, F. B., Smith, T. A., & Tomarchio, A. (2008). The Reagan revolution in the network of law. *Emory Law Journal*, 57(5), 1227-1257.
- Cross, F. B., & Tiller, E. H. (1998). Judicial partisanship and obedience to legal doctrine. *Yale Law Journal*, 107, 2155-2176.
- Cunningham-Parmeter, K. (2013). Men at work, fathers at home: Uncovering the masculine face of caregiver discrimination. *Columbia Journal of Gender and Law*, 24(3), 253-301.
- Davis, S. (1992). Do women judges speak in a different voice? Carol Gilligan, feminist legal theory, and the ninth circuit. *Wisconsin Women's Law Journal*, 8, 143-73.
- Education Amendments of 1972, Public Law No. 92-318, 86 Stat. 235 (June 23, 1972), codified at 20 U.S.C. § 1681 through 1688.
- Elkins, T. J., Phillips, J. S., & Konopaske, R. (2002). Gender-related biases in evaluations of sex discrimination allegations: Is perceived threat the key? *Journal Of Applied Psychology*, 87(2), 280-292. doi:10.1037/0021-9010.87.2.280
- Elkins, T. J., Phillips, J. S., Konopaske, R., & Townsend, J. (2001). Evaluating

- Gender Discrimination Claims: Is There a Gender Similarity Bias? *Sex Roles*, 44(1/2), 1-15.
- Epstein, L., Landes, W. M., & Posner, R. A. (2013). *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Cambridge and London:Harvard University Press.
- Epstein, L., Martin, A. D., & Boyd, C. L. (2007). On the Effective Communication of the Results of Empirical Studies, Part II. *Vanderbilt Law Review*, 60(3), 801-846.
- Equal Protection Clause (U.S.C.A. Const. Amend. § 1983).
- Fair Labor Standards Act of 1938 (29 U.S.C. § 201).
- Farhang, S., & Wawro, G. (2004). Institutional dynamics on the US Court of Appeals: Minority representation under panel decision making. *Journal of Law, Economics, and Organization*, 20, 299–330.
- Federal Judicial Center, Administrative Office of the U.S. Courts on behalf of the Federal Judiciary, Federal Courts, on the Internet at <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalJudges.aspx> (visited March 22, 2014).
- Feldman, S. M. (2006). Empiricism, religion, and judicial decision-making. *William & Mary Bill of Rights Journal*, 15(1), 43-57.
- Fischman, J. B., & Law, D. S. (2009). What is judicial ideology, and how should

- we measure it? *Washington University Judicial Law & Policy*, 162, 176-183.
- Gillman, H. (2001). What's law got to do with it? Judicial behaviorists test the 'legal model' of judicial decision making. *Law & Social Inquiry*, 26, 165-504.
- Goldman, S. (1975). Voting behavior on the United States courts of appeals revisited. *American Political Science Association*, 69(2), 491-506.
- Gruhl, J. , Spohn, C. & Welch, S. (1981). Women as policy-makers: The case of trial judges. *American Journal of Political Science*, 25, 308-22.
- Hettinger, V. A., Lindquist, S. A., & Martinek, W. L. (2004). Comparing attitudinal and strategic accounts of dissenting behavior on the U.S. courts of appeals. *American Journal of Political Science*, 48(1), 123-137.
- Hill, A. C. (1997). Protection of Women Workers and the Courts: A Legal Case History. In K. J. Maschke (Ed.), *The Employment Context* (pp. 1-27). New York & London: Garland Publishing, Inc.
- Hurwitz, M. S., & Lanier, D. N. (2008). Diversity in state and federal appellate courts: Change and continuity across 20 years. *The Justice System Journal*, 29(1), 48-70.
- Johnson, S. W., Songer, D. R., & Jilani, N. A. (2011). Judge gender, critical mass, and decision making in the appellate courts of Canada. *Journal of Women, Politics & Policy*, 32, 237-260.

- Johnson, S. W., Stidham, R., Carp, R. A., & Manning, K. L. (2008). The gender influence on US district court decisions: Updating the traditional judge attribute model. *Journal of Women, Politics and Policy*, 29, 497–526.
- Johnson, S. W. & Songer, D. R. (2009). Judge gender and the voting behavior of justices on two North American supreme courts. *The Justice System Journal*, 30(3), 265-279.
- Judgepedia, on the Internet at [http://judgepedia.org/United States federal courts](http://judgepedia.org/United_States_federal_courts) (visited on March 22, 2014).
- Kaheny, E. B., Haire, S. B., & Benesh, S. C. (2008). Change over tenure: Voting, variance, and decision making on the U.S. Courts of Appeals. *American Journal of Political Science*, 52(3), 490-503.
- Kastellec, J. P. (2011). Hierarchical and Collegial Politics on the U.S. Courts of Appeals. *The Journal of Politics*, 20(2), 345-361.
- Kay, F., & Gorman, E. (2008). Women in the legal profession. *Annual Review of Law and Social Science*, 4, 299–332.
- Kim, P. T. (2009). Deliberation and strategy on the United States Courts of Appeals: An empirical exploration of panel effects. *University of Pennsylvania Law Review*, 157, 1319-1381.
- King, Desmond (1995). *Separate and Unequal: Black Americans and the US Federal Government*. Oxford University Press, Oxford, NY: 1995.
- Klien, D. E. (2002). *Making Law on the U. S. Courts of Appeals*. Cambridge:

Cambridge University Press.

Kritzer, H. M. & Richards, M. J. (2003). Jurisprudential regimes and supreme court decisionmaking: The lemon regime and establishment clause cases. *Law & Society Review*, 37, 827-840.

Kulik, C. T., Perry, E. L., & Pepper, M. B. (2003). Here comes the judge: The influence of judge personal characteristics on federal sex harassment case outcomes. *Law and Human Behavior*, 27(1), 69-86.

Lens, V. (2003). Reading between the lines: Analyzing the Supreme Court's views on gender discrimination in employment, 1971-1982. *Social Service Review*, 77(1), 25-50.

Martin, A. D. & Quinn, K. M. (2002). Dynamic ideal point estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999. *Political Analysis*, 10(2), 134-153.

Martin, E., & Pyle, B. (2000). Gender, race, and partisanship on the Michigan Supreme Court. *Albany Law Review*, 63, 1205-37.

McCall, M. & McCall, M. A. (2007). How far does the gender gap extend? Decision making on state supreme courts in fourth amendment cases, 1980-2000. *Social Science Journal*, 44, 67-82.

McCarthy, M. M., Cambron, N. H., & Eckes, S. E. (2014). *Public School Law: Teachers' and Students' Rights (7th Ed.)*. Indianapolis, IN: Pearson Publishing.

- Miles, T. J. & Sunstein, C. R. (2008). The real world of arbitrariness review. *University of Chicago Law Review*, 75(2), 761-814.
- Moyer, L.P. (2012). The role of case complexity in judicial decision making. *Law & Policy*, 34:291-312. doi:10.1111/j.1467-9930.2012.00362.x
- Moyer, L. P., & Tankersley, H. (2012). Judicial innovation and sexual harassment doctrine in the U.S. Courts of Appeals. *Political Research Quarterly*, 65(4), 784-798.
- Neubauer, D. W. (1997). *Judicial Process: Law, Courts, and Politics in the United States*. Westminster, MD: Harcourt Brace College Publishing Inc.
- O'Brien, D. M. (2005). *Storm Center: The Supreme Court in American Politics*, 7th Ed. New York, NY: W.W. Norton & Company.
- Peresie, J. (2005). Female judges matter: Gender and collegial decision making in the federal appellate courts. *Yale Law Journal*, 114, 1759–90.
- Posner, E. A. (2008). Does political bias in the judiciary matter?: Implications of judicial bias studies for legal and constitutional reform. *University of Chicago Law Review*, 75(2), 853-883.
- Public Acts Michigan 1945, No. 133, § 19a
- Randazzo, K. A., Waterman, R. W., & Fine, J. A. (2006). Checking the federal courts: The impact of congressional statutes on judicial behavior. *Journal of Politics*, 68(4), 1006-1017.
- Reeves, L. (2008). Pragmatism over politics: Recent trends in lower court

- employment discrimination jurisprudence. *Missouri Law Review*, 73(2), 482-555.
- Revesz, R. L. (1997). Environmental regulation, ideology, and the D.C. circuit. *Virginia Law Review*, 83(8), 1717.
- Rhode, D. & Spaeth, H. J. (1976). *Supreme Court Decision-Making*. San Francisco: WH Freeman.
- Richards, M. J., & Kritzer, H. M. (2002). Jurisprudential regimes in Supreme Court decision making. *American Political Science Review*, 96, 305.
- Robertson, D. (1998). *Judicial Discretion in the House of Lords*. Oxford, UK: Clarendon Press.
- Rowland, C. K., & Carp, R. A. (1996). *Politics and Judgment in Federal District Court*. Lawrence, Kansas: University Press of Kansas
- Scherer, N. (2011). Diversifying the federal bench: Is universal legitimacy for the U.S. justice system possible? *Northwestern Law Review*, 105(2), 587-631.
- Schubert, G. (1974). *The Judicial Mind Revisited*. New York: Oxford University Press.
- Segal, J. A. (1984). Predicting Supreme Court cases probabilistically: The search and seizure cases. *American Political Science Review*, 78, 891-900.
- Segal, J. A. (2000). Representative decision making on the federal bench:

- Clinton's district court appointees. *Political Research Quarterly*, 53, 137–50.
- Segal, J. A., & Spaeth, H. J. (1993). *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.
- Segal, J. A., & Spaeth, H. J. (2002). *The Supreme Court and the attitudinal model revisited*. New York: Cambridge University Press.
- Shapiro, S. A. (1994). Judges as liars. *Harvard Judicial Law and Public Policy*, 17, 155-156.
- Shapiro, S. A., & Murphy, R. (2012). Politicized judicial review in administrative law: Three improbable responses. *George Mason Law Rev*, 19(2), 319-362.
- Sherry, S. (1986). The gender of judges. *Law and Inequality*, 4, 159–69.
- Sisk, G. C., & Heise, M. (2012). Ideology “All the way down”? An empirical study of establishment clause decisions in the federal courts. *Michigan Law Review*, 110, 1201-1263.
- Sisk, G. C., Heise, M., & Morriss, A. P. (1998). Charting the influences on the judicial mind: An empirical study of judicial reasoning. *New York University Law Review*, 73(5), 1377-1500.
- Smith, C. (2010). Polarized circuits: Party affiliation of appointing presidents, ideology, and circuit court voting in race and gender civil rights cases. *Hastings Women's Law Journal*, 22(1), 157-186.

- Smith, S. M. (1994). Diversifying the judiciary: The influence of gender and race on judging. *University of Richmond Law Review*, 28, 179–99.
- Social Security Act of 1935 (42 U.S.C. § 301 et. seq).
- Songer, D. R., & Crews-Meyer, K. A. (2000). Does judge gender matter? Decision-making in state supreme courts. *Social Science Quarterly*, 81, 751–62.
- Songer, D. R., Davis, S. & Haire, S. (1994). A reappraisal of diversification in the federal courts: Gender effects in the courts of appeals. *Journal of Politics*, 56, 425–39.
- Stidham, R., & Carp, R. A. (1987). Judges, presidents, and policy choices: Exploring the linkage. *Social Science Quarterly*, (68) 395-404.
- Stone, K. (2011). Shortcuts in employment discrimination law. *St. Louis University Law Journal*, 56(1), 111-169.
- Sunstein, C. R., Schkade, D., & Ellman, L. (2004). Ideological voting on federal courts of appeals: A preliminary investigation. *Virginia Law Review*, 90(1), 301-354.
- Sunstein, C. R., Schkade, D., Ellman, L., & Sawiski, A. (2006). *Are Judges Political?: An Empirical Analysis of the Federal Judiciary*. Washington D.C.: Brookings Institution Press.
- Supreme Court of the United States, *Members of the Supreme Court of the United*

States, on the Internet at

<http://www.supremecourt.gov/about/members.aspx> (visited March 22, 2014).

Supreme Court of the United States, *The Court and Its Procedures*, on the

Internet at <http://www.supremecourt.gov/about/procedures.aspx> (visited March 22, 2014).

Supreme Court of the United States, *The Justices Case Load*, on the Internet at

<http://www.supremecourt.gov/about/justicecaseload.aspx> (visited March 22, 2014).

Swartz, N. (2003). *The Concept of Physical Law*, 2nd. Ed. Cambridge, U.K.:

Cambridge University Press.

Tate, C. N. (1981). Personal attribute models of the voting behavior of U.S.

Supreme Court Justices: Liberalism in civil liberties and economics decisions, 1946–1978. *American Political Science Review*, 75, 355–67.

Tiller, E. H., & Cross, F. B. (1999). A modest proposal for improving American justice. *Columbia Law Review*, 99(1), 215.

United States Constitution amendment XIV, § 1

United States Constitution amendment XIX

United States Equal Employment Opportunity Commission, The Editor's Desk,

Sex Discrimination, on the Internet at

<http://www.eeoc.gov/laws/types/sex.cfm>

- Wagar, T. H., & Grant, J. D. (1996). The relationship between plaintiff gender and just cause determination in Canadian dismissal cases. *Sex Roles, 34*(7/8), 535-547.
- Walker, T. G., & Barrow, D. J. (1985). The diversification of the federal bench: Policy and process ramifications. *Journal of Politics, 47*, 596–617.
- Wallace, D. & King, P. (2013). EEOC vs. higher education: Recent laws and Interpretations impacting faculty discrimination. *Journal of Legal, Ethical & Regulatory Issues, 16*(1), 1-6.
- Wayne, S. J., MacKenzie, G. C., O'Brien, D. M., & Cole, R. L.(1997). *The Politics of American Government*. New York, NY: St. Martin's Press.
- Westergren, S. (2004). Gender effects in the Courts of Appeals revisited: The data since 1994. *Georgetown Law Journal, 92*, 689–708.
- Wetstein, M. E., Ostberg, C. L., Songer, D. R., & Johnson, S. W. (2009). Ideological consistency and attitudinal conflict: A comparative analysis of the U.S. and Canadian Supreme Courts. *Comparative Political Studies, 42*, 763-792.
- Zorn, C. J. W. & Bowie, J. B. (2010). Ideological influences on decision making in the federal judicial hierarchy: An empirical assessment. *Journal of Politics, 72*, 1212-1221.

Biographical Information

Dr. LeAnne Hutson is a medical laboratory scientist who was employed as an Assistant Professor at a major medical university for nine years. She received her undergraduate degree in Clinical Laboratory Science from Texas Tech University Health Science Center. Her master's degree, also from Texas Tech University, focused on the three areas of higher education, business management, and speech communication.

Dr. Hutson's interests include policy studies, the accreditation process, healthcare education, and legal policy. She is currently employed at a major hospital in the Dallas area, focusing on matters of competency and education in healthcare.

In the future, Dr. Hutson would like to be involved with the education of healthcare professionals and the development of educational policy.