IDEOLOGICAL AND LEGAL PREDICTORS OF U.S. COURT OF APPEALS JUSTICES' VOTING IN TITLE VII NATIONAL ORIGIN EMPLOYMENT DISCRIMINATION CASES IN K-16 EDUCATION

by

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DISSERTATION

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ABSTRACT

IDEOLOGICAL AND LEGAL PREDICTORS OF U.S. COURT OF APPEALS JUSTICES' VOTING IN TITLE VII NATIONAL ORIGIN EMPLOYMENT DISCRIMINATION CASES IN K-16 EDUCATION

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The University of Texas at Arlington, 2016

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This study investigated the influence of: (1) judges' political ideology as measured by party-of-the- appointing president and DW-nominate scores; and (2) legal precedent as measured by voting which occurred before or after the 1991 amendments to the Civil Rights Act of 1964 on judges' liberal and conservative voting between 1964 and 2015 at the United States Court of Appeals in Title VII national origin decisions impacting K-16 education, using binary logistic regression as its main statistical tool. The principal findings for this group of K-16 decisions are: (1) ideology, as determined by party-of -appointing president, is an effective predictor of judges' voting in K-16 Title VII national origin discrimination cases decided at the U.S. Courts of Appeals when all other variables are held constant … the odds of a Democrat-appointed U.S. Court of Appeals judge voting in favor of the plaintiff are significantly greater than the odds of a Republican-appointed U.S. Court of Appeals judge voting in favor of the plaintiff in K-16 Title VII national origin cases; (2) ideology, as determined by judges' DW Nominate Score, is an effective predictor of judges' voting in K-16 national origin cases at the U.S. Courts of Appeals

when all other variables are held constant … the odds of a U.S. Court of Appeals judge with a DW Nominate score below 0 (liberal) voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge with a DW Nominate score above 0 (conservative) voting for the plaintiff in K-16 Title VII national origin cases; (3) whether a decision in a Title VII K-16 national origin discrimination case occurred before or after the 1991 amendments to the Civil Rights Act of 1964 is an effective and powerful predictor of judges' liberal or conservative voting at the U.S. Courts of Appeals, irrespective whether this variable is set-up in a model using party of the appointing president or DW nominate scores as an ideological predictor, along with the1991 amendments predictor …the odds of a U.S. Court of Appeals judge prior to the 1991 amendments voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge voting in that direction after the 1991 amendments in K-16 Title VII national origin cases.

Further, the data suggested that coding votes to "remand for further proceedings" as "liberal" rather than "conservative" had more merit than deleting this information from the data base even though they did not represent *ultimate* "wins" for the plaintiff. This is primarily because: (1) remands resulted in plaintiffs achieving their goal at the appellate level by reversing the trial court's grant of summary judgment or motion to dismiss for failure to state a claim for the defendant and (2) represented a distinct possibility of going to trial in the lower court or obtaining a favorable settlement on issuance of the remand order.

These results were discussed in terms of attitudinal theory and legal theory as factors influencing judicial decision making.

DEDICATION

There are many people who have played a role in helping me achieve this milestone in my career. I thank my husband for his unwavering support and encouragement whenever I began to feel overwhelmed with coursework or the dissertation process. He was the one who stayed up with me on those long nights of reading cases and writing. This process would have been so much more difficult without his support. I also would like to thank my parents and my maternal grandparents for instilling in me the importance of education, hard work, and achieving my goals. I began this journey just a couple of years ago, but it was my parents and grandparents who planted the seed all those years ago. Although I lost my grandfather at the end of the first semester in this program, I know he has been with me as I continued through the program and I know he will be watching from above when I receive my degree.

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Finally, this dissertation would not have been possible without the guidance, feedback, and insightful suggestions of Dr. Lewis Wasserman. Dr. John Connolly's assistance in the statistical applications was a vital resource for this dissertation. I also thank the other committee members, Dr. Jim Hardy and Dr. Yi Zang, for their support and feedback.

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CHAPTER I

INTRODUCTION

Background

On March 16, 2016, in response to the vacancy left on the United States Supreme Court by the death of Associate Justice Antonin Scalia, President Barrack Obama announced that he was nominating Chief Judge Merrick Garland of the United States Court of Appeals for the District of Columbia Circuit to fill the vacancy ("President Obama's Supreme Court Nomination," 2016). Republican Senate leaders quickly responded to the nomination by asserting that Judge Garland, as well as any other possible Obama appointee, will be allowed neither a Senate confirmation hearing nor a Senate vote in the middle of an election year. Commentators observed that, among other things, Republican party members were greatly concerned that an appointment by President Obama to the Supreme Court would shift the majority ideology on the Court from conservative to liberal (DeBonis, 2016; Herszenhorn, 2016).

To date Senate leaders have followed through on their refusal to consider Obama's nomination. Prior to Judge Garland's nomination, it has never taken longer than 125 days to confirm or reject a Supreme Court nominee and 25 days has been the average number of days for the Senate to make a decision ("*How Long Does It Take to Confirm a Supreme Court Nominee*," 2016). As of the date of this writing, it has been 236 days since Garland's nomination.

Although those in favor of denying Judge Garland a hearing and vote have made it clear that they do not believe an outgoing president has the right to make an appointment that may possibly shift the political ideology of the U.S. Supreme Court, one must wonder why political ideology is a concern? After all, are not jurists expected to vote in accordance with the "law all

the way down" (*The Nomination of Elena Kagan to Be an Associate Judge of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 2010).

Political and social scientists have conducted numerous studies in which they showed that political ideology does have an effect on judicial voting at the Court of Appeals and Supreme Court level (Clarke, 2014; Collins, 2010; Curry & Miller, 2015; Farhang, 2009; Haire, Edwards, & Hughes, 2013; Kaheny, Haire, & Benesh, 2008; Kastellec, 2011; Miller & Curry, 2009; Selmi, 2011; Songer & Ginn, 2002; Sunstein, Schkade, & Ellman, 2004; Van Detta, 2015; Webber, 2015). Political ideology in judicial voting is a topic that researchers continue to study since its implications for important policy concerns reaching the federal courts are substantial. This study investigates one aspect of ideological voting: national origin employment discrimination cases brought under Title VII of the Civil Rights Act of 1964 and its progeny in K-16 educational settings.

Statement of the Problem

Ideological judicial voting at the U.S. Court of Appeals and Supreme Court level is a well-documented phenomenon. Theoretically, the law should be applied neutrally, that is without an ideological slant. There is cause for concern if voting is driven by strong ideological influences. This is because the outcome of a case should depend on its legal merits and not the luck of the draw as to which judge a litigant draws in the assignment process.

A review of the literature reveals that there are very few studies that investigate Court of Appeals judicial voting in Title VII national origin cases concerning K-16 employment. In this study, I investigated the effect of ideology and law on judges voting in such cases. This study is intended to fill the gap in the literature concerning Court of Appeals judicial voting in Title VII national origin cases concerning K-16 employment.

Research Questions

In order to investigate ideological effects on voting in Title VII cases, I set up a regression model using the party-of-the president appointing each judge and judges' DW Nominate Scores as predictors. To ascertain legal effects, I set up a dichotomous variable using the effective date of the 1991 amendments to the Civil Rights Act of 1964. Votes were categorized as occurring before or after the effective dates of this legal development. The dependent measure was whether judges cast a conservative or liberal vote.

I framed the following research questions:

1. How does party-of-appointing-president predict court of appeals judges' liberal-conservative voting in Title VII national origin employment discrimination cases in K-16 education?
2. How do judges' DW Nominate scores predict court of appeals judges' liberal-conservative voting in Title VII national origin employment discrimination cases in K-16 education?
3. What impact did the 1991 amendments to the Civil Rights Act of 1964 have on the volume of appeals brought to U.S. Courts of Appeals?
4. How do the 1991 amendments to the Civil Rights Act of 1964 predict court of appeals judges' liberal-conservative voting in Title VII national origin employment discrimination in K-16 education?

Although not the main focus of the study, there is literature indicating that the number of same-party colleagues of three member courts of appeals influences the voting by other members of the panel. This is known as "panel effects." Thus, I ask the question:

5. How do panel effects, or panel composition, predict courts of appeals judges' liberal-conservative voting in Title VII national origin employment discrimination cases in K-16 education?

Table 1.1 Research Questions by Variable and Methodology

Research Question	Independent Variable	Dependent Variable	Method of Analysis
1	Party-of-appointing president	Courts of appeals judges' liberal-conservative voting	Logistic Regression
2	Judges' DW Nominate score	Courts of appeals judges' liberal-conservative voting	Logistic Regression
3	1991 amendments to the Civil Rights Act of 1964	Volume of appeals at the U.S. Courts of Appeals	Descriptive Data
4	1991 amendments to the Civil Rights Act of 1964	Courts of appeals judges' liberal-conservative voting	Logistic Regression
5	Panel composition determined by number of Republican judges on the panel	Courts of appeals judges' liberal-conservative voting	Logistic Regression

Hypotheses

The following hypotheses are made:

Hypothesis 1: The odds of a Democrat-appointed U.S. Court of Appeals Judge voting in favor of the plaintiff are greater than the odds of a Republican-appointed U.S. Court of Appeals Judge voting in favor of the plaintiff in K-16 Title VII national origin cases.

Hypothesis 2: The odds of a U.S. Court of Appeals Judge with a DW Nominate score below 0 (liberal) voting in favor of the plaintiff are greater than the odds of a U.S. Court of Appeals Judge with a DW Nominate score above 0 (conservative) voting for the plaintiff in K-16 Title VII national origin cases.

Hypothesis 3: The 1991 amendments to the Civil Rights Act of 1964 will cause an increase in the volume of appeals brought to the U.S. Courts of Appeals.

Hypotheses 5: The odds of a U.S. Court of Appeals Judge voting in favor of the plaintiff decreases as the number of Republicans on three judge courts of appeals panels increases in Title VII national origin employment discrimination cases in K-16 education.

Definition of Terms

Ideology – refers to a judge's political views. For the purposes of this study, ideology is viewed in terms of liberalism and leaning towards the Democratic Party or conservatism and leaning towards the Republican Party.

National origin discrimination – is treating someone unfavorably because s/he or his/her ancestors are from a certain place, such as a foreign country, or s/he belongs to a particular national origin or ethnic group. A national origin or ethnic group is a group of people that share a common language, culture, ancestry, and/or other similar social characteristics ("Section 13: National Origin Discrimination," 2002).

Title VII – is a title in the Civil Rights Act of 1964 and is a federal law that prohibits against employment discrimination based on national origin, race, color, religion, and sex ("Title VII of the Civil Rights Act of 1964," n.d.).

Party-of-appointing president – refers to the political party (Democrat or Republican) of the president that nominated a particular judge to the U.S. Court of Appeals.

DW Nominate scores – are quantitative measures of congressional ideology that are derived from procedures that analyze congressional roll call voting (Poole & Rosenthal, 1985). The DW Nominate scores of the appointing presidents and the senators from the practicing state

of each of the judges are utilized to compute the DW Score for each judge that participated on a panel of a case that will be included in the database for this study.

Panel effects – are the effects on judicial voting that occur when a judge is influenced not only by his/her own legal views, but also by the voting of other judges on the panel (Kastellec, 2011). For the purposes of this study, panel effects will be analyzed based on political ideology and will be measured in terms of the number of judges on the panel that were appointed by a Republican president.

Significance of the Topic

Although political scientists have examined the influence of ideology on judicial voting in Title VII cases at the Court of Appeals and Supreme Court level (Clarke, 2014; Curry & Miller, 2015; Haire, Edwards, & Hughes, 2013), very few political scientists focus on the effect of ideology on federal Judges' voting in Title VII cases specific to national origin and K-16 education. Although there is sometimes overlap between race and national origin, the terms have two different meanings. Whereas race refers to one of five racial constructs, such as Black, White, or Asian, as determined by the Office of Management and Budget, national origin refers to the place from which a person or his/her ancestors originally came ("Section 13: National Origin Discrimination," 2002). For example, a person of Mexican decent may be racially categorized as White, but still be able to file a case based on national origin if s/he believes that s/he was discriminated against because of his/her Mexican national origin.

A study specific to cases concerning race do not necessarily have the same implications for cases concerning national origin. In addition, judicial voting at the Court of Appeals level is of vital importance since a very small percentage ever receive *writ certiorari* to the Supreme Court. If it goes to the Court of Appeals, that is normally where the final decision is made on the

meaning of the particular federal statute in question (Kaheny, Haire, & Benesh, 2008). There is a gap in the literature concerning U.S. Court of Appeals judicial voting in Title VII national origin employment discrimination cases in K-16 education. This study is intended to add to the literature to help fill this gap.

CHAPTER II

LITERATURE REVIEW

A cursory review of any public school district, college, or university website will almost certainly reveal a variation of a statement that indicates that the educational institution "does not discriminate on the basis of race, color, religion, sex, national origin, disability, sexual orientation and/or age in educational programs or activities that it operates or in employment decisions" ("Current Jobs," 2016). A statement such as this is required in order to notify any potential employment applicants that s/he will not be subject to discrimination based on any of the aforementioned protected classes. How did it become a legal requirement for educational institutions across the country to post this statement on their websites and employment applications? What happens when an employee or potential employee suspects that an educational institution has violated this statement? In the following section, I will review the literature on the history of Title VII, the major groups protected by Title VII, and the procedures required to file a discrimination lawsuit under Title VII. I will then discuss the significant Title VII cases at the U.S. Supreme Court.

History of Title VII

On July 2, 1964, President Lyndon B. Johnson signed the Civil Rights Act of 1964. It was the height of the Civil Rights movement, and after 500 amendments, the longest senate debate in its then 180-year history, and 534 total hours of congressional debate, the bill that many hoped would eradicate discrimination was signed into law ("The Law," 2000). One particular title in the Act, Title VII, was included specifically to prohibit discrimination in the workforce. Title VII of the Civil Rights Act of 1964 prohibits private employers, employment agencies, and labor unions from discriminating against employees and potential employees based

on race, color, religion, sex, or national origin ("The Law," 2000). However, Americans who believed Title VII was the answer to discrimination in the workplace would soon find out that the promise of Title VII would not come to fruition as swiftly as they had hoped.

United States Equal Employment Opportunity Commission

A major component of Title VII was the creation of the United States Equal Employment Opportunity Commission (EEOC). The EEOC, charged with eliminating unlawful employment discrimination, consisted of five members who were appointed by the President and confirmed by the Senate. Title VII outlined that the Commissioners were to serve five year terms and that there could not be more than three Commissioners of the same political party that serve at the same time ("Pre 1965: Events Leading to the Creation of EEOC," 2000; "The Law," 2000).

Although the EEOC was originally part of H.R. 405, which was an earlier failed attempt at equal employment legislation, it was not the same Commission that was previously intended. Under H.R. 405, the EEOC would be the investigator, prosecutor, and judge for equal employment opportunity. By 1964, Title VII and the purpose of the EEOC had been compromised numerous times in order to ensure that the rest of the Civil Rights Act would pass and become law (Henson, 2012). What remained of the EEOC was nothing like what was originally envisioned in H.R. 405. The EEOC would come to be known as the "toothless tiger" ("1965 - 1971: A 'Toothless Tiger' Helps Shape the Law and Educate the Public," 2000).

Although Title VII prohibits workplace discrimination based on race, color, religion, sex, or national origin, an individual who believes s/he is a victim of discrimination cannot simply find an attorney and file a lawsuit against his/her employer. Instead, under Title VII, s/he would have to undergo a lengthy administrative process and take his/her complaint to the EEOC for a determination as to the claim's merit. (Cooksey, 1966; Henson, 2012). In a review of Title VII

written nine months after the EEOC opened its doors, Cooksey (1966) found that the EEOC's complaint procedure was inadequate at best. The complaint would merely result in an investigation of the grievance since the EEOC had no right to litigate or even to issue a cease and desist order once it reached the conclusion that an employer had discriminated against an employee. If the investigation did determine that discrimination had occurred, the EEOC could then advise the plaintiff that s/he file a private lawsuit or the Commission could request that the Attorney General file an action against discriminatory "pattern of practice" ("Enforcement of fair employment under the Civil Rights Act of 1964," 1965).

The EEOC would not open to the public for an entire year after the Civil Rights Act of 1964 went into effect. Citizens who had suffered from discrimination would have to wait until July 2, 1965 before they would be allowed to file a complaint with the EEOC ("Pre 1965: Events Leading to the Creation of EEOC," 2000; "The Law," 2000). When the EEOC finally became available to the public on July 2, 1965, the staff of 100 began work on the 1,000 charges that had backlogged in the previous year. There would be an additional 7,852 charges within the next year ("1965 - 1971: A 'Toothless Tiger' Helps Shape the Law and Educate the Public," 2000).

Updated Laws and Amendments to Title VII

Considering the limits placed on the EEOC, the promise of Title VII would be doomed from the start if improvements were not made. It would not be long before Congress would enact additional laws to extend protections to additional groups, such as the Age Discrimination in Employment Act of 1967, and to improve the EEOC's effectiveness, such as with Executive Order 11246 which allows the EEOC to refer Title VII violations to the Department of Labor to begin an enforcement action. The Equal Employment Opportunity Act of 1972 and the Civil

Rights Act of 1991 would also provide amendments to Title VII that would greatly improve the effectiveness of the law ("The Law," 2000).

The Equal Employment Opportunity Act of 1972

In 1972, Congress passed the Equal Employment Opportunity Act of 1972. The Act amended Title VII to improve EEOC's effectiveness by increasing its jurisdiction and its ability to follow through on the findings of its investigations ("The Law," 2000). For the first time, the EEOC had the authority to sue nongovernment respondents if an acceptable conciliation agreement could not be reached. Title VII also covered a greater number of employers since the minimum number of employees required for employer coverage was reduced from 25 to 15; and educational institutions and federal, state, and local governments were no longer exempt from Title VII ("The Law," 2000). In addition, the time period allotted for employees to file a charge with the EEOC was extended from 90 or 210 days to 180 or 300 days, and the time period to file a lawsuit after EEOC exhaustion was extended from 30 days to 90 days. The amendments marked a period of greater jurisdiction and Title VII enforceability for the EEOC ("The Law," 2000).

The Civil Rights Act of 1991

The period from 1972 to 1991 saw a large amount of legislation and Supreme Court cases concerning Title VII. Some of the legislation and cases expanded on and reinforced Title VII; however, this was not true for every act of legislation and or Supreme Court decision. In the late 1980s, a series of at least seven Supreme Court decisions appeared to ignore precedent and change the anti-discrimination landscape of employment law (Farhang, 2009; Selmi, 2011). A few essential cases that encouraged Congress to enact the 1991 amendments to the Civil Rights Act were *Patterson v. McLean Credit Union* (1988), *Price Waterhouse v. Hopkins* (1989) and

Wards Cove Packing Co. v. Antonio (1989) ("The Civil Rights Act of 1991," 2000; Selmi, 2011; "The Law," 2000).

In *Patterson v. McLean Credit Union* (1988), Patterson, an African-American woman, was laid off after 10 years of working as a teller and file coordinator. She sued the credit union for damages under § 1981, claiming that she was not promoted to accounting clerk, harassed, and eventually laid off due to her race. The Court held that Patterson was not eligible to sue for damages for racial harassment under § 1981 because although she may have suffered from discrimination, the discrimination did not affect her ability to make and enforce contracts the same way a White person would. Although was not a Title VII case, it would soon have an effect on the Title VII amendments that would be part of the Civil Rights Act of 1991.

In *Price Waterhouse v. Hopkins* (1989), Ann Hopkins was denied a promotion to a partnership at her accounting firm. Her department supervisor told her that she made the males in her department uncomfortable and needed to increase her femininity in order to improve her chances for promotion. The Supreme Court held that, although Hopkins had met her burden of proof that her employer's decision not to promote her was based on gender discrimination, her employer was able to avoid liability by proving that they would have made the same decision under nondiscriminatory motives.

In *Wards Cove Packing Co. v. Antonio* (1989), a group of nonwhite cannery workers filed a Title VII suit claiming that the Wards Cove was using discriminatory hiring practices to prevent nonwhite workers from being hired in skilled non-cannery positions at the plant. The circuit court found that the plaintiff had a *prima facie* case based on statistics that showed that the employees in the skilled non-cannery positions were overwhelmingly white and the employees in the nonskilled cannery positions were overwhelmingly nonwhite. The packing

company appealed to the Supreme Court, who remanded the case back to the circuit court, citing that the wrong statistics were used. The Supreme Court gave instructions to use the statistics that compared the percentage of nonwhite workers in the non-cannery jobs to the percentage of nonwhite skilled workers in the labor pool. The Court also held that a plaintiff must be able to prove disparate impact was the result of a specific practice and not the cumulative effect of several practices. The case demonstrated that employers could avoid the disparate impact liability with only a business justification for the discriminatory practices ("The Civil Rights Act of 1991," 2000).

Congress soon realized that they must take action to ensure that the purpose of Title VII was not completely diminished at the Supreme Court (Selmi, 2011). Congress enacted the Civil Rights Act of 1991, which included several amendments to improve the effectiveness of Title VII. Prior to 1991, a plaintiff who filed a suit under Title VII was only entitled to a bench trial and not a jury trial (Farhang, 2009; Van Detta, 2015). If the plaintiff won the suit, the plaintiff was entitled to injunctive and equitable relief, which was limited to the employer placing the plaintiff in a position that was equal to what the plaintiff would have received had the discrimination not occurred. This usually meant that the plaintiff would be given the job position that s/he applied for if the discrimination was based on a job application or promotion or compensating the plaintiff for wages if the discrimination was based on a wage discrepancy. Under the amendments, a Title VII plaintiff would also be entitled to a jury trial. If the plaintiff won the suit, s/he would now be eligible for compensatory and punitive damages for intentional discrimination (Farhang, 2009; Henson, 2012; Piar, 2001; Selmi, 1991; Stein, 1993). This change in the law meant that plaintiffs in cases such as *Patterson v. McLean Credit Union* (1988) could now be entitled to damages if filed and won under Title VII. The amendments also

clarified disparate impact discrimination and made it clear that it was unlawful for an employer to use race, color, religion, sex, or national origin as a motivating factor, even if it was not the sole factor, in any employment decisions ("The Civil Rights Act of 1991," 2000; Van Detta, 2015). In cases such as *Price Waterhouse v. Hopkins* (1989) where the plaintiff proved that discrimination occurred but the employer proved that it would have made the same decision in the absence of the discriminatory motivation, the plaintiff would at least be entitled to receive attorney's fees. In cases such as *Wards Cove Packing Co. v. Antonio* (1989), the employer would now have the burden of proving that the practice resulting in a disparate impact is both job-related and a business necessity (S. 1745 (102nd): Civil Rights Act of 1991).

Although the promise of the Civil Rights Act of 1991 was just as extraordinary as the promise of Title VII of the Civil Rights Act of 1964, there are several political scientists who argue that the promise of 1991 is as broken as it was in 1964. In 2015, Van Detta argued that federal courts have not acknowledged the 1991 amendments' clarification that it is an unlawful practice to allow race, color, religion, sex, or national origin to be a motivating factor, even if it is only a minimal factor, in employment practices. He argued that lower federal courts have explained away the motivating factor framework language as a simple modification of the *Price Waterhouse v. Hopkins* (1989) decision, and have not interpreted the language to mean exactly what Congress wrote in the act, which is that when an employer participates in an unlawful act when s/he "demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice" (S. 1745 (102nd): Civil Rights Act of 1991).

Prior to Van Detta's (2015) argument, Selmi (2011) argued that in most ideological cases since the Civil Rights Act of 1991, plaintiffs have continued to face a hostile, pro-defendant

Supreme Court. Selmi explained that although the Act did lead to a dramatic increase in case filings, overall, plaintiffs have only fared slightly better than they would have prior to the Act. Even at the Court of Appeals level, Selmi argued that many circuit courts have developed their own legal doctrines that make it more difficult for a plaintiff to be successful in employment discrimination cases.

Major Protected Groups

Title VII of the Civil Rights Act of 1964 prohibits the consideration of race, color, religion, sex, or national origin in any personnel decision (Cooksey, 1966). Although the majority of the early Title VII cases focused on racial discrimination, the EEOC developed policies and made decisions that were applicable to each of the protected classes, as well as some that were applicable to specific protected classes. The definition of discrimination and how it applied to the protected classes would also be developed by the EEOC and elaborated on in court decisions throughout the late 1960s and early 1970s ("Shaping Employment Discrimination Law," 2000). In the following section, I will discuss each of the protected classes and the types of discrimination that has occurred based on each class.

Employment Discrimination for All Protected Classes

Discrimination in employment occurs when a person is subjected to an adverse employment action. This can include, but is not limited to, acts such as firing, paying an individual on a lower pay scale, or overlooking an individual for a promotion because of his/her status as a member of a protected class. Discrimination can also manifest as harassment. Harassment can include, but is not limited to, repeated offensive remarks, jokes, images, and unwanted advances. When harassment is so pervasive that it creates a hostile work environment or leads to an adverse employment action, it is then an illegal act of discrimination ("National

Origin Discrimination," n.d.; "Race/Color Discrimination," n.d.; "Religious Discrimination," n.d.; "Sex-Based Discrimination," n.d.). The offender may be anyone at the workplace, such as a supervisor, co-worker, or client. In addition, discrimination can also happen to an individual when the adverse employment action occurs because of the protected class status of a person with whom the victim associates, such as a spouse; as well as between two individuals in the same protected class ("National Origin Discrimination," n.d.; "Race/Color Discrimination," n.d.; "Religious Discrimination," n.d.; "Sex-Based Discrimination," n.d.).

Race/Color Discrimination

Race discrimination is discrimination based on an individual's race or the physical characteristics, such as hair texture, facial features, and skin color, that are associated with race. Color discrimination is discrimination based on the complexion of the individual's skin color. Color discrimination can also be race discrimination if the race discrimination is based on a physical characteristic (skin color) that is associated with a person's race ("Race/Color Discrimination," n.d.). The Civil Rights Act of 1964 was primarily intended to end racial discrimination, although it did provide protection for individuals who were discriminated against based on other reasons such as religion, sex, and/or national origin.

Religious Discrimination

Religious discrimination is discrimination based on an individual's religious, ethical, or moral beliefs and practices. Title VII requires that employers accommodate an employee's religious beliefs and practices as long as the accommodations do not place an undue hardship on the employer. In a lawsuit, the employer would have the burden of proving undue hardship. Employers also cannot segregate employees, such as in a position out of customer sight, based on religion or religious clothing or grooming customs. An employee also cannot be forced to

participate in other religious customs or not participate in his/her own religious customs. ("Religious Discrimination," n.d.; "Shaping Employment Discrimination Law," 2000).

Sex-Based Discrimination

Although initially sex-based discrimination was discrimination based on an individual's gender status, it has evolved to include discrimination based on gender identity and sexual orientation. Congressman Howard Smith of Virginia, who opposed the Civil Rights Act of 1964, requested a prohibition against sex discrimination as a last minute amendment in hopes that Congress would reject a bill that required equal rights for women. Most civil rights supporters opposed the amendment because they were concerned that the bill would never pass; however, female members of Congress demanded that their civil rights be protected and that the amendment remain. Smith's amendment would backfire on him. Not only did the bill pass, but so did his amendment granting equal rights for women ("Sex-Based Discrimination," n.d). Although the EEOC did not expect very many charges of sex discrimination, one third of the charges in the first year of the EEOC were sex discrimination charges. Sex-based discrimination laws have continued to evolve over the past five decades, from eradicating hiring policies against women with young children to providing equal rights to transgender individuals ("Sex-Based Discrimination," n.d.; "Shaping Employment Discrimination Law," 2000). It is likely that this type of discrimination will continue to evolve in the years to come.

National Origin

National origin discrimination is based on the unequal treatment or adverse actions impacting persons from a particular country or part of the world. National origin discrimination can manifest as discrimination because an employee speaks a foreign language, has an accent, or appears to be of a certain ethnic background ("National Origin Discrimination," n.d). Employers

cannot require an employee to speak fluent English if fluency in English is not necessary to perform the job effectively. The only exception is if English is needed to ensure the safe or efficient operation of the employer's business. In this case, the language requirement must be put in place for nondiscriminatory reasons. In addition, employment decisions cannot be based on a foreign accent unless it causes a serious interference with job performance ("National Origin Discrimination," n.d.; "Shaping Employment Discrimination Law," 2000).

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA). This act authorized sanctions and fines for knowingly hiring undocumented workers. This had a negative impact on any workers who appeared to be foreign because of their appearance, accent, surname, or language. Many employers refused to hire them, and many employees were discriminated against based on their national origin ("Enforcement Efforts in the 1980s," 2000). Ironically, the IRCA also made it illegal to refuse to accept lawful documentation that establishes employment eligibility such as the Department of Homeland Security Form I-9 based on the individual's citizenship status or national origin ("National Origin Discrimination," n.d.).

According to the EEOC, its outreach activities have uncovered that national origin discrimination is a widespread problem in the United States. Individuals are discriminated against in the workplace based on their accents, and many employers still attempt to restrict the languages that can be spoken in the workplace ("The 2000s: Charting a Course for the 21st Century," 2000). National origin discrimination is evident even on the national political scene. Republican presidential nominee Donald Trump has announced repeatedly that he is in favor of a ban on any individual from a Muslim nation (Johnson, 2016). Trump also has stated that Mexican immigrants to the United States are criminals and rapists, and has unapologetically announced his intentions of mass deportation of Mexican immigrants, He has even gone as far

as stating that he will demand that the Mexicans build and pay for a wall to keep them out of the United States (Miller, 2015). Although the Civil Rights movement has brought a significant amount of progress, it is evident that there is still a significant amount of progress to be made in all areas of society, including employment.

Title VII Procedure

Administrative Level

When an employee believes s/he has been discriminated against at the workplace, s/he must first file a Charge of Discrimination in person with the closest EEOC office. This is required before a discrimination lawsuit can be filed. If the plaintiff is concerned about protecting his/her identity, s/he may have an organization or agency file the charge on his/her behalf. As part of the process for filing a Charge of Discrimination, the plaintiff must ensure that his/her circumstances meet certain criteria ("Basics of Employment Discrimination Law for Law Clerks," 2013; "Employees & Job Applicants," n.d.). The first step is ensuring that his/her employer is covered by Title VII. This depends on the type of employer, the number of employees, and the type of discrimination. For example, the Immigration Reform and Control Act (IRCA) of 1986 prohibits discrimination based on national origin by small employers; thus, the employer of a plaintiff filing a Charge of Discrimination based on national origin or citizenship status may have as few as four employees in order to be covered by Title VII. The IRCA minimum requirement of four employees for national origin discrimination is a departure from the Title VII minimum requirement of 15 employees for the other protected classes ("Basics of Employment Discrimination Law for Law Clerks," 2013; "Coverage," n.d.). If the employer is indeed covered by Title VII, the plaintiff may then proceed to the next step in the process.

Once the plaintiff and the EEOC have confirmed that the employer is covered by Title VII, the plaintiff must then verify that s/he is timely filing the charge. Generally, the plaintiff has 180 calendar days from the time of the discriminatory event to file a charge. If there is a state or local law prohibiting discrimination on the same basis, the deadline is extended to 300 calendar days. The time limit applies to and is independent of each individual discriminatory event. There is an exception for ongoing harassment. If a charge is based on ongoing harassment, the time limit begins with the last event of harassment ("Basics of Employment Discrimination Law for Law Clerks," 2013; "Time Limits for Filing a Charge," n.d.). Once it has been determined that the charge is timely, the plaintiff may then proceed to filing the Charge of Discrimination. The time requirement is a somewhat controversial issue, since the complexity has caused many plaintiffs to have their case dismissed simply because of the time requirement (Rutherglen, 2012).

When a plaintiff files a Charge of Discrimination, the EEOC generally will ask the plaintiff to attempt to settle the issue through a mediator. If the mediator does not resolve the problem or the case does not go to a mediator, the case will then go to an investigator to determine if there is a violation of the law. In the case of a violation, the EEOC will attempt to reach a settlement with the employer ("Filing a Charge of Discrimination," n.d). If a settlement is not reached, the EEOC's legal staff will decide whether or not to file a lawsuit. If a lawsuit is not filed, or the initial investigation found no violation of the law, the EEOC will give the plaintiff a Notice of Right to Sue ("Basics of Employment Discrimination Law for Law Clerks," 2013; "Filing a Charge of Discrimination," n.d.). Once a plaintiff has received the Notice of Right to Sue, then s/he may file a lawsuit in federal district court under Title VII ("Basics of

Employment Discrimination Law for Law Clerks," 2013; "After you Have Filed a Charge," n.d.).

District Court Level

Once a Notice of Right to Sue has been issued to a plaintiff, the plaintiff generally only has 90 days to file the lawsuit in federal district court ("Basics of Employment Discrimination Law for Law Clerks," 2013; "Filing a Lawsuit," n.d.). After filing a lawsuit, the plaintiff pleads a complaint and the defendant pleads an answer to the complaint ("Federal Rules of Civil Procedure," 2015). It is at this point that a party, most likely the defendant, will file a motion for summary judgement ("Basics of Employment Discrimination Law for Law Clerks," 2013).

The decision to grant summary judgement is based on the framework developed by the United States Supreme Court in *McDonnell Douglas v. Green* (1973). A motion for summary judgement is made when one party asserts that all factual issues are settled and no triable facts remain. If the court finds that there is a triable fact remaining or that a determination cannot be made as to whether an issue of triable fact remains, then the summary judgement may not be granted and the case must proceed to trial (Hill & Hill, n.d.).

In order to determine whether to grant summary judgement, the *McDonnell Douglas v. Green* (1973) framework first determines if the plaintiff's case has all the elements of a *prima facie* case. These elements include that the plaintiff is a member of a protected group, the plaintiff was subjected to an adverse employment action, there is a suggestion of discrimination concerning the adverse employment action, and the job is still available. If the plaintiff's case does indeed meet all the requirements of a *prima facie* case, the burden shifts to the defendant to provide a legitimate nondiscriminatory reason for the adverse employment action. The burden then shifts back to the plaintiff to show that the nondiscriminatory reason provided is actually a

pretext, and the real reason for the adverse employment action is discrimination ("Basics of Employment Discrimination Law for Law Clerks," 2013; *Reeves v. Sanderson Plumbing Products, Inc.*, 2000). If summary judgement is not granted, the case will ordinarily proceed to trial. If a case is dismissed outright, the losing party may appeal the judgment to the court of appeals ("Basics of Employment Discrimination Law for Law Clerks," 2013). In limited circumstances, a party losing on a summary judgment issue in the district court may take an interlocutory appeal to the court of appeals prior to the trial of the case in the district court.

Courts of Appeals Level

If either party decides to appeal to the U.S. Court of Appeals, they must timely file a notice of appeal with the district court clerk. An appellant may not appeal solely because s/he disagrees with the decision. There must be evidence that the district court made an error in interpreting the law and there was an incorrect decisional outcome based on this finding ("Federal Rules of Appellate Procedure," 2015; "Office of General Counsel Appeal Procedures," n.d.). The parties must submit evidence, transcripts, and any other written documentation from the case and provide details of the background of the case and evidentiary facts with an explanation of how the facts are relevant to the appeal. Typically, the parties to an appeal are granted the opportunity to make oral argument to the appellate panel about the merits of the case, although the courts of appeal will sometimes order the case be decided without argument ("Federal Rules of Appellate Procedure," 2015; "Office of General Counsel Appeal Procedures," n.d.). For the majority of cases, achieving a writ of certiorari is not likely, and the outcome of the Court of Appeals trial will be the final decision on the meaning of the federal statute in question (Kaheny, Haire, & Benesh, 2008).

Significant Title VII Cases at the U.S. Supreme Court

Although each case that receives *writ certiorari* to the U.S. Supreme Court can be considered significant in that the case sets the precedent for interpreting the federal statute applied, the following cases are of particular significance to this study.

Griggs v. Duke Power Co. (1971)

In *Griggs v. Duke Power Co.* (1971), African American employees of Duke Power Company sued the company for racial discrimination under Title VII because the company had begun to require a high school diploma or a passing score on intelligence tests as a requirement for employment in or a transfer to a job at the plant. The requirements were not intended to measure learning ability towards a category of jobs, and were not job related. The Court of Appeals found that the tests did not demonstrate a discriminatory purpose, and rejected the plaintiff's claims that the requirements were illegal because the requirements were not job related. The Supreme Court found that testing procedures must be a reasonable measure of job performance in order to be legal, even if the employer had no discriminatory intent. The Court also held that Title VII requires the elimination of arbitrary barriers to employment that discriminate on the basis of race and are not related to job performance. This case is significant because it set the precedent for disparate impact.

McDonnell Douglas Corp. v. Green (1973)

In *McDonnell Douglas Corp. v. Green* (1973), Green was an African American Civil Rights activist who was fired from McDonnel Douglas Corp. Green claimed that his firing and the general hiring practices of McDonnell Douglas were racially discriminatory. As part of a civil rights protest against the company, Green was arrested for disruptive and illegal conduct for his part in a stall-in where 20 civil rights activists parked their cars on and blocked the five entry

roads to McDonnell Douglas during the 7 a.m. rush hour to prevent current employees from going to work. When Green applied for a new position that had been advertised by the company a couple of weeks later, his application was denied due to illegal conduct. The EEOC found that Green was protected under Title VII 704 (a), which forbids discrimination against employees who protest against discriminatory employment practices; however, the EEOC did not make a finding on his Title VII 703 (a) 1 claim that he suffered from discriminatory employment practices. Green took his case to federal court, and the District Court found that Green's activity was not protected by 704 (a) because his rejection was based solely on his part in the illegal disruptive activity and not on his civil rights activity. The District Court also dismissed his 703 (a) 1 claim since the EEOC found no finding on the claim. The Court of Appeals affirmed the District Court's 704 (a) ruling, but reversed and remanded the 703 (a) 1 ruling since EEOC jurisdiction is not a prerequisite for District Court.

The Supreme Court set precedent and laid out a burden shifting framework that would become known as the *McDonnell Douglass* framework, which would be used in intentional discrimination employment cases. The framework begins by placing the burden on the plaintiff to establish a *prima facie* case of discrimination. A *prima facie* case has four requirements: 1) the plaintiff is a member of a protected class, 2) s/he applied for and was qualified for a job that the employer was trying to fill, 3) s/he was rejected for the job, and (4) the employer then continued to seek applicants with the plaintiff's qualifications (*McDonnell Douglas Corp. v. Green*, 1973). The burden then shifts to the employer to provide a legitimate nondiscriminatory reason for rejecting the applicant. Subsequently, burden shifts back to the employee to prove that the employers' legitimate nondiscriminatory reason was actually just a pretext, or cover-up, for discrimination (*McDonnell Douglas Corp. v. Green*, 1973). In the case of *McDonnell*

Douglas Corp. v. Green (1973), the Court of Appeals judgement was vacated, and the case was remanded back to District Court so that Green, who the Court had determined had a *prima facie* case, would have an opportunity to demonstrate that McDonnell Douglas' cited reason for rejecting the application was actually a pretext for discrimination.

Espinoza v. Farah Manufacturing Company (1973)

In *Espinoza v. Farah Manufacturing Company* (1973), Cecilia Espinoza, a Mexican citizen who was a lawfully admitted resident alien to the United States, and her husband sued the Farah Manufacturing Company for refusing to hire her as a seamstress at their San Antonio, Texas location. She sued under Title VII on the basis of national origin. The district court granted her summary judgement on the holding that refusing to hire because of a lack of citizenship is the equivalent of discrimination based on national origin. Farah Manufacturing company appealed to the Court of Appeals, which reversed the ruling stating that national origin does not necessarily mean citizenship. The Court of Appeals pointed out that over 90 percent of Farah's employees at the San Antonio location were of Mexican national origin. The Supreme Court affirmed the Court of Appeals decision holding that there is nothing in Title VII that makes discrimination on the basis of citizenship or alienage illegal. In 1975, the EEOC revised its guidelines to prohibit a citizenship requirement as a job requirement where it has the effect of excluding people of a particular national origin ("Supreme Court in the 1970s," 2000).

Texas Department of Community Affairs v. Burdine (1981)

In *Texas Department of Community Affairs v. Burdine* (1981), Burdine was a female employee at Texas Department of Community Affairs (TDCA) who was passed up for a promotion and later fired during a reduction in force. She was, however, eventually hired back into a different department with the same pay she would have received had she received the

promotion. Nevertheless, Burdine sued the TDCA under Title VII, claiming that she was passed up for the promotion and fired because of gender discrimination. The District Court found that neither of the adverse employment actions were based on gender discrimination. The Court of Appeals agreed that Burdine was not discriminated against when she was passed over for the promotion. However, the Court of Appeals also found that the TDCA did not prove a legitimate nondiscriminatory reason for firing Burdine and remanded the case back to District Court to determine how much Burdine was owed in back pay. The Supreme Court vacated and remanded the Court of Appeals verdict. The Supreme Court found that the Court of Appeals misapplied the *McDonnell Douglass* (1973) framework by erroneously placing the burden on the defendant to prove by a preponderance of evidence that they had a legitimate nondiscriminatory reason for firing Burdine. According to the Supreme Court, the employer only has to produce a legitimate nondiscriminatory reason, and does not have the burden of proving by a preponderance of evidence that the reason is legitimate and nondiscriminatory. It is a burden of production and not of persuasion, and there should be no assessment of the credibility of the nondiscriminatory reason. The Court claims that the burden always remains with the employee to prove that the employer acted with a discriminatory intent. This case was a setback for any employee who sued under Title VII.

Reeves v. Sanderson Plumbing Products, Inc., (2000)

In *Reeves v. Sanderson Plumbing Products, Inc.*, (2000), Roger Reeves, age 57, was fired from his position at Sanderson Plumbing Products after it was determined that there were numerous errors and misrepresentations made on his timecards. He sued in federal court on the basis of age discrimination. During the District Court trial, Reeves produced evidence that his timecards were completed accurately, and the jury found that Reeves was willfully terminated

due to his age. The Court of Appeals reversed the findings on the basis that Reeves did not produce enough evidence to support the jury's findings. The Supreme Court reversed the Court of Appeals' findings on the basis that Reeves did produce enough evidence to prove that Sanderson's reasons for firing were pretextual. This case is significant because it clarified *Burdine* (1981) by explaining that, although the Court of Appeals could find in favor of the employer if the employee did not prove that the nondiscriminatory reason was a pretext beyond a reasonable doubt, the Court is not required to find in favor of the employer if there was reason to suspect that the employer may be untruthful. The Court of Appeals did find that Reeves had provided evidence of discriminatory intent, but mistakenly ruled in favor of the employer because they believed the evidence had to be beyond reasonable doubt. This case made it easier for a plaintiff to prevail in court.

CHAPTER III

METHODS

This study investigated (1) U.S. Courts of Appeals JUDGES' political ideology, as measured by party of the appointing president and judges' DW-nominate scores and (2) legal developments, as measured by the 1991 Amendments to Title VII of the Civil Rights Act of 1964 (3) and panel effects on judges' voting in K-16 employment discrimination cases alleging violations of Title VII's national origin provisions arising between 1964 and 2015 using binary logistic regression as the primary statistical tool.

Data Collection

The database for the study was developed by conducting a search in the Westlaw database for all U.S. Court of Appeals cases that were decided between 1964 through 2015 and included the keywords Title VII, ed law rep, national origin, and employment. Each of the cases were read and analyzed to ensure that they meet the following criteria: 1) at least one claim in the case was Title VII discrimination based on national origin, 2) there was an actual finding in the case regarding national origin, and 3) the parties involved were a K-16 educational institution and an employee(s) of the educational institution. Any cases that were part of the search results but did not meet each of the three requirements were excluded.

Case-Level Data

The cases that met all three criteria were then listed in a spreadsheet. The spreadsheet initially included columns for the following data: case name, citation, circuit number, decision date, whether the panel voted unanimously, whether the final outcome of the case was in favor of the employer or employee, the number of Republican judges on the panel, whether the case was prior to or after the Civil Rights Act of 1991, name of individual judges on the panel, and

whether the individual judge voted for the employer or employee. Once the cases were determined and listed in the spreadsheet with the aforementioned column headings, the cases were reread to gather the data that was needed to fill in the spreadsheet columns for each case.

Judge-Level Data

After the case data was entered, additional columns were added to document data specific to each judge. The following columns were added: party-of-appointing president, last name of appointing president, date confirmed by Senate, judge's practicing state, president score, senator one name, senator one score, senator two name, senator two score, and DW Score. Data for the party-of-appointing president, last name of appointing president, date confirmed by Senate, gender of judge, and judge's practicing state were gathered from the Biographical Directory of Federal Judges page at the Federal Judicial Center website http://www.fjc.gov/history/home.nsf/page/judges.html or from the United States Court of Appeals page at the Ballotpedia website https://ballotpedia.org/United_States_Court_of_Appeals.

The remaining columns for president score, senator one name, senator one score, senator two name, senator two score, and DW Score all pertained to the DW Nominate score that was calculated for each judge. The data for these columns were filled in by utilizing the DW Nominate Scores spreadsheet. This spreadsheet listed each senator and president going back to the 75th congress of 1937-1938 and included the following information for each senator and president: which years they were in office, their political party, and their DW Nominate score. The senator information also included the state represented. The first step in calculating the DW nominate score was to fill in the president score column. This was completed by looking at the name of the appointing president column from the case spreadsheet and finding that president's

name in the DW Nominate spreadsheet. The DW Nominate score that was listed for that president was then entered in the president score column of the case spreadsheet. This score was entered each time that particular president was listed in the case spreadsheet. The process was repeated for each president listed in the name of the appointing president column.

The next step was to look at the party of the appointing president column, the judge's practicing state column, and the date confirmed by senate column for each individual judge. If the senators that represented that state during the confirmation year were of the same party of the appointing president, their name and DW Nominate score were listed in the case spreadsheet under the senator name and senator score column for that particular judge. If both senators were of the same party as the nominating president, one of them was entered in the senator 1 name and senator 1 score cells, and the other was entered in the senator 2 name and senator 2 score cells. The order did not matter. If only one senator was of the same party as the nominating president, the data were entered in senator 1 name and senator 1 score. If neither of the senators were of the same party as the nominating president, the senator data were left blank.

The final column was the DW Score. This column was calculated in one of three ways, depending on the amount of senator information entered. If both senator spaces were filled, the score was calculated by averaging the senator 1 score and the senator 2 score together. If only one senator score was entered, this was the DW Score. If neither senator space was entered, the president score was the DW Score. Once the DW Score was calculated, the data gathering portion of the study was complete.

Research Design

Coding of Independent Variables - Ideological Variables

The first independent variable that was analyzed to determine ideological effects was the party-of-appointing president. This predictor was a dichotomous variable that used the appointing presidents' political party to determine the judges' political ideology. This predictor was coded as a "1" if the appointing president was a Democrat and a "0" if the appointing president was a Republican.

The second independent variable that was analyzed was the DW Nominate score of each judge. This predictor was a continuous variable that ranged from "-1," the most liberal score, to "1," the most conservative score. Scores were determined by the average of the ideology scores of the senators of the judge's home state at the time of appointment and were of the same party as the appointing president. If there were no senators from the judge's home state at the time of appointment that were of the same party as the appointing president, the ideology score of the appointing president was then used. Scores ranged from "-1" to "1," with "-1" representing the most liberal end of the spectrum and "1" representing the most conservative end of the spectrum.

The third independent variable was panel composition; its levels were measured as the number of Republican judges, as determined by the party-of-the-appointing president, on the panel of a particular case. The levels of this predictor were coded either as a "0," "1," "2," or "3," with "3" representing the most conservative possible panel with each judge having been appointed by a Republican president. On the other end of the spectrum is a "0," with each judge having been appointed by a Democratic president.

Legal variables

The fourth and final independent variable was included as a predictor of legal effects. The fourth predictor was the 1991 amendment to the Civil Rights Act. This variable was dichotomous, and was coded as either a "0" or a "1." A "0" represented a case that was decided prior to the 1991 amendments and a "1" represented a case that was decided after the 1991 amendments.

Coding of Dependent Variable - Judges' Voting

Judges' individual votes were categorized as pro-employee or pro-employer. A pro-employee vote was coded "1" and a pro-employer vote was categorized as a "0." Because judges' voting may be interpreted in at least two ways, this dependent measure was examined as follows:

1. A pro-employee vote was defined as one in which the employee won outright *or* achieved a remand to the lower court. This approach was taken on the grounds that where an employee "survived" the appellate process, s/he was most often in a favorable negotiating position against the employer.

2. A pro-employee vote was defined as one in which the employee won outright. In this instance, only cases in which one party or the other prevailed were included in the analysis. Thus, remands were excluded in this instance from consideration in the coding process and not included in the data analysis.

Data Validation

The underlying data for the study were collected and stored in a spreadsheet that was imported into SPSS. In order to ensure the accuracy of the data and data coding, doctoral students independently cross-checked the accuracy of the collected and coded data.

Data Analysis

As discussed above, the independent variable predictors were used to model voting in the national origin discrimination cases populating the data base. The dependent variable of individual judge voting was a dichotomous, or binary, variable. Least squares regression assumes a linear outcome, rendering least squares regression as an inappropriate statistical test. Binary logistic regression has been selected as the appropriate statistical test for the purposes of this study because it was the most suitable statistical technique for binary dependent variables and the data fit all the assumptions of this technique (Aldrich & Nelson, 1984). The binary logistic regression model allowed the researcher to determine if one or more independent predictor variables effectively predicted the odds of a particular binary result, such as judicial voting. In addition, logistic regression is commonly used for analyzing judicial voting. Utilizing the same statistical technique allowed for comparisons with other judicial voting studies. The Nagelkerke R Square, as well as the Cox & Snell R Square, statistics were used to determine model fitness.

Descriptive Analysis

The data analysis commenced with a crosstab exploration of preliminary descriptive data that were utilized to guide the analysis. The first crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of ideology as measured by party-of-appointing president. The crosstab included all votes.

Table 3.1 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing President. *

	Voting		
Party Ideology	Liberal	Conservative	Total
Republican	N (%)	N (%)	N (%)
Democrat	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

*Votes in favor of employees or remanded were coded as pro-employee.

The second crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of ideology as measured by party-of-appointing president. The crosstab excluded remands.

Table 3.2 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing President. *

	Voting		
Party Ideology	Liberal	Conservative	Total
Republican	N (%)	N (%)	N (%)
Democrat	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

The third crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of panel effects as measured by the number of Republican judges on the panel. The crosstab included all votes.

Table 3.3 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel.*

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	N (%)	N (%)	N (%)
one	N (%)	N (%)	N (%)
two	N (%)	N (%)	N (%)
three	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes in favor of employees or remanded were coded as liberal.

The fourth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of panel effects as measured by the number of Republican judges on the panel. The crosstab excluded remands.

Table 3.4 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	N (%)	N (%)	N (%)
one	N (%)	N (%)	N (%)
two	N (%)	N (%)	N (%)
three	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

The fifth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of ideology as measured by DW Nominate scores. The crosstab included all votes.

Table 3.5 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW Nominate Scores. *

	Votes		
DW Nominate Scores	Liberal	Conservative	Total
.8 to 1.0	N (%)	N (%)	N (%)
.6 to .799	N (%)	N (%)	N (%)
.4 to .599	N (%)	N (%)	N (%)
.2 to .399	N (%)	N (%)	N (%)
.01 to .199	N (%)	N (%)	N (%)
-.01 to -.199	N (%)	N (%)	N (%)
-.2 to -.399	N (%)	N (%)	N (%)
-.4 to -.599	N (%)	N (%)	N (%)
-.6 to -.799	N (%)	N (%)	N (%)
-.8 to -1.0	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* * Votes in favor of employees or remanded were coded as liberal.

The sixth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of ideology as measured by DW Nominate scores. The crosstab excluded remands.

Table 3.6 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW Nominate Scores. *

	Votes		
DW Nominate Scores	Liberal	Conservative	Total
.8 to 1.0	N (%)	N (%)	N (%)
.6 to .799	N (%)	N (%)	N (%)
.4 to .599	N (%)	N (%)	N (%)
.2 to .399	N (%)	N (%)	N (%)
.01 to .199	N (%)	N (%)	N (%)
-.01 to -.199	N (%)	N (%)	N (%)
-.2 to -.399	N (%)	N (%)	N (%)
-.4 to -.599	N (%)	N (%)	N (%)
-.6 to -.799	N (%)	N (%)	N (%)
-.8 to -1.0	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

The seventh crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of the 1991 Title VII amendments. The crosstab included all votes.

Table 3.7 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of the 1991 Title VII amendments. *

	Voting		
1991 Title VII Amendment	Liberal	Conservative	Total
Pre-1991 Amendments	N (%)	N (%)	N (%)
Post-1991 Amendments	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes in favor of employees or remanded were coded as liberal.

The eighth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of the 1991 Title VII amendments. The crosstab excluded remands.

Table 3.8 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of 1991 Title VII amendments *

	Voting		
1991 Title VII Amendment	Liberal	Conservative	Total
Pre-1991 Amendments	N (%)	N (%)	N (%)
Post-1991 Amendments	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

The ninth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of panel effects as measured by the number of Republican judges on the panel for Democratic appointees. The crosstab excluded remands.

Table 3.9 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Democratic Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	N (%)	N (%)	N (%)
one	N (%)	N (%)	N (%)
two	N (%)	N (%)	N (%)
three	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

The tenth crosstab exploration examined the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of panel effects as measured by the number of Republican judges on the panel for Republican appointees. The crosstab excluded remands.

Table 3.10 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Republican Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	N (%)	N (%)	N (%)
one	N (%)	N (%)	N (%)
two	N (%)	N (%)	N (%)
three	N (%)	N (%)	N (%)
Total	N (%)	N (%)	(100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Logistic Regression

Multiple binary logistic regressions were conducted to estimate how well the overall model effectively predicted individual judicial voting in Title VII national origin employment discrimination cases in K-16 education between 1964 and 2015. The logistic regression computed the log odds of a particular outcome, such as whether a judge voted pro-plaintiff/employee or pro-defendant/employer (Brace, Kemp, & Snelgar, 2009). Based on the results of the regression, the researcher was able to determine if each predictor variable improved the model or detracted from the model. Tables displaying the results of each regression equation, including the Wald statistic, degrees of freedom, and probability values, were computed.

In the first regression equation, the party-of-appointing president and the 1991 Title VII amendments were set as dichotomous independent predictors of the dependent binary variable of

judges' individual votes in Title VII national origin discrimination cases. The equation determined if ideology, as determined by the nominating president's political party, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression included all votes.

Table 3.11 Logit Analysis on the Odds of a Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [P-A-P] and 1991 Title VII amendments

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees or remanded were coded as liberal.

In the second regression equation, the party-of-appointing president and the 1991 Title VII amendments were set as dichotomous independent predictors of the dependent binary variable of judges' individual votes in Title VII national origin discrimination cases. The equation determined if ideology, as determined by the nominating president's political party, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression excluded remands.

Table 3.12 Logit Analysis on the Odds of a Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [P-A-P] and 1991Title VII amendments

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

In the third regression equation, the DW Nominate score and the 1991 Title VII amendments were set as independent predictors of the dependent binary variable of judges' individual votes in Title VII national origin discrimination cases. The equation determined if ideology, as determined by the DW Nominate score, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression included all votes.

Table 3.13 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [DW] and 1991 Title VII amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees or remanded were coded as liberal.

In the fourth regression equation, the DW Nominate score and the 1991 Title VII amendments were set as independent predictors of the dependent binary variable of judges' individual votes in Title VII national origin discrimination cases. The equation determined if ideology, as determined by the DW Nominate score, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression excluded remands.

Table 3.14 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [DW] and 1991 Title VII amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

In the fifth regression equation, the number of Republican judges on the panel and the 1991 Title VII amendments were set as independent predictors of the dependent binary variable of judges' individual votes in Title VII national origin discrimination cases. The equation determined if panel composition, as determined by the number of Republican judges on the panel, and the 1991 Title VII amendments were significant predictors of whether the judge will vote conservatively for the employer or liberally for the employee. The regression included all votes.

Table 3.15 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republicans on Panel and 1991 Title VII Amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Number or Rs	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees or remanded were coded as liberal.

In the sixth regression equation, the number of Republican judges on the panel and the 1991 Title VII amendments were set as independent predictors of the dependent binary variable of judges' individual votes in Title VII national origin discrimination cases. The equation determined if panel composition, as determined by the number of Republican judges on the panel, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression excluded remands.

Table 3.16 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republicans on Panel and 1991 Title VII Amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Number or Rs	xxx (xxx)	xxx	x	.xxx	x.xxx
After 1991	.xxx (xxx)	x	x	.xxx	x.xxx
Constant	xxx	xx	xx	xx	xx

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

CHAPTER IV

RESULTS

The data analysis commenced with a descriptive examination of the relationship between voting patterns of the U.S. Courts of Appeals judges and the predictor variables. The predictor variables included political ideology (Party of Appointing President, judges' DW Nominate scores), number of Republican judges on the panel (panel composition), and whether the decision was rendered pre- or post the 1991 Civil Rights Act amendments. Once the descriptive analysis was complete, multiple binary logistic regressions were conducted to estimate how well the overall models predicted individual judicial voting and the size of the individual predictor variables' effects on the criterion variable in the Title VII national origin employment discrimination cases under study (Brace, Kemp, & Snelgar, 2009).

Descriptive Analysis

Table 4.1 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of ideology as measured by party-of-appointing president. This examination included all cases in the dataset, including those which were remanded to the district courts. Of the 394 votes, 224 (57%) were from judges appointed by Republican presidents and 170 (43%) were from judges appointed by Democratic presidents. Initial findings show that both parties tend to vote conservatively most of the time, although Democratic appointees voted liberally more often - 22% of the time than did Republican appointees – 10% of the time, a 12% difference.

Table 4.1 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing President. *

	Voting		
Party Ideology	Liberal	Conservative	Total
Republican	22 (10%)	202 (90%)	224 (100%)
Democrat	37 (22%)	133 (78%)	170 (100%)
Total	59 (15%)	335 (85%)	394 (100%)

*Votes in favor of employees or remanded were coded as liberal.

Table 4.2 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of ideology as measured by party-of-appointing president. This analysis *excluded* all cases that were remanded to the district courts. Of the total 334 votes, 198 (59%) were from judges appointed by Republican presidents, and 136 (41%) were from judges appointed by Democratic presidents. Democratic and Republican appointees voted liberally 6 and 3% of the time, respectively. This difference, a mere 3% appears unlikely to attain significance when tested in the inferential model examined below.

Table 4.2 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by Party-of-Appointing President.*

	Voting		
Party Ideology	Liberal	Conservative	Total
Republican	6 (3%)	192 (97%)	198 (100%)
Democrat	8 (6%)	128 (94%)	136 (100%)
Total	14 (4%)	320 (96%)	334 (100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Table 4.3 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition. This table includes all 394 votes in the dataset, including cases that were remanded to the district courts. Eighty-seven (22%) votes came from panels with three Republican judges. These judges voted liberally about 7% of the time. One hundred forty-one (36%) votes came from panels with two Republican judges. These judges voted liberally about 11% of the time. One hundred twenty-seven (32%) of the votes came from panels with one Republican judge. These judges voted liberally approximately 16% of the time. Finally, 39 (10%) votes came from panels with no Republican judges. These judges voted liberally 46% of the time. Thus, judges on panels with zero Republican judges voted substantially more often in a liberal direction than panels with three, two or one Republican appointee. The significance of these effects was tested in the inferential analysis discussed below.

Table 4.3 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel.*

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	17 (44%)	22 (56%)	39 (100%)
one	20 (16%)	107 (84%)	127 (100%)
two	16 (11%)	125 (89%)	141 (100%)
three	6 (7%)	81 (93%)	87 (100%)
Total	59 (15%)	335 (85%)	394 (100%)

* Votes in favor of employees or remanded were coded as liberal.

Table 4.4 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition with the remands excluded. Seventy-eight (23%) votes came from panels with three Republican judges. These judges voted liberally about 4% of the time. One hundred twenty-six (38%) votes came from panels with two Republican judges. These judges voted liberally about 3% of the time. One hundred six (32%) of the votes came from panels with one Republican judge. These judges voted liberally about 5% of the time. Finally, 24 (7%) votes came from panels with no Republican judges. These judges voted liberally about 8% of the time. Thus, when remands were excluded judges voted more or less equally in a liberal direction, regardless of the number of Republican judges on the panel when the remands were excluded.

Table 4.4 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	2 (8%)	22 (92%)	24 (100%)
one	5 (5%)	101 (95%)	106 (100%)
two	4 (3%)	122 (97%)	126 (100%)
three	3 (4%)	75 (96%)	78 (100%)
Total	14 (4%)	320 (96%)	334 (100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Table 4.5 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of ideology as measured by judges' DW Nominate scores. This examination included all cases in the dataset. Of the total 394 votes, 220 (56%) were from judges with a DW score above "0," on the conservative end of the spectrum, and 174 (44%) were from judges with a DW score below "0," [thereby falling on the liberal end of the spectrum]. The results show that judges assigned DW values on either side of the zero point tend to vote conservatively most of the time. Judges whose DW scores fell above the zero-point voted liberally 10% of the time, while judges whose DW scores fell below the zero-point voted liberally 22% of the time, a difference of 12%.

Table 4.5 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW Nominate Scores. *

	Votes		
DW Nominate Scores	Liberal	Conservative	Total
.8 to 1.0	0 (0%)	0 (0%)	0 (0%)
.6 to .799	3 (6%)	46 (94%)	49 (100%)
.4 to .599	2 (3%)	71 (97%)	73 (100%)
.2 to .399	7 (13%)	46 (87%)	53 (100%)
.01 to .199	9 (20%)	36 (80%)	45 (100%)
-.01 to -.199	6 (21%)	23 (79%)	29 (100%)
-.2 to -.399	23 (23%)	76 (77%)	99 (100%)
-.4 to -.599	9 (20%)	37 (80%)	46 (100%)
-.6 to -.799	0 (0%)	0 (0%)	0 (0%)
-.8 to -1.0	0 (0%)	0 (0%)	0 (0%)
Total	59 (15%)	335 (85%)	394 (100%)

* * Votes in favor of employees or remanded were coded as liberal.

Table 4.6 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in Title VII national origin employment discrimination cases involving K-16 education as a function of ideology as measured by judges' DW Nominate scores. This analysis excluded all cases that were remanded to the district courts. Of the total 334 votes, 195 (58%) were from judges with a DW score above "0," the conservative end of the spectrum, and 139 (42%) were from judges with a DW score below "0," the liberal end of the spectrum. The without remand comparisons here indicate that judges assigned DW values on either side of the

zero-point tend to vote conservatively most of the time. Judges whose DW scores fell above the zero-point voted liberally about 3% of the time, while those below the DW zero point voted in that direction about 6% of the time, a mere 3% difference.

Table 4.6 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judges' Ideology as Measured by DW Nominate Scores. *

	Votes		
DW Nominate Scores	Liberal	Conservative	Total
.8 to 1.0	0 (0%)	0 (0%)	0 (0%)
.6 to .799	1 (2%)	43 (98%)	44 (100%)
.4 to .599	1 (1%)	68 (99%)	69 (100%)
.2 to .399	1 (2%)	43 (98%)	44 (100%)
.01 to .199	3 (8%)	35 (92%)	38 (100%)
-.01 to -.199	0 (0%)	21 (100%)	21 (100%)
-.2 to -.399	7 (9%)	75 (91%)	82 (100%)
-.4 to -.599	1 (3%)	35 (97%)	36 (100%)
-.6 to -.799	0 (0%)	0 (0%)	0 (0%)
-.8 to -1.0	0 (0%)	0 (0%)	0 (0%)
Total	14 (4%)	320 (96%)	334 (100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Table 4.7 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes as a function of the 1991 Title VII amendments. This examination included all cases in the dataset, including those which were remanded to the district courts. Of the total 394 votes, 48 (12%) were from judges voting in cases prior to the 1991 amendments and 346

(88%) were from judges voting in cases after the 1991 amendments. The findings show that prior to the 1991 amendments, 26 (54%) of the judges voted in a liberal direction; whereas after the 1991 amendments, 33 (9%) of the judges voted in a liberal direction, a 45% difference. The 1991 amendments were intended to expand remedies available to successful plaintiffs, including compensatory and punitive damages, upon a finding that the defendant engaged in intentional discrimination. Prior to that time, the statute said nothing about such relief, and the courts construed the statute as not authorizing the issuance of such awards. The 1991 amendments extended the compensatory and punitive damages remedy only to intentional discrimination and not to cases where disparate impact was proven. These differences appear to be meaningful and significant. The effect of the 1991 amendments is examined more closely in the next section of this chapter, which applies logistic regression statistics to this analysis. This data is interpreted in the discussion chapter which follows this one.

Table 4.7 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination. Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of the 1991 Title VII amendments. *

	Voting		
1991 Title VII Amendment	Liberal	Conservative	Total
Pre-1991 Amendments	26 (54%)	22 (46%)	48 (100%)
Post-1991 Amendments	33 (9%)	313 (91%)	346 (100%)
Total	59 (15%)	335 (85%)	394(100%)

* Votes in favor of employees or remanded were coded as liberal.

Table 4.8 shows the frequency distribution of conservative pro-employer and liberal pro-employee votes cast in a 2 x 2 cell with the remands excluded. Of the total 334 votes, 27 (8%)

were from judges voting in cases prior to the 1991 amendments and 307 (92%) were from judges voting in cases after the 1991 amendments. The findings show that prior to the 1991 amendments, five votes (19%) were cast in a liberal direction; whereas after the 1991 amendments, nine9 votes (3%) were cast in a liberal direction. Thus, after the 1991 amendments judges voted liberally 16% less frequently than during the earlier period when the remands were excluded.

Table 4.8 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of 1991 Title VII amendments *

	Voting		
1991 Title VII Amendment	Liberal	Conservative	Total
Pre-1991 Amendments	5 (19%)	22 (81%)	27 (100%)
Post-1991 Amendments	9 (3%)	298 (97%)	307 (100%)
Total	14 (4%)	320 (96%)	334 (100%)

* Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

Table 4.9 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes by *Democratic appointees* cast in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition as measured by the number of Republican judges on the panel. This data set was comprised of 170 votes and included the remands.

Among the *Democratic appointees'* votes, 48 came from panels with two Republican judges. These judges voted liberally 12% of the time. Among the Democratic appointees, 83 of the votes came from panels with one Republican judge. These judges voted liberally 17% of the

time. Finally, 39 of the votes by Democratic appointees came from panels with no Republican judges. These judges voted liberally 44% of the time. From this initial exploration, it appeared that when remanded cases were coded as liberal, there was an effect on Democratic judges voting patterns as a function of the number of Republican judges on the panel. As the number of Republican judges on the panel increased, the percentage of *Democratic appointees* voting in a liberal direction decreased.

Table 4.9 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Democratic Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	17 (44%)	22 (56%)	39 (100%)
one	14 (17%)	69(83%)	83(100%)
two	6 (12%)	42 (88%)	48 (100%)
three	0 (0%)	0 (0%)	0 (0%)
Total	37 (22%)	133 (78%)	170 (100%)

* Votes in favor of employees or remanded were coded as liberal.

Table 4.10 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast by *Republican appointees* in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition as measured by the number of Republican judges on the panel. This data set was comprised on 224 votes including the remands.

Among the *Republican appointees'* votes, 87 votes came from panels with three Republican judges. These judges voted liberally 7% of the time. Ninety-three votes came from panels with two Republican judges. These Republican appointees voted liberally 11% of the time. Finally, 44 votes came from panels with one Republican judge. These judges voted liberally 14% of the time. This will be discussed in the following chapter.

Table 4.10 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Republican Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	0 (0%)	0 (0%)	0 (0%)
one	6 (14%)	38 (86%)	44 (100%)
two	10 (11%)	83 (89%)	93 (100%)
three	6 (7%)	81 (93%)	87 (100%)
Total	22 (10%)	202 (90%)	224 (100%)

* Votes in favor of employees or remanded were coded as liberal.

Table 4.11 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes by *Democratic appointees* cast in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition as measured by the number of Republican judges on the panel. This analysis excluded all cases that were remanded to the district courts and excluded all judges appointed by a Republican president, leaving a total of 136 votes. Among the Democratic appointees' votes, 43 came from panels with two Republican judges. These judges voted liberally 5% of the time. Among the

Democratic appointees, 69 votes came from panels with one Republican judge. These judges voted liberally 6% of the time. Finally, 24 votes by Democratic appointees came from panels with no Republican judges. These judges voted liberally 8% of the time. From this initial exploration, it appeared that when remanded cases were excluded the number of Republican appointees on a panel had little if any effect on the voting by judges appointed by Democratic presidents.

Table 4.11 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Democratic Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	2 (8%)	22 (92%)	24 (100%)
one	4 (6%)	65(94%)	69 (100%)
two	2 (5%)	41 (95%)	43 (100%)
three	0 (0%)	0 (0%)	0 (0%)
Total	8 (6%)	128 (94%)	136 (100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Table 4.12 examined the frequency distribution of conservative pro-employer and liberal pro-employee votes cast by *Republican appointees* in Title VII national origin employment discrimination cases involving K-16 education as a function of panel composition as measured by the number of Republican judges on the panel. This analysis excluded all cases that were remanded to the district courts leaving a total of 198 votes. Seventy-eight votes came from panels with three Republican judges. These judges voted liberally 4% of the time. Eighty-three

votes came from panels with two Republican judges. These Republican appointees voted liberally 2% of the time. Thirty-seven votes came panels with one Republican judge. These judges voted liberally 3% of the time. From this initial exploration, it appeared that when remanded cases were excluded, there was no meaningful difference in liberal voting based on the number of Republicans on a panel.

Table 4.12 Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republican Judges on Panel [Republican Appointees]. *

	Voting		
Number of Republican Judges On Panel	Liberal	Conservative	Total
zero	0 (0%)	0 (0%)	0 (0%)
one	1 (3%)	36 (97%)	37 (100%)
two	2 (2%)	81 (98%)	83 (100%)
three	3 (4%)	75 (96%)	78 (100%)
Total	6 (3%)	192 (97%)	198 (100%)

* Votes favoring employees were coded as liberal. Remands were excluded from this analysis.

Logistic Regression

Table 4.13 displays the results of a logit analysis performed on the courts of appeals judges' voting coded as liberal or conservative in Title VII national origin discrimination cases involving K-16 employees with ideology as measured by party-of-the-appointing president and the 1991 amendments set up as the independent variables. This analysis included all cases in the dataset with remands treated as pro-employee-liberal votes. The equation determined if ideology and the 1991 Title VII amendments were significant predictors of whether the judges voted

conservatively for the employer or liberally for the employee and the effectiveness of the model as a whole.

A total of 394 individual votes were analyzed and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 56.116, df = 2, p = .000). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The results for pseudo-R Square analyses for model fit were .133 for the Cox & Snell and .233 for the Nagelkerke statistic, with 96.7% of the conservative votes successfully predicted. However, only 27.1% of the liberal votes were successfully predicted. Overall, 86.3% of predictions were accurate. Table 4.13 gives coefficients, the Wald statistic, the associated degrees of freedom, and the odds of a liberal vote associated with each of the predictor variables. The Wald statistic shows that ideology and the 1991 Title VII amendments were significant predictors of judges' voting, each having attained significance at the .01 alpha level.

The values of the coefficients revealed that ideology, as determined by the nominating president's political party, was a significant predictor of individual judge voting choices. A judge appointed by a Democratic president was significantly more likely to vote in a liberal/pro-employee direction than a judge appointed by a Republican president. Calculation of the effect size showed that the odds of a judge appointed by a Democratic president voting in a liberal/pro-employee direction increased using a factor of 2.345 over the odds of a judge appointed by a Republican president voting in a liberal/pro-employee direction, when all the other variables were held constant.

The logit analysis also revealed that the date of the court decision, whether it was prior to or after the 1991Title VII amendments, was a significant predictor of individual judge voting

choices. A judge voting in a case prior to the 1991 Title VII amendments was significantly more likely to vote in a liberal/pro-employee direction than a judge voting in a case after the 1991 Title VII amendments. Calculation of the effect size showed that the odds of a judge voting in a case after the 1991 Title VII amendments voting in a liberal/pro-employee direction decreased by a factor of 0.094 over the odds of a judge voting in a case prior to the 1991 Title VII amendments voting in a liberal/pro-employee direction, when all the other variables were held constant. This means that after the 1991 Title VII amendments, the odds of judges voting in a liberal direction was 10.64 times less (1 ÷ 0.094=10.64) than a judge before the 1991 Title VII amendments. This lopsided outcome is analyzed in the next chapter. It suggests, however, that the incentives for compensatory and punitive awards provided by the 1991 amendment may have encouraged the filing of a higher percentage of meritless cases as compared to the earlier period.

Table 4.13 Logit Analysis on the Odds of a Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [P-A-P] and 1991 Title VII amendments

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	0.852 (0.317)	7.237	1	.007	2.345
After 1991	-2.368 (0.349)	46.011	1	.000	0.094
Constant	-0.306 (0.344)	0.795	1	.373	0.736

Note: Votes in favor of employees or remanded were coded as liberal.

Table 4.14 shows the results of the identical analyses as revealed in Table 4.13 excluding the remands. A total of 334 individual votes were analyzed with the remands excluded, and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 10.329, df = 2, p = .006). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The R Square statistic for this model was .03 and .104 when the Cox & Snell and the Nagelkerke formula were applied, with 100% of the conservative votes successfully predicted. However, 0% of the liberal votes were successfully predicted. Overall, 95.8% of predictions were accurate. Table 4.14 gives coefficients, the Wald statistic, the associated degrees of freedom, and the probability values for each of the predictor variables. The Wald statistic shows that ideology, as determined by the nominating president's political party, was not a significant predictor of individual judge voting when remands were excluded, although the 1991 Title VII amendments was a significant predictor of individual judge voting, having attained significance at the .01 alpha level. This suggests that the treatments of the remanded cases as "liberal" contributed to the power of party-of-appointing president as a predictor as show in Table 4.13.

A judge voting in a case prior to the 1991 Title VII amendments was significantly more likely to vote in a liberal/pro-employee direction than a judge voting in a case after the 1991 Title VII amendments. Calculation of the effect size showed that the odds of a judge voting in a case after the 1991 Title VII amendments voting in a liberal/pro-employee direction decreased by a factor of 0.138 over the odds of a judge voting in a case prior to the 1991 Title VII amendments voting in a liberal/pro-employee direction, when all the other variables were held constant. This means that the odds of a judge prior to the 1991 Title VII amendments voting in a

liberal direction was 7.25 times more likely (1÷0.138) than a judge after the 1991 Title VII amendments voting in a liberal direction.

Table 4.14 Logit Analysis on the Odds of a Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [P-A-P] and 1991Title VII amendments

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [P-A-P]	0.627 (0.565)	1.235	1	.266	1.873
After 1991	-1.982 (0.604)	10.787	1	.001	0.138
Constant	-1.815 (0.597)	9.242	1	.002	0.163

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

Table 4.15 displays the results of a logit analysis performed on the individual judge votes in the data base, including remands, categorized as liberal or conservative and substituting judges' DW nominate scores for the party-of-the appointing president ideological predictor. The equation determined if ideology, as measured by the judge's DW Nominate score, and the 1991 Title VII amendments were significant predictors of whether the judge voted conservatively for the employer or liberally for the employee.

A total of 394 individual votes were analyzed, and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 60.890, df = 2, p = .000). As a set, the predictors reliably distinguished between liberal/pro-employee and

conservative/pro-employer votes of the individual judges. The model fit was .143 and .251 when the Cox & Snell and the Nagelkerke R Square formula were calculated, with 96.1% of the conservative votes successfully predicted. However, only 28.8% of the liberal votes were successfully predicted. Overall, 86% of predictions were accurate. Table 4.15 gives coefficients, the Wald statistic, the associated degrees of freedom, and the odds of a liberal vote associated with each of the predictor variables. The Wald statistic shows that ideology, as determined by the judges' DW nominate score, and the 1991 Title VII amendments were significant predictors of individual judges' voting, each having attained significance at the .01 alpha level.

On the ideology measure a judge with a more liberal DW Nominate score was significantly more likely to vote in a liberal/pro-employee direction than a judge with a more conservative DW Nominate score. The values of the coefficients reveal that a unit increase on the judges' DW Nominate Score (for example, a change from "-1" to "0" or from "0" to "1") is associated with a decrease in the predicted odds of a liberal vote by a factor of .230.

The logit analysis also revealed that the date of the court decision, whether it was prior to or after the 1991Title VII amendments, was a significant predictor of individual judge voting choices. A judge voting in a case prior to the 1991 Title VII amendments was significantly more likely to vote in a liberal/pro-employee direction than a judge voting in a case after the 1991 Title VII amendments. Calculation of the effect size showed that the odds of a liberal vote occurring after the 1991 Title VII amendments decreased by a factor of 0.099 over the odds of a judge voting in that direction in a case prior to the 1991 Title VII amendments when all the other variables were held constant. This means that prior to the 1991 Title VII amendments the odds

of judges voting in a liberal direction was 10.1 times more likely (1÷0.099) to occur than after the 1991 Title VII amendments became effective.

Table 4.15 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [DW] and 1991 Title VII amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	-1.468 (0.442)	11.062	1	.001	0.230
After 1991	-2.308 (0.351)	43.283	1	.000	0.099
Constant	0.077 (0.299)	0.066	1	.797	1.080

Note: Votes in favor of employees or remanded were coded as liberal.

Table 4.16 displays the results of the same logit analysis whose results are shown in Table 4.15 performed on the individual judges' votes cast with remands excluded. A total of 334 individual votes were analyzed, and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 11.399, df = 2, p = .003). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .034 and .114, respectively, with 100% of the conservative votes successfully predicted. However, 0% of the liberal votes were successfully predicted.

Overall, 95.8% of predictions were accurate. Table 4.16 gives coefficients, the Wald statistic, the associated degrees of freedom, and the probability values for each of the predictor variables. The Wald statistic shows that ideology, as determined by the judge's DW Nominate

score, was not a significant predictor of individual judge voting when remands were excluded, although the 1991 Title VII amendments were significant predictors of individual judge voting, having attained significance at the .01 alpha level. It appears that the methodological decision of categorizing remands as "liberal" votes influenced the power of the DW nominate score to effectively predict voting in these cases.

The logit analysis revealed that whether it was prior to or after the 1991Title VII amendments, was a significant predictor of judges' voting choices. Judges voting in a case prior to the 1991 Title VII amendments were significantly more likely to vote in a liberal/pro-employee direction than a judge voting in a case after the 1991 Title VII amendments. Calculation of the effect size showed that the odds of a judge voting in a case after the 1991 Title VII amendments voting in a liberal/pro-employee direction decreased by a factor of 0.145 over the odds of a judge voting in a case prior to the 1991 Title VII amendments voting in a liberal/pro-employee direction, when all the other variables were held constant. This means that the odds of a judge after the 1991 Title VII amendments voting in a liberal direction was 6.9 times less likely (1÷0,145) than a judge prior to the 1991 Title VII amendments voting in a liberal direction when remanded cases were excluded from the analysis.

Table 4.16 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [DW] and 1991 Title VII amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Ideology [DW]	-1.128 (0.766)	2.164	1	.141	0.324
After 1991	-1.928 (0.606)	10.130	1	.001	0.145
Constant	-1.533 (0.505)	9.201	1	.002	0.216

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

Table 4.17 displays the results of a logit analysis performed on the individual judge votes set up as the dependent measure with panel composition, measured by the number of Republicans, and the 1991 Title VII amendments as the independent variables. This analysis included all cases in the dataset, including those which were remanded to the district courts.

A total of 394 individual votes were analyzed and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 62.04, df = 2, p = .000). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .146 and .255, respectively, with 96.1% of the conservative votes successfully predicted. However, only 28.8% of the liberal votes were successfully predicted. Overall, 86% of predictions were accurate. Table 4.17 gives coefficients, the Wald statistic, the associated degrees of freedom, and the odds values associated

with each of the predictor variables. The Wald statistic shows that panel composition, as determined by the number of Republican judges on the panel, and the 1991 Title VII amendments were significant predictors of individual judge voting, each having attained significance at the .01 alpha level.

As to the panel composition variable a judge on a panel with a higher number of Republicans sitting on the panel was significantly less likely to vote in a liberal/ pro-employee direction than a judge on a panel with a lower number of Republicans sitting on the panel. Calculation of the effect size showed that the predicted odds of a judge voting in a liberal/pro-employee direction decreased using a factor of 0.540 for each unit increase in the number of Republicans when all the other variables were held constant.

The logit analysis results also revealed that the date of the court decision, whether it was prior to or after the effective date of the 1991Title VII amendments, was a significant predictor of individual judge voting choices. The odds of a judge voting in a liberal direction after the 1991 Title VII amendments was significantly less than before the amendments. Calculation of the effect size showed that the odds of a judge voting in a case after the 1991 Title VII amendments voting in a liberal/pro-employee direction decreased by a factor of 0.103 over the odds of a judge voting in a case prior to the 1991 Title VII amendments voting in a liberal/pro-employee direction, when all the other variables were held constant. This means that after the 1991 Title VII amendments the predicted odds of a judge voting in a liberal direction was 9.71 (1÷0.103) times less likely than a judge before the 1991 Title VII amendments.

Table 4.17 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republicans on Panel and 1991 Title VII Amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Number of Rs	-0.617 (0.174)	12.560	1	.000	0.540
After 1991	-2.275 (0.356)	40.780	1	.000	0.103
Constant	0.986 (0.382)	6.653	1	.010	2.681

Note: Votes in favor of employees or remanded were coded as liberal.

Table 4.18 displays the results of a logit analysis performed on the individual judge votes using panel composition and the 1991 Title VII predictors with remands excluded from the calculation. A total of 334 individual votes were analyzed and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 9.427, df = 2, p = .009). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The R Square statistic for this model was .028 and .095 when the Cox & Snell and the Nagelkerke formula were applied, with 100% of the conservative votes successfully predicted. However, 0% of the liberal votes were successfully predicted. Overall, 95.8% of predictions were accurate. Table 4.18 gives coefficients, the Wald statistic, the associated degrees of freedom, and the probability values for each of the predictor variables. The Wald statistic shows that panel composition, as determined by the number of Republican judges on the panel, was not a significant predictor of individual

judge voting when remands were excluded, although the 1991 Title VII amendments were significant predictors of individual judge voting, having attained significance at the .01 alpha level.

The logit analysis results revealed that the date of the court decision, whether it was prior to or after the 1991Title VII amendments, was a significant predictor of individual judge voting choices. After the 1991 Title VII amendments, the odds of a judge voting in a liberal/pro-employee direction were significantly less than before the amendments. Calculation of the effect size showed that the odds of a judge voting in a case after the 1991 Title VII amendments voting in a liberal/pro-employee direction decreased by a factor of 0.138 over the odds of a judge voting in a case prior to the 1991 Title VII amendments voting in a liberal/pro-employee direction, when all the other variables were held constant. This means that after the 1991 Title VII amendments, the odds of a judge amendments voting in a liberal direction was 7.25 times less (1÷0.138) than before the 1991 Title VII amendments. The fact that the panel composition variable was significant with the remands included, but fell out of significance after removal of the remanded cases suggests that accounting for remanded cases is a meaningful determinant of the power associated with the panel composition variable.

Table 4.18 Logit Analysis on the Odds of a Liberal Pro-Employee Voting in National Origin Discrimination Decisions Involving K-16 Employees between 1964-2015 in United States Courts of Appeals as a Function of Number of Republicans on Panel and 1991 Title VII Amendments.

Independent Variables	B (S.E.)	Wald	df	P	Exp (B)
Number or Rs	-0.182 (0.310)	0.344	1	.557	0.834
After 1991	-1.978 (0.604)	10.714	1	.001	0.138
Constant	-1.208 (0.670)	3.255	1	.071	0.299

Note: Votes in favor of employees were coded as liberal. Remands were excluded from this analysis.

Summary

The Effects of Ideology (Party-of-Appointing President) and the 1991 Title VII Amendments

Ideological differences in voting appeared in Title VII national origin cases emanating from K-16 educational settings. Descriptive analysis revealed that judges appointed by Democratic presidents voted liberally 22% of the time, whereas judges appointed by Republicans voted liberally only 10% of the time when remands were included and counted as "liberal" votes. This 12% difference narrowed to 3% with Democratic appointees voting liberally 6% of the time and the Republican appointees voting liberally only 3% of the time when the remands were excluded from the data base. Differences in the frequency of liberal voting occurred between the pre-1991 amendment period and that which occurred after the amendments. When the remands were included 54% of the votes were liberal; however, after the 1991amendments, this dropped to 9%, a 45% reduction in liberal voting during a later period. Although the frequency of liberal

voting was still greater during the earlier period, this difference dropped to 16% when the remands were excluded.

When logistic regression analysis was set up with ideology [P-A-P] and the 1991 Amendments as the predictors and liberal-conservative voting as the dependent measure variable with the remands included, the model as a whole was significant [omnibus chi square=56.116, df=2, p<.01). The model fit was .133 and .233 when the Cox & Snell and the Nagelkerke R Square formula were calculated..

With this model, both the ideological and 1991 amendment variable attained significance. For the P-A-P variable, the results indicated that the predicted odds of a liberal vote were 2.3 times greater when the vote was cast by a Democratic appointee compared to one made by a Republican appointee. For the 1991 amendments variable, the results indicated that the odds of a liberal vote substantially diminished after the amendments. The unit change from Democratic to Republican appointees indicated the predicted odds of a liberal vote decreased by a factor of 0.094.

When this data set was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these Title VII cases (omnibus chi square=10.329, df=2, p<.01). The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .03 and .104, respectively. However, with the remands deleted, P-A-P no longer attained significance (p>.05). The effect of the 1991amendments in this model remained significant (p<.01). The size of this effect was such that the unit change from pre-1991 amendments to post-amendment period resulted in a decrease in the predicted odds of a liberal vote by a factor of 0.16, a robust difference. The implications of these outcomes are addressed in the next chapter

The Effects of Ideology (DW Nominate Score) and the 1991 Title VII Amendments

Descriptive analysis revealed that judges categorized as DW "liberal" [less than zero] voted liberally 22% of the time, whereas judges categorized as DW "conservative" [more than zero] voted liberally about 10% of the time when remands were included and counted as "liberal" votes. This 12% difference narrowed to 3% with DW "liberals" voting liberally 6% of the time and the DW conservatives voting liberally only 3% of the time when the remands were excluded from the data base.

When logistic regression analyses were applied to the data with remands included, and the logistic regression analysis was set up with DW ideology (in lieu of P-A-P) and the 1991 Amendments as the predictors, and liberal-conservative voting as the dependent variable, the model as a whole was significant [omnibus chi square=60.89, df=2, $p<.01$). The model fit was .143 and .251 when the Cox & Snell and the Nagelkerke R Square formula were calculated.

With this model, both the DW and 1991 amendment variables attained significance at the .01 alpha level. For the DW variable, the results indicated that the predicted odds of a liberal vote were diminished by a factor of 0.23 for each unit change [-1 to zero or zero to 1] in DW scores. For the 1991 amendments variable, the results indicated that the odds of a liberal vote substantially diminished after the amendments. The unit change from pre- to post-1991 amendments resulted in decreased odds of a liberal vote decreased by a factor of 0.099.

When this data set was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these Title VII cases (omnibus chi square=11.399, df=2, $p<.01$). The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .03 and .114, respectively. However, with the remands deleted, DW no longer attained significance ($p>.05$). The effect of the 1991 amendments in this

model remained significant ($p<.01$). The size of this effect was such that the unit change from pre-1991 amendments to post-amendment period resulted in a decrease in the predicted odds of a liberal vote by a factor of 0.145, a robust difference. The implications of these outcomes are addressed in the next chapter

Although not part of the original research plan, post-hoc analyses were conducted relative to potential panel composition effects, measured by the number of Republican appointees sitting on each panel, on Democratic and Republican appointees' voting in the cases under study. The implications for this data for future research are discussed in the next chapter.

In the next chapter I discuss these results and attempt to account for the relationship among the predictors and judges' voting patterns.

CHAPTER V

DISCUSSION

Introduction

This study investigated how effectively U.S. Courts of Appeals judges': 1) political ideology, as measured by party of the appointing president and judges' DW Nominate scores and 2) legal developments, as measured by the 1991 Amendments to Title VII of the Civil Rights Act of 1964 predict voting in K-16 employment discrimination cases alleging violations of Title VII's national origin provision. Judges' votes were classified as "liberal" when they were cast in favor of the plaintiff, and conservative when in favor of the defendants. Cases included in the data base arose from decisions issued between 1964 and 2015. The study used binary logistic regression as its primary inferential statistical tool. This chapter analyzes and discusses the descriptive and logistic regression results reported in Chapter IV.

Combined Research Question # 1

Are party of the appointing president [Democratic or Republican appointee] of U.S. Courts of Appeals judges and the 1991 amendments to the Civil Rights Act of 1964 effective predictors of judges' conservative and liberal voting in Title VII cases alleging national origin discrimination?

Remands included.

When P-A-P and the 1991 Amendments were set up as independent variables, the model as a whole was successful in predicting liberal and conservative voting [omnibus chi square=56.116, df=2, $p<.01$]. Both the ideological measure [P-A-P] and the 1991 amendments variable [before and after 1991] differentiated liberal and conservative voting. The model fit was .133 and .233 when the Cox & Snell and the Nagelkerke R Square formula were calculated.

With this model, both the ideological and 1991 amendment variables attained significance. For the P-A-P variable, the results indicated that the predicted odds of a liberal vote were 2.3 times greater when the vote was cast by a Democratic appointee compared to those made by a Republican appointee. For the 1991 amendments variable, the results indicated that the odds of a liberal vote diminished after the amendments. The unit change from Democratic to Republican appointees indicated the predicted odds of a liberal vote decreased by a factor of 0.094. This means that the odds of a liberal vote during the post-1991 amendment period was about 10.6 times less than during the earlier period, a robust difference.

Thus, this model confirms the continuing viability of the P-A-P measure of judges' ideology as a predictor of voting; it extends this research to Title VII national origin discrimination cases. This outcome, although important, is perhaps not surprising. A more profound implication of this result is the effects of the 1991 amendments … the substantial increase in cases reaching the courts of appeals and the large diminution in liberal voting in the decisions reviewed.

It seems a likely explanation for this result is the incentives contained in the 1991 law which theretofore did not exist: *the availability of compensatory and punitive damages and access to a jury trial during the post-1991 period*. Plaintiffs and their lawyers may have been seduced by the promise of greater payoffs during the post-1991 period. It is not hard to imagine, for example, that a plaintiff and his lawyer might expect a defendant-employer to settle a case pre-trial, even for nuisance value, rather than run the risk of a large payout at the end of the day. After all, payments to defense counsel might well exceed a quick payment to plaintiffs to rid the defendants of the case and save the foreseeable expenses which might ensue. This may have led these plaintiffs to run the risk of a dismissal of their case, which they would not have taken

before the 1991 amendments became effective, since the financial rewards previously absent from the equation were now potentially available. Certainly, the evidence indicates a substantial increase in Title VII case filings after 1991.

This theory gains further traction from the fact that there was no change in the law in 1991 or the substantive standards for establishing liability under the Civil Rights Act of 1964. Since this factor remained constant during the earlier and later periods, the drop in liberal voting cannot be attributed to a legal change which set out a more rigorous standard for proving employment discrimination. In addition, there was also no change in the availability of attorney's fees before and after the 1991 amendments. In *New York Gas Light, Inc. v. Carey* (1980), it was found that the plaintiff could obtain attorney's fees incurred in connection with the EEOC proceedings or state or local agency in a deferral state that are a pre-condition to filing a Title VII suit in court. Some circuits have interpreted this case to allow a plaintiff who obtained the desired relief in the mandated administrative proceedings to file a lawsuit solely for the purpose of obtaining attorney's fees in those administrative proceedings. If attorney's fees were available prior to the 1991 amendments, judicial voting after the 1991 amendments cannot be due to the availability of attorney's fees. It appears from the results a larger portion of meritless cases were filed after the 1991 amendments; this would account for the substantial decreases in liberal voting during the later period.

Remands excluded.

When this data set was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these Title VII cases (omnibus chi square=10.329, df=2, $p<.01$). The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .03 and .104, respectively. However, with the remands

deleted, P-A-P no longer attained significance (p>.05). The effect of the 1991amendments in this model remained significant (p<.01). The size of this effect was such that the unit change from pre-1991 amendments to post-amendment period resulted in a decrease in the predicted odds of a liberal vote by a factor of 0.16, a robust difference. Stated otherwise, this means that the odds of a liberal vote during the post-1991 period were about 6.3 times less than during the earlier period.

Remanded cases included or excluded: Appropriate methodology?

A couple of noteworthy differences appear in the results depending on whether the remands were included or excluded. These were: (1) P-A-P was an effective predictor of liberal and conservative voting when the remands were included [Wald=7.237, df=1, p<.01, Exp (B)=2.345], but fell out of significance when the remands were excluded [Wald=1.235, df=1, p>.05, Exp(B)=1.873] in models which included the 1991 amendment predictor and (2) the 1991 amendments retained significant predictive power regardless of whether the remands were included [Wald=46.001, df=1, p<.01, Exp(B)=0.094] or excluded [Wald=10.787, df=1, p<.01, Exp(B)=0.138] in the P-A-P model. Clearly then, the model with the remands included provided a superior model as a whole to the one without remands. This, however, leaves a question about the appropriateness of treating a remand as a vote categorized as "liberal." Since the remands account for a meaningful portion of coded votes, approximately 15% of the total vote in the data base, their use must be justified and explained beyond mere model superiority.

A review of the remanded cases revealed that over half the cases were originally dismissed at the district court level by summary judgment in favor of the defendant. The remaining remanded cases were all remanded because the district court erred in some other way in favor of the defendant, such as for example, dismissing the case for plaintiff's failure to state a

legally cognizable claim. This observation aligns with the research of various social scientists. Selmi's (2011) study noted that plaintiffs' often struggle to succeed at the lower courts and tend to have a low success rate in defending summary judgment motions in the lower courts. Van Detta (2015) even argued that judges confronting employment discrimination claims appear to use summary judgment as a jury control device, that is, by dismissing a case on summary judgment it results in the judge having to conduct fewer jury trials, and thereby limits the judges' work load. Donald and Pardue (2012/2013) go as far as to state that social science research confirms their belief that federal judges are hostile towards employment discrimination plaintiffs, and are disposed to grant motions for summary judgment in employment discrimination suits. If my observations about the reasons for the reduction in liberal voting after the 1991 amendments are correct, the increase in meritless cases during this period may have increased judges' hostility to these cases during this time frame, and increased their tendency to dismiss cases using the legal tools available to them.

It would seem then that the approach which included the remanded cases and coded them as a "liberal" disposition of the appeal is a sounder approach than leaving them out. Although such remands do not represent an ultimate win for the plaintiff, a remand represents a substantial step towards a plaintiff's victory. After all, a remand following a dismissal on summary judgment means that the facts adduced by the plaintiff raise triable issues of fact for a jury, or in the case where a remand occurs following dismissal for failure to state a claim, that the plaintiff has alleged facts, which if proven true, could result in a victory for the plaintiff. Perhaps most importantly, a remand is by any standard an appellate victory, although not an ultimate victory. Ordinarily, it is the best outcome a plaintiff can achieve in the appellate court. Accordingly, the appropriate view should be that remands coded as "liberal" is a better way of treating the data

than excluding them entirely. Indeed, they represent a definitive win in the U.S. Courts of Appeals that they survived to hold the defendant employer accountable for the alleged workplace discrimination. This is especially true if the remand represents judges overcoming the hostility to employment discrimination cases discerned by Donald and Pardue (2012/2013).

Combined Research Question # 2

Are the DW-Nominate scores of U.S. Courts of Appeals judges and the 1991 amendments to the Civil Rights Act of 1964 effective predictors of judges' conservative and liberal voting in Title VII cases alleging national origin discrimination?

Remands included.

When DW Nominate scores and the 1991 Amendments were set up as independent variables, the model as a whole was successful in predicting liberal and conservative voting [omnibus chi square=60.89, df=2, $p<.01$]. Both the ideological measure [DW score] and the 1991 amendments variable [before and after 1991] differentiated liberal and conservative voting. The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .143 and .251, respectively.

With this model, both the ideological and 1991 amendment variables attained significance. For the DW variable, the results indicated that the predicted odds of a liberal vote diminished by a factor of 0.23 for each unit change in judges' score. This means that the odds of a liberal vote were about 4.35 times less when the DW score fell between 0 and 1 than when it fell between -1 and 0. For the 1991 amendments variable, the results indicated that in this model the odds of a liberal vote diminished by a factor of 0.099 for each unit change on this variable [before and after the 1991 amendments]. This means that the odds of a liberal vote during the

post-1991 amendment period was about 10.10 times less than during the earlier period, a robust difference.

Thus, this model confirms the continuing viability of the DW measure of judges' ideology as a predictor of voting; it extends this research to Title VII national origin discrimination cases. This outcome, as with the P-A-P ideological predictor, although important, is perhaps not surprising.

This analysis, like the one running the P-A-P ideology, showed strong effects of the 1991 amendments on voting … the large diminution in liberal voting in the decisions reviewed after the amendments were implemented. The explanation offered above under the P-A-P and 1991 amendments analysis applies with equal force to this one. The economic incentives represented by the availability of compensatory and punitive damages due to the 1991 Title VII amendments, coupled with the increase in the absolute number of cases filed, and the larger share of meritless complaints, would account for the large increase in meritless cases being appealed and the decrease in liberal voting after 1991 in Title VII cases filed in the U.S. Courts of Appeals.

Remands excluded.

When the DW and 1991 predictor set was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these Title VII cases (omnibus chi square=11.399, df=2, $p<.01$). The R Square statistic for this model was .034 and .114 when the Cox & Snell and the Nagelkerke formula were applied, with 100% of the conservative votes successfully predicted. However, with the remands deleted, the DW nominate predictor no longer attained significance ($p>.05$). The effect of the 1991amendments in this model remained significant ($p<.01$). The size of this effect was such that a unit change from pre-1991 amendments to post-amendment period resulted in a decrease

in the predicted odds of a liberal vote by a factor of 0.145, a robust difference. Stated otherwise, this means that the odds of a liberal vote during the post-1991 period were about 6.89 times less than during the earlier period.

Remanded cases included or excluded: Appropriate methodology?

A couple of noteworthy differences appear in the results depending on whether the remands were included or excluded. These were: (1) DW nominate score was an effective predictor of liberal and conservative voting when the remands were included [Wald=11.062, df=1, p<.01, Exp (B)=0.230], but fell out of significance when the remands were excluded [Wald=2.164, df=1, p>.05, Exp(B)=0.324] in models which included the 1991 amendment predictor and (2) the 1991 amendments retained significant predictive power regardless of whether the remands were included [Wald=43.283, df=1, p<.01, Exp(B)=0.099] or excluded [Wald=10.130, df=1, p<.01, Exp(B)=0.145] in the DW model.

Clearly then, the model with the remands included provided a superior model as a whole to the one without remands. However, this leaves a question about the appropriateness of treating a remand as a vote categorized as "liberal" in this model. I reach a conclusion here similar to the one connected to the model which ran P-A-P and the 1991 amendments as predictors: using the remanded cases produces more meaningful results which correspond to the realities of litigation practice. The "remanded to a lower court" orders arise from situations where plaintiffs were defeated and lived to litigate their discrimination cases on another day. In that sense, they achieve their goals in the appellate proceeding … a liberal outcome. The message in a remand under such a scenario is clear: "You have stated facts which warrant a trial on the merits of your claim or you have asserted a valid claim if it can be proven." Clearly, in the coding protocols, such remands should be counted as a liberal vote.

Combined Research Question # 3

Are panel composition, as measured by the number of Republican judges, and the 1991 amendments effective predictors of liberal-conservative voting in Title VII national origin discrimination cases?

Although panel composition effects were not the primary focus of the study, additional analyses were set up using panel composition and the 1991 Amendments as predictors and voting with and without the remands as the dependent variable.

Remands included.

When panel composition, measured by the number of Republicans on a panel, and the 1991 Title VII amendments were set up as independent variables, the model as a whole was successful in distinguishing liberal and conservative voting [omnibus chi square=62.04, df=2, p<.01]. Both the panel composition and the 1991 amendments variable [before and after 1991] differentiated liberal and conservative voting. The model fit was .146 and .255 when the Cox & Snell and the Nagelkerke R Square formula were calculated.

With this model, both the panel composition [Wald=12.560. df.=1, p<.01] and the 1991 amendment variable [Wald=40.780, df.-1, p<.01] attained significance as predictors of voting. For the panel composition variable, the results indicated that with the other variable held constant, the predicted odds of a liberal vote diminished by a factor of 0.540 for each unit increase in the number of Republican appointees. This means that with each increase in the number of Republican appointees, the odds of a liberal vote for the judges as a group diminished about 1.85 times. Since this inferential analysis did not examine whether the panel composition effects differed between Republican and Democratic appointees, this might be an area worth

investigating in future studies in this category of cases. It may be unsound to assume the panel composition effects are bilateral. This question might be pursued in future studies.

For the 1991 amendments variable, the results indicated that in this model the odds of a liberal vote diminished by a factor of 0.103 for each unit change in this variable [before and after the 1991 amendments]. This means that the odds of a liberal vote during the post-1991 amendment period was about 9.7 times less than during the earlier period, a robust difference.

Thus, the results for this model show that the 1991 amendments to Title VII has a much larger effect on courts of appeals judges' voting as compared to panel composition as measured by the number of panel Republicans. The power of the 1991 amendments was revealed in the earlier referenced logistic regression modeling where this legal change exerted much greater influence on voting than either the party-of the appointing president or DW Nominate ideological score. That said, the ideological predictors with the remands included showed significant predictive power and should be retained in future studies of courts of appeals voting.

Remands excluded.

When the panel composition and 1991 predictor set was run with the remands excluded from the analysis, the model as a whole continued to distinguish between liberal and conservative voting in these Title VII cases (omnibus chi square=9.427, df=2, $p<.01$). The model fit as calculated under the Cox & Snell and Nagelkerke R Square formula were .028 and .095, respectively. However, with the remands deleted from the data base, panel composition effects disappeared ($p>.05$) in a manner similar to what occurred in the earlier models where P-A-P and DW nominate were set up as independent variables. The effect of the 1991amendments in this model remained significant ($p<.01$). The size of this effect was such that a unit change from pre-1991 amendments to post-amendment period resulted in a decrease in the predicted

odds of a liberal vote by a factor of 0.138, a robust difference. Stated otherwise, this means that the odds of a liberal vote during the post-1991 period were about 7.2 times less than during the earlier period.

Remanded cases included or excluded: Appropriate methodology?

A couple of noteworthy differences appear in the results depending on whether the remands were included or excluded. These were: (1) Panel composition was an effective predictor of liberal and conservative voting when the remands were included, but fell out of significance when the remands were excluded in models which included the 1991 amendment predictor and (2) the 1991 amendments retained significant predictive power regardless of whether the remands were in the panel composition-1991 amendments model. Clearly then, the model with the remands included provided a superior model as a whole to the one without them. As with the prior models this leaves a question about the appropriateness of treating a remand as a vote categorized as "liberal." I reach the same conclusion here because the analysis is identical: using the remanded cases produces more meaningful results which correspond to the realities of litigation practice.

Overview and Implications

When Congress enacted the Civil Rights Act of 1991, it included several amendments to improve the effectiveness of Title VII. The amendments changed the procedures for adjudicating claims and the remedies that would be available to the plaintiff if s/he won the case (Farhang, 2009). Plaintiffs were now entitled to a jury trial, rather than just a bench trial (Van Detta, 2015). According to Farhang (2009), a great deal of financial incentives were now available to a successful plaintiff. For example, if the plaintiff won the suit prior to 1991, s/he was entitled to injunctive and equitable relief, which was limited to the employer placing the

plaintiff in a position that was equal to what the plaintiff would have received had the discrimination not occurred. However, if the plaintiff won the suit after 1991, s/he would in addition be eligible for compensatory damages for pain and suffering as well as economic losses that were a result of intentional discrimination. Moreover, successful plaintiffs could recover punitive damages under the 1991 amendments where the employer's "malice or reckless indifference to the plaintiff's federally protected rights" was proven (Farhang, 2009; Piar, 2001; Selmi, 2011; Stein, 1993).

Several studies have demonstrated that the increase in financial incentives was followed by an increase in filing of Title VII discrimination cases (Donald & Pardue , 2012/2013; Farhang, 2009; Reeves, 2008; Selmi, 2011). It has been argued that the increase in filing of Title VII discrimination cases has led to an increase in workload for many district courts and that many of the courts have dealt with these cases by granting summary judgements to defendants, and thus removing the cases from the caseload (Donald & Pardue, 2012/2013; Farhang, 2009; Reeves, 2008; Selmi, 2011). This finding appears to concur with observations of the database for this study. Three hundred forty-six (88%) of the total 394 cases were filed after 1991 (see Table 4.7). Farhang's (2009) study also concurs with this finding. Farhang investigated data from the EEOC and found that Title VII discrimination filings increased in each of the protected classes after the 1991 amendments.

The present study expanded the body of research on judicial voting by investigating the influence of: (1) judges' political ideology as measured by party-of-the- appointing president and DW-nominate scores; and (2) legal precedent, as measured by voting which occurred before or after the 1991 amendments to the Civil Rights Act of 1964, on judges' liberal and conservative voting between 1964 and 2015 at the United States Courts of Appeals in Title VII national origin

decisions impacting K-16 education rendered, using binary logistic regression as its main statistical tool.

The principal findings for this group of K-16 decisions are: (1) ideology, as determined by party-of -appointing president, is an effective predictor of judges' voting in K-16 Title VII national origin discrimination cases decided at the U.S. Courts of Appeals when all other variables are held constant … the odds of a Democrat-appointed U.S. Court of Appeals judge voting in favor of the plaintiff are significantly greater than the odds of a Republican-appointed U.S. Court of Appeals judge voting in favor of the plaintiff in K-16 Title VII national origin cases; (2) ideology, as determined by judges' DW Nominate Score, is an effective predictor of judges' voting in K-16 national origin cases at the U.S. Courts of Appeals when all other variables are held constant … the odds of a U.S. Court of Appeals judge with a DW Nominate score below 0 (liberal) voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge with a DW Nominate score above 0 (conservative) voting for the plaintiff in K-16 Title VII national origin cases; (3) whether a decision in a Title VII K-16 national origin discrimination case occurred before or after the 1991 amendments to the Civil Rights Act of 1964 is an effective and powerful predictor of judges' liberal or conservative voting at the U.S. Courts of Appeals, irrespective of whether this variable is set-up in a model using party of the appointing president or DW nominate scores as an ideological predictor, along with the1991 amendments predictor …the odds of a U.S. Court of Appeals judge prior to the 1991 amendments voting in favor of the plaintiff are significantly greater than the odds of a U.S. Court of Appeals judge voting in that direction after the 1991 amendments in K-16 Title VII national origin cases.

These results suggest that logistic regression modeling, which assumes that ideology is the principal factor which controls voting across the case types, may be overstated, if not naïve, even in the Title VII employment discrimination cases under study. It is apparent that in this instance the effects of the 1991 amendments to the Civil Rights Act of 1964 produced large effect sizes relative to the P-A-P and DW nominate ideological indicators. The better view is that there are multiple effective variables which contribute to liberal or conservative voting, only some of which have been considered in this study. The discussion below on the study's limitations makes suggestions about what some of these factors might be.

Political scientists have varying explanations for why the Title VII amendments appear to have caused an increase in plaintiffs losing in court. Political scientists argue that there may be a factor other than ideology or the purpose of the amendments influencing judges' voting (Donald & Pardue, 2012/2013; Reeves, 2008; Selmi, 2011; Webber, 2015). The Title VII amendments expanded monetary relief for plaintiff's who were successful in court and political scientists have found that this caused a significant increase in the number of Title VII cases that were filed after the 1991 amendments (Reeves, 2008; Webber, 2015). Reeves (2008) contended that it is not only ideology that influences judicial voting in employment discrimination cases, but rather the increased workload that resulted from the increase in employment discrimination cases. Reeves also indicated that judges use whatever tools are at their disposal, such as summary judgement, to help expedite the cases and reduce their workload.

Selmi (2011) found that after the 1991 amendments, most of the lower federal courts remained somewhat hostile towards plaintiffs and many circuit courts of appeals created evidentiary legal doctrines that made it more difficult for plaintiffs to prove their case. Donald and Pardue (2012/2013) also argue that federal courts are hostile to employment discrimination

plaintiffs and describe how the courts have made it difficult for plaintiffs to overcome summary judgement. Donald and Pardue also argue that some judges may have biases against employment discrimination plaintiffs, especially those claiming race discrimination, because they believe that discrimination is not as common as it was when Title VII was originally enacted.

Further, the data suggested that coding votes to "remand for further proceedings" as "liberal" rather than "conservative" had more merit than deleting this information from the data base even though they did not represent *ultimate* "wins" for the plaintiff. This is primarily because: (1) remands resulted in plaintiffs achieving their goal at the appellate level by reversing the trial court's grant of summary judgment or motion to dismiss for failure to state a claim for the defendant and (2) represented a distinct possibility of going to trial in the lower court or obtaining a favorable settlement on issuance of the remand order.

A review of the literature revealed that there are very few studies that investigate Court of Appeals judicial voting in Title VII national origin cases concerning K-16 employment. In this study, I investigated the effect of ideology and law on judges voting in such cases. This study contributed to the research to help fill the gap in the literature concerning Court of Appeals judicial voting in Title VII national origin cases concerning K-16 employment and extended the literature in the ways I have described above.

Limitations of the Study

This study extended the existing body of research on judicial behavior to study the effects of ideology [measured by party-of –the- appointing-president and judges' DW nominate scores] and the 1991 amendments to the Civil Rights Act of 1964 [pre- and post-1991] on judges' liberal and conservative voting in cases involving claims of national origin discrimination under Title

VII. There are other variables, however, that may also have an effect on voting in Title VII nation origin cases.

These may include: the law of the circuit from which a decision was issued; the work load assigned to judges at the time a decision was made; whether the decision involved a K-12 or higher education conflict; the length of a judge's tenure and the goals that s/he is trying to accomplish; and the panel composition based on the number of a party's appointees participating in a decision relative to its effects on Democratic and Republican appointees, for example (Kaheny, Haire, & Benesh, 2008). Moreover, studying judges' ethnic, racial, and religious characteristics may also be a productive line of research. These and other variables' effects on courts of appeals judges' voting may be worth pursuing in future investigations.

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Appendix A:

U.S. Court of Appeals Title VII Cases Based on National Origin in K-16 Education (1964-2015)

Case #	Case Name	Decision Date
667 F.3d 800	Abuelyaman v. Illinois State Univ.	13-Dec-11
341 F. App'x 111	Adebisi v. Univ. of Tennessee	15-Jul-09
574 F. App'x 570	Agrawal v. Montemagno	23-Jul-14
269 F. App'x 842	Al-Ali v. Salt Lake Cmty. Coll.	18-Mar-08
548 F. App'x 625	Alberti v. Carlo-Izquierdo	18-Dec-13
784 F.2d 505	Al-Khazraji v. Saint Francis Coll.	3-Mar-86
848 F.2d 457	Alvarado v. Bd. of Trustees of Montgomery Cmty. Coll.	3-Jun-88
440 F.3d 350	Amini v. Oberlin Coll.	10-Mar-06
419 F. App'x 230	Andes v. New Jersey City Univ.	24-Mar-11
549 F. App'x 872	Arafat v. Sch. Bd. of Broward Cty.	4-Dec-13
71 F. App'x 775	Archuleta v. McGuinness	24-Jul-03
141 F. App'x 536	Ardalan v. Monterey Inst. of Int'l Studies	13-Jul-05
72 F. App'x 143	Ash v. Guajardo	8-Aug-03
927 F.2d 834	Ayoub v. Texas A & M Univ.	29-Mar-91
737 F.2d 747	Balicao v. Univ. of Minnesota	26-Jun-84
319 F.3d 532	Ben-Kotel v. Howard Univ.,	14-Feb-03
941 F.2d 154	Bennun v. Rutgers State Univ.	25-Jul-91
739 F.2d 344	Briseno v. Cent. Tech. Cmty. Coll. Area	17-Jul-84

864 F.2d 680	Brown v. Hartshorne Pub. Sch. Dist. No. 1	20-Dec-88
732 F.2d 1441	Casavantes v. California State Univ., Sacramento	9-May-84
214 F. App'x 201	Chatterjee v. Philadelphia Fed'n of Teachers	24-Jan-07
396 F. App'x 73	Chhim v. Spring Branch Indep. Sch. Dist.	22-Sep-10
605 F. App'x 20	Chung v. City Univ. of New York	31-Mar-15
580 F.3d 622	Darchak v. City of Chicago Bd. of Educ.	3-Sep-09
369 F. App'x 186	Das v. Consol. Sch. Dist. of New Britain	10-Mar-10
57 F. App'x 675	Das v. Ohio State Univ.	6-Feb-03
121 F.3d 1138	Dasgupta v. Univ. of Wisconsin Bd. of Regents	3-Sep-97
675 F.3d 1060	Dass v. Chicago Bd. of Educ.	12-Apr-12
449 F. App'x 209	Dellapenna v. Tredyffrin/Easttown Sch. Dist.	28-Oct-11
185 F.3d 542	Dobbs-Weinstein v. Vanderbilt Univ.	7-Jul-99
364 F. App'x 820	Dolgaleva v. Virginia Beach City Pub. Sch.	29-Jan-10
737 F.2d 1524	Dybczak v. Tuskegee Inst.,	1-Aug-84
131 F. App'x 807	E.E.O.C. v. Muhlenberg Coll.	17-May-05
441 F. App'x 721	Edmond v. Univ. of Miami	29-Sep-11
RE 1, 411 F. App'x 140	Faragalla v. Douglas Cty. Sch. Dist.	12-Jan-11

59 F.3d 1242	Fields v. Phillips Sch. of Bus.	21-Jun-95
441 F. App'x 454	Flores v. Verdugo	30-Jun-11
590 F. App'x 930	Fong v. Sch. Bd. of Palm Beach Cty.	4-Nov-14
309 F. App'x 806	Garza v. Laredo Indep. Sch. Dist.	30-Jan-09
415 F. App'x 520	Garza v. N. E. Indep. Sch. Dist.	28-Jan-11
146 F. App'x 840	Ghosh v. Getto	24-Aug-05
25 F.3d 974	Green v. Sch. Bd. of Hillsborough Cty., Fla.	12-Jul-94
63 F. App'x 925	Gupta v. Bd. of Regents of Univ. of Wisconsin Sys.	17-Apr-03
519 F. App'x 641	Harrison v. Bd. of Regents of Univ. Sys. of Georgia	17-May-13
296 F. App'x 226	Hasson v. Glendale Sch. Dist.	10-Oct-08
786 F.2d 280	Hemmige v. Chicago Pub. Sch.	10-Mar-86
476 F. App'x 892	Hengjun Chao v. Mount Sinai Hosp.	17-Apr-12
61 F. App'x 976	Huynh v. Damota	25-Apr-03
286 F. App'x 834	Ilozor v. Hampton Univ.	23-Jul-08
355 F. App'x 250	Jiann Min Chang v. Alabama Agric. & Mech. Univ.	23-Oct-09
57 F.3d 369	Jiminez v. Mary Washington Coll.	9-Jun-95
529 F. App'x 188	Johnson v. Pub. Servs. Enter. Grp.	1-Jul-13
215 F.3d 561	Johnson v. Univ. of Cincinnati	1-Jun-00

714 F.3d 48	Johnson v. Univ. of Puerto Rico	18-Apr-13
279 F. App'x 152	Kant v. Seton Hall Univ.	29-May-08
289 F. App'x 564	Kant v. Seton Hall Univ.	27-Aug-08
52 F. App'x 855	Karim v. Bd. of Trustees of W. Illinois Univ.	5-Dec-02
458 F.3d 620	Keri v. Bd. of Trustees of Purdue Univ.	14-Aug-06
148 F. App'x 72	Khazzaka v. Univ. of Scranton	13-Jul-05
624 F. App'x 195	Kobaisy v. Univ. of Mississippi	1-Sep-15
331 F.3d 207	Kosereis v. Rhode Island	12-Jun-03
93 F. App'x 356	Kovoor v. Sch. Dist. of Philadelphia,	26-Feb-04
774 F.2d 1	Kumar v. Bd. of Trustees, Univ. of Massachusetts	30-Sep-85
549 F. App'x 275	Lazarou v. Mississippi State Univ.	17-Dec-13
415 F. App'x 318	Lifranc v. New York City Dep't of Educ.	23-Mar-11
566 F.3d 720	Lucero v. Nettle Creek Sch. Corp.	29-May-09
28 F.3d 1554	Mascheroni v. Bd. of Regents of Univ. of California	11-Jul-94
304 F.3d 618	Mateu-Anderegg v. Sch. Dist. of Whitefish Bay	26-Aug-02
207 F.3d 938	Mathur v. Bd. of Trustees of S. Illinois Univ.	27-Mar-00

195 F. App'x 320	Mazumder v. Univ. of Michigan	9-Aug-06
374 F. App'x 150	Melie v. EVCI/TCI Coll. Admin.	19-Apr-10
75 F. App'x 910	Mezu v. Dolan	22-Sep-03
567 F. App'x 38	Milione v. City Univ. of New York	21-May-14
269 F. App'x 71	Mobasher v. Bronx Cmty. Coll. of City of New York	13-Mar-08
358 F. App'x 515	Moore v. Duncanville Indep. Sch. Dist.	21-Dec-09
488 F.3d 472	Moron-Barradas v. Dep't of Educ. of Com. of Puerto Rico	24-May-07
523 F. App'x 886, 887	Mosaka-Wright v. La Roche Coll.	11-Apr-13
427 F. App'x 1	Munoz v. Bd. of Trustees of Univ. of D.C.	1-Apr-11
590 F. App'x 351	Niwayama v. Texas Tech Univ.	10-Nov-14
124 F. App'x 510	Okonkwo v. Arizona State Univ.	14-Feb-05
684 F.3d 711	Onyiah v. St. Cloud State Univ.	2-Jul-12
172 F. App'x 352	Oparaji v. New York City Dep't of Educ.	3-Mar-06
71 F.3d 904	Park v. Howard Univ.	15-Dec-95
347 F. App'x 646	Pathare v. Klein	30-Sep-09
118 F.3d 864	Pilgrim v. Trustees of Tufts Coll.	10-Jul-97

566 F.3d 733	Qamhiyah v. Iowa State Univ. of Sci. & Tech.	1-Jun-09
323 F.3d 1185	Raad v. Fairbanks N. Star Borough Sch. Dist.	27-Mar-03
304 F. App'x 905	Raheim v. New York City Bd. of Educ.	15-Dec-08
714 F.3d 322	Raj v. Louisiana State Univ.	19-Apr-13
44 F. App'x 212	Ramirez v. Kroonen	12-Aug-02
521 F.3d 934	Recio v. Creighton Univ.	8-Apr-08
499 F. App'x 455	Rodriguez-Monguio v. Ohio State Univ.	7-Sep-12
90 F.3d 310	Roxas v. Presentation Coll.	23-Jul-96
218 F.3d 392	Rubinstein v. Administrators of Tulane Educ. Fund	6-Jul-00
191 F. App'x 193	Salami v. N. Carolina Agr. & Tech. State Univ.	28-Jun-06
904 F.2d 673	Santiago v. Wood	3-Jul-90
285 F. App'x 905	Sarmiento v. Montclair State Univ.	3-Jul-08
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