IDEOLOGICAL, LEGAL, AND CASELOAD EFFECTS ON COURTS OF APPEALS JUDGES' VOTING IN RACE-BASED TITLE VII CASES BROUGHT BY AFRICAN-AMERICAN PLAINTIFFS IN K-12 PUBLIC EDUCATION

by

Herman Jackson Jr.

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Supervising Professor: Dr. Lewis Wasserman

Abstract

This study investigated how effectively U.S. Courts of Appeals judges'(1) political ideology, as measured by party of the appointing president or judges' DW-nominate scores; (2) legal developments, as measured by the 1991 Amendments to Title VII of the Civil Rights Act of 1964; (3) judicial caseload carried by courts of appeals three-judge panels; and (4) plaintiffs' gender predict liberal-pro-employee and conservative-pro-employer voting in K-12 Title VII racial discrimination cases brought by African-American plaintiffs decided between 1964 and 2015. The study used logistic regression as its primary statistical tool.

The principal findings for this group of K-12 decisions are: (1) political ideology as measured by party-of-the-appointing president and DW-Nominate scores does not effectively predict court of appeals judges' voting when all other variables are held constant; (2) changes brought about by the 1991 Title VII amendments brought about a substantial reduction in pro-plaintiff voting compared to the pre-1991 period when all other variables are held constant, irrespective of whether the P-A-P or the DW-Nominate measures were used in the model; (3) judicial caseload was not a significant predictor of judicial voting when all other variables are held constant; and (4) plaintiffs gender was not a significant predictor of judicial voting within these regression models.

It was suggested that the strong reduction in liberal-pro-plaintiff voting after the 1991 amendments were brought about by incentives provided by the combination of compensatory and punitive damages and attorney's fee awards becoming available after the amendments: these appeared to be brought about a marked increase in meritless claims due to those incentives during the post-1991 period. Possible effects of the amendments on the ideological measures were considered as well.

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CHAPTER I

INTRODUCTION

Studies of ideological voting in the federal judicial system have historically emphasized the U.S. Supreme Court. Investigations of the high court demonstrate that the justices' ideology plays a role in Supreme Court's decisions, at least when they involve salient constitutional or social issues (Hall & Brace, 1992; Hettinger, Lindquist, & Martinek, 2004; Krosnick, 1988; Mishler & Sheehan, 1996; Seltzer & Zhang, 2010). Understanding how and why members of the judicial branch vote as they do helps us deepen our understanding of how constitutional and statutory laws are applied. Such insight may be used to improve public policy through the legislative process.

In recent years there has been a growing interest in ideological influences on lower court judges' voting, especially in United States Courts of Appeals (Sunstein, Schkade, & Ellman, 2003, 2004). The lower courts, unlike the Supreme Court, are constrained by precedent interpreting constitutional or statutory law as established by the Supreme Court. Moreover, the law of the federal circuit is usually binding on judges' decision-making in that circuit, and may be persuasive on the decision-making in other circuits as well.

This investigation expands prior research paradigms into voting in the United States Courts of Appeals, focusing on Title VII of the Civil Rights Act of 1964's racial discrimination provisions as applied in K-12 settings to African-American plaintiffs. It examines how ideology, the 1991 amendments to the Title VII Act, judicial caseload, and plaintiffs' gender, affect the judicial voting in such cases.

Importance of Research

Why do we study judicial voting? Political scientists and other researchers view this genre of study as important because judicial decision-making is an important factor in determining the distribution of material goods and civil liberties in the United States. Ideology is among the most important links among the three branches of government. Since the President appoints federal judges, subject to confirmation by the Senate, it stands to reason that judges' voting may, at least in some cases, align with their patrons (Sunstein et al., 2004).

While the Supreme Court is the final stop for litigants who can get, their case heard before that tribunal, voting at the Court of Appeals level is of vital importance, since a very small percentage of cases ever receive a *writ certiorari* which enables them to ascend to the Supreme Court level. The Courts of Appeals, in most cases, are where the final decision is made on whether a statutory or constitutional provision was properly applied in a particular case. (Kaheny, Haire, & Benesh, 2008). Thus, on a practical level, the decision-making process in U.S. Courts of Appeals is an area which merits study.

Among potential areas of study, unlawful race discrimination in the workplace must certainly rank at or near the top as to its importance. And no area of workplace discrimination would seem more important to study than K-12 educational settings, since public schools are the principal place for inculcating cultural values, including democratic ones. If discrimination is not abolished in these settings, then where?

There is a gap in the literature concerning what factors influence U.S. Court of Appeals judicial voting in employment discrimination cases brought under Title VII involving African-American plaintiffs in K-12 education. This study is intended to help fill this gap. Considering the centrality of this country's history of racial discrimination, and the persistence of obstacles to

attaining justice in contemporary society, any investigation of the factors influencing judicial fairness is worthwhile.

Title VII of the Civil Rights Act of 1964

Following the landmark case, *Brown v. Board of Education* in 1954 ending *de jure* segregation, the Civil Rights movement gained momentum. Activists like Rosa Parks and Dr. Martin Luther King propelled the civil rights movement forward during the mid-1950s through the 1960s in the face of enormous resistance. During 1960s, the NAACP's (National Association of the Advancement of Colored People) secretary was shot to death, the Ku Klux Klan murdered four girls and injured 21 others in a church bombing, President Kennedy was assassinated, and Martin Luther King Jr. gave his now famous "I have a dream speech." ("JLC_MLK_Speech_re_Dream.pdf," n.d.).In an attempt to relieve racial tensions, President Johnson pressed for the passage of a national civil rights act.

The Civil Rights Act was introduced by President Lyndon B. Johnson on July 2, 1964. Johnson's Civil Rights bill endured over 500 amendments and the longest senate debate in its then 180-year history. After a total of 534 total hours of congressional debate, the bill originally designed to eradicate discrimination, was signed into law. Title VII was born as part of this legislative wave.

In its current form, Title VII forbids employment discrimination based on race, color (*McDonald v. Santa Fe Trail Transportation Co*., 1976), national origin (*Espinoza v. Farah Mfg.*, 1973), sex which include pregnancy and gender identity *(Electric Co. v. Gilbert*, 1996), or religion (Equal Employment Opportunity Commission, 1972). The Act also makes it unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit (Equal

Employmet Opportunity Commission, 1991a). Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex (*Griggs v. Duke Power Co*., 1971 §701,703(a)).

Under Title VII, it is unlawful to discriminate in any aspect of employment, including:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements and recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Retirement plans, leave and benefits
- Other terms and conditions of employment

Discriminatory practices under Title VII also include:

- Harassment based on race, color, national origin, sex (including pregnancy or gender identity) or religion
- Refusal or failure to reasonably accommodate an individual's religious observances or practices, unless doing so would impose an undue hardship on the operation of the employer's business
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain race, color, national origin, sex, or religion
- Denial of employment opportunities to an individual because of marriage to, or association with, an individual of a particular race, color, national origin, sex or religion
- Employment decisions and harassment based on an individual's sex, including gender identity, transgender status, and nonconformity with gender stereotypes ("Title VII of the Civil Rights Act of 1964," § 702-705).

Complaints under Title VII are filed with the Equal Employment Opportunity Commission (EEOC). Under Title VII, the Department of Justice has authority to prosecute enforcement actions against state and local government employers upon referral by the EEOC of complaints arising under the Act ("Title VII of the Civil Rights Act of 1964," § 702-705). The Department of Justice also has authority to initiate investigations and prosecute enforcement actions against state and local government employers where it has reason to believe that a pattern or practice of employment discrimination exists.

Following passage of the original act, Congress added age and disability as classes protected under the law in the form of the Age Discrimination in Employment Act and the Americans with Disabilities Acts. These statutes are not general civility codes designed to reach "every bigoted act or gesture that a worker might encounter," but discrimination against the defined protected classes (Player, 2013, p. 55). Therefore, it is important to know what characteristics qualify an individual for protected status under the Act.

Protected Classes

Title VII of the Civil Rights Act of 1964 is federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, race, and religion. Recently however, the subsets of age and disability classes have been added to the protection of this law.

Race and color. Preventing racial discrimination by employers was the key purpose of the enactment of Title VII. The term "race" includes all races that are being discriminated against because of perceived characteristics of a racial class (*McDonald* v. *Santa Fe Trail Transportation, 1976;* Player, 2013). The term "color" was added to clarify that individuals with the same racial make-up, but have a physical appearance that differs, are protected under Title VII. For example, if an employer had two black employees, and they discriminated against one because they were either lighter or darker in complexion, then it would fall under the color aspect of this Title. The prohibition of discrimination of skin color eliminated the need for individuals to identify with a precise racial origin (Player, 2013). It also help clarify that individuals with a mixed racial profile were protected under the Act.

Race, color, religion, sex, and national origin, as protected categories under Title VII, are not mutually exclusive, and claims based on race and national origin may substantially overlap or even be indistinguishable depending on specific facts of the case (*Village of Freeport v.*

Barrella, 2016). Discrimination based on ethnicity, including Hispanicity, for example, constitutes racial discrimination under Title VII (*Village of Freeport v. Barrella*, 2016). The Supreme Court has implicitly assumed that Title VII's definition of race encompasses ethnicity (*Local 28 of Sheet Metal Workers Int'l Ass'n v. E.E.O.C*, 1986).

Ethnicity and national origin. Ethnicity is not a term which expressly appears in Title VII (*Vega v. Hempstead Union Free Sch. Dist*, 2015). Nevertheless, as just stated, discrimination based on national origin, for example, Hispanicity, or lack thereof, constitutes racial discrimination under Title VII (*Village of Freeport v. Barrella*, 2016). "Importantly, a claim of discrimination based on Hispanicity, or lack thereof, for example, may also be cognizable under the rubric of national origin discrimination, depending on the facts of each case" (Player, 2013 p, 607).

Natural Origin is defined as the country from which you or your fore-bearers came. The term has been interpreted to include ethnic distinctions broader than strict nationality, and as narrow as cultural heritage (Player, 2013). Natural Origin identity also extends to language. In *Hernandez v. New York* (1991), the courts held that the Spanish language was an immutable characteristic of a Latino, and thus synonymous with their natural origin.

Sex. The courts have tended to limit the term "sex" to the physical, biological differences that distinguish males from females (Player, 2013), and used sex and gender interchangeably. However, gender is often defined as what individuals do to manifest themselves as male or female. This identification of sex as gender, has opened gender stereotyping as an unlawful consideration under Title VII (*Waterhouse v. Hopkins, 1989)*. The U.S. Supreme Court's decision in the *Price Waterhouse* cases illustrates how gender stereotyping may affect rights protected under Title VII.

In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the employee, Anne Hopkins, sued her former employer, the accounting firm Price Waterhouse. She argued that the firm denied her partnership because she did not fit the partners' idea of what a female employee should look and act like. The employer failed to prove that it would have denied her partnership anyway, and the Court held that constituted sex discrimination under Title VII of the Civil Rights Act of 1964.

Religion. Title VII does not define religion other than to specify that it includes all aspects of beliefs and practices. Implicitly religion includes the teaching or traditions of established faiths and non-established faiths. Additionally, religious discrimination extends to atheists and agnostics because of the absence of their belief. In general this protected group has a broad definition adopted by the Supreme Court in defining the scope of religion protected by the First and Fourteenth Amendments (Player, 2013). In the majority of religious discrimination cases however, employees have the obligation to prove the sincerity of their religious beliefs, which is generally not difficult to prove.

Age. The Age Discrimination in Employment Act (ADEA) applies to those individuals over the age of 40. In general, a plaintiff needs to demonstrate the age factor is a pretext to disadvantage, or demonstrate statistically that policy has adverse effects on a distinct age class to give credence to an age discrimination complaint (Player, 2013).

Disabilities. Discrimination against person with disabilities is proscribed by the Americans with Disabilities Act. Like Title VII and ADEA, the ADA prohibits discrimination against persons, and most significantly, it imposes an obligation on employers to make accommodations for these individuals (Player, 2013). Persons are protected under this law if they: 1) have a physical or mental impairment that substantially limits one or more major life

activities; 2) a record of an impairment of that nature, or 3) are regarded as having a physical or mental impairment that inhibits their abilities (Smith, 2007).

Theories of Title VII Liability

Two dominant theories apply to Title VII liability: disparate-treatment-intentional discrimination and disparate-impact discrimination (Peffer, 2009). Initially, when one thinks about discrimination, blatant acts or bad motives usually come to mind; this is referred to as *intentional discrimination* (Ngov, 2011). Title VII's disparate treatment provision prohibits employers from *intentionally* treating employees or applicants belonging to a protected group less favorably.

Under *disparate impact* theory, an employer is prohibited from using an employment practice that disproportionately produces a disparate impact upon a protected group and are not shown to be related to job performance or supported by business necessity. Disparate impact liability may be found to occur irrespective of the employer's lack of discriminatory intent (*Griggs v. Duke Power Co*, 1971).

Title VII Amendments of 1991

The Civil Rights Act of 1991 was passed in response to a series of U.S. Supreme Court decisions which limited the rights of employees who had sued their employers for discrimination. These changes represented major efforts to modify some of the basic procedural and substantive rights provided by the Act in employment discrimination cases. The Amendments gave the right to a jury trial on discrimination claims, introduced the possibility of compensatory claims against the employer for intentional, but not disparate impact discrimination (Equal Employmet Opportunity Commission, 1991b), punitive damages, but only against non-governmental defendants, and limited the amount a jury could award. Moreover, the

1991 changes allowed plaintiffs to recover expert witness fees as part of an award of attorneys' fees, and to collect interest on any judgment against the federal government. One effect of the amendments was a dramatic increase in the number of cases filed in the years to follow.

Supreme Court Decisions as Impetus for the 1991 Amendments.

Among the most important cases leading Congress' to enact the 1991 amendments to the Civil Rights Act were: 1) *Patterson v. McLean Credit Union* (1988), 2) *Price Waterhouse v. Hopkins* (1989), 3) *Wards Cove Packing Co. v. Antonio* (1989), and *Martin v. Wilks*, 490 U.S.775 (1989). Each of these cases is discussed in turn.

In *Patterson v. McLean Credit Union*, Brenda Patterson was employed by the McLean Credit Union in Winston Salem, North Carolina from May 5, 1972 until July 19, 1982 when she was laid off and subsequently terminated. She filed suit against her employer "alleging that the company was liable under [42 U.S.C.] § 1981 for subjecting her to racial harassment and discriminating against her based on her race with respect to promotions and layoffs. The trial court dismissed Patterson's claims of racial harassment and salary discrimination ruling "that sec. 1981 does not provide a remedy for racial harassment by the employer" (Patterson v McLean, 1972 § 1981).

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 fall under the express terms of § 1981--that is, affect her ability to make and enforce contracts the same way a white person would. Because the Patterson decision interpreted narrowly the phrase "to make and enforce contracts," (*Patterson v McLean*, 1972 § 1981) it precluded employers from liability under § 1981 for most personnel decisions that did not involve a discharge or loss of promotion based on race or color. The 1991 Amendments

Congress addressed this concern by redefining the phrase "make and enforce contracts" to include "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of a contractual relationship" (*Patterson v. McLean*, 1972 § 1981). Moreover, the 1991 Act clarified that § 1981 applied to both governmental and private discrimination.

The second case mentioned above, *Wards Cove Packing Co. v. Antonio* (1989), arose in the 1980s. There, a group of non-white cannery workers filed a Title VII suit claiming that Wards Cove was using discriminatory hiring practices to prevent nonwhite workers from being hired. 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, while the non-skilled workers belonged to other protected groups. The packing company appealed to the Supreme Court. The Supreme Court remanded the case back to the circuit court and held that where an employer's practice was neutral on its face, 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.

Congress believed *Wards Cove* made it too difficult to prove disparate impact Title VII claims. It amended the law to provide that an employee could prove a case by showing either that an individual practice or group of practices resulted in "a disparate *impact* on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is required by *business necessity*" *(Wards Cove Packing Co. v. Antonio,* 1989 § 701). Congress added, however, that "The mere existence of a statistical imbalance in an employer's workforce

because race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate treatment" (*Wards Cove Packing Co. v. Antonio*, 1989 § 703).

The third case, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), mentioned above, held that the burden of proof shifted once an employee had proved that an unlawful consideration had played a part in the employer's personnel decision; the employer was required to prove that it would have the same decision if it had not been motivated by that unlawful factor; but such proof by the employer would constitute a complete defense for the employer.

Congress rejected the *Price Waterhouse* approach to cases where an unlawful consideration had played a part in the adverse employment decision. It amended the statute to provide that the employer's proof that it would have made the same decision in any case was a defense to back pay, reinstatement, and other remedies, *but not to liability per se*. The practical effect of this change was to allow a party that proved that the employer discriminated, but could not show that it had made any practical difference in the outcome, could still recover attorney's fees after showing the employer discriminated, even if no other remedy was awarded to the plaintiff.

In the fourth case, *Martin v. Wilks*, 490 U.S. 775 (1989), the Court held that white firefighters who had not been a party to a class action resolved by a consent decree to bring suit to challenge the decree which governed hiring and promotion of black firefighters. The 1991 Amendments limited the rights of non-parties to attack consent decrees by barring any challenges by parties who knew or should have known of the decree or who were adequately represented by the original parties.

The Civil Rights Act of 1991 Amendments

As indicated above, the Civil Rights Act of 1991 was enacted to make the law more effective. It is for this reason that the effects of this amendment represent an integral part of this study. Table 1.1 provides an overview of the course of civil rights enactments made by Congress, including a list of statutes enacted by Congress, starting with the Civil Rights Act of 1964.

Table 1.1

Civil Rights Amendments

Year	Actions
1964	- Provided punitive and compensatory damages are available in cases of "intentional discrimination"
1990	- Americans with Disabilities (ADA) is amended to provide punitive and compensatory damages
1991	-Provided a right to a jury trial
	- Provided, in cases where plaintiff can show "disparate impact" the employer is required to prove their actions as job-related and business necessary
	- Outlawed "race norming practices"
	- Outlawed any reliance on discriminatory factors
	- Consent decrees are not subject to attack subsequent litigation
	- American citizens working in foreign countries are entitled to protection under the law
	- Seniority systems do not justify discriminatory practices
	- Attorney fees and expert witness fees are also recoverable
	- Age Discrimination in Employment Act adopted the "right to use" procedures under Title VII
	- "Glass Ceiling Commission" established for women and minorities
	- Previously exempt state employees are protected under the law

* Adapted from: The Civil Rights Act of 1991: What Does It Mean and What Is Its Likely Impact?(Loudon, 1992)

Research Questions

In order to investigate ideological effects on voting in Title VII race discrimination cases brought by African-American plaintiffs, the current investigation employs a regression model using judicial ideology [the party-of-the president appointing of each judge and judges' DW Nominate Scores], legal effects [a dichotomous variable using the effective date of the 1991 amendments to the Civil Rights Act of 1964], workload [cases assigned per year per judicial panel], and plaintiffs' gender as independent variables. The dependent measure was whether judges cast a conservative or liberal vote as measured by whether the plaintiff was granted some of the relief sought in the courts of appeals.

The following research questions framed the study:

1. What effects does party-of-appointing-president, 1991 amendments to the Civil Rights Act of 1964, case-load carried by judges in U.S. Courts of Appeals, and plaintiffs' gender have on U.S. Court of Appeals judges' voting in Title VII race-based employment discrimination K-12 cases brought by African-American plaintiffs with *party of the appointing-president* used as the measure of judges' ideology?
2. What effects does DW Nominate scores, 1991 amendments to the Civil Rights Act of 1964, case-load carried by judges in U.S. Courts of Appeals, and plaintiffs' gender have on U.S. Court of Appeals judges' voting in Title VII race-based employment discrimination K-12 cases brought by African-American plaintiffs with *DW Nominate scores* used as the measure of judges' ideology?
3. What impact did the 1991 amendments to the Civil Rights Act of 1964 have on the volume of race-based K-12 appeals brought by African-American plaintiffs to U.S. Courts of Appeals?

CHAPTER II
LITERATURE REVIEW

This section examines prior research on the effects of political ideology, law and judicial effects, caseload effects, and race and gender influence, on judicial voting. It examines the prior research of each of these topics as it relates to K-12 education. The following is intended to provide a back drop for this study.

Ideology

The dominant empirical theory of judicial decision-making is Segal and Spaeth's (2002) attitudinal model. Their theory asserts that when judges make decisions, they tend to interpret the facts and the law in that case through a lens of their own policy preferences. At the Supreme Court level, voting preferences may often be predicted by knowing the judge's political affiliation. (Segal et al., 1995; Wasserman & Hardy, 2013). One hundred-forty books, articles, dissertations, and conference papers are identified in the legal and political science literatures. Between 1959 and 1998, there was substantial reporting on empirical research pertinent to a link between judges' political party affiliation/ideology and judicial voting. (Cross & Tiller, 1998).

In his study of courts of appeals judges' voting, Sunstein, Schkade, Ellman, and Sawicki (2007) conclude that while political affiliation can somewhat predict how a judge will vote in employment discrimination cases, it is far from dispositive. They observe that in race discrimination cases, Democratic appointees voted liberally 43% of the time, while Republicans voted liberally 34% of the time. In sex discrimination cases, Democratic and Republican appointees voted liberally 52% and 35% of the time respectively. In disability discrimination cases, they found that Democratic and Republican appointees voted liberally 43% and 27% of the time respectively. Overall, Democratic appointees voted liberally 47% of the time, while Republicans did so 32% of the time (Sunstein et al., 2007).

These results notwithstanding, Sunstein et al. acknowledge the limited role that ideology plays in courts of appeals decision-making:

> It would be possible to see our data as suggesting that most of the time, law is what matters, not ideology. Note here that even when party effects are significant, they are not overwhelmingly large. More often than not, Republican and Democratic appointees agree with each other, even in the most controversial cases. (Sunstein et al., 2007 p. 336)

Because Sunstein et al. worked from a limited database, one should be exceedingly cautious in drawing conclusions about the usefulness of political affiliation as predictor of judicial decision-making, based on the study of Sunstein et al. Moreover, Sunstein et al.'s study did not set up variables in a model which might separate effects, resulting from statutory law, more nuanced measures of ideology, and other factors which could affect voting.

One scholar, commenting on the study by Sunstein et al. noted:

> These considerations aside, it cannot seriously be contended that a judge's ideological orientation (for which political affiliation is a proxy) plays no role in his or her decision-making. At the same time, ideology appears to be only a weak predictor of the outcome in any given employment discrimination case. Methodological concerns about Sunstein's study notwithstanding, the average Democratic and Republican appointee in Sunstein's survey disagreed, at most, in less than one out of five employment discrimination cases, and in one of the most common types of discrimination cases (i.e., race discrimination), they disagreed less than 10% of the time. This evidence of inter-party hegemony belies the argument that ideology can explain - either by itself or in substantial part - the [decline in plaintiffs' success under Title VII] in recent years in federal court. (Reeves, 2008 p. 494-495)

Party affiliation as a proxy for ideology can be an effective predictor of voting in high salience cases for U.S. Courts of Appeals judges. In a recent study of federal court of appeals and district court voting, Sisk and Heise (2012) found that ideology as measured by party of the judges' appointing president was a powerful predictor of how judges voted in First Amendment Establishment Clause disputes: Republican appointees rejected claims of governmental Establishment Clause violations significantly more often than did their Democratic counterparts.

As indicated above, public law scholars traditionally have used judges' political party affiliations as proxies for judicial ideology (Lloyd, 1995). Empirical examination of how party identification influences judges' decision-making is essential in the study of judicial behavior (Pinello, 1999). In selecting party of the appointing president as a point of measure, it is generally assumed that judges' conservativeness or liberalness is parallel to the President that made their appointment.

A second measure of courts of appeals judges' ideology is known as the DW-Nominate score. DW is a continuous variable that potentially ranges from "-1" (the most liberal score) to "1" (the most conservative score). DW scores are determined by the average of the ideology scores of the senators of the judge's home state at the time of appointment, where they are of the same party as the appointing president. If there are 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 is then used.

Judicial Caseload Effects

Judges, like all human beings, are "leisure-seeking" individuals with an aversion to any sort of increase to the already perceived hard work they perform (Posner, 1993). As the workload in a judge's district increases, the leisure time decreases, and thus causes a shift in behavior (Huang, 2010). This concept is illustrated by one study which investigated whether proposed

sentencing guidelines entail more work and effort or ease the judicial burden. Cohen (1991) postulated that district judges would tend to oppose the Guidelines more if this practice resulted in judges carrying heavier dockets. He found a significant correlation between these variables.

While the caseload of the U.S. Courts of Appeals has increased, the volume of cases decided by the United States Supreme Court has declined (Giles, Strayhorn, & Peppers, 2015). Thus, the Courts of Appeals have increasingly assumed an important policy-making role as the final arbiter of federal law. Giles, Strayhorn, and Peppers studied how courts respond to the challenge of increasing their policy-making role under the constraints posed by caseload growth. The results of the analysis are generally consistent with the expectations, i.e., cases receive less judicial scrutiny.

Reeves (2008) showed that overall workload in the circuit courts increased substantially over the 25-year period preceding his study. He claims despite the fact judges are unable to control the number of cases which come their way, they exercise what he labels "prophylactic jurisprudence" (Reeves, 2008 p. 512) as a way of reducing their volume of work. In his view, judges can develop legal constructs which "dampen the incentive of plaintiffs (or, perhaps more importantly, the lawyers who might represent them) by elevating the substantive and procedural thresholds that frequently arise in employment cases" (Reeves, 2008 p. 512). Thus, he states:

> If my theory of prophylactic jurisprudence is correct, one would expect to see those judges in busier circuits adopting statutory and procedural interpretations that place greater burdens on plaintiffs relative to judges in less burdened circuits. Moreover, this theory, if proven, would tend to undermine a purely ideological theory of judging because there are circuits that are ideologically liberal as well as conservative (or at least perceived to be) … at the top and the bottom of the workload rankings (Reeves, 2008 p.

513).

To test his theory of "prophylactic jurisprudence," Reeves (2008, p.512) studied circuit court law over the extent to which Title VII and other federal anti-discrimination laws protected against retaliation in cases which arose *prior to* the Supreme Court's opinion (*Burlington Northern & Santa Fe Railway Co. v. White*, 2006). Reeves (2008) observed that since the circuits were badly divided over the extent to which Title VII and other federal anti-discrimination laws protected against retaliation, this could be a good test of whether prophylactic measures might be taken by the courts as a function of caseload. This was at the time an important issue because a lower standard for retaliation claims would enable "plaintiff to get to a jury on a retaliation claim even if the disparate treatment claim or harassment claim did not survive summary judgment, which has substantial ramifications for settlement" (Reeves, 2008 pp. 524-525).

Reeves analysis supported his thesis that workload, not ideology, is more important to judicial outcomes in the discrimination context. He observed:

> Of the seven circuits with the highest district and appellate workloads - the Second, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh - only the Ninth Circuit, which had among the fewest employment discrimination appeals per capita, adopted the most expansive view of retaliation. Of the eight circuits that adopted either the strict or the moderate view of actionable retaliation, six circuits - the Second, Fourth, Fifth, Sixth, Seventh, and Eleventh - handled higher than average numbers of discrimination filings at either the district or the appellate level (or both in most cases) . . . Conversely, of the four circuits that adopted the broadest view of retaliation - the First, Ninth, Tenth, and District of Columbia Circuits - only the Ninth has a district or appellate workload that exceeds the corresponding average. And with scattered exceptions, each of these four circuits had few

> discrimination cases at both the district and appellate levels relative to their respective peers in other circuits. Accordingly, how receptive a circuit was to retaliation claims appears correlated with its overall workload and number of employment discrimination filings. (Reeves, 2008 p. 526)

Reeves applied a similar approach in his examination of voting patterns in connection with the so-called direct/circumstantial evidence divide in what plaintiff must prove to advance their claims after passage of the 1991 Title VII amendments. Prior to the amendments, the only way for an employer to avoid liability where direct evidence of discrimination was shown was to prove that it would have made the same decision even if a discriminatory motive was not a factor in the decision. These mixed motive issues were resolved during the liability phase of the trial prior to the 19991 amendments (Reeves, 2008).

After 1991, Congress overruled this approach to courts' treatment of mixed-motive cases by making the employers' "same decision anyway" defense relevant only in the remedy phase. This meant that even if the employer could demonstrate it would have made the same decision despite the discriminatory motive, it was not necessarily free from exposure. This was because the employer could be subject to injunctive and declaratory orders and, perhaps most significantly, attorneys' fees because of the part unlawful motives played in the decision (Reeves, 2008). This change gave a significant negotiating advantage to plaintiffs' lawyers, regardless of whether plaintiff recovered monetary damages. Reeves (2008) noted:

> Apart from attorney's fees, the employer in such cases would be stuck in the uncomfortable position of arguing to the jury that it made its decision for legitimate, non-discriminatory reasons despite the evidence clearly suggesting it did not. For these reasons, a court's decision to classify plaintiff's claim as a mixed-motive as opposed to a

> single-motive case has massive consequences. This classification decision hinges on the court's determination whether the plaintiff has adduced direct evidence of discrimination. Accordingly, how direct evidence had to be was critically important. (2008 p. 528)

Under the mixed-motive scenario, the meaning of "direct evidence" took on great significance and, perhaps unsurprisingly, the circuits took different approaches to how this term should be defined. As with the different meanings given to the term "retaliation" described above, this state of affairs provided opportunity to examine the impact of caseloads on how judges defined "direct evidence" in Title VII cases.

A second, somewhat broader view known as the "animus-plus" perspective was adopted by the Second, Third, Fourth, and Ninth Circuits. Under this view, direct evidence is defined as evidence, both direct and circumstantial, that 1) reflects directly the animus of the employer and 2) bears squarely on the contested employment decision. Reeves (2008) argued that his thesis about caseload effects was supported by the standards adopted in the circuits:

> Of the three circuits that adopted the strictest view of direct evidence, the Eleventh and Fifth Circuits have (by a wide margin) the highest workloads of any appellate courts, as well as many discrimination claims. And while the Seventh Circuit's workload hovers close to the median for both district and appellate judges, it hears more discrimination claims than almost any other circuit . . . Of the two circuits that adopted the most lenient definition of direct evidence - the Eighth and District of Columbia Circuits - both had workloads at or below the district average, and two of the three lowest appellate workloads . . . The remaining circuits split the difference between these two extremes. That the Fourth and Ninth Circuits found common ground on this issue does much to undermine a purely ideological theory of judging, as these two circuits are rarely viewed

as kindred souls when it comes to employment discrimination jurisprudence. (pp. 529-530)

These results led Reeves (2008) to conclude that in circuits with higher caseloads of Title VII cases, but the overall workload was low, plaintiffs had a better opportunity to be successful.

In its 2003 decision in *Desert Palace v. Cos*ta, the Supreme Court abrogated the direct/circumstantial evidence distinction in mixed-motive cases. The Court held that Congress intended to overrule legislatively the direct/circumstantial distinction, holding that the 1991 Civil Rights Act "does not mention, much less require that a plaintiff make a heightened showing through direct evidence" (*Desert Palace v. Cos*ta, 2003 § 703). Although the Court explicitly declined to address the continued vitality of the direct/circumstantial evidence distinction outside of the mixed-motive context, some scholars have speculated that, with the removal of the direct evidence hurdle, single-motive cases will become a thing of the past. The rulings of a few courts confirm this speculation, but to the extent that this interpretation is not widely followed, it remains an open question what methodology courts will use to classify employment cases.

Finally, Reeves (2008) has observed that the effects of caseloads on retaliation and the direct/indirect distinction cut in the same direction for disposition of summary judgment motions: a robust standard has been applied in the First, Sixth, Seventh, and Eleventh Circuits which apply a "no reasonable chance standard" for summary judgment in employment discrimination cases while the Third and District of Columbia Circuits, both of which have light workloads, and appellate discrimination filings both declined to lessen the summary judgement standard in employment discrimination cases (Reeves, 2008).

The data which includes the workloads of the Federal Courts, indicates that appellate judges in the First, Third, and District of Columbia Circuits, have lighter workloads than judges

on most other circuits (Reeves, 2008). Appellate judges in the Fifth and Eleventh Circuits have substantially greater workloads than do appellate judges in other circuits. Although district courts in virtually every circuit experienced a sharp increase in employment discrimination filings following the passage of the 1991 Civil Rights Act, District courts in the First, Fourth, and District of Columbia Circuits encountered relatively few discrimination filings, while their counterparts in the Second, Seventh, and Eleventh Circuits saw their already-high number of discrimination cases almost double within a few years. This trend continues as the Court of Appeals receives cases.

Reeves asserts from this data that the more burdened circuits view summary judgment as "an opportunity to cull marginal cases from the docket, while less burdened circuits remain more vigilant about preserving the role of the fact finder" (Reeves, 2008, pp. 554-555). Reeves concludes from his observations of the retaliation, direct/indirect, and summary judgement cases that prophylactic jurisprudence based on caseloads is a viable theory of accounting for disposition of Title VII cases.

Although Reeves observations make sense, his claims must be approached with a degree of skepticism. First, the mere fact that circuit courts adopt different legal standards for case disposition of various legal issues does not mean that judicial voting varied based on those principles. Second, since Reeves did not control for ideology, it cannot be discerned from his analysis what contributions caseload versus ideology makes to the judges' voting. Third, Reeves did not eliminate sources of variability which might account for voting among different protected classes such race, gender, nation origin. Moreover, within the classification of race, there is substantial variability, since national origin can sometime be treated as a racial classification under Title VII and any effects associated with how blacks are treated as compared to say

Hispanics, this might lead to erroneous conclusions. Fourth, there is evidence to support that male and female plaintiffs may be treated differently within the same racial classification (Lacy, 2007). Thus, without controlling for such factors, any conclusions about Reeves' promising claims about caseload effects must be treated with caution. In the current study, these issues are addressed in the research design by simultaneously varying these variables and limiting the database on cases brought by African-American plaintiffs.

Plaintiffs' Gender

One line of research has examined how *judge's* gender and race may influence judicial decisions. Empirical support demonstrating such effects has been mixed. Collins and Moyer (2008) have argued that examining individual judges on a single characteristic, such as gender or race alone may be an insufficiently nuanced approach to understanding how these factors affect judges' voting. They argue that the intersection of individual characteristics may provide an alternative approach for evaluating the effects of diversity on the federal appellate bench. They studied the joint effects of race and gender. Their results suggest that minority female judges are more likely to support criminal defendants' claims when compared to their colleagues on the bench, even after controlling for other important factors. This suggests that our understanding of judicial behaviors may be assisted by studying how individual characteristics overlap, rather than examining those characteristics alone (Collins & Moyer, 2008).

Lacy (2007) has argued that black men face unique and difficult challenges in the workplace relative to black women. The author suggests that it is important for courts to recognize this phenomenon because of racial stereotypes. Black men face unique and difficult challenges in the field of employment, based upon the intersection of race and gender. According to Lacy (2007), "The Black male has had to overcome slavery, discriminatory federal legislation

passed to keep the Black male in a subordinate state, and the receipt of a lower salary than Black women. These actions have caused the Black male to become a double minority in need of extra protection to lift him to an equal footing with others in society" (p.18).

Similar to Lacy's concept of double minority stereotyping, Sidanius and Pratto (2001) introduce the idea of the subordinate male target hypothesis (SMTH) as it applies to discrimination in the workplace. This theory claims that the discrimination experienced by the men of subordinate groups is greater than that experienced by the women of the same subordinate groups. Navarrete, McDonald, Molina, and Sidanius (2010) also reported results across four studies consistent with this perspective, that race bias is moderated by gender differences in traits relevant to threat responses that differ in their adaptive utility between the sexes. Veenstra (2013) conducted a telephone survey where data was collected from 414 women and 208 men in Toronto, Canada, and 521 women and 245 men in Vancouver, Canada to test the concept of SMTH. Utilizing negative binomial regression techniques, it was determined that gender, race, educational attainment, household income, and sexual orientation, predicted scaled measures of discrimination.

Building on inferences drawn from the research of Collins and Moyers (2008), Lacy (2007), and Sidanius and Pratto (2001), the current study examines whether black males and females are treated differently in the courts when judges are confronted with Title VII racial claims from African-American male and female plaintiffs.

CHAPTER III

METHODS

This study investigates the effects of: 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) judicial case-load, measured annually by average cases per panel 4) and plaintiffs gender, on judges' voting in K-12 employment discrimination cases alleging violations of Title VII's race 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, race, employment* and *caseload*. 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 race and involved an African-American plaintiff, 2) there was an actual finding in the case regarding race, and 3) the parties involved were a K-12 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 listed in a spreadsheet. The spreadsheet initially included columns for the following data: case name, citation, circuit number, decision date, plaintiff gender, whether the outcome of the case was in favor of the employer or employee, whether the case was decided 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 selected 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 were entered, additional columns were added to documented data specific to each judge. The following columns were added: party-of-appointing president, last name of appointing president, date confirmed by Senate, judges' practicing state, president's DW score, senator one name, senator one score, senator two name, senator two score, and DW Score for each senator. This information enabled the researcher to derive each judges' DW score so it could be entered into the database.

Caseload Data

The number of cases ruled by judges in their perspective federal districts was also gathered. The spreadsheet included columns for the following data: district name, number of cases, and relative rank in terms of caseload, enabling determination of the relative frequency and time permitted to each case. The foregoing information was gathered from sources such as 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 and the 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 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 senator 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 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 in this section 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 president's political party as a proxy for judges' political ideology (Pinello, 1999). 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 proxy for judges' ideology is their DW Nominate score. This predictor is a continuous variable that ranged from "-1," the most liberal score, to "1," the most conservative score. Scores where be determined by the average of the DW ideology scores of the senators of the judge's home state at the time of appointment where they were of the same party as the appointing president. If there are 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 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. To align the DW scores with the party-of-appointing president coding, each DW score was multiplied by -1. This should produce a scale where a score of + 1 represented the most liberal score possible and a -1 the most conservative score possible.

Legal variable: 1991 amendments. The 1991 Title VII amendments serve as the measure of legal effects. 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.

Caseload variables: High or low workload. The third independent variable is judicial caseload, measured by number of cases carried by three-judge panels in each circuit. This was derived from data published by the United States Federal Judicial Center (*Federal Judicial Center*, 2016) which lists the volume of cases carried in each circuit by panel by year. If, for example, a decision was rendered in 2000 by the Second Circuit and the caseload per panel for that time period was 1200, then 1200 will be entered for the votes emanating from the Second Circuit for that year. Similarly, if a decision was made in the D.C. Circuit in 1992 and the decisions rendered that year in that circuit was 550 that number would be entered in the caseload column for all D.C. Circuit decisions made that year. Setting up the caseload predictor as such enabled a determination of whether the workload affected voting in the cases under consideration. Because caseload per panel per year was not available prior to 1992, I will average the caseload data for the first three years for which data was available and attribute that case load retroactively to each circuit for prior years. Because the relative caseloads in each circuit is fairly stable for the years for which data existed it appears this approach would lead to reliable and valid assessments of the effects of judicial caseload throughout the period studied.

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." A pro-employee vote was defined as one in which the employee won outright, obtained some relief including a remand to the lower court. This approach was taken because where an employee "survived" the appellate process, s/he was most often in a favorable negotiating

position against the employer. Moreover, success at the appellate level meant that the employee gained all the relief which could be obtained from the court.

Data Validation

The underlying data for the study were collected and stored in a spreadsheet and imported into SPSS version 23. 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 race discrimination cases populating the database. The dependent variable of individual judge voting was dichotomous or binary. Least squares regression assumes a linear outcome, rendering least squares regression as an inappropriate statistical test (Aldrich & Nelson, 1984). Logistic regression was selected as the appropriate statistical test for the purposes of this study because it is the most suitable statistical technique for binary dependent variables and the data fit all the assumptions of this technique (Aldrich & Nelson, 1984). The logistic regression model allows the researcher to determine if one or more independent predictor variables effectively predicted the odds of a binary result, such as judicial voting. In addition, logistic regression is commonly used for analyzing judicial voting (Wasserman & Connolly, 2016). 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, were also be examined to obtain an estimate of the percentage of variance accounted for by the model.

Descriptive Analysis

The data analysis commenced with preliminary descriptive data to guide the analysis. What follows are references to specific tables that will appear in Chapter 4, along with detailed

explanations of how they relate to the research analysis. Table 4.1 shows the frequency and percentage of liberal (pro-employee) and conservative (pro-employer) votes cast in Title VII race discrimination decisions involving all K-12 employees between 1964-2015 in United States Courts of Appeals as a function of race of the plaintiff. This initial table establishes the racial divide between the Title VII race discrimination decisions.

The second crosstab exploration examines the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of ideology as measured by party-of-appointing president. Table 4.2 contains data from a 2 x2 table with P-A-P and liberal-conservative voting as the variables examined.

The third crosstab exploration examines the frequency of conservative pro-employer and liberal pro-employee votes cast as a function of judges' DW nominate scores. In addition to the crosstab, a distribution figure is included which highlights that overall liberalism or conservativism of the judges in the Court of Appeals. The table was set up with scores above and below the DW zero point comprising the ideology measure. Judges' scores that fell below zero to negative one, were coding as liberal and scores that fell above zero to positive were coded as conservative. Table 4.3 contains data from a 2 x2 table with DW score and liberal-conservative voting as the variables examined.

The fourth crosstab exploration examines the frequency distribution of conservative pro-employer and liberal pro-employee votes cast as a function of the 1991 Title VII amendments. The analysis includes all votes. Table 4.4 contains data from a 2 x2 table with votes cast before and after the 1991 amendment with liberal-conservative voting as the variables examined.

Table 4.5 examines the average number of cases carried by judicial panels in each Court of Appeals for years 1964-2015 and their relative workload rank. This table displays the number

of cases ruled upon by judicial panels across all years for each circuit. It includes the percentage of cases ruled on within each district and their relative rank in terms of their workload. The analysis provides an overall comparison of workload experiences by the judges for the entire period under study.

Table 4.6 displays the overall frequency distribution of conservative pro-employer and liberal pro-employee votes cast as a function of the caseloads carried by panels in each circuit. The three highest volume circuits were assigned to Group 1. The next three highest volume circuits were assigned to Group 2. The next set of three circuits in terms of workload were assigned to Group 3. The last and lowest volume circuits were assigned to Group 4. The table examines the ranked groups with liberal-conservative voting as the variables examined.

Table 4.7 examines the frequency and percentage of liberal and conservative votes cast in Title VII race discrimination decisions involving African-AmericanK-12 employees between 1964-2015 in United States Courts of Appeals as a function of plaintiffs' gender. The displays total percentage of liberal and conservative voting for male and female plaintiffs as the variables examined.

Inferential Data: Logistic Regressions

Multiple logistic regressions were conducted to estimate how well the overall model effectively predicted individual judicial voting in Title VII race-based employment discrimination cases in K-12 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, Snelgar, & Kemp, 2012). 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, probability values, were computed.

In the first regression equation, the party-of-appointing president, 1991 Title VII amendments, panel caseload volume by year, and plaintiff's gender was set up as dichotomous independent predictors of the dependent binary variable of judges' individual votes in Title VII race discrimination cases. The equation determined if ideology, as determined by the nominating president's political party, and the 1991 Title VII amendments or circuits' caseload volume are significant predictors of whether the judge voted conservatively for the employer or liberally for the employee. The regression results as shown in Table 4.8 included all 339 votes cast in Title VII race discrimination cases.

In the second regression model, the DW Nominate score was used as the ideological measure. Similar to the previous model, this regression included the 1991 Title VII amendments, panel case volume by year, and plaintiff's gender, and judicial caseload was set up as independent predictors of the dependent binary variable of judges' individual votes in Title VII race discrimination cases. The equation determined if these indicators were significant predictors of whether the judges voted conservatively for the employer or liberally for the employee.

CHAPTER IV

RESULTS

This chapter reports on the analyses of the 339 U.S. Courts of Appeals judges' votes rendered between 1964 and 2015 in K-12 public education employment discrimination claims brought by African-American plaintiffs pursuant to Title VII of the Civil Rights Act of 1964. The data analysis commenced with frequency and percentage of K-12 cases, followed by 2 x2 descriptive examinations of the relationship between the variables of interest and liberal and conservative voting, and lastly followed by inferential analysis using logistic regression to determine the efficacy of the model as a whole and the effects of each variable of interest on the odds of liberal and conservative voting patterns in these Title VII cases.

The variables of interest included party-of-appointing president (Republican-Democrat) and judges' DW nominate scores (measured continuously from -1 to +1) as proxies for their ideology; plaintiffs' gender, judicial caseload (by three-judge panels), and whether the decision was rendered before or after the 1991 Civil Rights Act amendments. Once the descriptive analysis was complete, multiple binary logistic regression was conducted to estimate how well the overall model(s) predicted individual judges' voting and the effect size of the individual predictor variables' on voting in these race discrimination cases (Brace et al., 2012).

Descriptive Analysis

Table 4.1 examined the frequency and percentage of liberal (pro-employee) and conservative (pro-employer) votes Cast in all Title VII race discrimination decisions involving K-12 employees between 1964-2015 in United States Courts of Appeals, as measured by the race/ethnicity of the plaintiff and the percentage of liberal votes. Of the 489 votes cast, 345 (70%) were filed by African-American plaintiffs, 53 (11%) were filed by White plaintiffs, 36

(7%) were filed by Hispanic plaintiffs, 12 (2%) were filed by Asian plaintiffs, and 49 (10%) cases were filed by a category classified as "other," which constitutes remaining groups of plaintiffs. Of the 495 total votes 95 (19%) votes cast were liberal (pro-employee), while the remaining 400 (81%) votes cast were conservative (pro-employer). The overwhelming majority of cases filed were from African-American plaintiffs. The proportion of liberal-conservative voting for this group appears to parallel those for the other groups with 19.7% liberal voting and 80.3% conservative voting.

Table 4.1

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving all K-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of Race of Plaintiff

	Voting		
Race of Plaintiff	Liberal	Conservative	Total
African American	68 (19.7%)	277 (80.3%)	345* (70%)
White	11 (21%)	42 (79%)	53 (11%)
Hispanic	9 (25%)	13 (75%)	36 (7%)
Asian	0 (%)	12 (100%)	12 (2%)
Other	15 (30.6%)	34(69.4%)	49 (10%)
Total	95 (19%)	400 (81%)	495 (100%)

* represents the inclusion of class action suits, that are excluded in further analysis

Table 4.2 examined the frequency and percentage of liberal (pro-employee) and conservative (pro-employer) votes cast in Title VII race discrimination decisions involving African-AmericanK-12 employees between 1964-2015 in United States Courts of Appeals as a function of judges' ideology as measured by party-of-appointing President. Of the 345 votes, 339

votes were used in the following tabulations which excluded two class action suits, which incorporated both male and female plaintiffs. Overall 222 (80.2%) of the votes were conservative (pro-employer), while 67 (19.8%) were liberal votes. Republican and Democratic appointees cast respectively, 31(17.3%) and 36 (22.5%) votes in a liberal (pro-employee) direction and 148 (82.7%) and 124 (77.5%) votes in a conservative (pro-employer) direction. The 5% difference in liberal and conservative voting based on party-of –the-appointing president does not appear to be meaningful, but its significance will be tested in the inferential analysis discussed below.

Table 4.2

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-AmericanK-12 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/Pro-Employee	Conservative/Pro-Employer	
Republican	31 (17.3%)	148 (82.7%)	179 (52.8%)
Democrat	36 (22.5%)	124 (77.5%)	160 (47.2%)
Total	67 (19.8%)	222 (80.2%)	339 (100%)

Figure 4.1 shows the distribution of DW Nominate scores of republican and democratic judicial appointees in Title VII race discrimination decisions involving African-American(all) K-12 employees between 1964-2015 in United States Courts of Appeals. This figure includes all judges in the dataset. A conservative DW score has a positive number between zero to positive 1, while a liberal score represents those which are assigned a value from zero to -1., The average liberal DW score was a -.24, while the median conservative score was .39, yielding mean of .09 with a standard deviation of .355. This corresponds to the general conservativeness of judges

presiding over these cases. The true importance of this graphic is to show the distribution of liberal to conservative judges. Of the liberal judges, the majority of judges resided on the more conservative end of the liberal spectrum, while the conservative judges were more equally distributed. Overall, the panel of judges involved in African-American K-12 employment cases were more conservative than liberal.

Figure 4.1

Distribution of DW Nominate scores for Republican and Democratic Appointees Participating in Title VII Race Discrimination Decisions Involving African-American(all) K-12 Employees between 1964-2015 in United States Courts of Appeals.

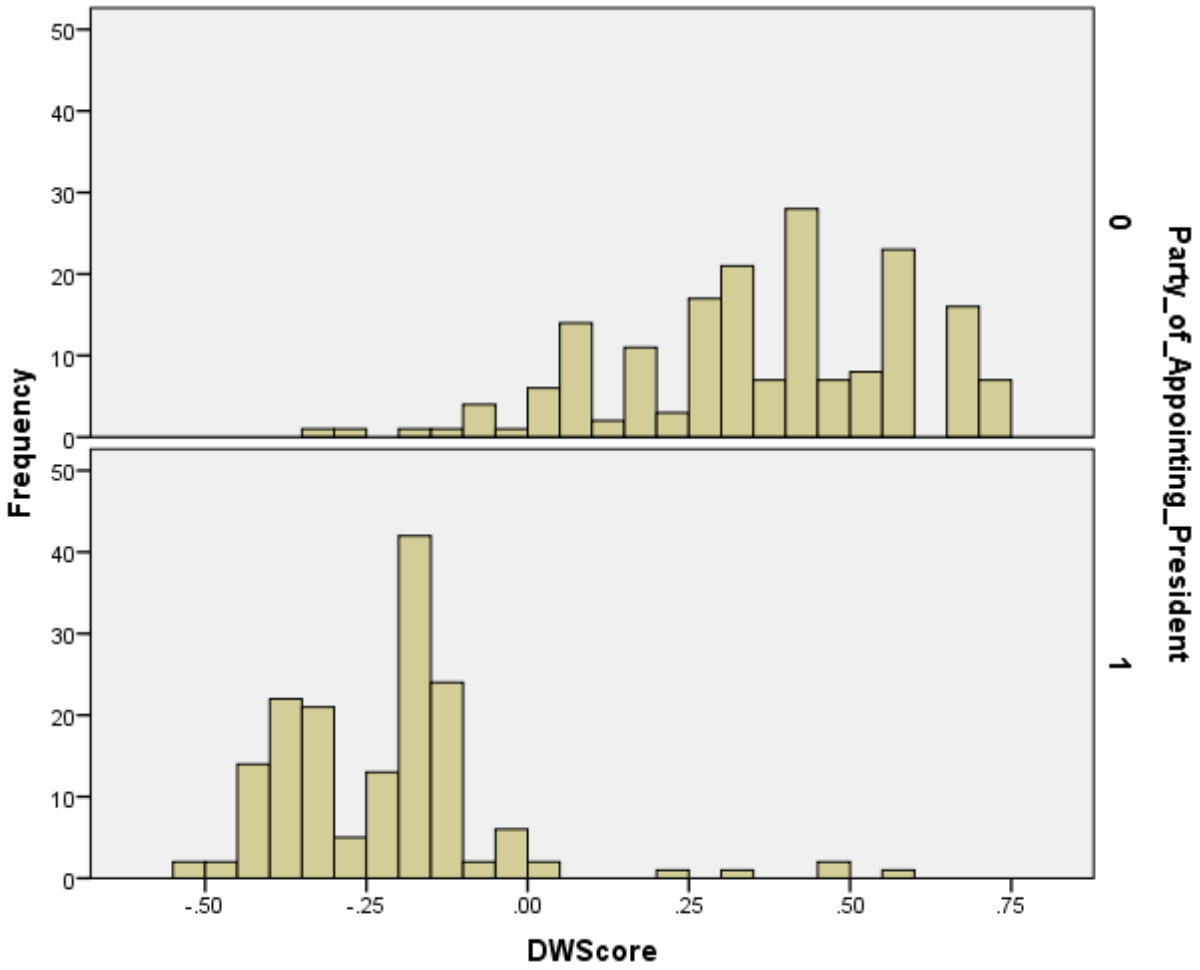

Table 4.3 examined the frequency and percentage of liberal (pro-employee) and conservative (pro-employer) votes cast in Title VII race discrimination decisions involving African-AmericanK-12 employees between 1964-2015 in United States Courts of Appeals as a function of judges' ideology as measured by DW Nominate scores. Of the total 339 votes, 177 (52%) were from judges with a DW score above "0," which places them on the conservative end of the spectrum, and 162 (48%) were from judges with a DW score below "0," thereby falling onto the liberal end of the spectrum. The results show that when all were included in the analysis they voted conservatively about 80.2% of the time while voting liberally only about 19.8% of the time. Judges whose DW scores were above the zero-point voted liberally 17% of the time, while judges whose DW scores fell below the zero-point voted liberally 22% of the time, a difference of 5%. This result closely parallels the pattern for the party-of-appointing president variable and does not appear to be statistically significant. However, this tentative conclusion was tested in the inferential analysis reported below.

Table 4.3

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-AmericanK-12 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
0 to 1.0	31 (17%)	146 (83%)	177 (52%)
0 to -1	36 (22%)	126 (78%)	162 (48%)
Total	67 (19.8%)	272 (80.2%)	339 (100%)

Table 4.4 examined the frequency and percentage of liberal (pro-employee) and conservative (pro-employer) votes cast in Title VII race discrimination decisions involving African-American(all) K-12 employees between 1964-2015 in United States Courts of Appeals as a function of the 1991 Title VII amendments. Of the total 339 votes, 93 (27%) were from cases decided prior to the 1991 amendments and 246 (73%) were from cases decided after the 1991 amendments. Thus, the number of votes cast after the amendments (1991-2015) more than doubled compared to the earlier period (1964-2014). Compared to the earlier period during which about 31 decisions were made, 82 were rendered after the 1991 amendments.

Among the post-1991 decisions, 25 (24%) were decided in favor of the employee (liberal), and 221 (76%) were decided in favor of the employer. Prior to the amendment, 42 (45%) were pro-employee and 51 (55%) were pro-employer. Two questions are suggested by this data: 1) why would the volume of cases increase so drastically after the 1991 amendments? And 2) why would the percentage of liberal votes decline so markedly after the 1991 amendments? The statistical significance of these results is explored in the logistic regression analyses reported later in this chapter. The reason for the effects of the 1991 amendments on judicial voting and case volume are examined in the next chapter.

Table 4.4

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-AmericanK-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of the 1991 Title VII Amendments.

	Voting		
1991 Title VII Amendments	Liberal	Conservative	Total
Pre-1991 Amendments	42 (45%)	51 (55%)	93 (27%)
Post-1991 Amendments	25 (24%)	221 (76%)	246 (73%)
Total	67 (19.8%)	272 (80.2%)	339 (100%)

Table 4.5 displays the average number of cases ruled upon by judicial panels across all years (1964-2015) for each judicial circuit and their relative rank. A total of 11,524 cases were decided across all Court of Appeal Circuits. The comparison shows that across all years the Eleventh (12.3%), Fifth (11.2%), and Second (9.3%) circuits carried the heaviest workloads, while the D.C. (4.3%), Tenth (6.3%), and First (6.9%) circuits had the least workloads of all Court of Appeals circuits. This comparison enabled me to test Reeves (2008) theory that judicial caseloads contribute to the outcomes of Title VII discrimination cases with heavier caseloads being associated with more conservative voting.

Table 4.5

Average Number of Cases Carried by Judicial Panels in Each Court of Appeals for Years 1964-2015 and their Relative Workload Rank

Federal Districts	Average Cases Per Panel	Percentage of Cases	Relative Rank
D.C.	353	(4.3%)	12
First	774	(6.9%)	10
Second	1184	(9.3%)	3
Third	789	(7.3%)	9
Fourth	974	(7.6%)	5
Fifth	1371	(11.2%)	2
Sixth	897	(8.2%)	7
Seventh	900	(9%)	6
Eighth	839	(8.5%)	8
Ninth	1157	(9.2%)	4
Tenth	624	(6.3%)	11
Eleventh	1663	(12.3%)	1
Total	11524	(100%)	

Table 4.6 displays the number of votes cast by judges across all circuits, the percentage of votes cast within their Title VII race discrimination caseload, and the percentage of liberal votes cast in each district involving African-AmericanK-12 employees between 1964-2015 in United States Courts of Appeals. A total of 339 cases were decided across all Court of Appeal Circuits. The comparison shows that the Fifth (41%), and Eleventh (19.5%) circuits received the greatest workload of cases in their courts by an overwhelming margin. Within these two districts, they account for approximately 60% of all African-American Title VII k-12 employee race discrimination cases between 1964 and 2015. Within the Fifth and Eleventh districts, there were 22 (16%) and 19 (29%) liberal votes cast respectively. The Sixth district with the highest

percentage of liberal votes (100%), while having one of the lowest totals of votes cast on the subject. The impact of this and Reeves (2008) theory will be discussed in the later chapter.

Table 4.6

Number of Cases Carried by Judicial Panels in Decisions Involving African-AmericanK-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judicial Panel Caseload and Liberal Percentage.

Federal Districts	Votes Per Panel	Percentage of Caseload	Percentage of Liberal votes
D.C.	0	0%	0 (0%)
First	6	1.8%	0 (0%)
Second	27	8%	6 (22%)
Third	21	6.2%	3 (14%)
Fourth	18	5.3%	9 (50%)
Fifth	138	41%	22 (16%)
Sixth	3	.01%	3 (100%)
Seventh	18	5.3 %	3 (17%)
Eighth	3	.01%	0 (0%)
Ninth	24	.71%	3 (12.5%)
Tenth	15	4.4%	0 (0%)
Eleventh	66	19.5%	19 (29%)
Total	339	100%	68 (100%)

Table 4.7 displays the overall frequency distribution of conservative (pro-employer) and liberal (pro-employee) votes cast as a function of the caseloads carried by panels in circuits separated into four groups. The three highest volume circuits (the Eleventh, Fifth, Second, were assigned a rank of 1; it contained 68% of the votes. Group 1 judges voted liberally 20% of the time. The second highest rank volume circuits (Ninth, Fourth, Seventh) contained 22% of the vote. Group 2 judges voted liberally 20% of the time. The third ranked volume group (Sixth,

Eighth, and Third) consisted of 11% of the votes cast; 40 % of its votes were liberal. Lastly, Group 4 comprised of the lowest caseload circuits (First, Tenth and D.C.) only represented 3% of the total votes; however, none of votes cast were pro-employee. In all, 20% of all voting in Title VII race discrimination cases involving African-AmericanK-12 education employees had liberal votes, and 80% yielded conservative votes. It may be observed that the two busiest circuit groupings, Groups 1 and 2 showed about 20% of the votes in a liberal direction, while the two least busy circuits showed liberal voting in about the same 20% value when averaged. However, group 3 had a 40% liberal vote and group 4 had 0%. This difference could be explained by the number of votes per group 45(11%) to 9 (3%) respectively. The relationship between judicial caseload and voting is examined more precisely in terms of their significance below in the logistic regression analysis.

Table 4.7

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-AmericanK-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of Judicial Panel Caseload.

	Voting		
Caseloads	Liberal	Conservative	Total
Group 1	47 (20%)	184 (80%)	231 (68%)
Group 2	15 (20%)	60 (80%)	75 (22%)
Group 3	6 (40%)	27 (60%)	45 (11%)
Group 4	0 (0%)	21 (67%)	9 (3%)
Total	68 (20%)	271 (80%)	339 (100%)

Table 4.8 displays the frequency distribution of conservative and liberal votes cast as a function plaintiffs' gender. The analysis includes all 339 votes in these Title VII cases in the Court of Appeals. Of the 339 votes cast 177 (52.2%) involved cases with female plaintiffs, while 162 (47.8%) had male plaintiffs. Liberal voting differences between the genders were less than 2% between men and women (female -19%, male -21%). Within both genders, 67 votes (19.8%) were for the employee. These results strongly suggest that no meaningful differences in voting appeared in this group of K-12 Title VII cases. Inferential analysis was run for this variable as well; it is discussed below where the logistic regression results are presented.

Table 4.8

Frequency and Percentage of Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-AmericanK-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of Plaintiff's Gender

	Voting		
Gender of Plaintiff	Liberal	Conservative	Total
Female	33 (19%)	144 (81%)	177 (52.2%)
Male	34 (21%)	128 (79%)	162 (47.8%)
Total	67 (19.8%)	272 (80.2%)	339 (100%)

Inferential Statistics

Utilizing logistic regression as the main statistical tool, the study examines the predictive power of the aforementioned independent variables. As ideology is the only changing variable, two models were run. The first model used party of appointing president (P-A-P) as the

ideological variable while the second model employed DW-Nominate scores as the ideological measure.

The P-A-P model. Table 4.9 displays the results of a logit analysis performed on the courts of appeals judges' voting coded as liberal or conservative in Title VII race discrimination cases involving K-12 African-American employees with ideology as measured by party-of-the-appointing president, 1991 Amendments, judicial caseload, and gender of plaintiff, set as the independent variables. This analysis included all cases in which African Americans were the plaintiffs. The equation determined the effectiveness of the model as a whole and if the independent variables were significant predictors of whether the judges voted conservatively for the employer or liberally for the employee.

A total of 339 individual votes were analyzed and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 49.190, $df = 4$, $p = .000$). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The model accounted for between 13.5% (Cox & Snell) and 21.4 % (Nagelkerke R Square) of the variance in the individual judge votes, with 97% of the conservative votes successfully predicted. However, only 9% of the liberal votes were successfully predicted. Overall, 79.6 % of predictions were accurate.

Table 4.9 gives coefficients, the Wald statistic, the associated degrees of freedom, and the odds of a liberal vote associated with each of the predictor variables. Among the four predictors, only the 1991 Amendments variable attained significance at the .05 alpha level (Wald = 32.973, $df = 1$, $p < .01$).

The odds of judges voting in a liberal/pro-employee direction were 9.3 times greater before the 1991 Title VII amendments became effective than thereafter, with all other variables

held constant. This lopsided outcome is analyzed in the next chapter. It suggests, however, that the incentives for compensatory and punitive awards provided by the 1991 amendments, as well as the payoff in attorney's fees, may have encouraged the filing of a higher percentage of meritless cases as compared to the earlier period.

Table 4.9 also reveals that ideology, as determined by the nominating president's political party, was not a significant predictor of individual judge voting choices, as the alpha level exceeded .05 (p = .45). Thus, a judge appointed by a Democratic president was not significantly more likely to vote in a liberal/pro-employee direction than a judge appointed by a Republican president in this group of cases.

Moreover, this model revealed that judicial caseload did not attain the .05 alpha level of significance (Wald = 1.09, df = 1, p= .296) Thus, judicial caseload was not a significant predictor of individual judges' liberal-conservative voting choices with all other variables held constant. Similarly, plaintiffs' gender in the party of appointing president model failed to attain significance at the .05 alpha level as well. (Wald = .169. df = 1, p = .681). Thus, no differences in the voting propensities of courts of appeals judges were revealed between male and female African-American plaintiffs in these Title VII discrimination cases.

Table 4.9

Logit Analysis on the Odds of a Liberal-Pro-Employee and Conservative Pro-Employer Votes Cast in Title VII Race Discrimination Decisions Involving African-American K-12 Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [P-A-P], the1991 Title VII Amendments, Gender, and Judicial Panel Caseload

Independent Variables	B (S.E.)	Wald	df	p	Exp (B)
Ideology [P-A-P]	.224 (.298)	.556	1	.452	1.251
After 1991	2.232 (.389)	32.973	1	.000	9.318
Caseload	.001 (.001)	1.092	1	.296	1.001
Plaintiffs' Gender	.124 (.302)	.169	1	.681	1.132
Constant	-3.079 (.769)	16.050	1	.000	.046

The DW-nominate model. Table 4.10 displays the results of a logit analysis performed on the courts of appeals judges' voting coded as liberal or conservative in Title VII race discrimination cases involving K-12 African-American employees with ideology as measured by judges' DW-Nominate scores, 1991 Amendments, judicial caseload, and gender of plaintiff, set as the independent variables. This analysis included all cases in which African Americans were the plaintiffs. The equation determined the effectiveness of the model as a whole and if the independent variables were significant predictors of whether the judges voted conservatively for the employer or liberally for the employee.

A total of 339 individual votes were analyzed, and a test of the full model against a constant-only model was statistically significant (omnibus chi square = 51.313, *df* = 4, *p* = .000). As a set, the predictors reliably distinguished between liberal/pro-employee and conservative/pro-employer votes of the individual judges. The model accounted for between 14% (Cox & Snell) and 22.3 % (Nagelkerke R Square) of the variance in the individual judge votes, with 96.3% of the conservative votes successfully predicted. However, only 13.4% of the liberal votes were successfully predicted. Overall, 79.9 % of predictions were accurate.

Table 4.10 gives coefficients, the Wald statistic, the associated degrees of freedom, and the odds of a liberal vote associated with each of the predictor variables. Among the four predictors, only the 1991 Amendments variable attained significance at the .05 alpha level (Wald = 32.647, *df* = 1, *p* <.01).

The odds of judges voting in a liberal/pro-employee direction were 9.4 times greater before the 1991 Title VII amendments became effective than thereafter, with all other variables held constant. This rather skewed outcome is analyzed in the next chapter. It suggests, however, that the incentives for compensatory and punitive awards provided by the 1991 amendments, as well as the payoff in attorney's fees, may have encouraged the filing of a higher percentage of meritless cases as compared to the earlier period.

Table 4.10 also reveals that ideology, as determined by judges' DW-Nominate scores was not a significant predictor of individual judge voting choices, as the alpha level exceeded .05 (*p* = .105). Thus, a judges' score on this continuous measure of ideology was not a significant indicator of liberal-conservative voting in this group of cases when the other variables were held constant.

Moreover, this model revealed that judicial caseload did not attain the .05 alpha level of significance (Wald = 1.201, *df* = 1, *p* = .273). Thus, judicial caseload was not a significant predictor of individual judges' liberal-conservative voting choices with all other variables held constant. Similarly, plaintiffs' gender in the party of appointing president model failed to attain significance at the .05 alpha level as well. (Wald=.109, *df* = 1, *p* = .742). Thus, no differences in the voting propensities of courts of appeals judges were revealed between male and female African-American plaintiffs in these Title VII discrimination cases.

Table 4.10

Logit Analysis on the Odds of a Liberal Pro-Employee Voting in Race Discrimination Decisions Involving K-12 African-American Employees between 1964-2015 in United States Courts of Appeals as a Function of Ideology [DW], the1991 Title VII Amendments, Gender, and Caseload

Independent Variables	B (S.E.)	Wald	df	p	Exp (B)
Ideology [DW]	-.725 (.447)	2.628	1	.105	.484
After 1991	2.236 (.391)	32.647	1	.000	9.353
Caseload	.001 (.001)	1.201	1	.273	1.001
Plaintiffs' Gender	.100 (.303)	.169	1	.742	1.105
Constant	-2.949 (.760)	15.071	1	.000	.052

Summary

Descriptive analysis of voting in Title VII racial discrimination cases brought by African-American plaintiffs emanating from K-12 educational settings revealed that judges appointed by Democratic presidents voted liberally about 22.5% of the time, whereas judges appointed by Republicans voted liberally about 17% of the time, only about a 5% difference. When ideology was measured by DW-Nominate scores grouped below (0 to -1) and above (0 to.1) liberal-pro-employee voting occurred 22% of the time and 17% of the time, respectively. Thus, the results for these two ideology measures were quite similar.

Differences in the frequency of liberal voting occurred between the pre-1991 amendment period and that which occurred after the amendments. Before the 1991 amendments, 42% of the votes were liberal; however, after the 1991amendments, this dropped to 24%, an 18% reduction in liberal voting during a later period.

When examining voting patterns in cases brought by male and female plaintiffs, no obvious differences in outcomes appeared in the descriptive data. Claims brought by female plaintiffs had a 19% liberal-pro-employee outcome, while those brought by male plaintiffs had about a liberal-pro-employee result about 21% of the time. Descriptively, voting patterns based on judicial caseload revealed no obvious association with liberal and conservative voting.

When logistic regression analysis was set up with ideology [P-A-P], the 1991 Amendments, judicial caseload, and plaintiffs' gender as the predictors and liberal-conservative voting as the dependent measure, the model as a whole was significant (omnibus chi square = 49.116, $df = 4$, $p < .01$). This model accounted for between 13.5% and 21.4% of the variance, depending on whether the Cox & Snell or Nagelkerke measures of variance accounted for estimate were applied.

With this model, only the 1991 amendment variable attained significance. For the 1991 amendments variable, the results indicated that the odds of a liberal vote substantially diminished after the amendments. The odds of judges voting in a liberal-pro-employee direction were 9.3 times greater before the 1991 Title VII amendments than after their implementation with all other variables held constant. In the P-A-P model neither the ideology, caseload or gender variables reached the .05 alpha level of significance, and therefore, did not distinguish liberal-pro-employee from conservative pro-employer voting when all other variables were held constant.

When logistic regression analysis was set up with ideology measured by DW-Nominate scores, the 1991 Amendments, judicial caseload, and plaintiffs' gender as the predictors and liberal-conservative voting as the dependent variable, the model as a whole was significant (omnibus chi square = 51.313, $df = 4$, $p < .01$). This model accounted for between 14.0% and 22.3% of the variance, depending on whether the Cox & Snell or Nagelkerke measures of variance accounted for estimate were applied.

With this model, as with the P-A-P predictor, only the 1991 amendment variable attained significance. For the 1991 amendments variable, the results indicated that the odds of a liberal vote substantially diminished after the amendments. The odds of judges voting in a liberal-pro-employee direction were 9.4 times greater before the 1991 Title VII amendments than after their implementation with all other variables held constant. In the DW-Nominate model, neither the ideology, caseload, nor gender variables reached the .05 alpha level of significance, and therefore, they did not distinguish liberal-pro-employee from conservative pro-employer voting when all other variables were held constant.

In Chapter V these results are discussed and interpreted in terms of the research questions posed in the first chapter.

CHAPTER V

DISCUSSION

Introduction

This study investigated how effectively U.S. Courts of Appeals judges' political ideology, as measured by party of the appointing president or judges' DW-nominate scores; legal developments, as measured by the 1991 Amendments to Title VII of the Civil Rights Act of 1964; judicial caseload carried by courts of appeals three-judge panels; and plaintiffs' gender predict liberal-pro-employee and conservative-pro-employer voting in K-12 Title VII racial discrimination cases brought by African-American plaintiffs decided between 1964 and 2015. The study used logistic regression as its primary statistical tool. This chapter analyzes and discusses the descriptive and logistic regression results reported in Chapter IV. Each of the research questions posed in chapter I is addressed and answered considering the results reported in chapter IV.

Republican and Democratic appointees cast 31(17.3%) and 36 (22.5%) votes in a liberal (pro-employee) direction and 148 (82.7%) and 124 (77.5%) votes in a conservative (pro-employer) direction. The 5% difference in liberal and conservative voting based on party-of –the-appointing president did not suggest a significant relationship between P-A-P and liberal and conservative voting in this group of Title VII cases. This was confirmed in the logistic regression model using P-A-P, pre- and post-1991 Title VII amendments, judicial caseload and plaintiffs' gender as the predictor variables. Although the model as a whole was significant (omnibus chi square=49.190, $df = 4$. $p < .01$), P-A-P failed to distinguish liberal and conservative voting among the Democratic and Republican appointees (Wald=.556, $df = 1$. $p = .542$). This result is somewhat surprising since the literature regularly reports differences among Democratic and

Republican judicial appointees' voting in civil rights cases (Reeves, 2008; Sisk & Heise, 2012; Sunstein et al., 2003).

Since the cases selected for study here substantially narrowed the size of the database by limiting it to K-12 employment discrimination cases involving African-American plaintiffs, it is possible that expanding the database to include racial discrimination claims beyond those brought only by African-American plaintiffs would have revealed ideological differences in voting between the two political groups' appointees which did not appear in this population of cases. Since this researcher's principal interest is on educational settings, another way to expand the database would be to include higher education cases where Title VII racial discrimination claims were decided.

Of the total 339 votes examined, 177 (52%) were from judges with a DW score above "0," which places them on the conservative end of the spectrum, and 162 (48%) were from judges with a DW score below "0," thereby falling onto the liberal end of the spectrum. The results show that when all votes were included in the analysis, judges voted liberally-pro-employee only about 19.8% of the time. Judges whose DW scores that were above the zero-point voted liberally-pro-employee 17% of the time, while judges whose DW scores fell below the zero-point voted liberally 22% of the time, a difference of 5%. This result closely paralleled the pattern for the party-of-appointing president variable, and did not appear to be statistically significant.

This was confirmed in the logistic regression model using DW-Nominate scores, pre- and post-1991 Title VII amendments, judicial caseload, and plaintiffs' gender as the predictor variables. The model as a whole was significant (omnibus chi square=51.313, $df = 4$. $p < .01$); it

accounted for 14% and 23% of the variance in voting using the Cox & Snell and Nagelkerke statistics respectively.

Although offering a slight improvement over P-A-P, the DW-Nominate scores failed to distinguish liberal and conservative voting among this group of circuit court judges at the .05 alpha level (Wald = 2.628, $df = 1$. $p = .105$). As with the P-A-P model, this result is somewhat surprising since DW is generally considered a more nuanced measure of ideology, and civil rights cases are the types of controversies where ideological differences in voting might be expected to appear (Poole & Rosenthal, 2001). As with the P-A-P modeling, expanding the database vertically to include higher education cases as well as broadening the racial representation in the model might result in finding significance for the DW ideology measure as a predictor of liberal-conservative voting in Title VII race discrimination cases.

Of the total 339 votes, 93 (27%) were from cases decided prior to the 1991 amendments, and 246 (73%) were from cases decided after the 1991 amendments. Thus, the number of votes cast after the amendments (1991-2015), a period of about 24 years, more than doubled compared to the earlier period (1964-2014), a time frame encompassing about 50 years. Compared to the earlier period during which about 31 decisions were made, 82 were rendered after the 1991 amendments. This data strongly suggests that changes wrought by the 1991 Title VII amendments provided strong incentives for plaintiffs and their attorneys to bring racial discrimination claims (Van Detta, 2015). The possibility of receiving both compensatory and punitive damages awards for intentional discrimination coupled with attorneys' fees appears to be a very likely explanation for this result (Farhang, 2009). If anything, the result here probably underestimates the effect of the 1991 amendments, since it might be expected that overt racial discrimination in the workplace would have been reduced since the enactment of the 1964 Act;

public education about discrimination law, changes in public attitudes about discriminatory practices, and a generally more tolerant society might be expected to have a moderating effect on the number of cases filed.

Examination of thepost-1991 voting revealed that 24% of the 246 votes were liberal-pro-employee. During the pre-1991 period 45% of the 93 votes were liberal-pro-employee, a difference of 21% between the two periods. This lopsided outcome attained significance in both the P-A-P and DW-Nominate models.

In the P-A-P model where the 1991 Amendments variable was run concurrently with the caseload and plaintiff gender predictors, the regression model estimates indicated that the odds of judges voting in a liberal/pro-employee direction were 9.3 times greater before the 1991 Title VII amendments became effective than thereafter, with all other variables held constant. This result strongly suggests that the incentives for compensatory and punitive awards provided by the 1991 amendments, as well as the payoff in attorneys' fees, encouraged the filing of many more meritless cases after the amendments became effective. This result may also explain why significant differences in liberal-conservative voting among Democratic and Republican appointees disappeared: the volume of obviously meritless cases was so overwhelming that differences between P-A-P groups (which typically appear in civil rights cases) when the merits of claims were more balanced, disappeared.

In the DW-Nominate model, which also ran judicial caseload and plaintiffs' gender along with the 1991 amendments as predictors, the results were similar to the P-A-P model. The odds of judges voting in a liberal/pro-employee direction were 9.4 times greater before the 1991 Title VII amendments became effective than thereafter, with all other variables held constant. This again strongly supports the conclusion that the incentives for compensatory and punitive awards

provided by the 1991 amendments, as well as the payoff in attorneys', fees may have encouraged the filing of a higher percentage of meritless cases as compared to the earlier period.

As with P-A-P, this skewed result may explain as well why DW-Nominate scores were not a significant predictor of liberal-conservative voting: there were so many glaringly frivolous cases adjudicated by the courts of appeals that distinctions between judges with conservative and liberal dispositions were wiped out; no matter what their inclinations, judges agreed about the weakness of the cases in which they ruled in favor of the employer. In sum judges' ideology in both models (P-A-P and DW score) failed to distinguish their liberal-conservative voting: ideology was over shadowed by the powerful effects of the Title VII 1991 amendments

When the logistic regression equations simultaneously ran the ideology, judicial caseload, 1991 Amendments, plaintiffs' gender as predictors, the caseload variable failed to reach the .05 alpha level in either the P-A-P (Wald = .556, $df = 1$, $p = .452$) nor DW-Nominate models (Wald = 2.26, $df = 1$, $p = .105$) with all other variables held constant. Thus, Reeves's (2008) Prophylactic Jurisprudence Theory that increasing caseloads would result in reduced success for Title VII employment discrimination plaintiffs was not substantiated for this group of cases. It might be the case that if the databases were expanded to include higher education cases and a greater variety of plaintiffs claiming racial discrimination, the results would be different. That said, there is reason to believe that the driving force behind the liberal-conservative voting in this group of cases had more to do with legal factors, that is, the weakness of the claims, than non-legal considerations such as judicial caseloads. This is evident from the very large effect sizes associated with the 1991 Amendments variable in the P-A-P and DW-Nominate models and the failure of the other indicators to predict voting in this group of cases when all other variables were held constant.

When the logistic regression equations simultaneously ran the ideology, plaintiff gender, 1991 amendments, and judicial caseload as predictors plaintiffs' gender failed to reach the .05 alpha level of significance in either the P-A-P (Wald=.169, $df = 1$, $p = .681$) or DW-Nominate models (Wald = .100, $df = 1$, $p = .742$). It is therefore difficult to conclude that plaintiffs' gender affected judges voting in this group of Title VII cases. Again, the overwhelming number of post-1991 cases which lacked merit may have affected this result.

Overview

When Congress enacted the Civil Rights Act of 1991, it included several amendments which it believed would improve chances of attaining the salutary purposes of Title VII. The amendments changed the procedures for adjudicating claims, the remedies that would be available to the plaintiff if s/he won the case, as well as financial incentives to the lawyers and other experts involved in the litigation (Farhang, 2009). Additionally, plaintiffs were now entitled to a jury trial, rather than just a bench trial (Van Detta, 2015). Prior to 1991, 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. However, after the 1991 amendments, the plaintiff would now be eligible for compensatory damages for pain and suffering, as well as economic losses that resulted from 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). The increase in filing of Title VII discrimination cases because of this 1991 amendment has apparently led to a substantial increase in meritless cases, which led to a drastic increase in courts granting summary judgement to the defendants.

Implications

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, 3) the caseload of judges, and 4) plaintiff's gender, on cases involving African-AmericanK-12 employees between 1964-2015 in United States Courts of Appeals, using multiple logistic regression as its main statistical tool.

The principal findings for this group of Title VII K-12 decisions brought by African-American plaintiffs are: 1) Ideology, as determined by party-of -appointing president, is not an effective predictor of judges' voting at the U.S. Courts of Appeals. 2) Court of Appeals judges' DW-Nominate scores is not an effective predictor of their voting; 3) Whether a decision 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. 4) Caseload was an insignificant predictor when all variables in either the P-A-P or DW-Nominate models were held constant. (5) Plaintiff's gender was not an effective predictor in Court of Appeals judges' individual voting habits.

This study contributed to the research to help fill the gap in the literature concerning Court of Appeals judicial voting in Title VII cases. This subject area and extends 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 as measured by party-of –the- appointing-president and judges' DW nominate scores; prior to the 1991 amendments to the Civil Rights Act of 1964; the effects of judicial

caseload; and plaintiff's gender, on judges' liberal and conservative voting in cases involving African-American race-based K-12 employment discrimination under Title VII.

The most significant limitation to this study is the low number of cases within the selected data bases. Such expansion might be accomplished by studying higher education and K-12 cases in the same database, and broadening the database to include all racial claims, not just those filed by African-American plaintiffs. By expanding the database, the results could caseload and plaintiff gender effects not shown in this investigation, but especially those triggered by judicial ideology.

A second limitation is the fact that this study did not differentiate between discrimination claims arising in connection with administrative positions and those occurring with staff and teaching positions. It is certainly possible that racial and gender stereotypes might influence courts of appeals judges' voting in a way which this study's design did not consider. Thus, the hierarchal placement of the position involved in Title VII discrimination claims might produce different results.

Suggestions for Future Research

Independent from judicial behavior is the more general question as to whether male and female African-American educators are treated differently in the workplace, especially in connection with promotional opportunities, for example. According to the Bureau of Labor Statistics, U.S. Department of Labor (2015), educational administration is a female dominated industry, with females consisting of 65.7% of the population. Thus, consistent with theories about male minority stereotyping in positions of authority by social scientists like Lacy (2007), Sidanius, (2001), Pratto and Espinoza (2001), studies might be pursued to ascertain whether

obstacles exist which interfere with advancement of African-American males, which did not manifest itself in this study.

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Appendix A

U.S. Court of Appeals African-American Title VII Cases in K-12 Education (1964-2015)

Case	Citation #	Date of Decision	Plaintiff Gender
Amie v. El Paso Independent School Dist.	253 Fed.Appx. 447	2-Nov-11	m
Amie v. El Paso Independent School Dist.	253 Fed.Appx. 447	2-Nov-11	m
Amie v. El Paso Independent School Dist.	253 Fed.Appx. 447	2-Nov-11	m
Brown v. School Bd. of Orange County, Florida	459 Fed.Appx. 817	29-May-15	m
Brown v. School Bd. of Orange County, Florida	459 Fed.Appx. 817	29-May-15	m
Brown v. School Bd. of Orange County, Florida	459 Fed.Appx. 817	29-May-15	m
Brown v. Unified School Dist. No. 501	459 Fed.Appx. 705	8-Dec-09	m
Brown v. Unified School Dist. No. 501	459 Fed.Appx. 705	8-Dec-09	m
Brown v. Unified School Dist. No. 501	459 Fed.Appx. 705	8-Dec-09	m
Davis v. Dallas Independent School Dist.	448 Fed.Appx. 485	28-Jun-16	m
Davis v. Dallas Independent School Dist.	448 Fed.Appx. 485	28-Jun-16	m
Davis v. Dallas Independent School Dist.	448 Fed.Appx. 485	28-Jun-16	m
Desir v. City of New York	453 Fed.Appx. 30	15-Jun-15	m
Desir v. City of New York	453 Fed.Appx. 30	15-Jun-15	m
Desir v. City of New York	453 Fed.Appx. 30	15-Jun-15	m
Dominick v. Daste	129 F.3d 608	5-Nov-14	m
Dominick v. Daste	129 F.3d 608	5-Nov-14	m
Dominick v. Daste	129 F.3d 608	5-Nov-14	m
Freeman v. Oakland Unified School Dist.	291 F.3d 632	27-Aug-09	m
Freeman v. Oakland Unified School Dist.	291 F.3d 632	27-Aug-09	m
Freeman v. Oakland Unified School Dist.	291 F.3d 632	27-Aug-09	m
Green v. Los Angeles County Superintendent of Schools	883 F.2d 1472	14-Feb-08	m
Green v. Los Angeles County Superintendent of Schools	883 F.2d 1472	14-Feb-08	m
Green v. Los Angeles County Superintendent of Schools	883 F.2d 1472	14-Feb-08	m
Grey v. Dallas Independent School Dist.	265 Fed.Appx. 342	13-Apr-07	m

Grey v. Dallas Independent School Dist.	265 Fed.Appx. 342	13-Apr-07	m
Grey v. Dallas Independent School Dist.	265 Fed.Appx. 342	13-Apr-07	m
Hodge v. Oakland Unified School Dist.	555 Fed.Appx. 726	7-Feb-00	m
Hodge v. Oakland Unified School Dist.	555 Fed.Appx. 726	7-Feb-00	m
Hodge v. Oakland Unified School Dist.	555 Fed.Appx. 726	7-Feb-00	m
Hutchens v. Chicago Bd. of Educ.	781 F.3d 366	19-Nov-97	m
Hutchens v. Chicago Bd. of Educ.	781 F.3d 366	19-Nov-97	m
Hutchens v. Chicago Bd. of Educ.	781 F.3d 366	19-Nov-97	m
Irwin v. Miami-Dade County Public Schools	398 Fed.Appx. 503	7-Mar-96	m
Irwin v. Miami-Dade County Public Schools	398 Fed.Appx. 503	7-Mar-96	m
Irwin v. Miami-Dade County Public Schools	398 Fed.Appx. 503	7-Mar-96	m
Jackson v. Board of Education, Peoria School District No. 150	67 Fed.Appx. 375	14-Sep-95	m
Jackson v. Board of Education, Peoria School District No. 150	67 Fed.Appx. 375	14-Sep-95	m
Jackson v. Board of Education, Peoria School District No. 150	67 Fed.Appx. 375	14-Sep-95	m
Jackson v. Frisco Independent School Dist.	789 F.3d 589	15-Mar-93	m
Jackson v. Frisco Independent School Dist.	789 F.3d 589	15-Mar-93	m
Jackson v. Frisco Independent School Dist.	789 F.3d 589	15-Mar-93	m
McDaniel v. Temple Independent School Dist.	770 F.2d 1340	13-Sep-06	m
McDaniel v. Temple Independent School Dist.	770 F.2d 1340	13-Sep-06	m
McDaniel v. Temple Independent School Dist.	770 F.2d 1340	13-Sep-06	m
Moore v. Forrest City School Dist.	524 F.3d 879	29-May-98	m
Moore v. Forrest City School Dist.	524 F.3d 879	29-May-98	m
Moore v. Forrest City School Dist.	524 F.3d 879	29-May-98	m
Patton v. Indianapolis Public School Bd.	276 F.3d 334	4-Dec-08	m
Patton v. Indianapolis Public School Bd.	276 F.3d 334	4-Dec-08	m
Patton v. Indianapolis Public School Bd.	276 F.3d 334	4-Dec-08	m
Riley v. School Bd. Union Parish	379 Fed.Appx. 335	10-Jun-97	m
Riley v. School Bd. Union Parish	379 Fed.Appx. 335	10-Jun-97	m

Riley v. School Bd. Union Parish	379 Fed.Appx. 335	10-Jun-97	m
Smith vs Houston ISD	WL 4073302	1-Feb-12	m
Smith vs Houston ISD	WL 4073302	1-Feb-12	m
Smith vs Houston ISD	WL 4073302	1-Feb-12	m
White v. South Park Independent School Dist.	693 F.2d 1163	28-Feb-12	m
White v. South Park Independent School Dist.	693 F.2d 1163	28-Feb-12	m
White v. South Park Independent School Dist.	693 F.2d 1163	28-Feb-12	m
Griffin v. Kennard Independent School Dist.	567 Fed.Appx. 293 (Mem)	4-Oct-10	m
Griffin v. Kennard Independent School Dist.	567 Fed.Appx. 293 (Mem)	4-Oct-10	m
Griffin v. Kennard Independent School Dist.	567 Fed.Appx. 293 (Mem)	4-Oct-10	m
McCormick v. Attala County Bd. of Ed.	541 F.2d 1094	14-Sep-06	m
McCormick v. Attala County Bd. of Ed.	541 F.2d 1094	14-Sep-06	m
McCormick v. Attala County Bd. of Ed.	541 F.2d 1094	14-Sep-06	m
Palmer v. Stewart County School Dist.	178 Fed.Appx. 999	30-Sep-05	m
Palmer v. Stewart County School Dist.	178 Fed.Appx. 999	30-Sep-05	m
Palmer v. Stewart County School Dist.	178 Fed.Appx. 999	30-Sep-05	m
Jones v. Birdsong	679 F.2d 24	9-Jun-83	m
Jones v. Birdsong	679 F.2d 24	9-Jun-83	m
Jones v. Birdsong	679 F.2d 24	9-Jun-83	m
Jones v. Orleans Parish School Bd.	688 F.2d 342	20-Dec-82	m
Jones v. Orleans Parish School Bd.	688 F.2d 342	20-Dec-82	m
Jones v. Orleans Parish School Bd.	688 F.2d 342	20-Dec-82	m
Jones v. School Dist. of Philadelphia	198 F.3d 403	4-Oct-82	m
Jones v. School Dist. of Philadelphia	198 F.3d 403	4-Oct-82	m
Jones v. School Dist. of Philadelphia	198 F.3d 403	4-Oct-82	m
Konits v. Valley Stream Cent. High School Dist.	394 F.3d 121	5-Oct-81	m
Konits v. Valley Stream Cent. High School Dist.	394 F.3d 121	5-Oct-81	m
Konits v. Valley Stream Cent. High School Dist.	394 F.3d 121	5-Oct-81	m

Koszola v. Board of Educ. of City of Chicago	385 F.3d 1104	13-May-81	m
Koszola v. Board of Educ. of City of Chicago	385 F.3d 1104	13-May-81	m
Koszola v. Board of Educ. of City of Chicago	385 F.3d 1104	13-May-81	m
Lujan v. Franklin County Bd. of Educ.	766 F.2d 917	17-Jun-85	m
Lujan v. Franklin County Bd. of Educ.	766 F.2d 917	17-Jun-85	m
Lujan v. Franklin County Bd. of Educ.	766 F.2d 917	17-Jun-85	m
Shumate v. Selma City Bd. of Educ.	581 Fed.Appx. 740	9-Sep-87	m
Shumate v. Selma City Bd. of Educ.	581 Fed.Appx. 740	9-Sep-87	m
Shumate v. Selma City Bd. of Educ.	581 Fed.Appx. 740	9-Sep-87	m
Silvera v. Orange County School Bd.	244 F.3d 1253	2-Dec-86	m
Silvera v. Orange County School Bd.	244 F.3d 1253	2-Dec-86	m
Silvera v. Orange County School Bd.	244 F.3d 1253	2-Dec-86	m
U.S. v. Hazelwood School Dist.	534 F.2d 805	30-May-86	m
Walker v. Fulton County School Dist.	624 Fed.Appx. 683	11-Dec-85	m
Walker v. Fulton County School Dist.	624 Fed.Appx. 683	11-Dec-85	m
Woods v. Central Fellowship Christian Academy	545 Fed.Appx. 939	22-Aug-83	m
Woods v. Central Fellowship Christian Academy	545 Fed.Appx. 939	22-Aug-83	m
Woods v. Central Fellowship Christian Academy	545 Fed.Appx. 939	22-Aug-83	m
Adams v. Cobb County School Dist.	242 Fed.Appx. 616	19-Mar-99	m
Adams v. Cobb County School Dist.	242 Fed.Appx. 616	19-Mar-99	m
Adams v. Cobb County School Dist.	242 Fed.Appx. 616	19-Mar-99	m
Alexander v. Brookhaven School Dist.	428 Fed.Appx. 303	3-Feb-97	m
Alexander v. Brookhaven School Dist.	428 Fed.Appx. 303	3-Feb-97	m
Alexander v. Brookhaven School Dist.	428 Fed.Appx. 303	3-Feb-97	m
Anderson v. Clovis Mun. Schools	265 Fed.Appx. 699	4-Jun-10	m
Anderson v. Clovis Mun. Schools	265 Fed.Appx. 699	4-Jun-10	m
Anderson v. Clovis Mun. Schools	265 Fed.Appx. 699	4-Jun-10	m
Brewer v. Muscle Shoals Bd. of Educ.	790 F.2d 1515	13-Jul-16	m
Brewer v. Muscle Shoals Bd. of Educ.	790 F.2d 1515	13-Jul-16	m
Brewer v. Muscle Shoals Bd. of Educ.	790 F.2d 1515	13-Jul-16	m
Carlisle v. Phenix City Bd. of Educ.	849 F.2d 1376	10-Dec-99	m
Carlisle v. Phenix City Bd. of Educ.	849 F.2d 1376	10-Dec-99	m

Carlisle v. Phenix City Bd. of Educ.	849 F.2d 1376	10-Dec-99	m
Hardy v. Simpson County School Dist.	209 F.3d 719 (Table)	24-Aug-06	m
Hardy v. Simpson County School Dist.	209 F.3d 719 (Table)	24-Aug-06	m
Hardy v. Simpson County School Dist.	209 F.3d 719 (Table)	24-Aug-06	m
Hervey v. Mississippi Dept. of Educ.	404 Fed.Appx. 865	17-Sep-02	m
Hervey v. Mississippi Dept. of Educ.	404 Fed.Appx. 865	17-Sep-02	m
Hervey v. Mississippi Dept. of Educ.	404 Fed.Appx. 865	17-Sep-02	m
Houston v. Easton Area School Dist.	355 Fed.Appx. 651	29-Jun-99	m
Houston v. Easton Area School Dist.	355 Fed.Appx. 651	29-Jun-99	m
Houston v. Easton Area School Dist.	355 Fed.Appx. 651	29-Jun-99	m
Mitchell v. Office of Los Angeles County Superintendent of Schools	805 F.2d 844	26-Apr-01	m
Mitchell v. Office of Los Angeles County Superintendent of Schools	805 F.2d 844	26-Apr-01	m
Mitchell v. Office of Los Angeles County Superintendent of Schools	805 F.2d 844	26-Apr-01	m
Walker v. Hitchcock Independent School Dist.	508 Fed.Appx. 314 (Table)	26-Nov-13	m
Walker v. Hitchcock Independent School Dist.	508 Fed.Appx. 314 (Table)	26-Nov-13	m
Walker v. Hitchcock Independent School Dist.	508 Fed.Appx. 314 (Table)	26-Nov-13	m
Keyser v. Sacramento City Unified School Dist.	238 F.3d 1132	15-Jun-07	m
Keyser v. Sacramento City Unified School Dist.	238 F.3d 1132	15-Jun-07	m
Keyser v. Sacramento City Unified School Dist.	238 F.3d 1132	15-Jun-07	m
Roque v. Natchitoches Parish School Bd.	583 Fed.Appx. 466 (Mem)	20-Mar-01	m
Roque v. Natchitoches Parish School Bd.	583 Fed.Appx. 466 (Mem)	20-Mar-01	m
Roque v. Natchitoches Parish School Bd.	583 Fed.Appx. 466 (Mem)	20-Mar-01	m
Stallworth v. Shuler	777 F.2d 1431	20-Nov-96	m
Stallworth v. Shuler	777 F.2d 1431	20-Nov-96	m
Stallworth v. Shuler	777 F.2d 1431	20-Nov-96	m
Cousin v. Board of Trustees of Houston Municipal Separate School Dist.	661 F.2d 377	14-Nov-83	m

Cousin v. Board of Trustees of Houston Municipal Separate School Dist.	661 F.2d 377	14-Nov-83	m
Cousin v. Board of Trustees of Houston Municipal Separate School Dist.	661 F.2d 377	14-Nov-83	m
Crim v. Board of Educ. of Cairo School Dist. No. 1	147 F.3d 535	27-Jul-82	m
Crim v. Board of Educ. of Cairo School Dist. No. 1	147 F.3d 535	27-Jul-82	m
Crim v. Board of Educ. of Cairo School Dist. No. 1	147 F.3d 535	27-Jul-82	m
Jett v. Dallas Independent School Dist.	798 F.2d 748	27-Aug-86	m
Jett v. Dallas Independent School Dist.	798 F.2d 748	27-Aug-86	m
Jett v. Dallas Independent School Dist.	798 F.2d 748	27-Aug-86	m
Knighton v. Laurens County School Dist. No. 56	721 F.2d 976	13-Nov-81	m
Knighton v. Laurens County School Dist. No. 56	721 F.2d 976	13-Nov-81	m
Knighton v. Laurens County School Dist. No. 56	721 F.2d 976	13-Nov-81	m
Lawrence v. East Baton Rouge Parish School Bd.	185 Fed.Appx. 406	11-Dec-78	m
Lawrence v. East Baton Rouge Parish School Bd.	185 Fed.Appx. 406	11-Dec-78	m
Lawrence v. East Baton Rouge Parish School Bd.	185 Fed.Appx. 406	11-Dec-78	m
Townsend-Johnson v. Rio Rancho Public Schools	568 Fed.Appx. 542	20-Jul-88	m
Townsend-Johnson v. Rio Rancho Public Schools	568 Fed.Appx. 542	20-Jul-88	m
Townsend-Johnson v. Rio Rancho Public Schools	568 Fed.Appx. 542	20-Jul-88	m
Woods v. Newburgh Enlarged City School Dist.	288 Fed.Appx. 757	15-Oct-82	m
Woods v. Newburgh Enlarged City School Dist.	288 Fed.Appx. 757	15-Oct-82	m
Woods v. Newburgh Enlarged City School Dist.	288 Fed.Appx. 757	15-Oct-82	m

Woods v. Sheldon Independent School Dist.	232 Fed.Appx. 385	1-Sep-82	m
Woods v. Sheldon Independent School Dist.	232 Fed.Appx. 385	1-Sep-82	m
Woods v. Sheldon Independent School Dist.	232 Fed.Appx. 385	1-Sep-82	m
Anderson v. Boston School Committee	105 F.3d 762	9-Sep-11	f
Anderson v. Boston School Committee	105 F.3d 762	9-Sep-11	f
Anderson v. Boston School Committee	105 F.3d 762	9-Sep-11	f
Arnolie v. Orleans School Bd.	48 Fed.Appx. 917	12-Aug-08	f
Arnolie v. Orleans School Bd.	48 Fed.Appx. 917	12-Aug-08	f
Arnolie v. Orleans School Bd.	48 Fed.Appx. 917	12-Aug-08	f
Baldwin v. Birmingham Bd. of Ed.	648 F.2d 950	7-Jan-05	f
Baldwin v. Birmingham Bd. of Ed.	648 F.2d 950	7-Jan-05	f
Baldwin v. Birmingham Bd. of Ed.	648 F.2d 950	7-Jan-05	f
Bolton v. Baldwin County Public Schools	627 Fed.Appx. 800	8-Mar-95	f
Bolton v. Baldwin County Public Schools	627 Fed.Appx. 800	8-Mar-95	f
Bolton v. Baldwin County Public Schools	627 Fed.Appx. 800	8-Mar-95	f
Brown v. Stafford County Public Schools	151 F.3d 1028	21-Apr-15	f
Brown v. Stafford County Public Schools	151 F.3d 1028	21-Apr-15	f
Brown v. Stafford County Public Schools	151 F.3d 1028	21-Apr-15	f
Brown v. T H Harris Vocational/Technical School	132 F.3d 1455	23-May-11	f
Brown v. T H Harris Vocational/Technical School	132 F.3d 1455	23-May-11	f
Brown v. T H Harris Vocational/Technical School	132 F.3d 1455	23-May-11	f
Davenport v. Riverview Gardens School Dist.	30 F.3d 940	29-Jul-16	f
Davenport v. Riverview Gardens School Dist.	30 F.3d 940	29-Jul-16	f
Davenport v. Riverview Gardens School Dist.	30 F.3d 940	29-Jul-16	f
Edwards v. Gladewater Independent School Dist.	572 F.2d 496	13-May-14	f
Edwards v. Gladewater Independent School Dist.	572 F.2d 496	13-May-14	f

Edwards v. Gladewater Independent School Dist.	572 F.2d 496	13-May-14	f
Evans v. Syracuse City School Dist.	704 F.2d 44	4-Nov-11	f
Evans v. Syracuse City School Dist.	704 F.2d 44	4-Nov-11	f
Evans v. Syracuse City School Dist.	704 F.2d 44	4-Nov-11	f
Faragalla v. Douglas County School Dist. RE 1	411 Fed.Appx. 140	8-Jun-11	f
Faragalla v. Douglas County School Dist. RE 1	411 Fed.Appx. 140	8-Jun-11	f
Faragalla v. Douglas County School Dist. RE 1	411 Fed.Appx. 140	8-Jun-11	f
Flowers v. Troup County, Ga., School Dist.	803 F.3d 1327	13-Dec-10	f
Flowers v. Troup County, Ga., School Dist.	803 F.3d 1327	13-Dec-10	f
Flowers v. Troup County, Ga., School Dist.	803 F.3d 1327	13-Dec-10	f
Garrett v. Judson Independent School Dist.	299 Fed.Appx. 337	23-Apr-09	f
Garrett v. Judson Independent School Dist.	299 Fed.Appx. 337	23-Apr-09	f
Garrett v. Judson Independent School Dist.	299 Fed.Appx. 337	23-Apr-09	f
Gray v. Vestavia Hills Bd. of Educ.	317 Fed.Appx. 898	10-Nov-08	f
Gray v. Vestavia Hills Bd. of Educ.	317 Fed.Appx. 898	10-Nov-08	f
Gray v. Vestavia Hills Bd. of Educ.	317 Fed.Appx. 898	10-Nov-08	f
Greer v. Board of Educ. of City of Chicago, Ill.	267 F.3d 723	8-Nov-07	f
Greer v. Board of Educ. of City of Chicago, Ill.	267 F.3d 723	8-Nov-07	f
Greer v. Board of Educ. of City of Chicago, Ill.	267 F.3d 723	8-Nov-07	f
Harris v. Birmingham Bd. of Educ.	712 F.2d 1377	21-Dec-05	f
Harris v. Birmingham Bd. of Educ.	712 F.2d 1377	21-Dec-05	f
Harris v. Birmingham Bd. of Educ.	712 F.2d 1377	21-Dec-05	f
Hatch v. Del Valle Independent School Dist.	496 Fed.Appx. 417 (Table)	9-Sep-03	f
Hatch v. Del Valle Independent School Dist.	496 Fed.Appx. 417 (Table)	9-Sep-03	f

Hatch v. Del Valle Independent School Dist.	496 Fed.Appx. 417 (Table)	9-Sep-03	f
Hill v. Clayton County School Dist.	619 Fed.Appx. 916	26-Sep-01	f
Hill v. Clayton County School Dist.	619 Fed.Appx. 916	26-Sep-01	f
Hill v. Clayton County School Dist.	619 Fed.Appx. 916	26-Sep-01	f
Hyland v. Smyrna School Dist.	608 Fed.Appx. 79	2-Oct-97	f
Hyland v. Smyrna School Dist.	608 Fed.Appx. 79	2-Oct-97	f
Hyland v. Smyrna School Dist.	608 Fed.Appx. 79	2-Oct-97	f
Marks v. St. Landry Parish School Bd.	75 Fed.Appx. 233	24-Mar-15	f
Marks v. St. Landry Parish School Bd.	75 Fed.Appx. 233	24-Mar-15	f
Marks v. St. Landry Parish School Bd.	75 Fed.Appx. 233	24-Mar-15	f
Miller v. Los Angeles County Bd. of Educ.	827 F.2d 617	4-Jan-02	f
Miller v. Los Angeles County Bd. of Educ.	827 F.2d 617	4-Jan-02	f
Miller v. Los Angeles County Bd. of Educ.	827 F.2d 617	4-Jan-02	f
Nash v. Palm Beach County School Dist.	469 Fed.Appx. 712	7-May-08	f
Nash v. Palm Beach County School Dist.	469 Fed.Appx. 712	7-May-08	f
Nash v. Palm Beach County School Dist.	469 Fed.Appx. 712	7-May-08	f
Parker v. State of Louisiana Dept. of Educ. Special School Dist.	323 Fed.Appx. 321	21-Feb-14	f
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Reynolds v. School Dist. No. 1, Denver, Colo.	69 F.3d 1523	7-Feb-01	f
Reynolds v. School Dist. No. 1, Denver, Colo.	69 F.3d 1523	7-Feb-01	f
Reynolds v. School Dist. No. 1, Denver, Colo.	69 F.3d 1523	7-Feb-01	f
Simmons v. Camden County Bd. of Educ.	757 F.2d 1187	11-Jun-14	f
Simmons v. Camden County Bd. of Educ.	757 F.2d 1187	11-Jun-14	f
Simmons v. Camden County Bd. of Educ.	757 F.2d 1187	11-Jun-14	f
Webb v. Round Rock Independent School Dist.	595 Fed.Appx. 301	10-May-13	f

Webb v. Round Rock Independent School Dist.	595 Fed.Appx. 301	10-May-13	f
Webb v. Round Rock Independent School Dist.	595 Fed.Appx. 301	10-May-13	f
White v. Department of Educ. of Baltimore County	803 F.2d 714	25-Sep-12	f
White v. Department of Educ. of Baltimore County	803 F.2d 714	25-Sep-12	f
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Mentor v. Hillside Bd. of Educ.	428 Fed.Appx. 221	12-Jan-06	f
Mentor v. Hillside Bd. of Educ.	428 Fed.Appx. 221	12-Jan-06	f
Mentor v. Hillside Bd. of Educ.	428 Fed.Appx. 221	12-Jan-06	f
Pittman v. Hattiesburg Municipal Separate School Dist.	644 F.2d 1071	18-May-01	f
Pittman v. Hattiesburg Municipal Separate School Dist.	644 F.2d 1071	18-May-01	f
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Bourne v. School Bd. of Broward County	508 Fed.Appx. 907 (Table)	25-Mar-83	f
Bourne v. School Bd. of Broward County	508 Fed.Appx. 907 (Table)	25-Mar-83	f
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Carmen v. San Francisco Unified School Dist.	237 F.3d 1026	17-Jul-84	f
Carmen v. San Francisco Unified School Dist.	237 F.3d 1026	17-Jul-84	f
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Conward v. Cambridge School Committee	171 F.3d 12	14-Oct-86	f
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Jackson v. Houston Independent School Dist.	189 F.3d 467	30-Aug-88	f
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Johnson v. Chapel Hill Independent School Dist.	853 F.2d 375	16-Sep-85	f
Johnson v. Chapel Hill Independent School Dist.	853 F.2d 375	16-Sep-85	f
Johnson v. Chapel Hill Independent School Dist.	853 F.2d 375	16-Sep-85	f
Joseph v. New York City Bd. of Educ.	171 F.3d 87	24-May-82	f
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Lee v. Russell County Bd. of Educ.	684 F.2d 769	19-Jun-78	f
Lee v. Russell County Bd. of Educ.	684 F.2d 769	19-Jun-78	f
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Lindsey v. Board of School Com'rs of Mobile County	491 Fed.Appx. 8 (Table)	4-May-78	f
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Love v. Alamance County Bd. of Educ.	757 F.2d 1504	4-Nov-76	f
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Rogers v. Pearland Independent School District	WL 3545991	30-Aug-89	f
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Allen v. Grenada Municipal Separate School Dist.	575 F.2d 486	21-Aug-12	f
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Barnes v. Simmons	198 Fed.Appx. 376	16-Mar-99	f
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Christian v. Cartersville City Schools Bd. of Educ.	167 Fed.Appx. 89	13-Nov-14	f
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Christian v. Cartersville City Schools Bd. of Educ.	167 Fed.Appx. 89	13-Nov-14	f
Dupre v. West Baton Rouge School Bd.	201 Fed.Appx. 218	15-Aug-14	f
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Dupre v. West Baton Rouge School Bd.	201 Fed.Appx. 218	15-Aug-14	f
Evans v. Harnett County Bd. of Educ.	684 F.2d 304	7-Nov-12	f
Evans v. Harnett County Bd. of Educ.	684 F.2d 304	7-Nov-12	f
Evans v. Harnett County Bd. of Educ.	684 F.2d 304	7-Nov-12	f
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Floyd v. Amite County School Dist.	581 F.3d 244	20-May-10	f
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Harrington v. Cleburne County Bd. of Educ.	251 F.3d 935	20-Jun-06	f
Harrington v. Cleburne County Bd. of Educ.	251 F.3d 935	20-Jun-06	f
Harrington v. Cleburne County Bd. of Educ.	251 F.3d 935	20-Jun-06	f
Harris v. Shelby County Bd. of Educ.	99 F.3d 1078	25-Jul-05	f
Harris v. Shelby County Bd. of Educ.	99 F.3d 1078	25-Jul-05	f
Harris v. Shelby County Bd. of Educ.	99 F.3d 1078	25-Jul-05	f
Hill v. Fort Bend Independent School Dist.	275 F.3d 42	7-Jun-01	f
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Pettis v. Nottoway County School Bd.	592 Fed.Appx. 158	13-Dec-05	f
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Todd v. Natchez-Adams School Dist.	160 Fed.Appx. 377	7-Aug-15	f
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McWilliams v. Escambia County School Bd.	658 F.2d 326	10-May-06	f
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Williams v. Tucson Unified School Dist.	316 Fed.Appx. 563	15-Apr-85	f
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Biographical Information

Prior to completing a Doctor of Philosophy in Educational Leadership and Policy Studies at the University of Texas at Arlington, Herman Jackson Jr. completed a Master of Education in Educational Leadership and Policy Studies at the University of Texas at Arlington, and a BS in Kinesiology with an emphasis in Athletic Training from California State University Northridge. Herman has earned educational teaching certificates in biology, physical education, composite science (8-12), a principal certification, as well as a superintendent certification. Among his 18 years in public education, and specific during his PhD attainment, Herman has focused on researching organizational systems development, leadership development, and instructional improvement in secondary education. During his tenure, Herman has worked as a science teacher, math teacher, football coach, track and field coach, assistant principal and a principal of a collegiate high school. He plans to continue his passion of improving public education as well as embark on a career in higher education as a lecturer in Educational Leadership, specifically principal development.