DIGITALCOMMONS
—@WAYNESTATE—

Wayne State University

Wayne State University Dissertations

1-1-2016

Modern-Day Judicial "politics": An Analysis Of Federal District Court Decision Making In Contemporary, Politically Divisive Issue Areas

Kyla Kristine Stepp
Wayne State University,

Follow this and additional works at: https://digitalcommons.wayne.edu/oa_dissertations

Part of the Law Commons, and the Political Science Commons

MODERN-DAY JUDICIAL "POLITICS": AN ANALYSIS OF FEDERAL DISTRICT COURT DECISION MAKING IN CONTEMPORARY, POLITICALLY DIVISIVE ISSUE AREAS

by

KYLA K. STEPP

DISSERTATION

Submitted to the Graduate School

of Wayne State University,

Detroit, Michigan

in partial fulfillment of the requirements

for the degree of

DOCTOR OF PHILOSOPHY

2016

MAJOR: POLITICAL SCIENCE

Approved By:

_____

Advisor   Date

_____

_____

_____

ACKNOWLEDGEMENTS

I would like to thank everyone for the various forms of love, support and assistance they gave me during this (long) process. Most importantly, I want to think my amazing kids, Cooper and Bailey, who not only gave me love and support throughout the entire process, but without whom my dissertation, degree, and life would have much less meaning. Thanks to Aaron for always encouraging me and for allowing me to quit one career in favor of a less lucrative, but infinitely less soul-crushing one. Thanks also to all those in my family who gave me time to write or advice or just encouragement along the way, especially Mom, Kim, and Becky, among others.

Dr. Ronald Brown was an invaluable help and an inspiring figure as my dissertation chair and advisor – thank you for all of your help and guidance. Thanks also to Jeff Grynaviski, Ewa Golebiowska, and Wassim Tarraf, my committee members, for their ideas, insights, and improvements to this dissertation. Lastly, I want to thank my friends, officemates, fellow GTAs, and other colleagues for their support over the last few years. Many of you allowed me to bounce ideas off of you and/or to vent about frustrations I faced, allowed me to share my excitement when things went well, and gave me encouragement when I needed it most. This includes many people, but in particular I want to thank Adam Uddin, Kim Saks-McManaway, and Rob Thompson for giving me needed insight into my research, theories, methods, and sometimes into myself as well.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

CHAPTER 1 – INTRODUCTION

On March 21, 2014, U.S. District Judge Bernard Friedman struck down Michigan's constitutional amendment banning gay marriage as a violation of the U.S. Constitution's 14th Amendment Equal Protection Clause[1]. Judge Friedman is known as a relatively conservative judge, as he was appointed to the bench by Ronald Reagan, and has consistently ruled in a conservative direction over the last 25 years. He was the original judge to strike down the University of Michigan Law School's Affirmative Action policy before that decision was ultimately reversed by the U.S. Supreme Court. Thus, some in the legal and political science communities were surprised when Judge Friedman released his 31-page, strongly worded ruling in favor of a "liberal" policy position – gay marriage. Speculation among legal scholars began immediately: Why did this judge make this particular decision? Are there significant influences beyond simple ideology that shape judicial decision making?

Brian Dickerson, a columnist for the Detroit Free Press, tells an interesting story of Judge Friedman's enduring friendship with a former law clerk and her family[2]. Judith Levy (now a U.S. District Judge herself, as of March 18, 2014) is a lesbian who was always open about her sexuality, even back in 1995 when she started clerking for Judge Friedman. She worked for him for several years and through two pregnancies, during which time she and the judge became close. They have stayed in touch over the years and maintained a professional relationship as well as a close friendship. In fact, Judith Levy's 15-year old twin daughters were in the courtroom during oral arguments for the gay marriage case,

---

[1] *DeBoer v. Snyder* (2014).
[2] Dickerson, Brian. March 23, 2014. "What Judge Friedman Learned About Gay Families from a Lesbian Law Clerk". The Detroit Free Press. Retrieved from http://www.freep.com/article/20140323/COL04/303230067/judge-bernard-friedman-gay-marriage-michigan

after which they had lunch with Judge Friedman in his chambers. Mr. Dickerson posits that Judge Friedman's longtime friendship with a lesbian, her partner, and their three children helped shape the way he looks at gay marriage and the issues involved in the case, including whether children are "harmed" when raised by a same-sex couple. It is also possible that Judge Friedman is aware of and considered the shift in public opinion regarding gay marriage, especially in Michigan, since the constitutional amendment was passed via voter referendum in 2004.

While we may never know exactly what was in Judge Friedman's head when he made his ruling, this case helps illustrate why we care about his (and other judges') decision making processes. Most importantly, the courts are central policy-making institutions. Legislatures and executive agencies are tasked with creating and implementing laws and policies, but courts often have (and exercise) the "final say" on most policy issues. Nary has an important constitutional issue arisen in the past 50-60 years that the federal courts have not tackled. This has been especially true in recent decades as the U.S. Supreme Court, as well as lower federal courts, have become more and more active in accepting political and otherwise salient cases to hear. With each decision interpreting a statute, regulation, or constitutional provision, judges shape the meaning of the law. It is the responsibility of the judiciary to interpret the meaning of new laws and to apply them to case-specific facts as part of the adversarial process. Further, courts must determine if statutes, regulations or state constitutional provisions are at odds with our nation's constitution.

A large and increasing ideological divide between the two major political parties in the United States has accompanied increasingly partisan behavior from public officials.

Whether this partisan behavior extends to members of the judiciary – the so-called "apolitical" and "neutral" branch of government – is an important question to consider. Judges are typically members of, or at least identify with, one of the political parties, and are certainly human beings with fully formed opinions, values, and policy preferences of their own. Scholars long ago abandoned the idea that legal considerations are the only factors that influence judicial decision making. Ideology, public opinion, demographics, and political considerations have all been found to influence certain types of judges in certain types of cases. Trying to understand these extralegal factors and the role they play in decision making is important if we want to understand why judges make the decisions they make and what it means for this "neutral" branch of government.

This large ideological divide has also resulted in increasingly polarized and mobilized issue-publics. Controversial topics such as gay marriage, gun control, and contraceptive coverage have politically polarized the mass public as well as elites. The debates over these issues have in turn mobilized supporters and opponents to file court cases challenging these and other highly politically charged policies. Many scholars argue that as one branch of our democratic system, courts should not act as countermajoritarian institutions. As public opinion on an important or controversial issue changes, courts should not stand in the way of the law changing with it. One only needs to look at the Supreme Court's decisions in *Plessy v. Ferguson* in 1896 and then *Brown v. Board of Education* almost 60 years later to understand the role that courts play in our system and the role that societal values play in constitutional interpretation. The federal judiciary is currently operating in more partisan and thus conflicting political environments, perhaps as a result of the mobilization of groups that are opposed to "old majority" preferences.

Thus, ideology and public opinion are two potentially important influences on judicial decision making, especially in cases involving important and controversial constitutional issues. My dissertation will examine the impact of these and other factors on the decision making processes of U.S. District Court judges. Little has been written about District Court judges as opposed to the large body of research on the U.S. Supreme Court and Circuit Courts of Appeals. However, a trend has emerged recently among political scientists in which we see scholars turning to the lower courts to further enhance our understanding of judicial decision making. The Michigan gay marriage case helps illustrate the importance of U.S. District Courts in our legal and political systems and how even the lowest level of the federal judiciary can create sweeping policy change and substantially impact the law and policy of a state. Consequently, it is important to understand the factors that influence district court judges' decision making, including both legal and extralegal factors.

At the district court level, the role of ideology has been studied relatively infrequently, and the role of public opinion not at all, despite the fact that public opinion is a very important aspect of both our political system and judiciary – the public participates in the system through elections, and even appointed judges are subject to a political process. Public opinion may also directly impact judges' decisions. The possible effects of public opinion on district courts, and the value of studying such effects, have been pointed out by multiple scholars studying the federal judiciary. Thus, for the reasons stated above, understanding the behavior of our nation's judicial branch is important, and examining various influences on judges helps us to understand judicial behavior beyond simply legal factors. Further, a comprehensive examination of U.S. District Courts will add to this

understanding overall and help to illuminate the primary influences on the largest level of federal judiciary.

Overview of the Literature & Theory

Scholars have spent a great deal of time studying why judges make the decisions they make. In Chapter 2, I will summarize the vast literature on judicial decision making, including the effects of legal factors, judicial ideology, strategy, and public opinion. I will also thoroughly examine the research to date on federal district courts in order to describe and analyze the gaps in this literature. Perhaps the biggest gap in the literature is that although studies have mentioned the importance of other extralegal factors, they are not often tested. Several studies that I found postulated that regional public opinion may play a role in district court decision making. As I discuss below, judicial scholars have found some influence of public opinion on the Supreme Court, both direct and indirect, and there is a good amount of literature on the Court as a (possible) countermajoritarian institution. I believe that public opinion has the potential to play an even larger role at the district court level for several reasons – district court judges are typically local; they have lived and practiced in the district, or at least the state, for their entire careers. They frequently socialize with other elites in the area, including mayors, commissioners, and other public officials and are often politically active. They are presumably aware of the opinion among both the mass public and elites in their states, at least in regard to salient and controversial issues. Additionally, they are single judges making decisions, so their behavior is not mitigated by potential panel effects. Examining the role of local public opinion on local courts is important to understand democracy at this level, as policymaking and implementation at the level closest to the people is the heart and soul of a republican form

of democracy. This is an especially critical topic lately, as increased policy diffusion has required state or local units of government to implement many federal policies and programs, often without sufficient federal dollars to do so.

Another problem encountered in the literature is that the vast majority of these studies use party of the appointing president as their measure of ideology. While this has been consistently seen as a valid enough measure, the more recent development and application of Keith Poole's Common Space scores to federal judges has given us a more accurate, while still imperfect, measure of ideology. Several scholars, most notably Epstein and colleagues (2007), have shown that Common Space scores are generally more reliable and accurate measures of judicial ideology than simply using party of the appointing president. I describe Common Space scores and what they represent more fully in Chapter 3.

A third gap in the literature is the lack of studies surrounding key contemporary constitutional issues. Political officials, and to some extent, our society, has become more polarized in recent years, especially surrounding certain types of issues. I want to capture the impact of judges' personal policy preferences on (as well as the impact of the mass public's policy preferences) on decisions in these highly ideological and polarizing issue areas. For this reason, among other reasons that I detail below, I chose gay rights, abortion, and affirmative action as my issue areas.

A final piece of the puzzle largely missing in the literature is the practical implication of extralegal factors' influence on judges. Legal scholars and practitioners likely want to know not only *which* variables affect decision making, but *how much* they affect it. An individual or group filing a gay rights case in district court may wish to understand

whether judicial ideology and other variables are significant predictors of judicial behavior, but they will be much more interested in just how likely they are to succeed when assigned a Republican-appointed judge versus a Democrat-appointed judge, or a female judge versus a male judge. In other words, it is important to determine the implications for our legal system overall as well as for the parties involved in litigation in the district courts.

In an effort to address these significant questions and gaps, my primary contribution to the decision making literature will consist of an analysis of both individual judicial ideology and state-level public opinion as possible determinants of judicial behavior at the district court level. To my knowledge, these two variables have rarely been studied together at the district court level, where each has the potential to play a significant role in the lower courts' decision making process. I will do so using the most recent developments in measures of ideology and state-level public opinion, and will examine cases involving contemporary, salient constitutional issues over a substantial time period, including very recent decisions.

My primary research questions center on these two variables but also examine the effect of other potential explanatory variables. I begin with a comprehensive analysis of which factors significantly impact federal district court judges' decision making. What kind of role does ideology play at the district court level, compared to the substantial role it often plays at the Supreme Court and Circuit Courts of Appeal levels? To what extent does local public opinion play a significant role in the decision making process, and does it mitigate the role of judicial ideology? Consistent with findings by other scholars regarding the impact of judicial ideology on decision making, I hypothesize that conservative judicial ideology will be positively and significantly correlated with conservative outcomes in

district court cases involving gay rights, abortion, and affirmative action issues (and vice versa). Beyond this initial hypothesis, my analysis is largely exploratory. I am interested in the greater theoretical question about the behavior of judges, and will use empirical evidence to help answer this question in regard to important contemporary constitutional issues.

Research Design & Methodology

As described above, I will examine the impact of various factors, most importantly ideology and public opinion, on the decision making processes of U.S. District Court judges. In order to differentiate between these potential factors, I will examine cases regarding three constitutional and highly salient issues –gay rights, abortion, and affirmative action. All of these topics can be framed as civil rights/equal protection issues (additionally, abortion and gay rights are also civil liberties issues). For each of them, there is consistent survey data over the last couple of decades, plenty of district court cases, and a clear ideological divide between conservatives and liberals. Additionally, I think they compare well to one another, as they are all issues that have been significant for the last few decades, each deals with a different "protected" or disadvantaged group (women, LGBT individuals, and African Americans), all have been a huge source of "elite" debate, and they have varying public opinion trends (opinion on abortion has remained relatively stable, support for affirmative action has trended downward, and support for gay rights has trended upward).

For each issue, I will analyze every District Court decision nationwide in these issue areas (gay rights, abortion, and affirmative action) over a 22-year time period (1991-2012). The decision in each case will be the dependent variable (pro-gay rights vs. anti-gay rights,

etc.). Using multivariate logistic regression, I can determine which factors are significantly associated with case outcomes. The primary independent variables will be the ideology of individual judges (measured both by Common Space scores and by party of the appointing president) and state-level public opinion on the three issue areas.

Since each federal district sits within a state's boundaries (and often cover an entire state), I will use the public opinion within the state where the judge sits as my public opinion variable. This will make my dissertation unique as studies on public opinion usually look at national data, instead of more difficult to obtain state-level data. To obtain enough public polling data at the state level for (theoretically) every state for multiple years will require one of two approaches that have been developed in the literature: disaggregation by state of national surveys, or multilevel regression and post stratification (MRP), a recently developed sophisticated modeling method. Both approaches are considered valid and each has its own benefits and drawbacks. Disaggregation is straightforward but requires a large number of national survey responses (for which the same or similar questions must have been asked). MRP is relatively sophisticated but requires many fewer survey responses, and it has been found to be more accurate overall than disaggregation (Lax and Phillips 2009). As described more fully in Chapter 3, I chose to utilize the MRP method to obtain the most accurate measurements of state-level opinion possible, and will generate this opinion over time in order to examine the dynamic nature of such opinion in the states and its relationship with case outcomes.

Other than my primary independent variables, I will include several additional independent and control variables. These will include individual-level variables about the judges themselves (gender, race, religion), regional location of the court (south vs. non-

south), state culture (based on Elazar's typology), legal factors, case-level variables, and strategy (ideology of the reviewing circuit court; difference between circuit court ideology and judge's ideology). In addition to their use as control variables, I am also interested in the independent and combined effect of these variables on decision making in these issue areas. I have listed my dependent and independent variables in the table below.

Table 1
Variables

Independent Variables	How Measured
Judge's Ideology	1. Common Space Score 2. Party of Appointing President
State Public Opinion	1. Level of support for issue (gay rights, abortion, affirmative action) 2. EWM's measure of State Liberalism (alternate measure) 3. Berry's measure of Citizen Ideology (alternate measure)
Judge's Gender	Male or Female
Judge's Race	White or Non-white
Judge's Religion	Catholic, Mainline Protestant, Other Christian, Jewish, or No Affiliation/Refuses to Answer
Region	South or Non-South
State Culture	Elazar's Typology
State Culture*State Opinion	Interaction Variable
Circuit Ideology	1. Party of Appointing President of Majority 2. Median Common Space Score of the Circuit
Circuit Difference	1. Judge's Party of Appt. Pres. matches that of Circuit or Not 2. Judge's CS Score – Median CS Score of Circuit
Judge's Ideology*Circuit Diff.	Interaction Variable (alternate measure)
Case Type	Major issue presented
Remanded Case	Yes or No
Decision on Facts or Law	Facts or Law or Mixed
Dependent Variable	
Case Outcome	Binary – either in support of or opposition to issue

My research design faces several limitations. First, since I am looking at just three issue areas, the findings will not be as generalizable to district court decision making as the studies that examine every district court decision in every issue area. However, by

choosing politically charged and salient constitutional issues involving civil liberties or civil rights, I believe that the results will not be "watered down" by cases involving every possible litigable issue covering multiple political periods. The results will also be more generalizable than the majority of district court studies that examine only one issue area.

The second major limitation of my design is the difficulty in assessing causation. I may find a correlation between one or more variables and case outcomes, however, it is impossible to rule out all other alternative explanatory variables, especially legal factors. However, this is a widely recognized problem with any study of judicial decision making, and the accepted answer in the literature is to look for and analyze associations between variables; a conclusion that one or more variables actually caused an outcome in a case is unnecessary.

A third major limitation is the use of state-level public opinion data for districts that compose only a portion of a state. Approximately half of the states have more than one district court. The public opinion of a state (as measured by polls) may not be the same as the public opinion of a district that covers only half of a state. However, there is no way to disaggregate the data along district court lines. Further, while district court judges normally come from the same state where they sit as judges, they may not be from within that district's boundaries. They are likely to be well aware of the statewide opinion on these types of issues, as statewide polling numbers are typically the ones released. Therefore, any consideration of public opinion by a judge when making a decision may very well take into account state public opinion regardless of whether his or her district comprises only a portion of that state.

Chapter Outline

The remainder of the chapters will unfold as follows: Chapter 2 provides an in-depth literature review of each topic of interest and each body of literature I pull from, including judicial decision making generally, decision making in district courts and the role of public opinion in the judiciary. Chapter 2 also sets forth my theory, hypotheses, and how I expect to contribute to the judicial decision making literature. Chapter 3 details my methods for answering my research questions and testing my hypotheses. It sets forth my research design, including my choice of issue areas, collection of data, variables included in the data set, statistical methods, and descriptions of the compiled data.

My empirical findings and analysis can be found in Chapters 4 and 5. Chapter 4 provides rich descriptive analysis of the data itself to help readers get a handle on the variables, what they mean, and how trends over time may impact the results. Chapter 4 also includes some preliminary basic statistical analyses of the data before turning to multivariate regression analysis in Chapter 5. Chapter 5 describes the findings for each of the issue areas and explains in detail the different models and analyses I ran and the conclusions to be drawn from each model. I also compare and contrast the results from the three different issue areas and their implications in these types of cases. Perhaps most importantly, Chapter 5 demonstrates the substantive impact of significant factors on case outcomes. This information is likely to be the most useful for legal scholars and practitioners, and helps my study to span the legal and social science disciplines.

Chapter 6 concludes with a discussion of the important findings, the implications for our legal and political systems, especially whether the judicial truly behaves as an "apolitical" institution, and how this analysis can guide scholars as they look to the future of

decision making in salient and politically charged cases. I also point out the additional questions raised by this study and how future research building on these findings could potentially further our knowledge of district court decision making even more.

CHAPTER 2 – LITERATURE REVIEW & THEORY

Before embarking on my own study of judicial decision making in the U.S. District Court, it is important to establish what the literature to date says about these courts and the potential influence of judicial ideology and/or public opinion on judicial decision making. I can then identify the gaps in this literature and describe the theoretical bases for my research questions, including how my results and analysis will complement the existing literature on judicial decision making. I address all of these questions in this chapter. I begin by briefly describing the three models of judicial decision making and the seminal studies on each. Secondly, I discuss the increasingly important policymaking role of district courts in our legal and political systems and explain why scholars have recently turned their attention to these district courts as the next wave of research in judicial politics. Next I analyze the studies that have been conducted on district courts and their conclusions regarding the impact of ideology and strategic factors on judicial behavior at this level. Throughout, I point out what the existing literature is missing and why filling those gaps is critical to a comprehensive understanding of judicial decision making. Next I explore the literature on public opinion and its crucial role in shaping public policy generally and in shaping court decisions specifically, as well as the bases for my assertion that public opinion likely has a greater impact on district courts than on the Supreme Court. Lastly, I set forth my theory and explain why and how I will contribute to the literature in this area and further scholars' knowledge of why judges behave the way they do.

Judicial Decision Making

> "[I]t is probably true to say that judges correspond with, more than they differ from, people" (March 1956, 534).

Over the last century, scholars have spent a great deal of time and energy studying the courts, and judges in particular, because of their important position in our legal and political systems. Any attempt to understand the behavior of judges is particularly thorny compared to other political environments, as judges have complex pressures and influences on them from several different directions. James Gibson succinctly summarized this complexity in his famous remark "judges' decisions are a function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive it feasible to do" (1983, 9). In this section I very briefly describe the models of judicial decision making and touch on the large body of scholarship that exists on this general topic before turning to the literature on district courts specifically.

The original explanatory theory of judicial decision making is the legal model. It holds that case outcomes are primarily determined by legal doctrine, including precedent, plain meaning, and the framers' intent. The legal model still has many strong proponents, including the prominent legal theorist and scholar Ronald Dworkin. He asserts that *stare decisis* plays a vital role in judicial decision making and argues that judges ignore their own personal beliefs in order to follow existing law and adhere to legal history (Dworkin 1988). In addition, when discussing the issue of decision making, Supreme Court justices and lower court judges almost always speak out in favor of the legal model and the important role of precedent. In fact, adherence to precedent is the primary justification provided by justices for the decisions they reach (Segal and Spaeth 1996).

The legal model has been attacked over the last 50 years, most commonly by the political science community, as outdated and naïve. Greg Caldeira, for example, can think of "no political scientists who would take plain meaning, intent of the framers, and precedent

as good explanations of what the justices do in making decisions" (1994, 485). He claims that the legal model is a "silly formalism" that "no one who has taken introduction to American government or read *Marbury v. Madison* or witnessed the fights over nominations to the Court during the Reagan and Bush years is going to ascribe to" (1994, 485). However, prior to the mid-1990s, the attacks on the legal model had been lacking systematic empirical evidence showing that legal factors do not play a significant part in Supreme Court decision making.

A new wave of scholarship began in 1993 with Jeffrey Segal and Harold Spaeth's groundbreaking book, *The Supreme Court and the Attitudinal Model*, which clearly laid out the attitudinal model and provided strong empirical evidence of its value as the primary explanation for judicial behavior. They presented systematic evidence on various processes within the Court, including staffing, gatekeeping, decisions on the merits, and distribution of opinion assignments. By focusing on so many institutional features of the Court, the authors were able to show how ideology plays a substantial role from the very beginning of the process through the decision itself. They presented strong evidence of the importance of ideology to decision making in each of these areas, thereby setting forth a more comprehensive analysis of, and support for, the attitudinal model than had been attempted before. They provided a blunt view of judicial decision making that did not allow for the possibility of legal or other outside factors to play any role.

A flurry of new studies immediately followed, reigniting a long-dormant debate over the influence of legal factors versus policy preferences on judges. Some of the criticism of the attitudinal model stems from perceived limitations on it. For example, Unah and Hancock (2006) found that the attitudinal model is highly sensitive to case salience and is a

strong explanatory vehicle for high salience cases only. Other scholars have disputed the claim that the legal model is completely dead, and purport that it has an impact, albeit a complicated and difficult one to prove (e.g., Brisbin 1996; Songer and Lindquist 1996). Many legal practitioners believe that the attitudinal model (called "legal realism" within legal academy) is incomplete when it does not take into account legal factors (e.g., George and Epstein 1992; Dworkin 1988).

The third model of Supreme Court decision making, the strategic model (also called the rational choice model), is actually an expansion and modification of the attitudinal model. It holds that justices do indeed vote in a way to maximize their preferences, but that does not always mean a simple vote with the preferred side. Instead, justices act strategically to ensure that their policy goals are met. They understand that the fate of policies depends on the preferences of other actors, such as Congress, the president and their fellow justices. This theory of strategic decision making was first laid out by constitutional scholar Walter Murphy in 1964, although he offered no empirical evidence of it. The attitudinal model came into dominance shortly thereafter, and the strategic decision making thesis was virtually ignored until the 1990s.

The first comprehensive empirical analysis and substantive formation of the rational choice model was conducted by Epstein and Knight (1998) in *The Choices Justices Make*. They argued that the attitudinal model was not incorrect, just incomplete. The framework they developed rests on three main ideas: "justices' actions are directed toward the attainment of goals; justices are strategic; and institutions structure justices' interactions" (Epstein and Knight 1998, 10-11). Those actions include voting and joining opinions in accordance with their policy positions, but also the entire decisional process,

from accepting cases, conference discussion, initial votes, opinion assignment, and draft opinions up to the final decision to sign an opinion. The authors found each of these processes fraught with evidence of strategic actions and interactions on the part of the justices. Further, the justices often feel constrained by outside forces, such as Congress, who can overturn their rulings, and the president, who can change the makeup of the Court with new appointments and who can speak out against the Court, possibly affecting its legitimacy in the eyes of the public. The authors concluded that for the most part, justices act in such a way that promotes their policy preferences beyond simply voting in accordance with their values (Epstein and Knight 1998). Subsequent to Epstein and Knight's work, a wealth of studies have further investigated and refined the strategic model, which has solidified its place as one of the core considerations at the center of the debate over judicial decision making (e.g., Epstein, Hoekstra, Segal, and Spaeth 1998; Bergara, Richman, and Spiller 2003; Hammond, Bonneau, and Sheehan 2006)

While all three models continue to be studied by judicial politics scholars, the emphasis in the last few decades has been on the latter two models (together referred to as the "political model") and the role of judicial ideology in decision making. Research on the attitudinal model has taken a multitude of different forms and has resulted in varying conclusions regarding the degree to which judges ignore everything other than their personal policy preferences when making decisions. Even staunch proponents of the strategic model start with the assumption that judges' behavior is ultimately aimed at advancing their own policy goals (e.g., Hammond, Bonneau, and Sheehan 2006; Bergara, Richman, and Spiller 2003; Epstein and Knight 1998). Indeed, very few scholars have argued that ideology plays anything less than a major role in decision making, at least at

the Supreme Court level. As prominent judicial scholar Lawrence Baum points out, "the attitudinal model in its various versions has been the most influential conception of judicial behavior in political science" (Baum 1997, 25).

District Courts

Their Role in our Legal and Political Systems

The complexity of human behavior makes it difficult for scholars to try and understand why judges do what they do, and even decades of excellent research have not given us any conclusive answers, although they have brought us closer to understanding such behavior. Even powerfully consistent patterns of behavior are subject to multiple possible explanations. However, the more information we have, and the greater the number, creativity, and diversity of studies we are privy to, the more comprehensive explanation of judicial behavior we will obtain. Baum has argued that our understanding of judicial behavior has been limited by scholars' overwhelming focus on the Supreme Court. He advocates for more extensive research on the lower courts in order to "provide a more comprehensive picture of the forces that shape judicial behavior", and that "[c]ourts whose institutional characteristics create unusual situations for judges may be instructive" (1997, 148).

District courts are often overlooked at the expense of the "higher" courts because they cover much less geographic ground and their decisions therefore carry less precedential value. However, as the emerging scholarship on district courts has noted, they also play important policymaking roles. District courts are trial courts and thus are on the "front lines" in "adjudicating legal clashes" over important constitutional issues (Blakeman and Greco 2004, 439). There are 94 federal district courts throughout the United States,

including at least one in every state, with 677 district court judges (as of December 2014). District courts decide almost seven times as many cases as the circuit courts of appeal and 3,000 times as many cases as the Supreme Court every year (Epstein, Landes, and Posner 2013). Although the Supreme Court and courts of appeals have important roles in interpretation of the law and precedent setting, district courts impact the lives of the citizens of their states much more so than the upper courts. District courts are local, accessible federal courts for individuals and interest groups concerned with a policy or its implementation to challenge it. If, as Harold Lasswell claimed, politics is "who gets what, when, and how", then trial court judges, who make these determinations on a daily basis, are as large a part of the political system as other governmental institutions.

Further, the decisions of district court judges provide direction to other political institutions in the state including state legislatures and executives regarding the constitutionality of laws and policies. Due to the recent trend toward devolution and the increased political reality of policy diffusion, many issues that raise important constitutional questions are encountered at the state and local levels, where most policies are actually implemented. District courts also set the boundaries for subsequent appellate review with the types of decisions made and the language used. They constitute the "last word" on many types of matters as the high standard of review applied by appellate courts in many cases often results in deference to district court opinions. In essence, district courts are "formulating policy to guide other judges and ... potential litigants" both in their states and beyond (Rowland and Carp 1996, 4).

Consequently, district courts also serve a policymaking function, through both the accumulation of individual decisions based on similar facts, and sometimes via single

important decisions upholding or striking down a state law or regulation. Similarly, district courts have the important role of policy implementation. District court judges have made decisions, and thus policy, on such important issues as "integration of our schools; the availability of abortions; standards for defining obscenity; the quality of air we breathe and the water we drink; requirements for affirmative action programs; and standards for maintenance of our prisons, public hospitals, and mental institutions" (Rowland and Carp 1996, 2). District courts significantly shape legal doctrine within a state. They hear the issues first; issues which appellate courts do not hear until years later, and often not at all. Even lower-level courts thus have the power to strongly influence legal policy for entire states, which is not an insignificant responsibility.

Several early studies on district courts nicely illustrate the policymaking power of district courts as well as the potential for extralegal factors to supersede legal factors in decision making. Research conducted on cases decided during the very tumultuous period of school desegregation highlighted particular extralegal factors, including the political party of judges, region (south vs. non-south), state culture, and background characteristics of judges, as significant predictors of judicial decision making in racial relations cases (e.g., Vines 1964; Peltason 1971; Giles and Walker 1975). The variation in case outcomes across districts during this time was extensive, and could only legitimately be explained by extralegal factors. In one striking example, Vines (1964) found that of the 37 district court judges who were active in litigation involving race relations in the south, seven of them never decided a case in favor of black litigants, and four of them decided for the black litigants over 90% of the time. Such early studies laid the groundwork for contemporary

research on district courts and the role of extralegal factors in the important policy making decisions district judges make.

It is clear that federal district courts perform a variety of important roles in our legal system and are very much a part of the political process as well. Judges at this level do not just resolve disputes between parties, but also allocate wealth and other resources, enforce societal norms or strengthen changes in them, monitor governmental institutions and make sure they do not exceed constitutional or statutory boundaries, speed up social change or stomp it out, and act as a forum for citizens to enact change in the legal or political systems. For all of these reasons, it is important to understand the factors that influence district court judges' decision making, including both legal and extra-legal factors.

Ideological Decision Making

Unlike the large body of research on the Supreme Court, and to a lesser extent, the federal courts of appeals, federal district courts have been largely ignored by scholars studying the impact of ideology on judicial decision making. However, several scholars have extended this analysis down to the district court level, especially recently as more grass-roots mobilization has taken place at the local and state levels addressing such diffuse issues as reproductive rights, gay marriage, and voting rights. Prior studies that examine the impact of ideology on federal district court judges have typically fallen into two categories: comprehensive studies of thousands of district court decisions over a long period of time covering many different issues, and more specific studies that examine the role of ideology in a particular issue area. I will discuss and report the conclusions of both categories of studies in this section, as well as a brief mention of how studies of circuit courts of appeals impact this line of research.

The influence of ideology appears to slightly decrease as one moves down the federal court hierarchy from the Supreme Court to the circuit courts of appeals (e.g., Epstein, Landes, and Posner 2013; Cross 2007). There are several reasons for this. The primary argument of attitudinal model proponents as it relates to the Supreme Court is that a lack of (1) electoral accountability and (2) ambition of higher office free up justices to pursue their own policy agendas, unlike the majority of state court judges (Segal and Spaeth 2003). Lifetime tenure is a characteristic shared among the different levels of federal courts; however, circuit courts of appeals judges, (as well as district court judges), do not share a lack of ambition for higher office with Supreme Court justices, resulting in the potential for differing behavior at these lower levels. Indeed, the evidence on circuit court judicial behavior is less comprehensive and less consistent than studies of the Supreme Court, and reveals a historically weaker role for ideology at this level (Cross 2007). Nevertheless, ideology has been consistently found to have the largest impact on circuit court judges compared to legal or strategic factors (e.g., Sisk and Heise 2012; Cross 2007; Klein 2002).

Thus, it stands to reason that the effect of judicial ideology will continue to lessen as we continue down the hierarchy from circuit court judges to district court judges. The career goals of district court judges vary dramatically from those of Supreme Court justices, who have already achieved the ultimate destination for any lawyer/judge. District judges are also substantially different from circuit courts of appeals judges, as district judges have a much better chance at promotion than circuit court judges, whose options are limited to openings in the 9 U.S. Supreme Court seats (Baum 1997). Thus the concerns and goals of

district judges differ from those of upper court judges, which may ultimately result in a diminished role for ideology at the district court level.

The limited research that has been conducted on district courts has found a role for both legal *and* extralegal variables in judicial decision making. District judges themselves point to legal principles as the overwhelming factor in decision making (Sisk and Heise 2012; Rowland and Carp 1996). However, as judicial scholars often point out, when "traditional legal cues are ambiguous or absent" (Carp and Stidham 1998, 141), judges often look to extralegal factors to make their decisions, including individual ideology, local sentiment, public opinion, and political pressures (Blakeman and Greco 2004). Studies examining the impact of each of these (and other) extralegal factors on district court judges have been sporadic over the past few decades and vary substantially in research design, methods, and findings. However, for the most part, scholars studying the district court over the last half-century have accepted as axiomatic the assumption that ideological values do impact judicial decision making at this level (e.g., Epstein, Landes, and Posner 2013; Sisk and Heise 2012; Zorn and Bowie 2010; Rowland and Carp 1996). The debate in the literature over the last few decades has been reduced to the extent of this impact.

On one side of this debate are the multitude of studies that have shown a strong association between ideological preference and decision making. In the largest study of the federal district courts to date, Rowland and Carp (1996) examined nearly 46,000 published district court opinions over a 44-year period and coded the outcomes in the cases as "liberal" or "conservative". Using party of the appointing president as their independent variable, they found that district judges appointed by Democrats were significantly more likely to decide in a "liberal" manner as those appointed by Republicans, with the degree of

likelihood largely dependent on the type of issue. These decisional differences were most pronounced in civil rights and civil liberties cases (Rowland and Carp 1996). Other comprehensive studies have found similar results. Examining district court decisions from 1933 to 1977, one study found that "to an impressive degree the voting patterns of the district judges reflect the political values of their appointing president" (Stidham, Carp, and Rowland 1984). Johnson and Songer (2002) found party of the appointing president to be significantly related to the policy decisions of federal district judges in civil rights, civil liberties, criminal and economic and labor cases over a period of 35 years (1961-1995).

On the other side of the debate are those scholars that point to the conventional wisdom suggesting that district courts, as the lowest rung on the federal court ladder, will feel constrained by their position in the hierarchy and the appellate courts above them, waiting to review their decisions and potentially overturn them. Further, district courts have not typically been considered important policymakers to the same extent as circuit courts of appeal and the U.S. Supreme Court; district court judges recognize this and behave accordingly. In support of this assertion, judicial scholars conducting broad, comprehensive studies of district courts have found empirical evidence to demonstrate that ideology does not significantly influence district court judges because of institutional and legal constraints, including much bigger caseloads, threat of review and reversal from above, ambitions for higher judicial office, and other various constraints (e.g., Epstein, Landes, and Posner 2013; Zorn and Bowie 2010).

Conversely, compared to these large, comprehensive studies, scholars examining decision making in narrow issue areas have more consistently shown the significance of ideology on judicial behavior, despite institutional constraints. Sisk and Heise (2012)

examined Establishment Clause rulings by judges in the district courts as well as the circuit courts of appeal from 1996 through 2005. They found that ideology was strongly correlated with decisions in Establishment Clause cases at both the district court and appeals court levels; in fact, an Establishment Clause claimant's chances for success were 2.25 times higher before a judge appointed by a Democratic president than one appointed by a Republican president (Sisk and Heise 2012, 1216). Other scholars examining district court decision making in narrow issue areas have found similar results, including in cases involving gay rights (Pinello 2003), sexual discrimination and sexual harassment lawsuits (Peresie 2005; Songer 1994), abortion (Alumbaugh and Rowland 1990), criminal defendant actions (Rowland, Carp, and Songer 1985), and civil rights claims (Stidham and Carp 1987).

Not all studies of narrow issue areas have found a significant effect of ideology on judges. For example, Ashenfelter, Eisenberg, and Schwab (1995) found that ideology had little influence on judicial actions in civil rights and prisoners' cases in federal district courts in three districts (the Central District of California, the Eastern District of Pennsylvania, and the Northern District of Georgia) in 1981. Similarly, Blakeman and Greco (2004) examined the impact of legal and extralegal variables on district court decision making in public forum and religious speech cases and found only a weak correlation between judicial ideology and case outcome, although they did find a strong correlation between a judge's religion and case outcome, as well as court region and case outcome, indicating the importance of certain other types of extralegal factors.

Thus, prior studies have provided support for both sides of the debate regarding the extent of ideology's impact on judicial behavior. Despite this conflicting evidence, the bulk

of studies examining judicial decision making in specific issue areas conclude that ideology does play a significant role compared to legal factors. This effect appears to be heightened in two specific subsets of cases: (1) those involving issues that are both ideological in nature and politically charged, and (2) those in which the law is ambiguous and not well-settled. Ideology plays a larger role in "major cases", those involving highly salient and controversial issues in which major organized interests are involved (e.g., Yarnold 1997; Rowland and Carp 1996). As one study puts it, in these cases, "our nation's judges appear to have separated into the same camps as the national political parties" (Sisk and Heise 2012, 1205). Further, ideology appears to play a larger role when judges have greater discretion to invoke their political preferences due to the ambiguity of the law (Stidham and Carp 1987; Rowland and Carp 1996). Scholars focusing on district court outcomes in cases falling into one or both of these subsets have consistently found a significant effect of ideology on judges (e.g., Sisk and Heise 2012; Pinello 2003; Rowland and Carp 1996; Alumbaugh and Rowland 1990).

Strategic Behavior

The other primary focus of judicial studies over the past few decades has been the strategic behavior of judges. The bulk of research on the strategic model focuses on short-term strategic behavior by justices on the Supreme Court. These studies show that justices deviate from sincerely voting their policy preferences in limited circumstances by modifying their written opinions, joining opinions they may partially disagree with, or engaging in other specific actions in order to win support from their colleagues in those or other cases (e.g., Epstein and Knight 1998; Baum 1997; Spiller and Gely 1992). However,

this research also evidences how difficult it is to differentiate between sincere voting, strategic voting, or other motivations (Baum 1997).

There exists a much smaller body of research regarding the role of strategy in lower courts; however, considerable research has been conducted on one vital aspect of strategy – judges' behavior in light of decisions by higher courts and the likelihood of reversal by higher courts. The theoretical basis for these studies is that judges want to match case outcomes with their policy preferences as closely as possible; however, they cannot simply decide cases in line with these preferences due to the threat of reversal from reviewing courts. Thus, judges must strike a balance between their preferences and those of the higher courts, sometimes by making rulings that diverge from their ideal position, in order to avoid reversals that could move policy even further from their preferences (Baum 1997).

These studies have produced inconclusive and conflicting results. Some scholars have argued that lower courts' desire to avoid reversal has led them to at least partially adopt the policy positions of their reviewing court, such that both ideology and strategy play large roles in lower court decisions (Songer, Segal, and Cameron 1994). Others have concluded that circuit court judges strategically choose legal and/or factual bases that are more resistant to review when making certain ideologically driven decisions (Smith and Tiller 2002; Hume 2009; Smith 2014). Conversely, several other scholars have asserted that lower court judges do not typically modify their behavior based on a fear of reversal, as they recognize that very few cases are substantively reviewed and reversed, especially by the Supreme Court (Bowie and Songer 2009; Cross 2007; Klein 2002).

The focus of the vast majority of this research has been at the circuit courts of appeal level and their responses to the Supreme Court. Very few studies exist that analyze

whether district courts act strategically in the same manner. However, because of their position in the judicial hierarchy, specifically the fact that all district court opinions are subject to mandatory review by the circuit courts of appeal, there is good reason to believe that district court judges may act strategically to avoid reversal. If district judges made their decisions based solely on legal decisions, then it should not matter to them whether they are overturned or not – they simply interpreted the law and/or precedent incorrectly in light of the facts of a particular case, and an appellate court corrected their error. However, if their decisions are made on the basis of ideology, it may be disconcerting to see their policy preferences overridden by an appellate court. Beyond this, district judges have other good reasons to avoid reversal by higher courts, including feelings of defeat and the appearance of incompetence. Additionally, district judges with ambitions of higher office, typically appointment to a circuit court of appeals, believe they may find their chances diminished if they are repeatedly reversed and derided by the higher courts[3]. Thus, judges may act strategically in order to gain approval from higher courts and an appearance of success (Baum 1997).

The scant evidence that does exist on district courts and strategic decision making is not conclusive either way. Several scholars have recently argued that district judges may be more concerned with reversal of their decisions than previously accounted for (e.g., Choi, Gulati, and Posner 2011; Randazzo 2008). These scholars argue that if unconstrained, district judges would decide cases so as to advance their ideological preferences. However, under the constraint of mandatory appellate review by the circuit courts of appeal, district

---

[3] Scholars have found no evidence that a district judge's rate of reversal actually impacts his or her chances of elevation to the circuit courts of appeal (Choi, Gulati, and Posner 2011). However, that does not mean district judges do not *think* high rates of reversal will hurt their potential career advancement.

judges cannot simply follow their preferences. Instead, they have a greater incentive to match their decisions to the preferences of the reviewing judges by predicting how an appellate panel will respond to a case and deciding in accordance with that prediction (Choi, Gulati, and Posner 2011). This "strategic anticipatory effect" is strongest when the circuit in which they sit is ideologically homogeneous in the opposite direction of the district judge's ideology, and is dampened when the circuit is split or the majority of circuit judges share the district judge's ideological leanings (Randazzo 2008; Epstein, Landes, and Posner 2013).

Based on these findings, it is possible that district courts do indeed feel constrained by a fear of reversal and may act accordingly. However, the majority of district court cases are not appealed, and only a very small percentage (3% or less) of district court judgments are typically reversed on appeal in a given year. The low likelihood of appeal may soften the strategic anticipatory effect felt by district court judges, and they may be more inclined to rule in favor of their personal preferences and hope for the best, especially in cases of political and ideological importance to them. Smith (2006) looked at one circuit, the D.C. Circuit Court of Appeals, and found that district court judges did decide in line with their ideological preferences until reversed by the appeals court, at which point they adjusted their behavior to follow the preferences of the appeals court. Other studies have found only insignificant evidence of strategic anticipation by district court judges (e.g., Boyd and Spriggs 2009).

Further, district court judges can also partially insulate themselves from higher court reversal by carefully choosing the foundations for their decisions. Appellate courts typically must find a legal error in order to reverse a trial court decision; any lower court

decision based on a judge's *factual* interpretation is subject to a very high threshold of deference and can only be overturned based on a finding of egregious error. Thus, a clever trial judge can word his or her decision in such a way to make reversal very difficult (Cross 2007). Indeed, some scholars have argued that district court judges actively advance their ideological preferences while protecting themselves from reversal by manipulating their findings of fact in this manner, at least for cases or issues that they feel strongly about (Tiller and Spiller 1999).

Overall, the scholarship on strategic behavior by district court judges is relatively new and contradictory. I include it here because of its importance in the recent judicial decision making literature. In the next section, I set forth the theoretical bases for my hypotheses by describing how the existing literature informs my research, as well as what type of roles I believe ideology and strategy will play in my chosen issue areas.

Summary of Theoretical Bases

There is good reason to believe that both legal and policy considerations play an important role for judges. Virtually all judges are lawyers who have received law-school training emphasizing the importance of law and precedent and taking personal feelings out of decision making. When practicing law, most lawyers must occasionally (or often) take positions they do not necessarily believe in, or represent a side of an issue they would not represent if acting solely on behalf of their personal preferences. Above all, lawyers seek legal accuracy from judges when ruling in matters of fact and of law. However, lawyers are often politically active; indeed, one reason people become lawyers is because of their interest in the political system and policy. They are educated, knowledgeable about politics, and have their own political values and preferences that they care about. Many become

advocates for these values and preferences in one way or another. Thus, when lawyers become judges, they have opposing forces influencing them in their decision making – their legal training and desire for legal accuracy above all and their strongly-held policy values and advocacy goals.

Between the legal training judges receive emphasizing legal considerations in decision making, the pressure from both parties and outside forces for legal accuracy and clarity, and the fear of reversal by higher courts, it may seem obvious that federal district judges would ignore their own preferences and come to decisions based solely on legal context. However, there is one crucial reason why it is not this easy – ambiguity in the law. Only occasionally does the law (or precedent) give judges a clear-cut answer to a legal problem. This ambiguity allows judges to use *other* skills learned in law school and through experience practicing law – the ability to shape a legal argument to support the outcome they want, and to persuade others to see it their way. There is widespread agreement among judicial politics scholars that ambiguity in the law limits the influence of legal considerations on judicial decisions (Baum 1997, 64). One can simply look at the Supreme Court's high rate of dissent (70% of cases decided since 1940), and the frequency of 5-4 decisions (one in every six cases since 1940) to see how our most experienced and learned judges can reach differing conclusions given the same facts and law (Goff 2005). Thus we should not discount the potential for legal ambiguity to allow lower court judges to insert their own policy preferences into their decision making process as well. I believe that individual policy preferences will indeed play a strong role in judicial behavior, even when accounting for legal factors, in the three ambiguous and highly ideological issue areas I will examine.

As also described above, it has been suggested that lower court judges may act strategically in order to ultimately advance their policy goals and/or career advancement goals based on their subordinate position to other, higher courts. However, the studies examining this issue thus far have been incomplete and have typically examined district court behavior in all cases, not just those involving politically charged issues. Further, I propose that district court judges may actually be *less* constrained in some ways than appellate judges to decide cases based on personal preferences. Appellate decisions are made by 3-judge panels (or rarely, all circuit judges in en banc hearings). Multiple decision makers may check judicial discretion by individual judges, and panel effects can result in different decisions and opinion language than any one judge would prefer him or herself. District court judges, able to make decisions in isolation without a need to shape collective action or to take into account the preferences of colleagues, and with the knowledge that reversal by a higher court is the exception, not the rule, may have more freedom to use their discretion to decide cases in whatever way they see fit. I will test the use of strategy by district court judges in three highly ideological issue areas to see whether it has an independent effect or, more likely, whether it dampens the effect of judicial ideology when the majority of the reviewing circuit holds an opposing ideology.

Public Opinion

Generally

One of the central tenets of our democratic system is responsiveness of government to majority will – officials should advance the policy preferences of the people they represent. As V.O. Key declared, "unless mass views have some place in the shaping of policy, all the talk about democracy is nonsense" (1961, 7). Public opinion is thus a crucial

component to any measure of success of democratic governance, and therefore has been carefully studied and measured by political scholars for decades.

Studies on the impact of mass public opinion on policymaking has historically focused on the national level. Polls measuring public opinion on salient issues like gay marriage, immigration reform, health care, legalization of marijuana, and increasing the minimum wage, just to name a few, are released virtually every week by various news outlets and polling agencies. A large body of literature shows that executive officials, legislators, and innumerable others take account of these polls and the public's attitudes on these issues when deciding their agendas, speaking points, and support or opposition to proposed laws or regulations (e.g., Soroka and Wlezien 2010; Erikson, MacKuen, and Stimson 2002; Page and Shapiro 1983).

Comparatively little research has examined public opinion at the state level. However, states are particularly well-suited for research on public opinion and its impact on state policy decision-makers. The 50 states, each with their own set of publics and policies, provide excellent opportunities for a comparative analysis of the influence of public opinion on a wide range of processes and people. The largest impetus to such analyses has been the lack of reliable and sufficient survey-based measures of public opinion at the state level.

Despite these problems, several scholars began turning their attention to state-level public opinion in the mid-1990s and consequently developed new ways of measuring state public opinion. Eriksen, Wright and McIver (1993) aggregated 122 national opinion polls over a 13-year period (1976-88), resulting in over 167,000 individual respondents. They then disaggregated the data by state, giving them enough respondents within each state

(ranging from 292 in Wyoming to 14,000 in California) to analyze the impact of state public opinion on state policy in 48 states. Other scholars have utilized this method, often referred to as "disaggregation", in order to analyze state-level public opinion in a variety of contexts. Other methods have also been utilized in recent years, most notably the use of state "policy mood" as a proxy for state public opinion (Berry, Ringquist, Fording, and Hanson 1998), as well as a newly developed simulation method that has so far shown great promise in obtaining accurate measurements of state public opinion (Lax and Phillips 2009). I will describe each of these methods in much more detail in the next chapter.

National and state government responsiveness to the policy preferences of the polity they serve is of vital concern to political scientists, government officials, policymakers, and anyone else interested in the healthy functioning of our representative democracy. While the majority of public opinion research examines the actions of the legislative and executive branches, an important subset of the literature focuses on the judiciary, a subject to which I now turn.

In the Federal Judiciary

The federal courts present a unique place in the debate over democracy's mandate that governments be responsive to the preferences of the public. Federal judges are unelected and serve for life, thus they are completely unaccountable to the American polity. Despite this, federal judges are important political actors with policymaking power. They enjoy the power of judicial review, which gives them the ability to strike down laws, policies, and other actions of the legislative and executive branches as unconstitutional. By utilizing this power, and others possessed by the courts more broadly, federal judges are able to replace the judgment of elected officials with their own. This feature of the federal

judiciary has created tension and debate regarding the proper role of such courts in our democratic system. Thus, as I will describe in this section, scholars have spent a great deal of attention on determining whether federal courts follow the opinion of the polity or instead act as countermajoritarian institutions. If the courts are indeed responsive to public opinion on policy, this might alleviate concern that these judges are unelected policymakers (Calvin, Collins, and Eshbaugh-Soha 2011).

The Supreme Court has traditionally been viewed as a countermajoritarian institution, meaning it thwarts the majority will of the people and their elected representatives when it overturns a legislative act. In fact, "almost all constitutional scholars and democratic theorists agree that the Supreme Court is, either in process or in substance, a countermajoritarian institution" (Marshall 1989, 4). Although the Court is countermajoritarian in form, it does not necessarily ignore the opinions of the majority of the people. Dahl (1957) was one of the first scholars to suggest that the Court's reputation as a countermajoritarian institution has been greatly exaggerated; subsequently several other scholars have supported Dahl's hypothesis by showing that the policy outputs of the Court are likely to conform to the policy preferences of the majority, at over the long run (Barnum 1985; Marshall 1989).

Despite lifetime appointments and insulation from politics in general, there are several reasons for justices to be attentive to public opinion. Justices must consider the possibility that Congress or the president will overturn their decisions, or that they will be improperly implemented or enforced. Institution-minded justices want to maintain the legitimacy of the Court and therefore want to avoid the public embarrassment of defeat and the accompanying weakening of the Court (Casillas, Enns, and Wohlfarth, 2011). They may

adjust their decisions slightly toward a compromise in order to avoid active political opposition by paying attention to public opinion (McGuire and Stimson 2004). In this way, the rational choice model is supported by the thesis that public opinion does directly impact decision making, as the justices are necessarily acting strategically. Although the evidence on any direct impact of public opinion on the Supreme Court is inconsistent, the majority of studies do show a significant effect (e.g., Mishler and Sheehan 1993, 1996; Flemming and Wood 1997; McGuire and Stimson 2004; but see Norpoth and Segal 1994; Segal and Spaeth 2002)

The literature on the influence of public opinion on the federal judiciary has focused almost exclusively on the Supreme Court. Scholars have recently expanded their research to include the circuit courts of appeal in an effort to increase our understanding of this influence on the whole of the federal judiciary. Investigating the influence of public opinion on the lower federal courts can provide a more generalizable and nuanced understanding of this relationship (Calvin et al. 2011). Circuit courts of appeal and district court judges are also important policymakers, but share the unique feature of being both national *and* regional actors. They are clearly federal officials, as they are appointed by the president and confirmed by the Senate, their salaries are appropriated by Congress, and they are charged with the duty of upholding and interpreting federal law, including the Constitution. At the same time, circuit court and district court judges are regional actors – their decisions are binding only on certain courts and limited geographic areas, federal law requires them to be residents of their circuits/districts, and most are prominent members of their communities who engage in political and civil activities with peers and other community

members (Calvin et al. 2011). Thus, unlike the Supreme Court, lower court judges may be influenced by both national and state public opinion.

In an effort to expand the research on public opinion beyond the Supreme Court, Calvin, Collins, and Eshbaugh-Soha (2011) conducted the first comprehensive study of the influence of the public's policy preferences on circuit court judges. As a proxy measure for state public opinion, the authors utilized Berry et al.'s (1998, 2007) state-level indicators of public mood. They found strong support for the proposition that courts of appeals judges are *indirectly* impacted by public opinion through the federal judicial selection process, but little evidence of any *direct* influence of national or regional public opinion on circuit judges. As the authors point out, they examined a sample of all cases heard by circuit court panels over a period of 40 years, such that many of the cases did not involve particularly salient or political issues. They speculate that public opinion may have a larger impact in highly salient cases or issues and suggest further research in this area.

District Courts

From the earliest studies of federal district courts, scholars have been pointing to the potential role of public opinion and community approval in judicial decision making. Unlike Supreme Court justices and circuit court judges, district judges live and socialize where they work, in their home communities, surrounded by friends and political connections. Indeed, federal district judges typically have deep roots in the states in which they serve. Most are raised, educated, and have served in public office either as a judge or other official in their home states. As Beverly Cook explained, "[j]udges absorb the local beliefs, attitudes, and values during their formative years and as part of their apprenticeship for the bench serve in political parties and accept elected or appointed

governmental positions in the other two branches. To the extent permitted by ethical codes and their own role definitions, judges after appointment maintain their old associations with friends in the political elite and participate in everyday life with their families" (1977, 569).

The appointment process further demonstrates how district courts are local actors in addition to national actors. While nominees for vacant seats are technically chosen by the president, they are in practice chosen by elites in the state who are familiar with state judges, politicians, and other important lawyers. These elites often consist of one or both senators, if they are from the president's party, but can also be other high-ranking elected or unelected state or local officials, state party leadership, or even powerful donors or interest groups in the state. Historically, the responsibility for narrowing down potential candidates and choosing final nominees has fallen much more squarely on state or local elites from the president's party than on the president himself. As described by one judicial scholar six decades ago, "the Constitution does not give an accurate description of the selection process. ... It would be more accurate to say that federal district judges are selected by the individual Senator or local party organization in the area in which they are to serve, subject to presidential veto" (Peltason 1955, 31). This is an even more accurate depiction today, especially as the political environment has become increasingly polarized and hyperpartisan in recent years.

The influence of public opinion on policy at the state level has been well established in the literature since the 1990s. In their groundbreaking study, Erikson, Wright, and McIver (1993) found that state public opinion, as measured by self-reported partisan identification and ideological identification, was strongly correlated to state policy

outcomes, even after controlling for demographic and socioeconomic variables. Thus, the more "liberal" a state's residents, the more liberal the policies of that state tended to be. Their study was the first to evidence a strong relationship between public opinion and government action in the states, demonstrating the significant influence the public often has over state policy. Erikson et al.'s conclusions have been upheld by numerous scholars utilizing various direct or indirect measures of public opinion (e.g., Brace et al. 2004; Berry et al. 1998, 2007). The question I raise here is whether state public opinion influences *judicial* policymaking in the same way.

District judges obtain information regarding public opinion the same way that we all do – through the media as well as interactions with family, friends, and neighbors (Epstein and Knight 1998). Judges may alter their decision making unconsciously as their own preferences change in conjunction with changing preferences of the public, or they may consciously follow shift in public opinion by likewise adapting their policy decisions (Calvin et al. 2011). Some judges have explicitly expressed this position – First Circuit Court of Appeals Judge LeBaron Colt asserted that "[t]he purpose and end of law are the welfare of society and the happiness of the people. The law should always be viewed from the standpoint of society, and not from the standpoint of the law itself... The law must march with society; the constitution must march with the nation" (1903, 675).

Despite the noted importance of public opinion on district judges, scholars have undertaken very little empirical testing of this proposition, in large part due to the difficulty in obtaining local public opinion. Occasionally, scholars have used proxy measures to determine whether judges may be vulnerable to public opinion. For example, Giles and Walker (1975) used the number of associational memberships a judge held within the

community as an indicator of the closeness of his relationship with the community, and Alumbaugh and Rowland (1990) found state political climate to be a significant predictor of federal district court decisions in abortion cases. One early study did use state-level public opinion as a predictor variable and found a strong link between the behavior of district judges and shifts in public opinion about the Vietnam War (Cook 1977). However, the simulation-based method Cook used to generate state-level public opinion was heavily criticized for not incorporating geography as an explanatory factor, and overall for including only a limited set of voter types due to the inadequacies of statistical tools and computing power, and fell out of favor by the 1980s (Erikson, Wright, and McIver 1993)[4].

The almost complete lack of research on the impact of public opinion on federal district judges is lamentable because it deprives us of a deeper understanding of the relationship between public opinion and unelected federal judges, which speaks directly to their role in our democratic system. However, with ever-improving technology and methodology for obtaining state-level public opinion data, this gaping hole in the literature and our understanding can begin to be filled in.

My Study

The purpose of my study is to help fill in some of the gaps and deficiencies in the literature on district courts, judicial decision making, and public opinion that I have pointed out above. Specifically, I hope to contribute to the aforementioned literature in four ways. First, I seek to help bridge the divide between legal scholars, the legal community, and social scientists. As previously stated, legal scholars, as well as historians and political

---

[4] Fortunately, a new and much improved simulation technique for obtaining state-level public opinion has reemerged recently and has been increasingly utilized by political science scholars (Lax and Phillips 2009). I describe this method in much more detail in the next chapter.

scientists, have been very interested in the determinants of judicial behavior over the past half-century; however these academic disciplines have approached this issue very differently. Social scientists have typically used statistical methods and quantitative analysis to examine judicial behavior and legal institutions. Legal scholars have focused much less on quantitative techniques and have instead conducted qualitative analyses of judges and courts, including legal analysis of judicial decisions, opinions, case law, and other types of law. Several legal scholars have lamented the lack of quantitative analysis in legal research, even devoting entire articles to questions like "Why Don't Law Professors Do More Empirical Research?" (Schuck 1989). Further, Hall and Wright (2008) note that systematic content analysis of judicial opinions is an important way in which legal scholars can create a "uniquely legal empirical methodology" that combines the rigor of empirical social science with the classic interpretative and analytical skills developed by those in the legal profession (2008, 64).

In recent years, legal scholars have increasingly turned to quantitative research designs to explain judicial decision making, and some of the most important studies on judges and the courts have been published in law reviews as opposed to political science journals. Despite this trend toward empiricism, many legal scholars continue to ignore the quantitative findings on the courts in the social science literature, finding it too technical and difficult to understand in laymen's terms, thus making it impractical to study and to apply to the real world of judges and courts (Cross 2007; Epstein and Martin 2014). In this dissertation, I will attempt to bridge this divide by performing empirical analysis and reporting my findings in easily accessible and interpretable ways. This will provide legal scholars, practitioners, and advocates the ability to understand the results and the real-

world implications, and to utilize the knowledge gained about judicial decision making going forward. As an attorney who has been trained in the art of legal content analysis and has years of experience doing so, I am in a position to make a unique contribution to the scholarship on judicial decision making across multiple disciplines.

Secondly, I begin to fill in the gaps in our knowledge of judicial decision making due to the dearth of empirical investigations surrounding salient contemporary constitutional issues. Political officials, and to some extent, our society, has become more polarized in recent years, especially surrounding certain types of issues. The so-called "culture wars" have further emphasized this polarization regarding morality policy, including abortion and gay rights, and have played an important role in the partisan conflict at both the national and state levels.

Daniel Pinello's (2003) comprehensive study of judicial treatment of gay rights claims illustrates the potentially powerful influence of ideology in salient, politically charged issues. He examined two decades worth of gay rights cases in both federal and state appellate courts. He found that ideology (based on party of appointing president) had a considerable impact on decision making at the federal level, predicting case outcome far better than any other judicial attribute. He also found religion, gender, and race of the judge to significant predictors of case outcomes. Although his study was limited to appellate courts, the force of his findings suggests that judges at all levels of the federal judiciary may be more inclined to follow their personal ideological preferences when deciding cases involving ideologically charged issues like gay rights. I want to capture the impact of district judges' personal policy preferences (as well as the impact of the public's policy preferences) on decisions in these politically sensitive issue areas.

These ideologically charged cases are also those where the public is most likely to hold strong opinions, polling data are most likely to be readily available and commonly reported, and judges are most likely to be aware of the opinions of their state's residents. Therefore, cases involving such salient and ideological issues are the best ones to analyze for evidence of the impact of ideology, public opinion, or both, as well as whether the impact of each is mitigated by legal, strategic, or demographic factors. For this reason, among other reasons that I detail in the following chapter, I chose gay rights, abortion rights, and affirmative action as my issue areas.

Thirdly, I examine cases decided in the modern era. All but a few studies of district courts examine decision making in cases that are several decades old. The current state of scholarly work on the role of ideology and other factors in district court decision making is based on the literature encompassing these studies of older cases. These studies are very informative and certainly remain valid, but are no longer sufficient to explain the current state of the judiciary. The lower-tier courts have recently (in the last 20-30 years) begun to play an increasingly significant role in policymaking, as opposed to their more traditional role of simple error correction. At the same time, the courts have become more and more ideologically driven. In just one example, Cross (2007) found that the association between judicial ideology and judicial votes in the circuit courts was not statistically significant until the 1980s, with the significance of the association increasing ever since. The role of district courts as important policymakers is an even more recent occurrence, and historically scholars have often dismissed district courts as courts of limited reach and scope, and thus not as worthy of study. This perception has changed in the last 15-20 years, as district

courts have increasingly made key decisions impacting state policy while becoming more ideological in nature.

Lastly, and perhaps most importantly, I seek to contribute to the literature by analyzing the mechanisms by which public opinion may influence district court decision making. A significant number of published works have postulated that regional public opinion may play a role in district court decision making. As discussed above, scholars have found some influence of public opinion on the Supreme Court, and I believe that public opinion has the potential to play an even larger role at the district court level for the reasons I spelled out in the prior section. Examining the role of local public opinion on local courts is important to understand democracy at a local level, which is the heart and soul of a republican form of democracy. This is an especially important topic lately, as increased policy diffusion has required state or local units of government to implement many federal policies and programs, often without sufficient federal dollars to do so.

In sum, my purpose here is to further our understanding of judicial behavior, not to provide a means for accurately predicting case outcomes. Baum argues that "full explanation goes beyond successful prediction to identify the fundamental sources of behavior" (1997, 5). In that vein, I seek to gain insight into federal district judges and the potential explanations for why they do what they do, and in so doing, add to the extensive but incomplete body of literature on judicial decision making.

While my research is aimed at answering these broad inquiries more so than testing narrow hypotheses, I have formed a few specific hypotheses based on my synthesis of the scholarly work in this area. Consistent with findings by other scholars regarding the impact of judicial ideology on decision making, I hypothesize that conservative judicial ideology

will be positively correlated with conservative outcomes in district court cases involving gay rights, abortion rights, and affirmative action issues (and vice versa). Additionally, I do not expect strategic variables to be significantly associated with decision making in these highly ideological issue areas, or at least not to the same extent as ideology. The dearth of research on public opinion and district courts gives me only a limited basis on which to form hypotheses. I anticipate some effect of public opinion on district judges, although the effect is likely to vary by issue area and over time. Further, public opinion could have both direct and indirect effects on judges; even if public opinion is not a significant predictor of case outcomes, it may mitigate the effect of judicial ideology or other variables. I will use empirical evidence to test these hypotheses and to answer my broader inquiries regarding judicial behavior in cases involving contemporary constitutional issues. In the following chapter, I explain how I plan to achieve this goal by describing my research design and methodology in detail.

CHAPTER 3 – RESEARCH DESIGN

I have explained why I seek to study the determinants of judicial behavior at the district court level and have formulated my hypotheses; the next step is to test my theories. There are typically many different ways to test a theory, and choosing the best methodology to do so is not always straightforward. This chapter will explain my research design, beginning with why I chose the three issue areas of gay rights, abortion, and affirmative action and how they are appropriate for examining the roles of ideology and public opinion in the district courts. I will describe how my analysis bridges the traditional gap between political scientists and legal scholars in their study of judicial behavior, thereby contributing to both fields. Lastly, I will describe my methodology in detail, including how I created my data set, why I included each of my variables, and how I operationalized each variable, devoting specific attention to my methods for obtaining state-level public opinion data.

Issue Areas

A large body of literature has indicated that research on the linkages between mass public opinion and policy often turn on the salience of the issues at hand; thus I have chosen three highly salient dispute areas to examine this link – gay rights[5], abortion, and affirmative action. Scholars agree that Americans do not pay close attention to politics and are generally unknowledgeable about policy, unless the issues are highly salient and therefore not easily overlooked (e.g., Delli Carpini and Keeter 1996; Carmines and Stimson 1989). Generally speaking, the public is more likely to pay attention to and care about issues that are topics of discussion in the media and among political elites. Scholars have

---

[5] For ease of use and for consistency with prior studies, I use the term "gay rights" throughout this dissertation to refer to all issues concerning rights for members of the LGBTQ community.

shown that the greater the salience of an issue, the stronger the link between public opinion and policy outcomes (e.g., Haider-Markel and Meier 1996; Carmines and Stimson 1989). Taking this general concept a step further to apply it to judicial behavior, cases involving highly salient issues should show closer links between public opinion and outcomes.

As discussed in the previous chapter, the body of literature on judicial decision making suggests that judicial ideology impacts decision making for some dispute categories much more so than others. The types of disputes in which ideology plays a significant role have typically had three criteria in common: (1) they are characterized by a moderate degree of either factual or legal ambiguity, (2) they evoke ideological values held by and advanced by the two major political parties, and (3) they do not evoke competing extra-judicial preferences, including the local political environment and public opinion (Alumbaugh and Rowland 1990; Rowland and Carp 1996). Research on the district courts to date has typically focused on either all types of cases heard by the courts, or on broad categories such as civil rights cases. These broad categories include both strongly ideological disputes and other disputes. By focusing specifically on ideologically and politically charged dispute categories, I help satisfy the second criteria listed above. Another criterion, ambiguity in the law, is also satisfied by the three issues areas I examine. Each issue is characterized by ambiguous legal criteria in the precedents set by the Supreme Court and other appellate courts, as well as the explicit role of district court judges in interpreting and applying these criteria to individual cases. The third criterion is the subject of this research, as I seek to analyze the varying roles of ideology and public opinion, along with other extra-legal factors, in decision making in these three issue areas.

Further, morality policy is an especially appropriate area to test possible links between public opinion and judicial policymaking, as morality policy issues tend to be highly salient and technically simple. Although the specifics of tax code provisions, welfare policy, and other economic issues tend to be too technically complex for most citizens to understand, it is reasonable to expect that most people can form coherent opinions on morality issues (often called "easy" issues) without specific technical knowledge (Carmines and Stimson 1980). Rarely is an individual unable to express an opinion when asked about such issues. "Morality policy raises questions that instigate debate over first principles, resulting in uncompromising clashes of values" (Mooney and Lee 1995, 600). Additionally, these moral debates typically fall easily along party and ideological lines. Indeed, research has consistently shown a strong link between public opinion on morality policy and decision by elected officials (Haider-Markel 1999; Carmines and Stimson 1989). The question presented here is whether that link extends to decisions made by unelected federal judges acting as policymakers in their states. Gay rights and abortion are both prime examples of morality policies and thus should definitively evidence this link if it exists. Affirmative action does not fit the standard definition of morality policy based on religious values/morality; however it does involve ethics and the concept of "right" and "wrong" and is thus also a moral issue, as well as one that is highly salient and politically charged in its own right.

In addition to being salient and highly ideological along party lines, these three issue areas also can be used to compare the impact of differing public opinion trends on judicial policymaking. We have seen variation in national public opinion across these issue areas between 1991 and 2012: opinion on abortion and affirmative action has remained

relatively stable, while support for gay rights has trended sharply upward. As I demonstrate in the next chapter, public opinion in the states has followed similar trends during this time period. This allows me to examine temporal trends for each issue area and to compare the role of public opinion in policymaking for each issue to one another.

Methodology

Data Set

My data set includes every reported District Court decision across the nation in these three issue areas (gay rights, abortion, and affirmative action) over a 22-year time period (1991-2012). This time period is important for several reasons: it represents the contemporary era of district court decision making (including the most recent cases and information available) – an era characterized by increasing party polarization and partisanship as well as the recent judicial trend favoring devolution, especially in social issues like those examined here. The analysis and conclusions provided by this data set will give a more accurate picture of the current federal judiciary and influences on decision making in contemporary constitutional issues, and will better provide practitioners with information that can be applied to their own cases going forward.

To obtain my list of cases for each topic, I performed a search in LexisNexis[6], resulting in a total of 1,390 gay rights cases, 663 abortion cases, and 591 affirmative action cases during this time period. I also cross-referenced the lists of cases from LexisNexis with case lists (based on the same search terms) from Westlaw in order to make sure that I had the entire universe of cases during this time period. The next step was to read each case to

---

[6] I used the advanced search option on LexisNexis Academic Universe for all district court cases between January 1, 1991 and December 31, 2012 containing the core terms "(gay OR lesbian OR homosex! OR same sex OR sexual orientation)" for gay rights cases, the core term "abortion" for abortion cases and the core terms "(affirmative action OR preferencing)" for affirmative action cases.

determine whether it was appropriate to include in my analysis. Only those cases involving substantive decisions on the merits were included in the data set; more specifically, I only included rulings that either accepted or rejected a party's claim in a way that engaged the merits of the claim (Sisk and Heise 2012). The majority of rulings were made on motions for summary judgment, but the data set includes an array of substantive rulings on various types of motions as well as final judgments.

The Lexis-Nexis database from which I obtained the cases in the data set includes unpublished district court opinions starting from June 2005. Unpublished opinions are selectively included in this database prior to June 2005. Although this results in the omission of many district court opinions prior to June 2005, the best evidence suggests that "the vast majority of published opinions are explications of discretionary policy decisions that directly or indirectly allocate value beyond the litigants of record" (Rowland & Carp 1996, 19), and that unpublished opinions typically determine technical or standard matters and do not engage in policymaking.

I coded each case based on the directionality of the decision (pro-gay rights vs. anti-gay rights; pro-abortion vs. anti-abortion; pro-affirmative action vs. anti-affirmative action). For each of my three issues, a "pro" decision indicates a liberal outcome, and an "anti" decision indicates a conservative outcome. Liberal decisions are coded as 0 and conservative decisions are coded as 1. For example, in *Davis v. Prison Health Services,* 2010 U.S. Dist. LEXIS 127890 (W.D. Mich. 2010), a prisoner sued the prison alleging discrimination based on his identity as an openly gay man. He was terminated from his offsite public works job after being subject to ridicule and discriminatory comments and behavior by prison guards. The prison responded that Davis was terminated because he

was diabetic and it was concerned for his health. Davis was able to show that other diabetic prisoners were permitted to continue doing the same job he was terminated from. The district court judge ruled against Davis and granted the Defendant summary judgment[7]; therefore I coded the decision as a 1. Following standard practice, I omitted decisions that were mixed, indeterminate, decided by magistrate judges, or, as mentioned above, were not substantively decided on the merits. My final data set contains 297 gay rights cases, 187 abortion cases, and 95 affirmative action cases. Tables 2, 3 and 4 show the breakdown of decisions in each issue area.

Table 2
U.S. District Court Decisions in Gay Rights Cases 1991-2012

Decision	Frequency	Percent
Support	174	58.59
Oppose	123	41.41
Total	297	100.00

Table 3
U.S. District Court Decisions in Abortion Cases 1991-2012

Decision	Frequency	Percent
Support	137	73.26
Oppose	50	26.74
Total	187	100.00

Table 4
U.S. District Court Decisions in Affirmative Action Cases 1991-2012

Decision	Frequency	Percent
Support	51	53.68
Oppose	44	46.32
Total	95	100.00

---

[7] Incidentally, this decision was reversed on appeal to the 6th Circuit.

Dependent Variable

As described above, my dependent variable is the judge's decision in a case, coded (0) for pro-gay rights, pro-abortion, and pro-affirmative action decisions, and (1) for anti-gay rights, anti-abortion, and anti-affirmative action decisions. As will be discussed further in subsequent chapters, I use logistic regression, which is appropriate in models containing a dichotomous dependent variable, and is commonly used in analyses of judicial decision making.

Primary Independent Variables

My primary independent variables of interest are judicial ideology, state-level public opinion, and strategic factors. This section describes how I operationalize each variable.

1. Judicial Ideology

Until relatively recently, the most accepted measure of judicial ideology has been the political party of the president that appointed a judge. Most of the studies mentioned in the preceding chapter regarding federal appeals courts and federal district courts have used this measure of ideology. Despite being a simplistic and indirect measure of ideology, scholars have found the party of the appointing president to be a remarkably accurate proxy for judicial ideology (Sisk and Heise 2012). Presidents have been extraordinarily consistent in their choice of like-minded judicial candidates. Additionally, many appointees were party activists before joining the bench (Cross 2007). However, this method has also been criticized for its simplicity, in that it does not account for the fact that presidents from the same party are not necessarily equal in their ideologies.

In the last decade, scholars have developed and tested a newer measure of judicial ideology that I will refer to as "Common Space" scores. Poole and Rosenthal (1997)

originally developed Common Space NOMINATE scores for members of Congress based on their voting records, placing them on a continuum from very liberal to very conservative. Giles, Hettinger and Peppers (2001) adapted the Common Space scores for federal judges by assigning each judge the NOMINATE Common Space score of the home-state Senator if the home-state Senator and the appointing President are from the same party (or the average of both home-state Senators if both are from the same party as the President). If neither home-state Senator are from the President's party, the judge is assigned the appointing President's NOMINATE Common Space score. This approach utilizes senatorial courtesy and accounts for regional differences in appointments. For example, an Obama appointee in Vermont may not be ideologically identical to an Obama appointee in Mississippi. It also accounts for differences in ideology among appointing Presidents belonging to the same party (a Reagan appointee vs. a George W. Bush appointee).

While both measures are considered accurate, valid proxies for ideology, Common Space scores have come to be seen as "the state-of-the-art measure for the preferences of US Court of Appeals judges and… federal district court judges" (Epstein et al. 2007, 306). The most recent studies of federal district court decision-making have used both measures in order to fully capture judicial ideology. These studies typically find a high correlation between the two measures, and most scholars have found little difference in results when using one measure versus the other (Sisk and Heise 2012; Peresie 2005). However, several scholars argue that Common Space scores significantly outperform the party of the appointing president as a measure of ideology for several reasons. First, since Common Space scores lie along a continuum, as opposed to a binary measure, they capture more variation between judges as well as a more accurate picture of judicial ideology. Judges can

also be compared to one another and placed on the spectrum relative to each other to compare levels of "liberalness" or "conservativeness". Further, although the Common Space spectrum ranges from -1 to 1, aligning its scores with those of party of the appointing president, real-world actors, including presidents and senators, and therefore judges, very rarely fall at the extreme ends of the spectrum. The vast majority of these political actors fall between -.6 and .6 (Sisk and Heise 2012). The trend in contemporary studies of judicial ideology at all levels has been to use Common Space scores (Epstein and King 2002; Sisk and Heise 2012; Epstein et al. 2007).

This measure is even more appropriate for district court judges, where senatorial courtesy plays perhaps the largest role in the nomination process, and home state culture is maintained when a judge "stays home" to be a judge in his or her own community. I will use both measures in my analysis in order to more fully test my hypothesis that ideology is correlated with case outcome and to better determine the magnitude of any effect I find as well as to discern any differences between the two measures. Judges appointed by Republican presidents are coded (1) and those appointed by Democrats are coded (0). The Common Space scores range from -1 (most liberal) to 1 (most conservative). I retrieved Common Space scores for most of the judges from calculations completed and provided by Christina Boyd (2010); for the judges not contained in this data set, I calculated the Common Space scores according to the description outlined above.

Figure 1 graphs the distribution of District Court Common Space Scores for all judges in my data set. Scores are disbursed rather evenly with a slight right skew, which indicates a relatively high number of staunchly conservative judges and few staunchly liberal judges. As evidenced by the summary statistics below Figure 1, the mean Common

Space Score is slightly conservative, but very close to zero, at .034. The lowest score, indicating the most liberal judge, is -.65, and the highest score, for the most conservative judge, is .61.

Figure 1
Distribution of Common Space Scores for all District Court Judges in Data Set
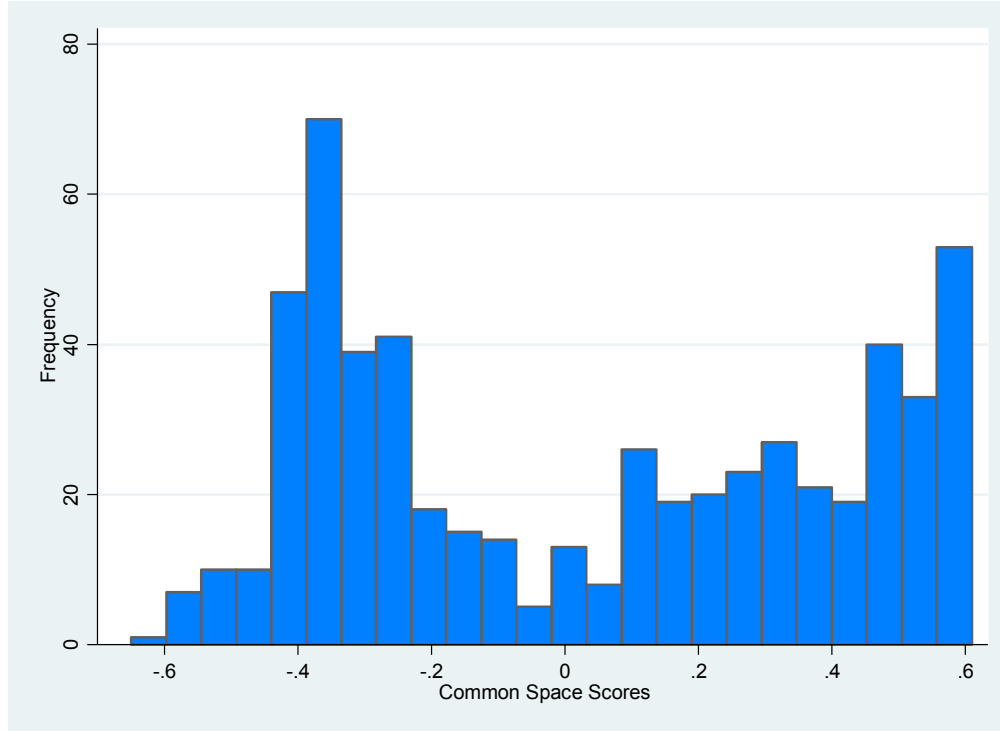
	N	Mean	Median	Std. Dev.	Min	Max
Common Space Scores	579	.034	.028	.374	-.65	.61

2. State-Level Public Opinion

Public opinion has long been a topic of interest to political scientists. However, as discussed above, the exploration of state-level public opinion and its relationship to state policy or other variables has suffered from a severe lack of state-level public polling. Although several organizations, typically universities or media outlets, within most states do conduct state polls, such polls are sporadic, inconsistent, and often specific to an issue

area, hot-button topic, political figure, or election. Additionally, finding comparable polls across states is very difficult, and variations in topic areas, question wording, and survey techniques make scientific comparisons of this data untenable. The vast majority of scientific polls are conducted on a national level, and these polls very rarely include enough respondents from each state to allow for comparisons across states.

Scholars have developed several viable solutions to this nagging problem over the last few decades. Erikson, Wright, and McIver (1993) ("EWM") pioneered a method for aggregating many national surveys in order to obtain large enough sample sizes for individual states, creating measures of residents' overall ideology and party identification for each state. Their measure has been repeatedly found to be a valid and useful measurement of state ideology over time, and is meant to capture public sentiment toward politics and policy within a state. Berry et al. (1998) developed an alternative measure of state ideology based on state congressional election results and roll-call data. Most recently, Park, Gelman, and Bafumi (2006) created a new method to obtain state-level data from national polls based on multilevel regression and poststratification ("MRP"). Pacheco (2011) has used MRP to create dynamic measures of state ideology and state partisanship based on EWM's methodology. Any or all of these measures have been used by scholars to approximate the overall ideology of a state's residents and gauge the effect on state policy, the effectiveness of state political institutions, and other areas of interest.

However, since this study examines judicial decision making in specific issue areas of high political interest and salience to the public, measures of general state ideology may be inappropriate (Norrander 2001). For example, a self-identified liberal voter may have a different opinion on abortion than on welfare spending, gun control, or other issues.

Certainly support for gay rights has grown rapidly in recent years, however the number of self-identified liberals has remained approximately the same. At the national level, Wlezian (2004) found that specific policy attitudes more strongly influenced policy outcomes in salient and highly visible issue areas, including welfare and national defense, while global indicators were more likely to affect those policy areas that were less important or more poorly understood by the public. These same effects are also likely at the state level. Thus, a measure of public opinion within a state on these three specific issues will more fully and accurately capture the attitudes of state residents toward the issues of interest and most appropriate for this study.

Two methodologies exist to obtain such state-level opinion on specific topics – disaggregation and MRP. I seek to create a dynamic measure of state opinion in order to evaluate the relationship between state public opinion *at the time* of a judicial decision and the decision itself. Thus, I need a yearly measurement of state public opinion. This makes the disaggregation method virtually impossible here. EWM had to aggregate 13 years of national surveys in order to obtain large enough sample sizes from each state to create one measure of state ideology and one measuring partisanship. For this study to obtain estimates of state public opinion on a *yearly basis*, I would need to find dozens of national surveys every year of my study, all containing similar enough questions about each topic area to enable combining the respondents together. Even if I could find enough surveys to accomplish this, the resulting state-level opinion may suffer from non-representativeness (Pacheco 2011).

The myriad limitations of the disaggregation method, especially for dynamic measures of opinion, have fueled a scholarly trend toward the MRP method in just the last

few years. The MRP method is a way to simulate state public opinion using national survey data in conjunction with geographic and demographic data. The first step uses multilevel regression analysis of one or more national surveys to estimate the opinions of different categories of individuals (often called "person types") on a particular topic. The person types are based on several individual factors, including gender, race, age, and education, as well as state of residence and region. Each individual respondent's opinion is treated as a function of his or her demographic and geographic characteristics. The second step uses U.S. Census data to identify how many of each person type live in each state; for example, how many (1) white, (2) 18-25 year old, (3) college-educated, (4) women live in (5) Missouri. Poststratification then estimates overall state opinion based on the percentage of each person type within a state (for further explanation see Park, Gelman, and Bafumi 2006; Pacheco 2011; and Lax and Phillips 2009).

Scholars are still experimenting with MRP and its many potential uses. Although still relatively new, this innovative method has been rigorously tested by a number of scholars and has universally been found to provide more accurate and reliable estimates of state public opinion than disaggregation, especially when using smaller national sample sizes (e.g. Pacheco 2014; Lewis, Wood, and Jacobsmeier 2014; Enns and Koch 2013; Lax and Phillips 2009). In fact, MRP provides further benefits in addition to increased accuracy, including increased representativeness and increased reliability of estimates for less populous states. National surveys typically use sampling designs that are aimed to be representative of the nation, but not individual states. Additionally, the number of respondents from small states in national surveys can result in very small sample sizes for those states. The MRP method helps overcome both of these problems. It adjusts estimates

of state-level opinion and partially pools data across states using multilevel modeling, resulting in poststratified estimates that are more representative of states and are much more reliable for less populous states (Pacheco 2011; Lax and Phillips 2009). Further, scholars have concluded that the MRP method provides valid, accurate, and reliable estimates even when using only a single large national survey (Lax and Phillips 2009; Lewis, Wood, and Jacobsmeier 2014).

For purposes of my study, I need to obtain state-level public opinion that (1) includes each of the 22 years my data set covers and (2) is specific to each of my three issue areas. The best data source to accomplish both of these requirements is General Social Survey (GSS) data. The National Opinion Research Center (NORC) has conducted the GSS on an annual or biennial basis since 1972. One of the biggest benefits of the GSS is that it repeats certain core questions every time it is administered, including questions on each of my three issue areas. Although the GSS was administered biennially for the time period covered in my analysis, data for the in-between years can easily be imputed. Further, while the sampling strategy used in administering the GSS is not aimed at providing samples that are representative of individual states, scholarly analysis of state samples has shown they typically end up being representative nonetheless (Brace, Sims-Butler, Arceneaux, and Johnson 2002).

Two very recent scholarly works demonstrate the utility of GSS data to obtain yearly state opinion on specific topics. Lewis, Wood, and Jacobsmeier (2014) applied the MRP approach to GSS data from 1980 to 2010 to obtain state-level opinion on gay rights, using answers to the question whether respondents believe that homosexual sex is always, almost always, sometimes, or never wrong. They repeat the MRP method for each year of

GSS data in order to obtain biennial measurements of opinion and to examine the change in state opinion over time. They use the resulting specific state opinion variable to evaluate the impact of such opinion on the decisions of state judges and find that it does influence judges in states with certain types of institutions and electoral retention methods. Pacheco (2014) uses the MRP method to analyze the stability of state public opinion on abortion from 1977 to 2004 as measured by GSS and National Election Survey (NES) data. Both studies confirm the validity and accuracy of the MRP method when used to estimate state opinion from a single national survey, as well as the usefulness of GSS data when estimates of opinion on specific topics are necessary.

Following the lead of these scholars, I use GSS data from 1991 to 2012 in order to obtain estimates of state-level opinion on gay rights, abortion, and affirmative action[8]. The specific question I used to measure attitudes toward gay rights was the respondents' opinion on sexual relations between two adults of the same sex – always wrong, almost always wrong, sometimes wrong, and not wrong at all. The question I used for abortion was respondents' opinion on whether or not it should be possible for a pregnant woman to obtain a legal abortion if the woman wants it for any reason – yes or no. The question I used to measure attitudes toward affirmative action was whether the respondent was for or against preferential hiring and promotion of blacks – strongly support preferences, support preferences, oppose preferences, or strongly oppose preferences[9]. In order to

---

[8] Publically available GSS data only include respondents' region, not state of residence, as NORC considers state of residence to be "sensitive data". However, NORC does make such data available for purchase under certain conditions, one being the destruction of all data sets that include any sensitive data, such as state of residence of respondents, once statistical analysis is complete. Thus, that part of my data set is not available for replication purposes. However, the resulting state public opinion variable obtained utilizing the MRP method on the GSS data in conjunction with Census data, as well as the rest of my data set containing all other variables, is available and can be provided upon request.

[9] Although perhaps not the most ideal questions to measure opinion on these issues, especially the gay rights question, they appear to be the best option available for questions that are repeated each year and are broad enough to measure support for gay rights, abortion, and affirmative action generally, as opposed to specific applications of each.

provide an even larger sample size and more accurate estimates when possible, I added in NES data for the years in which similar questions were asked (1992, 1996, 2000, 2004, 2008, and 2012). Several scholars have combined GSS and NES data in this way as they found minimal differences in the wording of relevant questions as well as the administration of the survey instruments (Brace et al. 2004, Pacheco 2014). The questions of interest in the present analysis were very similar in the GSS and NES surveys.

Although I believe that specific public opinion on these issue areas is the best measure of state public opinion for my study, I also include two alternate general measures of state ideology. The first is the measure of state ideology created and popularized by EWM (1993). Prior to the more recent development of the MRP method, this measure was the most commonly used proxy for state public opinion for scholars studying state policy and opinion. Subsequent work by Pacheco (2011) built on EWM's measures and developed yearly estimates of state ideology using the MRP method. Thus, I include Pacheco's estimates for as many years as possible in my data set[10]. The second alternative measure of state opinion I include is Berry et al.'s (1998, 2007) yearly estimates of state "policy mood"[11]. This is a measure of operational ideology, i.e. how state residents feel about the job their state representatives are doing, and it can vary significantly from year to year. Conversely, EWM's measure best captures symbolic ideology, or how individual state residents self-identify with a particular political party or ideological grouping (Pacheco 2011; Norrander 2007). Other scholars have argued that Berry's measure is more representative of elite preferences than those of the public and are thus inappropriate as a

---

[10] Pacheco's measures are kindly made available on her website; however, those data are currently only available through 2006.

[11] These data are also generously provided by the authors and are available for the entire time period in my data set.

proxy for state-level mass public opinion (Brace et al. 2004). Nonetheless, I include both measures in alternate models in order to assess the relationship of each differing measure of general state ideology to district judge decision making.

    3. Strategic Factors

In order to take into account the strategic model of judicial decision making as described in the previous chapter, I need to include as independent variables those factors that may point to strategic behavior by district judges. As Baum (1997) explains in his book *The Puzzle of Judicial Behavior*, the label "strategic behavior" can apply to many different types of behavior, which are often lumped together confusingly under rational choice or strategic models. For example, the form of judicial strategy can consist of either strategic *voting* or a wide variety of other strategic non-voting behavior (choosing cases, opinion assignment, formation of coalitions, etc.). The time horizon of judicial behavior can be considered either short-term (one-shot games) or long-term (future cases). Additionally, the target of judicial strategy can be either the judge's own court or other institutions, especially higher courts that have the power of review over decisions of a district judge. Studies of strategic behavior typically research one or several related aspects of strategic behavior in order to prove that judges act strategically. Some of these aspects apply only to Supreme Court justices, and others apply to appellate judges sitting in panels. Only a few of these aspects apply to district court judges. District court judges do not sit in panels and do not choose their own cases; thus, strategic non-voting behavior is not an area of interest. Likewise, district court judges, sitting alone, likely would not vote against their policy preferences in one case for the purpose of advancing their preferences overall, as coalition forming and quid pro quo voting are only possible on appellate panels. Consequently, a

judge's own court would not be a target of judicial strategy, as each district judge in essence *is* the court. That leaves other institutions as the only probable target of judicial strategy at the district court level.

Acting strategically in order to garner favor and not derision from upper courts is not straightforward. Many cases are not appealed, and the vast majority of cases that are appealed are upheld by the circuit courts of appeal. Thus, a district judge concerned with the possibility of reversal must try and predict the likelihood that a case will be appealed and that the appellate court panel will reverse it. Circuit courts of appeals sit in panels of three randomly assigned judges, so the chances of reversal can vary with the particular panel chosen. The large amount of uncertainty involved can make this a difficult prediction for a district court judge to make. However, district judges can gather information about the appellate judges and their ideologies and preferences based on their experiences with them over time. Similarly, the overall ideological makeup of a circuit court of appeal can give a district court a good idea of how likely a case is to be overturned if it involves ideological issues. Circuit courts that are evenly split into judges appointed by Republican and Democratic presidents will not provide much help to district court judges attempting predictions, but those circuit courts with a majority (especially a strong majority) of judges appointed by one party or the other can increase the percentage changes of a like-minded (or opposite-minded) appellate panel. For circuit courts for which this is the case, district judges may be more likely to think twice before deciding on the basis of ideology when the intermediate appellate court above them is ideologically different from them.

In order to test my hypothesis that strategic factors should not substantially impact judicial decision making in highly salient and political areas, I include two alternative

measures of the strategic environment faced by District Court judges. The first is a Circuit Ideology variable measuring the ideology of the circuit court as a whole at the time of each lower court ruling. I include two different measurements for circuit court ideology in order to line them up with my two measurements of district judge ideology. The first, "Circuit Ideology I", uses party of the appointing president to determine the majority ideology of each circuit. If the majority of judges in a circuit were appointed by a Democratic president, the court is coded a "0", and if the majority of judges were appointed by a Republican president, the court is coded a "1", and if the Circuit were split, it is coded a "2". The second variable, "Circuit Ideology 2", provides a more accurate measurement of the composition of a circuit court by supplying the median Common Space score of each circuit. Each variable will be included in the corresponding regression model (Party of the Appointing President model or Common Space Score Model) in order to assess the impact of strategy on district court judges in cases involving politically charged constitutional issue areas.

The alternate measure I utilized for strategy, "Circuit Difference", is meant to capitalize on the ideological conflict between a district court judge and those with the ability to reverse his or her decisions. As with Circuit Ideology, it is generated in two different ways for the two different regression models. For the Party of Appointing President model, I generated a binary variable ("Circuit Difference 1") – 0 if the majority of judges in a circuit were appointed by presidents from the same party as the district judge, or if the circuit were split, and 1 if the majority of the circuit judges were appointed by presidents from a different party. For the Common Space Score model, I took the absolute difference between the median circuit common space score and the district judge's common space score ("Circuit Difference 2"). Thus, as Circuit Difference 2 increases, the

greater the distance between the judge's ideology and that of his or her reviewing circuit. I interact Circuit Difference with Judge's Ideology to test whether the influence of judicial ideology is dampened when he or she sits in a circuit with opposite party control, or when his or her ideology is far apart from the reviewing circuit's median ideology. For both of my strategy measures, if district judges do not participate in strategic anticipation as described in the previous chapter, than neither the ideology of the appellate court above them nor the difference between judicial ideology and circuit ideology should influence case outcomes. If judges do operate to a significant extent under a constant "fear of reversal", one or both of the strategic variables in my regression analysis should indicate this (Randazzo 2008).

Other Independent/Control Variables

In order to determine whether judicial ideology, strategic factors, and/or state public opinion are in fact predictors of judicial decision making, I include several control variables in my analysis that may also impact a judge's decision making.

1. *Personal Characteristics*

Various personal characteristics could potentially influence judicial decision making. In general, studies focusing on the personal characteristics of judges have typically found little to no effect on decision making in most types of cases. Race and gender have been most extensively studied, and little evidence of any variation exists, outside of limited findings in certain cases involving criminal sentencing (Cross 2007). However, several scholars have found personal characteristics to have a significant effect in one issue area in particular – civil rights actions. For example, Pinello (2003) found gender, race, and religion all to have dramatic effects on judicial voting in gay rights cases spanning from 1981 to 2000. However, his study encompassed both federal and state appellate courts,

and the role of these background characteristics was stronger in state courts, while party affiliation played a larger role in federal courts. Nevertheless, background characteristics, especially gender, race, and religious affiliation certainly have the potential to impact judicial decision making in cases involving civil rights and civil liberties issues, including gay rights, abortion, and affirmative action. For this reason and those indicated below, I include each of these characteristics as control variables in my quantitative analysis.

Gender – I control for gender, as women are typically more supportive of gay rights and reproductive rights than men. Overall, the research on the impact of gender on judicial decision making has produced mixed findings. However, at least some scholars have found a significant impact of gender on decisions in particular types of cases, specifically sex discrimination lawsuits. For example, Peresie (2005) examined federal appellate court cases from 1999-2001 regarding sexual harassment or sex discrimination and found that female judges were twice as likely to find in favor of the plaintiff as male judges. Thus, I expect that female judges will be more likely to rule in a liberal direction in each issue area, especially in gay rights and abortion cases. I coded each judge's gender as 0 (male) or 1 (female) based on the self-reported data available from the Federal Judicial Center (www.fjc.gov) database.

Race – Some scholars have asserted that judges from marginalized racial groups are more likely to rule in a liberal way than white judges, although studies generally show only insignificant correlations (Peresie 2005). However, race has been a significant factor in particular categories of cases, especially those involving civil rights generally, or rights of minority groups specifically (see e.g. Ifill 2000; Pinello 2003). Since my issue areas involve civil rights and civil liberties claims, including the often racially charged issue of affirmative

action, I decided to include race as a control. I expect that non-white judges are more likely to rule in favor of affirmative action. I used a dummy variable to code racial minority judges as 1 and everyone else 0. I obtained information on race from self-reported data available from the Federal Judicial Center database.

Religion – It is reasonable to assume that sincerely held religious beliefs will play a role in the value choices an individual makes, including judges' decisions. The evidence on the influence of religious affiliation on judicial decision making has generally been less compelling than evidence of ideological effects. However, religion has been shown to have a powerful effect in cases involving morality policy or other stereotypical religious concerns (Alumbaugh and Rowland 1990). I expect a judge's religion may influence his or her decision making in the cases examined here, especially those involving gay rights and abortion; namely, that judges identifying with more "conservative" religions will be more likely to rule against gay rights and abortion rights. I include a measure of each district judge's religion, coded either as Catholic, Mainline Protestant, Other Christian, Jewish, or Non-affiliated, which includes judges that refused to provide their affiliation, based on information that I obtained from *The American Bench* (published biennially by Reincke and Wilhelmi).

2. State Culture

The political culture of a state is distinct from its political ideology as a "red" state or "blue" state. Political culture is deeper and broader than that – it provides individuals with their social identities and provides societal norms and values regarding acceptable behavior of individuals, groups, and government institutions (Wildavsky 1987). Culture entails a shared set of values regarding the proper roles of citizens and elites in politics, the

relationship between citizens and officials, and the role of government in meeting societal needs. The political culture of a state is based on historical developments, most importantly the patterns of westward migration occurring after the colonial period.

Elazar's (1984) typology is the most prominent measure of state political culture and has been widely used in many different types of studies examining differences between states. He differentiated between three dominant political subcultures: moralistic, individualistic, and traditionalistic. States exhibiting the moralistic culture view politics as an important and beneficial activity in which all citizens should participate. The focus is on the collective public good as opposed to the individual good, and the purpose of governmental institutions is to promote and protect the public welfare. Individualistic states view politics as a marketplace. Government should be limited, should not intervene in the marketplace, and should not restrict private activities. For this reason, the public has a limited role to play in government. Traditionalistic political culture focuses on the protection of elites – the government's role should be limited to maintaining the social order, and should be left to those with the ability and knowledge to do so properly.

Although relatively simplistic, scholars have consistently found Elazar's typology to be a reliable predictor of variation in public policy, political decision making, and other political phenomena among states. A recent study by Patrick Fisher (2010) found state political culture to be a significant predictor of vote share for Barack Obama in the 2008 presidential primaries, more so than state political characteristics and primary demographics. He found that states characterized by a moralistic culture were more likely to support Obama instead of Hillary Clinton, while traditionalistic or individualistic states were less likely to support Obama.

Erikson, Wright, and McIver (1993) included state political culture in their analysis of state public opinion and legislative policy. They found strong support for Elazar's typology as a separate and distinct influence from state ideology as it applies to policy outcomes. Public opinion had a significant direct effect on policy in individualistic states, which is consistent with the individualistic culture of pragmatic politicians primarily concerned with re-election. Conversely, state legislatures were much less responsive to public opinion in traditionalist states, where elites tend to ignore the opinion of the uninformed masses, and in moralistic states, where officials are more concerned with imposing their version of the "public good" as opposed to simply following public opinion (Erikson et al. 1993).

Hundreds of studies have included Elazar's political culture typology as an independent variable in their analysis of political phenomena at the state level, often simply as a control variable. I include it in order to control for differences in political culture that may be distinct from differences in state ideology. My purpose in including state political culture as a variable is twofold. First, I want to analyze the relationship between state culture type and state public opinion in these three highly ideological issue areas; for example, whether moralistic states have more liberal viewpoints on these issues, as well as the potential impact on judges in those states. To achieve this, I include a variable interacting state public opinion with state political culture. Secondly, I want to examine the impact of state culture on my primary dependent variable – judicial decision making. District court judges, as longtime residents of the states where they preside, presumably have been influenced by that state's political culture and may reflect the corresponding attitudes about the role of government, importance of public good, and citizens' rights.

Thus, state political culture could impact the policy decisions of judges as it does the policy decisions of state legislators. I expect that judges in traditionalistic states are more likely to oppose gay rights, abortion rights, and affirmative action policies than judges in moralistic states, and that judges in individualistic states are more likely to oppose affirmative action policies, but not necessarily gay rights or abortion rights, than judges in moralistic states.

3. Region

A number of studies have discovered regional variations in the decisions of district judges. Early studies of the district courts found southern judges to be more conservative on issues such as race relations (Peltason 1955; Vines 1964; Giles and Walker 1975) and abortion (Alumbaugh and Rowland 1990), regardless of which president appointed them. More recent studies have shown the difference between south and non-south decisions to have mostly disappeared since 1977, with the exception of race relations cases, which still show substantial variation (Rowland and Carp 1996). I suspect that judges located in southern states may be more likely to rule against gay rights, abortion, and affirmative action policies than judges in other states. Therefore, I include a dummy variable indicating whether the district court is located in the south[12] (coded as 1) or not (coded as 0).

4. Legal Factors

Perhaps the most difficult factors to accurately capture via empirical measurement are legal factors influencing a judicial decision. Legal factors certainly play a role in judicial decision making and should therefore be controlled for when analyzing the impact of other factors. However, it is impossible for a researcher to code a case as correct or incorrectly

---

[12] I used Rowland and Carp's (1996) definition of southern courts and thus included Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

decided without second guessing the judge and bringing the researcher's own interpretations of law and biases into play. The vast majority of cases (at least of those included as substantive, relevant cases in my analysis) have non-frivolous legal arguments on both sides. Typically both sides invoke legal precedent from upper courts as a guide for how and why the district court should rule in their favor; however, the parties will either cite differing precedent from each other or differing interpretations of the same precedent. Either way, the researcher cannot accurately distinguish which party, precedent, or interpretation is correct without making a purely subjective judgment call. More objective measures of legal factors, including case type and decision type, can shed some light on the role of law in decision making but cannot fully control for precedent or other legal factors. However, this obstacle is not fatal to the study of judicial decision making, as statistical analysis allows us to tease out the impacts of ideological and strategic factors despite not having perfect controls for legal variables (Cross 2007).

Thus, it is important to include legal factors to the extent possible in order to isolate the potential influence of the law on judicial decisions. Following the literature on district court decision making, I have included three legal variables; (1) type of case, (2) whether the case was in front of the district court on remand from an appellate court, and (3) whether the judge's decision was based primarily on findings of fact or conclusions of law.

For each case in my data set, I coded the category of the major factual and/or legal issue involved. I subsequently reclassified the cases into a quantity of categories that was amenable to inclusion as a variable. Initial categories that were closely related to one another were collapsed into one final category. I combined and eliminated as many categories as possible in this way until I was left with discrete, unique categories that could

not be collapsed any further without distorting the meaning of the case types. These classifications help control for the role of precedent in judicial decision making. If one type of case is more consistently decided in a particular way than the other case types, the reason may be that Supreme Court precedent is clearer in that area of law, forcing lower court judges to follow precedent despite personal preferences.

As demonstrated by Table 5 below, for gay rights cases, there were eight final categories: (1) employment discrimination or harassment, (2) gay marriage, (3) prisoner discrimination or harassment, (4) other discrimination or harassment (service cost, police treatment, city treatment, school harassment, club membership, housing, etc.), (5) privacy issues or defamation, (6) domestic partnerships and benefits/adoption (7) upholding action protecting gay rights (protect non-discrimination policy, hate crimes, give same-sex couples benefits, etc.), and (8) Military discrimination, including "Don't Ask, Don't Tell" cases. Table 5 provides a look at the percentages of each case type within the gay rights data set.

Table 5
Gay Rights Case Types 1991-2012

Case Type	Frequency	Percent
Employment	115	38.72
Marriage	15	5.05
Prisoner	26	8.75
Other Discrimination/Harassment	67	22.56
Privacy	7	2.36
Domestic Benefits	7	2.36
Government/Private Action in Support	40	13.47
Military/DADT	20	6.73
Total	297	100.00

As shown in Table 6, I coded five different types of abortion cases: (1) restrictions to abortion access/undue burden on individuals and clinics, (2) challenging government and/or private action restricting abortion providers' rights, (3) individual rights to abortion, (4) upholding government action to protect access to abortion clinics or protect abortion providers, and (5) upholding action to not promote or allow anti-abortion messages & to restrict protestors.

Table 6
Abortion Case Types 1991-2012

Case Type	Frequency	Percent
Undue Burden	78	41.71
Government/Private Restrictions	29	15.51
Individual Rights	7	3.74
Access to Clinics	50	26.74
Government/Private Action in Support	23	12.30
Total	187	100.00

Lastly, I coded three different types of affirmative action cases: (1) employment policies, (2) university admissions policies, and (3) policies regarding priority contractors. Table 7 breaks these case types into percentages.

Table 7
Affirmative Action Case Types 1991-2012

Case Type	Frequency	Percent
Employment	63	66.32
Education	10	10.53
Contracting	22	23.16
Total	95	100.00

Each case that was on remand from the circuit court of appeals was coded as 1, and all other cases (the vast majority) were coded as 0. Lastly, decisions based primarily on

findings of fact, which typically only occurred after a trial was conducted, were coded as 1, while decisions based primarily on legal conclusions (the vast majority of cases), were coded as 0. Controlling for these legal variables will ensure that associations between my primary independent variables and the dependent variable are not simply "artifacts" of relationships between the dependent variable and certain case types or procedures (Sisk and Heise 2012).

Statistical Analysis

The next two chapters reveal the results of my analysis. Chapter 4 provides basic descriptive data and graphics to help reveal patterns of judicial behavior and trends over time that cannot be easily discerned from regression analysis. Chapter 5 details the regression analyses for each of the issue areas and examines the significant and interesting results provided by these analyses.

CHAPTER 4 – TRENDS IN DATA AND PRELIMINARY STATISTICS

Before turning to the various logistic regression models and analysis for each issue area, it is important to examine the data more in depth. My data set consists of the entire population of gay rights, abortion, and affirmative action cases substantively ruled on by district court judges from 1991-2012[13]. Thus, we can learn quite a bit about how district judges have treated these types of cases over the last few decades by examining trends in the data. This chapter traces and analyzes trends in state-level public opinion on these issues during this time period, as well as trends in support of and/or opposition to gay rights, abortion, and affirmative action policies by district court judges by tracking the decisions in these cases. I also conduct preliminary statistical analysis of the relationships between several of the variables of interest in order to get an idea of how these variables may or may not be associated with each other.

Gay Rights

State-Level Public Opinion over Time

One of the primary reasons I chose gay rights as one of my issue areas of interest is because of the dramatic change in public opinion over a relatively short time span. Examining the differences in public opinion over time and between states provides context for state-level public opinion as a potential indicator of district judge decision making. The variance in level of support for gay rights was substantial, ranging from a low of 7.2% in Alabama in 1991 to 80.3% in the District of Columbia in 2012. The average opinion across all 50 states and Washington D.C. increased steadily every year except for a small dip in

---

[13] This is true for at least all of the cases in which substantive decisions were made and reported. Certainly there are cases not included in this data set that were settled before a judge was asked to make any substantive rulings or dismissed early on, however those cases would not add to the discussion on judicial decision making and thus are not considered part of the "population" of cases heard and substantively ruled on by district judges.

2004 and 2005[14], after which it continued to rise every year through 2012, as can be seen

in Figure 2.

Figure 2
State-Level Public Support for Gay Rights over Time in MA, MN & AL, Compared to the
Average Across all 50 States (and DC) from 1991-2012
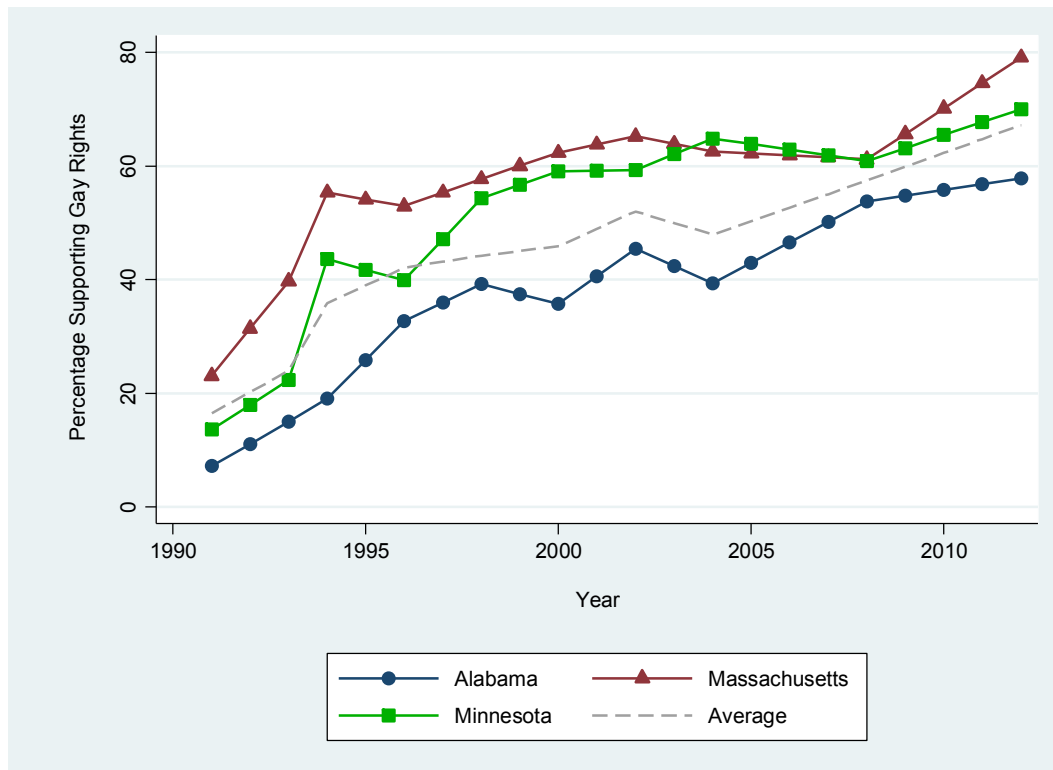
Sources: GSS Data (1992-2012) and ANES Data (1991-2012)

Instead of cluttering up the graphics by showing the dynamic nature of state-level

opinion in all states[15], I produced a graph of the public opinion trends in three

representative states: one state in which public support for the issue has typically been

higher than in other states, one state in which the level of support has remained relatively

---

[14] Conventional wisdom attributes this brief reversal in the upward trend of support for gay rights to the "backlash" resulting from the Massachusetts Supreme Court's 2003 ruling that gay marriage could not be banned under the Massachusetts Constitution, thereby making gay marriage legal in Massachusetts (Egan, Persily, and Wallsten 2008). This dip in public support disappears after approximately 2 years, at which point the national upward trend continues uninterrupted.
[15] Tables containing the state-level opinion data for all states for all years can be found in Appendix A.

moderate, and one state with typically lower support for the issue. Figure 2 shows support across the three representative states I chose to showcase gay rights – Massachusetts, Minnesota, and Alabama – compared to the average across all the states and Washington D.C. The trend line for Massachusetts (a state that has historically been more supportive of gay rights than most of the country) is well above the average level of support across the entire time period. Conversely, as a state with historically low support for gay rights, the trend line for Alabama is substantially below the average level of support across the entire time period. Minnesota is an example of a typically moderate state where the support for gay rights is in the middle of the pack. In Minnesota's case, the support tracked the average fairly closely for the first few years and then rose above it for the remainder of the time period.

Although the differences in support between some of the states can be interesting, for the most part there are no surprises here. All of the states that I expected to have higher support for gay rights did, and those I expected to have lower support also matched my expectations. The sharp rise in support held across all states; by 2012, every state had significantly greater support for gay rights than it did in 1991.

District Court Decision Making over Time

Another important trend that can be discerned from the data is the frequency and treatment of gay rights cases over time. While the last section examined the extent of the public's support for gay rights from 1991-2012, this section essentially examines district court judge's support for gay rights during the same time period. The primary question I seek to answer here is whether judges "followed" public opinion in the sense that they have increasingly ruled in favor of gay rights as public support has steadily increased.

The issue of gay rights itself is also dynamic in nature, with different types of cases arising in the courts at different times. For example, while cases regarding gay marriage and government action to protect gay rights were very rarely seen prior to the 2000s, employment discrimination and harassment cases were common throughout the entire time period I examined. The overall number of gay rights cases heard by district courts was relatively low throughout the 1990s with a few spikes in 1995 and 1999, but did not see a sharp increase until the mid-2000s. As Figure 3 shows, gay rights cases became much more frequent after 2004; indeed, some of the earlier years in my data set contain only a handful of cases.

Figure 3
Number of Total Gay Rights Decisions made by U.S. District Court Judges Each Year from 1991-2012
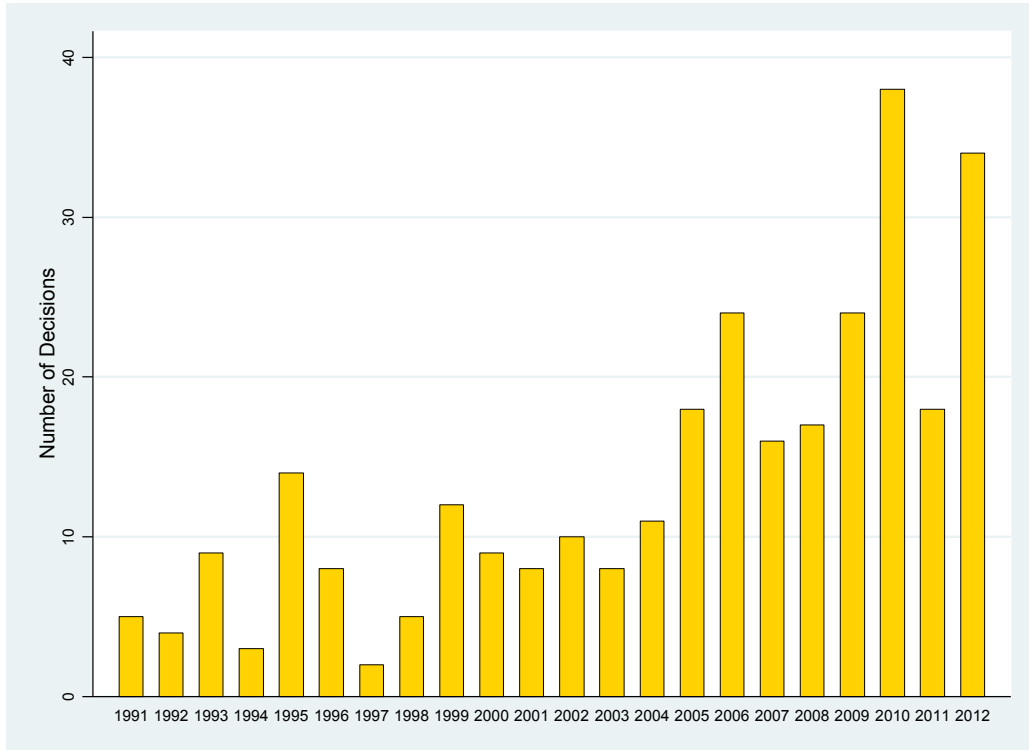
In addition to the overall frequency of gay rights cases heard by the district courts in each year, it is important to determine whether district court judges became more likely to rule in favor of gay rights as time progressed. Figure 4 shows the proportion of pro-gay rights decisions each year.

Figure 4
Percentage of Total Cases Decided in Support of Gay Rights vs. Percentage of Total Cases Decided in Opposition to Gay Rights Each Year; Column Width Represents the Total Number of Cases Decided (in Either Direction) Each Year
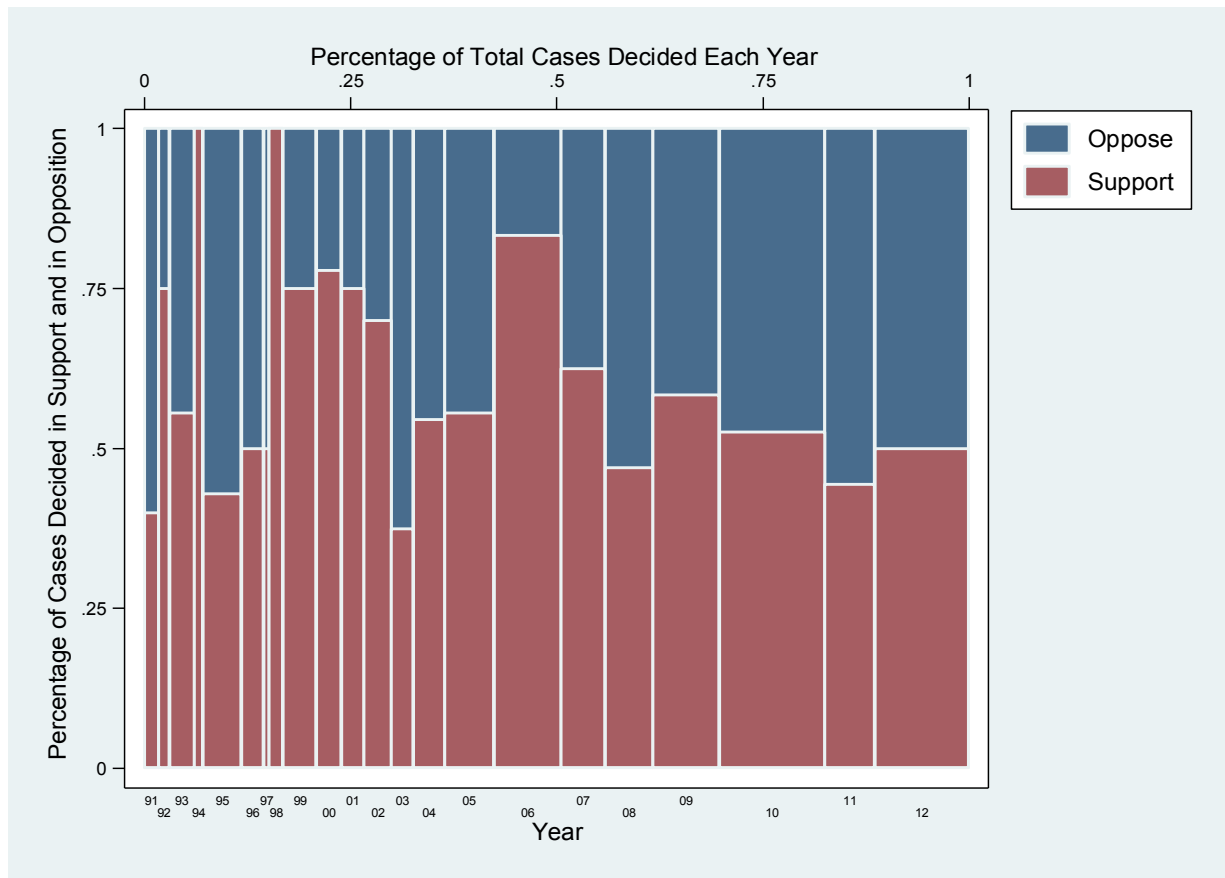
It can be quickly discerned by looking at Figure 4 that the proportion of cases with pro-gay rights outcomes did not increase over time. In fact, some of the earlier years in the data set, namely 1994 and 1998, saw *all* of their (albeit small number of) cases decided in favor of

gay rights. In more recent years we see a relatively even split between cases decided in favor and those decided in opposition to gay rights. Overall, judicial support for gay rights does not trend upward over time, but remains relatively steady.

This result is mildly surprising as I expected judicial support for gay rights to increase over time, at least moderately. After considering the sharp increase in public support for gay rights in every state from 1991 to 2012, as well as the significant increase in the frequency of gay rights cases heard by the district courts over that time, I was anticipating that judges would increasingly decide cases in a pro-gay rights manner alongside public opinion. The most interesting statistic to me is the high proportion of cases decided in favor of gay rights in the 1990s; a proportion I expected would be lower. The absence of any such upward trend in the data foreshadows the likely results from including state-level public opinion in my regression analysis in the next chapter; state-level opinion does not appear to influence district court judges in gay rights cases.

Basic Descriptive Associations

In order to more fully describe several of the independent variables of interest and to understand some of the potential relationships between them and my dependent variable, I include here several basic descriptive tables and measures of association. One of my primary variables of interest is judicial ideology, measured both by party of the appointing president and Common Space score. As a preliminary matter, a simple frequency table can show us whether judges appointed by Democratic presidents tend to rule in favor of gay rights and whether those appointed by Republicans more commonly rule against. Table 8 shows just that, as judges appointed by Democrats decided approximately 76% of their cases in favor of gay rights, while judges appointed by

Republicans decided only 45% of their cases in favor of gay rights. The association is highly significant, having a chi-square of 28.4 and thus achieving significance at the .001 level. Of course, regression analysis may change the significance of this association when controlling for additional variables, however, even the basic descriptive data here show a fairly clear picture of a relationship between judicial ideology and decision making.

Table 8
Gay Rights Decisions by Appointing President of Judge 1991-2012

| Appointing President | Decision | | | | Total |
| | Support | | Oppose | | |
	Frequency	Percentage	Frequency	Percentage	
Democrat	98	75.97	31	24.03	129
Republican	76	45.24	92	54.76	168
Total	174	58.59	123	41.41	297

$$X^2 = 28.4022 \qquad Pr = 0.000$$
$$\text{Cramer's } V = 0.3092$$

Another variable of interest is case type and whether it has any impact on which cases are ruled in favor of or against gay rights. As discussed in the last chapter, in order to control for the possible effects of precedent and other legal factors, I break down each issue area into several different case types. I attempted to keep the number of case types as minimal as possible, and ended up with eight discrete types of gay rights cases. I ran another frequency table showing how many of each type of case were decided in support of or opposition to gay rights, along with a chi-square statistic to gauge significance. Additionally, I created a horizontal bar chart to make the variation between case types more easily discernable at a glance. Throughout this chapter and the next, I follow the recent trend in empirical legal research of producing statistical findings in a more easy-to-

read and quickly understood manner, making them accessible to legal scholars and others who are not social scientist empiricists[16].
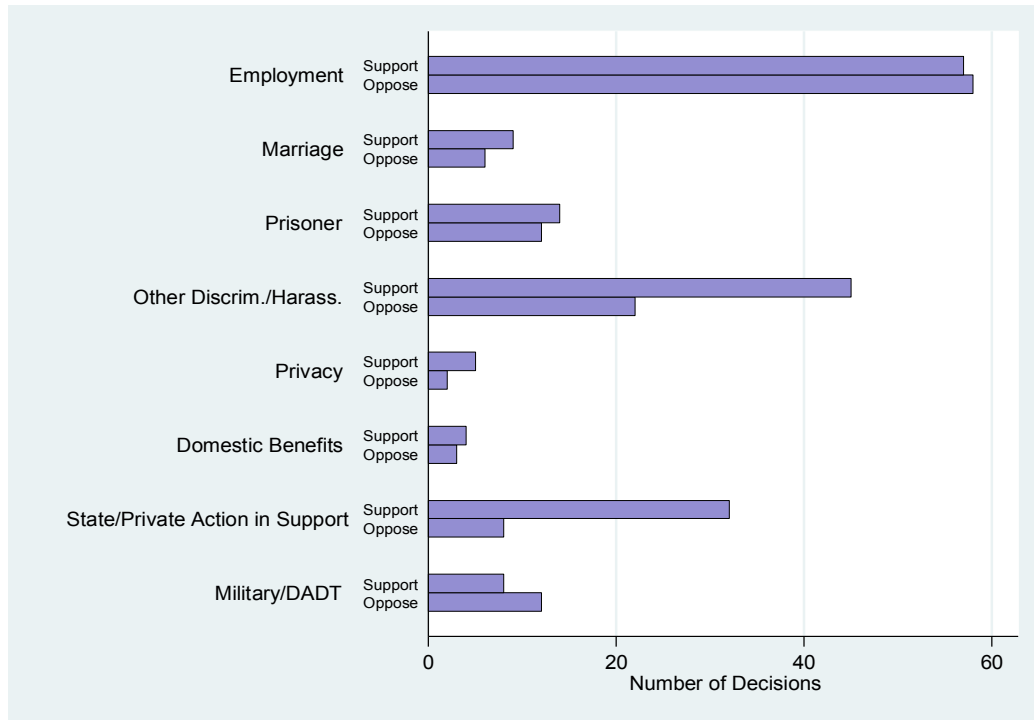
Figure 5 shows that certain types of cases were certainly more likely to be decided in a pro-gay rights manner, especially those involving government or private action to protect gay rights or those involving non-employment and non-prisoner discrimination or harassment (by school officials, by the police, by city officials, etc.). Other case types were split between support and opposition, most notably employment discrimination or harassment cases. Military discrimination cases (including those regarding the

---

[16] This idea has been recently endorsed by an increasing number of well-known and highly respected political scientists and legal scholars and is considered by many public law scholars to be the norm going forward for empirical work in this field. I follow the specific suggestions and guidelines set forth by some of these scholars throughout this dissertation as I report my findings and other statistical information. For more information, see Epstein and Martin (2014), King, Tomz, and Wittenburg (2000), and Epstein and King (2002).

constitutionality of Don't Ask Don't Tell) were the only subset of cases in which judges were more likely to rule against gay rights. The chi-square statistic in Table 9 below demonstrates that case type is significantly related to decisions in gay rights cases, at the .005 level, although several of the case type categories have very few cases. As such, this association will be tested further in the next chapter.

Table 9
Gay Rights Decisions by Case Type 1991-2012

Case Type	Decision		Total
	Support	**Oppose**	
Employment	57	58	115
Marriage	9	6	15
Prisoner	14	12	26
Other Discrimination/Harassment	45	22	67
Privacy	5	2	7
Domestic Benefits	4	3	7
Government/Private Action in Support	32	8	40
Military/DADT	8	12	20
Total	174	123	297

X^2 = 17.0313   Pr = 0.017
Cramer's V = 0.2395

Abortion

State-Level Public Opinion over Time

Public opinion on abortion has remained remarkably consistent over time, with the occasional spike in support or opposition to abortion that subsequently levels out. The average support for abortion across all the states ranged from a low of 38.6% in 2004 to a high of 47.9% in 1993. Figure 6 demonstrates this stability in opinion over time, as well as comparative trends in three representative states: California, Florida, and Tennessee. Similarly to public support for gay rights, support for abortion in some states (including

California) is consistently higher than the average, while support in others (including Tennessee) is consistently lower than the average across all years. Florida demonstrates a pair of interesting spikes (low, then high) in recent years, but otherwise adheres to the overall pattern of stability.

Figure 6
State-Level Public Support for Abortion over Time in CA, FL & TN, Compared to the Average Across all 50 States (and DC) from 1991-2012
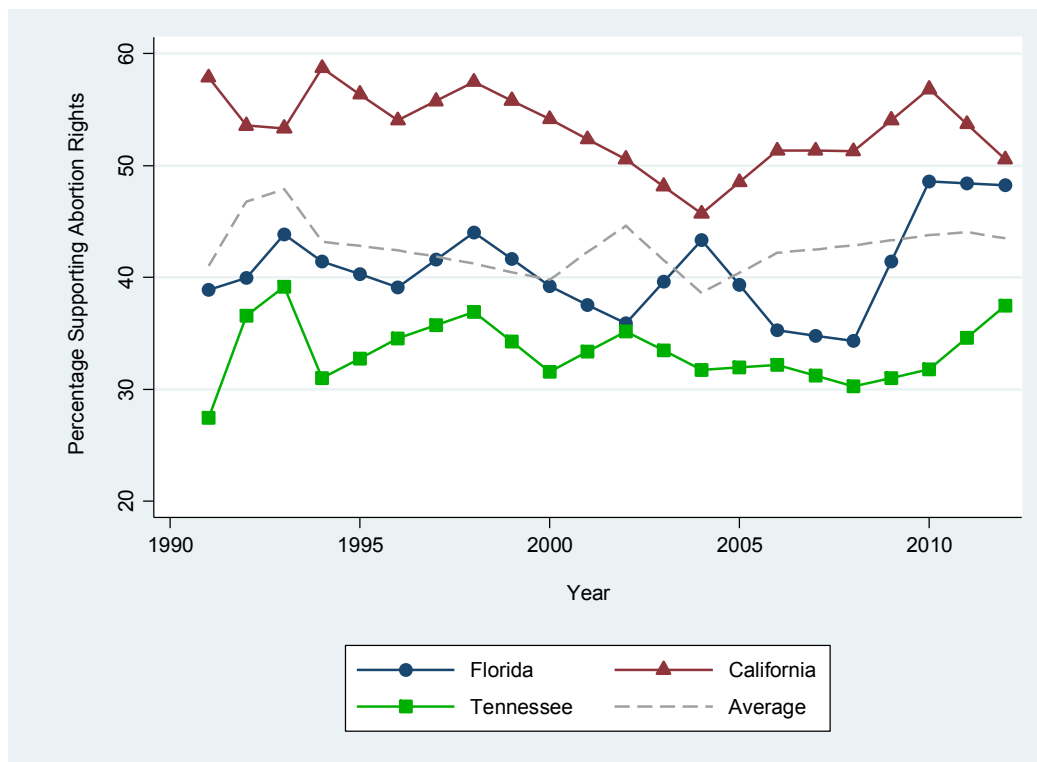
Sources: GSS Data (1992-2012) and ANES Data (1991-2012)

Again, there is nothing surprising in these data, but the trends across various states are worth a quick glance nonetheless, especially when compared to trends in judicial decision making during the same time period.

District Court Decision Making over Time

Unlike gay rights cases, the frequency of abortion cases heard in the district courts did not substantially increase (or decrease) over time. Figure 7 shows the distribution of district court abortion cases in my data set across each year from 1991-2012. The distribution is relatively even despite several spikes in particular years.

Figure 7
Number of Total Abortion Decisions made by U.S. District Court Judges Each Year from 1991-2012
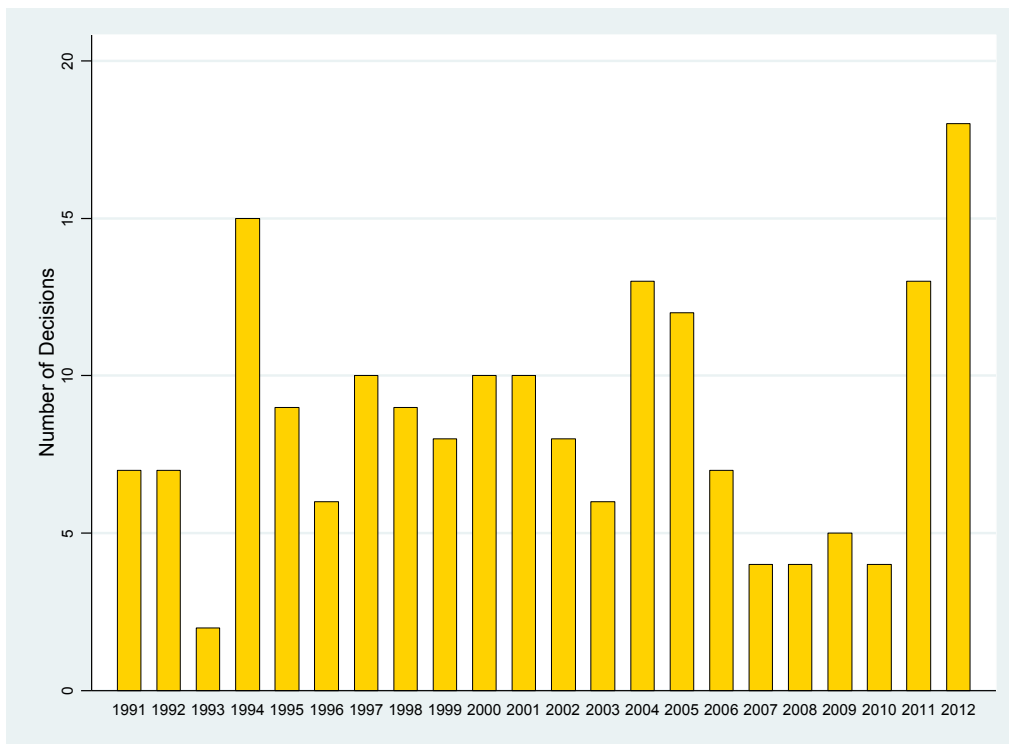
Further, the percentage of abortion cases decided in favor of abortion rights does not appear to increase or decrease over time in any noteworthy way. Figure 8 shows the proportion of cases decided each way (for or against) from 1991 to 2012, and no discernable pattern stands out. Some years have higher proportions of decisions opposing abortion rights, and there are two years in which every case was decided a particular way.

However, in every year but one (with very few cases), the judges ruled in favor of abortion rights in at least 50% of cases, and the percentage was even higher in most years.

Figure 8
Percentage of Total Cases Decided in Support of Abortion Rights vs. Percentage of Total Cases Decided in Opposition to Abortion Rights Each Year; Column Width Represents the Total Number of Cases Decided (in Either Direction) Each Year
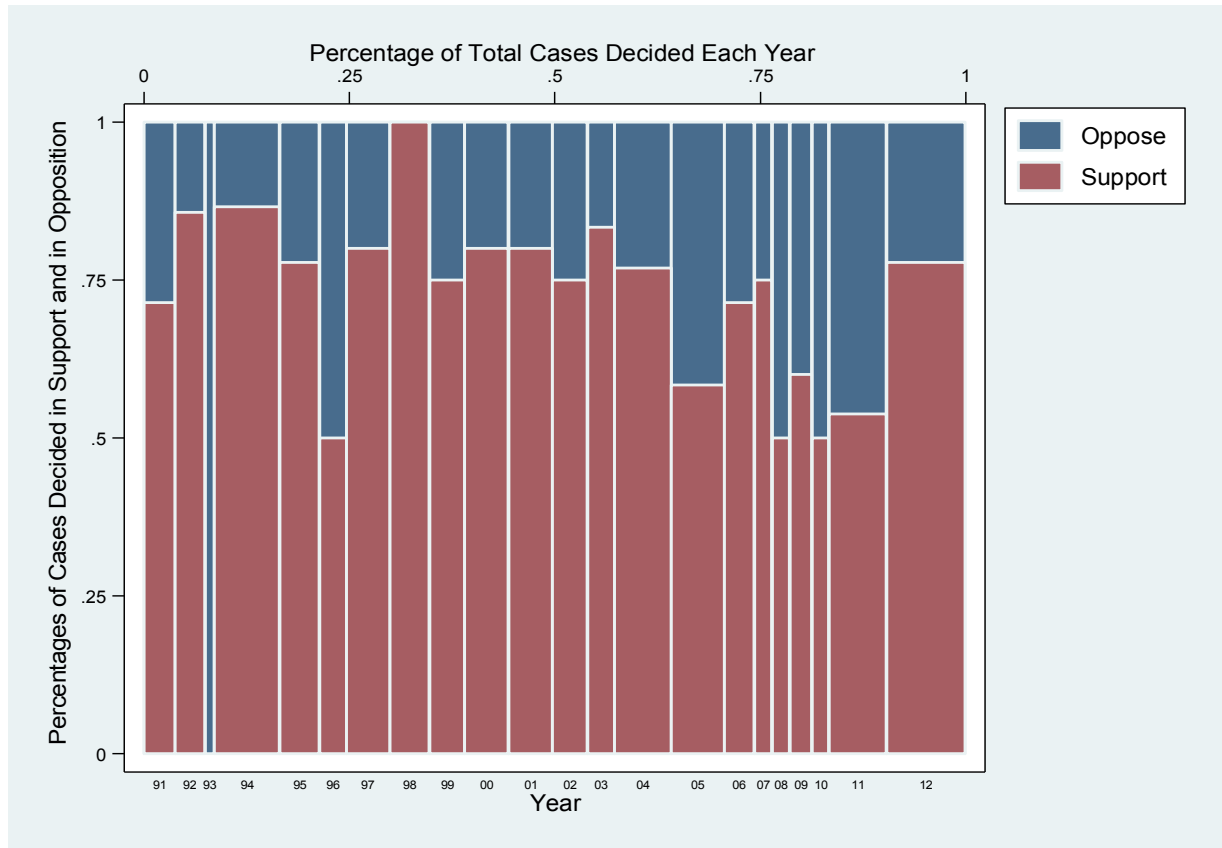
A closer inspection of the state-level public opinion regarding abortion compared against the proportions of pro- and anti-choice decisions over time did not reveal any obvious correlations between public opinion and rulings. However, these charts show only overall trends in opinion and decision making and cannot disaggregate these trends for each of the states individually at this point. Regression analysis will reveal whether state-

level public opinion influences judicial decision making, while these preliminary
descriptive statistics give us the ability to visualize trends in the data over time.

Basic Descriptive Associations

As with gay rights above, I can use simple statistical analysis to conduct a
preliminary test of my hypothesis that judicial ideology significantly influences decision
making in abortion cases. Table 10 indicates that judges appointed by Democratic
presidents were significantly more likely to uphold abortion rights (to a .001 significance
level), although judges from both parties ruled in favor of abortion rights more often than
not. Overall, 73% of judicial decisions upheld abortion rights[17]. This may signify that
although judicial ideology remains the most significant predictor of decision making, legal
precedent may also have a role to play in abortion cases.

Table 10
Abortion Decisions by Appointing President of Judge 1991-2012

| Appointing President | Decision | | | | Total |
| | Support | | Oppose | | |
	Frequency	Percentage	Frequency	Percentage	
Democrat	78	83.87	15	16.13	93
Republican	59	62.77	35	37.23	94
Total	137	73.26	50	26.74	187

X^2 = 10.630 $\qquad$ Pr = 0.001

Cramer's V = 0.2384

The fact that almost 3/4ths of abortion cases were decided the same way results in
far less variation in decisions among case type. As Figure 9 and Table 11 show, each of the
five case types consisted of more pro-choice than anti-choice decisions. Unlike in the gay
rights cases, case type is not significantly associated with outcome in abortion cases.

---

[17] A fact that may result in difficulty finding significance when conducting regression analysis.

However, Figure 9 also shows more subtle differences in the success rate of certain types of abortion cases, including a high likelihood of pro-choice outcomes in undue burden cases during this time period.

Figure 9
Numbers of Decisions in Support of Abortion Rights vs. Decisions in Opposition to Abortion Rights, Broken Down by Case Type (Includes all Cases from 1991-2012)
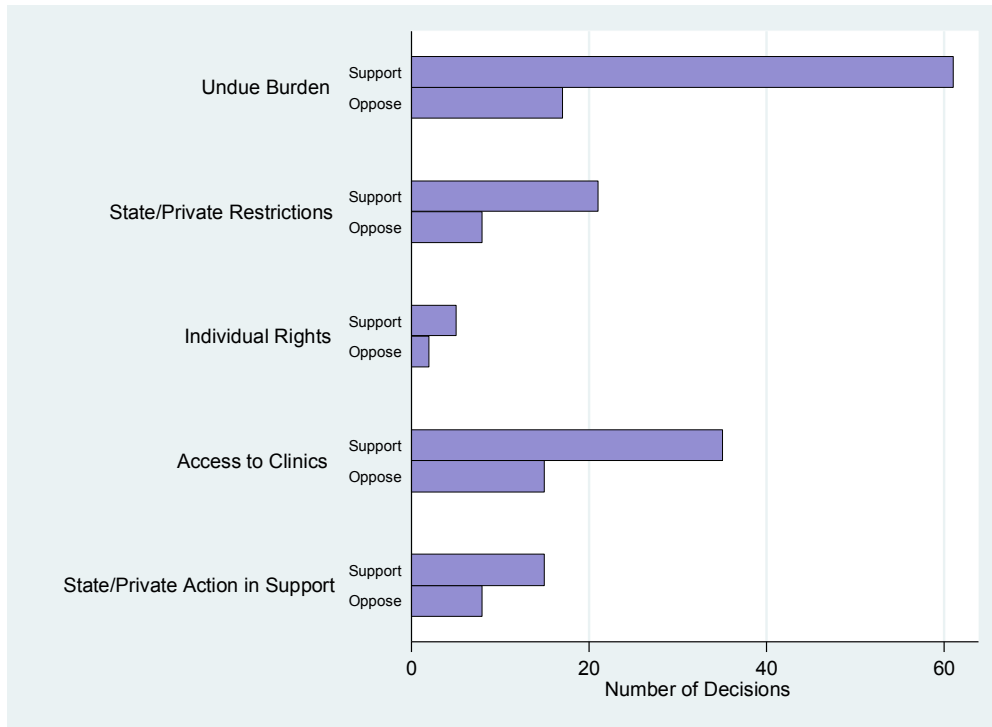
Table 11
Abortion Decisions by Case Type 1991-2012

Case Type	Decision		Total
	Support	Oppose	
Undue Burden	61	17	78
Government/Private Restrictions	21	8	29
Individual Rights	5	2	7
Access to Clinics	35	15	50
Government/Private Action in Support	15	8	23
Total	137	50	187

$X^2 = 2.0271$ Pr = 0.731
Cramer's V = 0.1041

Affirmative Action

State-Level Public Opinion over Time

Public opinion on affirmative action follows the same trend as opinion on abortion –

it has remained remarkably stable over time. I initially expected support for affirmative

action policies to decrease from the early 1990s, when many state and local hiring and

contracting policies were still considered necessary and were upheld by the courts, to the

2000s and especially recently, as more and more government agencies and courts appear

reluctant to consider such policies necessary to ensure equal opportunity. As I read the

decisions and opinions in affirmative action cases, the change in language and tone used by

district court judges over time was evident, even when the outcome of the case was not

necessarily different. However, as Figure 10 shows, public support in the states has not

decreased in any discernable way, but has remained low over time.

The average level of support for all states covered a very small range – from a low of

14.9% in 2002 to a high of 18.7% in 2012. Most individual states followed a similar pattern

of low support with little variation over the years. The District of Columbia was the only

outlier, as the support level there was consistently much higher than the rest of the

country, and does evidence a slight downward trend from 1991-2012 (with a more recent

upturn since 2008). While the support level in D.C. averaged over 35% during this time, no

other state averaged over 25%, and the vast majority averaged in the teens. Interestingly,

the states with the highest levels of support after D.C. were often southern states; for

example, Mississippi showed the second highest average at 25%, and Georgia, South

Carolina, Alabama, Virginia, and Maryland all had averages of over 20% support during this

time period. The states that were least supportive of affirmative action policies were

located in the mountain west (including Wyoming, as shown in Figure 10), midwest, and

northeast regions.

State-Level Public Support for Affirmative Action over Time in DC, IL & WY, Compared to
the Average Across all 50 States (and DC) from 1991-2012
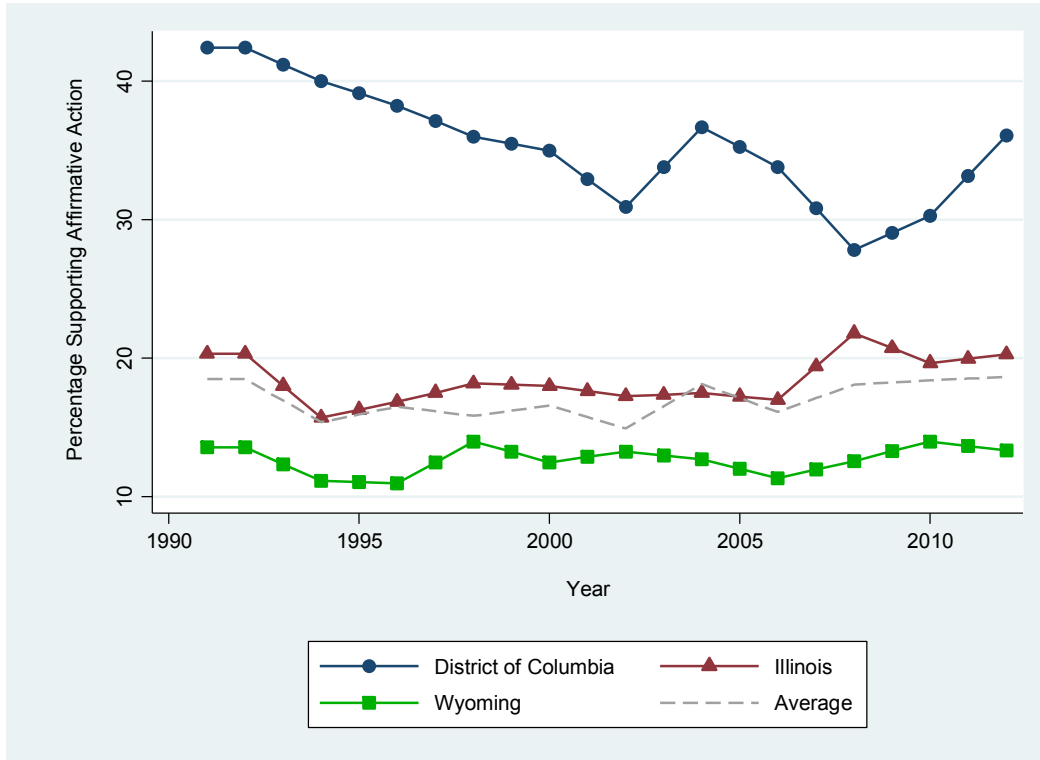
Sources: GSS Data (1992-2012) and ANES Data (1991-2012)

District Court Decision Making over Time

Although public opinion regarding affirmative action did not follow the trends I

anticipated, I was correct about the frequency patterns of affirmative action cases. Unlike

the gay rights cases, most of which occurred in later years, most of the affirmative action

cases occurred in the early and middle years of my data set. As Figure 11 makes clear, the

time periods that saw the most cases were 1992-1993 and a significant spike from 1999-

2001. Since 2002, they have tapered off slowly, with only a handful of cases heard every year from 2007 on, with no cases at all in the last year of the data set, 2012.

Figure 11
Number of Total Affirmative Action Decisions made by U.S. District Court Judges Each Year from 1991-2012
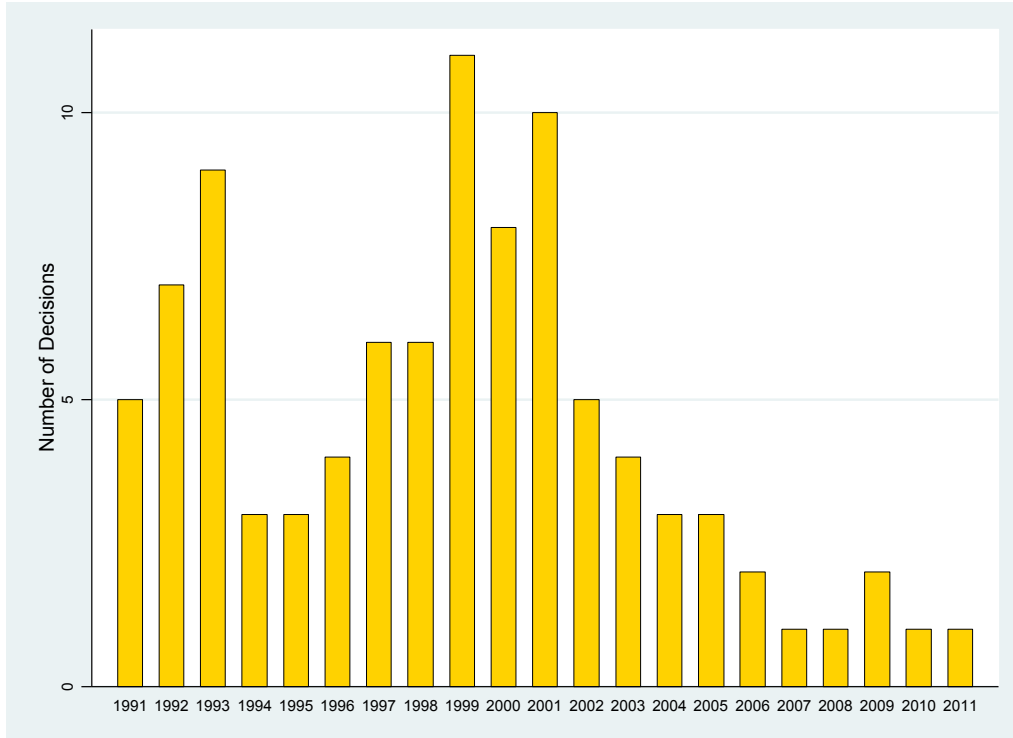
Turning to the proportion of cases decided for and against affirmative action over time, Figure 12 fails to indicate any obvious trends in district court decision making during this time frame. In any given year, the decisions could have been split between support and opposition, or most (or all) cases decided in support, or most (or all) in opposition. This is somewhat surprising based on the shift in language and tone used by judges in affirmative action decisions as time went on, as I mention above. However, this shift demonstrated gradual change in judicial attitude without necessarily indicating change in outcomes. For

example, many of the judges in the early affirmative action cases involving government hiring and promotion practices upheld these programs using strongly supportive language and by pointing out the highly discriminatory practices of the city or county in the near past. In more recent cases, even when the programs were upheld, the judges were much more reluctant to do so, and pointed to progress made since the programs were put into place, often speculating that such programs would not be upheld for much longer if they continued to exist in their current forms.

Figure 12
Percentage of Total Cases Decided in Support of Affirmative Action Policies vs. Percentage of Total Cases Decided in Opposition to Affirmative Action Policies Each Year; Column Width Represents the Total Number of Cases Decided (in Either Direction) Each Year
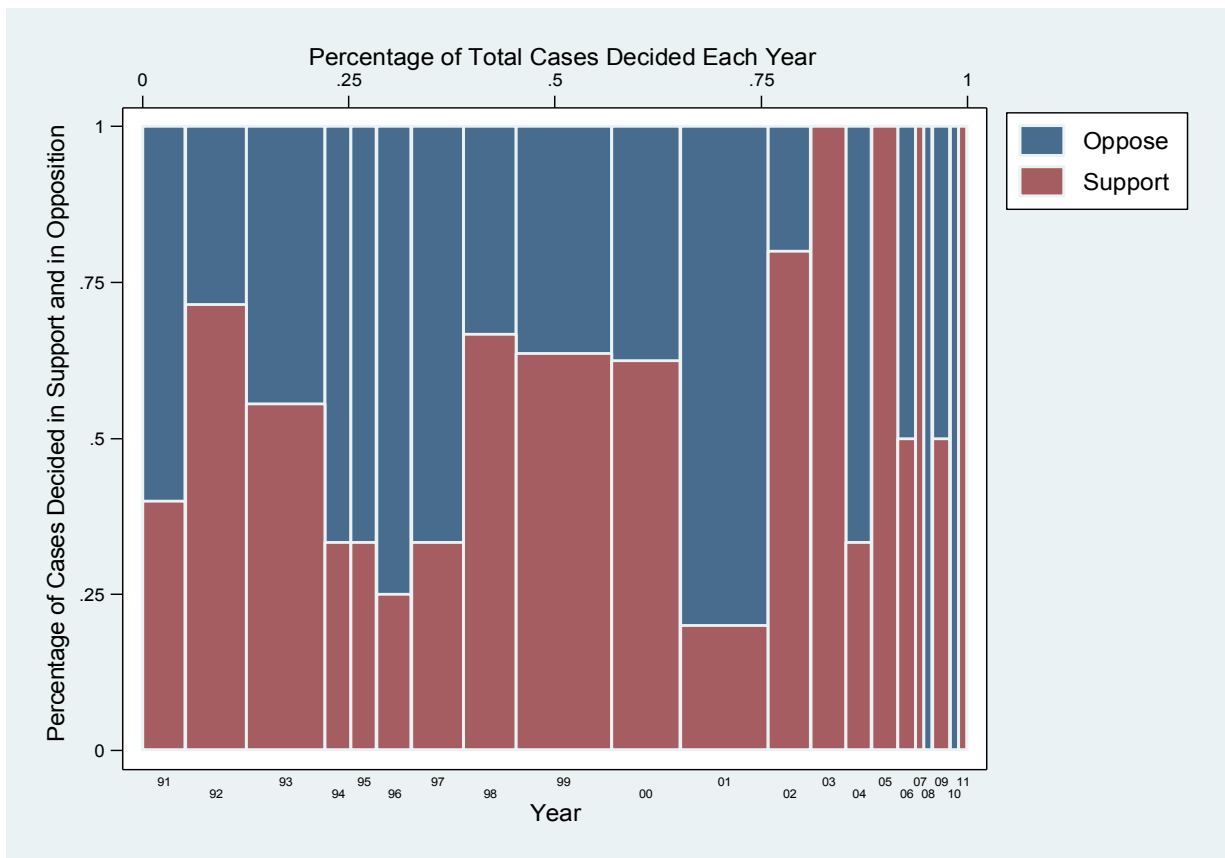
This is an issue area that will be interesting to continue to examine into the future, to see how recent Supreme Court action (and inaction) impact the already reluctant judges in many of these cases. It may be that a more noticeable shift is underway currently and can be seen in a few years when we have the data available to examine contemporary trends more accurately.

Basic Descriptive Associations

As with gay rights and abortion, I expect judicial ideology to be the primary driving force behind affirmative action decision making. Although affirmative action cases constitute the smallest subset of cases in my data set, a quick look at these variables confirms that party of the appointing president is a significant predictor of decisions in these cases. Table 12 shows that Democrat-appointed judges decided in favor of affirmative action policies almost 3 to 1, while Republican-appointed judges ruled against such policies in the majority of the cases they heard. The association was significant at the .005 level; a relationship that will be tested more extensively in the next chapter.

Table 12
Affirmative Action Decisions by Appointing President of Judge 1991-2012

Appointing President	Decision				Total
	Support		Oppose		
	Frequency	Percentage	Frequency	Percentage	
Democrat	27	72.97	10	27.03	37
Republican	24	41.38	34	58.62	58
Total	51	53.68	44	46.32	95

$X^2 = 9.0684$ $\quad$ Pr = 0.003
Cramer's V = 0.3090

Unlike the abortion cases discussed above, the likelihood of success for affirmative action proponents depended to some extent on the type of policy they were defending.

Figure 13 demonstrates how employment policies, including in hiring, promotion, and layoffs were much more likely to be upheld than university admissions policies or minority contracting requirements. As Table 13 indicates, the association is significant at the more lenient .10 level, but not at the standard .05 level that I use throughout this dissertation. A data set containing a larger N may have the effect of making case type significant at this level. Nevertheless, the data as is does reveal this interesting dichotomy in the treatment of affirmative action cases by judges based on the type of case presented.

Figure 13
Numbers of Decisions in Support of Affirmative Action Policies vs. Decisions in Opposition to Affirmative Action Policies, Broken Down by Case Type (Includes all Cases from 1991-2012)
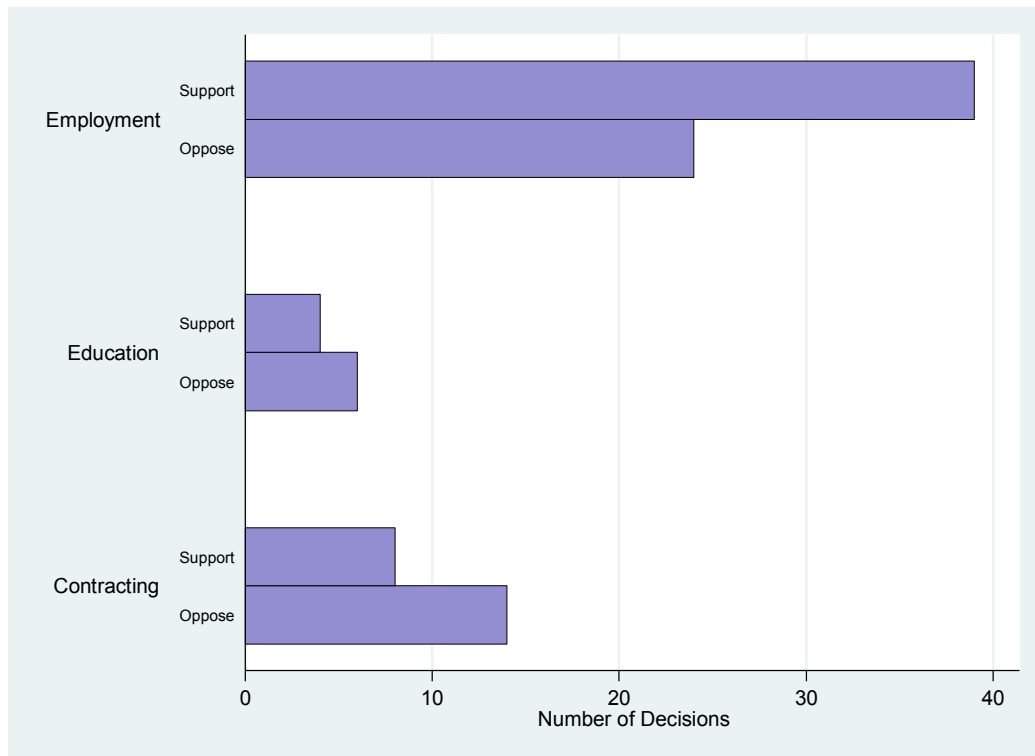
Table 13

Affirmative Action Decisions by Case Type 1991-2012

Case Type	Decision		Total
	Support	**Oppose**	**Total**
Employment	39	24	63
Education	4	6	10
Contracting	8	14	22
Total	51	44	95

$X^2 = 5.1198$ $Pr = 0.077$

Cramer's V = 0.2321

Conclusion

The illustrative data, graphs, and basic statistical analysis provided in this chapter are designed to provide deeper descriptions of the data within each issue area and to provide richer context within which to review the more rigorous regression analyses in the next chapter. Several interesting trends can be seen by examining these figures and relationships, especially the nature of state-level public opinion on each issue, the significance of ideology in all issue areas, and the significance of case type on decision making in gay right cases, and to a lesser extent in affirmative action cases, but not in abortion cases. Many of the over-time trends and frequency and proportion patterns cannot discerned by simply running and examining regression analysis, so including them here is an important first step in explaining my results, inferences, and conclusions presented in the next chapter.

CHAPTER 5 – REGRESSION ANALYSIS

The previous chapter indicated a significant role for certain variables in judicial decision making and pointed to the potential impact of others. This chapter provides a more rigorous and thorough examination of the relationship between decision making and judicial ideology, strategy, legal factors, judicial characteristics, and state-level opinion. I test whether judicial ideology is still significant when other potential explanatory variables are introduced and controlled for. Additionally, regression analysis allows us to determine whether any of the trends or patterns over time exhibited above have any actual relevance to how judges make decisions in these issue areas. I employ multivariate regression and run several models with differing combinations of data in order to best utilize my data set to further our understanding of judicial decision making. I will explain what I have included and why as I go, and will report all theoretically and substantively interesting findings.

As described more fully in Chapter 3, because of the dual measure of judicial ideology, each regression will have two different models – one with party of the appointing president and one with Common Space scores. The models will be identical in every other way, containing all of the same variables and same type of measurements for those variables. The one exception is Circuit Ideology, which also varies depending on which model I am running. The Party of the Appointing President model will use a dummy variable for Circuit Ideology indicating whether the majority of judges in the circuit were appointed by Democrats or Republicans. The Common Space Score model will employ the median Common Space score of the judges in the circuit as its measure of Circuit Ideology. As the tables will show, most of the regressions had very similar results for the two models,

with only a handful of differences. I present the models side by side in the same tables to allow easy comparison of them.

Throughout this chapter, I provide more than just regression tables reporting coefficients, standard errors, and significance. As briefly mentioned in Chapter 3, a "new wave" of more accessible and user-friendly empirical reporting has swept into the field of public law. Gary King and colleagues were some of the first scholars to advance the concept of providing more accessible presentations of data and statistical analysis in everything from journal articles and books to conference papers to teaching materials in order to heighten the impact of empirical scholarship on other, non-traditional audiences, including lawyers, judges, policy makers, and students. Scholars promoting more accessible ways of reporting statistical findings provide guidelines, suggestions, and even software for easily conveying results visually and in more intuitive ways that can be quickly examined and grasped by even the most non-statistically inclined reader (e.g., Epstein and Martin 2014; King et al. 2000). Most scholars do not conduct research simply to satisfy their own curiosity, but want to inform others of their results and conclusions. Slight modifications to how statistical results are reported can help empirical scholars reach larger audiences and can increase the degree of intellectual discourse in the field (King et al. 2000).

A related trend in the empirical legal literature (as well as in political science literature generally) is a renewed effort to make regression analysis more easily understood by focusing on the substantive effect of the results; in other words, what the regression coefficients mean in the "real world". Logistic regression coefficients are especially difficult to interpret since they represent the percentage change in the log of the odds ratio. A statistically significant logistic regression coefficient tells us simply that a

variable is associated with the dependent variable to a certain degree of certainty (95%, 99%, etc.). While this is certainly important to know and report, it says nothing about the actual impact of the variable and the resulting implications. If a predictor variable is significant, but does not have any real implications in practice, those academics, students, practitioners, and other individuals reading the findings are going to ask, "Why should I care?"

In order to convey the substantive impact of results, and to do so in a manner that makes them accessible to empiricists and non-empiricists alike, I provide information and graphics on the actual impact of the independent variables of interest on judge's decisions. I primarily use CLARIFY, a program for Stata created by Gary King, Michael Tomz, and Jason Wittenberg that simulates predicted probabilities from logistic regression coefficients[18]. Since my dependent variable is a dichotomous measure of how a judge rules in a particular case (either in support of the issue, or against it), the predicted probabilities generated by CLARIFY show how likely each outcome is as the independent variable of interest changes. For each of my issue areas, I report the predicted probabilities using intuitive and user-friendly graphs and discuss the implications of these findings for the parties involved in these cases and the judicial system as whole.

Gay Rights

Primary Models

For each issue area, I ran a hierarchal model, beginning with judicial characteristics alone (ideology, gender, race, and religion)[19], then adding strategic (circuit ideology)[20] and

---

[18] For further explanation of how the simulation method works, see King et al. (2000).

[19] I began the hierarchy with ideology and other individual-level variables in the first level because of the strong impact that ideology has consistently been shown to have on decision making, especially in polarizing issues. Thus, it is crucial to include ideology in all levels of the hierarchal models or risk invalid results for the other variables.

legal (case type)[21] variables, and finally adding state-level variables (state opinion and state political culture[22])[23]. I decided to estimate hierarchal models instead of just one all-inclusive model because I wanted to clearly delineate the impact of each additional set of independent variables on the dependent variable. I also wanted to observe and investigate any significant changes to the primary independent variables' coefficients from one hierarchal model to the next, possibly providing a more nuanced understanding of the relationships between variables. However, I did not report the regression tables for each level of the hierarchal model here unless there were substantively interesting differences between them. The hierarchal regressions for the gay rights cases were straightforward; each addition of variables added to the overall strength of the model and did not alter the significance of any previously included variables. Therefore I report just the final, "best" model that includes all variables in Table 14 below.

---

[20] For each issue area, I ran models that replaced circuit ideology with my alternate interaction variable for strategy (judge's ideology*circuit difference). The interaction was not significant in any of the models. Since the interaction included one of my primary variables of interest (judge's ideology), the coefficients (and the meaning of the coefficients) for judge's ideology were changed in the interactive models. I was primarily interested in the effect of judge's ideology on decision making across all districts and circuits, and thus I removed the interaction variable to get the appropriate coefficients for judge's ideology. Additionally, the role of circuit difference alone has no value (as it only measures the distance, or party differences, between district and circuit judges, but not the direction of those differences), so I ultimately dropped both circuit difference and the interaction variable and report the original model (using circuit ideology as the strategic variable) here. Appendix B contains tables showing each of the alternative interactive models.

[21] Due to the miniscule number of cases that were heard on remand, I dropped the legal variable "Remanded" from regression analysis. Similarly, very few cases were decided on factual, as opposed to legal, grounds; thus I also dropped "Decision Type" from my analysis.

[22] As suspected, Elazar's state political culture types and region were too strongly correlated to include both in regression analysis. I decided to include state culture and omit region for several reasons: State culture has greater variation than region (3 categories instead of 2); the state culture categories effectively encompass region fairly comprehensively (all but a handful of southern states are in the "traditionalistic" category, and all non-south states are part of the "moralistic" and "individualistic" categories), and state culture is less correlated with state-level opinion (although neither state culture nor region was significantly correlated with opinion). Running each of the models with region instead of state culture did not substantively change the results or show any interesting differences.

[23] Additionally, I ran each model with an interaction effect between state opinion and state culture in order to assess whether the effect of state opinion on judicial decisions varied with each type of state culture. None of the interactions were significant; thus I did not include the interactions in the final models.

Table 14

Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.422 (.310)****	---
Common Space Score	---	**2.026 (.438)****
Judge's Gender	**-1.069 (.411)****	**-1.091 (.406)****
Judge's Race	.155 (.470)	.138 (.472)
Judge's Religion (Reference – no affiliation)		
Catholic	-.241 (.404)	-.152 (.402)
Mainline Protestant	.189 (.414)	.281 (.419)
Other Christian	-.104 (.493)	.081 (.486)
Jewish	-.439 (.630)	-.298 (.601)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	.114 (.337)	---
Circuit is Evenly Split	-1.123 (.790)	---
Circuit Ideology 2 – Median C.S. Score	---	.661 (.721)
Case Type (Reference – Employment Cases)		
Gay Marriage	-946 (.650)	-1.080 (.658)
Prisoner Discrimination	-.044 (.521)	-.117 (.523)
Other Discrimination/Harassment	**-.933 (.376)***	**-.873 (.372)***
Privacy/Defamation	-1.055 (.958)	-1.015 (.946)
Domestic Benefits	-.716 (.911)	-.668 (.889)
Gov't or Private Protections	**-1.722 (.491)****	**-1.826 (.497)****
Military/Don't Ask Don't Tell	.755 (.659)	.896 (.661)
State-Level Public Support for Gay Rights	.020 (.013)	.020 (.013)
State Political Culture (Reference – Moralistic)		
Individualistic States	.526 (.337)	.569 (.339)
Traditionalistic States	**.881 (.429)***	.572 (.448)
Constant	-2.090 (1.047)	-1.281 (.918)

n	280[24]	280
X² of Model	69.79	68.61
Percent Reduction in Error	35.04%	33.33%

As Table 14 indicates, judicial ideology was strongly statistically significant for both the Party of the Appointing President model and the Common Space Score model. This means that liberal (Democrat-appointed) judges are significantly more likely than their conservative (Republican-appointed) counterparts to uphold gay rights, even when controlling for many other potential explanatory variables. This finding supports my hypothesis that judicial ideology is significantly associated with decision making in federal district courts. Gender was also strongly significant, indicating that female judges were substantially more likely to uphold gay rights than male judges. Both of these findings are in line with the literature generally as it discusses the roles of ideology and gender in decision making, but also confirm their importance at the district court level, a contention that the district court literature has debated at length.

Two of the case types were significant when compared to the reference category of employment cases. The descriptive statistics reported in Chapter 4 showed that decisions in employment discrimination and/or harassment cases were evenly split between pro-gay rights and anti-gay rights. Comparatively, cases involving other types of discrimination or harassment (all cases not involving employment or prisoners) were more likely to be decided in favor of gay rights (typically the person being discriminated against or harassed). Common examples in this category of cases include students treated unequally by school officials (not allowed to form LGBT support groups, not protected from bullying

---

[24] Most of the regression models in this chapter include fewer than the total number of cases in each issue area because of missing data in the Elazar variable (for Washington D.C. and Puerto Rico cases) and in each of the state opinion alternate variables (for Puerto Rico cases).

and/or assault), harassment by police and unlawful arrest, unequal treatment by city or state officials, and housing discrimination. This finding of significance is not surprising to me as someone who has read the facts of all of these cases. For cases in this category, the levels of bias and resulting discrimination were noticeably more overt and more extreme than in discrimination and/or harassment cases in the other categories[25]. Further, many (although not all) of the cases in this category dealt with government officials and units (police, public schools, cities or counties, etc.) who face a lower threshold for actionable treatment than private entities, who made up a large percentage (but not all) of the employment discrimination cases.

Judges hearing challenges to protections afforded to LGBT individuals or groups by either government or private actors were also much more likely to uphold such protections than to strike them down. This category included city or county ordinances prohibiting anyone from discriminating against individuals based on sexual orientation, as well as similar rules put into place by private organizations. As pointed out in Chapter 4, these cases were overwhelmingly decided in favor of gay rights 32-8, a result that remains significant when controlling for ideology and other predictor variables. The significance of these two case categories, as well as the overall significance of Case Type as a predictor variable in a post-regression test, indicates that legal factors do influence judges to some extent. Conversely, controlling for case type and still finding statistical significance for judicial ideology affirms the important role of ideology in decision making as well.

---

[25] For example, cases in this category included LGBT students that were bullied to extremes, sometimes resulting in vicious assaults, during which the schools often did nothing to protect them or to punish the offenders. Similarly, the cases of police harassment often included assaults on suspects and bullying of LGBT individuals on the street or in other public places, and discrimination by city officials or housing boards often involved flat-out refusals to accommodate an individual or group because of their sexual orientation. Very few of these cases involved subtle or nuanced forms of harassment or discrimination, unlike many of the employment cases, in which the employers could attempt to blame employees' poor performance for firings or demotions or argue that workplace harassment did not meet the stringent standards required for it to be actionable.

The only other statistically significant variable was Elazar's "traditionalistic" state culture type. Compared to the reference category of moralistic states, judges in traditionalistic states, almost all of which are located in the south, are significantly more likely to rule against gay rights. This is not a surprising result, as southern states have been slower to recognize and support gay rights overall. However, it is interesting that the variable is significant in the Party of the Appointing President model but not the Common Space Score model. I attribute this difference to the fact that Common Space scores already account for the variation in ideology for judges in different states, especially judges in southern states and non-southern states. As described in Chapter 3, it does so by taking into account the ideology of each state's senators at the time of appointment, as opposed to simply the party of the appointing president. The result here is useful evidence of the superior accuracy of Common Space scores when measuring judicial ideology.

The non-significance of explanatory variables can be just as interesting as the significance of others. Among the most notable were religion and state opinion. The issue of gay rights is a prime example of morality policy, and many religions proclaim strong stances on this issue. However, none of the categories of religion were statistically significant, nor was it significant as a whole. Two factors could be contributing to religion's lack of impact on judges. First, it is a variable with one very large category and several small ones – over 48% of judges in the gay rights data set either consider themselves non-affiliated with any religion or refused to respond. Thus, it may be difficult to find significance for this variable at all[26]. Secondly, much of the variation in religion may be encompassed by judicial ideology. Judges falling within certain religion categories are

---

[26] Although, as discussed later in this chapter, at least one religion category was found to be significant in one of the time-bound gay rights models.

typically more conservative (especially Other Christian) while those falling within other categories are typically more liberal (Jewish, Mainline Protestant), although this is certainly not true for all judges. Additionally, Catholic judges tend to run the gamut from liberal to conservative. Therefore, the explanation for religion's non-significance here could be one, both, or neither of these reasons, or religion could simply not be associated with judicial decision making to a significant degree.

State-level opinion is one of my primary variables of interest and bases for my research question, thus its non-significance here is important to consider. I ran models using all three alternate measures of state opinion described in Chapter 3 – specific state-level opinion on the issue, Erikson, Wright, and McIver's measure of the general ideology of state residents, and Berry et al.'s measure of state citizen ideology. There was very little difference between the three measures, so I include specific state opinion in my final model as that is my primary (and most appropriate) measure of state opinion[27]. Although I did not expressly hypothesize that state-level public opinion would influence district court decision making, I did anticipate that it may matter to judges enough to mitigate ideology or other important explanatory variables. However, the addition of state opinion in my model did not alter the coefficients of the other significant variables in any substantial way; in fact, the coefficient for judicial ideology *increased* in both models with the addition of state-level opinion as a control variable. At least in the issue area of gay rights, it appears that district court judges do not follow the opinion of the residents within their states, but instead adhere strongly to their own ideological beliefs.

---

[27] In order to be as thorough as possible, and to satisfy my own curiosity, I ran several different variations of the models to see whether state opinion by itself was significant, or whether removing the other state-level variable (state culture) increased its significance (even though I also tested to make sure they were not too highly correlated with each other), among other combinations. None of these models made any substantive difference and all ended up explaining less about the dependent variable than the final model I present here.

Understanding that judicial ideology is related to judicial decision making to a statistically significant degree is only half the battle. What we really want to know is the magnitude of the effect – does ideology actually make a noticeable difference in how a judge rules in a gay rights case? As discussed above, the best way to test the magnitude of the effect in logistic regression is to simulate predicted probabilities. Figure 14 shows the predicted probabilities of a decision opposing gay rights for judges appointed by each party while holding all other independent variables constant.

Figure 14
Predicted Probability of Anti-Gay Rights Decision in U.S. District Court Cases (1991-2012), by Party of Appointing President, with 95% Confidence Intervals
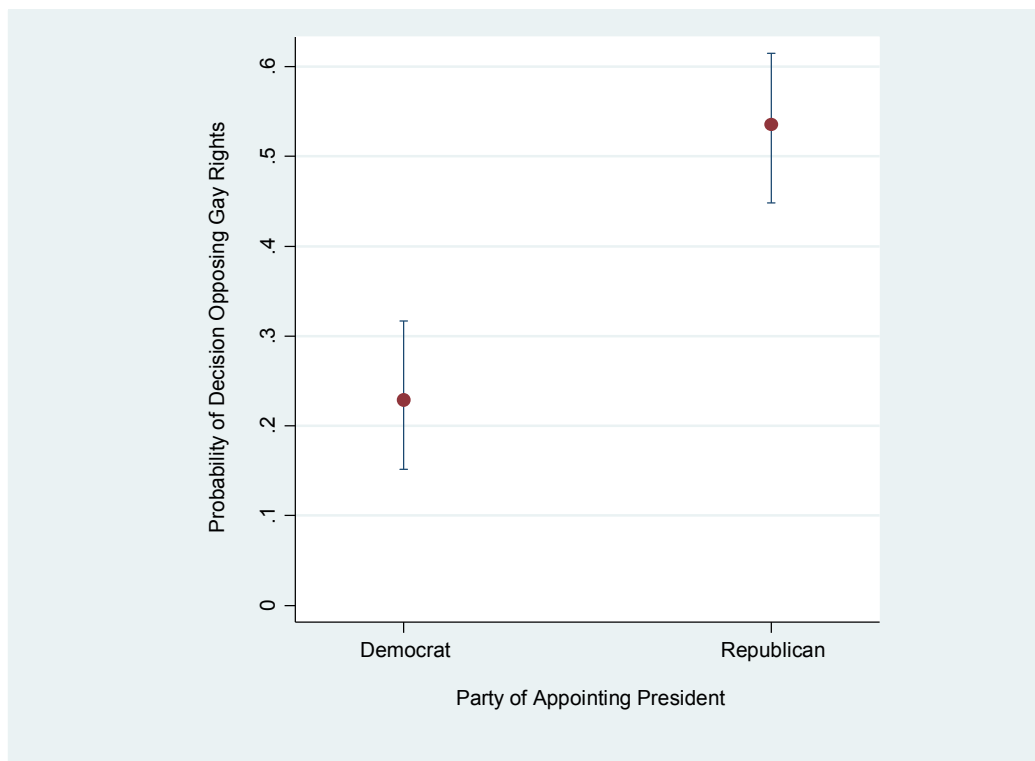
All else being equal, the mean likelihood of a Democrat appointee ruling against gay rights was 22.9%, while the mean likelihood of a Republican appointee ruling in the same way jumped up to 53.5%. This is quite a substantive and dramatic difference, especially for

the parties involved in these cases. For a LGBT individual or advocate filing a lawsuit in federal district court to uphold protections or strike down discriminatory actions, the likelihood of winning the case decreases by 30% percentage points when assigned a Republican-appointed judge. The vertical lines above and below the dots represent 95% confidence intervals for the predictions. The large difference between the highest point for Democrat appointees and the lowest point for Republican appointees further substantiates the substantive differences between judges and the likelihood of an anti-gay rights outcome.

It is perhaps even more beneficial to depict the predicted probabilities for decisions based on the more accurate measure of judicial ideology – Common Space scores. This analysis is not quite as straightforward since Common Space scores are a continuous variable with many different values. Holding all other independent variables constant, I generate average predicted probabilities for a ruling opposing gay rights for each Common Space score in the range of -0.6 to 0.6 (the complete range of actual judicial scores) at increments of 0.1 and connect them with a solid line. The shaded area around the line signifies the high and low parameters of the 95% confidence intervals for each .01 increment along the continuum. Figure 15 depicts the considerable variation in probabilities depending on judicial Common Space score. As we move from the most liberal judges to those in the middle of the ideological spectrum, the likelihood of an anti-gay rights decision more than doubles, from 15.5% to 37.7%. As we move further to the most conservative judges, the likelihood of an anti-gay rights decision almost doubles again, to 66.8%.

Figure 15

Predicted Probability of Anti-Gay Rights Decision in U.S. District Court Cases (1991-2012), by Common Space Score of Judge, with 95% Confidence Intervals
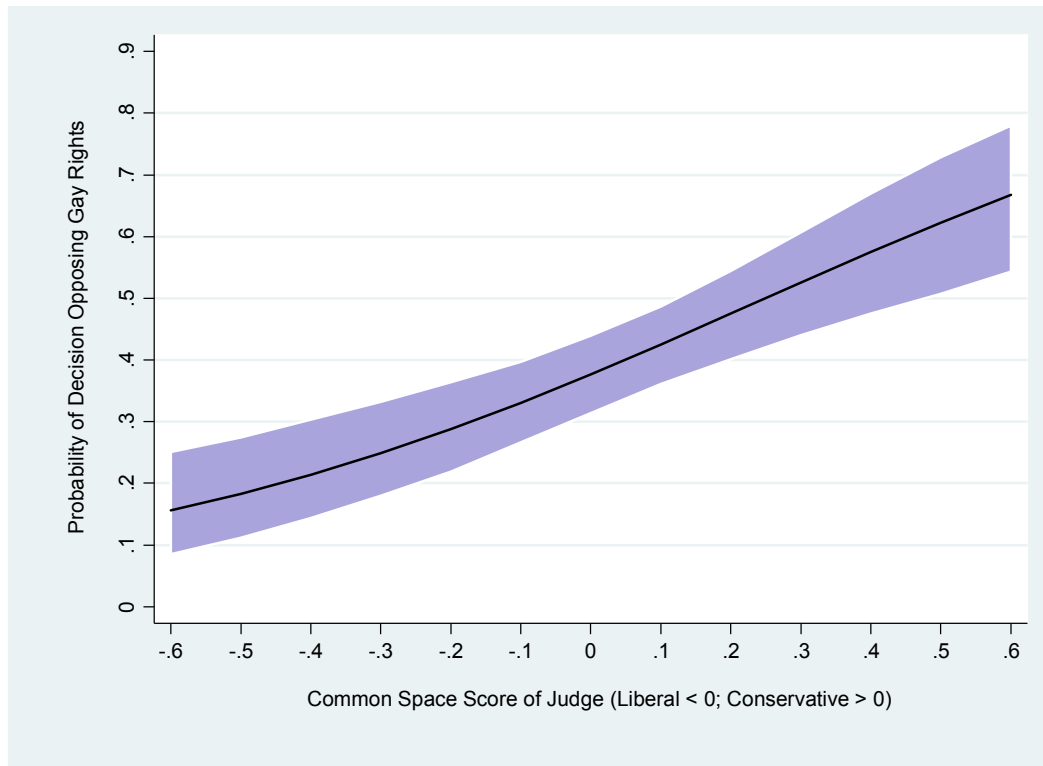
I also ran predicted probabilities for the effect of gender on decisions in gay rights cases. Although the coefficient was highly significant, I am more interested in the practical effect of gender on judicial decision making. As described in Chapter 3, women tend to demonstrate higher levels of support for gay rights than men; thus the perception is that female judges will be more sympathetic to LGBT individuals and gay rights advocates than male judges. Indeed, Figure 16 indicates a rather substantial difference between male and female judges in these cases. Holding all other independent variables constant[28], the

---

[28] I used the Common Space Score Model when computing predicted probabilities for gender.

average probability that a male judge will rule against gay rights was 44.0%, while the average probability that a female judge would do the same was only 21.5%[29].

Figure 16
Predicted Probability of Anti-Gay Rights Decision in U.S. District Court Cases (1991-2012), by Gender of Judge, with 95% Confidence Intervals
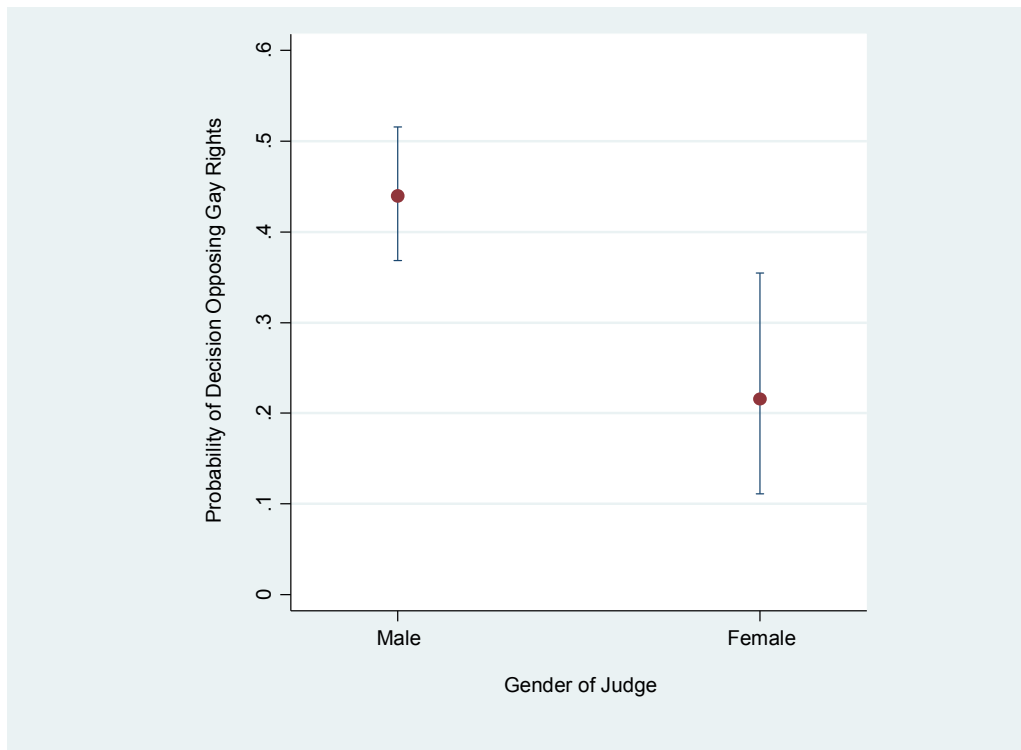
This difference is certainly large enough to be noteworthy, and to catch the attention of the parties in these cases, in which ideology and gender both apparently play significant roles in the outcomes.

Time-Bound Models

  Gay rights is unique among the issue areas I include because of the drastic change in public opinion during the time period examined. Although state-level public opinion did

---

[29] The 95% confidence interval range was significantly larger for female judges than males because only 20% of the judges in the gay rights data set are female.

not appear to have any *direct* effect on decision making, I thought it may be interesting to see if there were any disparities in the impact of explanatory variables between the earlier years of my data set and the later years, keeping in mind the large difference in public support for gay rights between the two time frames. Therefore, I split the data into two time periods – 1991 to 2005 and 2006 to 2012. I chose 2005/2006 as the split point because it was right around the time that the number of gay rights cases heard every year markedly jumped up (see Figure 3 in Chapter 4) and also when state-level public support for gay rights began its final steady incline, with no further dips (see Figure 2 in Chapter 4)[30]. The number of cases in each subset was also sufficient to run viable regression analyses.

The two time-bound models did in fact indicate several interesting contrasts, both between each other and when compared to the overall model. I present the results of both regressions first and then evaluate the differences. Table 15 shows the logistic regression results from the first time-bound model (1991-2005). While ideology was still highly significant (for both the Party model and the Common Space Score model), gender and case type were not. Further, one of the Religion categories (Mainline Protestant), as well as Circuit Ideology (in the Common Space Score model only), did have significant impacts on decision making during this time period. Similarly to the overall model, Elazar's traditionalistic state culture type was significant in the Party model, but not in the Common Space Score model.

---

[30] As mentioned in Chapter 4, public backlash after the Massachusetts Supreme Court legalized gay marriage in that state resulted in a (brief) nationwide dip in public support for gay rights in 2004-2005. The highly publicized case, which made Massachusetts the first state to legalize gay marriage, also likely acted as a trigger that placed the issue of gay rights more firmly on the radar of the public, the media, and the political parties.

Table 15

Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, including *only* Cases from 1991-2005, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**2.15 (.610)****	---
Common Space Score	---	**2.909 (.854)****
Judge's Gender	-1.006 (.896)	-1.137 (.853)
Judge's Race	.655 (.904)	.519 (.904)
Judge's Religion (Reference – no affiliation)		
Catholic	.254 (.738)	.827 (.735)
Mainline Protestant	**1.512 (.715)***	**1.482 (.703)***
Other Christian	.771 (.781)	.994 (.814)
Jewish	-.176 (1.123)	.188 (1.007)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	1.047 (.633)	---
Circuit is Evenly Split	2.922 (1.686)	---
Circuit Ideology 2 – Median C.S. Score	---	**2.720 (1.290)***
Case Type (Reference – Employment Cases)		
Prisoner Discrimination	1.385 (1.664)	1.097 (1.404)
Other Discrimination/Harassment	-.405 (.709)	-.347 (.706)
Domestic Benefits	1.654 (1.392)	1.092 (1.365)
Gov't or Private Protections	-.726 (.763)	-.685 (.748)
Military/Don't Ask Don't Tell	1.053 (.920)	1.055 (.914)
State-Level Public Support for Gay Rights	.045 (.029)	.036 (.027)
State Political Culture (Reference – Moralistic)		
Individualistic States	.813 (.661)	.897 (.673)
Traditionalistic States	**2.805 (1.038)****	1.556 (.937)
Constant	-5.982 (2.242)	-3.547 (1.784)
n	115	115
X² of Model	49.79	49.24
Percent Reduction in Error	33.33%	35.56%

Table 16 depicts the results for the 2006-2012 model. This model looks more similar to the results from the overall model, with ideology and several case types having significant effects on the outcomes of gay rights cases (with the addition of gay marriage to that list). However, gender was not significant in this model, nor was Elazar's state culture.

Table 16
Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, including *only* Cases from 2006-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.595 (.466)****	---
Common Space Score	---	**1.809 (.599)****
Judge's Gender	-1.004 (.584)	-1.093 (.568)
Judge's Race	.003 (.644)	-.156 (.626)
Judge's Religion (Reference – no affiliation)		
Catholic	-.814 (.578)	-.711 (.561)
Mainline Protestant	-.502 (.667)	-.319 (.667)
Other Christian	-.408 (.700)	-.244 (.681)
Jewish	-.515 (.976)	-.469 (.913)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	-.328 (.485)	---
Circuit is Evenly Split	**-2.216 (1.056)***	---
Circuit Ideology 2 – Median C.S. Score	---	-.647 (1.026)
Case Type (Reference – Employment Cases)		
Gay Marriage	**-2.427 (.845)****	**-2.503 (.828)****
Prisoner Discrimination	-.921 (.651)	-.904 (.627)
Other Discrimination/Harassment	**-1.755 (.538)****	**-1.480 (.507)****
Privacy/Defamation	-1.671 (1.026)	-1.588 (1.004)
Gov't or Private Protections	**-2.881 (.781)****	**-2.695 (.769)****
State-Level Public Support for Gay Rights	.025 (.034)	.048 (.030)

State Political Culture (Reference – Moralistic)

Individualistic States	.554 (.467)	.459 (.457)
Traditionalistic States	.458 (.620)	.626 (.637)
Constant	-1.387 (2.421)	-2.448 (2.067)
n	158	158
X² of Model	52.89	46.42
Percent Reduction in Error	42.65%	42.65%

The results from the earlier time period (1991-2005) demonstrated several

surprising results. Judges identifying as Mainline Protestant were significantly more likely

to rule against gay rights than judges claiming no affiliation or refusing to respond. This

result is counter-intuitive as Mainline Protestants are typically considered more liberal on

morality policy issues[31]. Further, although significant in these models, none of the religion

variables were significant over the entire time period (or in the later models), suggesting

that the religion of the deciding judge (at least for Mainline Protestants) had an influence

on him or her in the early years of gay rights, but not after 2005 or so. Circuit Ideology was

also significant in the earlier time period, indicating that judges were attentive to the

ideology of the judges on the circuit above them and ruled accordingly, probably in an

effort to avoid reversal. Circuit Ideology also dropped off the list of significant variables in

both the later models[32] and overall models, suggesting that strategy as a factor in decision

making was influential to judges early on, perhaps as they confronted these issues for the

first time and were learning to navigate their own stances on them. In later years, because

of increasing party polarization or the increasing attention paid to gay rights issues, district

---

[31] Since the category of "Mainline Protestant" is somewhat of a catch-all category, including Methodists, Presbyterians, Lutherans, and others, it is conceivable that certain denominations, especially those located in the South, may be conservative on gay rights issues, despite being relatively liberal on other issues.

[32] Except in the "split" circuits, of which there were relatively few; though mildly interesting, this result has little bearing here as strategy would not come into play in evenly split circuits, as opposed to circuits controlled by Republican-controlled judges and those controlled by Democrat-appointed judges.

judges appeared to be less concerned with being overturned on appeal and ruled more in line with their own ideologies, depending also on case type.

Indeed, case type did not have much of an effect until 2006 and beyond, perhaps because precedent was not established in any of these areas of law early on, but was established (albeit to a limited extent) slowly as time went on, causing judges to rule more similarly with each other on certain case types. The impact of this evolving precedent did not make judicial ideology less significant in later years; however the coefficients were noticeably lower in the later models, possibly indicating the mitigating influence of legal factors on ideology as time wore on. It is also possible that public opinion contributed to some of the variation between time-bound models in an indirect way. As public support for gay marriage grew, judges were less likely to be influenced by religion or strategy, and were more likely to follow the lead set by other judges in similar types of cases. Discrimination by public officials based on sexual orientation was increasingly viewed as almost always inappropriate, and protections for LGBT individuals were increasingly viewed as necessary and appropriate in the eyes of the public and judges.

The other two major differences between the time-bound models and the overall model I attribute to a simple numbers game. Gender is not significant in either time-bound model, but is significant overall, likely because the number of female judges in each subset of cases is just too small to be significant. Likewise, gay marriage cases are only significant in later years as the number of cases involving gay marriage was very small prior to 2006.

Abortion

Primary Models

Back in Chapter 4, I predicted that the large proportion of abortion cases decided in favor of abortion rights would cause difficulties in regression analysis. Since only 50 cases between 1991-2012 had anti-choice outcomes, the variation among the independent variables in those cases will likely not be sufficient to find many significant results. As Table 17 shows, this prediction was mostly accurate. However, while no other explanatory variables exhibit significant effects, judicial ideology was still highly significant in both models, providing further evidence of the substantial role ideology plays in morality policy decisions.

Table 17
Logistic Regression Analysis of Decisions in Abortion Cases on all Independent Variables, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.062 (.409)****	---
Common Space Score	---	**1.550 (.548)****
Judge's Gender	-.176 (.593)	-.255 (.590)
Judge's Race	-1.426 (.835)	-1.296 (.834)
Judge's Religion (Reference – no affiliation)		
Catholic	.460 (.508)	.516 (.505)
Mainline Protestant	-.434 (.532)	-.371 (.525)
Other Christian	.960 (.622)	.895 (.632)
Jewish	-.320 (.909)	-.336 (.909)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	-.144 (.449)	---

Circuit is Evenly Split	-.501 (1.213)	---
Circuit Ideology 2 – Median C.S. Score	---	-.722 (.919)
Case Type (Reference – Undue Burden Cases)		
Gov't or Private Restrictions	-.407 (.574)	-.450 (.572)
Individual Rights	.278 (1.010)	.183 (1.025)
Access to Clinics	.207 (.511)	.176 (.510)
Gov't or Private Protections	.636 (.593)	.459 (.597)
State-Level Public Support for Abortion Rights	-.004 (.027)	.002 (.027)
State Political Culture (Reference – Moralistic)		
Individualistic States	.208 (.509)	.304 (.515)
Traditionalistic States	.931 (.578)	.900 (.583)
Constant	-1.854 (1.424)	-1.658 (1.374)
n	182	182
X^2 of Model	24.43	25.79
Percent Reduction in Error	0%	4.17%

Although judicial ideology was significant, each model as a whole was barely significant at the 0.05 level and showed little to no reduction in error[33]. This is also a result of that fact that almost 3/4ths of cases were decided the same way; the inclusion of ideology (and the rest of the independent variables) in a regression analysis provides only a slight increase in predictive power. Thus, the question that remains is whether judicial ideology has any substantive, discernable impact on decision making in abortion cases. Figure 17 demonstrates that the magnitude of ideology's effect is indeed substantial, if not as large as its effect in gay rights cases. As Figure 17 shows, when holding all other independent variables constant, the average predicted probability of a Democrat appointee

---

[33] I ran several variations of regression models on abortion decisions, including hierarchal models, models including region instead of state culture or eliminating state culture altogether, and models utilizing the Erikson, Wright, and McIver measures or Berry et al. measures instead of state-level opinion. None of the variations demonstrated any substantive or even merely interesting differences in effects.

ruling against abortion rights is 15.1%, while the average predicted probability of a Republican appointee ruling in the same manner jumps to 33.2%.

Figure 17
Predicted Probability of Anti-Choice Decision in U.S. District Court Cases (1991-2012), by Party of Appointing President, with 95% Confidence Intervals
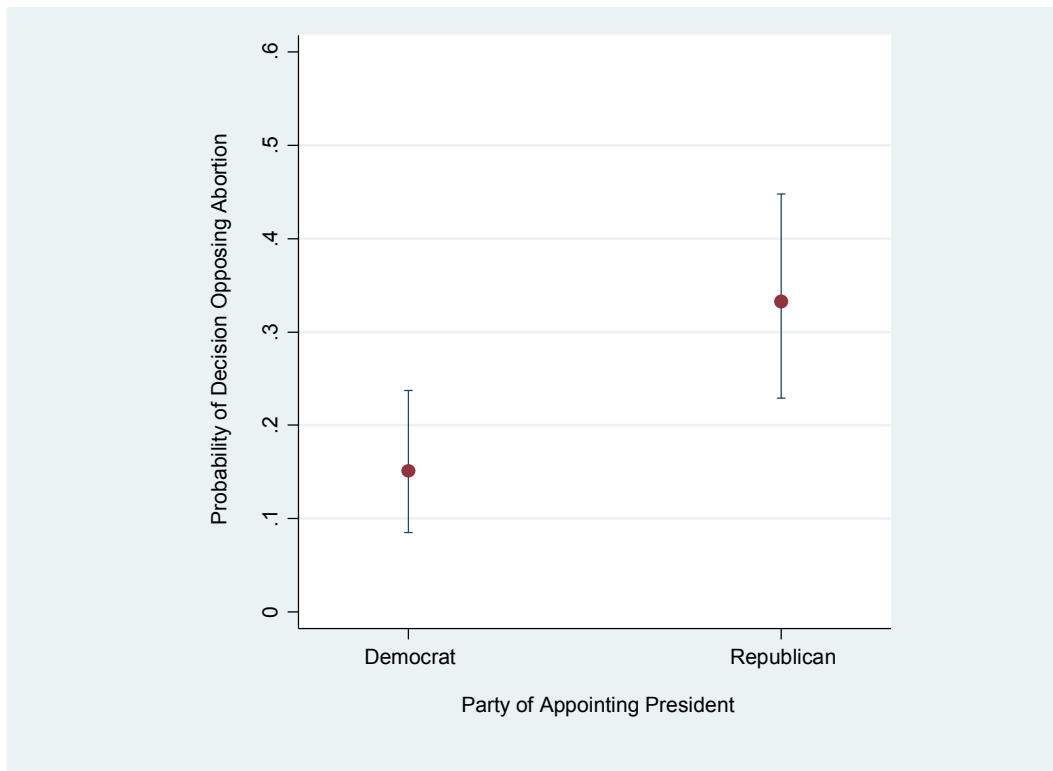
Figure 18 demonstrates the predicted probabilities for anti-choice rulings based on Common Space scores. As we move from the most liberal judges to the most conservative, the likelihood of an anti-choice decision quadruples, from 10.5% to 41.9%. While the curve is not as dramatic as that in gay rights cases, it still exhibits substantive differences between liberal and conservative judges that are of practical interest to judicial scholars and practitioners alike.

Figure 18

Predicted Probability of Anti-Choice Decision in U.S. District Court Cases (1991-2012), by Common Space Score of Judge, with 95% Confidence Intervals
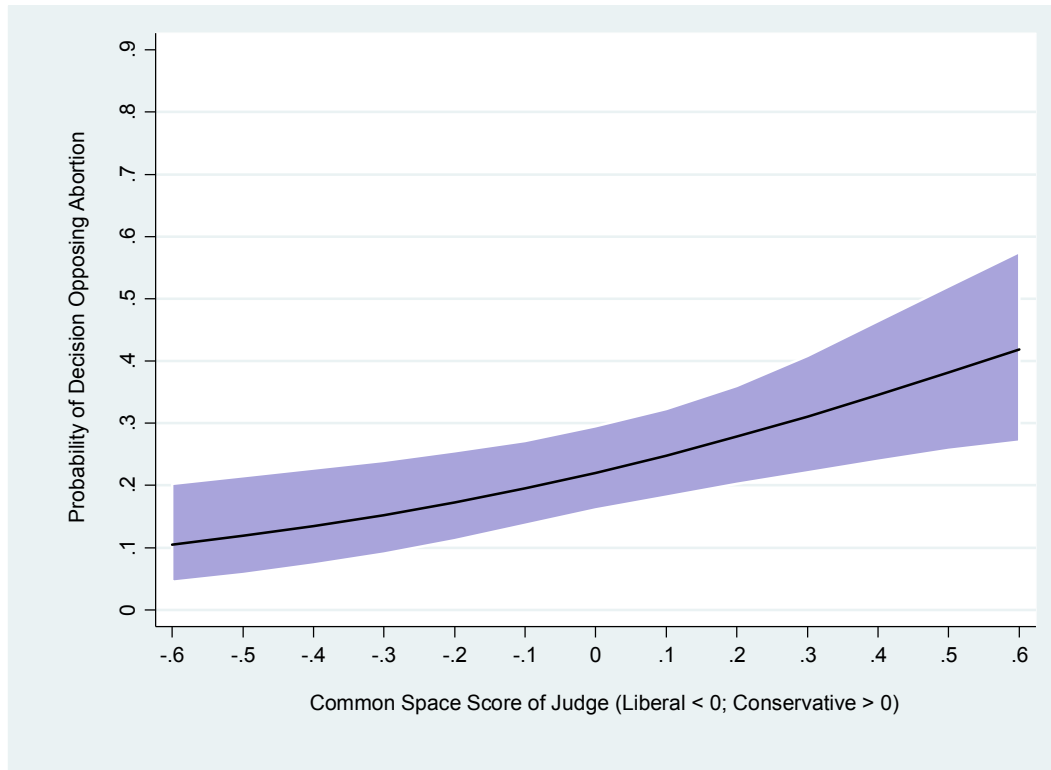
Affirmative Action

Primary Models

Although consisting of the smallest subset of cases at only 95, the affirmative action regression models provide some of the most intriguing results. The first interesting deviation from the gay rights and abortion results was the usefulness of hierarchal models. Table 18 shows both regression models without any state-level variables included.

Table 18

Logistic Regression Analysis of Decisions in Affirmative Action Cases on all Independent Variables *except* State-Level Variables, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.242 (.533)***	---
Common Space Score	---	**2.063 (.692)****
Judge's Gender	-.260 (.831)	-.540 (.823)
Judge's Race	-.767 (.874)	-.614 (.895)
Judge's Religion (Reference – no affiliation)		
Catholic	1.080 (.759)	1.042 (.741)
Mainline Protestant	.246 (.600)	.527 (.613)
Other Christian	-.662 (.801)	-.455 (.817)
Jewish	-.165 (.898)	.144 (.903)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	-.346 (.755)	---
Circuit is Evenly Split	-1.447 (1.468)	---
Circuit Ideology 2 – Median C.S. Score	---	.167 (1.282)
Case Type (Reference – Employment Policies)		
Education Policies	1.104 (.878)	1.117 (.884)
Contracting Policies	**1.299 (.639)***	**1.293 (.647)***
Constant	-.982 (.907)	-1.880 (.507)
n	95	95
X² of Model	21.51	24.53
Percent Reduction in Error	25.00%	34.09%

At this first hierarchal level, judicial ideology was significant (although to a higher degree in the Common Space Scores model), as was case type both generally and for cases involving minority contracting policies. Such cases were significantly more likely to be ruled in an anti-affirmative action manner than the reference category of employment

cases. The results here support my hypothesis that judicial ideology significantly impacts judicial decision making in affirmative action cases, as it does in the other two issue areas. None of the other variables have a notable effect except case type, which is not surprising given the content of the judges' opinions in these cases. The tone and language used by judges in these cases (which involved policies requiring certain proportions of government contractors and/or subcontractors to be minority companies) was often blatantly negative, especially in more recent years[34]. The most surprising omission in the list of significant variables is that of race; however the low percentage of non-white judges (15%) in the data set makes a significant result very difficult to achieve.

Adding state-level variables (state opinion and state culture[35]) caused several substantive changes in the coefficients of the significant variables discussed above. As Table 19 demonstrates, the state-level variables themselves were not significant, but did decrease the coefficients for judicial ideology in both models. The result was that judicial ideology is no longer significant at all in the Party model, and is still significant, but to a lesser degree, in the Common Space Score model. Conversely, the addition of state-level variables resulted in increased coefficients for each of the case types, increasing the degree of significance for the variable overall as well for contracting cases in the Party model. Thus, adding state-level variables appears to mitigate the effect of judicial ideology while simultaneously heightening the effect of case type. Further, it is the addition of both state opinion and state culture that result in these effects. When adding these variables one at a

---

[34] Indeed, an in-depth analysis of the case opinions revealed a consistent reluctance on the part of most judges to uphold policies requiring a certain percentage of contractors or subcontractors to consist primarily of minorities or to be minority-owned entities. Judges often found it difficult to extend the history of past discrimination rationale to contracting polices, finding that they are one step removed from the government itself.

[35] Again, state culture was used as opposed to region when the two were highly correlated with each other. Running the same regressions with region instead led to very similar results.

time, each appeared to be only partially responsible for the changes in coefficients for

ideology and case type.

Table 19
Logistic Regression Analysis of Decisions in Affirmative Action Cases on all Independent
Variables, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	1.011 (.578)	---
Common Space Score	---	**1.695 (.779)***
Judge's Gender	.472 (.977)	-.020 (.920)
Judge's Race	-.879 (.970)	-.689 (.985)
Judge's Religion (Reference – no affiliation)		
Catholic	1.617 (.923)	1.435 (.873)
Mainline Protestant	.534 (.687)	.893 (.682)
Other Christian	-.718 (.907)	-.426 (.876)
Jewish	.130 (.942)	.469 (.957)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	-1.413 (.990)	---
Circuit is Evenly Split	-2.705 (1.779)	---
Circuit Ideology 2 – Median C.S. Score	---	-1.938 (1.772)
Case Type (Reference – Employment Policies)		
Education Policies	1.981 (1.091)	2.028 (1.082)
Contracting Policies	**1.992 (.756)****	**1.849 (.748)***
State-Level Support for Affirmative Action	.049 (.103)	.035 (.102)
State Political Culture (Reference – Moralistic)		
Individualistic States	.436 (.780)	.281 (.752)
Traditionalistic States	1.247 (.879)	1.142 (.901)
Constant	-1.812 (1.806)	-2.053 (1.790)
n	87	87
X² of Model	28.83	29.06
Percent Reduction in Error	37.5%	40%

Since judicial ideology was either not significant or barely significant in the models containing all independent variables, which were the hierarchal models of best fit (based on percent reduction in error, X^2 of model, and pseudo-R^2), I did not generate predicted probabilities. However, affirmative action cases proved to be unique in another way; state opinion did have a significant effect on decision making when I included one of my alternate state opinion variables – Berry et al.'s measure of citizen ideology. Further, these regression models ended up being the "best" models of fit overall. I describe my findings and generate predicted probabilities for these regression analyses in the next section.

Alternative Models – Citizen Ideology

As described more fully in Chapter 3, Berry et al. developed a measure in 1998 that they now refer to as "citizen ideology". Unlike Erikson, Wright, and McIver's measure of state citizen ideology on a liberal to conservative continuum that shows remarkable stability over time within states, Berry et al.'s measure is more dynamic in nature. For this reason, it has been described by other scholars as more accurately capturing the ideology of elites in the state instead of the mass public. Berry and colleagues in subsequent articles (2007, 2010) have staunchly defended their measure as representative of the public's ideology, specifically its mood toward the government, politics, and policies of their state during any given year, and insist it is the best comprehensive measure of citizen ideology in the states.

As noted in each of the prior sections, Berry et al.'s measure made no discernable difference in the regression models for gay rights or abortion when including it as an alternative to specific state-level opinion. However, in the affirmative action regression models it is not only statistically significant itself, but its inclusion gave the overall model a

better fit[36] and revealed interesting relationships between several other variables and

decision making. Table 20 provides the regression results.

Table 20
Logistic Regression Analysis of Decisions in Affirmative Action Cases on all Independent
Variables, using Berry et al.'s Citizen Ideology Measure instead of State-Level Public
Support for Affirmative Action, including all Cases from 1991-2012, for both Judicial
Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.210 (.607)***	---
Common Space Score	---	**1.833 (.822)***
Judge's Gender	.626 (.998)	.267 (.949)
Judge's Race	-.485 (.981)	-.364 (1.004)
Judge's Religion (Reference – no affiliation)		
Catholic	1.732 (.938)	1.647 (.892)
Mainline Protestant	.739 (.721)	1.023 (.724)
Other Christian	-1.271 (1.043)	-.934 (.967)
Jewish	-.105 (1.000)	.256 (1.004)
Circuit Ideology 1 (Reference – Majority Dem)		
Majority Republican	-1.840 (1.075)	---
Circuit is Evenly Split	-2.308 (1.740)	---
Circuit Ideology 2 – Median C.S. Score	---	-2.775 (1.876)
Case Type (Reference – Employment Policies)		
Education Policies	**3.251 (1.371)***	**3.163 (1.304)***
Contracting Policies	**1.708 (.730)***	**1.621 (.727)***
Citizen Ideology	**-.094 (.045)***	**-.092 (.044)***
State Political Culture (Reference – Moralistic)		
Individualistic States	.936 (.805)	.812 (.792)
Traditionalistic States	.125 (1.001)	.160 (1.003)

---

[36] Running the same regressions with Erikson, Wright, and McIver's alternative measure did not result in significance or provide a good model fit, so it is not reported here.

Constant	4.184 (2.755)	3.454 (2.452)
n	87	87
X^2 of Model	33.56	33.91
Percent Reduction in Error	47.5%	45%

The first notable difference between these alternate models and the primary models is the significance of state citizen ideology itself. As states become more "liberal" on Berry et al.'s scale, the likelihood of an anti-affirmative action decision decreases significantly. However, the coefficient itself does not tell us very much about the magnitude of the effect, especially at a seemingly minimal -.094 and -.092 for the Party model and the Common Space Score model, respectively. Thus, I generated predicted probabilities for anti-affirmative action rulings based on citizen ideology and graphed the results in Figure 19 below.

As Figure 19 demonstrates, the effect of citizen ideology on affirmative action decisions is quite dramatic. Although the 95% confidence intervals are comparatively large, the sizable decrease in likelihood of an anti-affirmative action decision over the range of citizen ideologies is easily apparent. The liberalism scale provided by Berry et al. ranges from approximately 20 (representing the most ideologically "conservative" states) to approximately 80 (representing the most ideologically "liberal" states) in each year. In my data set, the two states with the most conservative citizens in a particular year are Louisiana with scores of 28.24 and 28.54 in various years, and Arkansas, with a low score of 29.17. The two states with the most liberal citizens in a particular year are Massachusetts, with a high score of 79.04, and Hawaii, with a high score of 77.92. According to Figure 19, holding all other variables constant, as we move from the states with the most conservative citizen ideologies to the most liberal, the likelihood of an anti-affirmative

action ruling plummets from a high of 89.3% to 10.3%. At the middle of the citizen ideology range, the likelihood of an anti-affirmative action ruling is approximately 50/50. Thus, while the coefficients for Citizen Ideology reveal very little about the substantive relationship between the variable and judicial decisions, the predicted probabilities evidence a striking association between the two.

Figure 19
Predicted Probability of Anti-Affirmative Action Decision in U.S. District Court Cases (1991-2012), by Berry et al.'s "Citizen Ideology" Measure of the State Containing the District where the Judge Presides, with 95% Confidence Intervals
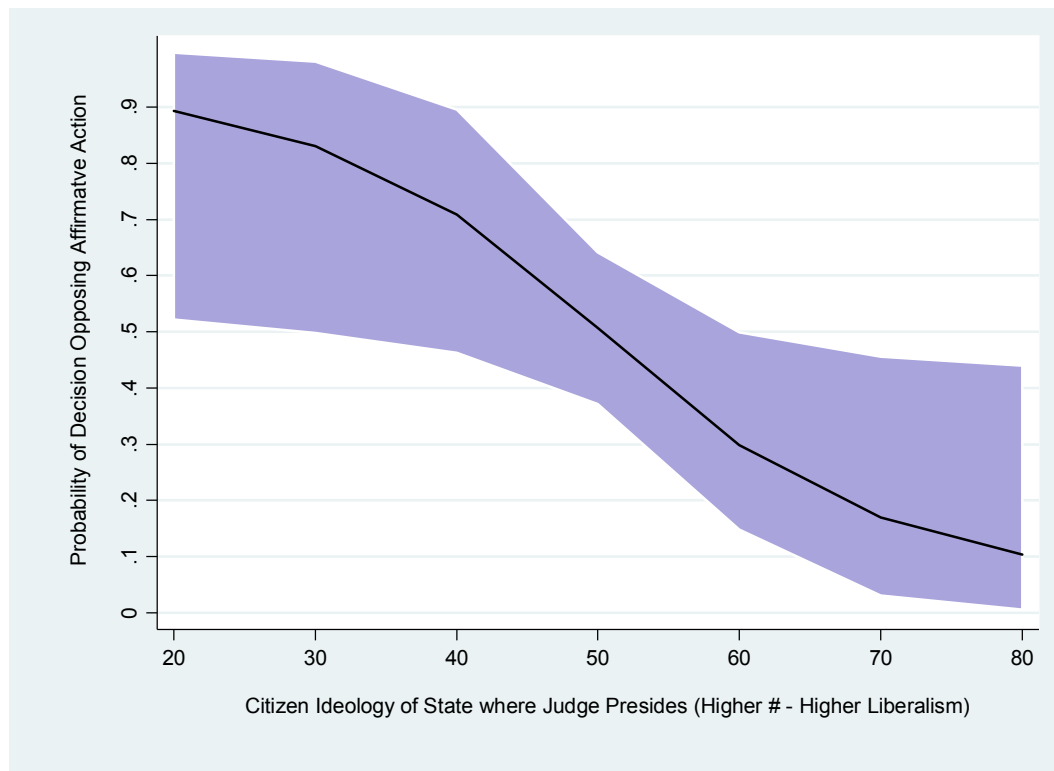
The Berry models also demonstrate the significant effect of several other variables, including judicial ideology and both case types. The coefficient for judicial ideology is in the anticipated direction, meaning that Republican appointees were more likely to rule against affirmative action policies and vice versa. Similarly, the more conservative the judge, the

more likely he or she will rule against affirmative action policies and vice versa. In an effort to determine the practical effects of judicial ideology, I generated predicted probabilities and report them here.

Figure 20 evidences a substantial difference between the rulings of judges appointed by Republicans and Democrats. Holding other independent variables constant, the average likelihood of a Democrat appointee ruling against an affirmative action policy is 29.9%, while the average likelihood of a Republican appointee ruling against such a policy is 57.1%.

Figure 20
Predicted Probability of Anti-Affirmative Action Decision in U.S. District Court Cases (1991-2012), by Party of Appointing President, with 95% Confidence Intervals
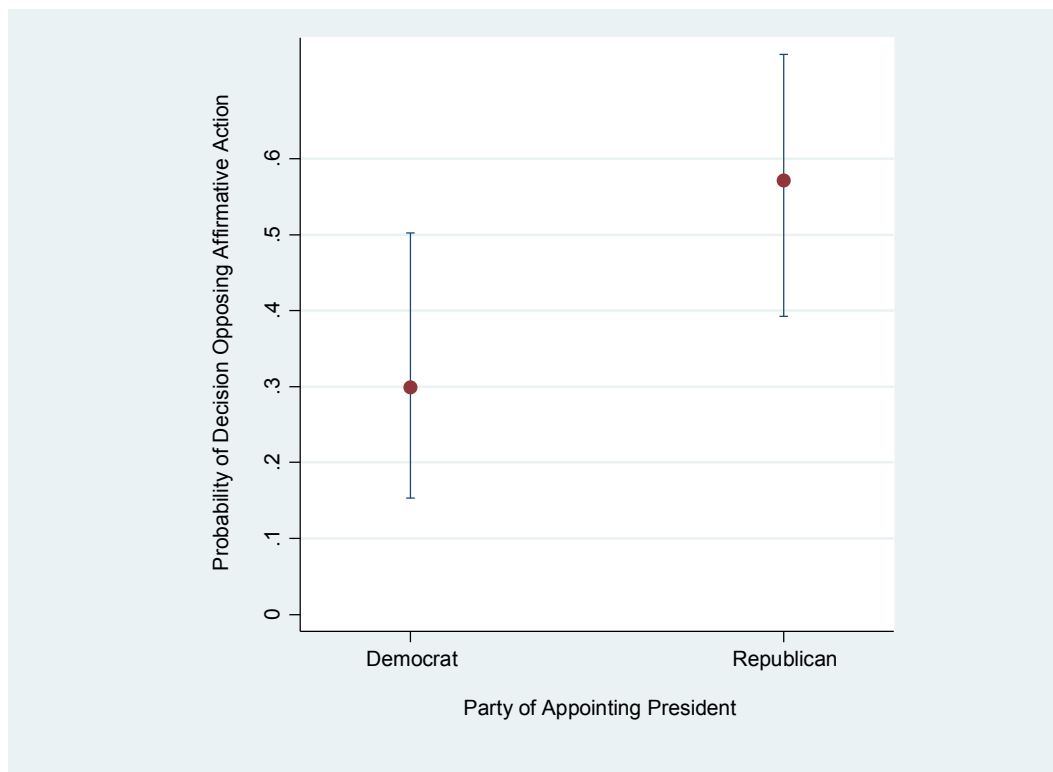
Similarly, the predicted probability of an anti-affirmative action decision varies substantially based on the Common Space score of the judge. As Figure 21 shows, holding other independent variables constant, as we move from the most liberal judges to the most conservative, the likelihood of an anti-affirmative action decision more than triples, from 21.6% to 68.8%. Thus, even when controlling for citizen ideology and other explanatory variables, and despite the relatively low number of cases decided from 1991 to 2012, judicial ideology has a significant and substantive effect on decision making in affirmative action cases.

Figure 21
Predicted Probability of Anti-Affirmative Action Decision in U.S. District Court Cases (1991-2012), by Common Space Score of Judge, with 95% Confidence Intervals
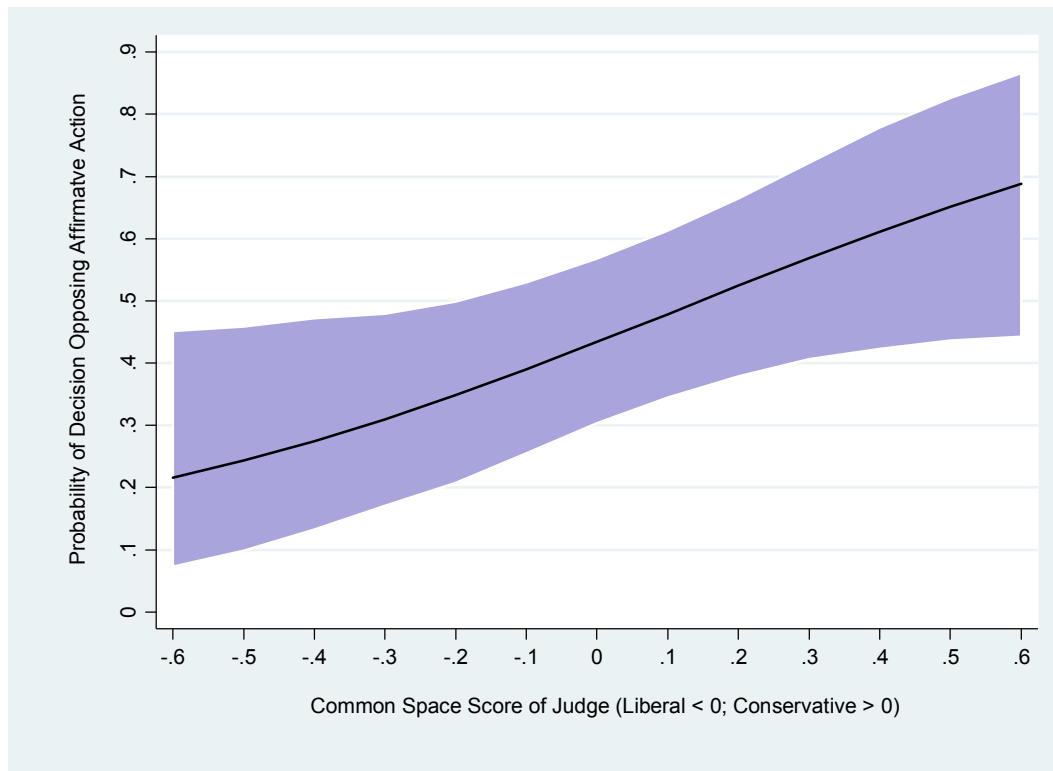
The significance of both case types indicates that legal factors, especially precedent, play a role in affirmative action decision making as well. Judges were significantly more likely to rule against both minority contracting policies and affirmative action admissions policies than employment policies, even when controlling for ideology and other factors. Thus, when it comes to affirmative action cases, judges appear to be influenced by several factors, including ideology, precedent, and the predominant ideology of the citizens in the state in which the judge presides.

Conclusions

The three issue areas I chose as most appropriate to test my hypotheses and shed light on my research questions show sizable variation but also some striking similarities in the effect of particular variables on judges' rulings. Judicial ideology was consistently and substantially related to decision making in all three issue areas when the best regression models, controlling for the "correct" variables, were analyzed. This confirms my primary hypotheses. While not a necessarily surprising result, it does run contrary to much of the district court literature which finds little to no relationship between ideology and decision making. However, as I point out in Chapter 2, most of the studies reporting such findings examined a wide variety of (or sometimes all) case types, including many not touching on moral or politically divisive issues. As all three of my issues are polarizing and politically divisive, and my data set covers the population of reported decisions from 1991-2012, I can safely conclude that judicial ideology is strongly associated with district court decision making in areas of salient and controversial civil liberties and civil rights such as these.

The other findings reported here deliver mixed results that show several intriguing disparities between issue areas. Legal factors (case type) and strategic factors (circuit

ideology) appeared to effect decision making in certain issue areas; these findings bolster one side or the other in the scholarly debate about the importance of these factors to district court judges. However, their influence did little to mitigate the significant effects of judicial ideology. Similarly, the significant impacts of gender in gay rights cases and religion in the subset of older gay rights cases were noteworthy and should be of interest to judicial scholars studying the roles of gender and/or religion on decision making.

My other primary variable of interest, state-level public opinion, demonstrated some of the most thought-provoking disparities between the three issue areas. It did not appear to have any direct impact on decision making in gay rights cases or abortion cases, but did perhaps indirectly impact decision making through its effects on *other* variables in the issue area of gay rights. The time-bound models demonstrated substantial differences in the effect of particular variables on decision making during the same time period that support for gay rights in every state increased at extraordinary levels. Additionally, state-level opinion had both direct and indirect effects in affirmative action cases. Adding specific state-level opinion on affirmative action in conjunction with Elazar's state culture types as indicator variables in the regression analyses substantially changed the effects of both judicial ideology and case type on decision making. Further, state opinion had a direct and substantial impact on decision making in affirmative action cases when utilizing Berry et al.'s citizen ideology as its measure. Perhaps the best conclusion to reach regarding state-level opinion is that certain types of state-level opinion *may* matter, in certain types of cases. Although vague, the implication here is that further research should be done to clarify the role of state-level opinion on district court judges. Certainly, this chapter has shown enough evidence of a relationship between the two variables to encourage scholars

to incorporate state-level public opinion into studies of judicial politics at the district court

level.

CHAPTER 6 – CONCLUSION

The results I have presented in this dissertation help to answer my research questions, but also raise some new questions. Several of the findings, including the strong effect of judicial ideology on decision making, are directly relevant and provide evidence to further the scholarly debates on these topics, but are not altogether unexpected. Other findings are both unexpected and substantively interesting and deserve further speculation and study. In this concluding chapter, I revisit the results and conclusions from the various analyses and discuss the implications for the greater question involved here, namely what these results mean for our judiciary and our legal system as a whole. I also ponder some of the new questions raised by these results and why they may be of import to scholars and practitioners. Lastly, I describe the research I anticipate conducting as a follow-up to address the limitations of my study and expand on my findings here, as well as other potential studies that could help shed further light on district court decision making and additional relevant queries that have emerged.

A "Neutral" Federal Judiciary?

As described in Chapter 2, whether the judiciary acts in an appropriately "apolitical" or neutral way is of great consequence to our legal system, and thus has been studied extensively. An increasingly hyperpartisan political atmosphere has led to even greater concern that judges may be unwilling or unable to simply adhere to legal principles when ruling, resulting in a politicized judiciary. Federal judges are partially insulated from the political process because they are not subject to elections or re-elections and all of the accompanying campaigning, money-raising, and promise-making. However, every time a federal judge eschews legal principles to rule in a way that aligns with his or her ideology

or the ideology of other elites, he or she is not acting in a neutral way, but is acting just as politically as politicians in the other two branches of government. Further, the judiciary has historically been considered the institution that provides protections and upheld the rights of certain minority or marginalized groups in society when the other branches of government refuse to do so (e.g., Romero 2000). If judges are driven primarily by their own ideological beliefs and not by legal principles such as consistent constitutional interpretation and precedent, the concern arises whether the judiciary can really fill this role[37].

The evidence presented here supports the theory that the federal judiciary is not an impartial, neutral branch when deciding ideologically charged cases. Although this study does not speak to how judges may behave in other types of cases, the results here are indicative of how judges rule in the types of salient and ideological cases in which it is most crucial that judges to act in an impartial manner, as the rest of the government at all levels continues to handle these policies in very partisan ways. The strong effect of ideology on judges in all three issue areas and the drastic differences in predicted probabilities of outcomes based on ideology demonstrates that the policies in question as well as the parties involved in these cases are to some extent subject to the luck of the draw. When a gay rights, abortion, or affirmative action case is filed in federal court and a judge is randomly assigned, the probability of a positive outcome for either party is highly dependent on the ideology of the judge assigned[38]. Other extralegal factors can also

---

[37] This concern has been raised repeatedly by scholars over the years, with no clear-cut answers provided (e.g. Rosenberg 1991, 2008).

[38] In fact, my in-depth analysis of the cases themselves revealed the extent to which opposing outcomes in cases with very similar facts can be handed down by judges with differing ideologies. For example, in many of the "access to clinics" cases in the abortion data set, the facts were virtually identical, regarding how far protesters wanted to stand, their actions in blocking entrances and speaking to women, and the federal statute that controlled these issues (the Freedom of Access to

significantly influence the likelihood of outcomes in certain cases, including the gender or the religion of the assigned judge, the predominant ideology of the reviewing appellate court, the enduring state culture, or citizen ideology of the state in which the judge sits. The significant effect of any one or more of these variables on judges violates the concept of a neutral judiciary that decides cases based on precedent and other legal principles alone.

Beyond ideology, I was also very interested in the influence, if any, of state-level public opinion on district court judges. There is little disagreement that the judiciary should behave as the neutral branch of government; however, as I describe in Chapter 2, the issue of whether courts should always follow public opinion or instead act as countermajoritarian institutions in certain circumstances is a hotly debated topic. The results presented here show little to no impact of specific public opinion on the judges deciding cases in the three issue areas examined. These results add to the scholarly debate by showing that district court judges – those judges that are closest to the people in a state and most familiar with the political environment and history of a state – are not significantly impacted by the opinion of state residents, even in highly ideological issue areas in which the public is most likely to hold strong opinions. However, there is no evidence to indicate that district courts are instead acting in a countermajoritarian manner or that they are acting to protect the rights of politically disadvantaged groups, only that they do not appear to follow public opinion in the states.

Clinic Entrances Act). The decisions in these cases, despite being based on the same facts and the same precedent, varied dramatically, with different outcomes occurring sometimes in the same state or even in the same district. The common denominator in these disparate outcomes was the opposing ideology of the judges. As I discuss later in this chapter, I intend to conduct further analysis of the different case types in each data set (including access to clinic cases)and judicial behavior, in order to illuminate and fully detail exactly how judicial ideology presents itself in case language and outcomes.

The only exception to this general finding of public opinion's irrelevance was intriguing and raises important questions: Berry et al.'s measure of state liberalism was a significant factor in affirmative action cases. Initially, this finding supports my hypothesis that public opinion may have a stronger role in less ideological issue areas. Since affirmative action does not fall squarely within morality policy and is the least ideological of the three issue areas, it is possible that judges do not feel as strongly about the issue either, and instead adhere more closely to public opinion in their respective states. It is also possible that when judges do not feel strongly about this or another issue area, they will adhere to *elite* ideology in the state, since elites are more likely to be in the same social circles as judges and are to some extent responsible for district judges' ascension to higher office. In my view, the findings here support the latter explanation more so than the former. I agree with the many scholars who find Berry et al.'s liberalism scores more appropriate as a measure of elite ideology in a state than of citizen ideology. As described in Chapter 3, the liberalism score for each state consists of an index that primarily includes measures of the party makeup of a state legislature and the vote shares received by incumbents and opposite-party challengers during each election cycle (Berry et al. 1998). Whether this constitutes a better of measure of elite ideology or citizen ideology, its significance as an explanatory variable provokes speculation about its role in decision making and the potential implication of elite theory in this topic area. I will discuss ideas for how to explore this further in the next section.

Overall, the primary conclusions to be drawn from this study are that federal district judges are just as ideologically driven as judges on higher courts, and that legal principles appear to take a backseat to a variety of extralegal factors when judges are confronted with

cases involving highly ideological issues. The differences in the three issue areas, as well as the variation found between regression models within each issue area, reveal nuanced distinctions in how extralegal factors affect case outcomes that can help us to better understand and explain judicial decision making. The findings presented here both enhance current knowledge about district court judges and act as stepping stones to further research and analysis on this important topic.

Future Avenues of Study

Several new avenues of study emerge based on the many questions raised from the results of these analyses. The limitations of this study also point to further research that could help to fill in gaps and to answer some of the questions raised. The chief limitation facing my research design is the use of imputed values to capture state-level public opinion. As discussed in Chapter 3, several scholars have tested the MRP method and found that it is capable of generating very accurate estimates of state-level opinion; in fact, it has consistently been found to be the most precise method for capturing specific state-level public opinion across all states currently available (e.g., Pacheco 2014; Lewis, Wood, and Jacobsmeier 2014; Enns and Koch 2013; Lax and Phillips 2009). However, the use of imputed values still has inherent deficiencies that cannot be avoided; primarily that opinion is generated based on demographic and geographic factors, which are not necessarily strongly predictive of specific opinion. Thus, it is possible that my measure of state-level opinion generated using MRP contains substantial error. Indeed, this could be one reason for the lack of any significant linkage between specific public opinion and judicial decision making.

Another potential limitation of this study is its generalizability to judicial decision making overall. It is likely that if expanded to include non-salient and less ideological issue areas, the result may vary substantially, especially the strong influence of judicial ideology on decision making. However, as described throughout this dissertation, I am primarily interested in the decision making of judges in cases involving politically charged and ideological constitutional rights. The increasingly hyper-partisan environment of the last few decades has led to concern among judicial scholars that judges may be becoming more "partisan" and ideological as well. In my view, examining decision making in issue areas that are likely to trigger ideological responses and partisan allegiances is the best way to measure the state of the judiciary and its neutrality (or lack thereof). In order to make my results as generalizable as possible, I include three issue areas that share some similarities but that differ in important ways as well. Thus, I believe that my findings would apply to other salient, ideologically charged issues, but not necessarily issues that do not fit this characterization. As I describe below, I intend to further address both of these limitations by conducting additional analyses, specifically the inclusion of additional variables and issue areas.

My future avenues of study are also designed to answer questions raised by my findings. Among the more intriguing results here are those regarding the time-bound gay rights models. Between 1991 and 2005, the effects of individual ideology and other extralegal factors, including religion, circuit ideology, and state culture, were all significantly related to judicial decision making. However, from 2006 on, most of those factors, with the exception of individual ideology, were no longer significant, and legal factors took their place as significant predictors of case outcomes. I speculate that this

change is a consequence of the changing legal and political environments surrounding gay

rights issues.

As mentioned previously, the mid-2000s were a turning point for media coverage

and politicians' attention to these issues after the Massachusetts gay marriage decision. As

evidenced in Chapter 4, the number of gay rights cases filed in federal courts began to

increase exponentially during this time frame as well. Thus, not only was an increasingly

polarized political realm starting to pay closer attention to these issues, but groups and

individuals in support of and opposition to these issues, particularly gay marriage, appear

to have increased mobilization efforts, including filing many more cases in an effort to

change the legal environment. Perhaps district court judges were not only more aware of

these issues in the 2000s than in the 1990s, but were cognizant of both public and elite

attitudes on these issues. It is also possible that newly-appointed judges were less inclined

to follow their own ideology, religious beliefs, and predominant state culture in favor of

established precedent (even from other districts) and legal principles. Still another

possibility is that judges do indeed behave as proponents of the legal model predict – when

the law or issue is new and unsettled, judges may decide based on their own sincerely-held

beliefs and experiences; but as more courts tackle the issue and clarify the law in regard to

it, judges put aside their own policy preferences and follow the lead of other judges in cases

with similar case facts and issues presented. However, since individual ideology was still a

highly significant factor in the later model, it does not seem that judges put aside their own

preferences entirely. Although I can only speculate here, these are questions that should be

considered and investigated further.

In my view, there exist several avenues of research that could further explain these differences over time. The literatures on party polarization and interest group mobilization, especially as it pertains to the issue of gay rights, could be very helpful in explaining the extent to which this occurred and the extent to which elites reacted to it in the mid-2000s. Examining the official party platforms for both Republicans and Democrats throughout the 1990s and 2000s could show when the parties decided to make these issues a bigger part of their campaigns and rhetoric. This research may also help shed light on the greater roles of partisanship and polarization on judicial policymaking in general.

The data set I've created could also be expanded in several ways to help answer these questions. Certainly a greater number of cases would increase accuracy of statistical results and may help to explain some of the nuance in the cases. Since gay rights cases were relatively scarce in the 1990s and before, expanding the data set to include earlier years will only add a few cases. However, adding cases that were decided after 2012 would increase the N substantially. A larger set of cases would also allow for additional regression models to be run, including variations on the time-bound models I include here. Another variable that may prove useful is the age cohort of each judge in the data set, specifically the year they were appointed to the bench. I suspect that in the rapidly-changing arena of gay rights, younger judges (most likely those appointed more recently) may rule differently than judges who have presided for two or three decades. My data set includes judges appointed by presidents as far back as Kennedy up to those appointed by Obama. One other possible modification to the data set is to expand it to include other issue areas, especially those involving politically charged issue areas that have experienced a notable increase or possibly a decline in media and elite attention and/or interest group

mobilization over time. The results in additional issue areas may help clarify whether party polarization and mobilization can result in changing significance of predictor variables on decision making, or whether gay rights is an outlier in explaining judicial behavior.

Among the other findings that merit closer attention, perhaps the most intriguing is the significant role of citizen ideology/elite ideology in affirmative action cases. As I mention above, the measure provided by Berry et al. is subject to much debate itself, and thus makes it difficult to interpret its effect on judges. If the policy preferences of the party elites in a state are indeed influencing judicial behavior in certain types of cases, it would have great implications for our legal system. Further examination of this effect could include including more case types and additional alternative measures of elite ideology. Since Berry et al.'s measure was significant in the affirmative action data set alone, it may be useful to add issue areas that are similar in that they are politically sensitive and tend to fall along the typical Republican/Democrat ideological divide, but are not based primarily on moral or religious values. Similarly, generating models with alternative measures of elite ideology can show whether Berry et al.'s measure is an anomaly, and thus truly represents mass public ideology or something else entirely, or whether elite ideology does in fact play a role in decision making in these types of cases. Such a finding could add to the literature on elite theory as it pertains to judges and reveal new inquiries and theories.

The next stages of my research agenda will tackle some of these questions as I expand my study in light of the findings presented here. First, I plan to enhance my data set by adding the variables I mentioned above as well as several others. I will go back and code for the age cohorts of the judges based on year of appointment to determine whether time on the bench is associated with case outcomes. I expect this variable to be most relevant in

the gay rights and affirmative action cases, as the decisions in those cases evidenced a clear shift in tone and language over time. I am also interested to see whether judges appointed in the current hyperpartisan era behave differently than judges appointed in earlier time periods. Additionally, I will code for the type of law school each judge in the data set graduated from, primarily to check for any association between judges attending elite law schools and ideology, or law school type and case outcome. I am especially interested in how law school type may or may not impact case outcomes in affirmative action cases.

Although my data set covered a relatively large period of time and included all district court cases decided during that time, the resulting N was somewhat low compared to the number of predictor variables included. This was especially true in the limited number of affirmative action cases overall, as well as the small number of anti-choice outcomes in abortion cases. It is possible that these models cannot quite capture the full effect of the predictor variables due to low statistical power. Increasing the number of cases would certainly address this problem. Additionally, we have witnessed quite a bit of change over the last few years in gay rights (especially gay marriage) and abortion policy. Since my data set only goes through 2012 (due to availability of public opinion data), it fails to capture the most recent developments and intense polarization and mobilization surrounding these issues. Affirmative action has gone through a bit of a resurgence as a controversial political issue of late as well. Thus, one of the most relevant ways I can expand my data set and further my research in these areas is to add cases up to the present. This will not only add to the total number of cases in the data set and improve statistical analyses, but may provide further insight into how shifts over time in attitudes, media and elite attention, and polarization in each of these issue areas has affected decision making. In

combination with an examination of judicial age cohort as an explanatory variable, it may be possible to discern some impact of elite polarization and ideology on judges in these intense issue areas.

Another way to expand the data set and the study would be to add cases involving additional issue areas. As I mention above, in order to gain a better understanding of what role elite ideology may play in district court decision making, finding other issues that are similar to affirmative action may help. It is possible that elite ideology trumps individual ideology as a consideration for judges when ruling on issues that are political but not necessarily very moral in nature. Further, although state-level mass public opinion had little substantive impact in the three issue areas analyzed here, it is possible it could have an effect in other, less ideological issue areas, where judges may not feel quite as strongly about the issues personally. In those cases, district judges may be more likely to take either mass public opinion or elite opinion, or both, into account. Additionally, as mentioned above, analyzing other issue areas will make the results and conclusions more generalizable and provide even greater insight into decision making overall.

In addition to expanding my data set to help answer some of these unresolved questions, there are several other avenues of research I wish to embark on. Some of the most interesting findings to me were the distinctions that emerged between different case types within each issue area. Certain case types were significantly more likely to be decided in either a conservative or liberal way. For example, gay rights cases involving government or private protections as well as those involving discrimination or harassment in situations other than employment, of prisoners, or in the military, were significantly more likely to result in a pro-gay rights/liberal outcome than employment cases. In the more recent time-

bound model (2006-2012), where almost all of the gay marriage cases in the data set were decided, the likelihood of a ruling in favor of gay marriage was significantly higher than a ruling in favor of the plaintiff in employment cases. In the affirmative action data set, both minority contracting policies and education policies were significantly more likely to be struck down than employment policies. It is possible that certain types of cases had stronger or clearer precedent for district judges to follow, and were thus decided similarly. It is also possible that certain types of cases are treated differently by judges. In my reading of the case decisions themselves, I witnessed vast differences in tone and language used by judges in different types of cases. I want to examine these case type distinctions more in depth by conducting separate statistical analyses of each case type in order to determine the significance of predictor variables on judges deciding each type of case. Many of the case types within issue areas do not contain an adequate number of cases on which to run regression analysis, but increasing the overall number of cases in the data set by bringing it current will improve my ability to examine individual case types.

Lastly, as I make several references to throughout this dissertation, I will provide richer context to my analysis by conducting in-depth case study analysis of the decisions and the judges themselves. I will closely examine the case opinions and evaluate the language and tone used by judges when making these decisions. I will also investigate the judges themselves and their differences in background and political environments, as well as changes in these environments over time. The purpose of these analyses is to explore two distinct phenomena. The first is how two judges deciding almost identical cases in the same time frame can reach vastly different conclusions and rulings. Secondly, when creating the data set I noticed that several judges spending decades on the bench appear to

have shifted their attitudes toward these issues over time. Further examination of these judges and the language and details of the cases can provide insight on why these phenomena may occur. Thus, case studies can provide richer detail and answers to my research questions and can examine factors that cannot be adequately captured by statistical analysis alone.

The analyses conducted and presented here add to the judicial decision making literature in numerous ways and help to increase our understanding of the variety of factors that appear to influence judges. Through the future avenues of study detailed in this chapter, I hope to continue my research into judicial behavior and to provide judicial and legal scholars with increased insight into why judges make the decisions they make as well as the implications for our legal system and consequences on state policy and on the rights of marginalized groups in the states.

APPENDIX A
STATE-LEVEL PUBLIC OPINION

Below (beginning on the next page) are tables containing the state-level public opinion generated using MRP for all 50 states and Washington D.C. The tables are too large to include all years for all states in one table, so I split them into two tables per issue area; the first table for each issue includes all states from 1991 to 2001, the second for 2002-2012. The numbers represent the estimated proportion of state residents that support the issue presented (gay rights, abortion rights, or affirmative action).

Table A-1
State-level Public Support for Gay Rights in all States and Washington D.C. from 1991-2001

State	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
AL	7.2	11.1	14.9	19.1	25.9	32.6	35.9	39.2	37.5	35.7	40.6
AK	23.5	27.0	30.5	38.0	43.9	49.7	49.2	48.7	44.8	40.8	48.7
AZ	26.4	27.2	28.1	36.3	46.3	56.3	48.8	41.4	42.1	42.8	52.9
AR	8.3	12.1	15.8	26.9	31.9	36.9	34.4	31.9	36.0	40.1	41.7
CA	25.4	29.2	33.0	51.2	51.0	50.7	51.9	53.1	53.7	54.2	58.5
CO	22.5	27.1	31.7	46.9	49.4	51.9	52.3	52.7	52.8	52.8	58.6
CT	22.1	26.2	30.4	57.7	52.2	46.8	46.9	47.0	48.4	49.8	54.0
DE	10.1	16.6	23.2	26.6	31.2	35.8	30.0	24.1	29.5	34.8	38.8
DC	22.6	26.1	29.6	49.3	50.2	51.1	52.2	53.4	53.3	53.2	51.4
FL	9.3	16.0	22.6	29.9	34.0	38.1	38.1	38.1	43.7	49.3	51.5
GA	8.8	13.2	17.6	35.6	36.3	37.0	36.2	35.5	35.5	35.5	37.2
HA	22.0	25.2	28.5	37.8	44.9	52.0	53.5	55.0	51.7	48.5	53.3
ID	20.8	24.3	27.9	39.9	44.5	49.1	50.6	52.0	49.8	47.6	52.6
IL	17.2	20.2	23.2	38.4	41.8	45.2	44.6	44.0	47.1	50.1	57.2
IN	14.9	17.0	19.1	24.5	28.1	31.6	33.6	35.6	35.1	34.5	38.2
IA	12.9	16.3	19.6	40.6	42.8	45.0	50.9	56.8	55.0	53.2	51.6
KS	11.2	14.0	16.7	36.6	41.3	46.0	39.7	33.4	36.5	39.6	46.0
KY	10.6	14.5	18.4	19.5	22.8	26.2	23.7	21.3	26.8	32.3	34.2
LA	7.6	13.9	20.2	32.6	35.3	38.0	34.9	31.7	33.0	34.2	34.7
ME	20.8	25.2	29.5	43.1	43.8	44.5	47.1	49.8	52.7	55.5	56.9
MD	14.3	19.6	24.8	40.7	41.2	41.7	50.0	58.3	55.0	51.6	56.4
MA	23.1	31.4	39.7	55.3	54.1	52.9	55.3	57.7	60.0	62.3	63.8
MI	8.3	15.9	23.4	40.5	39.9	39.3	40.3	41.2	45.4	49.7	46.7
MN	13.6	18.0	22.3	43.6	41.7	39.9	47.1	54.3	56.7	59.1	59.2
MS	10.1	11.8	13.5	25.7	28.2	30.7	26.6	22.5	24.0	25.5	27.0
MO	12.7	14.7	16.7	27.4	31.6	35.8	33.6	31.5	33.2	35.0	42.0
MT	21.0	24.3	27.6	33.2	37.7	42.2	41.5	40.8	40.8	40.8	43.7
NE	13.6	16.9	20.2	31.3	34.0	36.8	40.1	43.5	47.2	51.0	53.7
NV	21.1	24.5	27.8	39.3	44.8	50.3	50.8	51.3	49.3	47.3	50.8
NH	26.2	28.9	31.5	48.4	50.7	53.0	55.2	57.5	60.9	64.3	63.9
NJ	22.2	27.9	33.6	46.4	49.9	53.4	54.2	55.0	55.3	55.6	60.6
NM	21.1	24.5	27.9	39.0	45.5	52.0	57.2	62.4	56.4	50.5	53.4
NY	21.7	27.0	32.4	43.2	43.2	43.2	46.8	50.3	51.4	52.4	56.0
NC	10.1	13.3	16.5	22.2	25.0	27.9	23.0	18.1	22.2	26.3	31.5
ND	13.4	14.7	16.1	28.7	30.9	33.2	36.6	40.1	42.1	44.2	46.9
OH	9.5	15.2	20.8	30.2	33.6	37.0	40.1	43.2	45.0	46.7	52.6
OK	7.6	13.3	19.0	23.1	28.0	32.9	31.7	30.4	31.5	32.5	35.0
OR	25.8	25.2	24.6	49.5	53.0	56.5	58.5	60.4	54.6	48.7	54.1
PA	21.7	23.5	25.3	27.5	30.3	33.1	37.5	41.9	44.5	47.0	50.5
RI	20.1	25.1	30.1	43.9	44.6	45.3	48.0	50.6	51.2	51.8	57.3
SC	11.2	14.3	17.5	24.4	25.9	27.5	28.4	29.3	31.0	32.7	35.4
SD	13.2	16.3	19.5	28.9	34.4	39.8	38.4	36.9	42.9	48.8	47.6
TN	7.6	11.3	15.1	20.1	24.7	29.2	28.9	28.6	29.7	30.8	31.2
TX	8.0	12.4	16.7	27.2	31.5	35.7	36.2	36.6	38.1	39.6	44.1
UT	17.6	23.9	30.3	42.7	47.9	53.0	64.4	75.7	65.2	54.7	56.7
VT	21.8	26.4	31.0	43.9	42.7	41.4	49.9	58.5	56.0	53.4	58.9
VI	20.2	20.7	21.2	39.6	41.5	43.4	44.7	46.1	47.3	48.4	50.0
WA	22.0	26.9	31.8	38.7	44.1	49.6	50.4	51.3	51.8	52.3	53.0
WV	10.2	13.1	16.1	30.7	31.9	33.1	32.2	31.2	36.4	41.6	40.3
WI	25.3	23.1	20.8	27.9	36.0	44.2	49.0	53.7	55.9	58.0	58.1
WY	20.9	24.6	28.3	36.5	42.2	48.0	50.0	52.1	51.6	51.0	56.4

Table A-2
State-level Public Support for Gay Rights in all States and Washington D.C. from 2002-2012

State	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
AL	45.4	42.4	39.3	42.9	46.6	50.2	53.8	54.8	55.8	56.8	57.9
AK	56.5	53.9	51.3	53.8	56.4	59.0	61.6	64.3	67.0	69.7	72.4
AZ	63.0	55.4	47.9	52.8	57.6	62.5	67.4	68.0	68.6	69.3	69.9
AR	43.2	39.6	35.9	36.0	36.0	36.1	36.2	41.0	45.8	50.6	55.4
CA	62.8	59.5	56.2	59.3	62.5	65.6	68.7	70.1	71.4	72.8	74.1
CO	64.5	61.3	58.2	62.6	67.0	71.4	75.7	74.8	73.9	73.0	72.0
CT	58.2	56.2	54.3	57.1	60.0	62.9	65.8	68.8	71.9	74.9	78.0
DE	42.7	42.5	42.3	46.6	50.9	55.2	59.5	59.3	59.1	58.9	58.7
DC	49.5	53.7	57.8	60.6	63.4	66.2	69.1	71.9	74.7	77.5	80.3
FL	53.8	55.2	56.6	57.6	58.7	59.8	60.8	62.7	64.7	66.6	68.5
GA	38.9	33.5	28.0	33.7	39.3	44.9	50.6	52.6	54.7	56.7	58.8
HA	58.1	50.4	42.7	46.1	49.5	52.9	56.3	60.5	64.6	68.8	72.9
ID	57.5	51.4	45.2	45.1	45.0	44.8	44.7	50.2	55.7	61.2	66.6
IL	64.3	57.9	51.6	54.1	56.7	59.2	61.8	63.2	64.6	66.0	67.5
IN	41.9	43.6	45.3	47.5	49.7	51.9	54.1	56.8	59.6	62.4	65.2
IA	50.0	45.9	41.8	44.8	47.8	50.7	53.7	57.5	61.3	65.1	68.9
KS	52.4	49.3	46.3	51.7	57.1	62.5	67.9	68.2	68.6	68.9	69.3
KY	36.2	36.5	36.9	39.1	41.3	43.5	45.7	49.8	54.0	58.1	62.2
LA	35.2	37.7	40.2	43.1	46.1	49.1	52.1	55.1	58.1	61.2	64.2
ME	58.3	55.6	52.9	53.4	53.8	54.2	54.6	59.1	63.7	68.2	72.7
MD	61.2	56.1	51.0	53.6	56.2	58.7	61.3	62.6	63.9	65.2	66.5
MA	65.2	63.9	62.6	62.2	61.9	61.5	61.2	65.7	70.2	74.7	79.2
MI	43.7	44.2	44.7	50.8	56.8	62.9	69.0	69.7	70.5	71.2	71.9
MN	59.3	62.1	64.9	63.9	62.9	61.9	60.9	63.2	65.4	67.7	70.0
MS	28.6	34.9	41.2	44.6	48.0	51.4	54.8	55.1	55.3	55.6	55.9
MO	49.1	46.8	44.4	45.0	45.5	46.0	46.6	50.3	54.0	57.8	61.5
MT	46.6	49.5	52.4	54.2	56.0	57.8	59.6	62.6	65.5	68.5	71.5
NE	56.4	52.8	49.3	51.6	54.0	56.4	58.8	60.0	61.2	62.4	63.6
NV	54.4	51.9	49.4	51.7	54.0	56.3	58.6	62.1	65.5	68.9	72.4
NH	63.6	60.9	58.3	58.8	59.3	59.8	60.3	64.1	67.8	71.6	75.3
NJ	65.6	59.1	52.6	56.0	59.5	62.9	66.4	69.3	72.2	75.1	78.0
NM	56.4	50.8	45.2	50.1	55.0	59.9	64.8	65.4	66.0	66.6	67.3
NY	59.6	59.4	59.1	60.5	61.9	63.3	64.6	67.4	70.2	72.9	75.7
NC	36.7	39.2	41.6	42.6	43.7	44.8	45.9	50.2	54.5	58.9	63.2
ND	49.7	49.6	49.6	52.1	54.6	57.1	59.7	61.4	63.1	64.8	66.5
OH	58.6	49.0	39.4	42.3	45.1	48.0	50.8	54.9	59.0	63.1	67.2
OK	37.5	38.3	39.2	44.1	49.0	53.9	58.8	57.3	55.8	54.2	52.7
OR	59.4	58.4	57.5	58.2	58.9	59.6	60.3	62.1	64.0	65.8	67.7
PA	54.0	48.5	43.0	44.8	46.6	48.3	50.1	54.8	59.6	64.4	69.1
RI	62.8	57.9	53.0	55.0	56.9	58.9	60.9	65.3	69.6	73.9	78.2
SC	38.1	38.8	39.4	41.9	44.4	46.9	49.4	52.4	55.5	58.6	61.7
SD	46.4	47.1	47.8	50.3	52.8	55.2	57.7	58.5	59.3	60.1	60.9
TN	31.6	37.6	43.6	42.7	41.8	40.9	40.0	44.6	49.2	53.7	58.3
TX	48.6	45.1	41.5	46.9	52.2	57.6	62.9	63.0	63.0	63.0	63.1
UT	58.7	58.8	58.8	59.8	60.7	61.7	62.7	62.8	63.0	63.2	63.3
VT	64.3	59.6	54.9	56.2	57.5	58.8	60.1	63.9	67.7	71.5	75.3
VI	51.5	49.9	48.2	49.7	51.1	52.6	54.1	56.8	59.5	62.2	64.9
WA	53.7	54.7	55.6	57.0	58.5	59.9	61.4	63.2	65.0	66.9	68.7
WV	39.0	32.8	26.6	30.3	34.0	37.7	41.5	43.4	45.2	47.1	49.0
WI	58.1	54.5	50.9	52.5	54.1	55.7	57.4	59.0	60.7	62.4	64.0
WY	61.9	55.3	48.7	48.8	48.9	49.0	49.1	54.1	59.1	64.1	69.1

Table A-3
State-level Public Support for Abortion Rights in all States and Washington D.C. from 1991-2001

State	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
AL	32.4	38.4	33.9	23.8	28.3	32.9	31.1	29.2	28.4	27.5	31.3
AK	51.0	52.9	55.5	54.1	50.7	47.2	47.9	48.7	49.4	50.0	50.9
AZ	49.1	52.8	54.8	43.5	45.4	47.3	47.3	47.3	43.6	40.0	45.4
AR	34.5	38.0	41.2	34.9	33.9	32.8	33.6	34.3	32.9	31.6	33.2
CA	57.9	53.6	53.3	58.7	56.4	54.0	55.8	57.5	55.8	54.2	52.4
CO	56.3	54.2	54.3	62.2	55.9	49.6	48.8	48.0	48.4	48.8	50.4
CT	39.1	57.7	62.3	51.4	48.6	45.7	43.7	41.7	46.8	51.8	53.9
DE	34.9	40.0	45.3	38.1	39.1	40.1	39.9	39.7	38.0	36.3	36.3
DC	40.3	58.2	54.9	53.5	51.1	48.8	48.2	47.5	48.7	49.9	53.2
FL	38.9	39.9	43.8	41.4	40.3	39.1	41.6	44.0	41.6	39.2	37.6
GA	34.4	36.9	42.1	38.9	39.7	40.6	37.6	34.6	35.2	35.9	35.8
HA	49.7	48.6	54.4	45.1	45.2	45.2	47.2	49.2	46.8	44.5	47.8
ID	50.0	52.8	53.7	49.6	48.8	48.1	48.4	48.7	46.2	43.7	47.4
IL	49.9	42.7	49.9	45.6	46.0	46.3	46.1	45.8	43.6	41.4	41.1
IN	39.3	38.8	45.4	28.6	29.2	29.8	29.9	30.0	29.7	29.4	34.7
IA	41.8	41.5	44.5	35.2	36.2	37.2	37.1	36.9	35.8	34.7	37.7
KS	41.2	41.7	41.4	39.6	41.3	42.9	40.1	37.2	36.0	34.7	37.9
KY	32.1	38.9	40.8	40.8	35.7	30.6	28.9	27.3	27.7	28.0	31.4
LA	31.7	39.1	42.2	27.1	30.9	34.8	32.2	29.6	27.4	25.3	30.0
ME	38.6	55.2	55.7	51.5	49.8	48.2	46.8	45.3	47.1	48.8	52.0
MD	45.0	43.4	45.8	41.5	42.5	43.4	44.4	45.4	45.4	45.4	41.3
MA	35.5	57.7	58.3	61.8	56.9	51.9	50.7	49.4	51.2	52.9	54.6
MI	33.8	41.8	44.3	38.9	36.7	34.4	36.1	37.9	38.0	38.1	39.4
MN	41.3	43.0	44.6	40.2	38.5	36.8	35.1	33.4	35.3	37.1	39.3
MS	30.3	39.0	33.6	30.9	34.5	38.1	34.4	30.8	30.6	30.3	32.5
MO	36.9	43.0	38.0	38.6	37.3	36.0	34.5	32.9	33.3	33.8	37.0
MT	50.6	52.9	53.7	45.9	45.1	44.4	46.5	48.6	44.3	40.0	45.7
NE	41.1	43.1	45.2	34.2	34.5	34.8	35.8	36.8	37.0	37.1	39.1
NV	49.9	52.2	53.4	48.6	48.6	48.6	48.3	48.0	45.8	43.7	46.9
NH	43.4	55.2	57.5	56.2	53.6	51.1	50.2	49.3	48.0	46.8	51.4
NJ	41.1	57.6	56.5	50.8	49.9	49.0	51.6	54.2	50.5	46.8	51.1
NM	49.5	51.2	53.0	47.6	46.3	44.9	45.0	45.1	44.5	44.0	47.3
NY	38.3	56.4	60.4	56.4	56.3	56.2	50.8	45.4	47.5	49.7	52.4
NC	30.2	38.0	38.6	33.2	34.6	36.1	35.6	35.2	32.9	30.6	33.1
ND	39.1	41.6	39.8	29.9	33.3	36.7	34.8	32.9	33.7	34.6	37.7
OH	36.1	43.2	48.6	38.7	39.3	39.9	39.5	39.2	34.6	30.1	35.2
OK	35.5	39.1	42.3	42.3	36.6	30.9	32.8	34.7	33.8	32.8	34.2
OR	54.6	55.1	58.5	46.7	48.6	50.4	52.7	54.9	50.9	46.8	49.1
PA	35.5	53.1	52.3	39.8	40.8	41.8	40.5	39.2	40.2	41.3	48.0
RI	38.1	55.3	55.6	50.6	49.2	47.7	46.5	45.3	45.2	45.1	50.0
SC	32.3	39.6	41.3	46.6	42.4	38.2	38.5	38.7	36.3	33.9	34.6
SD	40.2	41.3	44.2	34.9	39.5	44.1	39.3	34.5	35.6	36.7	38.6
TN	27.4	36.6	39.2	31.0	32.8	34.5	35.7	36.9	34.2	31.6	33.4
TX	34.6	40.5	37.1	40.9	39.4	37.9	33.9	29.9	32.6	35.3	35.3
UT	43.8	54.8	55.8	51.2	48.6	46.1	49.3	52.4	47.5	42.6	47.2
VT	39.4	56.3	56.8	50.6	51.0	51.4	49.6	47.7	50.1	52.4	54.2
VI	42.3	43.6	41.1	45.4	43.5	41.6	39.3	37.0	38.5	40.0	38.4
WA	52.4	53.2	55.3	54.5	55.4	56.4	52.5	48.6	48.5	48.4	50.1
WV	29.6	39.5	36.1	34.5	33.6	32.8	33.3	33.9	32.3	30.7	32.7
WI	47.7	42.3	46.7	33.2	35.6	38.0	36.7	35.5	32.1	28.8	34.7
WY	51.8	52.8	54.4	39.1	42.6	46.1	47.5	49	46.1	43.2	47.4

Table A-4
State-level Public Support for Abortion Rights in all States and Washington D.C. from 2002-2012

State	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
AL	35.1	30.1	25.2	29.3	33.3	32.5	31.6	37.4	43.2	38.3	33.3
AK	51.8	50.2	48.6	49.6	50.6	48.4	46.3	46.3	46.3	46.7	47.1
AZ	50.8	52.9	55.0	52.2	49.4	47.5	45.7	40.3	35.0	37.7	40.4
AR	34.8	27.7	20.6	26.3	32.0	31.3	30.6	36.6	42.5	35.1	27.8
CA	50.6	48.1	45.7	48.5	51.4	51.3	51.3	54.1	56.8	53.7	50.6
CO	52.1	53.4	54.7	53.8	52.9	48.4	44.0	49.0	54.0	51.2	48.4
CT	56.0	46.3	36.7	41.8	46.9	49.4	51.9	50.7	49.6	52.9	56.2
DE	36.3	34.3	32.4	33.5	34.6	35.6	36.7	38.7	40.8	42.7	44.7
DC	56.5	54.4	52.4	50.9	49.4	52.6	55.8	52.4	49.0	56.5	64.1
FL	35.9	39.6	43.3	39.3	35.3	34.8	34.3	41.4	48.6	48.4	48.2
GA	35.6	35.3	35.0	34.4	33.7	35.1	36.4	37.0	37.6	39.3	41.0
HA	51.1	49.4	47.7	48.7	49.7	48.5	47.4	49.7	51.9	46.2	40.5
ID	51.1	50.6	50.1	49.2	48.3	45.1	41.9	39.6	37.3	41.7	46.1
IL	40.7	38.8	36.9	40.8	44.6	45.2	45.7	48.4	51.2	50.5	49.9
IN	40.0	30.6	21.1	29.9	38.6	39.1	39.6	40.2	40.9	38.5	36.2
IA	40.7	36.2	31.8	35.9	40.0	42.7	45.5	44.0	42.4	44.9	47.4
KS	41.1	37.6	34.0	38.0	41.9	42.6	43.4	45.6	47.8	45.9	44.0
KY	34.9	30.9	27.0	29.9	32.8	32.6	32.4	35.8	39.2	40.5	41.9
LA	34.8	26.2	17.7	24.8	31.9	31.5	31.0	32.9	34.8	38.0	41.3
ME	55.3	54.5	53.7	50.3	46.9	50.3	53.7	53.2	52.7	51.7	50.8
MD	37.1	42.4	47.7	42.2	36.7	38.2	39.8	40.2	40.7	44.4	48.2
MA	56.3	54.6	52.9	50.3	47.8	47.2	46.5	49.8	53.1	59.1	65.1
MI	40.7	34.5	28.2	34.4	40.6	42.7	44.8	41.6	38.4	44.0	49.6
MN	41.5	34.5	27.6	35.7	43.7	46.1	48.6	49.0	49.4	45.8	42.1
MS	34.7	32.4	30.0	31.3	32.7	31.6	30.5	35.6	40.7	36.6	32.6
MO	40.3	32.5	24.7	32.1	39.5	41.3	43.0	40.6	38.2	37.4	36.7
MT	51.4	49.8	48.3	49.3	50.2	47.9	45.6	45.6	45.5	46.6	47.8
NE	41.0	35.4	29.9	35.9	42.0	43.0	43.9	43.4	42.9	40.2	37.5
NV	50.2	48.2	46.2	47.1	48.1	44.9	41.6	43.1	44.5	47.9	51.3
NH	56.1	51.9	47.6	47.7	47.7	49.8	51.9	48.9	45.8	49.5	53.2
NJ	55.4	52.8	50.2	48.1	46.0	51.0	56.1	50.0	43.9	49.8	55.8
NM	50.5	44.6	38.6	43.1	47.7	43.3	38.9	38.7	38.4	37.9	37.4
NY	55.2	51.7	48.1	47.2	46.2	51.4	56.7	50.7	44.6	49.9	55.1
NC	35.6	35.0	34.5	33.9	33.3	33.1	32.9	40.5	48.1	43.0	37.9
ND	40.9	35.1	29.4	35.7	41.9	40.0	38.0	40.5	43.0	42.3	41.6
OH	40.2	34.0	27.8	34.2	40.6	41.9	43.3	38.0	32.6	38.1	43.5
OK	35.6	34.9	34.1	33.2	32.3	35.5	38.7	35.5	32.3	33.5	34.8
OR	51.4	53.1	54.8	52.3	49.8	48.9	48.0	55.2	62.5	54.8	47.1
PA	54.7	51.6	48.5	47.5	46.5	46.3	46.2	43.9	41.6	41.0	40.5
RI	54.9	50.5	46.2	46.0	45.8	48.2	50.7	47.8	44.9	52.2	59.6
SC	35.3	34.6	33.8	33.7	33.5	34.1	34.6	40.4	46.1	43.2	40.2
SD	40.5	35.0	29.5	35.5	41.5	42.5	43.5	43.1	42.7	41.4	40.1
TN	35.2	33.4	31.7	32.0	32.2	31.2	30.3	31.0	31.8	34.6	37.5
TX	35.4	32.8	30.2	32.1	34.1	34.8	35.4	34.9	34.4	34.3	34.2
UT	51.8	48.5	45.2	47.7	50.3	48.2	46.1	46.1	46.1	39.8	33.5
VT	56.0	52.2	48.3	48.0	47.6	49.8	51.9	48.8	45.7	50.8	55.9
VI	36.7	38.7	40.7	38.4	36.1	39.3	42.6	44.4	46.3	45.2	44.1
WA	51.8	50.1	48.5	49.1	49.7	49.5	49.2	48.0	46.7	48.3	49.9
WV	34.6	27.2	19.8	26.6	33.5	32.8	32.1	36.4	40.6	34.5	28.5
WI	40.6	34.6	28.7	36.2	43.7	43.9	44.0	38.9	33.8	35.8	37.8
WY	51.5	48.4	45.3	47	48.8	46.9	45.1	45.1	45.1	45.1	45.2

Table A-5
State-level Public Support for Affirmative Action in all States and Washington D.C. from 1991-2001

State	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
AL	24.4	24.4	22.5	20.6	20.1	19.7	18.5	17.3	19.3	21.2	18.5
AK	17.5	17.5	16.0	14.5	14.5	14.4	16.1	17.9	16.1	14.3	15.7
AZ	15.1	15.1	14.5	13.9	14.7	15.4	17.0	18.5	17.0	15.6	15.9
AR	18.9	18.9	17.7	16.6	17.6	18.6	16.8	15.1	16.5	17.9	15.4
CA	21.6	21.6	19.3	17.0	17.2	17.5	19.8	22.2	19.3	16.4	18.1
CO	15.7	15.7	14.5	13.2	14.0	14.9	15.2	15.5	15.0	14.6	15.0
CT	16.6	16.6	15.9	15.1	15.1	15.1	14.6	14.1	15.4	16.6	15.7
DE	20.5	20.5	18.9	17.3	17.7	18.0	17.5	17.0	18.4	19.8	17.0
DC	42.4	42.4	41.2	40.0	39.1	38.2	37.1	36.0	35.5	35.0	32.9
FL	16.9	16.9	16.2	15.4	17.1	18.7	16.2	13.7	15.6	17.5	15.2
GA	23.1	23.1	22.6	22.1	21.1	20.0	20.6	21.3	21.5	21.8	19.4
HA	20.7	20.7	18.8	16.8	18.2	19.7	21.4	23.1	20.3	17.6	20.8
ID	14.1	14.1	12.8	11.5	11.7	11.9	13.1	14.3	13.3	12.4	12.9
IL	20.3	20.3	18.0	15.7	16.3	16.9	17.5	18.2	18.1	18.0	17.6
IN	18.2	18.2	15.6	13.0	12.7	12.4	13.0	13.6	14.7	15.7	14.9
IA	14.1	14.1	12.1	10.0	11.3	12.7	11.4	10.1	11.3	12.6	12.2
KS	15.1	15.1	13.4	11.8	13.3	14.8	13.6	12.5	13.1	13.7	13.7
KY	17.3	17.3	15.5	13.7	13.7	13.8	13.1	12.3	13.9	15.4	13.0
LA	26.0	26.0	24.7	23.3	24.0	24.7	22.9	21.0	22.8	24.6	21.1
ME	13.7	13.7	12.6	11.5	11.5	11.5	11.3	11.1	11.5	12.0	11.4
MD	22.4	22.4	21.5	20.6	21.8	22.9	21.7	20.4	22.7	25.0	21.1
MA	16.8	16.8	15.4	13.9	14.6	15.2	15.0	14.8	14.7	14.6	14.2
MI	18.6	18.6	16.6	14.7	14.8	15.0	14.7	14.4	15.2	16.1	16.0
MN	13.8	13.8	12.2	10.6	11.5	12.4	11.7	11.0	12.5	14.1	13.4
MS	29.9	29.9	27.9	25.9	26.8	27.6	24.6	21.5	23.7	25.9	22.2
MO	18.0	18.0	15.9	13.9	15.8	17.6	15.2	12.7	13.7	14.7	14.8
MT	13.9	13.9	12.6	11.2	11.2	11.3	13.0	14.8	13.4	12.0	12.7
NE	14.6	14.6	12.7	10.7	11.3	11.9	11.7	11.5	12.4	13.3	13.0
NV	17.5	17.5	16.2	15.0	15.1	15.1	16.6	18.1	16.8	15.5	16.4
NH	13.3	13.3	12.5	11.6	11.7	11.8	11.7	11.6	11.9	12.1	11.7
NJ	18.2	18.2	17.9	17.5	17.0	16.4	16.3	16.3	16.8	17.3	17.1
NM	17.6	17.6	16.1	14.6	14.7	14.9	17.9	20.9	18.2	15.4	16.3
NY	22.5	22.5	20.4	18.4	19.5	20.7	19.2	17.8	19.1	20.3	19.2
NC	23.5	23.5	21.4	19.3	20.3	21.2	18.5	15.9	17.0	18.1	16.5
ND	13.9	13.9	11.9	10.0	10.9	11.8	10.8	9.8	11.5	13.1	12.4
OH	16.7	16.7	15.3	14.0	14.5	15.1	14.5	13.9	14.9	15.9	15.4
OK	17.1	17.1	15.4	13.6	13.7	13.8	13.2	12.7	14.0	15.2	13.5
OR	15.5	15.5	13.8	12.1	13.0	14.0	14.1	14.2	13.1	12.1	13.2
PA	15.9	15.9	15.2	14.6	14.3	14.1	14.8	15.6	15.2	14.8	14.5
RI	16.1	16.1	15.0	13.9	14.0	14.2	13.9	13.6	14.0	14.3	13.8
SC	26.5	26.5	24.6	22.7	23.3	23.9	22.2	20.6	21.3	22.1	19.4
SD	14.2	14.2	12.2	10.3	12.3	14.3	12.6	11.0	12.0	13.0	12.6
TN	19.2	19.2	18.0	16.8	18.3	19.8	17.7	15.7	17.3	18.9	15.9
TX	21.8	21.8	19.1	16.5	17.3	18.0	17.4	16.9	17.5	18.1	15.7
UT	14.0	14.0	12.8	11.6	12.1	12.6	13.4	14.2	13.7	13.1	13.5
VT	13.9	13.9	12.8	11.7	12.7	13.7	12.6	11.4	12.3	13.2	12.1
VI	24.9	24.9	21.7	18.5	20.9	23.3	20.2	17.2	18.2	19.3	17.0
WA	16.4	16.4	14.6	12.8	12.9	13.0	14.7	16.5	15.3	14.2	14.8
WV	15.7	15.7	13.9	12.1	12.6	13.2	12.1	11.0	12.4	13.8	11.6
WI	15.0	15.0	13.1	11.3	12.0	12.7	12.7	12.7	13.6	14.5	13.8
WY	13.5	13.5	12.3	11.1	11.0	10.9	12.5	14.0	13.2	12.5	12.9

Table A-6
State-level Public Support for Affirmative Action in all States and Washington D.C. from 2002-2012

State	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
AL	15.7	16.5	17.2	18.6	19.9	21.9	23.9	22.7	21.5	23.2	24.9
AK	17.1	17.3	17.5	16.6	15.7	16.0	16.3	17.2	18.2	17.7	17.3
AZ	16.2	16.7	17.3	17.2	17.0	17.5	18.0	17.4	16.9	16.5	16.2
AR	12.9	19.2	25.4	19.7	13.9	16.4	18.8	18.4	17.9	19.0	20.1
CA	19.7	20.1	20.6	18.3	15.9	18.2	20.5	20.3	20.2	19.7	19.2
CO	15.4	16.1	16.9	16.2	15.6	16.2	16.8	16.3	15.8	15.6	15.4
CT	14.7	16.2	17.6	17.5	17.4	17.8	18.2	18.2	18.2	18.3	18.4
DE	14.1	17.3	20.5	18.6	16.7	18.3	19.9	20.3	20.7	21.7	22.8
DC	30.9	33.8	36.7	35.2	33.8	30.8	27.8	29.0	30.3	33.2	36.1
FL	12.8	14.4	16.0	14.5	13.0	14.5	15.9	17.1	18.3	19.2	20.2
GA	17.0	20.7	24.3	22.1	20.0	21.8	23.7	22.4	21.1	24.2	27.3
HA	24.0	24.2	24.5	22.3	20.1	20.1	20.2	22.8	25.5	23.1	20.8
ID	13.3	13.6	13.9	13.9	14.0	13.5	13.0	13.8	14.6	14.0	13.3
IL	17.2	17.4	17.5	17.2	17.0	19.4	21.8	20.7	19.7	20.0	20.3
IN	14.1	16.1	18.1	17.3	16.6	16.6	16.7	16.9	17.2	17.1	17.1
IA	11.9	11.3	10.7	12.4	14.1	13.7	13.2	15.2	17.2	15.5	13.7
KS	13.7	15.2	16.8	15.5	14.1	14.0	13.8	15.1	16.5	16.1	15.7
KY	10.6	13.1	15.5	14.1	12.6	15.0	17.4	16.9	16.4	16.6	16.8
LA	17.5	22.1	26.7	22.9	19.0	23.3	27.5	27.7	27.8	27.7	27.6
ME	10.9	12.2	13.4	13.2	12.9	14.0	15.1	13.9	12.8	12.9	12.9
MD	17.1	19.5	22.0	23.4	24.9	26.2	27.6	25.1	22.6	24.8	27.0
MA	13.7	15.5	17.3	16.7	16.2	16.4	16.7	17.0	17.3	17.2	17.1
MI	16.0	16.0	16.1	16.6	17.2	18.9	20.5	20.3	20.0	19.6	19.1
MN	12.7	13.0	13.3	14.8	16.3	16.7	17.1	16.6	16.1	15.6	15.1
MS	18.5	22.4	26.3	23.7	21.2	26.5	31.9	28.7	25.5	27.5	29.5
MO	14.9	15.3	15.6	16.5	17.3	16.2	15.0	15.5	16.1	17.1	18.0
MT	13.3	13.3	13.4	13.2	13.1	13.3	13.5	13.9	14.3	13.8	13.3
NE	12.7	13.4	14.1	14.1	14.1	14.4	14.7	14.9	15.1	14.9	14.7
NV	17.3	17.6	18.0	17.1	16.2	16.7	17.2	18.1	18.9	18.8	18.6
NH	11.2	13.1	15.0	14.0	12.9	13.2	13.5	13.8	14.0	13.8	13.5
NJ	16.9	19.0	21.0	19.4	17.9	17.0	16.1	18.3	20.5	20.6	20.7
NM	17.3	18.1	19.0	18.5	18.0	19.0	20.0	19.3	18.5	17.5	16.4
NY	18.0	21.2	24.4	20.4	16.4	19.8	23.2	20.9	18.7	20.3	21.9
NC	14.9	18.0	21.1	18.6	16.1	18.3	20.6	22.9	25.3	24.2	23.0
ND	11.7	12.3	12.9	13.0	13.0	12.0	11.1	12.7	14.3	14.0	13.6
OH	14.9	15.5	16.1	15.7	15.3	15.5	15.6	16.5	17.4	17.8	18.2
OK	11.8	14.0	16.2	14.4	12.5	15.8	19.2	18.0	16.9	17.3	17.6
OR	14.4	15.4	16.4	15.1	13.8	13.4	13.0	13.9	14.9	14.6	14.3
PA	14.3	15.8	17.4	16.3	15.2	15.8	16.4	18.8	21.2	19.6	18.0
RI	13.4	15.0	16.5	15.8	15.0	18.7	22.3	19.8	17.3	17.0	16.8
SC	16.7	20.1	23.5	20.8	18.1	19.7	21.3	21.3	21.3	23.4	25.5
SD	12.2	12.9	13.7	13.6	13.4	13.8	14.2	14.6	15.1	14.6	14.2
TN	13.0	17.4	21.7	19.2	16.6	16.2	15.8	16.5	17.1	18.8	20.5
TX	13.4	17.4	21.4	18.2	15.0	17.5	20.1	21.3	22.6	21.2	19.8
UT	13.8	14.0	14.1	13.8	13.4	13.8	14.1	14.6	15.0	14.4	13.8
VT	11.0	12.1	13.1	12.9	12.7	13.0	13.3	13.5	13.7	13.5	13.3
VI	14.6	18.0	21.3	18.8	16.3	18.4	20.5	20.8	21.0	21.8	22.5
WA	15.4	15.9	16.4	16.1	15.9	14.8	13.8	15.0	16.3	16.0	15.7
WV	9.3	10.8	12.4	11.7	11.1	13.3	15.5	15.2	14.8	14.7	14.6
WI	13.1	13.8	14.5	15.4	16.3	16.8	17.4	16.7	15.9	15.7	15.4
WY	13.3	13.0	12.7	12.0	11.3	11.9	12.6	13.3	14.0	13.6	13.3

APPENDIX B
ALTERNATE STRATEGIC VARIABLE INTERACTION MODELS

Below (beginning on the next page) are tables for each of the alternate models that replace Circuit Ideology with the interaction between Judge's Ideology and Circuit Difference as the measure of the strategic environment faced by a district judge. As mentioned in Chapter 5, the interaction variable was not significant in any of the models; thus the original models (using Circuit Ideology) were used as the final models for this study. However, I include the alternate, interactive models here for information purposes.

Table B-1
Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**1.434 (.473)****	---
Common Space Score	---	**2.348 (.905)****
Judge's Gender	**-.984 (.417)***	**-1.043 (.413)***
Judge's Race	.168 (.468)	.107 (.477)
Judge's Religion (Reference – no affiliation)		
Catholic	-.215 (.401)	-.151 (.402)
Mainline Protestant	.253 (.416)	.302 (.422)
Other Christian	-.050 (.489)	.076 (.486)
Jewish	-.404 (.622)	-.325 (.604)
Circuit Difference 1 (Parties match or not)	.169 (.491)	---
Circuit Difference 2 (CS Score distance)	---	.455 (.610)
*Judge's Ideology*Circuit Difference*	-.059 (.665)	-.836 (1.768)
Case Type (Reference – Employment Cases)		
Gay Marriage	-1.016 (.651)	-1.123 (.674)
Prisoner Discrimination	-.092 (.516)	-.145 (.525)
Other Discrimination/Harassment	**-.872 (.371)***	**-.878 (.372)***
Privacy/Defamation	-1984 (.954)	-.956 (.943)
Domestic Benefits	-.640 (.915)	-.703 (.901)
Gov't or Private Protections	**-1.660 (.486)****	**-1.798 (.495)****
Military/Don't Ask Don't Tell	.862 (.655)	.953 (.659)
State-Level Public Support for Gay Rights	.020 (.013)	.016 (.013)
State Political Culture (Reference – Moralistic)		
Individualistic States	.496 (.335)	.607 (.346)
Traditionalistic States	**.924 (.426)***	.705 (.430)
Constant	-2.180 (1.047)	-1.287 (.928)
n	280	280
X² of Model	67.24	68.56

Table B-2
Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including *only* Cases from 1991-2005, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	**2.925 (.992)****	---
Common Space Score	---	**4.446 (1.768)***
Judge's Gender	-1.230 (.912)	-1.042 (.874)
Judge's Race	.661 (.907)	.507 (.918)
Judge's Religion (Reference – no affiliation)		
Catholic	.544 (.741)	.541 (.712)
Mainline Protestant	**1.411 (.719)***	1.375 (.710)
Other Christian	.901 (.797)	.969 (.799)
Jewish	.325 (1.035)	-.155 (1.007)
Circuit Difference 1 (Parties match or not)	.586 (1.076)	---
Circuit Difference 2 (CS Score distance)	---	.055 (1.278)
*Judge's Ideology*Circuit Difference*	-2.104 (1.281)	-3.852 (3.635)
Case Type (Reference – Employment Cases)		
Prisoner Discrimination	1.223 (1.554)	1.338 (1.511)
Other Discrimination/Harassment	-.401 (.736)	-.214 (.704)
Domestic Benefits	1.717 (1.408)	1.353 (1.377)
Gov't or Private Protections	-.651 (.760)	-.543 (.749)
Military/Don't Ask Don't Tell	.783 (.955)	1.277 (.908)
State-Level Public Support for Gay Rights	.045 (.029)	.028 (.028)
State Political Culture (Reference – Moralistic)		
Individualistic States	.621 (.666)	1.023 (.692)
Traditionalistic States	**2.642 (1.011)****	**1.967 (.927)***
Constant	-5.468 (2.285)	-3.243 (1.812)
n	115	115
X² of Model	49.25	45.86

Table B-3
Logistic Regression Analysis of Decisions in Gay Rights Cases on all Independent Variables, using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including *only* Cases from 2006-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	**Party of Appointing President Model** Coefficients (std. errors)	**Common Space Score Model** Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	1.019 (.654)	---
Common Space Score	---	2.142 (1.264)
Judge's Gender	-.903 (.591)	-976 (.575)
Judge's Race	-.022 (.632)	-.175 (.646)
Judge's Religion (Reference – no affiliation)		
Catholic	-.653 (.572)	-.722 (.562)
Mainline Protestant	-.337 (.671)	-.275 (.657)
Other Christian	-.240 (.688)	-.192 (.689)
Jewish	-.328 (.992)	-.269 (.955)
Circuit Difference 1 (Parties match or not)	-.130 (.659)	---
Circuit Difference 2 (CS Score distance)	---	.488 (.841)
*Judge's Ideology*Circuit Difference*	.944 (.942)	-.745 (2.413)
Case Type (Reference – Employment Cases)		
Gay Marriage	**-2.559 (.846)****	**-2.481 (.845)****
Prisoner Discrimination	-.904 (.632)	-.882 (.625)
Other Discrimination/Harassment	**-1.606 (.525)****	**-1.486 (.508)****
Privacy/Defamation	-1.540 (1.025)	-1.552 (1.004)
Gov't or Private Protections	**-2.636 (.768)****	**-2.697 (.769)****
State-Level Public Support for Gay Rights	.042 (.032)	.052 (.030)
State Political Culture (Reference – Moralistic)		
Individualistic States	.511 (.467)	.550 (.466)
Traditionalistic States	.741 (.605)	.482 (.617)
Constant	-2.812 (2.273)	-2.934 (2.071)
n	158	158
X² of Model	49.66	46.46

Table B-4
Logistic Regression Analysis of Decisions in Abortion Cases on all Independent Variables, using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	.878 (.620)	---
Common Space Score	---	1.810 (1.134)
Judge's Gender	-.199 (.589)	-.228 (.588)
Judge's Race	-1.427 (.834)	-1.286 (.838)
Judge's Religion (Reference – no affiliation)		
Catholic	.488 (.504)	.498 (.509)
Mainline Protestant	-.447 (.529)	-.410 (.528)
Other Christian	.975 (.622)	.806 (.630)
Jewish	-.288 (.905)	-.250 (.915)
Circuit Difference 1 (Parties match or not)	-.242 (.649)	---
Circuit Difference 2 (CS Score distance)	---	.418 (.894)
*Judge's Ideology*Circuit Difference*	.334 (.873)	-.670 (2.366)
Case Type (Reference – Undue Burden Cases)		
Gov't or Private Restrictions	-.412 (.574)	-.463 (.574)
Individual Rights	.274 (1.019)	.254 (1.032)
Access to Clinics	.187 (.507)	.172 (.509)
Gov't or Private Protections	.637 (.591)	.511 (.606)
State-Level Public Support for Abortion Rights	-.003 (.027)	.007 (.026)
State Political Culture (Reference – Moralistic)		
Individualistic States	.183 (.506)	.347 (.514)
Traditionalistic States	.931 (.582)	.901 (.583)
Constant	-1.835 (1.422)	-2.080 (1.355)
n	182	182
X^2 of Model	24.36	25.42

Table B-5
Logistic Regression Analysis of Decisions in Affirmative Action Cases on all Independent Variables, using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	Party of Appointing President Model Coefficients (std. errors)	Common Space Score Model Coefficients (std. errors)
Judge's Ideology		
* Party of Appointing President*	.561 (1.294)	---
* Common Space Score*	---	-1.467 (1.868)
Judge's Gender	.389 (.936)	-.354 (.998)
Judge's Race	-1.283 (.997)	-.636 (1.065)
Judge's Religion (Reference – no affiliation)		
* Catholic*	1.421 (.885)	1.466 (.893)
* Mainline Protestant*	.638 (.684)	1.056 (.715)
* Other Christian*	-.743 (.970)	-.656 (.935)
* Jewish*	.271 (.969)	.575 (.970)
Circuit Difference 1 (Parties match or not)	-.104 (1.310)	---
Circuit Difference 2 (CS Score distance)	---	.657 (1.443)
*Judge's Ideology*Circuit Difference*	3.146 (2.139)	7.803 (4.130)
Case Type (Reference – Employment Policies)		
* Education Policies*	1.962 (1.222)	1.854 (1.149)
* **Contracting Policies***	**2.010 (.758)****	**2.042 (.771)****
State-Level Support for Affirmative Action	.026 (.100)	.041 (.100)
State Political Culture (Reference – Moralistic)		
* Individualistic States*	.588 (.793)	.191 (.764)
* Traditionalistic States*	1.423 (.908)	1.138 (.883)
Constant	-2.672 (2.168)	-2.440 (1.824)
n	87	87
X² of Model	31.11	33.17

Table B-6

Logistic Regression Analysis of Decisions in Affirmative Action Cases on all Independent Variables, using Berry et al.'s Citizen Ideology Measure instead of State-Level Public Support for Affirmative Action, *and* using Judge's Ideology*Circuit Difference Interaction Measure instead of Circuit Ideology, including all Cases from 1991-2012, for both Judicial Ideology Models

* = p≤0.05   ** = p≤0.01

Independent Variables	**Party of Appointing President Model** Coefficients (std. errors)	**Common Space Score Model** Coefficients (std. errors)
Judge's Ideology		
Party of Appointing President	.319 (1.323)	---
Common Space Score	---	-3.445 (2.332)
Judge's Gender	.768 (1.009)	-.066 (1.033)
Judge's Race	-.911 (.996)	-.215 (1.118)
Judge's Religion (Reference – no affiliation)		
Catholic	1.657 (.918)	1.843 (.960)
Mainline Protestant	.765 (.734)	1.406 (.806)
Other Christian	-1.486 (1.142)	-1.607 (1.099)
Jewish	-.004 (1.038)	.406 (1.019)
Circuit Difference 1 (Parties match or not)	-.592 (1.371)	---
Circuit Difference 2 (CS Score distance)	---	.676 (1.500)
*Judge's Ideology*Circuit Difference*	4.562 (2.478)	8.020 (5.494)
Case Type (Reference – Employment Policies)		
Education Policies	**3.657 (1.579)***	**3.661 (1.515)***
Contracting Policies	**1.805 (.748)***	**1.866 (.759)***
Citizen Ideology	**-.111 (.047)***	**-.128 (.050)****
State Political Culture (Reference – Moralistic)		
Individualistic States	1.243 (.837)	.815 (.812)
Traditionalistic States	.124 (1.023)	-.290 (1.025)
Constant	3.789 (2.869)	5.020 (2.758)
n	87	87
X² of Model	37.51	40.93

REFERENCES

Alumbaugh, Steve, and C. K. Rowland. 1990. "The Links between Platform-Based Appointment Criteria and Trial Judges' Abortion Judgments." *Judicature* 74: 153-62.

American National Election Studies. 2011. "American National Election Studies (ANES) Cumulative Data File, 1948-2008." Inter-university Consortium for Political and Social Research (ICPSR) [distributor].

Ashenfelter, Orley, Theodore Eisenberg, and Stewart J. Schwab. 1995. "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes." *Journal of Legal Studies* 24(2): 257-82.

Barnum, David G. 1985. "The Supreme Court and Public Opinion: Judicial Decision Making in the Post-New Deal Period." *The Journal of Politics* 47: 652-65.

Bates, Douglas. 2005. "Fitting Linear Models in R Using the Lme4 Package." *R News* 5(1): 27-30.

Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.

Bergara, Mario, Barak Richman, and Pablo T. Spiller. 2003. "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint." *Legislative Studies Quarterly* 28(2): 247-80.

Berry, William D., Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960-1993." *American Journal of Political Science* 42: 327-48.

Berry, William D., Richard C. Fording, Evan J. Ringquist, Russell L. Hanson, and Carl E.

Klarner. 2010. "Measuring Citizen and Government Ideology in the U.S. States: A

Re-Appraisal." *State Politics & Policy Quarterly* 10: 117-35.

Berry, William D., Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson. 2007. "The

Measurement and Stability of State Citizen Ideology." *State Politics & Policy*

Quarterly 7: 111-32.

Blakeman, John C., and Donald E. Greco. 2004. "Federal District Court Decision Making in

Public Forum and Religious Speech Cases, 1973-2001." *Journal for the Scientific*

Study of Religion 43(3): 439-49.

Bowie, Jennifer Barnes, and Donald R. Songer. 2009. "Assessing the Applicability of

Strategic Theory to Explain Decision Making on the Courts of Appeals." *Political*

Research Quarterly 62(2): 393-407.

Boyd, Christina L. 2015. "Federal District Court Judge Ideology Data." available at:

http://cLboyd.net/ideology.html.

Boyd, Christina L., and James F. Spriggs. 2009. "An Examination of Strategic Anticipation of

Appellate Court Preferences by Federal District Court Judges." *Washington*

University Journal of Law & Policy 29: 37-81.

Brace, Paul, Kellie Sims-Butler, Kevin Arceneaux, and Martin Johnson. 2002. "Public

Opinion in the American States: New Perspectives Using National Survey Data."

American Journal of Political Science 46(1): 173-89.

Brace, Paul, Kevin Arceneaux, Martin Johnson, and Stacy G. Ulbig. 2004. "Does State

Political Ideology Change over Time?". *Political Research Quarterly* 57: 529-40.

Brisbin Jr., Richard A. 1996. "Slaying the Dragon: Segal, Spaeth and the Function of Law in Supreme Court Decision Making." *American Journal of Political Science* 40(4): 1004-17.

Caldeira, Gregory A. 1994. "Review of 'The Supreme Court and the Attitudinal Model'." *American Political Science Review* 88(2): 485-86.

Calvin, Bryan, Paul M. Collins, and Matthew Eshbaugh-Soha. 2011. "On the Relationship between Public Opinion and Decision Making in the U.S. Courts of Appeals." *Political Research Quarterly* 64: 736-48.

Carmines, Edward G., and James A. Stimson. 1989. *Issue Evolution: Race and the Transformation of American Politics.* Princeton, N.J.: Princeton University Press.

———. 1980. "The Two Faces of Issue Voting." *The American Political Science Review* 74: 78-91.

Carp, Robert A., and Ronald Stidham. 1998. *The Federal Courts.* Washington, DC: Congressional Quarterly Press.

Casillas, Christopher, Peter K. Enns, and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55(1): 74-88.

Choi, Stephen J., Mitu Gulati, and Eric A. Posner. 2011. "What Do Federal District Judges Want? An Analysis of Publications, Citations, and Reversals." *The Journal of Law, Economics, & Organization* 28(3): 518-49.

Colt, LeBaron B. 1903. "Law and Reasonableness." *American Law Review* 37: 657-76.

Cook, Beverly B. 1977. "Public Opinion and Federal Judicial Policy." *American Journal of Political Science* 21(3): 567-600.

Cross, Frank. 2007. *Decision Making in the U.S. Courts of Appeals*. Stanford, CA: Standard University Press.

Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6: 279-95.

Delli Carpini, Michael X., and Scott Keeter. 1996. *What Americans Know About Politics and Why It Matters*. New Haven, CT: Yale University Press.

Dworkin, Ronald. 1988. *Taking Rights Seriously*. Cambridge, MA: Harvard University Press.

Egan, Patrick J., Nathaniel Persily, and Kevin Wallsten. 2008. "Gay Rights." In *Public Opinion and Constitutional Controversy*, eds. Jack Citrin, Nathaniel Persily, and Patrick J. Egan. New York: Oxford University Press.

Elazar, Daniel. 1972. *American Federalism: A View from the States*. 2nd ed. New York: Crowell.

———. 1966. *American Federalism: A View from the States*. New York: Crowell.

Enns, Peter K., and Julianna Koch. 2013. "Public Opinion in the U.S. States: 1956 to 2010." *State Politics & Policy Quarterly* 13: 349-72.

Epstein, Lee and Andrew D. Martin. 2014. *An Introduction to Empirical Legal Research*. Oxford: Oxford University Press.

Epstein, Lee and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review* 69: 1-209.

Epstein, Lee and Jack Knight. 1998a. *The Choices Justices Make*. Washington D.C.: CQ Press.

Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, and Organization* 23(2): 303-25.

———. 2015. "Judicial Common Space Data." available at

http://epstein.wustl.edu/research/JCS.html.

Epstein, Lee, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth. 1998b. "Do Political

Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *The

Journal of Politics* 60(3): 801-18.

Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *Behavior of Federal Judges :

A Theoretical and Empirical Study of Rational Choice.* Cambridge: Harvard

University Press.

Erikson, Robert S., Gerald C. Wright, and John P. McIver. 1993. *Statehouse Democracy*.

Cambridge: Cambridge University Press.

Erikson, Robert S., Michael B. MacKuen, and James A. Stimson. 2002. *The Macro Polity*.

New York: Cambridge University Press.

Erikson, Robert S., Gerald C. Wright, and John P. McIver. 2007. "Measuring the Public's

Ideological Preferences in the 50 States: Survey Responses Versus Roll Call Data."

State Politics & Policy Quarterly 7: 141-51.

Federal Judicial Center. 2015. "Federal Judges Biographical Database." available at:

http://www.fjc.gov/public/home.nsf/hisj.

Fisher, Patrick. 2010. "State Political Culture and Support for Obama in the 2008

Democratic Presidential Primaries." *The Social Science Journal* 47: 699-709.

Flemming, Roy B. and B. Dan Wood. 1997. "The Public and the Supreme Court: Individual

Justice Responsiveness to American Policy Moods." *American Journal of Political

Science* 41(2): 468-98.

George, Tracey E., and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86(2): 323-37.

Gibson, James. 1983. "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior." *Political Behavior* 5(1): 7-49.

Giles, Michael W., and Thomas G. Walker. 1975. "Judicial Policy-Making and Southern School Segregation." *The Journal of Politics* 37: 917-36.

Giles, Micheal W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3): 623-41.

Goff, Brian. 2005. "Supreme Court Consensus and Dissent: Estimating the Role of the Selection Screen." *Public Choice* 122(3): 483-99.

Haider-Markel, Donald P. 1999. "Redistributing Values in Congress: Interest Group Influence under Sub-Optimal Conditions." *Political Research Quarterly* 52(1): 113-44.

Haider-Markel, Donald P., and Kenneth J. Meier. 1996. "The Politics of Gay and Lesbian Rights: Expanding the Scope of the Conflict." *Journal of Politics* 58: 332-49.

Hall, Mark A. and Ronald F. Wright. 2008. "Systematic Content Analysis of Judicial Opinions." *California Law Review* 96(1): 63-122.

Hammond, Thomas H., Chris W. Bonneau, and Russell S. Sheehan. 2006. *Strategic Behavior and Policy Choice on the U.S. Supreme Court.* Stanford: Stanford University Press.

Hume, Robert J. 2009. "Courting Multiple Audiences: The Strategic Selection of Legal Groundings by Judges on the U.S. Courts of Appeals." *Justice System Journal* 30: 14-33.

Ifill, Sherrilyn A. 2000. "Racial Diversity on the Bench: Beyond Role Models and Public Confidence." *Washington & Lee Law Review* 57: 405-95.

Johnson, Susan W., and Donald R. Songer. 2002. "The Influence of Presidential Versus Home State Senatorial Preferences on the Policy Output of Judges on the United States District Courts." *Law & Society Review* 36: 657-76.

Kastellac, Jonathan P., Jeffrey R. Lax, and Justin Phillips. 2014. "Estimating State Public Opinion with Multi-Level Regression and Poststratication Using R." available at http://www.princeton.edu/~jkastell/mrp_primer.html.

King, Gary, Michael Tomz, and Jason Wittenberg. 2000. "Making the Most of Statistical Analyses: Improving Interpretation and Presentation." *American Journal of Political Science* 44(2): 347-61.

Klein, David E. 2002. *Making Law on the United States Courts of Appeals.* New York: Cambridge University Press.

Lax, Jeffrey R. and Justin H. Phillips. 2009. "How Should We Estimate Public Opinion in the States?". *American Journal of Political Science* 53(1): 107-21.

Lewis, Daniel C., Frederick S. Wood, and Matthew L. Jacobsmeier. 2014. "Public Opinion and Judicial Behavior in Direct Democracy Systems: Gay Rights in the American States." *State Politics & Policy Quarterly* 14: 367-88.

March, James G. 1956. "Sociological Jurisprudence Revisited, a Review (More or Less) of Max Gluckman." *Stanford Law Review* 8: 499-534.

Marshall, Thomas. 1989. *Public Opinion and the Supreme Court.* New York: Longman.

McGuire, Kevin T. and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *The Journal of Politics* 66(4): 1018-35.

Mishler, William and Reginald S. Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *The Journal of Politics* 58(1): 169-200.

———. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(1): 87-101.

Mooney, Christopher Z., and Mei-Hsien Lee. 1995. "Legislating Morality in the American States: The Case of Pre-*Roe* Abortion Regulation Reform." *American Journal of Political Science* 39(3): 599-627.

Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.

Norpoth, Helmut and Jeffrey A. Segal. 1994. "Popular Influence on Supreme Court Decisions: Comment." *American Political Science Review* 88(3): 711-16.

Norrander, Barbara. 2007. "Comment: Choosing among Indicators of State Public Opinion." *State Politics & Policy Quarterly* 7(2): 152-59.

———. 2001. "Measuring State Public Opinion with the Senate National Election Study." *State Politics & Policy Quarterly* 1: 113-27.

Pacheco, Julianna. 2014. "Measuring and Evaluating Changes in State Opinion across Eight Issues." *American Politics Research* 42: 986-1009.

———. 2011. "Using National Surveys to Measure Dynamic U.S. State Public Opinion: A
Guideline for Scholars and an Application." *State Politics & Policy Quarterly* 11: 415-
39.

Page, Benjamin I., and Robert Y. Shapiro. 1983. "Effects of Public Opinion on Policy."
American Political Science Review 77(1): 175-90.

Park, David K., Andrew Gelman, and Joseph Bafumi. 2006. "State Level Opinions from
National Surveys: Poststratification Using Multilevel Logistic Regression." In *Public
Opinion in State Politics*, ed. Jeffrey Cohen. Stanford: Stanford University Press, 209-
28.

Peltason, Jack W. 1955. *Federal Courts in the Political Process.* New York: Random House.

———. 1971. *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation*.
Urbana: University of Illinois Press.

Pinello, Daniel R. 2003. *Gay Rights and American Law*. New York: Cambridge University
Press.

———. 1999. "Linking Party to Judicial Ideology in American Courts: A Meta-Analysis."
The Justice System Journal 20(3): 219-54.

Poole, Keith T. 2015. "Common Space Scores Congresses 75 - 113 (6 January 2015)."
available at: http://voteview.com/basic.htm.

Poole, Keith T. 1998. "Estimating a Basic Space from a Set of Issue Scales." *American
Journal of Political Science* 42(3): 954-93.

Randazzo, Kirk A. 2008. "Strategic Anticipation and the Hierarchy of Justice in U.S. District
Courts." *American Politics Research* 36(5): 669-93.

Reincke, Mary and Jeaneen C. Wilhelmi. 1977-2014. *The American Bench: Judges of the*

Nation. Minneapolis: Reginald Bishop Forster & Associates.

Romero, Francine Sanders. 2000. "The Supreme Court and the Protection of Minority

Rights: An Empirical Examination of Racial Discrimination Cases." *Law & Society*

Review 34: 291-313.

Rosenberg, Gerald N. 2008. *The Hollow Hope.* 2nd ed. Chicago: The University of Chicago

Press.

———. 1991. *The Hollow Hope.* Chicago: The University of Chicago Press.

Rowland, C. K., Robert A. Carp, and Donald R. Songer. 1985. "The Effect of Presidential

Appointment, Group Identification and Fact-Law Ambiguity on Lower Federal

Judges' Policy Judgments." Paper presented at the annual meeting of the American

Political Science Association, New Orleans.

Rowland, C.K., and Robert A. Carp. 1980. "A Longitudinal Study of Party Effects on Federal

District Court Policy Propensities." *American Journal of Political Science* 24(2): 291-

305.

———. 1996. *Politics and Judgment in Federal District Courts.* Lawrence: University of

Kansas Press.

Schuck, Peter H. 1989. "Why Don't Law Professors Do More Empirical Research?". *Journal*

of Legal Education 39: 323-36.

Segal, Jeffrey A., and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of

United States Supreme Court Justices." *American Journal of Political Science* 40(4):

971-1003.

———. 1993. *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.

Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Sisk, Gregory C. 2008. "The Quantitative Moment and the Qualitative Opportunity: Legal Studies of Judicial Decision Making." *Cornell Law Review* 93: 873-900.

Sisk, Gregory C., and Michael Heise. 2012. "Ideology "All the Way Down"? An Empirical Study of Establishment Clause Decisions in the Federal Courts." *Michigan Law Review* 110: 1201-63.

Smith, Joseph L. 2014. "Law, Fact, and the Threat of Reversal from Above." *American Politics Research* 42: 226-56.

———. 2006. "Patterns and Consequences of Judicial Reversals: Theoretical Considerations and Data from a District Court." *Justice System Journal* 27: 28-44.

Smith, Joseph L., and Emerson H. Tiller. 2002. "The Strategy of Judging: Evidence from Administrative Law." *Journal of Legal Studies* 31: 61-82.

Smith, Tom W., Michael Hout, and Peter V. Marsden. 2013. "General Social Survey, 1972-2012 [Cumulative File]." Inter-university Consortium for Political and Social Research (ICPSR) [distributor].

Songer, Donald R. and Martha Humphries Ginn. 2002. "Assessing the Impact of Presidential and Home State Influences on Judicial Decisionmaking in the United States Courts of Appeals." *Political Research Quarterly* 55(2): 299-328.

Songer, Donald R. and Stefanie A. Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *American Journal of Political Science* 40(4): 1049-63.

Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions." *American Journal of Political Science* 38: 673-96.

Soroka, Stuart N., and Christopher Wlezien. 2010. *Degrees of Democracy*. New York: Cambridge University Press.

Stidham, Ronald, and Robert A. Carp. 1987. "Judges, Presidents, and Policy Choices: Exploring the Linkage." *Social Science Quarterly* 68: 395-404.

Stidham, Ronald, Robert A. Carp, and C. K. Rowland. 1984. "Patterns of Presidential Influence on the Federal District Courts: An Analysis of the Appointment Process." *Presidential Studies Quarterly* 14.

Stimson, James A. 1992. *Public Opinion in America: Mode, Cycles, and Swings*. Boulder, CO: Westview.

Tiller, Emerson H. and Pablo T. Spiller. 1999. "Strategic Instruments: Legal Structure and Political Games in Administrative Law." *Journal of Law, Economics, and Organization* 15: 349-77.

Tomz, Michael, Jason Wittenberg, and Gary King. 2001. *Clarify: Software for Interpreting and Presenting Statistical Results. Version 2.0.* Cambridge, MA: Harvard University.

Unah, Isaac, and Ange-Marie Hancock. 2006. "U.S. Supreme Court Decision Making, Case Salience, and the Attitudinal Model." *Law and Policy* 28(3): 295-320.

Vines, Kenneth. 1964. "Federal District Judges and Race Relations Cases in the South."

    Journal of Politics 26(2): 337-57.

Wildavsky, Aaron. 1987. "Choosing Preferences by Constructing Institutions: A Cultural

    Theory of Preference Formation." *American Political Science Review* 81: 3-21.

Wlezien, Christopher. 2004. "Patterns of Representation: Dynamics of Public Preferences

    and Policy." *Journal of Politics* 66: 1-24.

Zorn, Christopher, and Jennifer Barnes Bowie. 2010. "Ideological Influences on Decision

    Making in the Federal Judicial Hierarchy: An Empirical Assessment." *The Journal of*

    Politics 72(4): 1212-21.

ABSTRACT

MODERN-DAY JUDICIAL "POLITICS": AN ANALYSIS OF FEDERAL DISTRICT COURT DECISION MAKING IN CONTEMPORARY, POLITICALLY DIVISIVE ISSUE AREAS

by

KYLA K. STEPP

May 2016

Advisor: Dr. Ronald E. Brown

Major: Political Science

Degree: Doctor of Philosophy

Recent decisions regarding LGBT rights, reproductive rights, and racial and gender equality by U.S. District Courts have illuminated how these lower federal courts are increasingly becoming important policymakers in our political system. However, research to date has only scratched the surface on district court decision making in cases involving significant constitutional issues such as these. The substantial variation among judges (and among states/regions) in the decisions made and resulting policies indicates the existence of powerful, competing influences on district judges. I conduct a comprehensive analysis of many potential influences on district court judges, including individual ideology, personal characteristics, legal factors, and strategy; I also examine the influence of public opinion on judges, a variable that has been heretofore ignored at the district court level, most likely due to the difficulty of obtaining state-level public opinion data. I do so using a unique dataset I've created, which includes every district court case over a 22-year period (1991-2012) involving LGBT rights, abortion, and affirmative action. My results run counter to several recent studies discounting the role of ideology on district court judges by strongly confirming the importance of such ideology, at least when salient constitutional rights are

involved. Additionally, public opinion does appear to play a role in certain cases, a finding that suggests we should change the way we look at the role of district courts in our current political system, as well as opens up a whole new avenue of study for judicial scholars.

AUTOBIOGRAPHICAL STATEMENT

Education & Training
Ph.D., Political Science, Wayne State University   **2016**
- Major Concentration – American Government & Politics
    Minor Field – Public Policy
    Minor Field – World Politics

Interuniversity Consortium for Political and Social Research (ICPSR)   **2014**

J.D., Georgetown University Law Center   **2004**

B.S., Legal Studies, Grand Valley State University   **2001**

Research and Teaching Interests
Public Law; Judicial Behavior; Contemporary Constitutional Issues and Social Movements; Political Institutions; Public Opinion; State Politics and Policy; Race, Gender, Sexuality & Politics

Teaching & Research Experience
Adjunct Instructor, Wayne State University   **2014-**
- Courses Include: Introduction to American Government,
    American Legal Systems & Processes,
    State and Local Government

Research Assistant, Wayne State University Law School   **2015-**
- National Science Foundation Grant ($249,952)
    "Legal Mobilization, Rights Claims, and Federal Indian Policy Reform"
    PI – Kirsten Matoy Carlson, J.D., Ph.D.

Graduate Teaching Assistant, Wayne State University   **2011-2014**
- Instructor of Record Courses Include: Introduction to American
    Government, American Legal Systems & Processes

LSAT Preparation Instructor, Georgetown University   **2002-2004**

Selected Academic Fellowships, Grants, and Awards
Graduate School Dissertation Research Support Grant,   **2015**
    Wayne State University

Garrett T. Heberlein Excellence in Teaching Award,   **2013**
    Department of Political Science Nominee, Wayne State University

CALI Student Award, Georgetown University Law Center   **2003**