

PARTISANSHIP AND JUDICIAL DECISION MAKING

IN U.S. COURTS OF APPEAL

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Partisanship is found in voter and Congressional behavior. Members of the federal judiciary should behave similarly. I utilize cases involving the Republican and Democratic parties from 1966 to 1997 and examine the voting behavior of federal Courts of Appeal judges. I utilize both cross tabulations and a Logit regression model to determine the likelihood appellate judges will vote for their own party and against the opposition.

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CHAPTER 1

INTRODUCTION

Partisan affiliation, or at least the recognition of a party label and its associated values, is a key factor in determining how an individual will cast his or her vote in selecting elected officials. The stronger the party affiliation and loyalty, the more likely the individual will vote for the parties' candidates. Partisanship may be overt, or it may be exercised strategically by taking actions that on the surface appear to diverge from the official party position. In elections the goal of political parties is to win office. Candidates will appeal to partisan sentiments in order to gain the favor of voters. Flanigan and Zingale (1998) define partisanship as "the sense of attachment or belonging that an individual feels for a political party." It is the single most important influence on political opinions and voting behavior. Individuals who identify themselves as being either Republican or Democratic respond to political information partially by using their party identification to orient them. They react to the latest political information in ways allowing it to fit with the ideals and feelings they already have. Party identification "raises a perceptual screen through which the individual tends to see what is favorable to his partisan orientation." (Campbell, Converse, Miller, and Stokes, 1960). For people with weak political attitudes who have some sense of partisan loyalty, party identification "has a more direct influence on behavior than it has among people with a well elaborated

view of what their choices concern.” (Campbell, Converse, Miller, and Stokes, 1960). Epstein (1986) notes that in the last century when educational levels were lower and there were limited mass communication and other sources of political information “voters would have few cues more helpful and meaningful than the party label.” Epstein further believes that that the measurable decline of party identifiers has been so modest that the overwhelming majority of voters retain Republican and Democratic identifications. Parties may be less central to the voting decision, but they provide important cues for voters in the absence of candidate centered appeals such as personality, issue orientation, or incumbency.

Declining loyalty to a party may occur when there is a decrease in partisan intensity. Loyalty can also be weakened by other factors such as the attractiveness of the candidate, foreign and domestic policy issues, and local circumstances (Flanigan and Zingale, 1998). Voters may also deliberately choose not to support their party in the short term because they are behaving in a purposive, goal directed manner (Allison, 1971). They may vote for alternate choices rather than a more preferred candidate in order to stop another candidate that is liked less (Niemi and Weisberg, 1993). Abramson, Aldrich, Paolino, and Rohde (1992) find evidence of such strategic or as they call it, “sophisticated voting” in the 1988 National Election Survey Super Tuesday study.

Elected legislative leaders also exhibit partisan loyalties. Republican and Democratic members of Congress act in ways to support their parties’ ideological positions while trying to undermine the position of the opposition. While partisan ties are

a predictor of how elected officials vote, they are expected to maintain a certain amount of flexibility in their views so as to prevent gridlock with the opposition and promote compromise in legislation. The public is not surprised to hear of numerous “deals” being made in order to fashion compromises on major public policies.

In Congress, Clausen (1973) finds that party is the major explanatory variable in votes concerning economic regulations, government and business relations, care and use of natural resources, fiscal policies, agricultural assistance, social welfare programs, and civil rights. Partisans usually share ideologies and “for a Congressman who is at either end of the political spectrum, ideology is a means to array the amendments and the proponents on a continuum, enabling him to vote for the one nearest him.”(Kingdon, 1981).The President’s power base in Congress is shared with those who “have the greatest predisposition to support his preferences, because they share with the president both party affiliation and an ideological outlook.” (Bond and Fleischer, 1990).

Members of Congress have been shown to vote strategically when circumstances arise that make it more advantageous to vote contrary to one’s own preferences. Enelow and Koehler (1980) find this to be true when they examine Congressional votes that were designed to save losing bills and kill winning bills. Denzau and Mackay (1983) model sophisticated forms of committee behavior concerning the germaneness rule and the closed rule in the U.S. House of Representatives. Committee members’ votes are made with an eye towards the bill’s final fate in floor voting. Krehbiel and Rivers (1990) skeptically examine the theory of sophisticated voting in the context of congressional

rules, agendas, preferences and uncertainty. As an alternative approach, they characterize voting as a game illustrating the interaction of information and procedure in congressional activity. Finally, Calvert and Fenno (1994) examine Senate consideration of allowing Senate proceedings to be televised. Their model shows that even with less than complete information about preferences and a fixed agenda, senators still engage in sophisticated voting.

Partisanship is also alive and well in the judicial branch of government.

According to Carp and Stidham (2001) eight of the states select their judges in partisan elections.¹ Judges who must run for office face the twin hurdles of primary and general elections. They are in the same predicament as any other political candidate. They are concerned with getting their message out to the voters. In order to do this they must raise funds in order to get their message out. They must make promises to garner support and votes. In the primary election they are seeking the support of the party faithful by promising to adhere to party principles. For example, this could be the promise to “get tough” on crime or assist in the protection of “victim’s rights.” Such comments do not bode well for the alleged offender. Yet in the general election, judicial candidates also have to promise the voters to be fair and impartial.

What about the federal judiciary? While its judges do not have to run for office, does partisanship affect them? Federal judges are born out of the political process and in many instances are themselves past party loyalists. Prior research in judicial decision

¹ Alabama, Arkansas, Illinois, Mississippi, North Carolina, Pennsylvania, Texas, and West Virginia.

making has not addressed the issue of how partisan affiliation might affect the outcome of cases involving the major political parties as litigants. Because they usually concern First Amendment issues, these cases have always been lumped in together with “civil liberties” cases. Pragmatically there is a very good reason for this. Most judicial research is interested in how judges in general reach their decisions. In order to generalize, a large sample or N is required. Focusing on one small area of interest, such as political parties, within the sphere of the First Amendment is not going to tell the researcher very much about overall trends concerning judges and their decisions. A better approach is to include all case types that fall inside this sphere. However, now that these trends have been identified, it is important to pull out the microscope and conduct more detailed examinations of particular subject areas within the sphere of the First Amendment. This will reveal how a particular area does, or does not compare to the established generalizations.

Public law scholars know how federal judges vote as a whole on civil liberties cases. Liberal judges tend to support the expansion of civil liberties such as First Amendment freedom of speech and the related freedom of association. Ideally these are concerns of organized groups such as political parties. Conservative judges tend to read the First Amendment less expansively. The myth of judicial impartiality implies that judges would never let partisan loyalties sway their decisions. This may be true in most cases where partisan preferences are not overtly at issue, but what happens when a case comes before a judge that involves the judge’s own party or that of the opposition? Will a

Republican judge support the Republican Party and vote against the Democrats? Will a Democratic judge support the Democratic Party and vote against the Republicans?

Political parties are manifestations of the freedom of association and dependent upon judicial interpretation for their existence and continued viability. Can it be assumed that a judge would automatically support his or her own party and vote against the opposition party in the name of partisanship and against personal ideology? Will a conservative judge sacrifice ideology and vote in a sophisticated manner in order to expand the civil liberties of the Republicans, but remain conservative if it restricts the Democrats? Will a liberal judge sacrifice ideology and vote in a sophisticated manner to limit the civil liberties of the Republicans, or will that judge stay ideologically true and expand their rights? Partisanship is alive and well in the other branches of government. Are federal courts immune from such partisanship?

CHAPTER 2

THE LEGAL STATUS OF THE POLITICAL PARTIES

Of central importance to any concept of democracy are the beliefs that policy makers should be selected through periodic elections with unrestrictive adult suffrage; that candidacies are not unduly restricted; votes equally weighted; and outcomes based on majority preferences (McCleskey, 1984). Parties help achieve these goals by assisting in the governing processes through selection of officials; shaping and determining governmental policies; executing those policies; and when out of power, criticizing those who hold power. They are important in promoting such values as democratic responsiveness, consent of the governed, equality, public choice and political accountability (Ryden, 1999). Fitts (2000) believes parties perform four critical functions. First, they mobilize and aggregate citizens to gain control of the government. They try to prevail over the problems of collective action that restrict individuals from fully participating in and creating full democracy. Second, parties channel public debate by prioritizing and narrowing the discussion of issues. Third, they promote compromise and tradeoffs that are essential to an organization with diverse interests among many supporters. There is an organizational interest in maintaining a large membership that includes a variety of interests, but not beholden to any one narrow group. Factions can be dangerous and divisive for a party seeking to gain office. Finally, parties attempt to define what is meant by democratic majority rule. There is no definition in the

Constitution saying what majority rule means. Parties take the individual rights of voters and collectivize them. In doing so, they are made strong by the competition between private political forces.

Though essential to the functioning of government, political parties are not a part of the formal governmental structure. They are not mentioned in the U.S. Constitution and some of the Founders, as reflected in the *Federalist* papers, did not encourage them to be formed. Pritchett (1984) identifies eight separate clauses of the U.S. Constitution that are of importance to the parties. First, is Article I, Section 2, which provides that electors for members of the House in the several states “shall have the qualifications requisite for electors of the most numerous branch of the state legislature.” In other words, voter qualifications are the responsibility of the states. Next is the “time, place, and manner” clause of Article I, Section 4, establishing when and how elections are to be carried out. Several of the Amendments to the Constitution relate to elections and the electorate. Especially relevant are the protections afforded to individuals concerning free speech and the freedom of association as reflected in the First Amendment. The Fifteenth Amendment specifically forbids the denial of the right to vote “on account of race, color, or previous condition of servitude.” The Nineteenth Amendment gives women the right to vote. Poll taxes were invalidated under the Twenty-fourth Amendment. Finally, the Twenty-sixth Amendment extended the right to vote to eighteen year olds.

While much attention is given in the literature to party structure, membership characteristics, ideologies, and electoral performance, often neglected is the legal context

in which they operate. What conditions would drive the parties from the electoral arena to the legal arena? Epstein and Rowland (1991) believe that groups are involved in litigation to win cases, gain publicity, and to maintain their membership. Members want to know that their group's leaders are out fighting for the good of the organization. They want to know that their contributions to the party are well spent.

Scheppele and Walker (1991) investigate litigation strategies of interest groups. While interest groups and parties carry out different political functions, they share common goals in undertaking litigation. Both groups are manifestations of associational interests and are goal oriented. Scheppele and Walker (1991) find that there are several important factors leading interest groups to seek out the courts. First, groups with more organizational resources (legal staffs, diffuse financial support, and longer time horizons) are more likely to use the courts to promote their policy goals. The Republican and Democratic parties are organized, structured, and well funded. They have adequate resources needed to undertake often long and complex legal battles in the courts. Second, groups engaged in structured and intense conflicts with regular opponents are more likely to be in court than those who operate in a consensual policy environment. Parties by definition are associations of individuals with similar beliefs. Naturally, these beliefs may not always be consistent with others' beliefs leading to conflict. Party goals and objectives may not always be in harmony with the electoral policies of the state and federal government requiring the parties to seek relief from the courts. Finally, Scheppele and Walker (1991) find that groups whose fortunes are politically sensitive will attempt

to protect themselves from the tumult of politics by securing their interest through legal precedent established by the courts. This would certainly be true of political parties which wax and wane in influence over time. Anything that could be done to strengthen their position, either as a weakened minority, or a dominant majority will be undertaken.

The Framers of the Constitution divided and distributed power among the three branches of government at varying levels within the federal system. Drawn over the entire structure is a system of checks and balances as well as statutory restrictions at all levels of government. The parties are important for building consensus across the three branches as well as the various levels of government, but they must overcome the hurdles of federalism and separation of powers if they are to be effective (Ryden, 1999, 2000). Black (1996) and Ryden (1999) believe these restrictions affect the parties' ability to nominate and promote candidates, have access to the ballot, raise funds, organize, and exercise other associational rights.

Parties are essentially organizations made up of private individuals with similar political and ideological beliefs and were treated as such from the 1790s until the Civil War. After the efforts of Robert La Follette and the Progressives, parties began to be treated as public agencies (Black, 1996). Prior to World War II, the constitutional status of the parties was similar to that of non-public associations in that they could be subjected to governmental regulation, when the regulation furthered some sort of legitimate governmental interest (McCleskey, 1984). Epstein (1986) views this relationship as being comparable to "public utilities" in that the parties are agencies

which perform services in which the public has an interest sufficient to require some governmental oversight, along with the granting of legal privileges, but not to the extent that the government owns or manages the organizations' activities. This party - government relationship, like all citizens - government relationships, must balance between governmental interest and protection of the rights of the people. For many years, there was "an implicit recognition of constitutional limits to state control of party activities" which recognized a governmental interest in running fair and efficient elections versus the "presumably protected rights of parties to undertake private associational activities." (Epstein, 1986).

Parties have often found themselves either as plaintiff or defendant in court protecting their associational rights from restrictions by state and federal governments. Early controversy arose when associational rights came into conflict with individual rights. Party activities in some areas of the country were legalized fronts for racial discrimination. Election officials used the Equal Protection Clause of the Fourteenth Amendment to prevent the dilution of votes and to invalidate discriminatory practices to the detriment of the membership interests of the parties. The Fourteenth, Fifteenth, and Nineteenth Amendments all authorize Congress to enforce these provisions with appropriate legislation. Especially significant to the political parties was the passage of the Voting Rights Act of 1965. Its underlying intent is the belief that all citizens have the ability to participate and have their votes counted in an election. Courts had to balance the associational interests of the parties with the individual rights of those who were

being excluded from the parties or their activities. Their individual equal protection and voting rights outweigh any private associational rights used by members of parties to justify discriminatory practices (Pettersen, 2000).

Initially, there was “great reluctance” on the part of the Supreme Court to “to get involved in electoral problems other than those raised by racial discrimination” (Pritchett, 1984). Federal courts, especially the Supreme Court, have had to fashion legal policy concerning parties in the face of the Framers’ antagonism, the absence of textual guidance from the Constitution, and the absence of any clearly accepted, normative understanding of parties and their roles and functions. There has really been no consensus over the years within the legal or the political science community for a constitutionally grounded responsible party government that would assist the Supreme Court in its consideration of parties. (Ryden, 2000).

The White Primary Cases² collectively stand for the idea that judicial intervention is necessary in the voting process when racial discrimination threatens that process. In affirming the rights of racial minorities at the expense of the associational rights of the white majority, the Court restricted the scope of participation and party activity. The White Primary Cases laid the foundation for the Voting Rights Act of 1965. In doing so,

² *Nixon v. Herndon*, 273 U.S. 536, 47 S.Ct. 446 (1927)
Nixon v. Condon, 286 U.S. 73, 52 S.Ct. 484 (1932)
U.S. v. Classic, 313 U.S. 299, 61 S.Ct. 1031 (1941)
Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757 (1944)
Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809 (1953)

the Court addressed questions of voting rights, ballot access, equal protection, and patronage issues.

Primary elections and the party nominating process are integral steps in achieving public office and considered public functions and state action subject to constitutional scrutiny (Rotunda and Nowak, 1999). Though freedom of association is not specifically mentioned in the First Amendment, the Supreme Court recognized this right as emanating from it in *NAACP v. Alabama ex rel. Patterson* (1958). While there are governmental interests in candidate selection, members of political parties have associational rights under the First Amendment that overcome governmental interest in the integrity of the election process. Consequently, parties have achieved the legal authority to define and control the internal party processes without state interference (Black, 1996). Through increased party autonomy, the courts have been able to “strengthen the power of the state party organizations to control the content of the party’s ideological message,” and have “increased their ability to influence the nomination of candidates.” (Black, 1996).

Party rules on delegate selection to national conventions take precedence over contrary state laws and regulations. (*Democratic Party v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 1981); (*Cousins v. Wigoda*, 419 U.S. 477, 1975); (*O’Brien v. Brown*, 409 U.S. 1, 1972). Parties possess the ability to establish and advance shared beliefs while insulating their internal operations from governmental regulation. Party beliefs can be enforced through the application of party rules. (*Kusper v. Pontikes*, 414 U.S. 51, 1973).

Additionally, parties may determine who its membership shall be and exclude those who do not share the party's official ideology. (*Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 1989). States are not allowed to insert their own judgments for the party's or impose upon the party's right to select nominees who are in harmony with party preferences and ideologies. (*Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 1981).

Ballot access laws determine which candidates are on the ballot on Election Day. Justice Stewart said these laws require candidates to have at least some "significant modicum of support" prior to having their names placed on the ballot for the purpose of "avoiding confusion, deception, and even frustration of democratic process at the general election." (*Jennes v. Fortson*, 403 U.S. 431, 1971). This would include avoidance of "bed sheet ballots" in which voters are faced with a dizzying array of candidates to choose from (McCleskey, 1984, p. 350). Ballot access cases have customarily been thought to be advantageous to the Democratic and Republican parties. They are allowed to promote primary ballot access laws that are advantageous to candidates favored by the state party establishment. Such laws have been held not to infringe upon the rights of party candidates excluded from the ballot or their supporters (Black, 1996; see also *Burdick v. Takushi*, 504 U.S. 428, 1992).

Closed primary cases concern who gets to vote in a political party primary. In challenging such primaries, independent groups and individuals challenge the validity of state run elections that exclude voters who are not "publicly professing party identifiers."

(Epstein, 1986.) Individuals claim that their right to participate should take priority over party interest protected by state laws that shield the parties from such electoral “interlopers.” (Epstein, 1986). In general this is true, but in *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), Republican Party rules allowed independent voters to participate in primary elections for state wide and federal offices which was contrary to state law. The Supreme Court held for the party’s associational rights believing that it had the right to expand its base in order to support its activities. The Court also has addressed party concerns over legislative redistricting suspected of eliminating or diluting the voting power of individuals associated with a party. In *Davis v. Bandemer*, (478 U.S. 109, 1986), the Court determined that political gerrymandering cases were justiciable under the Equal Protection Clause of the Fourteenth Amendment.

Finally, the Court has addressed issues concerning party affiliation in the realm of public employment (patronage). In general, an individual cannot be terminated or denied public employment because of that individual’s partisan affiliation. More specifically, the issue in these cases is whether a governmental employer can show that an individual’s partisan affiliation is an appropriate requirement for the effective performance of the public office involved. (*Branti v. Finkel*, 445 U.S. 507, 1980); (*Rutan v. Republican Party of Illinois*, 497 U.S. 62, 1990).

Petterson (2000) believes that the Court has supported the ability of the parties to structure their own affairs, especially nominating procedures. In general though, he believes that the Court has viewed freedom of association as an individual right with

collective consequences. When the interests of individuals collectively suffer voting and representational discrimination, these come into conflict with the representational interests of a party and its members. When this happens, the Supreme Court sides against the parties and in favor of the individuals. Ryden (2000) believes the Supreme Court has played a key role in the so-called “decline” of the political parties. It has “subordinated political parties to other collectivities (referring to minority groups) in creating a group right to representation in gerrymandering disputes.” The Court has distorted differences between independent candidates and party organizations in ballot and voter access cases. Until recently, the Court “generally excluded parties from discussions in campaign finance.” They have refused to recognize the role of party patronage in the construction of party organizations. In general, the Court has “reinforced a larger political culture increasingly hostile to political parties and their control of the electoral process and government. Finally, the Supreme Court “has been complicit in undermining party influence in favor of an individualistic, unmediated, participatory form of politics, making more difficult the parties’ task of reversing their fortunes.” (Ryden, 2000).

CHAPTER 3

JUDICIAL DECISION MAKING

The Legal Model

How do courts, and more specifically the judges on those courts, reach their decisions? Of particular interest is whether or not partisanship affects how judges vote? The traditional view of judicial decision-making is the legal model. It holds that judges base their decisions upon the facts of the case and apply the applicable law. Of central importance to the decision making process are the plain meaning of statutes and constitutions, respect and adherence to the intent of the Framers of the Constitution or of the legislature, precedent, and the balancing of societal interests (Segal and Spaeth, 1993; Brace and Hall, 1995). In this view, judges exercise little or no discretion in the decision making process. They do not speak but rather, the laws speak through them. Judicial decisions are merely applied to the law objectively, dispassionately, and impartially. The legal model holds that partisanship has no place in the courtroom or in the decision making process. For many judges and lawyers, if asked whether they were or would be influenced by their political party affiliation when rendering decisions, they would respond, “after taking the sacred judicial oath and donning the black robes, the judge is no longer a Democrat or a Republican.” (Carp and Rowland, 1983.) Prior partisan orientations ideally are put aside as the judge enters a new realm where judicial decisions are the “product of precedent, argumentation, and wit, rather than such base factors as the

judge's background, personality, or political party affiliation." (Carp and Rowland, 1983). This approach has been drilled into the heads of most law students and constantly reaffirmed today by the entire legal system.

Behavioral Models

Behaviorialists have a different point of view concerning factors influencing judicial decisions. The attitudinal model posits judicial decisions based upon the facts of the case viewed in light of the attitudes and values of the individual judge. (Segal and Spaeth, 1993). Judges act in ways to achieve case outcomes "most proximate to their individual policy preferences." (Brace and Hall, 1995).

Some believe that partisanship does play a role in the decision making process of judges. Nagel (1964) establishes a relationship between party affiliations and the judicial decision making process. Democratic judges, when compared to their Republican colleagues on the same court during the same time period and comparing voting patterns on the same cases are more liberal and prone to favor: (1) the defense in criminal cases; (2) the administrative agency in business regulation cases; (3) the private party in non - business regulation cases; (4) the claimant in unemployment compensation cases; (5) the broadening of free speech rights in First Amendment cases; and (6) the finding of a constitutional violation in "criminal - constitutional" cases. Goldman (1966) finds Democratic judges, as a whole, have higher liberalism scores than Republicans. He qualifies his findings in that it appears that Democratic and Republican judges may be

equally liberal on criminal and civil liberties categories, but that Democrats are more liberal when it came to economic matters. Goldman (1975) revisits this issue and determines that there are even greater differences between Republican and Democratic judges in civil liberties, criminal justice, and political liberalism issues. Of the background variables for party, age, religion, prior judicial experience, tenure on the court, and prior prosecutorial experience, Goldman finds that the party variable is the single most important. Adamany (1969) hypothesizes that if judges are party identifiers before they come on the bench, there is a basis for believing that the judges, like members of the legislature, are affected in their issue orientations by partisan affiliation. Additionally, he believes that since judges are better educated, they have stronger partisan identification. Policy preferences of the judges in legal issues are cast in ideological terms. This allows the judge to have clearer perceptions of issues and the party position on those issues. Judicial decisions are then based in ways that are consistent with the position of the party. Adamany recognizes that party identification is probably one of many factors that affect how a judge votes. He suggests that psychological dispositions and socializing process might also be at work. These include procedural rules, case facts, legal education and training, and “other judicial beliefs and attitudes.” Feeley (1971) however, warns not to be too simplistic in the relationship between party affiliation and subsequent voting patterns in that it may not work in all types of judicial voting scenarios.

Tate (1981) finds that liberal justices on the Supreme Court favor, among other things, the claimant in civil rights cases. Conservative justices are generally opposed to the granting of a claimed civil right. He additionally finds that party identification is important as well as prior career experiences of the justice. Non-prosecutors are more favorable to civil liberties claims than prosecutors. Justices with prior judicial experience are more favorable towards civil liberties claims than those without.

Tate and Handberg (1991) hypothesize that political factors such as the justice's partisanship and the intentions of the appointing President when making the judicial appointment could be factors involved in the judicial decision making process. An ideologically conscious President might be more inclined to appoint "like minded party mates to the Supreme Court." Tate and Handberg conclude that a "justice's partisanship and appointing President's intentions are positively related to civil rights and liberties liberalism."

Of all the background variables measured by Carp and Rowland (1983) concerning judicial decision making, political party affiliation is found to be the "best" predictor of judicial behavior. Gibson (1991) finds that judges have enormous discretion when rendering a decision. Of the many factors involved, judges rely on their own ideological positions in making their decisions. Judges' decisions are a function of what they prefer to do in any given legal setting. Liberal and conservative judges will do all that they can to render decisions that are in keeping with their values and experiences. If necessary they will cloak their preferences in the name of precedent, stare decisis, strict

constructionism, activism, and restraint, if it will serve their particular point of view. Humphries and Songer (1999) support this view.

Cognitive Models

Rowland and Carp (1996) theorize that cognitive processes account for individual differences and similarities in the perception, memory, and inferential interpretation of information by judges. They reject the axioms that judicial decisions are necessarily goal oriented or that they are motivated by personal policy preferences. Instead, their social cognition theory characterizes attitudes and other affective elements of human choices as influences on the evaluation of information rather than as crude indicators of motives that directly influence behavior, such as attitudes and policy preferences. Judges are “cognitive misers,” meaning that they “rely on long term memories to compensate for the limitations” of short-term memories. Stored episodic and impressionistic knowledge or “schema” is a cognitive structure of organized prior knowledge, abstracted from experience with specific instances that anchors the processing of new information and the retrieval of stored information. In other words, past experiences give them a point of reference in evaluating the merits of a case. Judges politically involved before their appointment may be expected to have richer, more complex political schemata than the general public. A judicial cognitive approach would expect that judges, who were recruited on the basis of political experience, would perceive, remember, and interpret evidentiary and legal cues through highly affective schematic lenses. In other words,

prior political experience as an elective or appointed official would influence a judge's current decision-making process.

Strategic Models

Baum (1997) believes that judges take positions that mirror their conceptions of desirable public policy. He believes judges vote "sincerely" when they cast a vote which supports case outcomes and doctrines preferred by the judge. They do not take into consideration the impact of their vote on the collective result in their court, higher courts, or other political institutions. They automatically support the solution closest to their "ideal" point. In a sense, this appears to be somewhat akin to the attitudinal model. Baum (1997) also believes that at times, a judge may vote strategically. Here judges take into consideration "the effect of their choices on the collective results when they vote on outcomes and write or support opinions. They do so in order to achieve the most desirable results in their own court and in government as a whole. Because of this motivation, the positions they take may differ from the positions that they prefer most." Strategic voting by judges is calculated behavior that takes place "whenever they take actions intended to advance their policy goals in collective decisions of their own court or in the decisions of other institutions." (Baum, 1997). Basically strategic judicial voting is similar to what a legislator does in order to get a particular policy through. He or she may have to compromise. Judges may realize that if they take a position and write opinions that are too broad, narrow, conservative, or liberal, they may have problems building

some sort of consensus on their court. Additionally, they may be writing an opinion in a way to avoid reversal by a higher court such as the Supreme Court. They may also be writing the opinion that interprets legislation with an eye towards the reaction of Congress, or possibly even public opinion.

Epstein and Knight (1998) believe that justices make decisions due to the primacy of policy preferences. They want to see their policy preferences made into law. They believe that while Supreme Court Justices are chiefly interested in making legal policy, “they are not unconstrained actors who make decisions based only on their own ideological attitudes.” In other words, Supreme Court decision making is not limited to the constraints of the attitudinal model. Justices are “strategic actors.” Their objectives depend upon consideration of other actors, such as Congress, as well as other members of the Court. Individuals make rational decisions, but this is often contingent upon what other actors are also doing or are expected to do. The strategic account is goal oriented. When faced with a Solomon-like decision, the judge will select an outcome most likely to achieve their desired goal, or as close to it as possible, given the context and implications of the decision. Judicial decision making, especially in a collegial court such as the Supreme Court is interdependent upon the actions and preferences of other judges and political actors. Sincere preferences, much like Baum (1997), reflect the true feeling of the judge. Sophisticated preferences may require the judge to take a position that does not accurately reflect the judge’s true feeling on an issue. This is done to avoid the possibility of seeing colleagues reject a judge's most preferred policy in favor of one that is least

preferred by the judge. In other words, the judge has to compromise to at least get part of his or her preferences translated into judicial policy. Additionally, judges must take into account the reactions of other branches of government such as the Congress and the president. Failing to take into account the actions of other actors and the actions they are expected to take may lead to undesirable judicial policies.

CHAPTER 4

RESEARCH DESIGN

Prior Research on Partisan Affiliation and its Influence on Court Decisions

Epstein and Hadley (1990) focus upon the success rates of major and minor political parties in litigation before the Supreme Court. They suggest that the Supreme Court acts on behalf of the major parties, however they do not address the issue of partisan affiliation and whether or not it is influential. Lloyd's (1995) central concern is whether party labels reflect a different influence on decisions from partisan reference group attachments. He finds that federal district court judges sitting on three member panels in reapportionment cases have a greater probability of voting against any partisan reapportionment plan than over non-partisan plans. Judges take either a conscious or unconscious note of the political party controlling the state legislature drawing up reapportionment plans. Cases involving legislative reapportionment plans drawn up in legislatures controlled by the party opposite that of the judge are more likely to be struck down than non-partisan plans. Same party reapportionment plans, among all partisan plans, are less likely to be voted against. Lloyd's work comes closest so far in trying to determine the role of partisanship in judicial decision-making. What this examination does is take this a step further by determining what judges will do when their own or the

opposing political party is involved in the litigation before them. This should provide a clearer test than was examined by Lloyd.

The Federal Court of Appeals

This research examines voting decisions of United States Courts of Appeals cases involving the Republican and Democratic parties. McCleskey (1984) believes that the political parties' transformation in the constitutional system began in the 1960s. This was the time period the civil rights movement was gaining momentum and many courts were forced to address important civil rights and liberties questions. As such, this analysis extends from 1966 through the end of 1997. Prior to this time few cases existed concerning the two major political parties. Some cases from the late Eighteenth century as well as the Nineteenth century were discovered, but were not included in this analysis.

In general, much of the literature on American judicial studies revolves around the Supreme Court. Less research has been conducted upon the various United States Courts of Appeal, federal District Courts and the many state trial and appellate courts. This is especially evident in the lack of any kind of empirical analysis, great or small, concerning partisanship influences in cases involving the Republican and Democratic parties. The federal Courts of Appeal occupy an important place in the American judicial system. They help to promote uniformity of national laws and legal principles within their respective jurisdictions. They are also vital interpreters of the law in an era when the Supreme Court is issuing fewer full opinions. Songer (1991) notes the Supreme Court

reviews less than one of two thousand decisions from the federal district courts. Baum (2001) notes that in the 1998 term, just over 7,100 were filed with the Supreme Court. The chances that a case will make it all the way to the Supreme Court and that the Court will entertain oral arguments and issue a full written opinion are quite small. Table 1 shows the decreasing numbers of cases disposed of by the Supreme Court utilizing full opinions since 1992.

Federal Courts of Appeal handle thousand of cases each year reviewing lower court decisions on evidentiary matters, jury instructions, and other routine procedural questions. These courts have the opportunity to fashion public policy by interpreting various pieces of legislation, administrative actions, as well as interpreting words and terms found in the U.S. Constitution, treaties, and federal laws. In doing so they must progress beyond simply applying the law to the facts as is championed by the legal model of judicial making. They must give meaning to the words of the law calling upon their attitudes, ideologies, past experiences, as well as legal expertise to render a decision.

Cases filed in federal appellate courts have steadily increased over the years. Table 2 reflects the growth of the caseload for various years since 1960.

The U.S. Courts of Appeals do not have a discretionary docket. Unlike the Supreme Court, lower federal courts must hear all appeals from below and deal with error correction and sometimes policy formulation. The kinds of cases heard in these courts generally reflect the kinds of disputes that are being addressed by the federal judicial system. The federal Courts of Appeal are “more akin to a referee of disputes between

litigants.” (Songer, Sheehan, and Haire, 2000). These scholars believe that court decisions may have important policy consequences, but most only impact the litigants in a particular case. Caseloads vary as social conditions vary. Social development theory holds that as populations grow and change and as society becomes more complex, more disputes occur, and more cases are filed in court. Courts must adjust and react to the social and economic conditions as presented to them in litigation. Judicial power cannot be invoked unless there are at least two parties in disagreement and a case or controversy exists. Hypothetical opinions by the courts are not allowed.

Songer, Sheehan, and Haire (2000) further believe that political contexts and issue agendas have risen as a result of increased interest group activities in federal courts. Lawmaking by administrative agencies charged with implementation of Congressional policies has also increased the amount of litigation. The legal environment has also affected the growth of federal cases. This is in part due to changes in the composition and policy attitudes of the Supreme Court. As the high court creates new doctrines, waves of new litigants flock to the courthouse, grievances in hand.

Songer, Sheehan, and Haire (2000) finally note that the types of cases presented to the federal courts have changed over the years. Table 3 reflects the changes in the judicial business of the U.S. Courts of Appeal.

Attention to private law economic issues has fallen over time, but economic issues involving the government as a party are relatively stable. The number of criminal cases has risen. The authors attribute this to greater access to legal counsel on federal

appeal brought about by the Criminal Justice Act of 1964; decisional trends of the Warren Court; and an increase in state and federal habeas corpus cases. Civil rights cases have increased because of the Warren Court's interpretations of the Equal Protection Clause of the Fourteenth Amendment; federal civil rights legislation of the 1960's and 1970's; and judicial reinterpretation of Reconstruction era civil rights legislation. Civil liberties cases have increased because of a shift of emphasis by the Supreme Court towards the First Amendment as well as a number of appeals under the Freedom of Information Act. These are all areas of special interest to the political parties.

After losing at the initial trial, many claim that they will fight their case all the way to the Supreme Court in order to remedy a grave injustice. Realistically though, most appeals will stop with review in the Court of Appeals. The Supreme Court handles the major cases and sets the legal policies for the rest of the lower courts to follow. It has done so in many cases involving the political parties, but it simply cannot issue substantive opinions on all of the issues presented to it for review. Justices on the Supreme Court can generally pick and choose which cases they want to review and party issues may not be a high priority for them. This is not the situation with the Courts of Appeals. If a trial court renders a decision and one or both of the litigants wants to appeal, they have that right. Appeals are also made from decisions rendered by governmental agencies such as the Federal Elections Commission or the Federal Communications Commission. If someone or group is unhappy with a decision, it can be appealed to the Court of Appeals as a matter of right.

There is a popular misconception that judges are somehow immune from politics. They are, however, creatures of politics. Many states select their judges through partisan elections that can be as colorful and controversial as any election for a more “political” position as president, member of Congress, or a state office. Merit selection of state judges is no less political. Selection of federal judges is also political. Presidents seek to find nominees that share similar political values as themselves. In selecting names for possible appointment they seek the guidance of senators and other elected official with similar partisan beliefs over which potential nominees to select. Possibly these nominees are legal scholars, but they may also be loyal party members waiting to be rewarded for their faithfulness. When the president and the Senate are of the same party there may be more of an opportunity for the president to put in more like-minded nominees. If faced with a Senate controlled by the opposition party, he may have to find nominees that are more moderate in their political views.

Data Collection

There are no databases specifically dedicated to cases involving political parties. Epstein and Hadley (1990) ran a search on LEXIS™ (© 2002 LexisNexis, a division of Reed Elsevier Inc., www.lexisnexis.com), a legal information retrieval system, of 500 names of political parties they had gathered for their study of political parties in litigation before the Supreme Court. Since this study involves only the Republican and Democratic

parties, I searched for all U.S. Court of Appeals cases on LEXIS that contained any of the following combinations of words in the opinion or in the style of the case:

“Republican Party,” “Democratic Party,” “Republican State Committee,” “Democratic State Committee,” “Republican National Committee,” “Democratic National Committee,” “County Republican,” “County Democratic,” “Democratic Congressional Campaign Committee,” “Democratic Senatorial Campaign Committee,” “National Republican Congressional Committee,” “National Republican Senatorial Committee,” “Democratic,” and finally “Republican”

This search yielded 70 cases listed in Appendix B. Subject matter for each case fell into the following areas: party maintenance (22 cases), delegate selection (14 cases), ballot access (11 cases), finance and expenditures (8 cases), patronage (6 cases), redistricting (3 cases), and racial discrimination (6 cases). For each case, information was gathered on whether one or both of the parties were involved in the litigation and whether the parties were plaintiffs or defendants in the case. I also determined whether or not the state or federal government was involved in the litigation and their status as a plaintiff or defendant. The unit of analysis was each judge’s vote. Most cases involved panels of at least 3 judges, generating three separate observations. Some cases involved *en banc* decisions allowing for more observations to be made. There are a total of 246 separate observations.

Most of the judges deciding the cases were sitting circuit judges for their respective circuit. Some of the judges were senior circuit court judges from the circuit, or other senior judges sitting by designation from the other circuits. There were a few district judges, usually senior judges, from various federal district courts throughout the

country. They were not necessarily judges from within the geographic boundaries of the particular circuit court deciding the case. The particular status or designation of the judge did not matter. A federal judge, whether on the Supreme Court, Court of Appeals, or District Court level is still appointed by the president, confirmed by the Senate, and life tenured. Where they happen to be sitting in judgment did not affect how I went about my analysis. They had equal voting power when deciding a case. A judge from the United States Court of Customs and Patent Appeals, sitting by designation, heard one case. The vote was counted because the judge's party affiliation was available. When the vote was cast he was lawfully sitting as judge for the Court of Appeals.

Party affiliation of most of the judges was obtained from the Zuk, Barrow, & Gryski Appellate Court Data Set. Others were found utilizing the 1992 edition of the *Almanac of the American Judiciary*. Party affiliation was not readily apparent for all judges. Some of the data clearly indicated that the judge was a Democrat or a Republican. If not clearly indicated their biographies were searched to determine if they had had served in any type of capacity with a party. Some were members of their local county committee or their state committee. Others' party affiliation was determined by prior political service.³

³ Judge Fahy of the District of Columbia Court of Appeals, while not listed as a Republican or Democrat, served in various capacities in the administration of President Franklin D. Roosevelt, most notably as Solicitor General of the United States in the early 1940s. Based on this information, a guess was made that he was most likely a Democrat and he is coded accordingly.

Models

Partisan affiliation of judges affects their votes in cases in which the Republican or Democratic parties are litigants. Since political party affiliation is found to be the “best” predictor of judicial behavior judges should be more inclined to support their own party in any given case and less inclined to support the opposition party. In cases involving the parties as litigants, judges are placed in a unique position because they are called upon to render decisions affecting their own party or the opposition party. Partisanship will influence their decision. Republican judges will be more supportive of cases involving the Republican Party and less supportive of cases involving the Democratic Party (H1). Democratic judges will be more supportive of cases involving the Democratic Party, while being less supportive of cases involving the Republican Party (H2).

Initially, cross tabulations were carried out to test the validity of these statements. Each vote is coded (1) whenever a judge votes in favor of his or her party or against the opposition party. Such a vote promotes the interest of the judges' own party and deters the actions of the opposition. This is labeled in Table 4 as “Partisan Vote.” A vote is coded (0) and labeled “Contra-partisan” whenever a judge votes against his or her own party or in favor of the opposition party. Such an act would hamper the interests of the judge's own party and promote the interests of the opposition.

Table 4 shows the results of the partisan votes cast by both Democratic and Republican judges.

As is clearly evident and not surprising, federal Courts of Appeals judges vote in a partisan manner when it comes to cases dealing with the two major political parties. Overall, judges voted in a partisan manner in 57% of the cases and in a contrary manner in 43% of the cases. Republican judges voted in partisan manner in 56% of the votes, and in a contrary manner in 44% of the votes. Democratic judges voted in a partisan manner at a slightly higher rate of 58% of the votes and in a contrary manner in 42% of the votes.

Tables 5, 6, 7, and 8 each examine vote patterns for all judges when the Democratic and Republican parties were involved in the litigation either as a plaintiff or as defendant. In all scenarios, a majority of the votes were done so in a partisan manner. Republican judges supported their own party's interests and voted against the interests of the Democrats. Not surprisingly, Democratic judges voted for their own party and against the Republicans.

Only looking at the voting habits of all judges in the sample does not reveal the voting habits of the judges when their own party or the opposition is involved in the case. To better examine this concept, the votes were sorted in order to allow a closer examination of Democratic and Republican judges' preferences. Tables 9, 10, 11, and 12 examine the voting records of Democratic judges in dealing with their own party as plaintiff or defendant as well as the Republican Party as plaintiff or defendant.

Table 9 reveals that Democratic judges are more supportive of their own party when acting as a plaintiff. If they are acting in a truly partisan manner when deciding

these cases, this is not surprising. Nothing else would matter but the position of the party. Note however that the finding is not statistically significant.

Table 10 clearly and significantly indicates that Democratic judges act in a partisan manner when their own party is being sued. This is true in 70% of the cases in which the party was the defendant. They certainly circle the wagons when being challenged. As a cautionary note though, the Pearson's r indicates that while significant and that partisanship does play some role, it is not a large one. There are probably other factors involved.

Table 11 reflects how well Democratic judges treated the Republican Party when acting as plaintiff. Again, Democratic judges acted in a partisan manner. This means that when given the opportunity, they were able to vote against the Republican Party and deny their claims. The Pearson's r is stronger, but the model's fit reflected in the Chi squared coefficient is below the critical value of 3.84 needed for significance.

Interestingly, Table 12 indicates Democratic judges are more likely to vote in a contra partisan manner when the Republican Party is a defendant in litigation. This means that the Democratic judges will try and support the Republican Party when they are being sued. Perhaps this is a reflection of Democratic judges' more liberal tendency to support First Amendment Rights. In this case, the party label would not matter. What would matter was that a group, happening to be the Republican Party, was being threatened. Democratic and consequentially more liberal leaning judges would be more protective of

a group's associational rights. As party players, they may also be acting strategically. They could be thinking if they endanger the rights of the Republican Party institutionally, they could be endangering the ability of their own party to express itself and its values. This model fit is better, approaches significance at the 0.05 level, and has a higher Pearson's *r*.

Tables 13, 14, 15, and 16 reflect the voting patterns of Republican judges. Table 13 indicates that Republican judges act in a partisan manner against the Democrats when litigating as plaintiffs. They have no problem in voting against the Democrats. Here they are acting as pure partisans.

Table 14 reflects that Republican judges will act in a contra-partisan when the Democratic Party is being sued. This means they are more inclined to vote for the Democrats. Why would they do this? Possibly, they as party players, recognize the importance of the role of parties in the American political system. Any harm done to the Democrats might also be applied to the Republicans some day in another case. Instead of acting as partisans, they are acting strategically in trying to support political parties as an institution.

Table 15 indicates significantly that Republicans do not vote to support their party as plaintiffs. This may be done to avoid the appearance of bias in the support of their parties' litigation. They do not want to appear as activists on behalf of the party.

Table 16 very significantly shows that when Republican interests are being threatened as defendants in a lawsuit, the party can count on their judges to support them. While they are less inclined to get involved as activist judges in support of their party as plaintiffs, they have no problem in protecting the party as defendants. Party supporters will approvingly look at the decision made by these “wise” judges in helping out the interests of their party. Below the surface however, the judges may again be acting strategically on behalf of both parties. What is bad for one party can be bad for both political parties.

These findings only examine one aspect of a multidimensional problem however. Voting decision by judges does not exist in a vacuum. Party membership is one aspect of the decision making process, but it is important to see how it measures up under more rigorous analysis.

I propose the following model of judicial decision-making involving political parties:

$$\begin{aligned} \text{PARVOTE} = & a + \mathbf{b}_1 \text{JPID} + \mathbf{b}_2 \text{Region} + \mathbf{b}_3 \text{PSGOV} + \mathbf{b}_4 \text{PFGOV} \\ & + \mathbf{b}_5 \text{FEDGOVP} + \mathbf{b}_6 \text{FEDGOVD} + \mathbf{b}_7 \text{STATGOVP} + \mathbf{b}_8 \text{STATGOVD} \\ & + \mathbf{b}_9 \text{DEMP} + \mathbf{b}_{10} \text{DEMD} + \mathbf{b}_{11} \text{REPP} + \mathbf{b}_{12} \text{REPD} + \mathbf{m} \text{ where:} \end{aligned}$$

PARVOTE = the probability of a judge casting a partisan vote

JPID = the judge’s party affiliation

REGION = whether the judge was from the South or not

PSGOV = prior state government experience

PFGOV = prior federal government experience

FEDGOVP = federal government as plaintiff

FEDGOVD = federal government as defendant

STATGOVP = state government as plaintiff

STATGOVD = state government as defendant

DEMP = Democratic Party plaintiff

DEMD = Democratic Party defendant

REPP = Republican Party plaintiff

REPD = Republican Party defendant

Variables

Dependent variable. The dependent variable for the model is the judge's vote, "Partisan Vote." This variable predicts the likelihood that the judge will cast a partisan vote in favor of his or her party, or against the opposition. Each vote is coded (1) whenever a judge voted in favor of his or her party or against the opposition party. Such a vote would promote the interest of the judges' own party or deter the actions of the opposition. A vote is coded (0) and labeled "Contra-partisan" whenever a judge votes against his or her own party or in favor of the opposite party. Such an act would hamper the interests of the judge's own party and promote the interests of the opposition.

Because the dependent variable is dichotomous, the analysis utilizes a Logit regression model. (Aldrich and Nelson, 1984). Pampel (2000) believes there are several

conceptual problems with linear regression and dichotomous dependent variables. By definition, probabilities have maximum and minimum values of 1 and 0. However, a linear regression line can extend upwards towards positive infinity as the values of the independent variables change indefinitely, or towards infinity. Depending on the slope of the line and observed X values, a model's predictive values for the dependent variable can be above 1 or below 0. As such, the values make no sense and are of little predictive use. Regression assumes additivity; the effect of one variable on the dependent variable stays the same regardless of the levels of the other independent variables. A dichotomous dependent variable most likely violates the additivity for all combinations of the independent variables. If the value of any one of the independent variables is high enough to push the probability of the dependent variable to near 1 or 0, then the other independent variables cannot have much influence. The ceiling and the floor make the influence of all of the independent variables nonadditive and interactive.

Second, Pampel believes that linear regression with a dummy dependent variable violates the assumptions of normality. This results because there are only two observed values for the dependent variable, 1 and 0. Normality is the normal distribution of error values around the predicted Y which are associated with each X value. The dispersion of the error values for each X value is the same. The assumption of normality implies normal and similarly dispersed error distributions. With a dummy variable only two Y values and only two residuals exist for any single X value. The distribution of any errors for any X value cannot be normal when the distribution has only two values.

Third, Pampel believes that regression with a dummy dependent variable violates the assumption of homoscedasticity. The variance of the errors is not constant when using linear regression for dichotomous dependent variables. While sample estimates of regression coefficients are unbiased, they are inefficient in that they no longer have the smallest variance and sample estimates of standard errors are biased. Standard errors in the presence of heteroscedasticity will be incorrect and test of significance will not be valid. Weighting the least squares does not eliminate the conceptual problems of nonlinearity and nonadditivity and the use of regression with a dummy dependent variable remains inappropriate. Logit is a regression on a dependent variable that “transforms nonlinear relationships into linear relationships.” (Pampel, 2000). The process defines the relationship between the independent variables and a distribution of probabilities defined by a dichotomous dependent variable. The model provides maximum likelihood estimates (MLE’s) of the impact of the independent variables upon the dependent variable to be calculated. In other words, each independent variable will in some way be more or less likely to affect the dependent variable.

Hypotheses

Republican judges will be more supportive of cases involving the Republican Party and less supportive of cases involving the Democratic Party. (H₁)

Democratic judges will be more supportive of cases involving the Democratic Party, while being less supportive of cases involving the Republican Party. (H₂)

Southern judges, regardless of party affiliation, will be less supportive of political parties in the expansion or preservation of their rights. (H₃)

Judges with prior experience as elected officials will be more supportive of their respective parties and political parties in general. (H₄)

Judges with prior experience as an appointed official will be more supportive of their respective parties and political parties in general. (H₅)

Judges will be more inclined to rule against federal or state governments whether they are involved in litigation as plaintiffs or as defendants. (H₆).

Independent Variables. The independent variables each reflect both personal attributes of the judges as well as contextual variables of the case. The first independent variable is the judges' party affiliation and is coded (0) for Republican and (1) for Democrat. If judges are purely partisan players then they will be supportive of their respective parties and will try to work against the opposition party. Republican judges will be more supportive of cases involving the Republican Party and less supportive of cases involving the Democratic Party. (H₁). Democratic judges will be more supportive of cases involving the Democratic Party, while being less supportive of cases involving the Republican Party. (H₂).

Tate (1981) and Songer and Davis (1990) include a region variable in their work. A region variable is included in this analysis to determine if judges in either the Northern or Southern region of the United States are more or less inclined to support the parties. Regional variations may influence the judicial decision making process (Rowland and Carp, 1996). Southern judges have been found to be less supportive of defendants in

criminal cases (Rowland, Carp, and Stidham, 1984) and more conservative on civil rights (Stidham and Carp, 1982). It may be that they are less supportive of political parties in the expansion or preservation of their rights. (H₃). Judges were coded (1) if they were from the South and (0) if otherwise.³

If Tate (1981) as well as Rowland and Carp (1996) are correct in their assertions that party identification, prior career experience, and prior political experience of a judge are important, it is reasonable to assume that past political experience (state or federal) as an elected or appointed official should increase the loyalty to one's own party. Included in the determination of prior government experience was whether or not the judge had served in an elected position such as a mayor, county official, state or federal legislator, judge or prosecutor, or served in an appointed position such as an assistant district attorney, or cabinet level secretary or undersecretary. As a previously elected official, the individual judge has first hand experience with the electoral process. He or she had to go through the process of making political contacts within the party, raising funds, campaigning, and surviving a primary election, as well as the general election. As a candidate they must at least portray an image that they are loyal to their party and its principles. They must act or promise to act in a manner consistent with their party's position. While the parties may play a less involved role in the recruitment of candidates,

³ In determining whether a state was from the South, I followed Rowland and Carp's (1996) practice of including those states that constituted the old Confederate states and whose predominant cultural socioeconomic character has been southern. These states include: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

campaign strategies and fund raising, they can make a difference in drawing candidates into highly contested races and providing connections to financial resources. They assist in voter mobilization tasks targeted towards actual and potential party supporters. (Frendreis and Gitelson, 1999). Judges with elective office backgrounds learn to become party players in order to win election or reelection to office. These attributes should carry over into their judgeships. These judges will be more supportive of their respective parties and more inclined to support a political party in general. (H₄). Similarly, judges with prior experience as an appointed official may have attained their position as a result of party connections and past service to a party and its candidates. These judges should be more supportive of their parties and political parties in general when involved in litigation. (H₅)

Included are variables that take into account the litigant status of the federal government (plaintiff/defendant), state governments (plaintiff/defendant), and the Republican and Democratic parties (plaintiff/defendant). Songer, Sheehan, and Haire (2000) are interested in who wins and loses in the courts of appeals and for what reasons? They believe that litigants will be more successful in the Courts of Appeals if they are, in Galanter's (1974) definition, "repeat players." Repeat players are those litigants who regularly appear before the courts and as a result of their expertise and experience, prevail over those who appear less frequently and who are known as "one-shotters." Repeat players can select cases that they feel will be successful in litigation. They also have the ability to forum shop for the most favorable venues for their disputes to be

resolved. Repeat players are also well financed and can bear the high costs associated with lengthy and complex litigation. Federal and state governments, as well as the Republican and Democratic parties, are such players.

What will happen when repeat players go against each other? There still has to be a winner. Either the parties will win in a suit involving the government (federal or state) or they will lose. The government too will either be a winner or loser. Willison (1986) suggests that conservative judges on the U.S. Court of Appeals for the District of Columbia may in general be more supportive of a conservative administration's regulatory policies. Democratic members of the same court appear to be less willing to uphold the positions of agencies acting under the auspices of a Republican administration. Songer and Sheehan (1992) find that federal agencies were generally more successful in appeals taken before U.S. Courts of Appeals. Humphries and Songer (1999) believe that federal agencies may be more successful in federal courts of appeals because the direction of the agencies' policy decision is congruent with the policy preferences of the majority of the reviewing court. Judges are more likely to uphold the agency's position if that the position is consistent with the policy preferences of the judges. If it is inconsistent, then Court of Appeals judges are more inclined to reverse the decision. The judges are policy oriented and attempt to harmonize their own policy preferences with the agencies' but feel constrained to pursue their preferences within limits set by law. The courts are responsive to the law, even though the law does not always dictate an unambiguous resolution of every case. In other words, a liberal judge

will still try to uphold a liberal decision, etc., but can only go so far in doing so and then has to conform to precedent. Humphries and Songer (1999) find that as Supreme Court precedent shifts in a conservative direction, the decision patterns of both conservative and liberal federal appeals court panels will become more conservative. This is true even though the probability of a liberal decision remains greater if the panel is composed of liberal judges.

Despite these findings, I believe that the judge's partisan ties will be stronger than their support of the government. The Federal Election Commission or various state governments brought many of the cases in this study against the political parties. In deciding a case, Gibson (1991) notes that there is an "expectation that asks judges to do what is legally proper rather than what they prefer on ideological grounds." Judges must be able to vote contrary to their personal political values. I submit that this will be very hard to do when a judge is faced with a decision involving the judge's own political party. A judge cannot recuse him or herself because of partisanship in a case concerning the parties. If so, the parties would never be able to find judges to hear their cases. In cases involving the parties, judges, regardless of their party affiliation, will behave as activists, or one who tends to rely more on his or her own values in rendering a decision. Their interests are in protecting the rights of the parties from encroachments and restrictions by state and federal government. As such, judges will be more inclined to rule against federal or state governments whether they are involved in litigation as plaintiffs or as defendants. (H₆).

Findings

The first model examines votes made by both Republican and Democratic judges as a whole. There appears to be some evidence that partisanship does play a role in the judicial decision making process. Table # 17 displays the results of the model.

Litigant status is important in the model. When either the Democratic or Republican parties are defendants in legal proceedings, federal appellate court judges are more likely to cast partisan votes supporting the political parties. Both Democratic and Republican defendants are significant (Democrats 0.029; Republicans, 0.082). This indicates that the judges as a whole are more protective of the status of the parties. As partisans, either consciously or unconsciously, they rise up to protect the interests of the parties when they are being threatened.

The fact that both parties are being protected as defendants is of interest. This may indicate that judges, regardless of their ideology are party players who recognize the roles parties play in our system of government. A Democratic judge will protect the interest of not only the Democratic Party, but also those of the Republicans. The same goes for a Republican judge.

Approaching significance in this model is the status of government in the litigation. When the federal government is the plaintiff the judges are more inclined to cast a partisan vote supportive of the parties. (significance 0.116). To a lesser extent, when the federal government is the defendant, the judges are still more inclined to

support the parties (significance 0.129). Either way, the judges are more inclined to support the parties over the interests of the federal government. This is also the case when state governments are involved as defendants in a case (significance 0.187). It may be that the judges will support the parties' efforts to fight off unwanted state regulations that restrict the activities of the parties.

What is interesting in this model is that personal attributes of the judges do not appear to be significant. Partisan affiliation also does not appear to be of consequence. Prior political experience either as an elected official or as an appointed official does not influence the judge's voting decision. As such, there is little support for the social cognitive model. The region variable is also not significant. Caution is advised in accepting the results indicated in Table 17, however. The Chi 2 indicates that the effects may be purely random in nature. The Pseudo R2 is extremely low (.03) meaning that very little of the variance is explained.

I was also interested in determining whether or not judges from each party tend to support their own party and not the opposition. Table 18 reflects the model in terms of Democratic judges only. Problems with the data matrix forced me to drop out the state government as plaintiff variable. Most likely this was due to a lack of data. The model clearly shows that Democratic judges are more inclined to cast a partisan vote decisively when the Democratic Party is a defendant (significance .001, coefficient 3.05). When the federal government is the plaintiff there is a strong showing that the Democratic judges will cast a partisan vote in favor of their own party. (significance 0.021, coefficient

3.06). When the federal government is the defendant, Democratic judges are still inclined to cast a partisan vote that would favor the party at the expense of the government. (significance 0.032, coefficient 1.99). When state government is the defendant Democratic judges are more likely to support the party (significance 0.087, coefficient 0.96). Democratic judges do not appear to support their parties' efforts as a plaintiff however. Perhaps this is the one time they do not wish to appear as partisan activists by siding with their own party. They will protect the party, but they will not aid in its promotion when the party is the plaintiff.

Finally, Table 18 indicates that Democratic judges act as partisans when the Republican party is involved in the litigation. Democratic judges will cast a partisan vote opposing the Republican party when they are plaintiffs (significance 0.007, coefficient 2.69). We know from previous research that Democratic judges are more supportive of the expansion of First Amendment rights. However, this is not the case when the Republican party is the litigant. Democratic judges abandon their ideals, and vote strategically as partisans. Perhaps they are trying to weaken the Republican party which in turn may help strengthen the Democratic Party in the future. To a lesser extent, Democratic judges also vote in partisan manner when the Republicans are defendants in litigation (significance 0.168). Again, this is a possible indication of strategic voting. The model fit is good. The Chi 2 ratio is 24.06. The Pseudo R2 for the model in Table 18 is also higher at 0.153. While weak, this is a stronger showing than the general model containing both Republican and Democratic judges.

Table 19 reflects the results of the model for Republican judges. Again, data matrix problems forced me to drop the federal government as plaintiff and state government as plaintiff variables from the model. Nothing seems to motivate Republican judges to act in a partisan manner. Only two variables even approach significance. Republican judges appear to act in a more partisan manner when their party is being sued (significance 0.134). There is no indication that they support the parties' interest when they are the plaintiffs. If anything, they are even less inclined than the Democrats to actively promote their party (significance 0.514, coefficient -.437). Of course, it is not surprising that a Republican judge would be less supportive of the expansion of First Amendment rights and would not support the expansion of the political rights of the party. There is no support for the Democratic Party either as a plaintiff or as a defendant. The only other variable approaching significance is past political experience in state government (significance 0.162, coefficient .61). This may hint that personal attributes may be of importance to the decision making process when it comes to party litigation. Perhaps state level political experience had more of an effect on these judges. The explanatory value of the model is weak because the Pseudo R2 is only .09 and the findings are not significant.

Table 1
U.S. Supreme Court
Cases Disposed of by Full Opinion
Various Years

Year	Cases
1992	111
1993	93
1994	91
1995	87
1996	87
1997	93
1998	84
1999	79
2000	83

Source: Annual Reports of the Administrative Office of the United States Courts

Table 2
 U.S. Courts of Appeals
 Case Filings
 Various Years

Year	Total Cases Filed
1960	3,375
1965	6,597
1970	11,440
1975	16,571
1980	23,155
1985	33,360
1993	50,224
1994	48,322
1996	51,991
1997	52,319
1998	53,805
1999	54,693
2000	55,320
2001	56,067

Source: Annual Reports of the Administrative Office of the United States Courts

Table 3
 Judicial Business of the U.S. Courts of Appeals
 (By time period, in percentages)

Issue Area	1925-36	1937-45	1946-60	1961-69	1970-88
Criminal	11.8	13.3	21.1	32.3	32.3
Civil Liberties	0.5	0.8	2.6	1.9	5.0
Civil Rights	1.2	0.9	1.9	3.9	13.5
Public Economic	31.4	37.9	31.3	24.3	25.0
Private Economic	48.5	43.6	38.4	35.2	24.5

Source: Songer, Sheehan, and Haire (2000)

Table 4
Party Affiliation & Partisan Vote
All Judges

	Partisan Vote	Contra-Partisan Vote	Total
Republicans	72 56%	56 44%	128 100.00%
Democrats	69 58%	49 42%	118 100.00%
Total	141 57%	105 43%	246 100.00%

Pearson chi2 (1) = 0.124 Pr = 0.725

Table 5
 Partisan Vote & Democratic Plaintiff
 All Judges

	Cases with Democratic Plaintiff
Contra-partisan Vote	16 42%
Partisan Vote	22 58%
Total	38 cases

Pearson chi2 (1) = 0.006 Pr = 0.938

Table 6
 Partisan Vote & Democratic Defendant
 All Judges

	Cases with Democratic Defendant
Contra-partisan Vote	40 40%
Partisan Vote	60 60%
Total	100 cases

Pearson chi2 (1) = 0.495 Pr = 0.481

Table 7
 Partisan Vote & Republican Plaintiff
 All Judges

	Cases with Republican Plaintiff
Contra-partisan Vote	24 49%
Partisan Vote	25 51%
Total	49 cases

Pearson chi2 (1) = 0.991 Pr = 0.319

Table 8
 Partisan Vote & Republican Defendant
 All Judges

	Cases with Republican Plaintiff
Contra-partisan Vote	24 49%
Partisan Vote	25 51%
Total	49 cases

Pearson chi2 (1) = 0.991 Pr = 0.319

Table 9
 Partisan Vote & Democratic Plaintiff
 Democratic Judges

	Cases with Democratic Plaintiff
Contra-partisan Vote	9 45%
Partisan Vote	11 55%
Total	20 cases

Pearson chi2 (1) = 0.119 Pr = 0.729

Table 10
 Partisan Vote & Democratic Defendant
 Democratic Judges

	Cases with Democratic Defendant
Contra-partisan Vote	17 30%
Partisan Vote	39 70%
Total	56 cases

Pearson chi2 (1) = 5.474* Pr = 0.019
 *significant at the 0.05 level

Table 11
 Partisan Vote & Republican Plaintiff
 Democratic Judges

	Cases with Republican Plaintiff
Contra-partisan Vote	4 25%
Partisan Vote	12 75%
Total	16 cases

Pearson chi2 (1) = 2.081 Pr = 0.149

Table 12
 Partisan Vote & Republican Defendant
 Democratic Judges

	Cases with Republican Defendant
Contra-partisan Vote	23 52%
Partisan Vote	21 48%
Total	44 cases

Pearson chi2 (1) = 3.337 Pr = 0.149

Table 13
 Partisan Vote & Democratic Plaintiff
 Republican Judges

	Cases with Democratic Plaintiff
Contra-partisan Vote	7 39%
Partisan Vote	11 61%
Total	18 cases

Pearson chi2 (1) = 0.201 Pr = 0.654

Table 14
 Partisan Vote & Democratic Defendant
 Republican Judges

	Cases with Democratic Defendant
Contra-partisan Vote	23 52%
Partisan Vote	21 48%
Total	44 cases

Pearson chi2 (1) = 1.979 Pr = 0.159

Table 15
 Partisan Vote & Republican Plaintiff
 Republican Judges

	Cases with Republican Plaintiff
Contra-partisan Vote	20 61%
Partisan Vote	13 39%
Total	33 cases

Pearson chi2 (1) = 5.133* Pr = 0.023
 *significant at the 0.05 level

Table 16
 Partisan Vote & Republican Defendant
 Republican Judges

	Cases with Republican Defendant
Contra-partisan Vote	17 29%
Partisan Vote	42 71%
Total	59 cases

Pearson chi2 (1) = 9.922* Pr = 0.002
 *significant at the 0.01 level

Table 17
 Republican & Democratic Judges
 Logit Model

Partisan Vote (DV)	Coefficient	Standard Error	<i>P</i> > <i>z</i>
Party Affiliation	.0872	0.277	0.753
Region	-.1480	0.302	0.625
State Experience	.1946	0.282	0.491
Federal Experience	.2793	0.302	0.356
Federal Plaintiff	1.795	1.143	0.116
Federal Defendant	.7951	0.523	0.129
State Plaintiff	-.3433	0.884	0.698
State Defendant	.4605	0.349	0.187
Democratic Plaintiff	.2454	0.525	0.641
Democratic Defendant	.9993	0.458	0.029
Republican Plaintiff	.3108	0.502	0.536
<i>Republican Defendant</i>	.7353	0.422	0.082

Logit estimates

N = 246
 Pseudo R2 = 0.0318
 LR chi2 (12) = 10.68

Table 18
Democratic Judges
Logit Model

Partisan Vote (DV)	Coefficient	Standard Error	P> z
Region	.2371	0.443	0.593
State Experience	-.0251	0.461	0.956
Federal Experience	.2331	0.476	0.625
Federal Plaintiff	3.068	1.330	0.021
Federal Defendant	1.991	0.926	0.032
State Defendant	.9652	0.563	0.087
Democratic Plaintiff	.7594	1.005	0.450
Democratic Defendant	3.053	0.879	0.001
Republican Plaintiff	2.69	0.998	0.007
Republican Defendant	.9611	0.696	0.168

Logit estimates

N = 115
 LR chi2 (10) = 24.06
 Pseudo R2 = 0.1534

Table 19
 Republican Judges
 Logit Model

Partisan Vote (DV)	Coefficient	Standard Error	P> z
Region	-.1633	0.525	0.756
State Experience	.6162	.0440	0.162
Federal Experience	.1752	0.471	0.710
Federal Defendant	.0212	0.765	0.978
State Defendant	-.3117	0.535	0.560
Democratic Plaintiff	.2799	0.705	0.692
Democratic Defendant	-.2134	0.642	0.740
Republican Plaintiff	-.4371	0.669	0.514
Republican Defendant	.9215	0.614	0.134

Logit estimates

N = 123

LR chi2 (9) = 15.30

Pseudo R2 = 0.0910

CHAPTER 5

CONCLUSION

Four important questions were posed at the beginning of this research. The first was whether or not a Republican judge will support the Republican party and vote against the Democratic party? Strictly looking at partisan affiliation and nothing else, Republican judges do not support their own party's efforts as plaintiffs, but they are protective of their party when being sued as defendants. These findings are statistically significant. The findings about Republican judge's actions concerning Democrats are mixed. Republican judges will not vote in favor of the Democratic party when the Democrats are acting as plaintiffs. However, Republican judges will vote for the Democratic party when that party is litigating as a defendant. Neither finding however is significant. When considered in a multivariate Logit analysis, there is no significant finding that Republican judges will act in a partisan manner.

The second question was whether or not a Democratic judge will support the Democratic party and vote against the Republican party? Again only looking at partisan affiliation, Democratic judges are more inclined to support their own party as plaintiffs, but the findings are not statistically significant. On the contrary, Democratic judges are extremely protective of their own party when it is the defendant in litigation. Democratic judges do not support the Republican party as a plaintiff, but the finding is not

significant. Interestingly though, Democratic judges are more likely to support Republicans as defendants.

When considered in the multivariate Logit analysis, Democratic judges will cast a partisan vote in order to protect the interests of their party. This is true when the Democratic party is being sued by or is suing the federal government. It is also true when the Democratic party is suing a state government. Democratic judges will act in partisan manner and vote against the Republican party when they are litigating as plaintiffs.

The third question posited was whether or not a conservative judge will sacrifice ideology and vote in a sophisticated manner in order to expand the civil liberties of the Republicans, but remain conservative if the ruling restricts the Democrats? This question remains unanswered.

Finally, the fourth question posed was will a liberal judge sacrifice ideology and vote in a sophisticated manner in order to reign in the civil liberties of the Republicans, or will that judge stay ideologically true and expand their rights? This research shows that liberal judges, usually associated as Democrats, will abandon their ideals and vote in a partisan manner against the Republicans. This may be evidence of sophisticated voting. Liberal ideals are abandoned for the moment in order to defeat the activities of the Republicans. By doing so, they may be able to weaken the Republican party thereby strengthening the Democratic party in the long run.

Where does this research go in the future? The data stopped with cases to 1997. Additional years could easily be added to the database. This would strengthen the

findings. Additionally, cases concerning the multitude of minor political parties could be added similar to the approach taken by Hadley and Epstein (1990). In doing so, a determination of could be made as to whether or not federal Court of Appeals judges are more supportive of the major parties to the detriment of the minor political parties. Such research would help us to better understand the nature of the dominance of the major political parties in our democratic form of government.

APPENDIX A
CODEBOOK

Circuit
Citation
Year of opinion
Judge
Casnum (Case number)
JPARTY: 0=R; 1=D
J & P of same party: 0=No, 1=Yes
Presidential Party: 0=R; 1=D
Appointing President of the judge
Year Appointed
Senate & President of Same Party: 0=No, 1=Yes
Region Code: 0=NONSOUTH, 1=SOUTH
SPGOVT (Prior state service) 0=No; 1=Yes
FPGOVT (Prior federal service): 0=No, 1=Yes
JUDGE'S VOTE: 1=PPD; 2=PPR; 3=APD;4=APR
AP=0; PP=1: anti party / pro party
Cons=0; Lib=1 (conservative/liberal opinion)
Both Party Litigants: No=0; Both Plaintiff.=1; Both Def.=2; Opp. sides =3
Dem. Plaintiff/Def: Dem.: Pty. Not Involved=0; DPty.Plaint.=1; DPty.Def.=2
Rep. Plaintiff/Def: Rep. Pty. Not Involved=0; RPtyPlaint.=1; RPty.Def.=2
Fedgovplaint: 0=No; 1=Yes
Fedgovdef: 0=No, 1=Yes
Statgovplaint: 0=No, 1=Yes
Statgovdef: 0=No, 1=Yes
Case Subject: 1=Party Org./Structure
 2=Membership
 3=Delegate Selection
 4=Fundraising & Finance
 5=Campaign Activities
 6=Patronage
 7=Ballot Access
 8=Reapportionment

APPENDIX B
CITATION FOR EACH CASE

122 F3D 192 (Jordahl v. D Pty of Va.) (3 votes)
113 F3D 1114 (Johnson v. Knowles) (3votes)
108 F3D 413 (Common Cause v. FEC) (3votes)
104 F3D 965 (Stewart v. Taylor) (2 votes)
87 F3D 1226 (Duke v. Massey) (3 votes)
78 F3D 44 (Rockefeller v. Powers) (3votes)
76 F3D 400 (RNC v. FEC) (2 votes)
74 F3D 1367 (Rockefeller v. Powers) (3votes)
59 F3D 1015 (FEC v. Colo. R Fed Cmpgn. Comm.) (3 votes)
49 F3D 1289 (RP Kansas v. Faulkner County) (3 votes)
43 F3D 1126 (LaPorte Co. R Central Comm v. Board of Comm)
(3votes)
19 F3D 873 (Marks v. Stinson) (2 votes)
13 F3D 412 (Freedom Republicans v. FEC) (3 votes)
5 F3D 1399 (Duke v. Cleland) (3votes)
983 F2D 587 (Arlington Co. Rep. Com. V. Arlington County) (3votes)
980 F2D 943 (Rpty NCar v. Martin) (3 votes)
966 F2D 1471 (FEC v. NRSC) (3 votes)
959 F2D 144 (RP Oregon v. Keisling) (3 votes)
956 F2D 172 (Pulaski CTY Rep Comm v. Pulaski CO. Bd. Of Elect.
Comm.) (3 votes)
941 F2D 224 (Trinsey v. Com. Of Penn.) (3 votes)
919 F2D 455 (Shakman v. Dem. Org. of Cook County) (3 votes)
906 F2D 705 (Common Cause v. FEC) (3 votes)
902 F2D 15 (Whitfield v. Dem. Party of the State of Ark.) (10 votes)
899 F2D 251 (Heitmanis v. Austin) (3 votes)
898 F2D 1192 (Banchy v. R Party Hamilton Co) (3 votes)
898 F2D 870 (Igeneri v. Moore) (3 votes)
890 F2D 1423 (Whitfield v. Dem. Party of the State of Ark.) (3 votes)
868 F2D 943 (Rutan v. Rep. Pty. Illinois) (9 votes)
848 F2D 1396 (Rutan v. Rep. Pty. Illinois) (3 votes)
836 F2D 837 (Bachur v. Democratic Nat'l. Party.) (3 votes)
831 F2D 1131 (Dem. Cong. Cmpgn. Comm. V. FEC) (3 votes)
826 F2D 814 (S.F. Co. Dem. Cent. Comm. V. Eu) (3 votes)
821 F2D 31 (Kay v. N.H. D. Pty.) (3 votes)
812 F2D 1194 (Monterrey Co. De. Central Comm. V. USPS) (3 votes)
802 F2D 1302 (Curry v. Baker {State Demo. Chair}) (3 votes)

795 F2D 190 (Nat.Rcong Comm. V. Legi-Tech Corp.) (3 votes)
792 F2D 802 (SF County Dem. Central Comm v. Eu, Sec. of State of Calif.) (3 votes)
770 F2D 265 (Rep. Party of State of Conn. V. Tashjian. Sec. of State) (3 votes)
769 F2D 24 (Hopfman v. Connolly) (3 votes)
766 F2D 337 (McIntosh v. Ark Rep. Party ; Ark. State Police) (3 votes)
746 F2D 97 (Hopfman v. Connolly) (3 votes)
722 F2D 1307 (Shakman v. Democratic Org. of Cook County) (3 votes)
719 F2D 1072 (Wymbs v. Rep. State Exec. Comm. Of Fla.) (3 votes)
717 F2D 1471 (DNC v. FCC) (3 votes)
712 F2D 165 (Riddell v. NDP) (3 votes)
675 F2D 1212 (Harris v. Conradi) (3 votes)
660 F2D 773 (Dem. Se. Campaign Comm. V. FEC) (3 votes)
658 F2D 324 (Wymbs v. Rep. State Exec. Comm. Of Fla.) (3 votes)
624 F2D 539 (Riddell v. NDP) (2 votes)
616 F2D 1 (RNC v. FEC) (10 votes)
609 F2D 10 (Ward Three Demo. Comm. V. U.S.) (3 votes)
538 F2D 349 (Chisolm v. FCC) (3 votes)
533 F2D 344 (Shakman v. Democratic Org. of Cook County) (3 votes)
525 F2D 567 (Ripon Society v. NRP {en banc}) (10 votes)
525 F2D 548 (Ripon Society v. NRP) (3 votes)
514 F2D 1168 (Sumter County De. Exec. Comm. V. Dearman) (3 votes)
508 F2D 770 (Riddell v. NDP) (3 votes)
502 F2D 1123 (Redfearn v. Delaware Rep. State Comm.) (3 votes)
500 F2D 1307 (Siff v. State (Tx.) Democratic Exec. Comm.) (3 votes)
475 F2D 1287 (Keane v. NDP) (3 votes)
469 F2D 563 (Brown v. O'Brien) (3 votes)
469 F2D 563 PART II (Brown v. O'brien) (3 votes)
460 F2D 913 (DNC v. FCC) (3 votes)
460 F2D 250 (NYState Dem. Party v. Lomenzo {NY S of S}) (2 votes)
459 F2D 308 (Seergy v. Kings Co. Rep. Co. Comm.) (4 votes)
454 F2D 1018 (CBS v. FCC) (3 votes)
452 F2D 1302 (Bode v. DNP) (3 votes)
447 F2D 1271 (Georgia v. NDP) (3 votes)
435 F2D 487 (Gilmore v. Greene Co. Demo. Party Exec. Comm.) (3 votes)
435 F2D 267 (Shakman v. Demo. Org. of Cook Co.) (3 votes)
386 F2D 979 (Smith v. Paris) (3 votes)

370 F2D 919 (Gilmore v. Greene Co. Demo. Party. Exec. Comm.) (3 votes)

368 F2D 328 (Gilmore v. Greene Co. Demo. Party Exec. Comm.) (3 votes)

362 F2D 60 (Miss. Freedom Democratic Party v. Democratic Party of Mississippi) (3 votes)

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