The Effect of Partisanship in Election Law Judicial Decision-Making

Dissertation

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By

Kyle Casimir Kopko, B.A., M.A.

Graduate Program in Political Science

The Ohio State University

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Dissertation Committee:

Lawrence Baum, Advisor

Gregory Caldeira

Thomas Nelson
This dissertation seeks to determine if, and to what extent, federal judges behave in a partisan manner when deciding politically salient election law cases. Specifically, do judges favor the interests of their political party, after controlling for judicial policy preferences? The main hypothesis that I seek to test is the relationship between case votes and the interests of a judge’s political party in a given election law case. I posit that when the judge’s political party benefits from a ruling for the plaintiff/defendant, a judge will be more likely to rule for the plaintiff/defendant. I also test four additional hypotheses, all of which should moderate the relationship between partisan interests and case votes. I test the effects of political career experience, age, court of appeals membership, and partisan panel composition on the likelihood of a judge ruling in favor of her political party.

To test these hypotheses, I model the case votes of federal district court and court of appeals judges in campaign finance, political party right to association, and redistricting cases from 1962 through 2007. To control for a judge’s policy preferences, I impute first and second dimension common space scores for all federal judges in my dataset. Of the three categories of election law cases examined in this dissertation, only the campaign finance models consistently produce a statistically significant partisanship
effect. There is also evidence of a conditional partisanship effect in redistricting cases, which is contingent on the partisan composition of a three-judge district court. Additionally, judicial policy preferences are statistically significant predictors of judicial behavior in political party right to association and redistricting cases, and campaign finance cases that do not involve the interests of the Democratic and Republican Parties. While most political science models of judicial behavior emphasize policy preferences or a combination of law and policy preferences to explain and predict judicial behavior, the results of this dissertation provide evidence that social groups could be another important, systematic influence on judicial behavior. Specifically, these results suggest that judges hold separate sets of preferences: preferences for preferred in-groups (such as a political party) and policy preferences. Therefore, judicial scholars should consider, when appropriate, the influence of personally salient social in-groups when modeling judicial behavior.

While the influence of partisan preferences in any form is troubling, the results demonstrate that the effect of partisanship is not pervasive in all areas of election law. As such, policy makers should decide if any semblance of partisanship is unacceptable in the federal courts before considering any potential reforms or changes to the judiciary.
DEDICATION

This dissertation is dedicated to my brother, Mark C. Kopko.
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The culmination of my graduate career at The Ohio State University is the product of encouragement and support from many individuals. Unfortunately, I cannot thank every single person who shaped me as a scholar, and as a person, during my tenure at Ohio State. Nonetheless, in this section I would like to extend my sincerest thanks to several individuals to whom I owe much of my scholarly achievements and success.

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VITA

1984…………………………………………Born in Harrisburg, Pennsylvania

2002…………………………………………Diploma, Solanco High School

(Quarryville, Pennsylvania)

2005…………………………………………B.A., Political Science, Cum Laude,

Elizabethtown College (Elizabethtown, Pennsylvania)

2005 to present …………………………………Graduate Teaching Associate, Department

of Political Science, The Ohio State

University (Columbus, Ohio)

2007…………………………………………M.A., Political Science, The Ohio State

University (Columbus, Ohio)

Publications


Fields of Study

Major Field: Political Science

Primary Areas of Interest: American Politics, Judicial Politics, and Political Psychology
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>iv</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>v</td>
</tr>
<tr>
<td>VITA</td>
<td>viii</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>xiii</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>xv</td>
</tr>
<tr>
<td>CHAPTER 1: INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>Purpose of Dissertation</td>
<td>1</td>
</tr>
<tr>
<td>Potential Importance and Contribution to the Judicial Politics Literature</td>
<td>8</td>
</tr>
<tr>
<td>Preview of Chapters</td>
<td>11</td>
</tr>
<tr>
<td>CHAPTER 2: THEORY AND JUSTIFICATION FOR A PARTISAN EFFECT</td>
<td>16</td>
</tr>
<tr>
<td>Legal and Extra-Legal Models of Judicial Decision-Making</td>
<td>17</td>
</tr>
<tr>
<td>Attitudes-Toward-Objects and Attitudes-Toward-Situations</td>
<td>21</td>
</tr>
<tr>
<td>High and Low Politics in Election Law Cases</td>
<td>29</td>
</tr>
<tr>
<td>Partisan Preferences Informing Policy Preferences</td>
<td>34</td>
</tr>
<tr>
<td>Psychological Influences in Judicial Decision-Making</td>
<td>........................................... 36</td>
</tr>
<tr>
<td>Partisanship in Election Law</td>
<td>.......................................................... 41</td>
</tr>
<tr>
<td>Empirical Studies of Judicial Partisanship</td>
<td>.......................................................... 45</td>
</tr>
<tr>
<td>Hypotheses and Motivations for Partisan Case Votes</td>
<td>.................................................. 51</td>
</tr>
</tbody>
</table>

**CHAPTER 3: RESEARCH DESIGN** .......................................................... 57

| Models of Election Law Decision-Making | .................................................. 57 |
| The Case Outcome Model | .......................................................... 58 |
| Partisan Favoritism Model | .......................................................... 64 |
| Data | .......................................................... 69 |

**CHAPTER 4: RESULTS** .......................................................... 79

| Campaign Finance | .......................................................... 81 |
| Political Party Right to Association | .......................................................... 92 |
| Redistricting | .......................................................... 102 |
| Summary of Results | .......................................................... 118 |

**CHAPTER 5: CONCLUSION** .......................................................... 121

| Review of Research Question and Methods | .......................................................... 121 |
| Summary of Findings | .......................................................... 123 |
| Campaign Finance | .......................................................... 125 |
| Political Party Right to Association | .......................................................... 126 |
Redistricting..............................................................................................................128

All Cases..................................................................................................................130

Theoretical Implications..........................................................................................131

Previous Studies of Judicial Partisanship...............................................................131

Psychological Theories............................................................................................133

High/Low Politics ....................................................................................................136

The Effect of Party Interest Across Case Categories..............................................139

Limitations of Dissertation......................................................................................143

Future Research .......................................................................................................146

Conclusion .................................................................................................................147

REFERENCES............................................................................................................149

CASES CITED............................................................................................................161

APPENDIX A: THE POLITICAL QUESTION DOCTRINE ..................................164

APPENDIX B: MEASURING THE PREFERENCES OF JUDGES..................................170

Previous Measures of Policy Preference................................................................170

Estimating First and Second Dimension Common Space Scores .......................176

Validity of JCS1 and JCS2.......................................................................................185

Correlations of Epstein CS, JCS1, and JCS2 .........................................................187

APPENDIX C: DATA COLLECTION METHODS..................................................189

xii
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Variable Codes – Case Outcome Model</td>
<td>59</td>
</tr>
<tr>
<td>3.2</td>
<td>Variable Codes – Partisan Favoritism Model</td>
<td>66</td>
</tr>
<tr>
<td>3.3</td>
<td>Descriptive Statistics of Judges and Cases</td>
<td>77</td>
</tr>
<tr>
<td>4.1</td>
<td>Campaign Finance Likelihood of Ruling for Plaintiff – Includes Nonpartisan Cases</td>
<td>82</td>
</tr>
<tr>
<td>4.2</td>
<td>Campaign Finance Likelihood of Ruling for Plaintiff – Only Includes Partisan Cases</td>
<td>87</td>
</tr>
<tr>
<td>4.3</td>
<td>Campaign Finance Probability of a Partisan Ruling</td>
<td>91</td>
</tr>
<tr>
<td>4.4</td>
<td>Right to Association Likelihood of Ruling for Plaintiff – Includes Nonpartisan Cases</td>
<td>93</td>
</tr>
<tr>
<td>4.5</td>
<td>Right to Association Likelihood of Ruling for Plaintiff – Only Includes Partisan Cases</td>
<td>97</td>
</tr>
<tr>
<td>4.6</td>
<td>Right to Association Probability of a Partisan Ruling</td>
<td>100</td>
</tr>
<tr>
<td>4.7</td>
<td>Redistricting Likelihood of Ruling for Plaintiff – Includes Nonpartisan Cases</td>
<td>104</td>
</tr>
<tr>
<td>4.8</td>
<td>Redistricting Likelihood of Favoring Plaintiff – Only Includes Partisan Cases</td>
<td>108</td>
</tr>
</tbody>
</table>
Table 4.9: Redistricting Probability of a Partisan Ruling.................................111
Table 4.10: Redistricting Probability of Ruling for Plaintiff – Includes Panel Composition Interaction Term........................................................................................................115
Table 4.11: Cross Tabulation – Favorable Political Party Case Vote and Panel Composition..........................................................................................................................116
Table 5.1: Summary of Findings...........................................................................124
Table B.1: Judicial Policy Preferences.....................................................................183
Table B.2: Cross Tabulation - Party Affiliation and First Dimension Policy Preference .................................................................................................................................186
Table B.3: Cross Tabulation – Party Affiliation and Second Dimension Policy Preference .................................................................................................................................186
Table B.4 Correlations – Judicial Policy Preferences.................................................188
LIST OF FIGURES

Figure 4.1: Campaign Finance Predicted Probabilities, Includes Nonpartisan Cases .....84
Figure 4.2: Campaign Finance Predicted Probabilities, Only Includes Partisan Cases ....88
Figure 4.3: Right to Association Predicted Probabilities, Includes Nonpartisan Cases…
........................................................................................................................................95
Figure 4.4: Right to Association Predicted Probabilities, Only Includes Partisan Cases
........................................................................................................................................99
Figure 4.5: Redistricting Predicted Probabilities, Includes Nonpartisan Cases..........106
Figure 4.6: Redistricting Predicted Probabilities, Only Includes Partisan Cases .......110
Figure 5.1 Revised High/Low Politics Classification Scheme .................................138
CHAPTER 1: INTRODUCTION


“The Court's authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.” Justice Felix Frankfurter, Baker v. Carr, 369 U.S. at 267 (1962)

Purpose of Dissertation

The above quotations from Justices Blackmun and Frankfurter make clear that the legitimacy of courts is potentially vulnerable when judges decide cases of an overly political nature. However, deciding politically salient cases\(^1\) is not sufficient in itself to seriously jeopardize a court’s legitimacy; judges must also decide cases in a way that individuals outside the judiciary deem inappropriate. Relying on one’s partisan preferences to decide a politically salient case is one criterion that could endanger a court’s legitimacy and authority.

This dissertation seeks to determine if, and to what extent, federal judges behave in a partisan manner when deciding politically salient election law cases. “Partisanship”

\(^1\) “Politically salient cases,” and cases of a “political” nature, refer to those legal disputes that could affect the ability of politicians, political parties, and related actors to gain power and influence in government.
and its variations, as used in this dissertation, refer to the influence of a political party on judicial behavior, independent of a judge’s policy preferences. Specifically, I test whether the interests of a judge’s political party influence judicial case votes, after controlling for judicial policy preferences. To answer this dissertation’s research question, I model the case votes of federal judges in campaign finance, political party right to association, and redistricting cases from 1962 through 2007.

Unfortunately, few empirical studies in the political science literature address the issue of partisanship among judges, and therefore knowledge of partisan behavior in the judiciary is limited. Given the implications for the legitimacy and authority of courts, it is important to understand if partisanship systematically influences the behavior of judges. Furthermore, addressing this research question could have important implications for theories of judicial behavior. The most prominent political science models of judicial behavior typically do not account for the influence of a salient social group, such as a political party, in the decision-making process. If I find that partisan interests influence the case votes of federal judges, independent of their judicial policy preferences, then theories of judicial behavior may need to account for the influence of salient social groups.

In the following sections, I preview the theory, hypotheses, and research methods employed throughout this dissertation. First, I discuss how courts operate as political institutions, and I also provide a more detailed discussion of the concept of judicial partisanship. Then, I address how this dissertation potentially contributes to the existing

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2 Part of this chapter, and later chapters, were printed in Kopko (2008). The portions reproduced and/or adapted for this dissertation relate to theories of judicial decision-making, partisanship among judges in state and federal courts, and previous studies of judicial partisanship in the political science literature.
body of judicial politics literature. Finally, I conclude by offering a summary of the chapters forthcoming in this dissertation.

**Courts as Political Institutions & Judicial Partisanship**

Political scientists have long studied the U.S. court system as a political institution. While courts serve the important and primary legal function of peacefully resolving conflict between contesting litigants, the decisions of judges also have the potential to influence public policy. As those who are familiar with the American judiciary know, judges have the power of judicial review and can nullify laws and administrative agency rules that conflict with a state constitution or the U.S. Constitution. Moreover, judges sometimes interpret and define vague and/or ambiguous statutes or constitutional clauses in order to resolve a pending legal dispute. Any of these actions can affect public policy. Lawmakers and members of the public are often bound by, even if only temporarily, the decisions of judges on legal issues that relate to public policy. While most judges do not see their role as that of a policy maker, the decisions of judges often result in the creation or modification of policy, and therefore judges act as policy makers from time to time.

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3 The doctrine of preemption also allows judges to strike down state laws that are inconsistent with federal law.

4 In matters of statutory interpretation, judicial decision can be “overruled” by legislative action. However, a judge’s decisions in matters of constitutional interpretation can only be overturned by the action of higher courts, or by constitutional amendment.

5 There have been a number of studies that examine the role conceptions of judges, and how these conceptions influence judicial behavior. Although some judges perceive their judicial role as one that permits the creation of policy, most judges do not perceive their role as that of a policy maker (see, for example, Flango, Wenner, and Wenner 1975; Howard 1977; Kitchin 1978; Scheb, Unger, and Hayes 1989; Wold 1974; Wold and Caldeira 1980).
Courts can be considered political institutions, and judges political actors, in part, because they can influence and create policy. However, one must be careful when applying the term “political” to judges and courts. As Judge Richard Posner notes, labeling judges as political can take on a different meaning depending on one’s context. For example, judges could be described as political in the sense that they decide cases on narrow grounds to find the best agreed upon ends to a conflict, use charm and charisma to influence colleagues on a court, display ideological consistency, or show favoritism towards a political party, among other possibilities (Posner 2008, 11-12). Certainly, judges are also political in the sense that they must engage in some degree of political activity to obtain a judgeship. Yet, one must remember that judges certainly are not, at least in the federal judiciary, political in the same sense as a member of Congress or a president. Federal judges do not openly campaign for their offices like other politicians, they cannot initiate policy changes without a pending case and litigants with proper legal standing, and the primary purpose of courts is not that of a policy-making institution.

While judges are political actors, their degree of political influence is smaller due to institutional arrangements and norms, as compared to their counterparts in the legislative and executive branches. Despite the differences between judges and other elected federal officials, judges still have the ability to significantly influence the political process.

Since the Supreme Court decided the landmark case of *Baker v. Carr*, 369 U.S. 186 (1962), federal courts have heard many election law cases that directly affect the

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6 In Appendix A, I discuss the evolution of the political question doctrine in the federal courts because of its implications for redistricting cases. Additionally, and as explain later in this dissertation, I begin my statistical analysis in 1962 because this is the year the Supreme Court decided *Baker v. Carr*. The change in the application of the political question doctrine in *Baker* resulted in a flood of redistricting cases in the federal courts. Soon thereafter, federal courts also heard an influx of other cases of political importance,
political process. While there have been a number of election law cases that significantly influenced the political process, there is probably no better recent example than *Bush v. Gore*, 531 U.S. 98. (2000). What makes *Bush v. Gore* worthy of discussion for the purpose of this dissertation is its political salience (ending a disputed presidential election), and the behavior of the justices who decided the case (possible partisan case votes).

In the weeks following the 2000 presidential election, state and federal courts in Florida grappled with complex questions of election law regarding political rights in matters of domestic and overseas absentee voting, the counting of “hanging chads,” and county recount standards, among numerous other issues. During this period, it seemed that almost any court decision could result in either candidate’s eventual victory or defeat. Ultimately, the U.S. Supreme Court resolved the question of who won the 2000 presidential election when a 5-4 majority ruled in favor of petitioner Bush and ended recounts in Florida.  

The outcome of *Bush v. Gore* troubled many Court observers for a number of reasons, most notably the partisan division that occurred in the Supreme Court’s *per curiam* opinion. The five-member majority consisted of the Court’s most conservative members – all of whom were appointed by Republican presidents. The two justices appointed by a Democratic president, Ruth Bader Ginsburg and Stephen Breyer, did not  

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including campaign finance and right to association cases. For this reason, it seems logical to begin my analysis in 1962 with the Court’s decision in *Baker*.  

7 It is beyond the scope of this dissertation to discuss in full detail the legal proceedings surrounding the 2000 presidential election, especially since other scholars have so thoroughly examined this event. For an in-depth discussion of the litigation surrounding the 2000 presidential election, see Gillman (2001), Jacobson and Rosenfeld (2002), Sunstein (2001), Toobin (2001), and Zeldon (2008).
favor ending recounts and would have permitted more time for them to proceed.\textsuperscript{8} It is impossible to say whether the Republican majority and the Democratic dissenters were acting on partisan motivations when deciding the case, but there was certainly a perception that most of the justices acted on their partisan preferences. As one federal judge noted, the outcome in \textit{Bush v. Gore} “just seemed so politically partisan” (Greenhouse 2000, A32). Legal scholars, too, recognized the seemingly partisan nature of the Court’s decision and chastised the majority for indulging in the “low” politics of partisan favoritism (Balkin 2001, 1408; Balkin and Levinson 2001, 1061; Gillman 2001, 7; Levinson 2001, 8). And one political scientist claimed that three forces motivated the majority’s decision—“partisanship, partisanship, and partisanship…” (Geer 2002, 85).

While public reaction to perceived partisanship in the courts is certainly worthy of attention,\textsuperscript{9} it is important to remember perceived partisanship does not necessarily equate to actual partisan behavior, as I discuss later. Yet, the decision in \textit{Bush} could be the result of partisan behavior. In \textit{Bush v. Gore}, the majority of the Court’s members were accused of allowing their personal partisan preferences to dictate their case vote at the expense of their preferred legal policies. The conservative justices in the majority.

\textsuperscript{8} It is worth mentioning that two Republican appointees, Justices John Paul Stevens and David Souter, broke with the majority and would have allowed more time for recounts. Thus, the case votes in \textit{Bush} did not fall entirely along party lines. I discuss potential motivations for Justice Stevens’ and Souter’s behavior in Chapter 2, including the possibility that these justices were concerned with future appointments to the Supreme Court, or that both justices more closely aligned themselves with the Democratic Party instead of the Republican Party.

\textsuperscript{9} See, for example, Elmendorf (2007, 334): “[T]here is an ever-present danger that the courts’ reputation for political neutrality—a reputation on which public support for the judiciary probably depends—will founder on the shoals of judicial intervention in the political process.” Although this is a valid concern, there is some evidence to suggest that the U.S. Supreme Court, in particular, did not lose institutional legitimacy as a result of its decision in \textit{Bush v. Gore} (see Gibson, Caldeira, and Spence 2003). However, despite the study by Gibson, Caldeira, and Spence, it is certainly possible that the public’s attitude toward the court system would change drastically if courts routinely decided election law disputes in a partisan manner.
rejected a states’ rights legal argument when they usually embrace such a legal policy, while the two Democratic liberal appointees embraced the states’ rights position. It is specifically this type of contrary behavior that brought much criticism following the Supreme Court’s decision. Assuming that a majority of Supreme Court justices did, in fact, sacrifice their personal legal preferences to select their preferred presidential candidate in *Bush v. Gore*, thereby behaving in a partisan manner, it is possible that similar behavior will occur in the lower federal courts when judges must decide other types of election law cases.

At first glance, it may not seem surprising to find that a judge’s decision in an election law case coincides with the preferences of her political party. After all, the preferences of a judge and the preferences of her political party are likely to be positively correlated in many cases. To be clear, case votes that coincide with the interests of a judge’s political party do not necessarily constitute partisan behavior; one must examine the motivations of a judge’s decision to make such a determination. Consider the following example that I discuss in greater detail later in this dissertation: a conservative Republican judge is likely, all things being equal, to strike down campaign finance laws that place limitations on campaign contributions and expenditures, regardless of the litigants involved in a case. The reason for such a ruling is due to the conservative interpretation of contributions and expenditures being a form of speech – speech that is subject to protection under the First Amendment.\(^\text{10}\) The Republican Party often embraces

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\(^{10}\) I grant that the conservative approach to deciding campaign finance cases may result from the Republican Party’s opposition to campaign finance regulations. Thus, the argument goes that conservative judges formed this legal policy preference as a direct result of the Republican Party’s opposition to campaign finance laws. For the purpose of this dissertation, I assume that a legal policy preference originated independently of a political party’s position on campaign finance. As I discuss in Chapter 3, a
a similar policy position regarding campaign finance regulation. Thus, if the Republican Party challenges a campaign finance law in federal court, the case vote of a conservative Republican judge would likely be congruent with the preferences of her political party. Because this conservative Republican judge is likely to strike down campaign finance laws regardless of the litigants involved in a case, I assume that the conservative judge’s behavior in this case is the result of legal policy preferences, not partisan considerations. In my analysis, I only consider judicial behavior to be “partisan” if the interests of a judge’s political party in some way influence their case vote, independent of policy preferences. Thus, congruency of partisan interests and case votes is not a sufficient condition for partisan behavior.

Potential Importance and Contribution to the Judicial Politics Literature

By examining the topic of partisanship in judicial decision-making, this dissertation seeks to make several contributions to the judicial behavior literature, and I note some of these potential contributions in this section. First, this dissertation’s examination of judicial partisanship may provide a better understanding of how social groups influence the judicial decision-making process. As noted earlier, partisanship and the influence of social groups are not typically considered in the most prominent models

political party’s preferences in each case are not always ideologically consistent, and even if one assumes that a political party influences policy preferences, this should not cause any adverse effects in my statistical model.

This logic only applies for the classification of individual case votes. In Chapter 2, I discuss the differences in individual case and aggregate classifications of partisan behavior. In a statistical model that aggregates case votes, it is quite possible that partisan preferences and policy preferences would jointly influence judicial behavior. And since one can determine the statistical significance of partisan preferences and policy preferences in a statistical model, there is no need to make assumptions regarding the motivation of a judge’s decision, unlike the above campaign finance example.
of judicial behavior. The judicial politics literature has traditionally placed an emphasis on judicial policy preferences, or a combination of law and policy preferences, to explain judicial behavior. Recent scholarship, however, has taken into account the importance of social groups in the judicial decision-making process (Baum 2006). This scholarship draws heavily from social identity and psychological theories of behavior (see Tajfel and Turner 1979; Tajfel 1981). If judges value the well-being of, or their relationship with, a personally salient social group, then it is conceivable that judges will behave in a manner that will benefit (or not harm) this social group. And if judges value their political party as a social group, then it is possible that a judge will decide an election law case in a manner consistent with her political party’s preferred outcome.

Second, this dissertation seeks to make a conceptual contribution to the judicial politics literature in regard to the measurement of policy preferences versus partisan preferences. Many studies of judicial behavior do not separate partisan affiliation and policy preferences in statistical models of case decisions. Instead, scholars have often treated a judge’s partisan affiliation as a proxy for policy preference. There may be some circumstances where the policy preferences of a judge and the preferences of her political party are not aligned – *Bush v. Gore* is a potential example. In such a situation, simply relying on a judge’s political party as a proxy for policy preferences would be inaccurate. Later in this dissertation, I estimate the independent effect of partisan preferences and policy preferences, respectively. By doing so, I hope to better understand the relative importance of partisan preferences and policy preferences in the

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12 In the next chapter, I discuss how partisanship potentially comports with the attitudinal and strategic models of judicial behavior.

13 I discuss many of these studies in Chapter 2.
decision-making process. This estimation should also minimize the potential for model misspecification by accounting for an additional source of preferences when modeling election law cases votes.

Third, while other scholars have examined partisanship in the judicial decision-making process (e.g., Graves 2003, Kopko 2008, Lloyd 1995, Williams 1998), I am confident that this dissertation will be the most thorough analysis of partisanship in the judiciary to date. Previous studies of judicial partisanship typically examined only one type of case/legal issue. By analyzing three categories of election law cases, it is my hope that this dissertation will expand upon previous findings and provide more detailed information regarding the prevalence of partisanship in the federal judiciary.

Fourth, I am also confident that it will be the most comprehensive empirical analysis of judicial decision-making in election law cases. Election law cases, in particular, are worthy of attention because every case outcome affects the probability of political party’s electoral success and/or ability to gain power in government, to some degree. Furthermore, election-related litigation has greatly increased since 2000 because political parties have employed litigation as a tactic to gain electoral advantage (e.g., Hasen 2005; Smith and Shortell 2007). Therefore, if my results reveal that judges behave in a partisan manner, presumably their partisan attachments will permit them a greater opportunity to influence the political process in the coming years due to increased political litigation.

Finally, if partisan preferences exert significant influence over judicial decisions, not only will judges appear more “partisan” and “political” than previously thought, but this may also raise normative concerns for the federal judiciary. If judges consistently
decide election law cases in accordance with the preferences of their political party, such behavior could diminish the legitimacy of the U.S. court system. Deciding politically charged cases in a forum that is susceptible to partisan biases is clearly less than ideal. For this reason, lawmakers may find it prudent to change the mechanism for resolving election law disputes. One election law scholar has suggested that legislators create a special election tribunal where judges sitting on the court consist of equal numbers of Democratic and Republican appointees, and one or more independent judges (see Foley 2008). A specialized court with this institutional structure would ensure that decisions are not narrowly decided by a party-line vote, thereby preserving the integrity and legitimacy of the federal court system when resolving politically charged cases.

Preview of Chapters

In the following chapters, I discuss in greater depth the procedures used to answer my research question. Chapter 2 provides a theoretic overview and justification for the several hypotheses that I advance in this dissertation. This chapter details theories of judicial decision-making, and some of the systematic influences on judicial behavior that are relevant in the election law context. I discuss the attitudinal and strategic models of judicial behavior, and how partisanship may relate to these models. Based on Segal and Spaeth’s (1993; 2002) conception of judicial behavior, I argue that partisanship comports with the attitudinal model through the concept of “attitude-towards-objects.” Essentially, a political party could serve as an attitude object, as described by Segal and Spaeth. Therefore, partisan preferences and an attitude toward an object are synonymous in the
context of election law cases. In addition, I discuss psychological theories of behavior that could influence a judge’s case vote in an election law case. I present evidence that partisan attachments could act as a social identity for judges, whereby judges engage in behavior that benefits this particular in-group.

After discussing the theoretical motivations for partisan behavior, I present several hypotheses. The main hypothesis that I seek to test is the relationship between case votes and the interests of a judge’s political party in a given election law case. I posit that when the judge’s political party benefits from a ruling for the plaintiff/defendant, a judge will be more likely to rule for the plaintiff/defendant. I also test four additional hypotheses, all of which should moderate the relationship between partisan interests and case votes. I test the effects of political career experience, age, court of appeals membership, and partisan panel composition on a judge’s likelihood of ruling in favor of her political party.

Chapter 3 discusses the data and research methods employed in this dissertation. Within this chapter, I introduce two empirical models that I use to test the hypotheses presented in Chapter 2. To determine if a judge’s partisan preferences influence her case vote, I will estimate two logit models. The first model, the “case outcome” model, tests my primary hypothesis. This model includes a dependent variable operationalized as the case vote of an individual judge, and the model accounts for several independent variables, including the outcome favored by the judge’s political party (i.e., whether the judge’s political party favors the plaintiff or defendant) and control variables that account for a judge’s first and second dimension policy preferences and lower court decisions.
By controlling for a judge’s policy preferences in the logit model, I will determine whether a judge’s partisan preferences have an independent effect on her case decision. Several political scientists have created measures of policy preferences, or ideology, for federal judges serving on the federal courts (e.g., Epstein, Martin, Segal, and Westerland 2007; Giles, Hettinger, and Peppers 2001; Nixon 2005). However, each of these measures is problematic for the purpose of this dissertation.\textsuperscript{14} To remedy these problems, I impute a new measure of lower federal court policy preference using a bridging technique, similar to the one utilized by Nixon (2005). Given my research question, it is essential to develop a measure of policy preference that is divorced of partisan preference. Using a bridging sample of federal judges who have served in the U.S. Congress since 1960, I have developed a new measure of judicial preference that is independent of partisan considerations and avoids problems of collinearity. This measure uses the ideological preference estimates of the appointing president, home-state political elites, home-state citizenry, and the median member of the Senate in a regression equation to predict the preferences of each judge examined in this study.

The second empirical model, the “partisan favoritism” model, tests the four additional hypotheses concerning the effects of a judge’s political career history, age, court of appeals membership, and partisan panel composition. The dependent variable in this model measures congruency between a judge’s case vote and the preferences of her political party. I include several independent variables in this model to predict the outcome of the judge’s decision, including measures of judicial policy preferences, lower

\textsuperscript{14} I detail these problems in Chapter 3 and Appendix B.
court decision, and variables relevant to the four hypotheses regarding political career history, age, court of appeals membership, and partisan panel composition.

Chapter 3 also discusses the data used to estimate the empirical models. The data in this study consist of the case votes of federal district court and court of appeals judges in three types of election law cases: campaign finance cases,\textsuperscript{15} political party right to association cases,\textsuperscript{16} and redistricting cases.\textsuperscript{17} The data used in this study are drawn from the Westlaw legal database, and then coded into a separate database for the purpose of statistical analysis. I have compiled 1,378 case vote observations from federal district court and court of appeals judges who decided election law cases from 1962 through 2007.

Chapter 4 presents the data analysis and results for each of the three categories of election law. Of the three categories of election law examined in this dissertation, only the campaign finance models consistently produce a statistically significant partisanship effect. There is also evidence of a conditional partisan effect in redistricting cases, which is contingent on the partisan composition of a multi-judge panel. Additionally, judicial policy preferences are statistically significant predictors of judicial behavior in political party right to association, redistricting cases, and campaign finance cases that do not

\textsuperscript{15} Campaign finance cases involve the regulation of campaign contributions and expenditures. These cases include challenges to the validity of campaign finance regulations, and criminal prosecutions for the violation of campaign finance laws.

\textsuperscript{16} These First Amendment cases involve the right to association (or freedom of association). Specifically, these cases address a political party’s internal operating procedures and the conduct of primary elections.

\textsuperscript{17} Redistricting cases involve disputes over legislative and congressional district boundaries. These cases primarily involve Equal Protection claims under the Fourteenth Amendment for such issues as uneven population distribution among legislative/congressional districts, and political and racial gerrymanders – i.e., drawing legislative/congressional district boundaries (whether purposely or inadvertently) to maximize a specific political party’s chances of electoral victory, or drawing legislative/congressional boundaries to dilute the political power of racial/ethnic minority groups in the political process.
involve the interests of the Democratic and Republican Parties. While the influence of partisan preferences in any form is troubling, the results demonstrate that the effect of partisanship is not pervasive in all areas of election law.

Lastly, Chapter 5 provides a discussion of the results presented in Chapter 4, and the implications of these results for theories of judicial behavior. In this chapter, I also discuss avenues for future research.
CHAPTER 2: THEORY AND JUSTIFICATION FOR A PARTISAN EFFECT

As noted in Chapter 1, this dissertation seeks to determine if partisan preferences influence a federal judge’s case vote in election law cases, after controlling for the judge’s legal policy preferences. This chapter presents the theoretical reasons why a judge might be motivated by partisan considerations when deciding a politically salient election law case. The first section of this chapter provides an overview of the most prominent models of judicial behavior in the political science literature, followed by a discussion of how partisanship relates to existing extra-legal models of judicial behavior. I also address the motivations of judicial behavior in terms of “high politics” and “low politics.” Next, I detail several psychological motivations that could result in partisan judicial behavior. Then, I discuss possible examples of judicial partisanship, and political science scholarship that examines the influence of partisan attachment on judicial decision-making. Lastly, I outline several factors that could moderate the relationship between a judge’s partisan attachment and case votes in election law cases. Based on these factors, I posit several hypotheses that will be tested in Chapter 4.
Legal and Extra-Legal Models of Judicial Decision-Making

There are numerous models that seek to explain and predict judicial behavior. However, partisan preferences are not traditionally associated with the most popular models of judicial behavior. Instead, most political science models of judicial behavior emphasize policy preferences, or a combination of law and policy, as the factors that underlie the behavior of judges. If my findings reveal that judges are motivated by the interests of their political party, this will provide a nuanced, yet important contribution to the judicial behavior literature by identifying an understudied, and potentially significant, systematic influence on judicial case votes. But, before discussing the relationship between partisan preferences and existing models of judicial behavior, it is important to understand how the most prominent models of judicial behavior operate.

Broadly speaking, judicial scholars have relied on two general types of models to explain and predict the behavior of judges: legal and extra-legal models. Legal models vary in the extent to which law influences judicial decisions (Baum 2006, 8-9; Segal and Spaeth 2002, 48-49). Historically, judges, attorneys, and legal academics advocated this conception of judicial behavior. In its purest form, the legal model posits that judges seek to find and apply the correct law to the given circumstances of a case. In essence,

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18 For example, Judge Richard Posner (2008, 19-56) identifies nine models of judicial behavior: attitudinal, strategic, sociological, psychological, economic, organizational, pragmatic, phenomenological, and legalist.
19 It is important to note that most studies of judicial behavior focus on the U.S. Supreme Court (Baum 1994, 750-751). Therefore, these models of judicial behavior, too, are most frequently applied to the Supreme Court rather than lower courts. This is not to say that legal and extra-legal models do not apply to lower courts. Lower court behavior can be explained and predicted, at least to some extent, by both of these models. While the legal model may be more applicable to lower courts, extra-legal factors can still influence decision-making in the lower courts. For example, lower court judges are subject to review by higher courts, and therefore judges may take this consideration into account when deciding cases based on law or policy preferences (e.g., Baum 1978; Songer, Segal, and Cameron 1994; Klein 2002). Thus, both of these models are potentially applicable to a wide array of courts.
judges avoid extra-legal factors in the decision-making process; their considerations are primarily legal in nature. In addition, the role of a judge is that of an arbiter whose primary goal is to apply law to a set of facts in order to resolve a legal dispute. Creating “good” policy is not the goal of a judge operating under a pure legal model. As Chief Justice John G. Roberts, Jr. put it during his 2005 confirmation hearings before the Senate Committee on the Judiciary, “Judges are like umpires. Umpires don’t make the rules; they apply them.” Chief Justice Roberts presented this analogy to emphasize that a judge’s role is not that of a policy maker, but that of a neutral authority who simply “call(s) balls and strikes” (Roberts 2005).

This description of a judge’s role resembles classical jurisprudence, which has been described as “formal” or “mechanical” in nature. Classical jurisprudence was the dominant view of judicial decision-making among American legal scholars until the 1880’s (Monahan and Walker 2006, 1-2). Since the time of early criticisms of classical jurisprudence (e.g., Holmes 1881), most academics have rejected a mechanical view of jurisprudence. Instead, it is almost universally accepted among judicial scholars that a judge’s values and life experiences affect their case decisions to some extent (see Cross 1997, 255).

Modern “legalists” argue that policy preferences might play a role in the decision-making process, but policy preferences are not the only, or necessarily the primary, motivation of judicial behavior. Indeed, policy preferences and law can jointly influence behavior (Feldman 2005; Gillman 1993, 11-12; Gillman 2001b; Whittington 2000). Thus, the influence of law in the legal model could be conceptualized as a continuum. The influence of law could range from a classical jurisprudence conception, where
judicial behavior is mechanistic, to a post-positivist conception, where “decisions are considered legally motivated if they represent a judge’s sincere belief that their decision represents their best understanding of what the law requires” (Gillman 2001b, 486; see also Burton 1992). Therefore, the influence of law in the legal model can vary; law may be the only consideration, or it may be one of many considerations that explain judicial behavior. In short, legal models can best be summarized as follows: “one way or the other, law matters” (Gillman 2001b, 466).

Political scientists have developed two extra-legal models that emphasize the legal policy preferences of judges in the decision-making process. The first extra-legal model is the attitudinal model (e.g., Segal and Spaeth 1993; 2002). This model of judicial decision-making emphasizes the motivation of making good policy when deciding cases. Essentially, the model holds that judges decide cases with their sincere policy preferences in mind, and with little regard for other factors. The attitudinal model has traditionally applied to justices on the U.S. Supreme Court and other courts that can act in a rather unconstrained manner. There are several reasons why the Supreme Court is uniquely poised to operate under the attitudinal model. First, the Supreme Court is the highest court in the American judiciary and its decisions are usually final on issues of constitutional law. The only way to overturn a constitutional ruling by the Supreme Court is through a constitutional amendment. Second, members of the Supreme Court

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20 For example, there is evidence of attitudes predicting the behavior of Canadian Supreme Court justices in search and seizure cases (Wetstein and Ostberg 1999; see also Ostberg and Wetstein 2007). And early research on attitude theory has found evidence of attitudinal behavior in collegial courts in Australia, India, Japan, and the Philippines (Schubert and Danelski 1969).

21 There have only been five instances in the history of the Supreme Court that a constitutional amendment overturned an earlier Court decision (Segal and Spaeth 2002, 95). Thus, the threat of the Supreme Court being “overruled” on a constitutional question is quite rare. Although the Supreme Court also hears cases
are insulated from the want of higher office since they already sit on the nation’s highest court (assuming that a justice would not seek a position in another branch of government, or that an associate justice hopes to serve as chief justice).\textsuperscript{22} Third, the cases that the Supreme Court chooses to hear often involve issues of constitutional law for which there is no clear, correct outcome. Because justices lack a provision of law that squarely resolves a given case, they are able to rely on extra-legal factors, particularly policy preferences, to resolve the case. Fourth, the life tenure afforded to all Article III federal judges helps to diminish the influence of other government branches and the public on the decision-making process.\textsuperscript{23} While these considerations promote attitudinal behavior on the U.S. Supreme Court, this does not eliminate the possibility that lower courts could act in an attitudinal manner. Admittedly, however, lower court attitudinal behavior is conditional on a number of institutional and legal circumstances, including those described above.\textsuperscript{24}

In recent years, proponents of the attitudinal model have become more accepting of strategic considerations, which is the result of the other dominant model of judicial decision-making in the political science literature – the strategic model (e.g., Epstein and involving statutory interpretation, in which Congress could “overrule” the Supreme Court by enacting new legislation, there is a lack of empirical evidence to suggest that justices systematically consider the behavior of Congress when reviewing federal statutes (see Sala and Spriggs 2004; although for recent evidence to the contrary see Clark 2009).

\textsuperscript{22} On rare occasion, a justice may seek an office outside of the Court. The most recent occurrence is likely William O. Douglas’s efforts to run for president or vice-president (See Rosen 2006, Chapter 3).

\textsuperscript{23} Life tenure ensures that federal judges are not subject to re-appointment by the president or re-confirmation by the Senate. If this were not the case, it is possible that judges would adjust their behavior to ensure that presidents and senators would favor their re-appointment.

\textsuperscript{24} Lower courts, particularly trial courts, usually resolve issues for which there is a clear legal remedy, thereby negating the influences of attitudes. For a discussion regarding why the attitudinal model is less applicable to lower courts as compared to the Supreme Court, see Rowland and Carp (1996) and Spaeth (1995). However, lower courts could act on their attitudes in cases of first impression, when laws are vague and/or ambiguous, or in those circumstances where the possibility of reversal by a higher court is particularly low. See also footnote 19.
Knight 1998). The strategic model of judicial decision-making has its roots in a rational choice framework. Much like the attitudinal model, the strategic model assumes that policy preferences motivate judicial behavior. However, in this model, judges act strategically to attain the best possible outcome for their long-term goals, and judges take into account the actions of other relevant actors. Some examples of strategic behavior include defensive denials of cases in the certiorari process, switching case votes in hopes of “watering-down” a majority court opinion, and assigning case opinions to an ideologically proximate colleague on the Court. While lower court judges may be constrained in their ability to vote attitudinally, virtually all judges have the capacity to act strategically. For example, if a judge considers how outside parties will react to a court decision (be it a branch of government, interest groups, the public, or even a higher court) and the judge adjusts her decision in light of a potential reaction, then one could classify this behavior as strategic.

Attitudes-Toward-Objects and Attitudes-Toward-Situations

Although the attitudinal and strategic models differ in the emphasis on attitudes and rational choice considerations in the decision-making process, they both ultimately share the common belief that policy preferences, or a combination of law and policy preferences, are a significant motivating factor of judicial behavior (see Baum 2006, 9-10; see also Baum 1997, 27-28; Schauer 2000, 615-617). If policy or a combination of law and policy are the motivations for judicial behavior, then it may appear as if partisanship does not squarely fit into either the attitudinal or strategic models; and
partisanship certainly has no place in traditional conceptions of the legal model where law is the guiding force of judicial behavior. However, Segal and Spaeth provide some theoretical justification that partisanship comports with the attitudinal model through attitudes-toward-object and attitudes-toward-situations.

Under the framework laid out by Segal and Spaeth (2002, 313):

[Judicial] behavior may be said to be a function of the interaction between an actor’s attitude toward an “object” (i.e., persons, places, institutions, and things) and that actor’s attitude toward the situation in which the object is encountered…. (A)ttitude situations consist of the “facts,” that is, what the attitude object is doing, the legal constitutional context in which the attitude object is acting.

Using this definition, a political party, or a proxy for a political party, could serve as an attitude object. The distinction between attitude objects and attitude situations stems from Milton Rokeach’s (1968) attitude theory. Rokeach and Kliejunas (1972) demonstrated that the interaction of attitude objects and attitude situations influence the attitudes held by individuals, although attitude situations predict overall attitudes better than just attitude objects. The predictive power of the attitude situation over the attitude object was confirmed in the context of the U.S. Supreme Court by Harold Spaeth and Douglas Parker when analyzing cases that involved businesses and racial minorities as litigants (1969; see also Rohde and Spaeth 1976). While Spaeth and Parker’s evidence does point to the predictive power of attitude situations over attitude objects, attitude objects did provide some predictive power in their analysis.
Spaeth et al. (1972) provided further analysis of the predictive power of attitude objects versus attitude situations in the judicial decision-making process of Supreme Court justices between 1958 and 1969. They found that when the Court heard cases involving labor unions, individuals exercising their freedom of speech, and blacks and non-blacks, attitude situations across a variety of case facts were the dominant predictor of judicial behavior. However, attitude objects did have predictive power over the attitude situation when litigants included those who posed an alleged security risk to society, and injured employees. Spaeth et al. argue that these attitude objects had influence over judicial behavior for several reasons. First, regarding those litigants who allegedly posed a security risk, the Court decided many of these cases in the wake of Senator Joseph McCarthy’s accusations of communist subversion. Because of the public concern of a communist threat and the possible infiltration of American government, these attitude objects were likely to have significant bearing on judicial behavior. It is worth noting, however, that the Court ruled in favor of the accused 63% of the time, and therefore the Court was likely correcting the unlawful treatment of litigants deemed a social threat. Second, regarding injured workers, Spaeth et al. argue that the Court went out of its way to favor these individuals because Congress failed to pass workman’s compensation legislation. This allowed the Court to act as a “workman’s compensation commission” and rule in favor of these litigants 76% of the time (134-135). Thus, when the Court was influenced by attitude objects, such behavior was not due to personal biases against a particular litigant, but rather it was a reaction to the societal and legislative climate that caused the Court to favor these particular litigants.
While there is evidence of attitude objects having some predictive power over judicial behavior, attitude situations are consistently the stronger predictor. Because of the attitude situation’s dominance in predicting judicial behavior, scholars find that justices’ voting preferences tend to cluster around attitude situations (e.g., First Amendment issues, criminal rights, economic regulation, etc.). For the purpose of this dissertation, I assume that judicial policy preferences and preferences regarding the attitude situation are synonymous. 25 I recognize that this assumption may result in disagreement among some judicial scholars. Some may equate attitudes, as Segal and Spaeth use the term, with policy preferences. However, as just detailed above, attitudes are a function of both attitude objects and attitude situations. It is unclear how a policy preference, which essentially is an interest in making good public policy (Baum 2008, 4), relates to the holistic view of attitudes, which encompasses attitude objects. Policy preferences are not typically associated with a given litigant; a policy preference usually relates to the situation in which a litigant is acting. Recall Segal and Spaeth’s definition of attitude situations in the above: “attitude situations consist of the ‘facts,’ that is, what the attitude object is doing, the legal constitutional context in which the attitude object is acting” (Segal and Spaeth 2002, 313. Emphasis added). Thus, policy preferences should most often relate to issues of constitutional law, rather than what litigant appears before a given court.

As noted in the above, policy preferences are a key predictor of case votes in political science conceptions of judicial behavior. But one could argue that long-term

25 Policy preferences (or preferences regarding an attitude situation) are generally described as being liberal or conservative in nature. In the majority of non-unanimous cases that come before the Supreme Court, attitude situations/policy preferences will dictate the outcome of a case.
policy goals might be achieved by supporting a litigant (an attitude object) in the short-term, even if ruling for that litigant is contrary to a judge’s legal policy preferences. Consider the case of *Bush v. Gore*. Segal and Spaeth (2002, 313, fn. 2) argue that “*Bush v. Gore* serves as the most prominent example of the attitude-toward object (presidential contenders Bush and Gore) dominating the attitude-toward situation (court-ordered recounts under a feigned equal-protection argument)” in recent history.\(^{26}\) In the context of *Bush v. Gore*, policy preferences regarding the situation were less important than personal political preferences regarding the attitude object.\(^{27}\) Although one of the most popular explanations for the outcome in *Bush v. Gore* is partisanship – that is, the justices simply voted for their preferred presidential candidate – there are other possible explanations for the justices’ votes.

Judge Richard Posner suggests that the long-term consideration of future appointments to the Supreme Court may have guided the votes of some members of the Supreme Court in *Bush v. Gore* (Posner 2001, 175-76, 180-181; see also Baum 2006, 128). Certainly, this may have guided the case votes of Justices John Paul Stevens and David Souter, especially if these justices were contemplating retirement. Although both justices were appointed by Republican presidents, their policy preferences most closely

\(^{26}\) It should be noted that Segal and Speath’s (2002) conception of attitude objects is more specific than the original conceptualization of attitude objects (see Rohde and Spaeth 1976) because Gore and Bush are individually identified as attitude objects. Rohde and Spaeth (1976, 161-168) note several broad, categorical examples of attitude objects, including “criminal defendants,” “debtors,” “taxpayers,” “blacks,” among others. For the purpose of this dissertation, I will focus on Segal and Spaeth’s conceptualization of attitude objects. As such, individual political parties (or their proxies) will serve as attitude objects.

\(^{27}\) The majority in *Bush v. Gore* was chastised for invoking the Equal Protection Clause of the Fourteenth Amendment when they rarely do so in other cases, and for interfering in an issue involving federalism when conservative justices normally defer to the states. A similar criticism is lodged against Justices Ginsburg and Breyer for embracing a states’ rights position in the case. Therefore, to many Court observers the majority of the justices on the Supreme Court ignored their policy preferences when deciding the case.
matched those of their Democratic colleagues on the Court. Thus, if Stevens and Souter were concerned with future Court nominees, particularly if they had planned to retire during the next presidential administration, it is likely that Gore would have nominated justices whose policy preferences were closer to Stevens’ and Souter’s preferences, as compared to any potential Bush appointees.28 There were also rumors that Justice Sandra Day O’Connor voted in Bush’s favor in hopes that a Republican president could appoint her successor (see Toobin 2007, 143-144). However, O’Connor denied these reports in a June 6, 2003, television interview with George Stephanopoulos on ABC’s This Week (O’Connor 2003).

Even though a judge may achieve long-term policy goals by favoring an attitude object over an attitude situation, it seems that such an occurrence would be quite rare. In fact, deciding a disputed election may be the only way in which a judge could achieve a long-term policy goal at the immediate expense of their policy preferences. If a judge wanted to ensure that future judicial nominees would share her policy preference, or if the judge wanted to ensure that lawmakers would enact policy that she favors, then deciding a case based on preferred attitude objects over attitude situations may provide such long-term benefits. However, in most election law cases that do not involve the outcome of an election (including the cases I examine in this dissertation), favoring an attitude object at the expense of one’s policy preferences could not result in attaining such long-term policy goals.

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28 The fact that Justice David Souter waited to retire until President Barack Obama came into office provides some evidence for this claim. This claim is further supported by Justice Stevens’ recent retirement announcement.
Segal and Spaeth’s distinction between preferences for attitude objects and attitude situations similarly relates to Levinson et al.’s conception of high and low politics. When judges make policy preference-based decisions (i.e., decisions based on attitude situations), this is referred to as “high politics.” But, when judges set aside their policy preferences to “help out one’s political friends in the short run,” this is referred to as “low politics” (Levinson 2001, 8; see also Balkin 2001, 1408; Balkin and Levinson 2001, 1061; and Gillman 2001a, 7). Based on this definition, there are instances where decisions that benefit a judge’s political party, harm the opposing political party, or both, could fall under the framework of either high or low politics. High and low politics simply describe the motivating factor behind a judge’s decision. Thus, if a judge favors an attitude object over the attitude situation for the express purpose of supporting a political ally without regard for their preferred policy preferences, in the language of Levinson et al., this denotes low politics. However, if the attitude situation motivates judicial behavior, then such behavior can be classified as high politics.\footnote{Levinson uses the term “ideology” instead of policy preference.}

This is not to say that low politics occurs every time a judge permits an attitude object to affect judicial behavior. Low politics implies an unethical compromising of one’s legal values to aid political friends. Given this definition, it seems unlikely that low politics could be applied to the cases examined by Spaeth et al. (1972). As noted in the above, this study showed that the decisions of the Supreme Court were influenced by the attitude objects of injured workers and those accused of posing a threat to society.\footnote{This is true so long as there is an attitude situation that lends itself to a liberal/conservative dimension on which to place a judge’s policy preferences. Based on Levinson et al.’s definition, it is unclear if the conception of high and low politics applies if there is no prior policy preference.}
Additionally, Shapiro (1968, 55-57) notes that the Warren Court favored the African American community throughout the 1950s and 60s, as a clientele of sorts. There are some cases that the U.S. Supreme Court may not have considered, or decided in the same manner, but for the involvement of African American citizens and civil rights leaders during the Civil Rights Era. These cases do not constitute low politics simply because members of the Court had no personal, political attachment to these attitude objects, and the Court was trying to ensure the equal application of the law to minority groups. If one were to extend the logic of Levinson’s (2001) description of high/low politics, this classification scheme is likely more complex than a simple dichotomy. Cases similar to those discussed by Spaeth et al., or those in which the Warren Court favored African Americans, would fall into a middle category between high and low politics. These cases are not clearly high or low politics, and yet an attitude object significantly affected the behavior of judges.

Though attitude objects can influence judicial behavior, the motivation for giving weight to attitude objects over attitude situations, as evidenced by Bush v. Gore, could derive from a judge’s long-term policy preferences. As such, it is possible that case votes that are classified as low politics (because a judge disregards her legal policy preferences)

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31 Such cases include, but are not limited to, New York Times v. Sullivan, 376 U.S. 254 (1964) involving libel over the arrest of Martin Luther King, Jr., Duncan v. Louisiana, 391 U.S. 145 (1968), where the right to trial by jury was incorporated because of the arrest of a African American teenager, and Brown v. Louisiana, 383 U.S. 131 (1966), in which several African Americans were arrested for sitting in a public library.

32 As Shapiro (1968, 56) argues, “Clientelism is not necessarily a deviation from impartiality when practiced either by courts of other agencies. Instead it may simply be a recognition that certain social claims are not receiving equitable treatment elsewhere and must be especially championed by a particular agency if they are to receive their fair share of recognition in the political system as a whole.” Based on this observation, it would be particularly difficult to equate the Warren Court’s clientelism with low politics.
could still be the result of a judge trying to attain her long-term policy goals at the expense of her immediate policy preferences. Again, such an outcome only appears possible if a judge is deciding a disputed election, or a case that could lead to the likely election of a candidate or set of candidates who would advance a judge’s policy goals.

High and Low Politics in Election Law Cases

One might expect that most election law decisions involve outcomes where the judge’s policy preferences and their political party’s preferences are congruent. Despite this, some may question the motivation of a judge who rules in favor of her political party when partisan and policy preferences are congruent; is such behavior high or low politics? As noted in Chapter 1, a conservative judge appointed by a Republican president will likely strike down campaign finance laws that place limitations on campaign contributions and expenditures. The reason for such a ruling is due to the conservative interpretation of contributions and expenditures being a form of speech—speech that is subject to protection under the First Amendment.\(^{33}\) As a result, a conservative judge should be likely to disfavor any attempts to cap campaign contributions and expenditures, regardless of the parties involved in litigation. However, it just so happens that Republican politicians are usually opposed to campaign finance legislation, while Democrats tend to favor it. If the Republican and Democratic Parties were opposing litigants in a campaign finance case, it is likely that Republicans would

\(^{33}\) Epstein and Segal (2006) support the notion that campaign finance cases constitute free speech issues, as viewed by conservative members of the Supreme Court. Epstein and Segal find that conservative members of the Court are just as likely, if not more likely, than their liberal colleagues to vote in favor of First Amendment arguments when multiple values are presented in the context of a First Amendment case, including campaign finance cases.
favor the same outcome that a conservative judge would otherwise reach. As for Democrats, they would favor a liberal judicial decision, which a liberal judge would otherwise reach, because it benefits their own interest in maintaining campaign finance regulations.⁴₄

If one considers the above example, on the surface it appears that judges ruled in a purely partisan manner – conservative judges, who are likely appointed by a Republican president,⁵⁵ ruled in a way that favors the Republican Party, while liberal judges, who are likely appointed by a Democratic president, ruled in a way that benefits the Democratic Party. Yet, one cannot discount the role that policy preferences are likely playing in this situation. Given that many conservative judges would readily strike down campaign finance laws when political parties are not involved as litigants, or as amici, there is an argument to be made that policy preferences, and not partisan considerations, are the driving force behind this particular judicial decision.⁶⁶ Assuming that a conservative Republican judge in this hypothetical campaign finance case ruled based on her policy preferences, then this behavior could be classified as “high politics,” using the language of Levinson et al.

Levinson (2001) provides additional examples of judicial decisions that operate under a high/low politics framework. Another example of a high politics judicial

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⁴₄ It is worth mentioning, however, that the Democratic Party and liberals are not totally united in their preferred outcome on campaign finance. As I note in Chapter 3, some liberals favor campaign finance regulations, while other oppose them on First Amendment grounds like their conservative counterparts.

⁵⁵ Granted, this has not always been the case, but in recent years, Republican presidents tend to appoint conservative judges, while Democratic presidents appoint liberal judges.

⁶⁶ It is useful to note that even in cases where political parties are not litigants – e.g., cases involving corporate contributions or expenditures for referenda (see *Austin v. Michigan Chamber of Commerce* 494 U.S. 652, and *First National Bank of Boston v. Bellotti*, 435 U.S. 765) – a conservative judge would still oppose campaign finance regulations, while liberal judges would generally support them.
decision is a hypothetical racial gerrymander case. When deciding a racial gerrymander case, conservative judges are likely to strike down racially gerrymandered districts – that is, districts created to ensure minority representation in a legislature – while liberal judges are likely to uphold plans that create a majority-minority district. However, when liberals favor efforts to create majority-minority districts, this could benefit the Republican Party because minority voters are “packed” into a single district.\(^\text{37}\) Conservative judges, on the other hand, rule in a way that benefits the Democratic Party overall when they oppose majority-minority districts, because equal racial apportionment will likely mean that Republicans will have more Democratic minority voters in their districts.

As an example of low politics, Levinson cites the Supreme Court’s decision in \textit{Bush v. Gore}. As noted previously, a majority of the justices knowingly or unknowingly shirked their legal policy preferences to rule in a way that benefited their favored political candidate. For the most part, conservative justices relied on Equal Protection grounds to stop recounts in Florida when they normally defer to the states in such matters, while liberal justices argued in favor of states’ rights and did not advocate an Equal Protection rationale. The above is an oversimplification of \textit{Bush v. Gore}, especially when considering that the notorious 5-4 decision to stop recounts included two Republican nominees in the dissent. But, for at least a majority of the nine justices, it appears that the low politics label could apply to their decision-making.\(^\text{38}\)

\(^{37}\) This assumes that minority voters are likely to vote for the Democratic Party.

\(^{38}\) While Justices John Paul Stevens and David Souter did not vote to end recounts in Florida, and both were appointed by Republican presidents, it is possible that both justices were more closely aligned with the Democratic Party than the Republican Party. If these individuals now identified more closely with Democrats than Republicans, then the behavior of the Supreme Court justices in \textit{Bush v. Gore} could be explained largely by partisan interests.
It is also possible that a judge may rule against his own legal policy preferences and his political party’s preferences in a given election law case – this should occur when a judge’s policy preferences and their political party’s preferences are congruent. There are several plausible motivations for this type of decision. The most obvious explanation is the influence of law. If a legal provision clearly resolves a case, even if it is contrary to the judge’s policy preferences and the interest of the judge’s political party, it is likely that a judge will rely on legal factors to resolve the case. Additionally, it is possible that a judge will vote against one’s policy preferences and partisan preferences to avoid the appearance of partisan impropriety. This should particularly be of concern among state judges who are subject to re-election or retention and need to portray themselves as a neutral arbiter in order to maintain their credibility. If one considers collegial courts, there may be instances where judges have a compelling reason to render a unanimous decision. In these cases, a judge who would otherwise write a dissent may deem it necessary for the sake of the court’s image or the need for clarity in the law to acquiesce to the majority’s will.\textsuperscript{39} Even though these types of case outcomes are likely to be infrequent, nonetheless, these outcomes might occur from time to time.

From a normative perspective, judicial decisions that fall into the low politics classification are the most unsettling and troublesome. Here, judges place partisan considerations (i.e., attitude objects) higher than their policy preferences (i.e., attitude situations). Judges operating under this framework appear more like the stereotypical, partisan politician than an impartial jurist. While students of American politics are

\textsuperscript{39} One such case where unanimity was deemed essential was \textit{Brown v. Board of Education of Topeka}, 347 U.S. 483 (1954). See Rosen (2006, 9-10).
accustomed to the other branches of government acting in a partisan manner, it may seem as if it is only natural that the same type of behavior should occur to some extent in the third branch of government. However, given that the judiciary is structured in a way that is meant to isolate judges from political influence, courts should not operate in the same political manner as the other branches of government. Yet, if judges consistently behave in a manner that favors their political party, the three branches of government may be more similar than previously thought. In addition, since election law cases can have serious implications for the political process, any evidence of partisanship in the judiciary is less than ideal. If judges cannot decide election law cases in an unbiased manner, then legislators may need to reconsider how courts resolve election law disputes.

The preceding discussion of high and low politics decisions is concerned with case-by-case classifications of judicial motivations in election law cases. For the purpose of analyzing individual cases, this is a reasonable classification scheme. Yet, one must keep in mind that, in the aggregate, the above classification scheme is not entirely appropriate. It is possible that policy preferences and partisan considerations each have an independent effect on case votes. Such an occurrence does not clearly fit into the high/low politics classification devised by Levinson et al. Consider a statistical model of decision-making where a variable representing a judge’s policy preference (continuous) and a variable representing partisan considerations (dichotomous) are both significant and have a positive coefficient. This type of occurrence does not fall into any one of the examples listed in the above. In this situation, judges do not operate under either a pure high politics or pure low politics framework. In the aggregate, high and low politics could be thought of as a continuum. At one extreme, only a judge’s policy preferences
influence decision-making, at the other extreme partisan considerations completely override any policy preferences. Between these extremes, partisan considerations and a judge’s policy preferences could be working in tandem or against each other to influence the decision-making process. This dual influence of policy preferences and partisan preferences likely occurs within individual judges, but given that one can only observe a single dichotomous vote choice per observation, one cannot discern the independent effect of each of these forces at the individual level.\textsuperscript{40} All of this, of course, assumes that partisan considerations do have an independent effect on judicial behavior.

Partisan Preferences Informing Policy Preferences

Thus far, this chapter has addressed partisan preferences and policy preferences as independent considerations in a judge’s decision calculus, which permits classifying decisions as high or low politics. But, it is important to discuss the possibility of an attitude-toward-object influencing a judge’s attitude-toward-situation. If attitude objects inform preferences for attitude situations, then attitudes, as Segal and Spaeth define the term, may be more complex than the interaction of attitude situations and attitude objects. Consider cases involving a challenge to campaign finance regulations. A judge may have an attitude toward an object litigant, perhaps a corporation, before even considering the legality of the challenged campaign finance regulations. If a judge has a favorable attitude toward corporations, \textit{ceteris paribus}, the judge should be likely to oppose campaign finance regulations because these regulations restrict the capacity of

\textsuperscript{40} Based upon the results reported in Chapter 4, my conclusion chapter will discuss the applicability of high and low politics to the cases that I examine in this dissertation.
corporations to influence the electoral process. Likewise, if a judge has a negative attitude toward corporations, the judge may be more likely to embrace campaign finance regulations because such regulations restrict the freedom of corporations in the political process.

The above example is not intended to show that attitude objects systematically influence preferences regarding the attitude situation. Rather, this example only demonstrates that it is possible that attitude objects could shape preferences for attitude situations. Even if one assumes that attitude objects can influence preferences for attitude situations, this should not have serious consequences for the study of judicial behavior in general. Consider again a case in which a corporation challenges a campaign finance regulation. A corporation will always favor an outcome that benefits itself—an outcome that disfavors the enforcement of campaign finance regulations (a conservative outcome). Because this attitude object will always favor a consistent case outcome, and judicial scholars are rarely interested in parsing out the effect of attitude objects versus attitude situations, using a judge’s policy preferences (i.e., preferences for the attitude situation) to predict case votes should not result in any serious problems; policy preferences in this situation will still be a valid and reliable predictor of judicial case votes.

Complications may arise for my analysis if a political party influences the formation of a policy preference. For the purpose of this dissertation, I assume that policy preferences are formed independent of any partisan preferences. However, even if one assumes that a political party influences the formation of a policy preference, which is unlikely to occur in all instances, this should not result in complications for the purpose
of my analysis. Consider the example of a conservative Republican judge deciding a campaign finance case. It is possible that the judge formed this legal policy preference as a direct result of the Republican Party’s original opposition to campaign finance reform. Unlike the above example where a corporation challenges a campaign finance law, political parties may take contradictory positions when litigating an election law case.

Political parties seek to win elections. Thus, in order to maximize their potential to win an election, sometimes political parties must advocate ideologically inconsistent positions to gain an electoral advantage. As a result, Republicans sometimes favor liberal outcomes, and Democrats sometimes favor conservative outcomes, depending on the case. Thus, even if one assumes that a political party (attitude object) influenced the formation of a policy preference (preference for the attitude situation), the variation in ideological positions advocated by the Democratic and Republican Parties across election law cases should negate any statistical concerns for the purpose of my analysis.

Psychological Influences in Judicial Decision-Making

If an attitude object, such as a political party, influences judicial behavior, it is unclear why this is the case, besides the possibility of an attitude object helping to achieve a long-term policy or an attitude object informing attitude situation preferences.

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41 It is not clear that the Democratic or Republican Parties consistently took a position on political party right to association or redistricting issues that would have influenced the formation of a policy preference. Therefore, I used campaign finance cases for the sake of this example.

42 Again, one only needs to consider Bush v. Gore in which Democrats embraced a states’ rights legal argument, and Republicans favored an equal protection argument.

43 The interests of the Democratic and Republican Parties were ideologically inconsistent in 22.91% (N=93) of campaign finance case votes, 54.02% (N=47) of political party right to association case votes, and 24.69% (N=79) of redistricting case votes. These statistics exclude observations that only involve a non-partisan interest group or a third party.
as discussed in the above. While policy preferences are important in explaining, predicting, and motivating judicial behavior, relying exclusively on policy preferences may only tell part of the story. As Baum (2006, 32) notes:

In each of the dominant models of judicial behavior, judges are social isolates….This depiction of judges is unrealistic, in that few people are so removed from their social environment. If judges are like other people, they care about the regard in which they are held for its own sake. In turn, their interest in the esteem of others can be expected to influence their work as judges.

If this is the case, then judges should care how salient social groups perceive their judicial behavior. Baum’s argument is based largely on social identity theory. This theory emphasizes the importance of group membership and attachment as part of an individual’s self-conception.44 If an individual views herself as part of a group and values that group membership, she will seek outcomes and behave in ways that will provide her in-group a benefit, or at the very least an individual will not behave in a way that harms her in-group. It should follow that if a judge views herself as a Democrat or Republican, and her partisan attachment is personally salient, that judge will seek to

44 Social identity theory was developed by Henri Tajfel and John C. Turner (See Tajfel and Turner 1979; Tajfel 1981). Tajfel defines social identity as “that part of the individual’s self-concept which derives from his knowledge of his membership of a social group (or groups) together with the value and emotional significance attached to that membership” (1981, 251). Marilynn Brewer (2001) notes that there are varying definitions for social identity depending on one’s academic discipline and framework. However, for the purpose of this dissertation, the definition advanced by Tajfel is sufficient.
benefit her political party’s interests. Of course, this assumes that political party affiliations operate as a social identity.\textsuperscript{45}

There is evidence suggesting that partisan attachments can and do function as a social identity for members of the public (Green et al. 2002; Greene 2002; 2004). For years, scholars have noted that party affiliations develop in early adulthood and are subject to parental partisan attachments (e.g., Baker 1974; Iyengar 1978; Jennings and Niemi 1968; Knoke 1972; Tedin 1974; Tedin 1980). This supports the notion of a political identity being passed down from one generation to the next. Green et al. (2002, 6) liken the development of a young adult’s partisan identity to the development of a religious identity because both are “acquired early in life as a product of one’s family environment or early adult socialization. As a member of a religion, one is indoctrinated into that religion’s precepts, much as partisans learn the slogans and nostrums of their party.” If one assumes that the argument presented by Green et al. is accurate, then there is very good reason to believe that partisanship is an enduring group attachment that could mirror that of a religious attachment, or any other social attachments that young adults acquire.\textsuperscript{46}

Baum (2006, 126-128) also argues that political parities can act as an important social in-group, particularly for judges. Both state and federal judges have been known

\textsuperscript{45} Most conceptions of partisan affiliation are not based on social identity theory. I will not go into much detail on this issue, but under a Downsian framework (Downs 1957), partisan affiliations are determined by evaluating which political party most closely resembles an individual’s political preferences. To cite another example, Morris Fiorina (1981) argues that partisan allegiances are the result of retrospective evaluations of party performance.

\textsuperscript{46} The argument presented by Green et al. is not without its critics (e.g., Abramowitz and Saunders 2006) who argue that ideological considerations, not social identity, are the main reasons why people gravitate toward a political party. However, my purpose in presenting social identity as a theoretical explanation for partisan decision-making is not to say that social identity is the motivating factor, but rather it is one of many possible motivating factors that explains why partisan decision-making could occur among judges.
to exhibit partisan favoritism when evaluating politically salient cases. At the federal level, Baum cites the criminal appellate cases of Oliver North (*United States v. North*, 910 F.2d 843, 1990) and Lyn Nofziger (*United States v. Nofziger*, 278 U.S.App.D.C. 340, 1989) as examples where partisan preferences may have outweighed a judge’s policy preferences. Both of these cases involved former Reagan administration officials charged with felonies. All things being equal, liberal judges are more likely to favor the defendant in a criminal case as compared to their conservative colleagues. Yet, in both of these cases, conservative Republican judges voted to overturn the defendants’ convictions, while liberal Democratic judges voted to affirm the convictions. On the surface, it appears that partisanship was a motivating factor in determining the judges’ case votes. In other words, for these cases a judge’s preference for members of their political party (attitude object) outweighed their policy preferences in regard to criminal cases (attitude situation). Such behavior could be classified as low politics.

While it may appear that judges act consciously when ruling in favor of their political party’s interests, attachments to a preferred social in-group could result in subconscious bias in the decision-making process. Early studies of mass political behavior, such as *The American Voter*, recognized that partisan attachments act as a lens through which an individual perceives political events and information, thus causing a “perceptual distortion” (Campbell et al. 1960, 133). Although there has been some debate as to whether judges think like, and cognitively resemble, the average member of
society, judges are human beings who are subject to the same cognitive defects as any other person.

One cognitive bias that may affect the decision-making process is motivated reasoning (Kunda 1990). Motivated reasoning takes places when “accuracy” goals outweigh an individual’s “directional” goals (i.e., biases for a certain outcome) in the decision-making process. Segal and Spaeth (2002, 433) note that judges’ behavior may be influenced when presented with arguments that support their policy preferences. This should particularly be true in regard to the Supreme Court, where the issues of law that the justices confront are often vague and/or ambiguous. Research has already shown that individuals acting as ballot counters in a disputed election will view ambiguously marked ballots as favoring their preferred political candidate when given ambiguous ballot counting guidelines (Kopko et al. 2009). It is not unreasonable to expect that judges presented with ambiguous laws, in which a correct legal outcome is seemingly subjective, will reach a conclusion that favors the interest of a salient social in-group.

Another form of subconscious bias that could affect judicial behavior is confirmation bias (see Klein 2007, 8). For example, if a judge believes that the arguments of a given litigant are likely to have legal merit before hearing the legal arguments, the judge might give too much weight to that litigant’s position, and too little weight to the opposing litigant’s arguments. Given that confirmation biases exist among the general public (e.g., Taber and Lodge 2006), one can reasonably expect that judges are also subject to this same bias. In light of Klein’s example, one can imagine a similar

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47 For example, Frederick Schauer (2007) discussed the potential differences between judges and laypersons in the decision-making process.
type of bias that occurs when a political party, or a litigant representing the interests of a political party, appears before a court. A judge may give too much weight to the arguments advanced by his own political party, or give too little weight to the arguments of the opposing political party. Here, an attitude object significantly influences how a judge considers the attitude situation, and thereby influences the judge’s case vote. Thus, there are several psychological explanations as to why a judge may favor their political party in election law cases, even when their political party favors an outcome that is contrary to their legal policy preferences.

Partisanship in Election Law

While the above provides theoretical justification for a judge’s political party influencing case votes in election law cases, it does not provide strong evidence to support that judges actually behave in a partisan manner when deciding election law cases. In addition to Bush v. Gore, there are other anecdotal examples at both the state and federal level to suggest that a judge’s attachment to their political party affects the decision-making process. For example, in 2005, California voters considered Proposition 77, a ballot initiative that would deprive the Democratic-controlled State Assembly of its redistricting powers, and instead establish a three-member panel of retired judges to redraw California’s legislative and congressional districts. It was thought that Republicans could have stood a better chance of gaining seats in the state legislature and Congress if Democrats no longer controlled the redistricting process. Opponents of Proposition 77 sought to remove the initiative from the November ballot, citing an error
in the wording of the proposition.\(^{48}\) After a state trial court ruled that the initiative should not appear on the November ballot, a split decision by the court of appeals affirmed; the two judges in the majority were both Democrats, and the dissenting judge was a Republican. On appeal, the California Supreme Court stayed the lower court decision and ordered the proposition on the November ballot.\(^{49}\) The majority that issued the stay consisted entirely of Republicans.\(^{50}\) Did partisanship influence the decisions of the majority? One cannot say for certain. It is difficult to determine if there is an ideological dimension to the legal issue that California Supreme Court had to confront: whether inconsistent wording in Proposition 77 should result in its removal from the ballot. As a result, it is unknown if a justice’s policy preferences were the primary motivation of judicial behavior in this case. Nonetheless, it is curious that the majority favored the outcome preferred by their own political party.

In Illinois, there is evidence that a Democratic member of the state supreme court, Justice Joseph F. Cunningham, switched his vote in a redistricting case\(^{51}\) in 1991 to obtain instrumental benefits from a political party. Illinois Republicans favored the redistricting plan under review by the Illinois Supreme Court, yet Cunningham broke with his Democratic colleagues and voted with the Republican justices in a 4-3 decision upholding the redistricting plan. A few years later, a dissenting opinion speculated why Cunningham voted with the court’s Republican members – Cunningham intended to

\(^{48}\) See Lowenstein, Hasen, and Tokaji (2007, 38-39) for discussion on legal challenges to Proposition 77.


\(^{50}\) One Republican appointee, Justice Joyce Kennard, joined Justice Carlos Moreno, a Democratic appointee, to deny the stay of the lower court’s decision.

\(^{51}\) See *People ex rel Burris v. Ryan*, 588 N.E.2d 1023 (Ill. 1991).
switch political parties and run as a Republican for the state supreme court in 1992 (Williams 1998, 285-287; see also Note 2001, 888-890). Although Cunningham did not appear on the 1992 ballot for the state supreme court, he may have intended to run at the time he ruled in the redistricting case. Therefore, Justice Cunningham had a compelling incentive to support the interests of the Republican Party.

Perhaps the appearance of partisanship among judges is not surprising given that partisan interests often shape the formulation of election law. Since the passage of the Help America Vote Act in 2002, state legislatures have enacted a multitude of election reform measures, although Democrats and Republicans often disagree over the proper reform policies (Tokaji 2005, 1207; 2006, 689, 695; Hasen 2007b, 18-20; Elmendorf 2008, 6). It is probable that partisan electoral advantage was the motivation for some of these reforms (Hasen 2007b, 15). One of the most controversial reform measures is the requirement of voter identification to cast an in-person ballot. Republican officials generally favor voter ID laws as a means to deter in-person voter fraud. Democrats typically argue that voter ID laws cause more problems than they solve because these laws disenfranchise otherwise eligible voters who cannot produce the proper identification on Election Day. Voter ID laws are thought to disadvantage the Democratic Party because those individuals who are most likely to lack the proper identification are minority and impoverished voters, and these voters usually support Democratic candidates. Additionally, every state voter ID law enacted between 2000 and 2007 has largely passed along party lines (Hasen 2007a, 2).

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52 See Justice Moses W. Harrison II’s dissent in People ex rel Burris v. Ryan, 634 N.E.2d 1067 (Ill. 1994).
The partisan divide over voter ID laws also appears in both state and federal courts. For example, when the Michigan Supreme Court considered the validity of the state’s voter ID law, the five Republican justices voted to uphold the law, while the two Democratic members voted to overturn it. In 2008, the U.S. Supreme Court considered a facial challenge to Indiana’s voter ID requirement in *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008). Although the Supreme Court did not decide the case along party lines, there was a partisan split when the Seventh Circuit Court of Appeals decided *Crawford*; the two Republican appointees voted to uphold the Indiana law, while the Democratic appointee voted to overturn (Hasen 2007a, 15; 2007b, 42). The dissenting judge, Terence Evans, explicitly noted in his opinion the partisan interests presented in *Crawford*: “The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic” (Hasen 2007b, 42). These instances of partisan voting by judges are not exceptional. Elmendorf (2008, 7) reviewed numerous voter ID cases decided between 2005 and 2007 and found that Democratic and Republican judges usually voted in a manner that was consistent with their political party’s interests. Specifically, Democratic judges voted against photo ID requirements fourteen times, and in their favor three times. Republican judges voted against photo ID laws three times, and in their favor fifteen times.

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54 The Indiana Democratic Party was one of the petitioners in this case arguing against Indiana’s voter ID law.
56 *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007).
57 *Crawford*, 472 F.3d at 954 (7th Cir. 2007).
Given these examples where a judge’s attachment to a political party could have influenced the decision-making process, it is not unreasonable to assume that judges deciding other types of election law cases will be influenced by a conscious or subconscious attachment to their political party. In fact, as I discuss in the next section, there is some empirical evidence to suggest that judges are influenced by the interests of their political party.

**Empirical Studies of Judicial Partisanship**

In addition to the anecdotal evidence of partisanship in the context of election law judicial decision-making, there are a limited number of empirical studies that examine this same topic. This dissertation treats the influence of partisan attachment/affiliation differently than most other studies of judicial behavior that focus on this same independent variable. Many studies of judicial behavior examine the differences in case votes between Democratic and Republican judges (e.g., Adamany 1969; Brace and Hall 1995, 1997; Goldman 1966; Hall and Brace 1994, 1996; Nagel 1961; Pinello, 1999; Smith 1990; Sunstein et al. 2006; Ulmer 1962). While these studies have examined various aspects of judicial behavior, they all provide evidence that Democratic and Republican judges tend to behave differently; Democratic judges tend to be more liberal than their Republican counterparts. However, these studies were not concerned with partisanship among judges as I am defining the term in this dissertation. There studies were more concerned with differences in case decisions between Democratic and Republican judges, which essentially amounts to an examination of ideological
differences between Democrats and Republicans. While understanding the differences between Democratic and Republican judges is important, these studies do not address whether a partisan attachment compels a judge to favor her political party’s interests.

Only a few empirical studies explicitly examine the relationship between a judge’s case vote and the interests of their political party. The first of these studies is Lloyd’s (1995) analysis of reapportionment cases in the U.S. district courts between 1964 and 1983. Lloyd found that a judge’s party affiliation influenced their case votes when deciding the constitutionality of redistricting plans. Specifically, when one political party controlled the reapportionment process in a state legislature, judges who shared the party affiliation of the majority party in the legislature struck down contested reapportionment plans at a lower rate compared to instances where the judge’s party affiliation differed from the legislature. In other words, if a Democratic judge, for example, reviewed a reapportionment plan submitted by a Democratic-controlled state legislature, the judge was less likely to rule against the plan compared to those plans submitted by a Republican-controlled state legislature. Although judges were likely to strike down any challenged reapportionment plan submitted by a state legislature controlled by a single political party, Lloyd’s findings suggest that judges were less inclined to rule against their own political party’s interests.

Cox and Katz (2002) noted similar behavior when examining redistricting cases between 1964 and 1970. They found that a reapportionment plan reviewed by a “friendly court” – that is, a court with the same partisan composition as the majority party in the state legislature – was more likely to be upheld than if the plan was reviewed by a “hostile court.” In exploring the substantive effects of a friendly court, Cox and Katz
estimated that if a court reviewed a plan with a 12.8% maximum population deviation, there would be a 0.75 probability that such a plan would be upheld by a friendly court, but only a 0.35 probability that the same plan would be upheld by a hostile court (Ibid., 80).

Using an updated sample of U.S. district court reapportionment cases between 1981 and 2006, McKenzie (2007; see also McKenzie 2004; 2006) echoes the findings advanced by Lloyd (1995). McKenzie argues that judges are “constrained partisans” in the sense that they are “constrained by the law and institutional norms of the lower federal courts” (114). Ultimately, McKenzie finds that:

Judges do not necessarily favor their own party’s plans in court cases anymore than they do plans created by both parties under divided government. But, when a federal judge reviews a redistricting plan drawn up by a different party, and where the judge’s own party is the victim of partisan line-drawing, she will be more attuned to issues of unfairness in the process (ix).

In addition to these studies, Cox and Miles (2008) examined the role of partisan preferences among judges ruling on Voting Rights Act § 2 claims since 1982. In their empirical model, a judge’s partisan affiliation is used both as a measure of ideology and partisan preference. Liberal judges tend to receive appointments from Democratic presidents, while conservative judges tend to receive appointments from Republican presidents. Because there is a liberal/conservative divide over support for minority voting rights claims (liberal judges are more likely to favor these claims than conservative judges), this often translates to a partisan divide as well. When a judge rules in favor of a
plaintiff in a § 2 vote dilution claim, this usually benefits the electoral interests of the Democratic Party because minority voters often support Democratic candidates (Ibid., 19). As such, a judge may perceive a partisan electoral interest in the outcome of a § 2 case. Cox and Miles found a statistically significant relationship between the partisan affiliation of a federal judge and case votes in § 2 cases. Republican judges imposed liability in 21.2% of cases, while Democrats imposed liability in 36.2% of cases (Ibid., 21).

Several scholars have also studied partisanship among judges in the state courts. For example, Williams (1998) examined the influence of partisan interests in a limited number of cases that came before the Illinois Supreme Court between 1980 and the early 1990s. In each of the cases examined, both political parties had a stake in the outcome of the case, and due to the circumstances of the cases, Williams argued that the influence of ideological considerations on case votes was minimal. Williams used a chi-square test to determine if there are any significant case vote differences between Democratic and Republican justices of the state supreme court and found that the justices voted overwhelmingly along party lines in these cases. Although this is prima facie evidence of partisanship on the part of state judges, one must use caution when drawing

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58 In total, Williams examines four state supreme court cases – Rock v. Thompson, 426 N.E. 2d 891 (Ill. 1981), involving a writ of mandamus that would allow Democrats to elect the president of the Illinois Senate; In Re Contest of Election for Governor, 444 N.E. 2d 170 (Ill. 1983), regarding the contested gubernatorial election between Governor James R. Thompson and Adlai E. Stevenson III; Reed v. Norman, No. 70833 (unpublished order, Oct. 12, 1990), involving third-party ballot access that would increase competition for Democratic votes; People ex rel Burris v. Ryan, 588 N.E. 2d 1023 (Ill. 1991, follow-up case citations omitted), regarding state legislative redistricting plans. It should be noted that People ex rel Burris v. Ryan was litigated in the Illinois Supreme Court three separate times because of changes in a redistricting plan. Using each justice’s case vote as an observation for his analysis, total sample size is 42.

59 Of the 42 case votes, there were only two occasions where a Democratic justice voted in favor of the Republican Party’s interests, the other 20 case votes cast by Democratic justices favored the interests of the Democratic Party. As for the 20 case votes cast by Republican justices, every case vote favored the interests of the Republican Party.
conclusions from these results. The small sample size makes the generalizability of the results quite difficult, especially given that all four cases involved different issue areas of law, and only three specifically pertain to election law issues.

In a recent conference paper, McKenzie (2010) examined case votes of state supreme court justices who decided redistricting cases. McKenzie presented two models to predict when a judge would vote to uphold/strike down a districting plan. The second model is more relevant to this dissertation. In this model iteration, McKenzie controlled for a justice’s ideology by including Brace, Langer, and Hall’s (2000) PAJID measure. In this model, McKenzie reports a statistically significant partisanship effect. Specifically, when a judge heard a redistricting case where the opposite political party enacted the districting plan, the judge was likely to rule against the districting scheme. However, McKenzie acknowledged some potential problems with this model, including possible multicollinearity between the PAJID variable and state methods used to select judges (Ibid., 15-16). Nonetheless, this study suggests that in state courts, partisanship may independently influence judicial behavior.

Graves (2003) examined partisan favoritism in ballot access cases filed in state courts of last resort during the mid 1990s. He found that state supreme court justices were less likely to extend ballot access when the justice shared the same party affiliation as the party that controlled the majority of state government, but this relationship was contingent on the state’s method of judicial selection. State supreme court justices who

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60 Unfortunately, there is not yet a measure of judicial policy preference for state judges that is independent of partisan affiliation. Even the most prominent measure of state judge ideology, the PAJID measure, takes into account a judge’s partisan affiliation to derive an ideology score (see Brace, Langer, Hall 2000, 397-398). Until scholars create a measure of state court ideology that is independent of partisan preferences, it will be difficult to identify instances where partisan preferences motivate judicial behavior.
were selected by gubernatorial/legislative appointment or those selected through non-partisan elections were likely to display partisan behavior, although justices selected through partisan elections did not have a statistically significant relationship between party affiliation and judicial decision. Graves explained that expanded ballot access is detrimental to the controlling party in state government because state officials are usually the litigants seeking to limit ballot access for a given candidate. Using this logic, Graves argued that ballot access cases involve partisan interests, and then justifies the lack of a partisan effect in partisan election systems by concluding that “the popular association of judges with parties resulting from partisan elections puts pressure on justices to avoid votes that appear too favorable to their own party label” (280).

My previous research has also focused on partisanship in state courts (Kopko 2008). Specifically, I examined Ralph Nader’s ballot access cases in the context of the 2004 presidential election. Even though these cases were highly politicized – Democrats fought to keep Nader off the ballot in many states to prevent him from siphoning votes from John Kerry, while Republicans actively aided in Nader’s efforts to gain ballot access – judges who ruled in these cases were not affected by partisan considerations. Although I concluded that partisanship was not a systematic influence on decision-making, there was anecdotal evidence to suggest that at least one judge ruled in a partisan manner.61

Taking all of the above into account, there is empirical and anecdotal evidence to

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61 Specifically, Judge Wendy York of the New Mexico District Court donated $1,000 to John Kerry’s presidential campaign, and then ruled on Nader’s ballot access petition. After Nader campaign officials and members of the Republican Party discovered this conflict of interest, she withdrew her decision in the case.
suggest that partisan attachments influence judicial behavior. However, none of these studies explicitly control for the policy preferences of judges in their analyses. Lloyd (1995) incorporates a measure of population inequalities in his analysis, which acts as an indirect control for legal policy preferences, and Williams (1998) selects specific court cases to minimize the influence of legal policy preferences. In both my study and Graves’s (2003) study, ballot access cases do not seem to have a clear ideological dimension, at least at the state level. Also, there is no clear theoretical justification why conservative and liberal judges would be predisposed to rule in a certain manner for this particular type of election law case. As such, ballot access cases seem more technical rather than ideological in nature, and therefore accounting for policy preferences does not appear practical. However, in other areas of election law, particularly those cases that are the subject of this dissertation, controlling for legal policy preferences will be of great importance in determining the effect of partisan interests in the judicial decision-making process.

Hypotheses and Motivations for Partisan Case Votes

The primary hypothesis this dissertation seeks to test is whether partisan considerations influence the case votes of federal judges deciding election law cases. More specifically:

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62 The logic goes that the greater the population inequalities, the more likely a liberal judge is to strike down the proposed reapportionment plan. Thus, by accounting for this case factor, Lloyd indirectly controls for a judge’s policy preference.
**H1:** There is a relationship between the case outcome interest of a judge’s political party and the judge’s case vote in a given election law case.

I posit that a judge will be more likely to favor the plaintiff/defendant in an election law case when the judge’s political party favors the plaintiff/defendant securing a legal victory.

The attachment a judge feels for her political party is psychological in nature. As such, it is important to account for other factors that may moderate this psychological attachment to a political party. A career history of involvement with a political party may be one such factor that moderates this relationship. It is possible that judges who previously served as an elected official, party leader, or political staffer would have a stronger psychological attachment to a political party as compared to judges without this experience. Presumably, if a judge had some sort of political experience, she would have been more heavily involved in partisan politics, and therefore more likely to have a psychological attachment to a political party. A stronger attachment to a political party should result in judges being more sensitive to the interests of their political party when deciding election law cases. Therefore, I posit the following:

**H2:** Judges who served in a political position (e.g., elected office, political party leadership, or political staff member) at some point in their career will be more likely to rule in favor of their political party.63

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63 I do not include service as a state court judge obtained via partisan election. I exclude this type of political service for several reasons. First, service as a judge is fundamentally different than serving in other political capacities, and therefore treating judicial service like other political service is inappropriate. Second, the extent of partisan involvement as a state judge can vary from state to state, and in some states that employ non-partisan elections, political parties can also have a large role in the recruitment and election of judges (see Streb 2007 for a discussion of political party involvement in partisan election and non-partisan election states). I also conducted an additional analysis that mirrors the models presented in Chapter 3, and the results were not substantively different if 1) service as a state judge in a partisan election state is considered as part of regular political service, or 2) I include service as a state judge in a partisan election state as a separate independent variable.
As noted in the above, there are a number of valid reasons why judges may favor their political in-group or disfavor an out-group in the decision-making process. Most of these reasons stem from a psychological perspective of behavior. In addition to psychological motivations, there are also instrumental reasons why a judge might favor the interests of her political party. Specifically, a judge may gain political benefits by deciding a case in a partisan manner. As Baum (2006, 39) notes, “Of the possible instrumental motives, the most powerful is probably judges’ interest in advancing their career goals.” One important career goal may be promotion to a higher court. Although the likelihood of promotion from the district court to the court of appeals or from the court of appeals to the Supreme Court is small (see Fournet et al. 2009, 73), it is possible that judges will decide cases in a way that will increase their chances of promotion.

Studies of constitutional challenges to the federal sentencing guidelines have found that a judge’s promotion potential influenced judicial behavior in these cases (Cohen 1991; Morriss, Heise, and Sisk 2005; Sisk, Heise, and Morriss 1998). \(^{64}\) One such characteristic that could affect promotion is a judge’s age. It may be the case that younger judges have an incentive to rule in favor of their political party’s interests in hopes that their partisan loyalty will be rewarded in the future. As a judge becomes older, she may believe it is less likely that a political party will aid her in securing a higher judicial position or retaining her current judgeship. Therefore, she may not concern herself with pleasing her political party. As a result, younger judges may be more likely to show partisan favoritism due to the potential for career advancement. However, it is also possible that

\(^{64}\) Other studies have also addressed judges as utility maximizer in regard to promotion potential (see Cohen 1992; Taha 2004).
older judges will be more likely to rule in a partisan manner. Over the years, one might expect judges to develop a sense of loyalty to their political party, thereby increasing the likelihood of ruling in their party’s favor. Behavior of this kind is consistent with social identity theory. One could assume that the longer an individual associates with a group or organization, the more likely she is to internalize that membership as part of her self-conception. Because a judge associated with a political party for a longer period of time, the judge’s party will be more firmly rooted as part of the judge’s self-conception. Given these considerations, I posit:

**H3**: A judge’s age will affect the likelihood of ruling for her political party.

Because there are theoretical reasons why older and younger judges could be influenced by partisan considerations in the decision-making process, I will not posit a direction for this particular hypothesis.

The above provides possible psychological and instrumental motivations for partisanship in the decision-making process. However, there are also institutional factors that might suppress or limit the ability of a judge to favor one’s political party. The institutional differences between trial courts and appellate courts could affect a judge’s ability to behave in a partisan manner. Trial courts, unlike appellate courts, are courts that determine matters of fact. Although there are times when trial courts do have some law-making abilities – in the election law context this usually occurs in three-judge U.S. district court panels or when reviewing appeals from a Federal Election Commission ruling – appellate courts are the primary law-making courts. As such, trial courts could be constrained in their abilities to exercise discretion in the decision-making process,
while appellate courts will have a greater opportunity to allow partisanship to influence their decisions. Admittedly, the reverse may be true. Because trial courts are finders of fact, they may have broad discretion in determining the facts of a case, which ultimately affects the case’s final disposition. Thus, it is just as likely that judges serving on a trial court will be more susceptible to partisan influence. Therefore, I posit the following:

**H4:** Court membership (trial court versus appellate court) will affect a judge’s likelihood of ruling for her political party.65

Again, due to the theoretical reasons why trial court versus appellate court judges could be influenced by partisan considerations in the decision-making process, I will not posit a direction for this particular hypothesis.

Additionally, panel heterogeneity may affect partisanship in the decision-making process. In their study of U.S. court of appeals decisions in employment discrimination cases, Farhang and Wawro (2004) found that panel decisions differed significantly when at least one female judge was part of the panel.66 The authors argue that the unique perspectives of a female judge influence the legal reasoning of her male colleagues in the decision-making process. Similarly, research on group-think has shown that a lack of diverse opinions can result in outcomes that are different than if heterogeneous opinions are presented (see Janis 1972; 1982). Thus, one should expect the same outcomes for multi-judge panels; heterogeneous panels will lead to decisions that are different than homogenous panels. Frank Cross (2007) supports the argument that “collegiality plays

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65 As I discuss in Chapter 3, I only test this hypothesis for campaign finance and political party right to association cases. Because the vast majority of redistricting cases are decided by a three-judge district court consisting of district court and court of appeals judges, testing this hypothesis in this subset of cases does not seem prudent.

66 Similar panel effects were confirmed in Boyd, Epstein, and Martin (2010).
an important part in mitigating the role of partisan politics and personal ideology by allowing judges of differing perspectives and philosophies to communicate with, listen to, and ultimately influence one another in constructive and law-abiding ways. Tiller and Cross (1999) have even suggested that all court of appeals panels could be improved by modifying the random assignment of judges so that no more than two judges from the same political party could sit on a given panel. Sunstein et al. (2006) have made similar arguments. After examining panels of U.S. court of appeals judges, they concluded that politically homogeneous panels tend to render more extreme decisions, as compared to politically heterogeneous panels. Sunstein et al. then follow Tiller and Cross (1999) in suggesting ideological diversity of court panels as a means to arrive at less polarized, and presumably better, case decisions. As such, placing one or more judges of an opposing political party affiliation on multi-judge panels should have implications for case votes. Specifically, I posit the following:

**H5:** Politically heterogeneous panels will diminish the effect of partisan considerations on case votes.

Taken as a whole, there is good reason to suspect that a judge’s partisan attachments will influence her case vote, after controlling for her policy preferences. Furthermore, there are psychological, instrumental, and institutional factors that could moderate the relationship between partisan attachment and case votes.

In the next chapter, I present two models to test the hypotheses detailed in the above, and then I proceed to estimate these models in Chapter 4.

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68 For reasons that I explain in Chapter 3, I only examine panel effects for redistricting cases.
CHAPTER 3: RESEARCH DESIGN

This chapter discusses the research design and methods employed to test the hypotheses advanced in Chapter 2 for three types of election law cases: campaign finance, political party right to association, and redistricting cases. The first section of this chapter provides an overview of the two empirical models of judicial behavior that I estimate in Chapter 4. Within this section, I also address the measurement of the dependent and independent variables used in both of these models. Then, I describe the types of cases used in this dissertation and how the three categories of election law cases were selected for analysis. The Chapter Appendices provide detailed information on the estimation of judicial policy preferences as independent variables, and the methods used to collect case information using the Westlaw online database.

Models of Election Law Decision-Making

To test the hypotheses presented in Chapter 2, I estimate two models of judicial behavior. The first model is what I have termed the “case outcome model,” which tests Hypothesis 1. The second model is the “partisan favoritism model,” which tests Hypotheses 2 through 5. For ease of presentation, I address each of these models and their variable measurements in turn.
The Case Outcome Model

The dependent variable in the case outcome model is a judge’s case vote on a given legal issue in an election law case. Per Hypothesis 1, this model tests whether the interests of a judge’s political party affect case votes, after controlling for a judge’s policy preferences. The full version of the model is formally represented as:

\[
\text{Case Vote} = \beta_0 + \beta_1 \text{Party Interest} + \beta_2 \text{Epstein CS} + \beta_3 \text{JCS1} + \beta_4 \text{JCS2} + \beta_5 \text{Previous Court Decision} + \epsilon
\]

The coding rules for each of the variables in the case outcome model are listed in Table 3.1.

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For both the case outcome and partisan favoritism models I estimate five different variations of these models, which include and exclude the three measures of judicial policy preferences that I discuss later in this chapter and in Appendix B. The “full version” of each model includes all three measures of judicial policy preference.
<table>
<thead>
<tr>
<th>Case Outcome Variables</th>
<th>Coding Rules</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent Variable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case Vote</td>
<td>0 = Defendant; 1 = Plaintiff</td>
<td>Westlaw Court Records</td>
</tr>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Party Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Trichotomous)</td>
<td>-1 = Defendant; 0 = No Interest; 1 = Plaintiff</td>
<td>Westlaw Court Records</td>
</tr>
<tr>
<td>Party Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Dichotomous)</td>
<td>0 = Defendant; 1 = Plaintiff</td>
<td>Westlaw Court Records</td>
</tr>
<tr>
<td>Epstein CS</td>
<td>-1 = Liberal; 1 = Conservative (Continuous Variable)</td>
<td>Epstein et al. (2007)</td>
</tr>
<tr>
<td>JCS 1</td>
<td>-1 = Liberal; 1 = Conservative (Continuous Variable)</td>
<td>Common Space Model #1 (See Appendix B)</td>
</tr>
<tr>
<td>JCS 2</td>
<td>-1 = Conservative; 1 = Liberal (Continuous Variable)</td>
<td>Common Space Model #2 (See Appendix B)</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>-1 = Defendant; 0 = No Decision; 1 = Plaintiff</td>
<td>Westlaw Court Records</td>
</tr>
</tbody>
</table>

Table 3.1: Variable Codes – Case Outcome Model

As noted in Table 3.1, The *Party Interest* variable is used as both a trichotomous and dichotomous variable in the case outcome model. The dichotomous variable of *Party Interest* excludes the middle category of cases included in the trichotomous coding. The dropped category includes cases where a third-party or non-partisan interest group is the sole litigant, and cases in which Democrats and Republicans are co-litigants/amici and support the same case outcome (i.e., cases where Democrats and Republicans share an interest in the same case outcome). Including cases that do not involve a clear partisan interest, or cases that have a joint partisan interest, has the benefit of increasing the number of observations for the statistical analysis. However, some may question the usefulness of this category or the value of treating cases in which both Democrats and
Republicans support the same outcome. It is for this reason that I have recoded Party Interest as a dichotomous variable for use in a separate statistical analysis. This additional analysis will allow me to test the influence of partisan interests only in those cases that involve a clear stake for the Democratic and Republican Parties, when those parties have opposing case interests. I posit a directional effect regarding Hypothesis 1 – if a judge’s political party favors the plaintiff/defendant in a case, the judge will be more likely to vote in favor of the plaintiff/defendant. Thus, if the Party Interest variable is positively signed and statistically significant at the \( p \leq 0.05 \) level, using a one-tailed test, then this will be sufficient evidence to reject the null of Hypothesis 1.

To determine if a case involves the interest of the political parties, I refer to all available court records provided by Westlaw to ascertain the partisan affiliation of the litigants involved in the case. A case involves partisan interests if a litigant is one of the major political parties, an endorsed candidate of one of the major political parties, the campaign committee or other relevant representative for an endorsed candidate (e.g., campaign treasurer, campaign manager, etc.), or unified government in redistricting cases. Additionally, if a political party files an *amicus curiae* brief on behalf of a litigant, I treat *amicus* participation as a proxy for involvement as a litigant.

For the purpose of determining partisan interest in a case, I assume that what is a beneficial outcome for one major political party is detrimental for the opposing major

\[\text{\textsuperscript{70}}\text{A one-tailed significance test is appropriate because I posit a directional effect.}\]

\[\text{\textsuperscript{71}}\text{A few redistricting cases involved a unified state legislature overriding the veto of a governor of the opposite political party. In these situations, I considered the position of the unified legislature as a proxy for the majority political party’s interests. Additionally, I code plans created by non-partisan/bipartisan districting commissions as if they were enacted under divided government.}\]
party, and vice versa. For example, consider a hypothetical case in which a Democratic-controlled state legislature produces a gerrymandered districting plan and voters of that state file suit over the plan in federal court. If a Republican judge hears the case, under my coding rules, the voters serve as a proxy for the Republican Party’s interests because they are challenging a Democratic districting plan. Thus, a Republican judge hearing this case, in accordance with my primary hypothesis, should be likely to rule in favor of the plaintiff voters. Additionally, consider a hypothetical political party right to association case in which a disgruntled party member files suit against the Republican Party for failure to allow him to participate in candidate forum. In this case, the Democratic Party has an interest in a ruling for the disgruntled plaintiff because the Republican Party is the defendant and the party does no want to permit the disgruntled party member to participate in the candidate forum. Furthermore, for the purpose of coding Party Interest I assume that a judge shares the same partisan affiliation as the appointing president.

I concede that some may view this to be controversial because both major parties could benefit from a legal decision that only directly affects one major political party. For example, consider a hypothetical campaign finance case in which the Republican Party successfully challenges a campaign finance regulation. Although Republicans now have the ability to receive more money for electoral purposes, so do Democrats and other political parties. A similar type of benefit could even be gained through right to association cases – an associational right for one party is equally applicable to another political party. While there may be some benefit to be gained by other political parties not directly involved in the litigation, it seems that the party acting as a named litigant has the most to gain from a favorable court ruling, otherwise it makes little sense for the political party to bring legal action. Because of this, the operationalization of the Party Interest variable should not pose significant problems for the purpose of my analysis.

If a judge was appointed to multiple positions in the federal judiciary by presidents of opposing political parties, I code Party Interest based on the partisan affiliation of the most recent appointing president at the time the case was decided. Undoubtedly, this coding practice introduces some unsystematic bias in my models because I am unable to code a judge’s true partisan affiliation. For judges who received only one appointment in the federal judiciary, there are likely some unobserved instances where a judge’s partisan allegiances may change over time, or a judge does not share the same party affiliation as the appointing president. While this may seem problematic, this bias should work against a statistically significant Party
The case outcome model also includes several control variables that account for other influences on the decision-making process in a given election law case. The first set of control variables accounts for a judge’s policy preferences. I include three measures of a judge’s policy preferences in the full version of the case outcome model – two measures of first dimension policy preferences and another variable that measures second dimension preferences. The first dimension policy preference variables (i.e., common space scores) are continuous and range from -1 to 1, where negative values represent a liberal policy preference and positive values represent a conservative policy preference. The second dimension policy preference variables are identical in all respects, except negative values represent a conservative policy preference and positive number represent a liberal policy preference.74 The three measures of policy preference include Epstein et al.’s (2007) Judicial Common Space Scores (denoted as the variable Epstein CS),75 and two new first and second dimension measures of policy preferences that I have developed (JCS1 and JCS2, respectively).76 JCS1 and JCS2, like the Epstein et al. measures, are independent of partisan affiliation, and therefore independent of partisan preferences. To create these measures of policy preference, I use a bridging sample technique much like Nixon (2005) to impute common space scores for all federal judges in my dataset. Essentially, I use all federal judges who have also served in Congress since 1960 as a bridging sample, and after using an OLS regression equation to

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74 Chapter Appendix B provides a detailed discussion of the second-dimension policy preference scores and my justification for interpreting positive values with a liberal policy preference.

75 The Epstein et al. (2007) scores are an extension of the Giles, Hettinger, and Peppers (2001) common space scores.

76 I include both first and second dimension measures of policy preference in the full version of the empirical models to ensure that I adequately control for policy preferences.
predict their policy preferences, I use the coefficients from the regression model to impute common space scores for all federal judges in my dataset who did not serve in Congress. Appendix B provides a thorough discussion of the measurement of judicial policy preferences in the political science literature and how I imputed policy preference scores for judges in my dataset.

The directional influence of policy preferences on the dependent variable should vary depending on the issue area of election law. Even within each category of election law the directional influence of policy preference can vary depending on the nature of the legal dispute. As a result, I scale all common space scores in the case outcome model, contingent upon the outcome advocated by the litigants, to ensure that the directional influences are consistent. In the “Data” section of this chapter, I discuss which case outcomes I consider liberal/conservative for the purpose of estimating the case outcome model.

The last control variable included in the case outcome model is Previous Court Decision. This is a trichotomous variable that measures whether a lower court, or the F.E.C. in campaign finance cases, previously ruled in favor of the plaintiff/defendant in regard to a pending legal issue before a given court.\footnote{The variable accounts for specific legal issues within a court case, consistent with my unit of analysis as I discuss in the “Data” section of this chapter.} In redistricting cases, this variable accounts for previous decisions of a three-judge district court regarding the pending legal dispute, or remands from the U.S. Supreme Court. \textit{Ceteris paribus}, a court should give weight to a lower court or administrative agency decision when trying to resolve a case. The inclusion of this variable is important in that it helps to control for the effect of
frivolous lawsuits and situations in which the law is clear. Essentially, this variable helps to account for legal factors, at least to some degree, in the decision-making process.\(^{78}\)

The variable is coded such that -1 = the lower court/administrative agency decision favored the defendant; 0 = no decision by a lower court/administrative agency; 1 = the lower court/administrative agency decision favored the plaintiff.\(^{79}\)

Partisan Favoritism Model

The dependent variable in the partisan favoritism model is *Pro-Political Party*, which measures whether a judge voted in a manner that benefits her political party on a given legal issue in an election law case. In this model, I am most concerned with the characteristics of a judge that would increase the likelihood of ruling in favor of her political party’s interests, as noted in Hypotheses 2 through 5. I chose to estimate a second model with a different dependent variable, so that I could avoid the complications of several interactions in the case outcome model. Using this new dependent variable allows me to perform a similar analysis without having to interpret the substantive effects

\(^{78}\) I grant that this measure does not perfectly account for legal factors in my model. But, given the complexity of accounting for the influence of law in an empirical model, this variable at least accounts for legal factors in a parsimonious manner.

\(^{79}\) I only code the lower court/F.E.C. decision immediately preceding the pending case. While it may seem that an ordinal variable that takes account of all lower court/F.E.C. decisions would be most appropriate, I instead account for the preceding lower court decision for two reasons. First, the only time there would be more than one lower court decision would be cases where the court of appeals reviews a campaign finance case where the F.E.C. is a defendant (which only occurs in 65 out of 821 campaign finance case votes). Therefore, given the small number of cases where the F.E.C. is the defendant, using a dichotomous coding should not adversely affect the results of my models. Second, and most importantly, using a dichotomous coding ensures comparability across the three types of election law cases examined in this dissertation.
of numerous interaction terms. The dependent variable is dichotomous and it is coded such that 0 = judge’s case vote does not favor her political party; 1 = judge’s case vote favors her political party. This model only accounts for cases that specifically involve the opposing interests of the two major political parties; the partisan favoritism model does not include any cases in which a third party or non-partisan interest group are the sole litigants, or cases in which the Democratic and Republican Parties share the same interest in a given outcome. In short, the partisan favoritism model accounts for the same cases analyzed in the case outcome model using the dichotomous Party Interest variable.

Like the case outcome model, I employ logistic regression to estimate the party favoritism model because the dependent variable is dichotomous. I present the full version of partisan favoritism model formally as:

$$Pro-Political\ Party = \beta_0 + \beta_1 Political\ Career + \beta_2 Age + \beta_3 Court\ of\ Appeals + \beta_4 Panel\ Composition + \beta_5 Epstein\ CS\ (Scaled) + \beta_6 JCS1\ (Scaled) + \beta_7 JCS2\ (Scaled) + \beta_8 Previous\ Court\ Decision\ (Scaled) + \epsilon$$

If the variables Political Career, Age, Court of Appeals, and Panel Composition are statistically significant at the $p \leq 0.05$, this will provide support for rejecting the null of Hypotheses 2 through 5, respectively. Because I posit a directional hypothesis regarding Political Career and Panel Composition, I employ a one-tailed significance test for these variables. I employ a two-tailed hypothesis test for the variables Age and Court of Appeals. I present the coding rules for each of the variables in the partisan favoritism model in Table 3.2.

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80 The case outcome model test whether the interests of a judge’s political party influence their decision-making process, regardless of the judge’s personal characteristics. The partisan favoritism model, on the other hand, tests whether particular subsets of judges are likely to favor their political party.
<table>
<thead>
<tr>
<th>Partisan Favoritism Variables</th>
<th>Coding Rules</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent Variable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro-Political Party</td>
<td>0 = Vote Does Not Favor Political Party; 1 = Vote Favors Political Party</td>
<td>Westlaw Court Records</td>
</tr>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Career</td>
<td>0 = No Political Experience; 1 = Political Experience</td>
<td>Federal Judicial Center Biographical Database</td>
</tr>
<tr>
<td>Age</td>
<td>Age in Years (Continuous Variable)</td>
<td>Federal Judicial Center Biographical Database</td>
</tr>
<tr>
<td>Court of Appeals</td>
<td>0 = District Court; 1 = Court of Appeals</td>
<td>Westlaw Court Records</td>
</tr>
<tr>
<td>Panel Composition*</td>
<td>0 = All Other Panel Members Opposite Political Party 1 = All Other Panel Members Same Political Party</td>
<td>Westlaw Court Records and Federal Judicial Center Biographical Database</td>
</tr>
<tr>
<td>Epstein CS (Scaled)</td>
<td>-1 = Party Interest and Judicial Policy Preference Incongruent; 1 = Party Interest and Judicial Policy Preference Congruent (Continuous Variable)</td>
<td>Rescaled Data from Epstein et al. (2007) and Westlaw Court Records</td>
</tr>
<tr>
<td>JCS 1 (Scaled)</td>
<td>-1 = Party Interest and Judicial Policy Preference Incongruent; 1 = Party Interest and Judicial Policy Preference Congruent (Continuous Variable)</td>
<td>Rescaled Data from Common Space Model #1 (See Appendix B) and Westlaw</td>
</tr>
<tr>
<td>JCS 2 (Scaled)</td>
<td>-1 = Party Interest and Judicial Policy Preference Incongruent; 1 = Party Interest and Judicial Policy Preference Congruent (Continuous Variable)</td>
<td>Rescaled Data from Common Space Model #2 (See Appendix B) and Westlaw</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>-1 = Previous Court Decision and Judicial Policy Preference Incongruent; 0 = No Decision 1 = Previous Court Decision and Judicial Policy Preference Congruent</td>
<td>Rescaled Data from Westlaw Court Records</td>
</tr>
</tbody>
</table>

Table 3.2: Variable Codes – Partisan Favoritism Model

*Panel Composition* is a continuous variable, where values between 0 and 1 represent the percentage of other members who share a given judge’s partisan affiliation.
I obtained demographic variables on all judges from the Federal Judicial Center’s Biographical Directory of Federal Judges.\footnote{Available at \url{http://www.fjc.gov/public/home.nsf/hisj}. Accessed November 21, 2009.} The variable Political Career is a dichotomous variable, coded such that a judge with no political experience = 0, while a judge who served as an elected official, party officer, or campaign/political staffer = 1.\footnote{There are numerous ways of coding this variable. I operationalized this variable both as a dichotomous and trichotomous variable, where the trichotomous variable was coded as 0 = no experience; 1 = experience as a campaign/political staffer; 2 = elected officer or political party officer. The substantive findings of my models did not change depending on the operationalization this variable. I do not consider service as a judge elected via partisan elections when coding this variable because of the unique nature of elected judges (once on the bench it is often improper for judges to engage in the same type of partisan activity as a legislator or other politician). In a separate unreported analysis, the inclusion of a partisan election judge dummy variable was statistically insignificant in the party favoritism model. For the sake of parsimony, I decided to omit this variable from my reported model.} A judge’s Age is operationalized as a continuous variable representing the judge’s age at the time that she heard a given case.\footnote{To code a judge’s age, I subtracted the year of the judge’s birth (as listed in the FJC’s biographical database) from the year in which a given case was heard. I also considered other operationalizations of age, such as the square of a judge’s age and the log of a judge’s age. Neither of these additional ways of operationalizing the variable made a substantive difference on the party favoritism model.} The variable Court of Appeals is a dichotomous variable that denotes whether a judge was a member of the U.S. district court or U.S. court of appeals at the time of a given case vote. The variable is coded such that 0 = the judge is a district judge and 1 = the judge is an appellate judge. Lastly, the variable Panel Composition is only employed in the analysis of redistricting cases because virtually all of these cases involve a three-judge panel.\footnote{There were only seven total cases involving redistricting legal issues that were not resolved by a three-judge district court. Of the cases that were not decided by a three-judge district court, a single district court judge issued a ruling or dismissed the case on technical grounds, consistent with 28 U.S.C. § 2284.} As a result, redistricting cases provide a sufficient number of observations to test the effect of Panel Composition on case votes. I operationalize this variable as the percentage of the other judges serving on the panel who share the observed judge’s party affiliation. For example, if a three-judge panel hears a
redistricting case, and one judge shares the observed judge’s party affiliation, the variable takes on the value of 0.5. The variable is continuous in nature and can range from 0 (meaning no judges on the panel share the observed judge’s party affiliation) to 1 (meaning that all the judges on the panel share the observed judges party affiliation).

Like the case outcome model, I also include control variables for a judge’s policy preferences and the decision of a lower court or F.E.C. for a given case. Because the party favoritism model uses a different dependent variable than the case outcome model, the control variables for policy preferences and Previous Court Decision must be operationalized in another manner. The policy preference variables are still coded as continuous variables ranging from -1 to 1, consistent with the case outcome model. However, for the policy preference variable to have any meaningful relationship to the dependent variable, it must be coded in a way that directly relates to the likelihood of a judge favoring her political party’s interest. To achieve this result, I coded the variable to measure policy preference congruency with the legal position favored by the judge’s political party. As the first dimension policy preference variables approach 1, the greater likelihood the judge will rule in favor of her political party because the judge’s political party advocates an outcome consistent with the judge’s policy preference. Because the second dimension policy preference denotes increased liberalism as it approaches 1, the scaled version of this variable in the partisan favoritism model measures incongruence between a judge’s policy preference and the position advocated by her political party.

It is worth clarifying how I scale these policy preference variables. Consider a Democratic judge with a first dimension common space score of -0.33, which is a slightly liberal policy preference. If the judge’s political party favors campaign finance
regulations (a liberal case outcome), then the judge’s policy preference score would be re-scaled by multiplying it by -1 so that the new scaled policy preference score is 0.33. This means, relatively speaking, that the judge is likely to rule for her political party as a result of the congruency between her policy preferences and the legal position advocated by her political party. To give another example, consider a Republican judge with a second dimension policy preference of -0.55 who hears a redistricting case in which a Republican-controlled state legislature is sued for enacting a politically gerrymandered districting plan. Because the Republican Party favors a conservative outcome in this case (i.e., a ruling for the state), and negative values in the second dimension denote conservatism, the judge’s policy preference score is coded as 0.55.

The variable *Previous Court Decision* in the party favoritism model is operationalized in a manner similar to the common space scores as discussed in the above. This variable is still coded as a trichotomous variable, but the coding reflects whether a lower court ruled for the interests of the judge’s political party. More specifically, this variable is coded such that -1 = lower court/administrative agency decision does not benefit the judge’s political party’s interest; 0 = no lower court/administrative agency decision; 1 = lower court/administrative agency decision benefits the judge’s political party’s interests.

**Data**

As noted earlier, the data in this dissertation consist of three types of election law cases: campaign finance, political party right to association, and redistricting cases.
While there are certainly other types of election law cases that are deserving of attention, I decided to examine these case categories for three primary reasons. First, each judicial case vote can be classified as conservative or liberal in nature. This is particularly important because in order to test my hypotheses, I must account for both policy preferences and partisan preferences in a statistical model. Second, each of these cases has important implications for the political process, and therefore should maximize the possibility of a political party’s interest influencing judicial behavior. Lastly, these cases provide a sufficient number of observations for statistical analysis.

Each of these categories of election law involve unique legal claims that have direct bearing on the political process. The campaign finance cases that I examine include challenges to state or federal campaign finance laws, and a small number of these cases seek to enforce campaign finance regulations. For the purpose of scaling the policy preference variables, I consider any case vote that favors campaign finance regulations to be liberal, and a case vote disfavoring campaign finance regulations is conservative. Because most of the campaign finance cases involve plaintiffs advocating

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85 As noted in Chapter 2, there are legal disputes concerning the enactment of voter identification laws that seek to prevent voter fraud. These laws disproportionately affect Democratic voters because lower-income individuals are less likely to have adequate state-issued identification, and these individuals are more likely to support Democratic Party candidates for political office. Recently, a symposium on the topic was printed in the January 2009 edition of PS: Political Science & Politics.

86 The lack of observations is the primary reason why I do not examine voter ID cases.

87 E.g., Buckley v. Valeo, 424 U.S. 1 (1976), which involved a constitutional challenge to the Federal Election Campaign Act (FECA).

88 E.g., Shays v. F.E.C., 414 F.3d 76 (2005), in which congressional sponsors of the Bi-Partisan Campaign Reform Act (BCRA) challenged administrative rules promulgated by the F.E.C. The plaintiffs successfully argued that the F.E.C. implemented rules that undermined the campaign finance regulations advanced in BCRA.

89 It is worth noting, however, that there is a division among some liberal groups regarding campaign finance policy preferences. For example, in the recent U.S. Supreme Court case of Citizens United v. F.E.C., 558 U.S. _____ (2010), the American Civil Liberties Union (ACLU) filed an amicus curiae brief in
a conservative outcome (i.e., they disfavor campaign finance regulations), I rescaled policy preference variables for the cases advocating a liberal outcome. Of the 821 judicial case vote observations for campaign finance cases, 26.3% (N=216) of these case votes had to be rescaled because a plaintiff sought to enforce campaign finance regulations against a given political party or candidate.\textsuperscript{90} Thus, the campaign finance cases are scaled in such a way that the plaintiff advocates a conservative outcome.

Political party right to association cases involve a political party’s ability to determine with whom it may affiliate, and the political party’s ability to control its own internal operating procedures. For example, a political party may initiate litigation to invite non-party members to participate in a primary election.\textsuperscript{91} Additionally, right to association cases may involve a political party’s ability to regulate the nomination of candidates.\textsuperscript{92} When scaling the policy preference variables, I consider any case vote that favors associational rights to be liberal, and any case vote against associational rights to be conservative.\textsuperscript{93} In most of the right to association cases in my dataset, the plaintiff

\begin{flushleft}
\textsuperscript{90}I re-estimated the logit models for campaign finance cases without the 216 scaled observations, the substantive results of the logit model do not substantively change.
\textsuperscript{91}E.g., \textit{Tashjian v. Republican Party of Connecticut}, 479 U.S. 208, (1986), where the Connecticut Republican Party challenged a state law that only permitted registered party members to participate in a primary election. Republicans sought to allow independent voters to take part in the Republican primary election. A related case (although not included in my sample due to the classification scheme used by Westlaw) is \textit{Clingman v. Beaver}, 544 U.S. 581 (2005), where the Oklahoma Libertarian Party sought to open its primary to all registered voters, regardless of their party affiliation.
\textsuperscript{93}This coding rule seems in line with Supreme Court decisions that have sustained the associational rights of groups, such as the N.A.A.C.P. See, for example, \textit{NAACP v. Alabama ex. Rel. Patterson}, 357 U.S. 449 (1958), where the Supreme Court found that the First Amendment protects associational rights, and that
\end{flushleft}
advocates a liberal outcome (i.e., advocates associational rights). Therefore, I rescale the policy preference variables for those cases where the plaintiff advocates a conservative outcome. Of the 148 political party right to association cases examined, 39.9% (N=59) of these cases had to be re-scaled. Therefore, the political party right to association cases are scaled in a way that the plaintiff favors a liberal outcome.

It is possible that some may disagree with my classification of liberal and conservative case votes for political party right to association cases. For example, few would likely classify the Supreme Court’s decision in the White Primary Cases as “conservative,” even though these cases involved a political party’s associational rights. However, the legal issues motivating the Supreme Court’s decision in these cases pertained to racial discrimination, not associational rights. Fortunately, and unlike the White Primary Cases, the right to association cases that I examine do not involve multiple ideological issues. As a result, I do not foresee any complications due to conflicting ideological considerations in right to association cases. I should further emphasize that my predictions regarding the directional effects of policy preference are not of major concern for the purpose of the statistical models because policy preferences act as control variables. By scaling these variables, I am able to ensure that the directional effect of policy preferences is consistent. Because the variables are scaled


Because of the small sample size, I am not able to adequately estimate another model that excludes the re-scaled right to association cases.

There were several Supreme Court cases that considered the constitutionality of excluding African Americans from primary elections. The most famous case is Smith v. Allwright, 321 U.S. 649 (1944), in which the Supreme Court struck down the Texas Democratic Party’s practice of excluding blacks from the Democratic primary. None of these cases are included in my dataset. For detailed discussion of the White Primary Cases, see Klarman (2001).
consistently, my directional predictions are irrelevant because these variables will still control for policy preferences and allow me to ascertain the effect, if any, of partisan interests on case votes.

Lastly, redistricting cases involve disputes over apportionment schemes for state legislative and congressional districts. These cases involve equal-population claims,\textsuperscript{96} §2 VRA racial gerrymanders,\textsuperscript{97} political gerrymanders,\textsuperscript{98} as well as Voting Rights Act §5 pre-clearance claims.\textsuperscript{99} A case outcome that favors equality in population distribution, racial minority representation, or greater balance between Democratic and Republican voters in a given district will be considered a liberal case vote.\textsuperscript{100}

There are a small number of cases in the dataset that involve challenges to a districting plan on grounds similar to those presented in \textit{Shaw v. Reno}, 509 U.S. 630 (1993). In this situation, voters sue the state claiming that race was improperly used as a consideration in the redistricting process, thereby giving some sort of an electoral benefit or advantage to a minority group, and violating the Equal Protection Clause of the Fourteenth Amendment. In these types of claims, a state (i.e., defendant) advocates a position that affords increased representation to racial minorities. Therefore, a case vote

\textsuperscript{96} E.g., \textit{Reynolds v. Sims}, 377 U.S. 533 (1964), in which voters challenged the unequal apportionment of voters in state legislative districts.

\textsuperscript{97} An example of a racial gerrymander claim under §2 of the Voting Rights Act (VRA) is \textit{Thornburg v. Gingles}, 478 U.S. 30 (1986). In this case, African-American voters successfully argued that a North Carolina districting plan prevented blacks from electing a candidate of their choice.

\textsuperscript{98} An example of a political gerrymander case is \textit{Vieth v. Jubelirer}, 541 U.S. 267 (2004), in which a partisan districting plan in Pennsylvania was held to not be unconstitutional.

\textsuperscript{99} Although uncommon, some “covered” jurisdiction states under §5 of the VRA opt to approve state reapportionment plans through the U.S. District Court for the District of Columbia instead of seeking approval from the U.S. attorney general – e.g., \textit{U.S. v. Mississippi}, 444 U.S. 1050 (1980).

\textsuperscript{100} I apply Lloyd’s (1995, 415-416) reasoning that greater equality in population is a liberal case outcome, and I therefore assume that greater equality in racial and partisan representation also constitutes a liberal outcome. Additionally, previous studies have noted that §2 VRA cases involve a liberal/conservative dimension, where a liberal case vote favors minority voting rights claims (see Cox and Miles 2008; Kopko 2008).
for the defendant in such a case is liberal, consistent with my coding rule for other §2 VRA claims (see fn. 29 and 32). Additionally, under §5 of the VRA, covered jurisdictions have the option of filing suit in the U.S. District Court for the District of Columbia to receive approval of a districting plan, instead of submitting the plan to the U.S. attorney general for approval. I consider a case vote for the plaintiff in this type of case to be a conservative outcome.\(^{101}\) Because most of the plaintiffs in redistricting cases advocate a liberal outcome (i.e., favor more equality in districting schemes), I rescale the cases where the plaintiff advocates a conservative outcome. Of the 409 redistricting case votes in the analysis, only 8.8% (N=36) of case vote observations were rescaled to account for \textit{Shaw} and §5 VRA cases.\(^{102}\) As a result, the redistricting cases are scaled in such a way that the plaintiff favors a liberal outcome.

I examine 479 election law cases across these three categories of election law. The data consist of all cases decided from 1962 through 2007, as listed in the Westlaw case database. Appendix C discusses how I selected cases using Westlaw’s KeySearch feature. My analysis begins in 1962 because this is the year that the Supreme Court decided \textit{Baker v. Carr}, 369 U.S. 186, which significantly eroded the political questions doctrine, thereby allowing federal courts to hear more cases that involve salient political issues. As I explain in Appendix B, I only examine the case votes of judges appointed to the federal courts starting in 1960.\(^{103}\) The unit of analysis in my data is the individual

\(^{101}\) As Lloyd (1995, 415) notes, a conservative judge is more likely to approve districting plans on states’ rights grounds as compared to their liberal counterparts. Therefore, a conservative judge should give difference to state districting plans submitted under a §5 pre-clearance lawsuit.

\(^{102}\) I re-estimated my statistical models without the case vote observations and their inclusion in the model did not substantively affect the results of the logit models.

\(^{103}\) Unfortunately, this does result in some censoring of the data. I excluded 42 judges from my dataset who were appointed before 1960, but decided cases on or after 1962. This resulted in the censoring of 75
case vote of a judge. When multiple legal issues are presented within a case, I treat each of these issues as a separate case vote, and therefore a separate observation for each judge hearing the case.\textsuperscript{104} This coding practice is similar to the procedure used to code case votes in the Supreme Court Database judge-centered data, organized by issues/legal provisions.\textsuperscript{105} To ensure that standard errors are not biased, I cluster the standard errors by court case.\textsuperscript{106}

If there are multiple legal rulings in a case, but one ruling ultimately resolves the case, I only code the decision that resolves the case.\textsuperscript{107} Consider a hypothetical case that involves a challenge to a partisan gerrymandered districting scheme. If a judge makes a ruling on the justiciability of the partisan gerrymander claim, I only code this issue if a judge rules that the case is non-justiciable, thereby dismissing the case and resolving the case votes across the three categories of election law cases. While this may seem like a significant number of judges and case votes for the early time periods of my analysis, most of my observations occurred after 1979. Cases decided between 1962 and 1979 only account for 19.3\% of all case vote observations (N=266). If these observations were included, 23.5\% of all case vote observations would have been decided between 1962 and 1979 (N=341). As a result, the exclusion of observations from this early time period should not cause significant differences in my results.

\textsuperscript{104} Westlaw provides a summary of the legal issues presented in each case in the “headnote” of the court opinion. The information provided in this headnote (or in the body of the court opinion when a headnote was not available) was used to code individual case votes for each legal issue.\textsuperscript{105} There are currently eight versions of the Supreme Court Database, and each data file is organized with differing units of analysis. These files, including the justice-centered file organized by legal issue, are available for download at \url{http://scdb.wustl.edu/data.php}. Accessed November 21, 2009.\textsuperscript{106} Clustering by case is substantively the same as weighting the case votes by judge in a given case. Clustering is also necessary due to the non-independence of judicial case vote observation due to the facts in a given case. While some may argue that a multilevel model would be more appropriate, the use of clusters as compared to a multilevel model is “a more straightforward and practical approach” and should not result in substantively different findings (see Primo, Jacobsmeier, and Milyo, 2007, 446). Even though I am clustering by court case, this still leaves potential independent-observation problems due to repeated observations of a particular judge. However, given that I am controlling for a judge’s policy preferences, this helps to alleviate problems due to the non-independence of judges (see Bartels 2006, 56, fn. 2). Therefore, clustering by court case not only provides an easier way to interpret my model’s results, but it should not deviate substantially from a multilevel model.\textsuperscript{107} Additionally, if multiple issues in a given case are all decided for the same litigant, I only code one observation per judge for that case. Because I am clustering standard errors by case, this method of coding case votes does not result in any difference in statistical results.
immediate legal claim. However, if a judge rules that the case is justiciable and then makes a ruling on the merits, I only code the case vote on the merits because that particular case vote resolves the legal dispute; the justiciability decision in this latter example ultimately has no bearing on the final judgment because a judge could rule for either litigant on the merits. To use an example from a real case, consider *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006). In this case, the U.S. Supreme Court decided several redistricting claims involving vote dilution and partisan gerrymanders in the state of Texas, as well as a general question regarding the justiciability of partisan gerrymander claims. For the purpose of illustration, if I were to code the Supreme Court’s *LULAC* decision, I would rely on the information Westlaw provides in the case “headnotes” to determine the case votes of the justices relating to each of the VRA claims and the partisan gerrymander claims. However, I would not code the justiciability issue in this case because it is a procedural issue that does not dispose of the case; regardless of the justiciability ruling in this case, there were still legal issues the Court had to resolve. In short, I code the case vote for each judge for a substantive legal issue (i.e., on the merits) within every court case, as well as rulings on technical grounds that ultimately resolve the case. Table 3.3 provides descriptive statistics for the judges and cases that are part of my database.

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108 This case involved mid-decennial redistricting that took place in Texas at the behest of then-House Majority Leader Tom Delay.

109 Essentially, there was a VRA § 2 claim relating to Latino voters in Districts 23 and 25, and another VRA §2 claim regarding African-American voters in District 24.

110 The technical rulings in the dissertation dataset result in the case’s dismissal.
<table>
<thead>
<tr>
<th>Judges</th>
<th>Campaign Finance</th>
<th>Right to association</th>
<th>Redistricting</th>
<th>All Cases*</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>289</td>
<td>132</td>
<td>239</td>
<td>557</td>
</tr>
<tr>
<td><strong>Male</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>87.5% (N=253)</td>
<td>90.9% (N=120)</td>
<td>96.2% (N=230)</td>
<td>91.0% (N=507)</td>
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<tr>
<td>Female</td>
<td>12.5% (N=36)</td>
<td>9.1% (N=12)</td>
<td>3.8% (N=9)</td>
<td>9.0% (N=50)</td>
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<tr>
<td><strong>Democrats</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republicans</td>
<td>46.9% (N=134)</td>
<td>53.8% (N=71)</td>
<td>57.7% (N=138)</td>
<td>50.9% (N=283)</td>
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<tr>
<td><strong>District Court</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District Court</td>
<td>51.2% (N=148)</td>
<td>37.9% (N=50)</td>
<td>66.0% (N=158)</td>
<td>56.4% (N=314)</td>
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<tr>
<td>Courts of Appeals</td>
<td>48.8% (N=141)</td>
<td>62.1% (N=82)</td>
<td>34.0% (N=81)</td>
<td>43.6% (N=243)</td>
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<tr>
<td><strong>Political Experience</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(0 = No; 1 = Yes)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Average Age</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>60.0 (S.D. 10 years)</td>
<td>62.1 (S.D. 10.2 years)</td>
<td>60.2 (S.D. 8.7 years)</td>
<td>60.5 (S.D. 9.6 years)</td>
</tr>
<tr>
<td><strong>Cases</strong></td>
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<td></td>
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<tr>
<td></td>
<td>275</td>
<td>73</td>
<td>131</td>
<td>479</td>
</tr>
<tr>
<td><strong>Case Votes</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>821</td>
<td>148</td>
<td>409</td>
<td>1378</td>
</tr>
<tr>
<td><strong>Ruling for Plaintiff</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>51.6% (N=424)</td>
<td>56.8% (N=84)</td>
<td>44.3% (N=181)</td>
<td>50.0% (N=689)</td>
</tr>
<tr>
<td><strong>Party Interest</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendant</td>
<td>24.8% (N=204)</td>
<td>31.1% (N=46)</td>
<td>41.3% (N=169)</td>
<td>30.4% (N=419)</td>
</tr>
<tr>
<td>No Interest</td>
<td>50.5% (N=415)</td>
<td>41.2% (N=61)</td>
<td>21.8% (N=89)</td>
<td>41.0% (N=565)</td>
</tr>
<tr>
<td>Plaintiff</td>
<td>24.6% (N=202)</td>
<td>27.7% (N=41)</td>
<td>36.9% (N=151)</td>
<td>28.6% (N=394)</td>
</tr>
<tr>
<td><strong>Lower Court Decision</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendant</td>
<td>28.1% (N=231)</td>
<td>28.4% (N=42)</td>
<td>0.7% (N=3)</td>
<td>20.0% (N=276)</td>
</tr>
<tr>
<td>No Ruling</td>
<td>50.5% (N=415)</td>
<td>37.2% (N=55)</td>
<td>89.0% (N=364)</td>
<td>60.5% (N=834)</td>
</tr>
<tr>
<td>Plaintiff</td>
<td>21.3% (N=175)</td>
<td>34.5% (N=51)</td>
<td>10.3% (N=42)</td>
<td>19.4% (N=268)</td>
</tr>
</tbody>
</table>

Table 3.3: Descriptive Statistics of Judges and Cases
* The statistics for judges in the “All Cases” column is not the sum of the judges in all three categories of election law. This is due to the repeated observation of judges who decide cases in more than one area of election law.
The data reported in Table 3.3 are grouped by category of election law. While I do not include a judge’s gender as a variable in the statistical models presented later in this dissertation (because there is no theoretical reason to expect a difference between men and women deciding election law cases), I have included these data in Table 3.3 as supplemental information. The last column provides aggregate statistics across the three election law categories, however, I do not perform an aggregate analysis of cases. I omit an aggregate analysis because the influence of Party Interest could vary across the election law case categories. Therefore, conducting separate analyses will allow me to test the robustness of a possible Party Interest effect across the three categories of election law. In the next chapter, I employ these data to estimate the case outcome and partisan favoritism models to test my research hypotheses.
CHAPTER 4: RESULTS

This chapter presents the results of the case outcome and partisan favoritism models. I report five iterations of these models, and each iteration includes different combinations of first and second dimension judicial policy preference control variables. Although the policy preference variables included in each model differ, every model iteration includes Party Interest (for the case outcome model) and Previous Court Decision (for both the case outcome and partisan favoritism models). Estimating different iterations of these models is advantageous for two reasons. First, this practice allows me to evaluate the robustness of any potential finding of partisan interests affecting the case votes of federal judges. Second, by varying the policy preference control variables included in the model, I am able to determine which of these variables best controls for a judge’s preferences. Given that the influence of the first and second dimension common space scores have changed over time, and the influence of these dimensions should vary by election law case category, it is important to determine which measures of policy preference result in a greater percentage of outcomes correctly predicted and reduction in error for each of these models. I can then use the model iteration with the greatest percentage of outcomes correctly predicted and greatest reduction in error to estimate predicted probabilities.
In the following, I discuss the results of the case outcome and partisan favoritism models by category of election law; I report campaign finance cases, followed by political party right to association cases, and lastly, redistricting cases. For each of these case categories, I first present the results of the case outcome model. As noted in Chapter 3, I operationalize the *Party Interest* variable in the case outcome models as both a trichotomous and dichotomous variable. The trichotomous *Party Interest* variable accounts for cases that involve non-partisan interest groups, third parties, and instances where the two major parties are co-litigants and share the same case outcome preference (in addition to cases where the major parties have opposing case outcome preferences). The dichotomous *Party Interest* variable only accounts for instances where the Democratic and Republican Parties have an opposing interest in a case outcome. As a means of thoroughly testing Hypothesis 1, I begin by presenting the case outcome model with the trichotomous *Party Interest* coding, and then the case outcome model with the dichotomous *Party Interest* coding. After discussing the results of the case outcome model, I then report the results of the partisan favoritism model. I conclude this chapter by briefly evaluating the results and whether the findings, as a whole, support the hypotheses advanced in Chapter 2. In Chapter 5, I provide a discussion of the theoretical and substantive implications of this dissertation’s findings.

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111 Because the dichotomous *Party Interest* variable only accounts for cases where the interests of the major political parties are opposed, the model employing this variable will have fewer case vote observations, compared with the case outcome model employing the trichotomous variable.
Campaign Finance

The campaign finance cases examined in this dissertation relate to the regulation and reporting of campaign expenditures and contributions. The results of the campaign finance case outcome model are presented in Table 4.1. This version of the case outcome model includes the trichotomous *Party Interest* variable. As a reminder, for analytic purposes the campaign finance data are re-coded in such a way that the plaintiff favors a conservative outcome (i.e., the plaintiff disfavors campaign finance regulations).\(^\text{112}\)

Across the five different iterations of the case outcome model, *Party Interest* and *Previous Court Decision* reach statistical significance at \(p \leq 0.05\) and are correctly signed in each model iteration. The coefficients can be interpreted to mean that when a judge’s political party favors the plaintiff in a campaign finance case, the judge will be more likely to vote in favor of the plaintiff. Likewise, when a previous lower court or F.E.C. decision favors the plaintiff, the judge will be more likely to vote for the plaintiff.

\(^{112}\) As I discuss in Chapter 3, coding the data in this manner is necessary because some plaintiffs favor the enforcement of campaign finance regulations, although the majority do not. To ensure consistent directionality of the coefficients in my statistical models, it is necessary to code some defendants as plaintiffs.
The policy preference variables *Epstein CS* and *JCS1* also attain statistical significance in Table 4.1, however, these variables are not statistically significant across all model iterations. *Epstein CS* is statistically significant at $p = 0.055$ in model 1, and *JCS1* is significant at $p \leq 0.05$ in models 2 and 4. Neither of the first dimension policy preference variables reach statistical significance in model 5. The lack of a significant
finding in model 5 could be the result of the collinearity between Epstein CS and JCSI, and it is a likely reason why model 5 does not attain the highest percentage of outcomes correctly predicted and the greatest reduction in error. Given that campaign finance cases involve economic/free speech issues, it makes sense that Epstein CS and JCSI predict case votes since these two policy preference variables tap first dimension preferences. One can interpret the first dimension policy preference results to mean that as a judge becomes more conservative, she is more likely to rule in favor of a plaintiff challenging campaign finance regulations. At no point does JCS2, the variable that measures second dimension policy preferences, reach traditional levels of statistical significance.

Although Table 4.1 provides evidence in support of Hypothesis 1 (that when a judge’s political party favors the plaintiff/defendant, the judge’s case vote will favor the plaintiff/defendant), interpreting the magnitude of Party Interest’s effect on case votes is difficult when only referring to the logistic regression coefficients. For this reason, I present Figure 4.1, which depicts the predicted probability of a judge ruling in favor of the plaintiff, depending on the value of Party Interest.

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113 See Appendix B for a discussion on collinearity among the policy preference variables.

114 Depending on one’s perspective, campaign finance cases could be viewed as either economic or free speech legal issues. The Supreme Court’s ruling in *Citizens United v. F.E.C.* (588 U.S. ___, 2010) exemplifies the legal argument that money is the equivalent of speech in the context of campaign contributions. Regardless of the legal issue, the policy preference influence, as measured by first dimension policy preferences, is the same. In the context of free speech, a conservative judge is likely to prefer fewer campaign finance restrictions because she views such regulations as a violation of the First Amendment. If campaign finance cases are viewed as economic issues, a conservative judge is still likely to strike down such laws because, all things being equal, a conservative judge will favor fewer government economic regulations.
The Y-axis of Figure 4.1 represents the probability of a judge ruling for a plaintiff, while the X-axis denotes the outcome preferred by a judge’s political party (i.e., the value of Party Interest). Figure 4.1 uses the coefficients from model 4 of Table 4.1 to depict the substantive change in probability that a judge will rule in favor of the plaintiff. I use the coefficient estimates from model 4 to create Figure 4.1 because this model had the largest percent of outcomes correctly predicted (59.68%) and the largest reduction of error (16.62%). To estimate these probabilities, I set all policy preference

115 All predicted probability Figures in this chapter follow this same format.
variables and *Previous Court Decision* at 0. Additionally, I have estimated 90% confidence intervals for each value of *Partisan Interest* for each value of *Party Interest*. I follow this same practice later when estimating predicted probabilities for political party right to association and redistricting cases.

As evidenced by Figure 4.1, there is a statistically significant change in the probability of ruling for the plaintiff, depending on the preferences of the judge’s political party. When a judge’s party favors the defendant in a campaign finance case, the probability of the judge ruling for the plaintiff is 0.44. The probability of ruling for the plaintiff is 0.52 when the judge’s political party does not have a stake in the case. Lastly, when the judge’s political party favors the plaintiff, the judge has a 0.59 probability of ruling for the plaintiff. The change in the predicted probability of ruling for the plaintiff results in a 0.15 shift when moving from defendant to plaintiff. While this is not an overwhelming change in the probability of a judge favoring the plaintiff, it is evidence that, at the margins, partisan considerations do influence judicial behavior in the context of campaign finance cases.

As discussed in Chapter 3, some may question the usefulness of including the middle category of cases for the *Party Interest* variable (i.e., cases that do not have a clear Democratic or Republican Party interest, or cases where Democrats and Republicans share an interest in the same case outcome). As a means of providing a more direct test of Hypothesis 1, and to test the robustness of the findings in Table 4.1, I

---

116 I estimate 90% confidence intervals because I employ a one-tailed significance test in all variants of the case outcome model. As noted in Chapter 3, a one-tailed hypothesis test is appropriate because I posit a directional hypothesis.
re-estimate the campaign finance case outcome model, excluding those cases that do not involve a clear partisan interest. I report these results in Table 4.2.
<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest ( (0=\Delta; 1=\pi) )</td>
<td>0.659**</td>
<td>0.695**</td>
<td>0.713**</td>
<td>0.704**</td>
<td>0.724**</td>
</tr>
<tr>
<td></td>
<td>(0.244)</td>
<td>(0.249)</td>
<td>(0.245)</td>
<td>(0.254)</td>
<td>(0.250)</td>
</tr>
<tr>
<td>Epstein CS ( (-1=\text{Liberal}; 1=\text{Conservative}) )</td>
<td>0.200</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>0.724+</td>
</tr>
<tr>
<td></td>
<td>(0.294)</td>
<td></td>
<td></td>
<td></td>
<td>(0.543)</td>
</tr>
<tr>
<td>JCS1 ( (-1=\text{Liberal}; 1=\text{Conservative}) )</td>
<td>-----</td>
<td>0.046</td>
<td>-----</td>
<td>0.062</td>
<td>-0.675</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.440)</td>
<td></td>
<td>(0.439)</td>
<td>(0.712)</td>
</tr>
<tr>
<td>JCS2 ( (-1=\text{Conservative}; 1=\text{Liberal}) )</td>
<td>-----</td>
<td>-----</td>
<td>0.032</td>
<td>0.039</td>
<td>0.192</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.222)</td>
<td>(0.221)</td>
<td>(0.274)</td>
</tr>
<tr>
<td>Previous Court Decision ( (-1=\Delta; 0=\text{None}; 1=\pi) )</td>
<td>0.072</td>
<td>0.073</td>
<td>0.071</td>
<td>0.072</td>
<td>0.064</td>
</tr>
<tr>
<td></td>
<td>(0.254)</td>
<td>(0.225)</td>
<td>(0.255)</td>
<td>(0.256)</td>
<td>(0.255)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.292</td>
<td>-0.306</td>
<td>-0.311</td>
<td>-0.305</td>
<td>-0.322</td>
</tr>
<tr>
<td></td>
<td>(0.202)</td>
<td>(0.110)</td>
<td>(0.208)</td>
<td>(0.206)</td>
<td>(0.205)</td>
</tr>
</tbody>
</table>

Table 4.2: Campaign Finance Likelihood of Ruling for Plaintiff – Only Includes Partisan Cases

+ \( p \leq 0.10; \) * \( p \leq 0.05; \) ** \( p \leq 0.01, \) one-tailed significance tests. Robust clustered standard errors in parentheses.

One can observe several differences when comparing Tables 4.1 and 4.2. While the Party Interest, Previous Court Decision, and most of the first dimension policy preference variables were statistically significant in Table 4.1, only Party Interest reaches statistical significance \( (p \leq 0.01) \) in this additional analysis. It is also worth noting that, like Table 4.1, the Party Interest variable is statistically significant across all five
iterations of the case outcome model. In model 5 of Table 4.2, the variable *Epstein CS* is significant at $p = 0.091$. However, given that it only attains significance at the $p \leq 0.10$ level using a one-tailed test in model 5, and not in the other four models, this does not provide strong evidence that policy preferences influence a judge’s case vote in this subset of cases. One can better understand the substantive effect of *Party Interest* in Table 4.2 by referring to the predicted probabilities presented in Figure 4.2.

![Figure 4.2: Campaign Finance Predicted Probabilities, Only Includes Partisan Cases](image)
I used the coefficient estimates from model 5 in Table 4.2 to impute the predicted probabilities in Figure 4.2. Based on these coefficients, when a judge’s political party favors the defendant in a campaign finance case, there is a 0.42 probability that a judge will rule in favor of the plaintiff. However, when the judge’s political party favors the plaintiff, there is a 0.60 probability that she will favor the plaintiff. This results in a 0.18 change in probability, depending on the preference of the judge’s political party.

The results presented in Tables 4.1 and 4.2 suggest that judges rely on different factors when deciding a campaign finance case, depending on the litigants appearing before them. When a judge hears a case in which the major political parties have an opposing stake in the case outcome, she is likely to rely on her partisan preferences to help resolve the case. But, when the major political parties do not have an opposing stake in a campaign finance case, a judge is likely to rely on her first dimension policy preferences and the decision of a lower court or the F.E.C. to guide her case vote.\textsuperscript{117} I provide further discussion on the implications of this finding in Chapter 5.

While the case outcome model provides a test of whether judges favor their political party’s interest, after controlling for the judge’s policy preferences, this model does not provide insight as to what factors may lead a judge to favor her political party when hearing an election law case. To test Hypotheses 2 through 4,\textsuperscript{118} I present the campaign finance partisan favoritism model in Table 4.3. As discussed in Chapter 3, the

\textsuperscript{117} For brevity, I do not report a separate analysis that only examines case votes where the major parties do not have a direct interest in the case. In this additional analysis, the first dimension policy preferences of a judge and Previous Court Decision are the only variables that have a statistically significant relationship at p ≤ 0.05 with a judge’s case vote in campaign finance cases.

\textsuperscript{118} As a reminder, Hypothesis 2 states that a judge with political career experience will be more likely to rule for her political party, Hypothesis 3 states that age will influence the likelihood of a judge ruling for their political party, and Hypothesis 4 states that court of appeals membership will influence the likelihood of a judge favoring her political party.
policy preference variables and *Previous Court Decision* must be rescaled to account for the new dependent variable (whether the judge rules in favor of her political party’s preferred case outcome). The first dimension variables are scaled in such a way that increasing values in the policy preference variables denote congruency between the judge’s policy preference and the outcome favored by the judge’s political party. In other words, as the policy preference variable approaches one, this means a judge is more likely to rule for her political party because the party advocates a case outcome that is consistent with her policy preferences. However, since increasing values of the second dimension policy preferences denote increased liberalism, the opposite is true of the scaled version of *JCS2*. Increasing values of *JCS2* measure policy preference incongruence between a judge’s policy preferences and the position favored by her political party. The scaled version of *Previous Court Decision* denotes whether a previous court decision or administrative decision of the F.E.C. favored the judge’s political party.
<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Career Experience</td>
<td>-0.139</td>
<td>-0.135</td>
<td>-0.130</td>
<td>-0.129</td>
<td>-0.116</td>
</tr>
<tr>
<td>(0=None; 1=Experience)</td>
<td>(0.250)</td>
<td>(0.262)</td>
<td>(0.255)</td>
<td>(0.270)</td>
<td>(0.269)</td>
</tr>
<tr>
<td>Age</td>
<td>-0.005</td>
<td>-0.005</td>
<td>-0.005</td>
<td>-0.005</td>
<td>-0.005</td>
</tr>
<tr>
<td></td>
<td>(0.010)</td>
<td>(0.010)</td>
<td>(0.010)</td>
<td>(0.010)</td>
<td>(0.010)</td>
</tr>
<tr>
<td>Court of Appeals</td>
<td>0.120</td>
<td>0.141</td>
<td>0.125</td>
<td>0.127</td>
<td>0.121</td>
</tr>
<tr>
<td>(0=DC; 1=CA)</td>
<td>(0.252)</td>
<td>(0.245)</td>
<td>(0.261)</td>
<td>(0.260)</td>
<td>(0.260)</td>
</tr>
<tr>
<td>Epstein CS (Scaled)</td>
<td>0.157</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>0.430</td>
</tr>
<tr>
<td></td>
<td>(0.337)</td>
<td></td>
<td></td>
<td></td>
<td>(0.582)</td>
</tr>
<tr>
<td>JCS1 (Scaled)</td>
<td>-----</td>
<td>0.008</td>
<td>-----</td>
<td>-0.020</td>
<td>-0.449</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.465)</td>
<td></td>
<td>(0.467)</td>
<td>(0.734)</td>
</tr>
<tr>
<td>JCS2 (Scaled)</td>
<td>-----</td>
<td>-----</td>
<td>-0.081</td>
<td>-0.083</td>
<td>0.008</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.246)</td>
<td>(0.245)</td>
<td>(0.290)</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>0.038</td>
<td>0.040</td>
<td>0.049</td>
<td>0.049</td>
<td>0.036</td>
</tr>
<tr>
<td>(Scaled)</td>
<td>(0.252)</td>
<td>(0.253)</td>
<td>(0.253)</td>
<td>(0.253)</td>
<td>(0.254)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.589</td>
<td>0.608</td>
<td>0.620</td>
<td>0.623</td>
<td>0.621</td>
</tr>
<tr>
<td></td>
<td>(0.652)</td>
<td>(0.642)</td>
<td>(0.674)</td>
<td>(0.652)</td>
<td>(0.650)</td>
</tr>
<tr>
<td>Observations</td>
<td>406</td>
<td>406</td>
<td>406</td>
<td>406</td>
<td>406</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>156</td>
<td>156</td>
<td>156</td>
<td>156</td>
<td>156</td>
</tr>
<tr>
<td>Pseudo Log-Likelihood</td>
<td>-274.38</td>
<td>-274.55</td>
<td>-274.46</td>
<td>-274.46</td>
<td>-274.11</td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0.0022</td>
<td>0.0016</td>
<td>0.0020</td>
<td>0.0020</td>
<td>0.0032</td>
</tr>
<tr>
<td>$\chi^2$</td>
<td>0.74</td>
<td>0.66</td>
<td>0.79</td>
<td>0.93</td>
<td>1.69</td>
</tr>
<tr>
<td>Prob. &gt; $\chi^2$</td>
<td>0.9807</td>
<td>0.9849</td>
<td>0.9779</td>
<td>0.9881</td>
<td>0.9750</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>58.87%</td>
<td>58.87%</td>
<td>58.87%</td>
<td>58.87%</td>
<td>58.62%</td>
</tr>
<tr>
<td>Reduction in Error</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>-0.60%</td>
</tr>
</tbody>
</table>

Table 4.3: Campaign Finance Probability of a Partisan Ruling

Across the five models presented in Table 4.3, none of the independent variables attain traditional levels of statistical significance. At least in the context of campaign finance cases, I am unable to reject the nulls of Hypotheses 2 through 4. It is also worth...
noting that the Wald chi-square statistic is not statistically significant across the five iterations of the campaign finance partisan favoritism model. This insignificant finding means that, collectively, the independent variables included in these models do not adequately predict outcomes in the dependent variable. The poor performance of these models suggest that a judge’s political career experience, age, and being a member of a district court or court of appeals does not predict whether a judge will favor their political party in the context of campaign finance cases.

While my analysis of campaign finance cases provides support for Hypothesis 1, the partisan favoritism model provides no support for Hypotheses 2 through 4. Thus, it appears that federal judges deciding campaign finance cases, regardless of the demographic variables I examine, are all just as likely to be influenced by the interests of their political parties. In the next section, I repeat the above analyses in the context of political party right to association cases.

**Political Party Right to Association**

Right to association cases in this dissertation generally pertain to a political party’s right to associate with members or candidates, and the ability to control their own procedures during the candidate nomination process, including primary elections. As noted in Chapter 3, the right to association data are scaled such that the plaintiff prefers a liberal outcome (i.e., favoring associational rights). Table 4.4 presents the case outcome model for all right to association cases, including those that do not directly involve the interests of the two major political parties.
<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest (-1= Δ; 0= None; 1=π)</td>
<td>0.373*</td>
<td>0.341*</td>
<td>0.328+</td>
<td>0.282+</td>
<td>0.273</td>
</tr>
<tr>
<td></td>
<td>(0.202)</td>
<td>(0.199)</td>
<td>(0.213)</td>
<td>(0.207)</td>
<td>(0.213)</td>
</tr>
<tr>
<td>Epstein CS (-1= Liberal; 1= Conservative)</td>
<td>-0.813*</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>0.495</td>
</tr>
<tr>
<td></td>
<td>(0.471)</td>
<td></td>
<td></td>
<td></td>
<td>(1.137)</td>
</tr>
<tr>
<td>JCS1 (-1= Liberal; 1= Conservative)</td>
<td>—</td>
<td>-1.51**</td>
<td>—</td>
<td>-1.73**</td>
<td>-2.204*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.534)</td>
<td></td>
<td>(0.651)</td>
<td>(1.246)</td>
</tr>
<tr>
<td>JCS2 (-1= Conservative; 1= Liberal)</td>
<td>—</td>
<td>—</td>
<td>-0.053</td>
<td>-0.321</td>
<td>-0.258</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.308)</td>
<td>(0.351)</td>
<td>(0.383)</td>
</tr>
<tr>
<td>Previous Court Decision (-1= Δ; 0= None; 1=π)</td>
<td>0.180</td>
<td>0.218</td>
<td>0.136</td>
<td>0.240</td>
<td>0.234</td>
</tr>
<tr>
<td></td>
<td>(0.403)</td>
<td>(0.399)</td>
<td>(0.392)</td>
<td>(0.393)</td>
<td>(0.393)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.286</td>
<td>-0.294</td>
<td>-0.282</td>
<td>-0.349</td>
<td>-0.338</td>
</tr>
<tr>
<td></td>
<td>(0.268)</td>
<td>(0.269)</td>
<td>(0.273)</td>
<td>(0.282)</td>
<td>(0.283)</td>
</tr>
<tr>
<td>Observations</td>
<td>148</td>
<td>148</td>
<td>148</td>
<td>148</td>
<td>148</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>73</td>
<td>73</td>
<td>73</td>
<td>73</td>
<td>73</td>
</tr>
<tr>
<td>Pseudo Log-Likelihood</td>
<td>-98.33</td>
<td>-96.38</td>
<td>-99.81</td>
<td>-95.82</td>
<td>-95.68</td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0.0286</td>
<td>0.0479</td>
<td>0.0141</td>
<td>0.0534</td>
<td>0.0548</td>
</tr>
<tr>
<td>$\chi^2$</td>
<td>5.14</td>
<td>10.46</td>
<td>2.70</td>
<td>10.44</td>
<td>11.31</td>
</tr>
<tr>
<td>Prob. &gt; $\chi^2$</td>
<td>0.1622</td>
<td>0.0150</td>
<td>0.4401</td>
<td>0.0337</td>
<td>0.0456</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>58.11%</td>
<td>60.14%</td>
<td>53.38%</td>
<td>60.81%</td>
<td>62.16%</td>
</tr>
<tr>
<td>Reduction in Error</td>
<td>3.12%</td>
<td>7.81%</td>
<td>-7.81%</td>
<td>9.38%</td>
<td>12.50%</td>
</tr>
</tbody>
</table>

Table 4.4: Right to Association Likelihood of Ruling for Plaintiff – Includes Nonpartisan Cases

+ p ≤ 0.10; * p ≤ 0.05; ** p ≤ 0.01, one-tailed significance tests. Robust clustered standard errors in parentheses.

There are several variables that attain statistical significance in this table. In models 1 and 2, Party Interest is significant and correctly signed at p ≤ 0.05, and it is also significant and correctly signed at p ≤ 0.10 in models 3 and 4. However, Party Interest no longer achieves statistical significance in model 5. While models 1 through 4 provide support for Hypothesis 1, model 5 produces the largest percentage of outcomes correctly predicted and yields the largest reduction in error, and Party Interest is not significant in...
this model. Given these findings, the models in Table 4.4 provide mixed support for Hypothesis 1.

The only other variables to achieve statistical significance in the right to association case outcome model are the first dimension policy preference variables. 

\textit{Epstein CS} is statistically significant in model 1 at $p = 0.042$, while \textit{JCS1} is significant in models 2, 4, and 5 at $p \leq 0.01$. Thus, as a judge’s first dimension policy preferences become more conservative, she will be less likely to vote in favor of the plaintiff (who advocates a right to association). This outcome is consistent with my directional expectations of policy preferences influencing the case votes as discussed in Chapter 3.

It is important to note that the predictive power of models 1 and 3 is questionable given that the Wald chi-square statistic is not statistically significant. This, too, casts some doubt on \textit{Party Interest}’s effect on case votes. To better interpret the substantive results of Table 4.4, I present the predicted probabilities of this version of the case outcome model in Figure 4.3.
The predicted probabilities presented in Figure 4.3 are derived from the coefficients in model 5 of Table 4.4. Again, I use these coefficients because model 5 yields the largest percentage of outcomes correctly predicted and reduction in error. Based on these coefficient estimates, when a judge’s political party favors the defendant, the judge has a 0.35 probability of ruling for the plaintiff. When no party interests are involved, there is a 0.42 probability of ruling for the plaintiff. Finally, when a judge’s political party favors the plaintiff in a right to association case, a judge has a 0.48 probability of ruling for the plaintiff. This results in a 0.13 shift in probability of ruling for the plaintiff.
for the plaintiff when the preferred outcome of a judge’s political party moves from defendant to plaintiff. The 90% confidence intervals make clear that there is no statistically significant effect of *Party Interest* on a judge’s case vote. The confidence intervals for “Defendant” and “Plaintiff” overlap in this figure, and one cannot discern a statistical effect for this variable.

While models 1 through 4 of Table 4.4 provide some support for Hypothesis 1, the robustness of a partisan effect can be further tested by analyzing only cases that involved the interests of the two major political parties. Table 4.5 re-estimates the case outcome model for political party right to association cases.
<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest</td>
<td>0.775*</td>
<td>0.714+</td>
<td>0.710+</td>
<td>0.600+</td>
<td>0.579</td>
</tr>
<tr>
<td>(0= Δ; 1=π)</td>
<td>(0.461)</td>
<td>(0.461)</td>
<td>(0.449)</td>
<td>(0.454)</td>
<td>(0.464)</td>
</tr>
<tr>
<td>Epstein CS</td>
<td>-0.889+</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>0.759</td>
</tr>
<tr>
<td>(-1=Liberal; 1=Conservative)</td>
<td>(0.590)</td>
<td></td>
<td></td>
<td></td>
<td>(1.500)</td>
</tr>
<tr>
<td>JCS1</td>
<td>—</td>
<td>-1.840**</td>
<td>—</td>
<td>-2.044**</td>
<td>-2.863*</td>
</tr>
<tr>
<td>(-1=Liberal; 1=Conservative)</td>
<td></td>
<td>(0.699)</td>
<td></td>
<td>(0.873)</td>
<td>(1.729)</td>
</tr>
<tr>
<td>JCS2</td>
<td>—</td>
<td>—</td>
<td>0.037</td>
<td>-0.311</td>
<td>-0.215</td>
</tr>
<tr>
<td>(-1=Conservative; 1=Liberal)</td>
<td></td>
<td></td>
<td>(0.539)</td>
<td>(0.601)</td>
<td>(0.668)</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>0.058</td>
<td>0.083</td>
<td>-0.019</td>
<td>0.136</td>
<td>0.099</td>
</tr>
<tr>
<td>(-1= Δ; 0=None; 1=π)</td>
<td>(0.493)</td>
<td>(0.485)</td>
<td>(0.497)</td>
<td>(0.489)</td>
<td>(0.494)</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.111**</td>
<td>-1.036**</td>
<td>-1.040**</td>
<td>-1.030**</td>
<td>-0.970*</td>
</tr>
<tr>
<td></td>
<td>(0.413)</td>
<td>(0.421)</td>
<td>(0.407)</td>
<td>(0.428)</td>
<td>(0.455)</td>
</tr>
<tr>
<td>Observations</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td>Pseudo Log-Likelihood</td>
<td>-53.17</td>
<td>-51.84</td>
<td>-54.22</td>
<td>-51.63</td>
<td>-51.45</td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0.0399</td>
<td>0.0638</td>
<td>0.0210</td>
<td>0.0677</td>
<td>0.0709</td>
</tr>
<tr>
<td>χ²</td>
<td>4.26</td>
<td>8.86</td>
<td>2.55</td>
<td>8.93</td>
<td>9.90</td>
</tr>
<tr>
<td>Prob. &gt; χ²</td>
<td>0.2351</td>
<td>0.0312</td>
<td>0.4658</td>
<td>0.0629</td>
<td>0.0782</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>66.67%</td>
<td>67.82%</td>
<td>66.67%</td>
<td>70.11%</td>
<td>67.82%</td>
</tr>
<tr>
<td>Reduction in Error</td>
<td>0.00%</td>
<td>3.45%</td>
<td>0.00%</td>
<td>10.34%</td>
<td>3.45%</td>
</tr>
</tbody>
</table>

Table 4.5: Right to Association Likelihood of Ruling for Plaintiff – Only Includes Partisan Cases

+ p ≤ 0.10; * p ≤ 0.05; ** p ≤ 0.01, one-tailed significance tests. Robust clustered standard errors in parentheses.

One must be cautious when interpreting the results provided in Table 4.5.

Unfortunately, political party right to association cases constitute a rather small sample of election law cases. When examining only those cases that present a clear partisan interests for the two major parties, the total number of case votes is reduced to 87.

Performing maximum likelihood analysis on a sample size that is fewer than 100 could
result in biased model estimates (see Long 1997, 53-54). Despite the small sample size, Table 4.5 provides some statistically significant findings. Like the findings presented in Table 4.4, Table 4.5 also provides some support for Hypothesis 1. In model 1, \textit{Party Interest} is significant at \( p = 0.047 \), and this variable is significant at \( p \leq 0.10 \) in models 2, 3, and 4. However, the Wald chi-square statistic is not statistically significant in models 1 and 3. Given that these models employ a small sample size, and that \textit{Party Interest} is significant at \( p \leq 0.10 \) using a one-tailed test in some of these model iterations, this is not overwhelming support for Hypothesis 1 in the context of political party right to association cases.

In addition to \textit{Party Interest}, the first dimension policy preference variables attain statistical significance in models 1, 2, 4, and 5. Because these policy preference variables were also statistically significant in Table 4.4, this is reasonable evidence that a judge’s first dimension policy preferences predict case votes in right to association cases. Again, Previous Court Decision is not statistically significant in any iteration of the case outcome model for right to association cases. While this was a variable that influenced judicial behavior in the context of campaign finance cases, it appears to have no explanatory power for right to association cases. The substantive effects of \textit{Party Interest} can be observed in Figure 4.4.
Figure 4.4: Right to Association Predicted Probabilities, Only Includes Partisan Cases

The estimates in Figure 4.4 were calculated using the coefficients from model 4 in Table 4.5. When a judge’s political party favors the defendant, the judge had a 0.26 probability of ruling for the plaintiff, and this probability increased to 0.39 when the judge’s political party favored the plaintiff. Thus, even when the judge’s political party favored the plaintiff, a judge was still unlikely to rule for the plaintiff. Like Figure 4.3, the confidence intervals for “Defendant” and “Plaintiff” overlap. Again, these findings do not provide strong support in favor of Hypothesis 1.

To test Hypotheses 2 through 4 in the context of political party right to association cases, I present the results of the partisan favoritism model in Table 4.6.
<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Career Experience</td>
<td>0.672</td>
<td>0.677</td>
<td>0.611</td>
<td>0.639</td>
<td>0.636</td>
</tr>
<tr>
<td>(0=None; 1=Experience)</td>
<td>(0.724)</td>
<td>(0.741)</td>
<td>(0.689)</td>
<td>(0.723)</td>
<td>(0.725)</td>
</tr>
<tr>
<td>Court of Appeals</td>
<td>-0.705</td>
<td>-0.690</td>
<td>-0.655</td>
<td>-0.688</td>
<td>-0.671</td>
</tr>
<tr>
<td>(0=DC; 1=CA)</td>
<td>(0.504)</td>
<td>(0.492)</td>
<td>(0.476)</td>
<td>(0.494)</td>
<td>(0.509)</td>
</tr>
<tr>
<td>Age</td>
<td>-0.005</td>
<td>-0.005</td>
<td>-0.003</td>
<td>-0.003</td>
<td>-0.003</td>
</tr>
<tr>
<td></td>
<td>(0.024)</td>
<td>(0.025)</td>
<td>(0.023)</td>
<td>(0.025)</td>
<td>(0.025)</td>
</tr>
<tr>
<td>Epstein CS (Scaled)</td>
<td>-0.475</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>0.252</td>
</tr>
<tr>
<td></td>
<td>(0.733)</td>
<td></td>
<td></td>
<td></td>
<td>(1.255)</td>
</tr>
<tr>
<td>JCS1 (Scaled)</td>
<td>-----</td>
<td>-0.855</td>
<td>-----</td>
<td>-0.764</td>
<td>-1.034</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1.010)</td>
<td></td>
<td>(1.038)</td>
<td>(1.764)</td>
</tr>
<tr>
<td>JCS2 (Scaled)</td>
<td>-----</td>
<td>-----</td>
<td>0.253</td>
<td>0.141</td>
<td>0.165</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.458)</td>
<td>(0.471)</td>
<td>(0.448)</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>-0.126</td>
<td>-0.132</td>
<td>-0.143</td>
<td>-0.131</td>
<td>-0.138</td>
</tr>
<tr>
<td>(Scaled)</td>
<td>(0.495)</td>
<td>(0.497)</td>
<td>(0.504)</td>
<td>(0.495)</td>
<td>(0.494)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.957</td>
<td>0.995</td>
<td>0.772</td>
<td>0.898</td>
<td>0.888</td>
</tr>
<tr>
<td></td>
<td>(1.526)</td>
<td>(1.607)</td>
<td>(1.440)</td>
<td>(1.627)</td>
<td>(1.619)</td>
</tr>
<tr>
<td>Observations</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td>Pseudo Log-Likelihood</td>
<td>-56.79</td>
<td>-56.55</td>
<td>-56.89</td>
<td>-56.50</td>
<td>-56.47</td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0.0376</td>
<td>0.0415</td>
<td>0.0358</td>
<td>0.0425</td>
<td>0.0429</td>
</tr>
<tr>
<td>χ²</td>
<td>2.60</td>
<td>2.84</td>
<td>2.61</td>
<td>2.85</td>
<td>3.13</td>
</tr>
<tr>
<td>Prob. &gt; χ²</td>
<td>0.7617</td>
<td>0.7245</td>
<td>0.7596</td>
<td>0.8272</td>
<td>0.8731</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>64.37%</td>
<td>67.82%</td>
<td>68.97%</td>
<td>67.82%</td>
<td>66.67%</td>
</tr>
<tr>
<td>Reduction in Error</td>
<td>13.89%</td>
<td>22.22%</td>
<td>25.00%</td>
<td>22.22%</td>
<td>19.44%</td>
</tr>
</tbody>
</table>

Table 4.6: Right to Association Probability of a Partisan Ruling

^ p ≤ 0.10; # p ≤ 0.05; ## p ≤ 0.01, two-tailed significance tests. + p ≤ 0.10; * p ≤ 0.05; ** p ≤ 0.01, one-tailed significance tests. Robust clustered standard errors in parentheses.
Much like the results of Table 4.3, the right to association partisan favoritism model does not produce any statistically significant results. In addition, the Wald chi-square statistic for all models in Table 4.6 does not attain statistical significance. As a result, there is no evidence to support Hypotheses 2 through 4 in the context of political party right to association cases.

Unlike the campaign finance analysis, political party right to association cases provide little support for any of my hypotheses. There is marginal support for Hypothesis 1 only, but the evidence is not so strong that I would be confident in rejecting the null of Hypothesis 1. In Table 4.4, the model that yielded the largest percentage of outcomes correctly predicted and largest reduction of error did not result in a statistically significant estimate of *Party Interest*. It is difficult to say why this was the case, but it is worth noting that this model iteration included both measures of first dimension judicial policy preference. It is possible that the model iterations lacking both measures of first dimension policy preference are underspecified. *Party Interest* may be significant in these models simply because this variable accounts for some of the variance due to a judge’s first dimension policy preference. When I include both measures of judicial policy preference in the case outcome models, thus better-accounting for policy preferences, *Party Interest* is no longer significant. As for the results presented in Table 4.5, given the small sample size, the overlapping confidence intervals in the predicted probabilities, and the Wald chi-square statistic failing to attain statistical significance in two model iterations, it is difficult to give much weight to these findings. In any event, it seems that first dimension policy preferences are the strongest predictors of a judge’s case vote in the context of right to association cases, instead of partisan preferences.
In the next section, I present the results of the final category of election law cases – redistricting cases. Given that the redistricting process can profoundly affect state and national politics, judges may be compelled by partisan interests rather than policy preferences when deciding these politically salient cases.

Redistricting

Redistricting cases are unique in this dataset because a three-judge district court decided almost every case. And since these cases consistently employ the use of multi-judge panels, I am able to include Panel Composition in the redistricting partisan favoritism model to test Hypothesis 5 (politically homogeneous panels increase the likelihood a partisan ruling). While I include Panel Composition in the partisan favoritism model, I do not include the variable Court of Appeals. As I note in Chapter 2, I examine the differences between district and court of appeals judges in campaign finance and right to association cases because of each judge’s respective institutional role. Generally speaking, trial court judges are most concerned with deciding issues of fact, while appellate court judges are most often concerned with issues of law and procedure. When district and court of appeals judges sit together on a three-judge district court, all judges must assume the role of a trial judge. Therefore, including the variable Court of Appeals in the redistricting partisan favoritism model is not warranted.

---

119 There were only seven redistricting cases decided by a single district court judge. In most of these cases, the judge disposed of the legal complaint on technical grounds.
Despite this difference in the partisan favoritism model, the procedures for estimating the case outcome model remain the same as compared with campaign finance and political party right to association cases. I present the results of the redistricting case outcome model in Table 4.7. Following the practice of previous sections in this chapter, the case outcome model in Table 4.7 includes cases that do not directly involve the interests of the two major political parties.\footnote{120}{These cases include districting plans enacted under divided government, or cases created by a non-partisan/bipartisan districting commission.}
### Table 4.7: Redistricting Likelihood of Ruling for Plaintiff – Includes Nonpartisan Cases

+ $p \leq 0.10$; * $p \leq 0.05$; ** $p \leq 0.01$, one-tailed significance tests. Robust clustered standard errors in parentheses.

<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest ((-1 = \Delta; 0 = \text{None}; 1 = \pi))</td>
<td>0.058</td>
<td>0.034</td>
<td>0.164</td>
<td>0.136</td>
<td>0.124</td>
</tr>
<tr>
<td></td>
<td>(0.131)</td>
<td>(0.135)</td>
<td>(0.133)</td>
<td>(0.139)</td>
<td>(0.139)</td>
</tr>
<tr>
<td>Epstein CS ((-1 = \text{Liberal}; 1 = \text{Conservative}))</td>
<td>-0.368</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>-0.513</td>
</tr>
<tr>
<td></td>
<td>(0.361)</td>
<td></td>
<td></td>
<td></td>
<td>(0.662)</td>
</tr>
<tr>
<td>JCS1 ((-1 = \text{Liberal}; 1 = \text{Conservative}))</td>
<td>—</td>
<td>-0.122</td>
<td>—</td>
<td>0.379</td>
<td>0.867</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.417)</td>
<td></td>
<td>(0.495)</td>
<td>(0.760)</td>
</tr>
<tr>
<td>JCS2 ((-1 = \text{Conservative}; 1 = \text{Liberal}))</td>
<td>—</td>
<td>—</td>
<td>0.687**</td>
<td>0.765**</td>
<td>0.720**</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.257)</td>
<td>(0.291)</td>
<td>(0.308)</td>
</tr>
<tr>
<td>Previous Court Decision ((-1 = \Delta; 0 = \text{None}; 1 = \pi))</td>
<td>0.433</td>
<td>0.463</td>
<td>0.506</td>
<td>0.523*</td>
<td>0.488</td>
</tr>
<tr>
<td></td>
<td>(0.413)</td>
<td>(0.418)</td>
<td>(0.408)</td>
<td>(0.405)</td>
<td>(0.398)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.275*</td>
<td>-0.284*</td>
<td>-0.217*</td>
<td>-0.182</td>
<td>-0.148</td>
</tr>
<tr>
<td></td>
<td>(0.166)</td>
<td>(0.169)</td>
<td>(0.164)</td>
<td>(0.172)</td>
<td>(0.176)</td>
</tr>
</tbody>
</table>

Observations                        | 409        | 409        | 409        | 409        | 409        |
Number of Clusters                  | 131        | 131        | 131        | 131        | 131        |
Pseudo Log-Likelihood               | -278.91    | -279.62    | -274.59    | -274.17    | -273.66    |
Pseudo $R^2$                         | 0.0067     | 0.0042     | 0.0221     | 0.0236     | 0.0838     |
$\chi^2$                            | 2.17       | 1.33       | 8.15       | 8.39       | 9.71       |
Prob. $> \chi^2$                    | 0.5300     | 0.7231     | 0.0430     | 0.0236     | 0.0254     |
Percent Correctly Predicted          | 56.72%     | 56.23%     | 56.72%     | 55.75%     | 55.01%     |
Reduction in Error                   | 2.21%      | 1.10%      | 2.21%      | 0.00%      | -1.66%     |

Across the five iterations of the redistricting case outcome model, only the variable $JCS2$ attains statistical significance, and it does so at $p \leq 0.01$. As a reminder, the redistricting data is scaled such that the plaintiff favors a liberal outcome (i.e., favors greater equality in a districting plan). Thus, as a judge becomes more conservative in regard to her second dimension policy preferences, she is less likely to rule in favor of a
plaintiff challenging an apportionment scheme. This variable appears to be an important predictor of a judge’s case vote in redistricting cases, as evidenced by the Wald chi-square statistic for models 3, 4, and 5. Models 1 and 2 are the only iterations that do not include JCS2, and these models’ Wald chi-square statistic is not significant. At no point does the variable Party Interest attain statistical significance, and, therefore, these models do not provide support for Hypothesis 1. The substantive effect of Party Interest can be observed in Figure 4.5.
The coefficients from model 3 in Table 4.7 are the basis for the predicted probabilities reported in Figure 4.5. According to the predicted probability estimates, when a judge’s political party favors the defendant, a judge has a 0.41 probability of ruling for the plaintiff. When there is no partisan interest in a case, a judge has a 0.45 probability of ruling for the plaintiff. This probability increases to 0.49 when a judge’s political party favors the plaintiff. While there is a 0.08 change in the a judge’s case vote
depending on the value of Party Interest, the ranges of the 90% confidence intervals across the three values of Partisan Interest overlap. As a result, one cannot be certain that Party Interest does affect a judge’s case votes in redistricting cases.

I obtain similar results when re-estimating the redistricting case outcome models. The results of Table 4.8 exclude redistricting cases that were enacted under divided government or by a non-partisan/bipartisan districting commission. Thus, the cases analyzed in Table 4.8 were passed either under Democratic- or Republican-unified government.¹²¹

¹²¹ There is one small exception. A single redistricting case involved a lawsuit where Republican elected officials sued over a districting scheme that was enacted under divided government. Although this case involves divided government, I code it as a partisan case because an identifiable partisan interest is represented by the plaintiff. The inclusion of this one case does not affect the substantive results of the redistricting case outcome model.
The results of Table 4.8 do not provide support for Hypothesis 1, as *Party Interest* fails to attain statistical significance across any iteration of the case outcome model.

Although Table 4.8 produces several statistically significant findings, one should be cautious when interpreting these coefficients because the Wald chi-square statistic does not attain traditional levels of statistical significance in any of the model iterations. The Wald chi-square statistic performs best in model 3, where it reaches $p = 0.11$. This

<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest $(0=\Delta; 1=\pi)$</td>
<td>0.109</td>
<td>0.057</td>
<td>0.270</td>
<td>0.223</td>
<td>0.202</td>
</tr>
<tr>
<td></td>
<td>(0.271)</td>
<td>(0.284)</td>
<td>(0.277)</td>
<td>(0.293)</td>
<td>(0.292)</td>
</tr>
<tr>
<td>Epstein CS $(0=\text{Liberal}; 1=\text{Conservative})$</td>
<td>-0.304</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>-0.529</td>
</tr>
<tr>
<td></td>
<td>(0.459)</td>
<td></td>
<td></td>
<td></td>
<td>(0.809)</td>
</tr>
<tr>
<td>JCS1 $(0=\text{Liberal}; 1=\text{Conservative})$</td>
<td>—</td>
<td>-0.043</td>
<td>—</td>
<td>0.317</td>
<td>0.805</td>
</tr>
<tr>
<td></td>
<td>—</td>
<td>(0.510)</td>
<td></td>
<td>(0.576)</td>
<td>(0.879)</td>
</tr>
<tr>
<td>JCS2 $(0=\text{Conservative}; 1=\text{Liberal})$</td>
<td>—</td>
<td>—</td>
<td>0.539*</td>
<td>0.603*</td>
<td>0.560*</td>
</tr>
<tr>
<td></td>
<td>—</td>
<td></td>
<td>(0.303)</td>
<td>(0.332)</td>
<td>(0.353)</td>
</tr>
<tr>
<td>Previous Court Decision $(0=\Delta; 0=\text{None}; 1=\pi)$</td>
<td>0.776*</td>
<td>0.815*</td>
<td>0.850*</td>
<td>0.867*</td>
<td>0.813*</td>
</tr>
<tr>
<td></td>
<td>(0.485)</td>
<td>(0.483)</td>
<td>(0.475)</td>
<td>(0.473)</td>
<td>(0.476)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.420*</td>
<td>-0.401*</td>
<td>-0.474*</td>
<td>-0.426*</td>
<td>-0.379</td>
</tr>
<tr>
<td></td>
<td>(0.214)</td>
<td>(0.236)</td>
<td>(0.219)</td>
<td>(0.244)</td>
<td>(0.251)</td>
</tr>
</tbody>
</table>

| Observations                                        | 320               | 320               | 320               | 320               | 320               |
| Number of Clusters                                   | 98                | 98                | 98                | 98                | 98                |
| Pseudo $R^2$                                        | 0.0142            | 0.0125            | 0.0224            | 0.0234            | 0.0253            |
| $\chi^2$                                            | 3.38              | 2.90              | 5.99              | 6.25              | 7.49              |
| Prob. > $\chi^2$                                    | 0.3372            | 0.4069            | 0.1119            | 0.1811            | 0.1865            |
| Percent Correctly Predicted                          | 59.06%            | 59.06%            | 60.31%            | 60.94%            | 61.88%            |
| Reduction in Error                                   | 4.38%             | 4.38%             | 7.30%             | 8.76%             | 10.95%            |

Table 4.8: Redistricting Likelihood of Favoring Plaintiff – Only Includes Partisan Cases

$\dagger p \leq 0.10; \ast p \leq 0.05; \ast\ast p \leq 0.01$, one-tailed significance tests. Robust clustered standard errors in parentheses.
suggests that, overall, these models do not have more predictive power than the null model.

Despite the poor Wald chi-square statistic, the second dimension policy preference variable \(JCS2\) is statistically significant each time it is included in a model, much like the findings of Table 4.7. In models 3 and 4, \(JCS2\) is significant at \(p \leq 0.05\), and in model 5 it is significant at \(p = 0.057\). Additionally, the variable \(Previous\ Court\ Decision\) is now significant in Table 4.8. In all the model iterations, except model 5, this variable is significant at \(p \leq 0.05\). This statistically significant finding for \(Previous\ Court\ Decision\) is intriguing because it was not statistically significant in Table 4.7. It is not immediately clear as to why the decision of a previous court would be a predictor of a judge’s case vote only in cases where districting schemes were enacted under unified government. Given the politically charged nature of some redistricting cases, it is possible that judges may give deference to a previous court ruling on a pending legal matter to help resolve the dispute, thereby diminishing the possible appearance of judicial impropriety. But, one should be cautious when interpreting \(Previous\ Court\ Decision\) in the context of redistricting cases because of the limited variation in this variable.\(^{122}\) It could also be the case that the \(Previous\ Court\ Decision\) result is a statistical anomaly due to the poor performance of the models overall, as evidenced by the Wald chi-square statistic. In any event, this \(Previous\ Court\ Decision\) finding is questionable.

Figure 4.6 depicts the predicted probability of a judge ruling for the plaintiff, based on the coefficients of model 5 in Table 4.8. When a judge’s political party favors the defendant in a redistricting case, a judge has a 0.41 probability of ruling in favor of

\(^{122}\) I discuss this issue in regard to Table 4.9, presented later in this chapter.
the plaintiff. The probability of ruling in favor of the plaintiff increases to 0.46 when the judge’s political party favors a ruling for the plaintiff. Again, the 90% confidence intervals overlap between these two values of *Party Interest*, and therefore it is not possible to discern a statistically significant effect for this variable.

![Figure 4.6: Redistricting Predicted Probabilities, Only Includes Partisan Cases](image)

Even though there was no evidence to support Hypothesis 1 in the redistricting case outcome model, it is still possible that a judge’s personal characteristics will
influence the likelihood of voting for her political party. Table 4.9 presents the results of the partisan favoritism model and tests Hypotheses 2, 3, and 5.

<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Career Experience</td>
<td>0.237</td>
<td>0.224</td>
<td>0.255</td>
<td>0.224</td>
<td>0.221</td>
</tr>
<tr>
<td>(0=None; 1=Experience)</td>
<td>(0.313)</td>
<td>(0.321)</td>
<td>(0.311)</td>
<td>(0.320)</td>
<td>(0.323)</td>
</tr>
<tr>
<td>Age</td>
<td>0.039</td>
<td>0.037</td>
<td>0.036</td>
<td>0.033</td>
<td>0.035</td>
</tr>
<tr>
<td>(0.024)</td>
<td>(0.023)</td>
<td>(0.020)</td>
<td>(0.019)</td>
<td>(0.02)</td>
<td></td>
</tr>
<tr>
<td>Panel Composition</td>
<td>1.05*</td>
<td>0.984*</td>
<td>0.832*</td>
<td>0.805*</td>
<td>0.916*</td>
</tr>
<tr>
<td>(0=Opposite party; 1=Same party)</td>
<td>(0.525)</td>
<td>(0.514)</td>
<td>(0.530)</td>
<td>(0.516)</td>
<td>(0.513)</td>
</tr>
<tr>
<td>Epstein CS (Scaled)</td>
<td>0.784</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>1.459^</td>
</tr>
<tr>
<td>(0.656)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(0.812)</td>
</tr>
<tr>
<td>JCS1 (Scaled)</td>
<td>-----</td>
<td>-0.047</td>
<td>-----</td>
<td>-0.683</td>
<td>-1.909^</td>
</tr>
<tr>
<td>(0.652)</td>
<td></td>
<td></td>
<td></td>
<td>(1.183)</td>
<td>(1.238)</td>
</tr>
<tr>
<td>JCS2 (Scaled)</td>
<td>-----</td>
<td>-----</td>
<td>-1.236**</td>
<td>-1.355*</td>
<td>-1.234^</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.530)</td>
<td>(0.715)</td>
<td>(0.778)</td>
</tr>
<tr>
<td>Previous Court Decision (Scaled)</td>
<td>-0.941*</td>
<td>-0.781*</td>
<td>-0.814*</td>
<td>-0.739*</td>
<td>-0.901*</td>
</tr>
<tr>
<td></td>
<td>(0.569)</td>
<td>(0.533)</td>
<td>(0.514)</td>
<td>(0.503)</td>
<td>(0.522)</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.784</td>
<td>-1.713</td>
<td>-1.367</td>
<td>-1.256</td>
<td>-1.390</td>
</tr>
<tr>
<td></td>
<td>(1.517)</td>
<td>(1.459)</td>
<td>(1.215)</td>
<td>(1.188)</td>
<td>(1.252)</td>
</tr>
<tr>
<td>Observations</td>
<td>315</td>
<td>315</td>
<td>315</td>
<td>315</td>
<td>315</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>93</td>
<td>93</td>
<td>93</td>
<td>93</td>
<td>93</td>
</tr>
<tr>
<td>Pseudo Log-Likelihood</td>
<td>-173.36</td>
<td>-175.16</td>
<td>-165.75</td>
<td>-164.93</td>
<td>-162.64</td>
</tr>
<tr>
<td>Pseudo $R^2$</td>
<td>0.0562</td>
<td>0.0464</td>
<td>0.0976</td>
<td>0.1021</td>
<td>0.1145</td>
</tr>
<tr>
<td>$\chi^2$</td>
<td>13.74</td>
<td>10.96</td>
<td>16.09</td>
<td>19.18</td>
<td>21.79</td>
</tr>
<tr>
<td>Prob. &gt; $\chi^2$</td>
<td>0.0173</td>
<td>0.0522</td>
<td>0.0066</td>
<td>0.0039</td>
<td>0.0028</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>73.65%</td>
<td>73.02%</td>
<td>77.78%</td>
<td>77.14%</td>
<td>75.56%</td>
</tr>
<tr>
<td>Reduction in Error</td>
<td>2.35%</td>
<td>0.00%</td>
<td>17.65%</td>
<td>15.29%</td>
<td>9.41%</td>
</tr>
</tbody>
</table>

Table 4.9: Redistricting Probability of a Partisan Ruling

^ p ≤ 0.10; # p ≤ 0.05; ## p ≤ 0.01, two-tailed significance tests. + p ≤ 0.10; * p ≤ 0.05; ** p ≤ 0.01, one-tailed significance tests. Robust clustered standard errors in parentheses.
There are several variables that are statistically significant in Table 4.9. At first, it may seem unusual to find any statistically significant variables in the partisan favoritism model given that *Party Interest* was not significant in any of the case outcome models as listed in Tables 4.7 and 4.8. However, the fact that *Party Interest* was not significant in the case outcome models means that, in the aggregate, case votes across all judges were not predicted to a degree of statistical certainty by partisan preferences. The fact that some variables are statistically significant in the partisan favoritism model suggests that the effect of *Party Interest* could be conditional.

The first variable in Table 4.9 to achieve some level of statistical significance is a judge’s *Age*. This variable attains statistical significant at $p \leq 0.10$ in four of the five model iterations. Since this variable is positive, it can be interpreted to mean that as a judge’s age increases, she is more likely to rule in favor of the position that benefits her political party. Therefore, older judges are more likely than their younger counterparts to be influenced by partisan preferences in the context of the redistricting cases. This finding provides evidence in support of Hypothesis 3.

Additionally, the variable *Panel Composition* is statistically significant at $p \leq 0.05$ in models 1, 2, and 5, and at $p \leq 0.10$ in models 3 and 4. This finding suggests that a judge is more likely to vote in favor of her political party’s interests as more members of the three-judge district court share her partisan affiliation. This result provides support for Hypothesis 5, and can be interpreted to mean that partisan behavior is contingent upon panel homogeneity in the context of redistricting cases.

It is also worth discussing the significant relationship between JCS2 and a judge voting in favor of her political party’s interests. Within Table 4.9, the scaled version of
JCS2 attains statistical significance at $p = 0.01$ in model 3, $p = 0.029$ in model 4, $p = 0.056$ in model 5, and is negatively signed in each of these model iterations. One must keep in mind that the un-scaled version JCS2 is coded differently than JCS1. While JCS1 is coded such that increasing values measure increased conservatism, increasing values of JCS2 measure increased liberalism. The scaled version of JCS1 measures congruency between a judge’s first dimension policy preferences and the outcome preferred by her political party, while the scaled version of JCS2 measures incongruence between a judge’s second dimension policy preferences and the outcome preferred by her political party. Thus, when there is less congruence between a judge’s second dimension policy preference and the outcome preferred by their political party, a judge should be less likely to favor the interests of her political party.  

This relationship is confirmed in Table 4.9 because JCS2 is significant and negatively signed in models 3, 4, and 5.

The last control variable included in this model, the scaled version of Previous Court Decision, attains statistical significance at $p \leq 0.05$ in models 1 and 5, and at $p \leq 0.10$ in models 2, 3, and 4. However, the variable is not signed as expected. Since the variable coefficients are negative, the results can be interpreted to mean that when a previous court decision favors the interests of a judge’s political party, a judge is more likely to vote against her political party’s interests. It is not immediately clear why this should be the case. Such a finding is counterintuitive and unexpected given that Previous Court Decision was positively signed in Table 4.8. Since there is very little variation in the Previous Court Variable for redistricting cases (89% of the Previous Court Variable

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123 This relationship is the functional equivalent of measuring congruency between policy preferences and the outcome preferred by a judge’s political party.
case vote observations in redistricting cases are equal to zero), it is possible that there is a unique quality about the other 11% of case vote observations that may have compelled a judge to vote against her political party’s interests. In an unreported analysis, I re-estimated the models in Table 4.9, excluding the Previous Court Decision variable, and the results were not substantively different from those reported in Table 4.9.

One must keep in mind that the data used to estimate the redistricting partisan favoritism model consists of the same data as included in Table 4.8 (redistricting case outcome model that only includes partisan cases). Given that the Wald chi-square statistic was not statistically significant in the models presented in Table 4.8, this may cast doubt on statistically significant findings in Table 4.9. Therefore, in the interest of thoroughness, it is necessary to further examine the possibility of a conditional partisan effect in redistricting cases. In Table 4.9, the effect of Panel Composition is most noteworthy because it resulted in the strongest p-value of all the variables included in the model iterations, and it provided support for Hypothesis 5. Since the models reported Table 4.9 are my only opportunity to test Hypothesis 5 in this dissertation, further examination of this relationship is certainly warranted before I can reject its null hypothesis.

To test the robustness of Panel Composition’s effect on judicial case votes, I re-estimate the case outcome model presented in Table 4.8, but I now include an interaction term that takes into account the interests of a judge’s political party and the partisan

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124 This may be the case because the party favoritism model was constructed as a variation of the case outcome model, which sought to avoid the use of interaction terms.
composition of the three-judge district court hearing the redistricting case. I present this updated case outcome model in Table 4.10.

<table>
<thead>
<tr>
<th>Variables</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party Interest</td>
<td>-0.204</td>
<td>-0.271</td>
<td>-0.079</td>
<td>-0.157</td>
<td>-0.203</td>
</tr>
<tr>
<td>(0= Δ; 1=π)</td>
<td>(0.364)</td>
<td>(0.381)</td>
<td>(0.361)</td>
<td>(0.378)</td>
<td>(0.394)</td>
</tr>
<tr>
<td>Panel Composition</td>
<td>0.448</td>
<td>0.473</td>
<td>0.402</td>
<td>0.402</td>
<td>0.369</td>
</tr>
<tr>
<td>(0=Opposite party; 1=Same party)</td>
<td>(0.553)</td>
<td>(0.545)</td>
<td>(0.562)</td>
<td>(0.564)</td>
<td>(0.577)</td>
</tr>
<tr>
<td>Party Interest x Panel Composition</td>
<td>0.68</td>
<td>0.672</td>
<td>0.709</td>
<td>0.736</td>
<td>0.784</td>
</tr>
<tr>
<td></td>
<td>(0.908)</td>
<td>(0.89)</td>
<td>(0.904)</td>
<td>(0.895)</td>
<td>(0.917)</td>
</tr>
<tr>
<td>Epstein CS</td>
<td>-0.262</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-0.632</td>
</tr>
<tr>
<td>(-1=Liberal; 1=Conservative)</td>
<td>(0.440)</td>
<td></td>
<td></td>
<td></td>
<td>(0.793)</td>
</tr>
<tr>
<td>JCS1</td>
<td>-----</td>
<td>0.07</td>
<td>-----</td>
<td>0.44</td>
<td>1.028</td>
</tr>
<tr>
<td>(-1=Liberal; 1=Conservative)</td>
<td></td>
<td>(0.51)</td>
<td></td>
<td>(0.585)</td>
<td>(0.904)</td>
</tr>
<tr>
<td>JCS2</td>
<td>-----</td>
<td>-----</td>
<td>0.482*</td>
<td>0.578*</td>
<td>0.530*</td>
</tr>
<tr>
<td>(-1=Conservative; 1=Liberals)</td>
<td></td>
<td></td>
<td>(0.308)</td>
<td>(0.344)</td>
<td>(0.362)</td>
</tr>
<tr>
<td>Previous Court Decision</td>
<td>0.705*</td>
<td>0.74*</td>
<td>0.76*</td>
<td>0.775*</td>
<td>0.706</td>
</tr>
<tr>
<td>(-1= Δ; 0=None; 1=π)</td>
<td>(0.502)</td>
<td>(0.50)</td>
<td>(0.494)</td>
<td>(0.486)</td>
<td>(0.484)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.613*</td>
<td>-0.589*</td>
<td>-0.64*</td>
<td>-0.574*</td>
<td>-0.502*</td>
</tr>
<tr>
<td></td>
<td>(0.286)</td>
<td>(0.299)</td>
<td>(0.29)</td>
<td>(0.305)</td>
<td>(0.325)</td>
</tr>
</tbody>
</table>

| Observations                           | 315   | 315   | 315   | 315   | 315   |
| Number of Clusters                     | 93    | 93    | 93    | 93    | 93    |
| Pseudo Log-Likelihood                  | -209.8| -210.06| -208.39| -207.99| -207.42|
| Pseudo R²                              | 0.0247| 0.0235| 0.0313| 0.0331| 0.0358|
| χ²                                    | 6.18  | 6.08  | 8.54  | 9.11  | 10.07 |
| Prob. > χ²                             | 0.2895| 0.2981| 0.129 | 0.1674| 0.1849|
| Percent Correctly Predicted            | 62.54%| 61.59%| 61.59%| 62.86%| 64.76%|
| Reduction in Error                     | 12.59%| 10.37%| 10.37%| 13.33%| 17.78%|

Table 4.10: Redistricting Probability of Ruling for Plaintiff – Includes Panel Composition Interaction Term
+ p ≤ 0.10; * p ≤ 0.05; ** p ≤ 0.01, one-tailed significance tests. Robust clustered standard errors in parentheses.
While Table 4.10 does produce two statistically significant results, JCS2 and Previous Court Decision, the interaction term and its constituent terms do not attain statistical significance in any of the model iterations (although, the coefficients are positively signed, as expected). Furthermore, each of the five model iterations, as a whole, are not statistically significant, as evidenced by the Wald chi-square statistic. This finding is unexpected in light of the Panel Composition results in Table 4.9. Intuitively, it seems that the interaction term in the re-estimated case outcome model should also attain statistical significance. To help reconcile the conflicting findings of Tables 4.9 and 4.10, it is useful to examine the cross tabulation of Pro-Political Party (the dependent variable in the partisan favoritism model) and Panel Composition. I present this cross tabulation in Table 4.11.

<table>
<thead>
<tr>
<th>No Judges Share Party Affiliation</th>
<th>One Judge Shares Party Affiliation</th>
<th>All Judges Share Party Affiliation</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote Does Not Favor Political Party</td>
<td>29.7% (N=27)</td>
<td>31.8% (N=50)</td>
<td>11.9% (N=8)</td>
</tr>
<tr>
<td>Vote Favors Political Party</td>
<td>70.3% (N=64)</td>
<td>68.2% (N=107)</td>
<td>88.1% (N=59)</td>
</tr>
<tr>
<td>Totals</td>
<td>91</td>
<td>157</td>
<td>67</td>
</tr>
</tbody>
</table>

Table 4.11: Cross Tabulation – Favorable Political Party Case Vote and Panel Composition
Note: Reported percentages are calculated for each column. Pearson chi-square: 9.91, p = 0.007.

Although cross tabulations are limited in their ability to establish statistical relationships between variables, the descriptive statistics in Table 4.11 may provide some insight as to the validity of a Panel Composition effect. Upon examining the columns of
Table 4.11, there is very little difference in the percentage of case votes in favor of a judge’s party when a judge shares her partisan affiliation with one or no judges serving on the three-judge district court. Judges voted for their political party in 70.3% of case votes when no other judge shared their partisan affiliation, and in 68.2% of case votes when one other judge shared their partisan affiliation. The percentage of case votes in favor of a judge’s political party increases to 88.1% when all the judges on a three-judge district court share the same partisan affiliation. And the variation among these categories of Panel Composition is statistically significant (Pearson chi-square, p = 0.007). This increase in the percentage of partisan case votes supports Hypothesis 5 and the finding of a Panel Composition effect in Table 4.9. However, one must remember that this cross tabulation does not account for a judge’s policy preferences or other variables that could influence judicial behavior. Because of this, Table 4.11 does not provide any information regarding the motives for partisan judicial behavior. But, as an empirical finding, the judges in my dataset cast a partisan case vote most often when serving on a politically homogeneous panel.

Overall, the redistricting analysis does not provide evidence that partisan interests unconditionally and systematically affect judicial behavior. There is, however, evidence that older judges are more likely to rule in favor of their political party, and mixed evidence suggesting that politically homogeneous panels increase the likelihood of a partisan case vote. It is curious that Age is statistically significant in redistricting cases, when it was not significant in the campaign finance and right to association partisan favoritism models. Also, the results of Table 4.10 and the Wald chi-square statistics in Table 4.9 cast some doubt on the effect of Panel Composition. If partisan behavior, in
fact, occurs in redistricting cases, its effect on judicial behavior is conditional based on the findings presented in this section.

While discussing the results of the case outcome and partisan favoritism models by category of election law is useful, it does not address the larger concern of what these individual analyses can tell researchers about judicial behavior across the three categories of election law. In the next section, I provide a brief discussion of the collective results presented in this chapter, and whether these findings as a whole support my hypotheses.

**Summary of Results**

Of the three categories of election law analyzed in this dissertation, I have only found an unconditional statistical relationship between a judge’s case votes and the interests of her political party in campaign finance cases (see Tables 4.1 and 4.2). The campaign finance case outcome model is the only model that provides strong support for Hypothesis 1. However, there is limited evidence for a partisan effect in the right to association cases. As I noted earlier in this chapter, one must be cautious when interpreting the result of the right to association cases for several reasons. First, in the case outcome model that includes non-partisan cases (Table 4.4), the model iteration with the largest percentage of outcomes correctly predicted and largest reduction of error does not yield a statistically significant *Party Interest* effect. Second, when I re-estimated the case outcome model in Table 4.5, the sample size dropped to 87. This small sample size could pose problems for my model estimates. Third, there are several model iterations
that do not yield a statistically significant Wald chi-square statistic. And lastly, the confidence intervals for the predicted probabilities overlap (see Figures 4.3 and 4.4).

In the partisan favoritism models, I find evidence that a judge’s age influences case votes, but only in the context of redistricting cases. Given that there is no strong theoretical reason to justify why a judge’s age would be a consideration in redistricting cases but not in campaign finance or political party right to association cases, this finding seems questionable. Thus, one must assume that this finding does not provide strong support for Hypothesis 3 despite my statistical findings. Also pertaining to redistricting cases, Panel Composition was statistically significant across the five iterations of the partisan favoritism model. As previous scholars have found (e.g., Boyd, Epstein, and Martin, 2010; Farhang and Wawro, 2004; Sunstein et al., 2006; Tiller and Cross, 1999), panel diversity can influence the decision-making process of judges. The results of Table 4.9 suggest that panel homogeneity increases the likelihood of a partisan case vote. But, when I re-estimated the redistricting case outcome model to include an interaction term that accounts for Partisan Interest and Panel Composition, I did not obtain statistically significant results. Despite the appearance of partisan behavior as evidenced in Table 4.11, and out of an abundance of caution, I am hesitant to completely reject the null of Hypothesis 5. At this time, I am only able to report mixed support for Hypothesis 5. Additionally, at no point did the variables Political Career Experience and Court of Appeals attain statistical significance in any of the partisan favoritism model. Therefore, I cannot reject the nulls of Hypotheses 2 and 4.

As should be expected, I found strong evidence that a judge’s policy preferences influence case votes across all categories of election law cases. What is perhaps most
surprising is the effect of policy preferences in the context of campaign finance cases. When analyzing cases using the trichotomous *Party Interest* variable, first dimension policy preferences are a strong predictor of a judge’s case vote, along with *Party Interest* and *Previous Court Decision*. However, when cases involve the opposing interests of the Democratic and Republican Parties, as reported in Table 4.2, the first dimension policy preference variables are no longer significant and only *Party Interest* predicts case votes.

The reason for partisan behavior in campaign finance cases, but not the other categories of election law, is perhaps the result of the unique political salience and impact of campaign finance decisions. I discuss this possibility in more detail in the conclusion chapter of this dissertation. Despite this finding for campaign finance cases, it does not appear that judges are systematically and unconditionally influenced by the preferences of their political party across all areas of election law. Based on the results of the partisan favoritism models, there is virtually no evidence to suggest that factors such as a judge’s political career experience, age, and court membership influence partisan behavior.
CHAPTER 5: CONCLUSION

The primary purpose of this chapter is to discuss the implications of the results obtained in Chapter 4. But before discussing the implications of my results, it is useful to provide a brief review of the material presented in the preceding chapters. In the following sections, I provide a summary of the research question, methods, and results of the analyses reported earlier in this dissertation. After reviewing this information, I discuss the theoretical implications of my findings. I then offer a possible explanation for the differences in results for the variable Party Interest across the three categories of election law. Lastly, I acknowledge several shortcomings of this dissertation, and I also suggest avenues for future scholarship.

Review of Research Question and Methods

This dissertation sought to determine if partisan interests affect the case votes of federal judges when they decide politically salient election law cases, after controlling for a judge’s policy preferences. As noted earlier in the dissertation, the political science literature primarily emphasizes judicial policy preferences, or a combination of law and policy preferences, to explain and predict the decisions of judges. However, relying on law and policy preferences alone may provide an incomplete explanation of judicial
behavior. With respect to election law cases, where political parties often have a significant stake in the outcome of a case, there is good reason to expect that partisan preferences would influence a judge’s behavior when deciding these cases, at least to some extent.

In Chapter 2, I posited five hypotheses to determine if there was a relationship between a judge’s case vote and the interests of her political party for a given election law case. The primary hypothesis that I tested states that the interests of a judge’s political party influence judicial case votes. Specifically, when a judge’s political party favors the plaintiff/defendant in a given case, a judge will be more likely to vote for the plaintiff/defendant. The additional hypotheses advanced in this dissertation sought to determine if several variables increased the likelihood of a judge favoring the interests of her political party. Hypothesis 2 stated that a judge with previous political career experience (e.g., elected office, political party leadership, etc.) is more likely to vote in favor of her political party. Hypothesis 3 stated that a judge’s age influences the likelihood of favoring her political party. Because there are conflicting theoretical predictions regarding the directional effect of a judge’s age, I did not posit a direction for this hypothesis. Hypothesis 4 stated that there is a relationship between court membership (district court versus court of appeals) and the likelihood of a judge favoring her political party. Again, I did not posit a direction regarding Hypothesis 4 because there are conflicting theoretical expectations regarding the likelihood of district court/court of appeals judges favoring their political party. Additionally, I did not test Hypothesis 4 in the redistricting analysis, because virtually all redistricting cases were decided by a three-judge district court consisting of district and court of appeals judges.
Lastly, Hypothesis 5 states that politically heterogeneous panels decrease the likelihood of a judge favoring her political party’s interests. Due to the availability of multi-judge panels in the data, I only tested Hypothesis 5 for redistricting cases.

I estimated two different logit models to test my hypotheses. The “case outcome” model tested my primary hypothesis. The dependent variable in this model was the case vote of a judge (plaintiff/defendant). The second model, the “partisan favoritism” model, tested Hypotheses 2 through 5. The dependent variable in this model measured whether a judge’s case vote favored her political party’s interests. The data used to estimate these models consisted of the case votes of U.S. district court and court of appeals judges that decided campaign finance, political party right to association, and redistricting cases from 1962 through 2007, as listed in the Westlaw database.

Summary of Findings

In Chapter 4, I presented the results of the case outcome and partisan favoritism models by category of election law. I follow the same practice when discussing the results in this section. For brevity and clarity, I include Table 5.1, which summarizes my overall findings across all hypotheses, statistical models, and categories of election law. In this Table, I note whether there is sufficient evidence to reject each of the null hypotheses.
<table>
<thead>
<tr>
<th>Hypotheses</th>
<th>Campaign Finance</th>
<th>Right to Association</th>
<th>Redistricting</th>
</tr>
</thead>
<tbody>
<tr>
<td>H1: Party Interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Cases</td>
<td><strong>Reject Null</strong></td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
</tr>
<tr>
<td>Major Parties Only</td>
<td><strong>Reject Null</strong></td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
</tr>
<tr>
<td>H2: Political Career</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major Parties Only</td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
</tr>
<tr>
<td>H3: Age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major Parties Only</td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
<td><strong>Reject Null</strong></td>
</tr>
<tr>
<td>H4: Court Membership</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major Parties Only</td>
<td>Cannot Reject Null</td>
<td>Cannot Reject Null</td>
<td>N/A</td>
</tr>
<tr>
<td>H5: Panel Composition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major Parties Only</td>
<td>N/A</td>
<td>N/A</td>
<td>Mixed Findings*</td>
</tr>
</tbody>
</table>

**Table 5.1: Summary of Findings**

Note: I report “cannot reject null” for the right to association cases because the confidence intervals in the predicted probabilities overlap (see Figures 4.3 and 4.4 in Chapter 4). Also, I report “mixed findings” for Hypothesis 5 because the redistricting partisan favoritism model yielded statistically significant findings for Panel Composition, but I did not find a statistically significant effect when I re-estimated the case outcome model (see Tables 4.9 and 4.10 in Chapter 4).

^ p < 0.10, two-tailed test; + p < 0.10, one-tailed test; * p < 0.05, one-tailed test; ** p < 0.01, one-tailed test.

I derive the information in Table 5.1 from the model iterations in Chapter 4 that produced the greatest percentage of outcomes correctly predicted and the greatest reduction of error.\(^{125}\) While this Table is useful in describing my most significant findings, it oversimplifies my results to some degree. For that reason, I discuss the findings of each category of election law in greater detail in the following sub-sections.

\(^{125}\) To determine if I can reject the null of Hypothesis 1, I rely on the predicted probability estimates produced by the case outcome model that only includes cases in which the major political party have a stake.
Campaign Finance

Campaign finance cases provide strong support for my primary hypothesis. When I examined all campaign finance cases in the case outcome model (including cases that did not directly involve the interests of the two major political parties), the variable *Party Interest* was correctly signed and statistically significant across all five of the model iterations. Based on predicted probabilities for this analysis, a change in the value of *Party Interest* (moving from favoring the defendant to favoring the plaintiff) increased the probability of voting for the plaintiff by 0.15. When only examining those cases that involve the interests of the Democratic and Republican Parties, I obtained similar results – the *Party Interest* variable was correctly signed and statistically significant in all five model iterations. In this latter analysis, the change in probability of ruling for the plaintiff was 0.18.

What is, perhaps, most intriguing is the change in statistical significance of the control variables when analyzing all campaign finance cases versus only cases involving the interests of the Democratic and Republican Parties. In the campaign finance case outcome model that includes all cases, the control variables measuring a judge’s first dimension policy preferences and *Previous Court Decision* attained statistical significance. These results can be interpreted to mean that as a judge becomes more conservative, or when a lower court favors the plaintiff, the judge is more likely to rule for the plaintiff. However, this result only holds when analyzing all campaign finance cases. When I eliminated those cases that involved a non-partisan interest group, a third-party, or those cases in which the major parties shared a stake in the same case outcome,
the first dimension policy preferences and Previous Court Decision were no longer statistically significant. Based on these results, it appears that when judges decide campaign finance cases that do not directly involve the interests of the major political parties, they will rely on first dimension policy preferences and the decision of lower courts or the F.E.C. to help resolve the case. However, when a judge hears a case involving the interests of her political party, these control variables no longer influence judicial behavior. Instead, the judge’s partisan preferences will help to guide her case vote. These findings provide ample evidence to reject the null of Hypothesis 1.

When I estimated the partisan favoritism model for campaign finance cases, none of the variables attained statistical significance, and the models themselves did not achieve statistical significance, as indicated by the Wald chi-square statistic. Therefore, I could not reject the nulls of Hypotheses 2, 3, and 4 in the context of campaign finance cases.

Political Party Right to Association

There is limited support for my primary hypothesis in the context of political party right to association cases. When I estimated the case outcome model for all cases, Party Interest attained statistical significance and was correctly signed in four of the five model iterations. In models 1 and 2 of Table 4.4, Party Interest was significant at $p \leq 0.05$, and in models 3 and 4 it was significant at $p \leq 0.10$. However, model 5 yielded the

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126 As I discuss in footnote 117 of Chapter 4, I do not report a separate analysis that only examines campaign finance case votes where the major parties do not have a direct interest in the case. In this additional analysis, the first dimension policy preferences of a judge and Previous Court Decision were the only variables to achieve statistical significance.
largest percentage of outcomes correctly predicted and largest reduction in error but did not produce a statistically significant Party Interest effect. Additionally, models 1 and 3 did not yield a statistically significant Wald chi-square statistic, meaning that the models as a whole did not perform better than the null model. I reported similar results in the case outcome model that only examined cases involving the interests of the two major parties. Again, Party Interest was statistically significant in four of the five model iterations. But, in this analysis, Party Interest was only statistically significant at $p \leq 0.05$ in model 1 of Table 4.5, and it was significant at $p \leq 0.10$ in models 2, 3, and 4. Also, two of these models (models 1 and 3) did not yield a statistically significant Wald chi-square statistic.

While most of the Party Interest estimates, on their face, attained traditional levels of statistical significance, there are good reasons to be cautious when interpreting these results. If one accounts for the poor performance of some of the case outcome model iterations as evidenced by the Wald chi-square statistic, then the majority of the model iterations do not produce a statistically significant Party Interest effect. Furthermore, the small sample size in Table 4.5 also raises concerns regarding the accuracy of the model estimates. Lastly, in each of the predicted probability estimates, the confidence intervals across the different values for Party Interest overlap. Given these complications, and out of an abundance of caution, I am hesitant to reject the null of Hypothesis 1 in the context of right to association cases.

Of the control variables included in the right to association cases outcome models, only the first dimension policy preferences attained traditional levels of statistical significance. These results can be interpreted to mean that as a judge becomes more
conservative, she is less likely to rule in favor associational rights. The variables Previous Court Decision and the second dimension policy preference variables did not attain statistical significance.

The partisan favoritism model did not provide support for Hypotheses 2 through 4. At no point did any of the variables included in these models attain statistical significance. And, much like the campaign finance partisan favoritism model, each model in the right to association context does not have any predictive power because the Wald chi-square statistic does not achieve statistical significance.

Redistricting

I do not find support for my primary hypothesis in any of the redistricting case outcome models. In the case outcome model that included all cases, the only variable that attained statistical significance was a JCS2 (a judge’s second dimension policy preference). This variable was correctly signed and can be interpreted to mean that as a judge becomes more liberal, the more likely she is to rule in favor of a plaintiff and strike down a state’s districting scheme. When examining only those cases that involve the interests of the two major parties, both JCS2 and Previous Court Decision were statistically significant and correctly signed. As noted in Chapter 4, it is not clear why Previous Court Decision is statistically significant in the latter analysis of the case outcome model, but not in the analysis that includes all redistricting cases. It is possible that judges would defer to a lower court/Supreme Court decision in politically charged cases to avoid the appearance of impropriety. Or, it is possible that this finding is a
statistical anomaly. This is a plausible explanation given that best-performing Wald chi-square statistic is only statistically significance at $p = 0.11$. But, for the time being, I cannot determine the exact reason for this result.

Two variables were correctly signed and attained statistical significance in the partisan favoritism model. First, $Age$ was significant at $p \leq 0.10$ (two-tailed test) in four of the five model iterations. This finding can be interpreted to mean that as a judge’s age increases, she will be more likely to rule in favor of her political party. This appears to be sufficient statistical evidence to reject the null of Hypothesis 3 in the context of redistricting cases. However, as I noted in Chapter 4, there is no theoretical reason to expect that a judge’s age would be a predictor of case votes in redistricting cases, but not in other types of election law cases. This certainly casts doubt upon this particular finding. Additionally, $Panel\ Composition$ is correctly signed and statistically significant in all five model iterations. This variable attains significance at $p \leq 0.05$ in models 1, 2, and 5, while it attains significance at $p \leq 0.10$ in models 3 and 4. This finding can be interpreted to mean that a judge will be more likely to vote in favor of her political party’s interests as the percentage of judges who share her party affiliation on a multi-judge panel increases.

Because I was only able to test Hypothesis 5 in the redistricting partisan favoritism model, I decided to perform an additional analysis to test the robustness of this finding. I re-estimated the redistricting case outcome model, with the inclusion of an interaction term that accounts for $Party\ Interest$ and $Panel\ Composition$. In this additional analysis, the interaction term was not statistically significant. While this re-estimation of the case outcome model is not directly comparable to the partisan
favoritism model, the two models are similar enough that the non-significant interaction term raises some concerns regarding the validity of Hypothesis 5. I further examined the relationship between Panel Composition and a judge ruling in favor of her political party by producing a cross-tabulation of these variables in Table 4.11. Based on this cross-tabulation, judges voted for their political party’s interests more frequently when they served on a politically homogenous multi-judge panel. Because there is conflicting evidence regarding Hypothesis 5, I report “mixed findings” in Table 5.1.

All Cases

Admittedly, this dissertation does not find strong evidence in favor of my primary hypothesis across all categories of election law cases. There is only evidence to suggest that the interests of a judge’s political party systematically, and unconditionally, influences case votes in campaign finance cases. Thus, evaluated as a whole, there is not enough evidence to reject the nulls of Hypotheses 2 through 4. At least in regard to the campaign finance cases, where I found evidence of partisan behavior, the null results in the partisan favoritism model suggest that partisanship is uniform across a judge’s political career experience, age, and court membership. Also, there is mixed evidence to support Hypothesis 5, because Panel Composition was correctly signed and attained statistical significance in all iterations of the redistricting partisan favoritism model. But, similar findings were not reported in a re-analysis of the case outcome model that

127 While there is evidence that a judge’s age influences their decisions in the redistricting partisan favoritism model, there is no evidence of a similar effect in the other case categories. And as noted previously, there is no theoretical reason to expect that a judge’s age would be a predictor of case votes in redistricting cases, but not in campaign finance or right to association cases.
includes an interaction of Party Interest and Panel Composition. Therefore, if partisan behavior occurs in redistricting cases, this behavior is conditional and varies depending on the degree of homogeneity in the judicial panel’s partisan composition.

Additionally, when viewing the results of the case outcome model collectively, it appears that partisanship is the strongest predictor of case votes in campaign finance cases, while policy preferences are the strongest predictor of case votes in right to association and redistricting cases. Such a finding is intriguing, because it suggests that different sets of preferences influence judicial behavior, depending on the type of election law case a judge decides. However, it is not clear why Party Interest influences judicial behavior in campaign finance cases, and not in right to association or redistricting cases. This finding suggests that there is a unique quality about campaign finance cases that permits partisan preferences to influence judicial behavior. I discuss this possibility in more detail later in this chapter.

Theoretical Implications

Previous Studies of Judicial Partisanship

As I discussed in Chapter 2, most previous studies of judicial behavior that employ party affiliation as an independent variable in a statistical model treat party affiliation as a proxy for a judge’s policy preference. “Partisanship,” as used in these

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128 As I acknowledge earlier, Party Interest attained statistical significance in a majority of the right to association case outcome model iterations. However, because Party Interest was not statistically significant in the iterations with the largest percentage of outcomes correctly predicted and the largest reduction of error, I cannot say with a high degree of certainty that this is enough evidence to reject the null of Hypothesis 1. It is quite possible that the inclusion of more observations would provide greater certainty, but, given my results, I cannot assume that Party Interest influences judicial case votes in right to association cases.
studies, relates to ideological differences among judges, rather than favoritism for one’s political party. There have been some studies that have sought to examine the influence of partisanship on judicial behavior (e.g., Graves 2003; Kopko 2008; Lloyd 1995; McKenzie 2007; Williams 1998), but these studies do not directly account for the influence of policy preferences in the judicial decision-making process. Recently, however, McKenzie (2010) examined judicial decision-making among state supreme court justices deciding redistricting cases. In his analysis, McKenzie finds evidence of partisan behavior after controlling for a judge’s ideology using Brace, Langer, and Hall’s (2000) PAJID measure. However, he also notes problems with this analysis due to multicollinearity.

While some of these studies provided evidence of partisanship in the judicial decision-making process, none have implemented a control for judicial policy preference independent of a judge’s partisan affiliation. Most of the previous studies concerning judicial behavior have found evidence of partisanship among judges, particularly in the context of redistricting cases. But, this dissertation is the first study to control for a judge’s judicial policy preference independent of partisan affiliation, and I do not find a systematic and unconditional effect of partisanship. Although previous studies may have found a relationship between a judge’s partisan affiliation and case votes, it is not entirely clear that these studies measure partisanship as I do in this dissertation. The

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129 Some studies (e.g., Kopko 2008; Williams 1998) examine cases that do not involve a clear ideological dimension. As such, they do not necessarily need to account for the policy preferences of a judge.

130 Although, McKenzie (2010) is an exception. But, his findings are still conditional in nature. State supreme court justices are likely to strike down redistricting plans enacted by the opposing political party.
effects of partisanship in previous studies, instead, may be due to ideological differences between Democratic and Republican judges.

*Psychological Theories*

This dissertation sought to apply social identity theory and other social psychology theories to explain judicial behavior in the context of election law cases. Ultimately, this dissertation does not provide evidence that a judge’s political party influences decision-making in all cases. As I noted in this chapter, there is evidence of partisanship in campaign finance cases, and when politically homogeneous panels hear redistricting cases. However, in all other respects, I largely failed to find support for my hypotheses. It is important to note that the influence of political parties on judicial behavior is not pervasive, as evidenced by my results.

Yet, given the robust findings of partisanship in the campaign finance cases, and the effects of *Panel Composition* in the redistricting context, it seems that partisanship is conditional and its effect is dependent on the type of election law case. I detail in the next section a potential reason for the difference in the effect of *Party Interest* across the three categories of election law cases. The conditional effect of partisanship also means that, based on the results of the right to association and redistricting cases, the effect of policy preferences is conditional as well. As a reminder, *Party Interest* was the strongest predictor of case votes in the campaign finance case outcome model, while policy preferences were the strongest predictor in the right to association and redistricting case outcome models. This suggests that judges hold separate sets of preferences: preferences
for preferred in-groups (such as a political party) and policy preferences. In theory, these preferences could simultaneously influence judicial behavior, or only one type of preference could affect judicial behavior. This dissertation provides evidence of both the joint and individual influence each type of preference.

There is evidence that partisan preferences and policy preference jointly influenced the behavior of judges when deciding redistricting cases. Second dimension policy preferences were a strong predictor of judicial behavior in the redistricting case outcome model, and the degree of panel homogeneity was a statistically significant predictor of behavior in the partisan favoritism model. This seems to suggest that, generally, judges will use policy preferences to guide their case vote in redistricting cases. But, as more members of the multi-judge panel share their partisan affiliation, the more likely judges are to behave in a partisan manner and rule for their political party, after controlling for their policy preferences. As Table 4.9 in Chapter 4 demonstrates, the second dimension policy preference variable $JCS2$ is statistically significant and signed in the correct direction when it is included in the partisan favoritism model. One could argue that partisan preferences and policy preferences jointly influence judicial behavior in right to association cases as well. However, for reasons that I have already discussed in the previous section of this chapter, I cannot assume that partisan preferences motivate judicial behavior in right to association cases.

There is also evidence of a single preference influencing judicial behavior at a time in the context of campaign finance cases. When I analyzed cases that did not

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131 As I discuss in Chapter 2, if preferences for a social group and policy preferences jointly influence behavior, these variables could influence behavior in the same or opposite direction.
involve the interests of a political party, judges relied on policy preferences to decide these cases. But, when judges decided cases that only involved the interests of their political party, partisanship was the only significant predictor of judicial behavior.

The results presented in this dissertation could be consequential for theories of judicial behavior because I find evidence of both partisan preferences and policy preferences influencing a judge’s case votes. As noted previously, most political science theories of judicial behavior emphasize the role of policy preferences, or a combination of law and policy preferences, in the decision-making process. In light of my findings, judges are sometimes influenced by preferences for a social in-group in the decision-making process. Thus, law and policy preferences are not always sufficient considerations when predicting and explaining judicial behavior. In some instances, judges may hear a case that involves a personally salient in-group. If a judge has a strong personal attachment to the in-group appearing before the court, the judge may be compelled or motivated to rule for that in-group litigant, even if the in-group favors a position contrary to the judge’s personal policy preferences. While personally salient in-groups will not always appear before a judge, researchers may find it prudent to account for personally salient in-groups in models of judicial behavior, when appropriate. If scholars can account for the preferred outcome of a personally salient in-group, this may result in more accurate model estimates of judicial case votes.

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132 As noted in Chapter 4, this was an unreported analysis.
133 For example, a judge may feel compelled to recuse herself from a case if there is too strong of a personal attachment.
High/Low Politics

Since the interests of a political party (a social in-group) influence judicial behavior, at least to some extent, then it may seem as if the judges in my dataset sometimes operated under the low politics framework of decision-making as described by Levinson et al. But it is difficult to apply the low politics label to the results obtained in this dissertation. In order for low politics to occur, a judge must sacrifice their preferred policy preference in favor of their partisan preferences. It is not entirely clear that what I just described has, in fact, occurred in the election law cases that I examined. In the redistricting cases, both policy preferences and partisan preference (in the event of politically homogeneous panels) influence judicial behavior. This does not denote a sacrifice of policy preferences in favor of partisan preferences. Furthermore in the context of campaign finance cases, partisanship (not policy preferences) was the only statistically significant predictor of case votes. The fact that the policy preference variables failed to attain statistical significance should not be used as evidence that judicial behavior can be classified as low politics. It is likely that the policy preference variables did not attain statistical significance because some judges were influenced by policy preferences when deciding such cases, while others were not. Therefore, my dissertation provides little evidence that judges systematically disregarded their policy preferences to rule in favor of their political parties.

Although this occurrence does not qualify as low politics per the definition advanced by Levinson et al. (see Chapter 2), it does not meet the criteria of high politics either. In the cases I analyzed, judges were influenced, to some extent, by their political party’s preferences in campaign finance and redistricting cases. Thus, it appears that the
classification scheme devised by Levinson et al. is more complicated than a dichotomy. One could certainly not claim that federal judges are “partisan hacks” based on my results, but at the margins, and in some circumstances, judges are swayed in the decision-making process by their partisan preferences.

In light of my findings, the low/high politics classification scheme should be conceptualized as a continuum or, for the purpose of simplicity, a trichotomy. High politics denotes behavior that is motivated solely by a judge’s preferred legal policy preferences, while low politics denotes behavior where a judge disregards her policy preferences to rule in favor of her political party. In cases where policy preferences and partisan preferences jointly influence behavior, this could be classified as “intermediate politics.” In theory, judges may be compelled to decide a case in a certain direction because of psychological attachments to a political party and/or policy preferences, among other influences. However, when analyzing individual cases, it is not possible to determine how much weight a judge has given to partisan versus policy preferences. Intermediate politics is only observable in an aggregate statistical analysis, like the ones performed in this dissertation. For clarity, I present Figure 5.1 in the below, which provides an overview of the high/intermediate/low politics classification scheme.
This revised classification scheme uses the framework of Levinson et al. for high and low politics, and takes account of those situations in which both partisan preferences and policy preferences could jointly influence judicial behavior (i.e., intermediate politics). Additionally, there is one other possible outcome that I briefly discussed in Chapter 2 – that judges decided a case without the influence of partisan or policy preferences. In such a situation, any number of factors could be the guiding force of a judge’s decision, including such influences as law, judicial colleagues, government actors, public opinion, among a host of other possibilities. To be clear, high/intermediate/low politics does not mean an absence of other factors, including law, in the decision-making process. In my classification scheme, if a behavior is high politics, then policy preferences, and not partisan preferences, motivate judicial behavior to some extent. In low politics, partisan preferences, not policy preferences, motivate
judicial behavior to some extent. Lastly, intermediate politics assumes that both partisan
and policy preferences influence behavior at some level. The absence of both partisan
and policy preferences in the decision-making process means that other variables,
instead, influence judicial behavior. Again, considerations such as partisan preferences,
policy preferences, law, or other strategic factors could influence the behavior of any
given judge deciding an election law case. Perhaps it is only possible to observe the
influence of these variables through an aggregate statistical analysis without actually
knowing what a judge sincerely thinks when deciding a case.

The Effect of *Party Interest* Across Case Categories

The results of this dissertation raise an important question: why does *Party
Interest* only attain statistical significance in the campaign finance case outcome model?
While it is not clear why the effect of *Party Interest* is limited to campaign finance cases,
there are a few possible explanations for such a result. However, not all explanations are
likely to be true, as I discuss later in this section.

One potential explanation is campaign finance’s perceived salience in the political
process. It is possible that judges perceive campaign finance legal issues to be of greater
political importance than right to association or redistricting issues. If this is true, then it
may be reasonable to expect that campaign finance cases would yield a statistically
significant *Party Interest* effect. However, given that redistricting schemes are of
paramount political importance at the state and national level, it seems unlikely judges
would perceive campaign finance cases to be of greater political consequence, at least in

139
comparison to redistricting cases. Therefore, this is not a very compelling explanation for the *Party Interest* result.

There may also be institutional explanations for the differences in *Party Interest*, particularly in regards to campaign finance and redistricting cases. Virtually all the redistricting cases in my dataset were decided by a three-judge district court, while more than half (51.2%) of the judges who decided campaign finance cases served on a district court. It would seem that district court judges could have a greater capacity to rule in a partisan manner because there is no threat of a dissenting opinion, or other reactions from another judge hearing the case. Since most of the campaign finances cases analyzed in this dissertation were decided by a single district court judge, such an explanation, on its face, seems plausible. But, one must remember that none of the variables in the campaign finance partisan favoritism model, including *Court of Appeals*, attained statistical significance. If there was an institutional explanation for the differences between campaign finance cases and redistricting cases, it seems that *Court of Appeals* would be statistically significance in the campaign finance partisan favoritism model. Therefore, based on my results, I must assume that institutional differences due to multi-judge panels cannot explain the differences between campaign finance and redistricting cases.\(^{134}\)

Instead of perceived case salience or institutional arrangements, what may be consequential for the effect of *Party Interest* is a judge’s capacity to single-handedly

\(^{134}\) But, as discussed in this chapter and Chapter 4, *Panel Composition* was statistically significant in the redistricting partisan favoritism model. While the institutional difference of one judge versus three judges deciding a case may not be consequential, the results of the redistricting partisan favoritism model indicate that partisan homogeneity does affect the degree of partisan behavior among judges.
influence the political process when deciding an election law case. While redistricting cases may be of critical importance because of their implications for representation in legislatures, judges may not have the same influence over the political process when deciding a redistricting case versus a campaign finance case. If judges are aware that they have a greater opportunity to affect the political process when deciding a campaign finance case, then it is, perhaps, understandable that they would behave in a partisan manner. This raises the question: do judges have a greater capacity to influence the political process in campaign finance cases as compared to the other election law cases examined in this dissertation? Arguably, they do.\textsuperscript{135}

There are at least two reasons why campaign finance cases could afford judges a greater capacity to affect the political process, as compared to the other election law cases I examine in this dissertation. First, in many campaign finance cases, a litigant challenges a campaign finance regulation in the course of a general election campaign, or in the wake of a general election in hopes of achieving a policy change for the next set of elections.\textsuperscript{136} Therefore, a court’s decision could potentially result in direct and immediate consequences for the conduct of the general election campaign, or future campaigns, and ultimately competitiveness of these elections. Second, if a judge’s political party challenges a campaign finance regulation and the judge declares the regulation to be unconstitutional, it is quite difficult for a legislature to counteract this decision. While a legislature could pass a less restrictive campaign finance law in response to such a court decision, it would have to overcome the challenges and constraints presented by the existing political environment.

\textsuperscript{135} I present this argument only as a possible explanation for the findings that I report. There appears to be no way of knowing if judges do, in fact, have a greater capacity to affect the political process when deciding campaign finance cases.

\textsuperscript{136} This is particularly true when candidates or interest groups challenge campaign finance regulations related to a U.S. House of Representatives election, or an election for the lower chamber of a state legislature, since both of these offices are subject to election every two years.

141
ruling, the judge’s political party nonetheless receives an electoral net advantage.
Therefore, it is possible that a judge would have a greater capacity to affect the political
process when deciding campaign finance cases because their decisions could influence a
future election and their decisions (at least on constitutional grounds) are difficult to
overturn.

Now consider a case in which a judge votes to strike down a districting plan that
her political party opposes. In most cases, if a court were to strike down a districting
plan, a legislature would have the opportunity to revise the plan and resubmit it for court
approval (even after a court implements a temporary districting plan). Thus, the decision
of the judge is not entirely final; another political actor (i.e., a legislature) has the ability
to respond to such a judicial decision. If a previous plan was extraordinarily
gerrymandered, it is possible that a legislature could re-submit another gerrymandered,
although less-gerrymandered, plan for court approval. Thus, any given ruling in
redistricting litigation does not constitute the same direct and immediate impact on the
political process because there are opportunities for political actors to respond to a court
decision. ¹³⁷

A judge’s capacity to significantly affect the political process could also be
constrained in right to association cases. If a judge rules that a political party may or may
not invite non-affiliated voters to participate in a primary election, countless political
occurrences could happen after the primary election that would ultimately affect the
political party’s electoral advantage in a general election.

¹³⁷ It is possible for redistricting cases to directly affect the political process, particularly if a court
implements a temporary districting plan for an up-coming election. However, I noted in Appendix C, I do
not include these cases in my dataset.
While relying on campaign finance’s potential capacity to yield direct and immediate consequences for the political process is a plausible explanation for results I report, it is nothing more than conjecture. Without additional analyses of other types of election law cases, there is no way of determining if this explanation reconciles the differences in the effect of *Party Interest*. However, determining the exact reason for the differences in the *Party Interest* effect across case categories is beyond the immediate scope of this dissertation and is best suited for future research.

**Limitations of Dissertation**

While this dissertation has addressed a topic of both theoretic and normative importance, there are several limitations in its research design and results, of which readers should take notice. Perhaps the most important limitation is the validity of the judicial policy preference measures employed in my statistical analysis. I noted in Chapter 3, and Appendix B, that there is no perfect way of measuring judicial policy preferences. The validity of the policy preference scores I created (*JCSI* and *JCS2*) may use reasonable predictor variables to estimate the policy preferences of a given judge, but these variables will not have the same degree of validity compared to Bayesian Markov chain Monte Carlo estimates (e.g., Martin and Quinn 2002). However, as I discussed in Chapter 3, it may not be possible to develop policy preferences measures of this nature for the judges in my dataset, particularly for federal district judges.

Also related to issues of variable measurement, my measure of partisan preference will be inaccurate for some judges. I operationalized *Party Interest* based on the
president who appointed a judge to the federal courts. Certainly, this measure introduces some unsystematic bias, particularly if one considers the nomination of judges like Sonia Sotomayor, who was appointed to different levels of the federal judiciary by both Democratic and Republican presidents. Additionally, I conceptualize partisan stake as a zero-sum game, where a benefit for one political party is a detriment for the other, and vice versa. But, partisan interests may be more complex. As McKenzie (2007; 2010) finds, partisan behavior may be conditional, depending on whether a judge rules for her political party or rules against an opposing political party. Similarly, partisan behavior could be conditional, based on whether a judge’s party appears as a plaintiff or defendant in a given case. My models of judicial behavior do not account for these nuances. At the same time, however, given my limitations in accounting for partisan preferences and partisan stakes in a given case, my models should be considered a conservative test of partisan behavior among judges. The fact that I was able to find a partisan effect in campaign finance cases, and evidence of a conditional partisan effect in redistricting cases, should indicate that the influence of partisanship would be strong if I could better operationalize the Party Interest variable.

Another significant limitation of this dissertation, as noted in the previous section, is its inability to explain the differences in partisan behavior across the three categories of election law. While I have offered a possible explanation for this behavior, further research is needed to determine if this explanation is true. Intuitively, one would assume that the effect of partisanship would be similar across these areas of election law. For the time being, I am unable to provide a concrete explanation for the variation in partisanship across the categories of election law.
Furthermore, this dissertation is unable to explain the motivation for partisan behavior, when it did occur. In Chapter 2, I discussed both instrumental and psychological reasons that may compel a judge to rule in favor of her political party. Without knowing what a judge is thinking while deciding a given election law case, one cannot determine if instrumental or psychological factors are motivating behavior.

In the partisan favoritism model, Age served as a rough proxy variable for the instrumental motivation of judicial promotion. This variable only attained statistical significance in the redistricting case analysis. Thus, the effect was not consistent across all election law cases, and it does not appear that this instrumental motivation influenced judicial behavior.\(^\text{138}\) If instrumental motivations did not compel judges to behave in a partisan manner, then psychological factors must explain partisan behavior. Unfortunately, I have no way of determining if the psychological motivations/biases are conscious or subconscious. It is possible that a judge would knowingly rule in favor of her political party’s interests out of concern for the party’s well-being, or subconscious biases may cause a judge to process case information in a way that benefits her political party. However, due to limitations in examining the behavior of judges, it is not possible to determine the precise motivation for partisan behavior.

\(^{138}\) I acknowledge that the variable Age is by no means a perfect indicator for promotion potential. The lack of a consistent statistically significant finding could be due to this variable’s inability to properly measure promotion potential. However, given the complications in measuring promotion potential, and the fact that a judge’s age could affect the psychological attachment to their political party, I decided this would be an appropriate variable to include in my statistical models.
Future Research

This dissertation has only scratched the surface of possible cases for which a salient personal in-group could influence a judge’s decision. In the context of election law cases, one potential area for expansion would be voter identification cases. As discussed in Chapter 2, in recent years there has been an increase in voter ID-related litigation in federal courts since the passage of the Help America Vote Act in 2002. In many cases, judges tend to vote along party lines when resolving these disputes (see Elmendorf 2008). While the appearance of partisanship does not constitute actual partisanship, this voting pattern does raise the question of whether judges are motivated by the interests of their political party when resolving these cases. However, as noted earlier, more observations are needed to conduct an adequate statistical analysis.

Certainly much of the analyses conducted in this dissertation could be expanded to include state court cases. Perhaps the inclusion of state court cases would yield a large sample of voter ID cases as well. Federal courts are generally thought to be insulated from partisan influences, particularly due to the protections afforded to federal judges under Article III of the U.S. Constitution. However, state judges usually do not receive the same type of benefits as their counterparts in the federal courts. Furthermore, political parties often play an active role in the recruitment, election/re-election efforts of judges (e.g., Streb 2007). Additionally, McKenzie (2010) found some evidence of partisan behavior among state supreme court justices deciding redistricting cases. For these reasons, state judges should be more susceptible to partisanship when deciding election law cases.
Aside from election law cases, it is possible that scholars could identify other cases where personally salient social groups could influence the decision of a judge. While judges may feel compelled to recuse themselves from cases that involve some personally salient in-groups, there may be some broad social in-groups, much like a political party, that could permit a statistical analysis of judicial behavior. Religious denominations, for example, could be another type of a broad social group that could influence the behavior of judges. If the United Methodist Church was a litigant that appeared before a Methodist judge, it is possible that the judge would be influenced by the preferences of her religious group, independent of her own legal policy preferences.

Also, as mentioned earlier in this dissertation, it would be useful for future election law scholarship to understand why campaign finance cases produce a significant *Party Interest* effect in the case outcome model, while the other case categories do not. Answering this research question may be better suited to qualitative research, particularly interviews with federal judges to better understand how they approach decision-making in each of these types of election law case.

**Conclusion**

While political scientists often rely on policy preferences, or a combination of law and policy preferences, to explain and predict the case votes of judges, this dissertation’s findings suggest that the preferences of a personally salient in-group could be another relevant factor in predicting and explaining judicial behavior. Therefore, judicial scholars should consider, when appropriate, the influence of personally salient social in-
groups when modeling judicial behavior. However, determining which groups are salient to a judge may be a challenge when modeling judicial case votes.

Ultimately, this dissertation finds some evidence of partisan behavior among federal judges. Although any evidence of partisanship in the judicial decision-making process is troubling from a normative perspective, my results at least show that partisanship is not pervasive in all aspects of the decision-making process. In light of these findings, policy makers should decide if any semblance of partisanship is unacceptable in the federal courts before considering any potential reforms or changes to the judiciary. If so, then legislators may require politically heterogeneous multi-judge panels to hear election law cases, among other possible reforms. But, given that courts are human institutions, completely ridding them of the influence of partisanship may not be practical or possible.
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APPENDIX A: THE POLITICAL QUESTION DOCTRINE

In this appendix, I discuss the evolution of the political question doctrine as applied by the U.S. Supreme Court. Although the political question doctrine did not apply to campaign finance or political party right to association cases, this legal doctrine warrants discussion because of its implications for redistricting cases. Additionally, I begin my statistical analysis in 1962 because this marks a major shift in the application of the political question doctrine.

Historically, courts have tried to remove themselves from the political arena and instead leave political disputes, or “political questions,” to coordinate branches of government, where appropriate. As early as 1849, the U.S. Supreme Court in Luther v. Borden, 48 U.S. 1, sought to distance the federal judiciary from resolving questions that it thought would be best left to Congress. In this case, political dissidents in Rhode Island argued in federal court that their rights were violated under the Guaranty Clause of the U.S. Constitution (Art. IV, Sec. 4), because Rhode Island allegedly failed to provide a

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139 Even in the pre-Baker era, the Supreme Court heard various election law cases involving campaign finance regulations and a political party’s right to association. Regarding campaign finance cases, the Court invalidated a provision of the Federal Corrupt Practices Act that limited campaign contributions and expenditures for federal primaries (see Newberry v. United States, 256 U.S. 232, 1921). And, as I discuss later in the dissertation, the Supreme Court decided several political party right to association cases throughout the first half of the 20th century – most notably the White Primary Cases.
Chief Justice Roger Taney wrote for the Court and reasoned that only Congress had the power to determine and recognize the form of government established in a given state. Therefore, Congress, not the federal courts, had the ability to enforce the Guaranty Clause of the Constitution. In concluding his opinion, Chief Justice Taney wrote:

Much of the argument on the part of the plaintiff (Luther) turned upon political rights and political questions, upon which the court has been urged to express an opinion. We decline doing so. The high power has been conferred on this court of passing judgment upon the acts of the State sovereignties, and of the legislative and executive branches of the federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction…[I]t is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums. (48 U.S. at 46-47)

With this decision, the Supreme Court established what has become known as the political question doctrine. Under this doctrine, courts should not interfere with issues

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140 **Luther v. Boren**, 48 U.S. 1 (1849), stemmed from a political conflict termed the “Dorr Rebellion” or “Dorr Wars.” For further discussion on this historical event, see Conron (1967), Gettleman (1973), and Harvard Law Review (1987).

141 For an excellent and comprehensive discussion of the political question doctrine, see Mourtada-Sabbah and Cain (2007).
that the Constitution delegated specifically to Congress or the executive. However, it is important to note that the political question doctrine encompasses a variety of issues that do not necessarily affect the ability of a political party to gain power in government. Foreign relations is one such an example. In *Oetjen v. Central Leather Company*, 246 U.S. 297 (1918), the Supreme Court ruled that the ability to recognize the government of a foreign country is delegated to the executive and Congress by the Constitution, and therefore disputes over the conduct of foreign relations are non-justiciable because they presents a political question. The same reasoning was applied by a plurality of Supreme Court justices in *Goldwater v. Carter*, 444 U.S. 996 (1979), in which Senator Barry Goldwater challenged President Jimmy Carter’s withdrawal from a defense treaty with Taiwan without the consent of the U.S. Senate. Lower federal courts have also applied the political question doctrine to lawsuits challenging wars and international conflicts, including the Vietnam War. In addition to foreign relations, the Supreme Court has applied the political question doctrine to legal challenges regarding the time frame for ratifying a constitutional amendment (*Coleman v. Miller*, 307 U.S. 433, 1939) and impeachments of federal officers (*Nixon v. United States*, 506 U.S. 224, 1993).  

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142 This logic can be traced to Chief Justice John Marshall’s opinion in *Marbury v. Madison*, 5 U.S. (1 Cranch) at 170 (1803): “Questions, in their nature political or which are, by the Constitution and laws, submitted to the Executive, can never be made in this court.”  
144 The Supreme Court has usually relied on the criteria that Justice William Brennan promulgated in *Baker v. Carr*, 369 U.S. 186 (1962), to determine if the political question doctrine is applicable to a given case (see Mulhern 1989, 106). Justice Brennan declared for the Court in *Baker*: Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence
The Supreme Court has also applied the political question doctrine to election law cases, particularly redistricting cases. In 1946, the U.S. Supreme Court decided the case of *Colegrove v. Green*, 328 U.S. 549. In this case, Illinois voters challenged the state’s failure to reapportion its congressional districts in accordance with a 1901 state statute that required “compactness of territory and approximate equality of population.” The appellants argued, among other claims, that the malapportionment of congressional districts violated their Fourteenth Amendment rights. Justice Felix Frankfurter wrote for the Court and declared that redistricting was an issue of a “peculiarly political nature.” Frankfurter urged that federal “(c)ourts ought not enter this political thicket,” and should instead abstain from deciding redistricting cases.

Years later, the Supreme Court refrained from applying the political question doctrine in a case involving district boundaries. The Court could have, potentially, applied the political question doctrine in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), but chose not to. This case involved a challenge to an Alabama law that re-drew the boundaries of the city of Tuskegee to systematically exclude African American voters from its borders. Justice Felix Frankfurter again wrote for the Court, but instead argued that the political question doctrine was not applicable in this case because the Alabama legislature “single(d) out a readily isolated segment of a racial minority for special discriminatory treatment…” (*Gomillion*, 364 U.S. at 346), and therefore, Alabama had violated the Fifteenth Amendment rights of African American voters.

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145 *Colegrove* at 550-551.
146 Ibid., at 553.
147 Ibid., at 556.
Two years later, the Court decided *Baker v. Carr*, 369 U.S. 186 (1962), which all but ended the political question doctrine’s application to issues of redistricting.\(^{148}\) In this case, the Tennessee legislature failed to reapporion state legislative districts since 1901, which resulted in gross population inequalities among legislative districts. Voters then brought suit against state officials for their failure to redraw legislative districts over the past 60 years, while state officials argued that the federal courts did not retain jurisdiction over the matter. Writing for the Court, Justice William Brennan stated that “the mere fact that the suit seeks protection of a political right does not mean it presents a political question.”\(^{149}\) Instead of relying on the Guaranty Clause, the Court reasoned that redistricting claims and, theoretically, other “political rights” were justiciable under the Equal Protection Clause of the Fourteenth Amendment. Additionally, Justice Brennan clarified previous court decisions by declaring that, “in the Guaranty Clause cases and in the other ‘political question’ cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the ‘political question.’”\(^{150}\) The decision in *Baker* effectively overturned *Colegrove* and allowed litigants to file legal claims in federal court involving “political rights” as opposed to “political questions.”

\(^{148}\) Currently, it is unclear if the political question doctrine applies to political gerrymanders. Three justices in *Davis v. Bandemer*, 478 U.S. 109 (1986), argued that political gerrymanders were nonjusticiable political questions (see J. O’Connor, concurring in judgment, 478 U.S. at 144). And most recently, a plurality of the justices in *Vieth v. Jubelirer*, 541 U.S. at 281 (2004) ruled that in the 18 years since the Court decided *Bandemer*, “no judicially discernible and manageable standards for adjudicating political gerrymandering claims have emerged. Lacking them, we must conclude that political gerrymandering claims are nonjusticiable….” Because these opinions did not command a majority, they do not receive the same precedential value as an opinion of the Court. As such, it is uncertain how the Court will treat political gerrymander claims in the years to come.

\(^{149}\) *Baker v. Carr*, 369 U.S. at 209 (1962)

\(^{150}\) Ibid., at 210.
While the decision in *Baker v. Carr* was a landmark case because it ensured equal political rights for many American voters, it also opened the door for judges to hear cases in which their partisan biases might influence their decisions. The Supreme Court’s decision in *Baker*, and subsequent redistricting cases, demonstrated a willingness to allow federal courts to hear certain cases that could involve partisan interests. This change in the political question doctrine, along with the increase of litigation pertaining to campaign finance and right to association cases,\(^{151}\) provided the opportunity for judges to have a greater effect on the political process by deciding election law cases.

\(^{151}\) Campaign finance and political party right to association cases were not considered by the federal courts until years after *Baker*. The earliest campaign finance and political party right to association cases in my dataset were decided in 1971 and 1964, respectively.
APPENDIX B: MEASURING THE PREFERENCES OF JUDGES

The measurement of a judge’s policy preferences is of the utmost importance in this dissertation; failing to adequately control for a judge’s policy preferences could result in a type one error. In this appendix, I discuss the methods I use to estimate two new judicial common space scores, which I use as control variables in my empirical models. Additionally, I provide descriptive statistics and correlation tables that compare the policy preference variables that I employ in this dissertation. However, before discussing the process of estimating these common space scores, it is important to address the measurement of judicial policy preferences in the political science/judicial politics literature.

Previous Measures of Policy Preference

Over the years, scholars have employed numerous methods to measure judicial preferences, with a primary emphasis on the U.S. Supreme Court. These measures serve to explain or predict a judge’s decision in a particular case or series of cases. One of the earliest forms of measurement is Glendon Schubert’s (1965) use of cumulative scaling, or Guttman scaling, which allows researchers to rank the preferences of judges on one dimension based on past case votes. Although many judicial scholars employed this
method, some found it problematic because it is not an independent measure of judicial ideology – i.e., it uses case votes to predict case votes. For this reason, Segal and Cover (1989; see also Segal et al. 1995) developed an independent measure of U.S. Supreme Court justice ideology by content analyzing editorials of major newspapers printed at the time of a justice’s nomination.

Although Segal and Cover scores were an important step in measuring Supreme Court justice ideology, scholars soon began to develop more sophisticated and accurate measures of policy preference, particularly for federal judges. The most prominent example is Martin and Quinn’s (2002) ideal point estimates for all Supreme Court justices since 1937, using Bayesian Markov chain Monte Carlo methods. Martin and Quinn base their ideal point estimates on the case votes of justices, and the ideal points vary over time. These policy preference scores have been very popular in the judicial politics literature, and there has been some attempt to estimate ideal points for judges sitting on the U.S. court of appeals as well. For example, Fischman (2009) proposed a “consensus voting” model for members of the U.S. Court of Appeals for the Ninth Circuit. He uses case votes in asylum cases to derive ideal points for members of the Ninth Circuit using a technique similar to Martin and Quinn.

Another measurement approach makes use of “bridging” observations to estimate policy preferences for members of the judiciary. For example, Bailey (2007) developed cross-institutional common space scores for presidents, members of Congress, and

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153 Other scholars, too, have argued that the preferences of justices can change over time. See, for example, Epstein et al. (1998).
Supreme Court justices between 1951 and 2002. He developed these estimates using 11,966 “bridge” observations (i.e., observations that allow ideal point comparisons across political institutions) that consist of the reactions of presidents and members of Congress to Supreme Court cases. Using a Bayesian Markov chain Monte Carlo method, much like Martin and Quinn (2002), Bailey derived a robust set of common space scores for these political actors. While Bailey’s common space scores are quite impressive, they do not apply to members of the U.S. district courts and U.S. court of appeals, and therefore I am unable to use them for the purpose of this dissertation.\footnote{In theory, one could extend Bailey’s method to the lower federal courts, but it is unclear whether there would be sufficient bridging observations where members of Congress and presidents took positions on lower federal court decisions.}

Fortunately, other scholars have attempted to place lower federal court judges in a common space so that ideal points between all three branches of government are comparable. Most recently, Epstein et al. (2007) expanded the policy preference (ideology) measures created by Giles et al. (2001; 2002), thereby creating a first dimension “judicial common space” score, which is based on Poole’s (1998; see also Poole and Rosenthal 1997) scores for members of Congress and U.S. presidents. Epstein et al.’s common space score is a continuous variable, where increasing values denote increased conservativism. These scores place U.S. court of appeals judges and U.S. Supreme Court justices on -1 to 1 scale. To calculate the common space scores, Epstein et al. perform two different operations. First, for U.S. court of appeals judges, Epstein et al. impute the first dimension common space score of the judge’s home-state senator who shares the same partisan affiliation as the appointing president. If both home-state senators share the president’s partisan affiliation, then Epstein et al. use an average of the
home-state senators’ common space scores. In the event that there is no home-state senator that shares the president’s partisan affiliation, the authors substitute the president’s common space score. Second, the authors apply a tangent function to Martin and Quinn’s (2002) measure of Supreme Court justice policy preference, which allows this measure to be bounded between -1 and 1.

Although the Epstein et al. common space scores are an important step in measuring the policy preference of federal judges, particularly judges on the U.S. court of appeals, these scores have limitations. Among the most serious limitations is the fact that judges appointed from the same state in different years could receive the same common space score. For example, consider a circumstance in which a Republican president appoints a judge from a state with only one home-state senator that shares the president’s party affiliation. A judge appointed at the beginning of the president’s term would receive the same common space score as a judge from that same state appointed at the end of the president’s term (assuming the same home-state senator was still in office). The scores assigned to these two appointees would be the first dimension common space score of the home-state senator. While assigning every judge a unique common space score may be unrealistic due to data availability issues, it may be problematic to assume that two judges appointed in different years share the same common space score, even when they were from the same state with the same home-state senator.

To help cope with this problem, David Nixon (2005) developed a similar first dimension judicial common space score for all regular Article III federal judges appointed since 1937. Instead of imputing a home-state senator’s or president’s common space score to approximate a judge’s policy preferences, Nixon used a bridging sample of
federal judges who served in Congress since 1937 to impute his common space scores.\footnote{There were 63 observations in Nixon’s bridging sample. The sample treats every judicial appointment as the unit of analysis. This is distinct from judges as the unit of analysis. For example, if a member of Congress was appointed to a U.S. district court, that would result in one observation in the bridging sample. If that same judge was later promoted to a U.S. court of appeals, then the promotion would result in a second observation in Nixon’s bridging sample.}

Essentially, Nixon treats the common space score of federal judges who previously served in Congress as a dependent variable, and then uses several independent variables in an OLS regression model to predict the judge’s policy preferences. The final regression equation used by Nixon is expressed as:

\[
\text{Common Space Score} = \beta_0 + \beta_1 \text{Judge’s Political Party} + \beta_2 \text{Appointing President’s Political Party} + \beta_3 \text{Unified Government} + \beta_4 \text{Wartime Appointment} + \beta_5 \text{Southern Democrat} + \beta_6 \text{Northeastern Republican} + \beta_7 \text{Wright, Erikson, McIver State Ideology} + \epsilon
\]

Based on the OLS model results, Nixon is able to impute common space scores for all federal judges by multiplying the coefficient from the bridging sample model by the value of each variable for judges who did not serve in the U.S. Congress. This process of imputation produces common space scores for all federal judges serving on the U.S. districts courts, court of appeals, and Supreme Court.

The Epstein et al. and Nixon scores are highly correlated \((r = 0.77, p < 0.001)\) and both the Epstein et al. scores and Nixon’s scores make use of the first dimension common space scores as developed by Keith Poole (1998).\footnote{Epstein et al. (2007) argue that using the first dimension common space scores of senators and presidents is appropriate because most Supreme Court decisions can be classified on a single liberal-conservative dimension (see also Grofman and Brazill 2002; Martin and Quinn 2002).} Although there are clearly similarities between these measures, the correlation is not so high as to suggest that there is no substantive difference between these two measures. Nixon distinguishes his scores from the Epstein et al. scores by noting that the Epstein et al. scores are much more
extreme in cases where senatorial courtesy is not in use. Instead of assigning the
president’s common space score in the absence of senatorial courtesy, which is the
practice utilized by Epstein et al., Nixon takes into account other factors that might
predict a judge’s policy preference in the absence of senatorial courtesy. Given that the
Epstein et al. scores and Nixon’s scores are so highly correlated, and that Nixon’s
criticism of extreme values produced by Epstein et al.’s method seems credible, this leads
me to believe that Nixon’s scores have greater validity than the Epstein et al. scores.

Although the Nixon scores seem to be a better measure of ideology than the
Epstein et al. scores, they are not without problems. The most serious problem, at least
for the purpose of this dissertation, is the inclusion of party affiliation in the regression
model that predicts a judge’s common space score. It is essential that any measure of
judicial policy preferences be completely divorced of partisan attachment for the purpose
of this dissertation. Failing to do so would seriously bias any results and there would be
no way of determining if partisan attachments influence judicial case votes independent
of a judge’s policy preferences. In addition, there are several variables that were included
in Nixon’s model that do not have a strong theoretical basis in predicting a judge’s policy
preferences. For example, it is unclear why *Wartime Appointment* would predict a judge’s
policy preferences over the course of their judicial career. Likewise, it is unclear how
*Unified Government* control would affect a judge’s policy preference, particularly when
the House of Representatives plays no formal role in the judicial confirmation process.

There are also some potential problems with Nixon’s use of state ideology scores.
Nixon relies on the Wright, Erikson, and McIver (1985; see also Erikson, Wright, and
McIver 1993) state ideology scores to predict a judge’s common space score. Wright,
Erikson, and McIver used survey data from CBS/New York Times polls to derive measures of state partisanship and ideology. These state ideology scores were originally presented as static measures, however, the authors have expanded their data so that each state has an ideology measure ranging from 1976 through 2003. The use of these scores is problematic because Nixon employs them to estimate preferences for all judges since 1937. Presumably, this means that a judge appointed in 1937 from California would be assigned the same state ideology score as a judge appointed from California in 1976. Although my analysis begins in 1962, imputing the nearest ideological value (i.e., 1976) may introduce some bias in the judicial policy preference estimates. For these reasons, I am unable to adopt Nixon’s measure of judicial policy preference in my statistical models.

Estimating First and Second Dimension Common Space Scores

As an attempt to overcome some of the problems associated with the above measures of judicial policy preference, I have opted to create my own measures of policy preference for the purpose of this dissertation. Admittedly, there are a number of different ways to measure judicial policy preferences and no measure will be perfect. In the political science literature, ideal point estimates along the lines of Martin and Quinn (2002) and Bailey (2007) are the most robust measures of judicial policy preferences. However, these measures seem limited to the U.S. Supreme Court due to the unique institutional arrangement of the Court – e.g., justices hear all cases en banc, and there is

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typically a natural court that lasts for a number of years, thereby facilitating the comparison of liberal/conservative case votes across justices. A further complication that seems to prevent the use of Markov chain Monte Carlo simulations in this dissertation is the inclusion of U.S. district court and U.S. court of appeals judges in this dataset. As noted earlier, Fischman (2009) developed ideal points for members of the Ninth Circuit Court of Appeals based on case votes in amnesty cases. However, developing an inter-circuit measure of policy preference using this technique may not be possible. In using Markov chain Monte Carlo estimation, it is necessary to compare the case votes of individuals on a given set of policy issues. While it may be possible to develop intra-circuit ideal point estimates based on frequently-heard cases, or perhaps en banc hearings, this will not be of much help for the purpose of my analysis because I examine a number of election law cases across circuits. It seems that a measure of inter-circuit ideal points could be developed if judges from different circuits regularly sat together to hear a given set of cases. However, a judge sitting on the First Circuit in Boston would have no occasion to sit with a judge serving on the Fifth Circuit in New Orleans (unless the judge was a senior judge filling a temporary vacancy – however, even this would not provide enough inter-circuit observations to produce ideal point estimates for all judges sitting in the court of appeals). An additional complication is the inclusion of U.S. district court judges in my dataset. Because district judges sit alone for most cases, except for those situations in which a three-judge panel hears a case, it is

158 But, even relying on en banc case votes for Markov chain Monte Carlo methods is quite difficult due to their infrequent occurrence. For example, the twelve geographic circuits (i.e., First through Eleventh Circuit and the D.C. Circuit) heard just 14 en banc cases between October 1, 2007 and September 30, 2008 (see Table S-1 of the Annual Report of the Director of the Administrative Office of the U.S. Courts, available at http://www.uscourts.gov/judbus2008/tables/S01Sep08.pdf, accessed November 22, 2009).
particularly difficult to estimate a district judge’s policy preferences relative to their colleagues.

Because of the complications of applying Markov chain Monte Carlo simulations to members of the U.S. district courts and U.S. court of appeals, it is necessary to create another measure of judicial policy preferences that does not involve this method. In order to achieve this goal, I have created a measure of judicial policy preferences using a method similar to Nixon (2005). This method allows me to estimate policy preferences of judges using predictors that are independent of judicial case votes, and therefore avoids the complications of using Markov chain Monte Carlo simulations.\textsuperscript{159} However, my approach to modeling judicial policy preferences differs significantly from Nixon’s.

First, my bridging sample consists of all individuals who served in the federal courts and the U.S. Congress between 1960 and 2007 (observations: N = 29),\textsuperscript{160} while Nixon’s bridging sample consists of all individuals who served in the federal courts and the U.S. Congress since 1937 (observations: N = 63). There are several reasons for the difference in the size of bridging samples. The most important difference is that I only include judges in my bridging sample for whom I am able to obtain accurate and unbiased data to predict their common space scores. As noted earlier, Nixon’s use of the Wright, Erikson, and McIver (1985) home-state ideology scores only date to 1976, and Nixon must then impute values for state ideology for judges appointed before 1976. Instead of relying on these scores, I have opted to use the Berry et al. (1998) measures of

\textsuperscript{159}As noted previously, Segal and Cover (1989) and Segal et al. (1995) also used indicators independent of judicial case votes to estimate policy preferences.

\textsuperscript{160}Like Nixon, I treat every judicial appointment as an observation in my bridging sample. However, unlike Nixon, to avoid any statistical complications due to non-independence of observation, I cluster the data by judge to ensure that the standard error estimates are not biased.
home-state ideology. Berry et al. create measures of both state government and state citizen ideology dating back to 1960, and therefore I am able to include judges in my bridging sample appointed on and after 1960 by relying on this measure of home-state ideology. Additionally, because I examine election law cases decided between 1962 and 2007, there is little benefit in including judges appointed in the 1930s-1950s in the bridging sample because not all of these judges had the opportunity to hear an election law case in the 1960s. By limiting my bridging sample to judges who could have decided these election law cases, this should ensure greater accuracy in policy preference estimates.

Second, my model specification also differs significantly from Nixon’s model. I present my bridging model formally as follows:

$$Common \ Space \ Score = \beta_0 + \beta_1 \text{Appointing President’s Ideology} + \beta_2 \text{Senate Median Ideology} + \beta_3 \text{State Citizen Ideology} + \beta_4 \text{State Elite Ideology} + \epsilon$$

The model I propose consists of four independent variables, while Nixon’s consists of seven. Because I am working with a smaller bridging sample, I wanted to ensure that the variables I selected for my model had a strong theoretical relationship with the dependent variable. I considered several different iterations of the model presented in the above (including models that contained predictors such as home-state senator ideology, Senate filibuster pivot, Senate judiciary committee median, among other variables), but,

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161 For judges whose home “state” is the District of Columbia, I use an average of the ideology scores of Maryland and Virginia as an approximation for the District of Columbia’s ideology. In unreported analyses, I also employ an alternate measure of ideology for the District of Columbia where I simply impute values for Maryland instead of an average of Maryland and Virginia. This alternate method of coding does not result in substantive changes in the results of the models I estimate in Chapter 4.

162 There may be concerns regarding the small sample size in my bridging model. However, since I employ OLS regression, my model should not suffer from any significance estimation problems due to a sample size of 29.
ultimately, I decided to specify the model I present in the above because these variables did not substantially add to the model’s predictive power. Since the president is responsible for nominating judicial candidates, and the Senate is charged with their confirmation/rejection, there is good reason to believe that these variables would play an important role in predicting a judge’s policy preferences. One could also expect a judge to be influenced by her life experiences in her home state and other political elites who may have helped a judge to secure a judicial nomination. For these reasons, I rely on Berry et al.’s (1998) measure of state government and state citizen ideology to predict judicial policy preferences.

Berry et al. estimate state citizen ideology by aggregating the ideology of voters in each congressional district of a given state. To do so, Berry et al. first identify the

163 Some may find it surprising that home-state senator ideology is not included in my model. When I include the home-state ideology variables with home-state senator ideology in the bridging model, the latter variable is not statistically significant. Upon further examination, it appears that the home-state ideology variables predict the same variance in the dependent variable as would the home-state senator ideology variable by itself. Additionally, the inclusion of the home-state ideology variables result in a higher adjusted r-squared statistic.

164 One could argue that a president’s ideology does not always predict a judge’s policy preferences, even in recent decades. For example, Sonia Sotomayor’s nomination to the U.S. district court is not a pure reflection of President George H. W. Bush’s preferences. Sotomayor’s nomination was the product of an agreement between the White House and Senator Daniel Patrick Moynihan of New York. Even in a situation such as this, the president could have rejected such an arrangement if Sotomayor’s policy preferences seemed too extreme. Admittedly, however, this does present some problem for the estimation of judicial policy preferences. But, given that such an occurrence is not routine, the overall policy preference estimates of judges in my sample should not be overly biased.

165 In addition to the years of data availability, there are several other reasons to compel the use of the Berry et al. scores in my bridging model as compared to Wright, Erikson, and McIver (1985). Other judicial scholars have recognized the validity of the Berry et al. scores in estimating judicial policy preferences. More specifically, the Berry et al. scores were one of several predictors used by Brace, Langer, and Hall (2000) to create their party-adjusted surrogate judge ideology measures. Furthermore, Meinke, Staton, and Wuhs (2006) provide a strong argument that the Berry et al. measures of state ideology have greater validity in a time-series, cross-sectional analysis than do the scores developed by Erikson, Wright, and McIver (1993), which also use CBS/New York Times surveys much like the Wright, Erikson, and McIver (1985) measures. Discussion of the Berry et al. (1998) and Erikson, Wright, and McIver (1993) ideology scores is detailed in the web appendix to Meinke, Staton, and Wuhs (2006), available at http://sitemason.vanderbilt.edu/files/clj4Ws/Web%20Appendix%20Meinke%20State%20delegation.pdf. Accessed November 22, 2009.
ideology of the incumbent member of Congress for a given congressional district, and they also estimate an ideology score for the congressional challenger in the latest election. Based on vote totals for the congressional candidates, they are able to estimate an ideology score for each congressional district, and then an aggregate statewide citizen ideology score (see Berry et al. 1998, 330-331). To estimate state government ideology, Berry et al. aggregate the ideology scores of the state’s governor and the majority parities in each chamber of the state legislature (Ibid., 332-334).

Unlike Nixon (2005) and Epstein et al. (2007), I create a second-dimension measure of a judge’s policy preference. Poole’s (1998) common space scores for members of Congress included a second dimension, and since my bridging sample makes use of the Poole/Rosenthal common space scores as the dependent variable, creating a second dimension judicial common space score can be accomplished by using the same method to generate a first dimension judicial common space score. Because it is crucial to account for as much policy preference variance in my statistical model as possible, the inclusion of a second-dimension common space score will only help to further my objective of controlling for policy preference variance to ascertain the effect of a judge’s political party preferences in the decision-making process.

Traditionally, the first dimension Poole/Rosenthal common space score is a liberal/conservative dimension that measures preferences for government involvement in economic regulation. The second dimension largely relates to congressional voting on civil rights. However, as of the 1980s, the first dimension common space scores for members of Congress predicted voting behavior in both economic and civil rights issues.
Given that the first dimension NOMINATE scores predict 80.0% of all votes in the U.S. Senate between 1789-1985, and the addition of the second dimension only increases the number of correct predictions by 3.6%,\(^{166}\) one could argue, like Epstein et al. (2007),\(^{167}\) that the one-dimensional common space scores are appropriate for judges. But, throughout the 1960s and 70s, the second dimension tapped civil rights preferences of members of the U.S. Senate, and this type of issue will be of most concern to judges deciding Fourteenth Amendment claims in federal court (particularly in regard to gerrymander claims). Therefore, I believe it is necessary to estimate a second dimension judicial common space score given the types of election law cases that I analyze and the years in which the cases were decided.

I present my bridging model for first and second dimension judicial common space scores in Table B.1.

\(^{166}\) See Poole and Rosenthal (1997, 28).
\(^{167}\) See also Grofman and Brazill (2002) and Martin and Quinn (2002).
<table>
<thead>
<tr>
<th>Variables</th>
<th>First Dimension Judicial Common Space Score</th>
<th>Second Dimension Judicial Common Space Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>President’s Ideology</td>
<td>0.5945*** (0.0914)</td>
<td>0.0030 (0.1528)</td>
</tr>
<tr>
<td>Senate Median</td>
<td>-1.0896 (0.8074)</td>
<td>2.5178* (1.4231)</td>
</tr>
<tr>
<td>State Citizen Ideology</td>
<td>-0.0031* (0.0017)</td>
<td>-0.0198*** (0.0044)</td>
</tr>
<tr>
<td>State Elite Ideology</td>
<td>-0.0027* (0.0010)</td>
<td>0.0078* (0.0031)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.0989 (0.1043)</td>
<td>0.5900*** (0.0897)</td>
</tr>
<tr>
<td>Observations</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>Number of Clusters</td>
<td>27</td>
<td>27</td>
</tr>
<tr>
<td>Adj. R²</td>
<td>0.6386</td>
<td>0.6330</td>
</tr>
<tr>
<td>F (4, 26)</td>
<td>20.95</td>
<td>14.36</td>
</tr>
<tr>
<td>Prob. &gt; F</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

Table B.1: Judicial Policy Preferences
+ p < 0.10; * p < 0.05; ** p < 0.01. Two-tailed significance tests. Robust clustered standard errors in parentheses.

Each of the bridging models performs relatively well given the small sample size and the number of variables included in the model. In each model, the adjusted r-squared statistic exceeds 0.63, meaning that each model explains more than 63% of the variance in the dependent variable (i.e., the judge’s common space score). In the first dimension model, the ideology of the appointing president has the largest impact on a judge’s policy preferences; the more conservative the appointing president, the more conservative the
judicial nominee. Such a finding is not surprising given the president’s role in nominating federal judges. The common space score of the median senator is not significant in the first dimension model, while the Berry et al. score for state citizen ideology is significant at $p = 0.078$ and state elite ideology is significant at $p = 0.012$. It is important to note that the Berry et al. ideology scores are based on ADA and COPE scores, which range from 0 (very conservative) to 100 (very liberal) (see Berry et al. 1998, 334). This explains the negative sign for the Berry et al. scores in the first dimension model; as the value of the Berry et al. scores increases (becoming more liberal), the judicial common space score decreases (becoming more liberal).

In the second dimension model, the president’s ideology is no longer statistically significant. However, the three other variables in the model achieve statistical significance. The median senator has the largest influence on the dependent variable. Interestingly, there are conflicting effects for state citizen and state elite ideology. The state citizen ideology coefficient is correctly signed, but the state elite ideology coefficient is positive. This means that as the government officials in a judge’s home-state become more liberal, the judge’s common space score is more conservative. It is not immediately clear why there would be such a difference between state citizen and state elite ideology. However, despite this unexpected finding, the magnitude of the effect is relatively small in comparison to the effect of the median senator and state citizen ideology.
Validity of \textit{JCS1} and \textit{JCS2}

As noted in the main body of this chapter, my measures of judicial policy preference will be included, along with the Epstein et al. common space score, in a logit model as control variables to determine the influence of partisan interests in the decision-making process. By including three separate measures of judicial policy preference, this should help to ensure that my models control for the influence of policy preferences on a judge’s vote choice.

The first dimension common space scores (\textit{Epstein CS} and \textit{JCS1}) both denote increased conservatism as the variable approaches 1, while the second-dimension common space score (\textit{JCS2}) denotes increased liberalism as the variable approaches 1. While it may seem as if both dimensions should measure conservatism, the cross tabulations presented in Tables B.2 and B.3 provide evidence of the first and second dimension variables having opposite directional effects.
Table B.2: Cross Tabulation - Party Affiliation and First Dimension Policy Preference
Note: Party affiliation and dichotomous first dimension policy preference (JCS1) correlated at $r = 0.921$, $p < 0.001$.

<table>
<thead>
<tr>
<th></th>
<th>Policy Preference &lt; 0</th>
<th>Policy Preference &gt; 0</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>274</td>
<td>9</td>
<td>283</td>
</tr>
<tr>
<td>Republican</td>
<td>13</td>
<td>261</td>
<td>274</td>
</tr>
<tr>
<td>Totals</td>
<td>287</td>
<td>270</td>
<td>557</td>
</tr>
</tbody>
</table>

Table B.3: Cross Tabulation – Party Affiliation and Second-Dimension Policy Preference
Note: Party affiliation and dichotomous second-dimension policy preference (JCS2) correlated at $r = -0.659$, $p < 0.001$.

<table>
<thead>
<tr>
<th></th>
<th>Policy Preference &lt; 0</th>
<th>Policy Preference &gt; 0</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>107</td>
<td>176</td>
<td>283</td>
</tr>
<tr>
<td>Republican</td>
<td>272</td>
<td>2</td>
<td>274</td>
</tr>
<tr>
<td>Totals</td>
<td>379</td>
<td>178</td>
<td>557</td>
</tr>
</tbody>
</table>

Tables B.2 and B.3 are cross tabulations of a judge’s party affiliation, and first and second dimension policy preferences, respectively. The cross tabulations dichotomize policy preference by dividing judges into two groups – judges with policy preference scores less than zero, and judges with policy preference scores greater than zero. Generally speaking, Democrats tend to be more liberal than their Republican counterparts. As evidenced by Table B.2, Democratic judges tend to have negative policy preference scores, while Republicans tend to have positive scores. Furthermore,

\footnote{168 If a judge served on multiple federal courts and was appointed by presidents of different political parties, I use the party affiliation of the latest appointing president for the purpose of the cross tabulations in Tables 3.5 and 3.6.}
party affiliation and common space scores are highly correlated at $r = 0.921$, $p < 0.001$. This supports the notion that first dimension common space scores measure conservatism. However, Table B.3 presents a very different picture. There seems to be more of a split between Democrats on their second dimension scores. Yet, all but two Republican judges have a common space score that is negative. Also, party affiliation and second-dimension common space scores are negatively correlated at $r = -0.659$, $p < 0.001$. This finding leads me to believe that the second-dimension scores measure liberalism, instead of conservatism. Granted, this is a simplistic way of testing each policy preference measure’s validity, but these cross tabulations provide *prima facie* evidence that the directional effects of first and second dimension policy preference scores are different.

**Correlations of Epstein CS, JCS1, and JCS2**

Because I employ all three measures of judicial policy preference in the full versions of the case outcome and partisan favoritism models, it is important to analyze the correlations between these variables. If there is high correlation between any of these variables, this could result in collinearity. Of particular interest is the correlation between Epstein CS and JCS1, because both of these variables measure first dimension common space scores. I present the correlations between Epstein CS, JCS1, and JCS2 in Table B.4.
Table B.4  Correlations – Judicial Policy Preferences
Note: All correlations significant at p < 0.001, two-tailed test.

Based on the data in Table B.4, the first dimension policy preference variables
*Epstein CS* and *JCS1* are highly correlated (r = 0.822, p < 0.001). As such, it is possible
that collinearity might occur in models that include both *Epstein CS* and *JCS1*. To
determine if collinearity adversely affects my results, I will compare the pseudo r-squared
statistic, percent of outcomes correctly predicted, and reduction in error of the full model
to the same statistics in models that do not contain both *Epstein CS* and *JCS1*. If there
are substantive differences, collinearity may be to blame. When reviewing the
relationship between *JCS2* and the first dimension policy preference variables, there is a
negative relationship between these variables. The variables *JCS2* and *Epstein CS* are
correlated at r = -0.515, p < 0.001, and *JCS2* and *JCS1* are correlated at r = -0.471, p <
0.001. Since there is not a high correlation between the second-dimension and first
dimension variables, the inclusion of *JCS2* in any given model should not result in
collinearity.
APPENDIX C: DATA COLLECTION METHODS

I collected all the data for my analysis using the KeySearch feature in the Westlaw database. Westlaw classifies all of their cases using a numeric system. The KeySearch feature allows me to browse cases by one of thirty different categories, one of which is “Elections and Politics.” I drew most of my data from this category.

Within the “Elections and Politics” category there are a number of sub-categories, including “Electoral College,” “Hatch Act,” “Initiatives and Referendum,” among others. For redistricting cases, I used the sub-categories of “Apportionment” and “Reapportionment.” For political party right to association cases, I used the sub-category of “Political Parties.” However, there were few cases in this sub-category, and I had to expand the search to obtain more cases using KeyCites 92k1468 (nominations; primary elections) and 92k4231 (political parties and organizations). I was able to search the “Elections and Politics” cases by a keyword or phrase. To obtain a list of campaign finance cases I ran two searches. For the first search, I simply typed the phrase “campaign finance” into the KeySearch search engine, and for the second search I typed the phrase “expenditures” into the search engine.\(^{169}\)

\(^{169}\) There was no substantively different set of cases returned when I searched for words such as “contributions” for campaign finance cases.
There are two different options for conducting a KeySearch: 1) a search with “headnotes” and 2) a search without “headnotes.” Headnotes are a short summary of the case holdings written by the staff attorneys at Westlaw (in many ways it is an abstract/syllabus of the case). After talking to one of the Westlaw reference attorneys over the phone, they informed me that all published cases (and even some unpublished cases) receive these headnotes. I have limited my search to only those cases with headnotes for several reasons. First, since the individuals who compiled these headnotes are trained attorneys, their assessments of the case outcomes should be accurate. Second, the headnote feature allows me to code the cases without having to read through the entire opinion to determine the case’s disposition (or the disposition of individual holdings). For some cases, the headnote summary was vague and/or ambiguous, and I had to code the case by reading through the entire court opinion. For these cases, I detailed what legal issues I identified as being in dispute among the litigants, and coded the issues in accordance with my coding rules.

I excluded a number of cases from the database. Specifically, I excluded cases that dealt with local redistricting disputes (i.e., county or municipality districts, including school districts), cases involving judicial candidates and judicial elections, cases considered by a U.S. magistrate judge, cases in which a court implements a districting plan after a legislature-drawn or commission-drawn plan was struck down, and cases originating in the U.S. territories.