NON-LEGAL INFLUENCES ON INDIVIDUAL VOTING AND DECISIONAL OUTCOMES IN K-12 SEX DISCRIMINATION IN EMPLOYMENT CLAIMS IN UNITED STATES COURTS OF APPEAL: 1964-2013

by

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Abstract

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This investigation examined K-12 gender discrimination education in the workplace and litigations arising through the United States Court of Appeals between the years of 1964 and 2013 through Equal Protection, Title VII and Title IX claims. This investigation consisted of judges individual voting decisions and panel effects on the United States Court of Appeals and their relationship to judge level characteristics (party affiliation, judge gender, plaintiff gender, decision date and appointment era), and panel composition in cases brought pursuant to Equal Protection, Title VII and Title IX K-12 gender discrimination decisions during the years of 1964-2013. This study attempts to fill a gap in the research focusing on K-12 gender discrimination in employment rulings in the United States Courts of Appeals.

Results of this investigation found that when looking at the individual votes of the judges' appointment era did show significance in the voting decision of the judge. When investigating the panel composition of the judges only the appointment era showed significance in panel decision.

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Chapter 1

Introduction

Complaints of workplace gender discrimination in K-12 education arise frequently. Many of these conflicts find their way into federal courts (Lens, 2003; Walsh, Kemerer & Maniotis, 2005). The three principal grounds on which such claims are brought are: the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, (42 U.S.C.A. § 1983), Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000), and Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §1681).

Although the substantial literature involving legal analysis of gender based employment conflicts continues to grow (Housh, 2012), scholarly investigation of non-legal influences on the voting and the outcome of such cases in K-12 settings is limited. This study attempts to fill a gap in the literature focusing on K-12 gender discrimination in employment rulings in the United States Courts of Appeals.

In furtherance of this goal, gender discrimination in employment K-12 education cases from 1964-2013 will be examined and provide the basis for discerning judicial voting patterns, outcomes and trends in the disposition of these cases and influences producing these results. The research will proceed along two strands. In the first line of investigation, the independent predictors included judges' political ideology, gender, appointment era, plaintiffs' gender, and decision date of case. The one dependent variable in this part of the study was how each judge voted. Pro-plaintiff votes were classified as *liberal* votes while pro-employer votes were treated as *conservative.*

The second line of research examined decisional outcomes rather than individual votes. The independent predictors for this phase of the study were: gender, ideological and, appointment era majority of the panel and the, decision date, and plaintiffs' gender.

Pro-Plaintiff outcomes were coded as liberal, while pro-employer outcomes were treated as conservative.

Two theoretical models will be studied in this research: (1) the legal model and (2) the attitudinal model. The *legal model* holds that courts decide disputes before them in light of the facts of the case vis-à-vis precedent, the plain meaning of the Constitution or statute and the intent of the framers. One difficulty with the legal model is that various aspects of the model can support decisions going in different, or even opposite directions (Cross, 2003; Segal & Spaeth, 2002).

The *attitudinal model* holds that courts decide disputes in light of the facts of the case vis-à-vis the ideological attitudes and values of the judges. A judge may have a conservative or liberal disposition and these attitudes and values are reflected in the way they vote. Such dispositions may be associated with political ideology and judges' gender for example. These and other relationships are examined in this study. Much research regarding the Supreme Court has applied the attitudinal model (Roy & Songer, 2010; Segal & Spaeth, 2002; Unah & Hancock, 2006; Weinshall-Margell, 2011).

Significance of the Study

The Constitution of the United States as originally drafted had no provisions assuring equal protection of the laws (U.S.C.A. Const. Amend. 14). This was no surprise for an era where society accepted that blacks were enslaved and women enjoyed no right to vote and were routinely discriminated against. After the Civil War, continuation of discrimination toward former slaves led to the passage of the Fourteenth Amendment which provides in part: "no state shall …deny any person within its jurisdiction the equal protection of the laws" (U.S.C.A. Const. Amendment 14). Justice Oliver Wendell Holmes is quoted as saying "the Equal Protection Clause is normally referred to as a last resort of constitutional arguments" (Chemerinsky, 2008, p.617). It wasn't until the mid1950's when

the United States Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954) which eschewed school desegregation under the "separate but equal" doctrine (*Plessy v Ferguson, 163 U.S. 537)* that the Equal Protection Clause began to realize its potential. This high salience case paved the way for radical improvements in the education of black students and members of other minority groups (Miller, 2010; Unah & Hancock, 2006) and spurred numerous judicial reforms involving public education (*Griffin v Prince Edward*, 377 U.S. 218, 1964; *Green v County School Board*, 391 U.S. 430, 1968; *Swann v Charlotte-Mecklemburg Board of Education* 402 U.S. 1, 1970).

Moving forward to 1964 Congress enacted Title VII of the Civil Rights Act of 1964. Title VII "prohibits employment discrimination based on race, color, religion, sex and national origin" (42 U.S C A. §2000). Title VII banned job discrimination based on gender, which gave women and minorities the opportunity to become a more meaningful part of the American work force. Title VII provided women with ammunition to sue employers who refused to hire them or who otherwise treated them adversely in their terms and conditions of employment because of their sex. The importance of Title VII of the Civil Rights Act does not stop there; it directly impeded the discriminatory practices that controlled women's ability to achieve occupational equality to their male coworkers. However, as a society we continue to see discrimination, especially against women (Housh, 2012).

With Civil Rights movement and women's liberation, calls for equality have been heard. Women and minorities have argued for equal access to education, to economic and political opportunities and for social equality (Boxill, 1995). "The equality in these claims was and still is controversial" (Boxill, 1995, p23). Approximately forty years ago, fewer women were admitted into colleges and universities and were rarely given athletic scholarships; math and science degrees were an area reserved for men (Walters &

McNeely, 2010). Today remarkable progress has been made by women in various career fields due to increased educational opportunities that resulted from Title IX of the Educational Amendments of 1972 (20 U.S.C.A. § 1681).

On June 23, 1972 Title IX of the Educational Amendments of 1972 became the law. This landmark legislation bans sex discrimination in public schools and other entities receiving federal financial assistance. It states “no person in the United States shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid” (20 U.S.C.A § 1681-1683). Title IX offers protection in ten areas that include: access to higher education, career education, education for pregnant and parenting students, employment, learning environment, math and science, sexual harassment, standardized testing and technology. Title IX ensures equal opportunity for the students and employees of educational institutions along with ensuring legal protection against discrimination (which includes sexual harassment) for students and employees in federally funded institutions (Heckman, 2003; Walsh, Kemerer & Maniotis, 2005). Despite all the positive growth in higher education and increased work force participation of women, we continue to see issues such as sexual harassment, discrimination in education, including a wage gap and fewer women being promoted. These issues have made their way into our legal system where Equal Protection (U.S.C.A Const. Amend. § 1983), Title VII (42 U.S.C.A. § 2000) and Title IX (20 U.S.C.A. § 1681) claims have been asserted.

Although there is extensive research on Supreme Court judicial voting, there is less scholarly research on prediction of individual judicial voting and case outcomes within the United States Court of Appeals, especially where court cases involve gender discrimination in employment cases within K-12 education.

Theoretical Basis for Research

Attitudinal Model

Most research using the attitudinal model has been applied using the Supreme Court justices and cases they hear, particularly in high salience cases, to study judicial behaviors (Bartels, 2010; Gibson, 1978; Unah & Hancock, 2006). Although increasing in number, very little research has been applied using the attitudinal model to explain circuit court judges' voting behavior. The attitudinal model represents a blending together of key concepts from legal realism, political science, psychology, and economics (Roy & Songer, 2010; Segal & Spaeth, 2002). Supporters of the attitudinal model state that the justices create the law that guides their own decision making, so the law is itself a reflection of justices' attitudes (Richard & Kritzer, 2002). In research regarding the Supreme Court, this model concludes that Supreme Court Justices decide cases in light of the facts of the case, influenced by their ideology, attitudes, and values (Roy & Songer, 2010; Segal & Spaeth, 2003). For example: judge A may vote the way he does because he is extremely conservative when judge B voted the way he did because he was extremely liberal. The attitudinal model sees judges as political players who decide arguments based on their ideological positions regarding the facts of the case (Weinshall-Margell, 2011). According to this model, legal case facts act as prompts that trigger ideological or attitudinal responses on the part of judges. Thus, law then can be considered merely cover for judges' ideology, enabling them to justify any decision and mask the subjective bases for their decisions justices' (Segal & Spaeth, 2002; Weinshall-Margell, 2011).

Legal Model

The most obvious and logical theory of judicial decision-making is the legal theory. Proponents of this theory claim that the reasons judges give in their decisions

reflect the actual logic the judges followed in reaching their conclusions. According to this theory judges decide cases through systematic applications of the law, which reflect the theory of judicial decision-making commonly taught in law school (Cross, 2003; Weinshall-Margell, 2011). The legal model stresses that court decisions stem from the issues of the case as interpreted by the law, the plain meaning of the law, the intent of the law maker, and judicial precedents. Judges take the pertinent authorized legal tools, which are rules, standards and principles embodied in respected sources, such as statutory text and precedent and apply those legal tools to the facts of the case in order to reach a judgment (Cross, 2003). There is more research supporting this model in the circuit court judiciary, primarily due to the fact that appellate courts address matters of law and are rarely reviewed by a higher authority (Williams, 2007). Moreover, circuit courts are constrained by Supreme Court precedent and may not rule in a manner at variance with those precedents. Then it may be expected that in circuit courts as compared to the Supreme Court, ideology influence might be more attenuated.

That said, the majority of relevant precedents governing most federal court litigation do not come from the Supreme Court but rather from the United States Courts of Appeals (Sterns, 2002; Yung 2010). While the circuit courts may be less publicized than the Supreme Court, they are a major political institution that functions not only as norm enforcers, but also as creators of public policy (Sterns, 2002; Cross, 2003). Empirical evidence supports a conclusion that lower courts follow the law out of favorable judicial preference for such adherence rather than out of a fear of reversal by a higher court (Cross, 2003). The legal theory holds that the law serves as an objective control on the discretion of judges. Decisions made by judiciary applying the legal model would eliminate judges making decisions which reflect their own personal political views.

Chapter 2

Literature Review

Brief Summary of the United States Court System

The judicial branch is one of the three branches of government that was created by the Constitution. This branch of government is intended to interpret the laws through the federal court system which consists of the Supreme Court and all other inferior courts that have been created by Congress. The judiciary of the United States is actually a dual court system: federal and state. The federal courts preside predominately over matters stemming from issues concerning the Constitution of the United States and federal statutes, while the state court system is made up of courts in each of the fifty states whose authority comes predominately from state constitutions and laws.

Every court has the authority to hear only certain kinds of cases, which are referred to as the court's subject matter jurisdiction. Federal cases begin at the 94 district courts which have only original jurisdiction. Each state has at least one federal district court and additional courts if warranted by population. An appeal from these inferior courts will proceed to one of the 12 United States Courts of Appeals also known as the Circuit Court of Appeals. These courts of appeals hear cases from any of the district courts that are in its jurisdiction. The 11 numbered circuits and the D.C. Circuit are defined by geography. Appeals from any of the following United States Court of Appeals may be heard at the Supreme Court level. Table 2.1 shows the jurisdiction of the United States Courts of Appeals as designed by Congress.

The United States Court of Appeals for the First Circuit includes the State of Maine, Commonwealth of Massachusetts, New Hampshire, Commonwealth of Puerto Rico and the state of Rhode Island. The United States Courts of Appeals for the Second Circuit includes the State of Connecticut, New York and Vermont. The United States

Court of Appeals for the Third Circuit includes the State of Delaware, New Jersey and the Commonwealth of Pennsylvania. The United States Court of Appeals for the Fourth Circuit includes the State of Maryland, North Carolina, South Carolina and the Commonwealth of Virginia. The United States Court of Appeals for the fifth Circuit includes the state of Louisiana, Mississippi and Texas. The United States Court of Appeals for the Sixth Circuit includes the State of Kentucky, Michigan, Ohio and Tennessee. The United States Court of Appeals for the Seventh Circuit includes the State of Illinois, Indiana and Wisconsin. The United States Court of Appeals for the Eighth Circuit includes the State of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North and South Dakota. The United States Court of Appeals for the Ninth Circuit includes the State of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The United States Court of Appeals for the Tenth Circuit includes the State of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming. The United States Court of Appeals for the Eleventh Circuit includes the State of Alabama, Florida and Georgia. At the state level, cases are first heard in the lower level courts and an appeal will be heard ultimately at the State Supreme Court sometimes known as the State Court of Appeals. Some states further divide court jurisdiction between criminal and civil matters and have set up courts under those limited authority. State Supreme Courts have the final authority involving questions of *state constitutional law* and interpretation of that *state's statutes* in deciding cases initiated at the state level. An appeal from any of these courts may continue on to the Supreme Court of the United States if the decision interprets federal statutes or involve a federal Constitutional question, for example. Decisions made by the justices of the Supreme Court on Federal questions are final and cannot be appealed further.

Table 2-1 Circuit Courts of Appeal

Circuit	States
1	Maine, Massachusetts, New Hampshire, Commonwealth of Puerto Rico and Rhode Island
2	Connecticut, New York, Vermont
3	Delaware, New Jersey, Pennsylvania
4	Maryland, North Carolina, South Carolina, Virginia
5	Louisiana, Mississippi, Texas
6	Kentucky, Michigan, Ohio, Tennessee
7	Illinois, Indiana, Wisconsin
8	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Colorado, Washington
10	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
11	Alabama, Florida, Georgia

It is important to note that all courts in the United States must abide by the decisions made by the U.S. Supreme Court. This obligation was established in landmark cases beginning with *Marbury v. Madison,* 5 U.S. 137 (1803). This case formed the precedent basis for judicial review in the United States under Article III of the Constitution (Remy, 2003). In *Marbury v. Madison* Chief Justice John Marshall stated that the Judiciary Review Act of 1789 gave the Court more power than the Constitution allowed; thus the act was unconstitutional. The power to declare laws and actions of local, state or national governments unconstitutional is known as judicial review. *Marbury* enabled the Supreme Court to balance the powers of other branches. When the Supreme Court rules

on Constitutional issues it cannot be overturned except by a constitutional amendment, or by the Court overruling itself. It is important to note that Congress can effectively overturn a Supreme Court decision interpreting a federal statute by enacting a new law so long as the new law complies with federal constitutional requirements.

Structure of the Federal Court System

The United States Court of Appeals was originally created in 1891 and has grown to include thirteen courts (Remy, 2003). The court of appeals decides appeals from any of the district courts that are located within its jurisdiction. One should note that the appeals courts possess only appellate jurisdiction which means they do not hold trials. The appeals courts review decisions of trial courts for errors of law (Remy, 2001). In a federal court of appeals, the judges that serve are appointed for life by the President and serve after they are confirmed by the Senate. Appeals are almost always heard by a panel of three judges who are randomly assigned from a pool comprised of that circuit's judges. Each judge on the appellate court gets one vote for the decision of the case that is being heard; in civil matters, like those included in this study, these votes will be either be pro-plaintiff or pro-employer. The appeals court decisions, unlike trial court decisions, are considered precedent and all other courts within that circuit must follow the appellate court's guidance in substantially similar cases (the law of the circuit) regardless of what the trial judge may believe (Remy, 2003).

Following the passage of Title IX, in 1972 there are more women in career fields that were once dominated by men; this includes law. Since then, there are now more women and minority judges appointed to federal courts than in earlier era (Lens, 2003). Data accumulated during this research will include newly appointed women judges on the bench and how they voted in educational gender discrimination cases arising in K-12 setting.

Supreme Court and Justices

The Supreme Court is the pinnacle of the American legal system being the last resort for cases regarding federal law or Constitutional issues. The Supreme Court hears only those cases which it accepts through appeal from a lower court regarding a question of law. The overwhelming majority of cases begin in the United States District Court, although the constitution provides that the United States Supreme Court has original jurisdiction in a limited number of its cases. Original jurisdiction is where a case begins. A trial court has original jurisdiction and in the federal court system the district courts as well as other lower courts have only original jurisdiction. When a person loses a case in a trial court and wishes to appeal a decision, he or she may take the case to a court with appellate jurisdiction.

The United States Supreme Court has both original and appellate jurisdiction. Invoking the Rule of Four, the Supreme Court reviews the lower courts' decision when it grants a writ of *certiorari*, asking the lower court to send up the records on the case. In 2008, of the 8966 cases that requested the Court's attention, only 87 cases were granted review (Smith, 2011). Most cases heard by the Supreme Court are appeals from the lower federal and from state high courts (Remy, 2003).

There are nine justices that make up the Supreme Court, the Chief Justice of the United States and eight Associate Justices. Supreme Court justices are appointed by the President then must be confirmed by the Senate. A justices' appointment is for life. But Congress can remove Supreme Court justices through impeachment. Impeachment is a procedure through which charges are brought against a United States judge accused of misconduct (Remy, 2003, p.322). Most Supreme Court justices are well-known lawyers with considerable legal experience. Typically, they have experience as a state or federal court judge, or have served in other court-related positions such as attorney general,

state prosecutor or defense attorney. Generally, justices are not reflective of a broad spectrum of the population in social class, background, race or even gender. Most justices have come from upper socioeconomic levels, and to date there have been only two African American, one Hispanic and four women justices appointed to the Supreme Court (United States Courts, 2013).

Supreme Court and Sex Discrimination

Overview

The three principal grounds on which sex discrimination cases have reached the Supreme Court are: the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972.

The Equal Protection Clause of the Fourteenth Amendment affects public school districts and personnel. The Equal Protection Clause of` the Fourteenth Amendment in the United States Constitution states “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor shall any state deny to any person equal protection of the laws” (U.S.C.A. Const. Amend. 14). The Equal Protection Clause along with Title VII and Title IX embody the principal bases for protecting woman (and men) from workplace discrimination, including that which occurs in K-12 public school settings.

In 1964 Title VII of the Civil Rights Act was passed. It was a major step toward protecting employees against discrimination in the work force. Title VII prohibits discrimination on the basis of race, color, religion, sex or national origin in all aspects of

public or private employment (Walsh, Kemerer & Maniotis, 2005). In addition to equitable relief such as back pay and reinstatement, this law allows money damages for intentional discrimination. Title VII also includes protection in the following areas of employment: recruiting, hiring, advancement, harassment, hostile work environment, compensation and other employment terms, conditions and privileges; segregation and classification of employees.

Title IX of the Education Amendments enacted on June 23, 1972 states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Penalties against school districts under this statute can include compensatory damages, as well as termination of federal funding (Walsh, et al., 2005). Supreme Court precedent cases applying the Equal Protection Clause, Title VII and Title IX in the sex discrimination context are discussed in the next section. Each case is listed in chronological order under the appropriate section.

Equal Protection

The first gender based Equal Protection case which reached the Supreme Court that involved K-12 gender employment discrimination was *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 94 S. Ct. 791. This case was decided on January 21, 1974. *LaFleur* was a consolidation of lawsuits brought about by three teachers who challenged their school board mandatory leave rule. The first teacher (LaFleur) filed suit against the Cleveland Board's rule that requires a pregnant school teacher to take unpaid maternity leave five months before the expected childbirth, with leave application to be made two weeks before her departure. Eligibility for the teacher to return to work was not allowed until the next regular semester after her child was three months old. The teacher (LaFleur) was forced to discontinue her duties on March 12. 1971.

The second teacher (Nelson) filed suit against the school board after she reported her pregnancy to the school's principal on January 29, 1971 and applied for maternity leave. Both LaFleur and Nelson wanted to continue teaching until the end of the year, but were forced to leave in March of 1971. Both of these teachers filed separate suits in the district court challenging the policy however the United States District Court for the Northern District of Ohio tried their cases together (326 F Supp. 1208) and upheld the rule and appeals were taken. The United States Courts of Appeals for the Sixth Circuit (465 F.2d 1184) vacated and reversed the decisions concluding that the mandatory leave policy violated the Fourteenth Amendment's Equal Protection Clause.

The third teacher (Cohen) taught in Chesterfield County, Virginia and notified the Chesterfield School Board that she was pregnant on November 2, 1970. This case involved the board's rule that required pregnant teachers to go on maternity leave at the end of their fifth month, but allowed re-employment the next school year upon submission of a medical certificate by the employees' medical doctor. The teacher's doctor indicated that she was fit to continue working but the school board denied her request for an extension. She challenged the constitutionality of the rule in district court which held that the regulation violated the Fourteenth Amendment's Equal Protection Clause (326 F. Supp. 1159). The United States Court of Appeals for the Fourth Circuit affirmed, but then on rehearing *en banc*, the court upheld the regulation (474 F 2d 395). *Certiorari* was granted in these cases and a review was held by the Supreme Court. The Supreme Court reversed concluding the policies violated the Equal Protection Clause by creating an impermissible "irrerebuttable presumption" that women could not perform adequately after a fixed point in their pregnancy.

In *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S. Ct 3331, decided on July 1, 1982. The Supreme Court held that the state policy, which limited the

University to the enrollment of women in its nursing program, violated the Equal Protection rights of qualified males under the Fourteenth Amendment to the Constitution.

In *Wygant v. Jackson Board of Education*, 476 U.S. 267 S.Ct. 1842, decided on May 19, 1986, the Supreme Court declared unconstitutional under the Equal Protection Clause, a city's attempt to achieve faculty diversity in its schools pursuant to the provisions of collective bargaining agreement, by laying off white teachers with more seniority than black teachers who were retained. The Supreme Court held that school board's affirmative retention policy which resulted in layoffs of nonminority teacher with more seniority violated the Equal Protection Clause of the Fourteenth Amendment. *Wygant* has implications for governmental efforts to correct gender imbalance when seniority based layoffs in fields which have been historically dominated by males.

On June 26, 1996 the Supreme Court decided *United States v. Virginia*, 518 U.S. 515, 116 S. Ct. 2264. The United States sued Commonwealth of Virginia alleging that the state maintaining military college exclusively for males violated the Equal Protection Rights of would be female applicants. The United States District Court for the Western District of Virginia, 766 F. Supp. 1407 entered judgment for commonwealth. Appeal was taken and the Fourth Circuit Court of Appeals vacated and remanded (976 F. 2d. 890). On remand the Commonwealth moved for approval of a proposed remedial plan and the District Court approved the proposal on the basis that it satisfied the Constitution's Equal Protection requirement. The proposal would have established a parallel program for women: Virginia Women's Institute for Leadership (VWIL) located at Mary Baldwin College which is a private liberal arts school for women. Objecting to this order the United States sought and obtained review at the Supreme Court. The Supreme Court held that the all-male admissions policy at Virginia Military Institute (VMI) denied women the equal protection of the laws and was thus unconstitutional. The Court ruled that the proposed

VWIL alternative program did not settle the constitutional violation because VMI had not presented a good reason to withhold its program from women and VWIL alternative program was not substantially equivalent. Thus, the Constitution required VMI to admit, on an equal basis with men, women who could meet requirements.

The fifth and last Equal Protection Supreme Court case, that was also brought pursuant to Title IX , *Fitzgerald v. Barnstable School Committee,* 555 U.S. 246, 129 S. Ct. 788, decided on January 21, 2009. An elementary school student and her parents filed § 1983 action against the school superintendent and school committee claiming student-to-student sexual harassment in violation of Title IX and the Equal Protection Clause. The United States District Court for the District of Massachusetts dismissed the § 1983 claims, after summary judgment in favor of defendants. The United States Court of Appeals for the First Circuit affirmed 504 F 3d 165. *Certiorari* was granted. The Supreme Court held that Title IX was not meant to be an exclusive tool for addressing gender discrimination in schools or a substitute for § 1983 Equal Protection suits as a means of enforcing constitutional rights. The Supreme Court (555 U.S. 246) reversed and remanded this litigation. Thus, in this case the Supreme Court held that assertion of claim under Title IX does not preclude the concurrent use of 42 U.S.C. Section 1983 in cases alleging sex discrimination under the Fourteenth Amendment's Equal Protection Clause.

Title VII

In *Hazelwood School District v. United States*, 433 U.S. 299, 97 S. Ct. 2736, decided on June 27, 1977, , the United States brought an action against the Hazelwood School District and various officials alleging the district engaged in a pattern or practice of race discrimination in employment in violation of Title VII. The United States District Court for the Eastern District of Missouri denied relief and the Government appealed. The United States Court of Appeals reversed and remanded and *certiorari* was granted. The

Supreme Court held that for the purpose of determining whether a prima facie case of discrimination was made, the percentage of qualified black teachers in the district should have been compared to the percentage of black students in the district. The implication in this case as it relates to gender is that when a school district is engaged in hiring, the percentage of qualified females in the workforce is relevant consideration in assessing the merits of a Title VII claim.

The second Title VII Supreme Court case *University of Pennsylvania v. Equal Employment Opportunity Commission,* 493 U.S. 182, 110 S. Ct. 577, was decided on January 9, 1990. This case involved Rosalie Tung, a university associate professor who was denied tenure. She filed a Title VII complaint with respondent Equal Employment Opportunity Commission (EEOC) alleging discrimination on the basis of race, sex, and national origin. The EEOC brought action seeking to enforce a subpoena after the university declined to release confidential peer review materials relating to the tenure review process. The United States Court for the Eastern District of Pennsylvania enforced the subpoena and the university appealed. The Court of Appeals for the Third Circuit affirmed, and the University petitioned for *certiorari*. The Supreme Court affirmed the lower court's decision to enforce subpoena, and held that common-law privilege would not be recognized to protect peer review materials from disclosure and First Amendment right of academic freedom would not be expanded to protect the materials from disclosure. This ruling expanded the right of Title VII plaintiff to obtain information about possibly discriminatory conduct.

The third Title VII Supreme Court case is *Clark County School District v. Breeden*, 532 U.S. 268, 121 S. Ct. 1508, decided on April 23, 2001. This case involved a school district employee who sued the school district under Title VII of the Civil Rights Act of 1964. The plaintiff (Breeden) alleged that during a meeting while reviewing job

applicant files a male co-worker read an inappropriate sexual comment regarding an applicant's psychological evaluation report. Breeden then ascertained that she had been a victim of sexual harassment by exposure to the commentary and later claimed she suffered from adverse employment action for complaining about the alleged harassment after being transferred about a month later to a job with less supervisory authority. In 1997, Breeden filed a retaliation claim against the school district for reporting the sexual harassment.

The United States District Court of Nevada granted summary judgment for the school district. The Ninth Circuit Court of Appeals (232 F. 3d 893) reversed and the Supreme Court granted review. The issue presented to the Court was: can a single sexually explicit remark and a change in employment status less than a month after an employee files a complaint about the remark meet the threshold requirements for an adverse employment action under Title VII? The Supreme Court reversed the decision of the lower court and held that a cause of retaliation was not shown. The Supreme Court also declared that a single incident of alleged sexual harassment does not violate Title VII (532 U.S. 268, 2001). Title VII forbids actions taken on the basis of sex that "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" (42 U.S.C. § 2000). The Supreme Court states that sexual harassment is actionable under Title VII only if it is severe or pervasive as to alter the conditions of (the victim) employment and create an abusive working environment. In the case of *Clark County School District v. Breeden* the sexual harassment charge was considered an isolated and sufficiently serious incident and therefore did not violate any Title VII statute.

Title IX Supreme Court Precedent Cases

The first Title IX case to reach the Supreme Court was *Geraldine G. Cannon, Petitioner, v. University of Chicago* 441 U.S. 677, 99 S. Ct.1946 decided on May 14,

1979. The plaintiff Geraldine Cannon sued the University of Chicago claiming she was denied admission on the basis of her sex. The issue in *Cannon* was whether Title IX creates an implied private right of action against the funding recipient. A private right of action is right of an individual claimant to sue and to obtain judicial relief for themselves. The United States District Court for the Northern District of Illinois dismissed the case and the dismissal was affirmed by the United States Courts of Appeals for the Seventh Circuit (559 F. 2d 1063). The issue in this case on appeal to the Supreme Court was whether Congress intended a private remedy to be implied from Title IX. The Court held that plaintiff had right under Title IX of the Education Amendments of 1972 to pursue a private cause of action against the universities receiving federal financial assistance.

North Haven Board of Education v. Terrel H. Bell, Secretary, Department of Education 456 U.S. 512, 102 S. Ct. 1912., decided on May 17, 1982, involved two consolidated cases where two Connecticut public school boards (both recipients of federal financial assistance) brought separate suits challenging the Department of Health Education and Welfare (HEW) and their authority to review and enforce employment practices of educational institutions. Petitioners contended that Title IX was not meant to reach the employment practices of educational institutions. The issue in this case was whether Title IX does in fact cover employment practices of educational institutions. Supreme Court held that employment discrimination comes within Title IX's prohibition.

Grove City College v. Bell 465 U.S. 555, 104 S. Ct. 1211 decided on February 28, 1984, involved Grove City College a private college and four of its students who filed suit seeking an order to declare void the Department of Education's termination of student's financial assistance based on the college's failure to execute assurance of compliance with a statute prohibiting sex discrimination. The United States District Court for the Western District of Pennsylvania, 500 F. Supp. 253 concluded that the students'

receipt of basic educational opportunity grants constituted federal financial assistance to the college, but held that the Department could not terminate the students' aid because the college's refusal to execute the assurance of compliance. Appeals were taken and the Court of Appeals, 687 F. 2d. 684 reversed in part and remanded. *Certiorari* was granted and the case was then reviewed by the Supreme Court (465 U.S. 555).

The Supreme Court held that the college was a recipient of federal financial assistance and was subject to Title IX's prohibition of sex discrimination where some of the students received basic educational opportunity grants even though the college did not receive any direct financial assistance. This Supreme Court decision made it clear for future litigations that discrimination is prohibited throughout an entire institution or agency if any or part is the recipient of federal financial assistance. The Court concluded that prohibiting discrimination as a condition for the federal assistance did not infringe upon the First Amendment rights of the College and that the school was free to end its participation in the grant program.

Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 112 S. Ct 1028 was decided in February 26, 1992. It gave *Title* IX new significance by upholding the right of victims of teacher-on-student sexual harassment to sue for compensatory damages. The *Franklin* case involved a female student who alleged that she was harassed and pressured into sexual intercourse by one of her teachers. She sued the school district for damages due to its failure to take corrective action. The United States District Court for the Northern District of Georgia dismissed the case, student appealed and the court of appeals for the Eleventh Circuit affirmed (911 F. 2d 617). The case then went to the Supreme Court for review. In *Franklin v Gwinnett* the court relying on *Cannon v University of Chicago* (441 U.S. 677) asserted that Title IX is enforceable through an implied right of action and in proper case damages could be obtained for the injuries

sustained. *Franklin v Gwinnett County Public Schools* increased the sensitivity to employee-on-student made Title IX claims a major concern of school districts (Walsh, et al., 2005).

Gebser v. Lago Vista, 524 U.S. 274,118 S. Ct. 1989, was decided on June 22, 1998. This case involved a teacher-student sexual relationship about which school administrators were not aware of in the beginning, but when the school officials were informed or became aware of the relationship they took swift action to terminate the employee. The question regarding this case was whether the school district can be held liable under these circumstances? The district court granted the school districts summary judgment and the student appealed. The Court of Appeals for the Fifth Circuit (106 F 3d 1223) affirmed and *certiorari* was granted. The Supreme Court reviewed the case and affirmed the decision of the lower courts which denied the plaintiffs claim. The Court ruled that misconduct by a teacher in the form sexual harassment of a student does not render the school district liable under Title IX, unless a school official had knowledge of the situation and responded with "deliberate indifference" (524 U.S. 274, 1998). This is interpreted as the student would have to prove that someone with authority (school administration) had knowledge of the behavior of the teacher towards the student and failed to correct the inappropriate behavior. In *Gebser* this was not the case since the school administration took the appropriate action with the teacher immediately when made aware of inappropriate behavior towards the student.

Davis v. Monroe County Board of Education, 526 U.S. 629, 119 S. Ct 1661, was decided on May 24, 1999. *Davis* involved student-to-student sexual harassment that occurred in a fifth grade classroom. This particular case is important because of the Court's decision established a standard for Title XI liability which may be applicable to workplace claims as well. In *Davis* the parent of a female student alleged that a fifth

grade student sexually harassed her daughter. This harassment continued for a long period of time and the parent stated that the school officials knew about it yet failed to stop the harassment.

The parent filed a Title IX claim for failure to remedy the classmate's sexual harassment of student. The United States District Court for the Middle District of Georgia, (826 F Supp. 363) dismissed for failure to state claim. The parent appealed and the Court of Appeals for the Eleventh Circuit affirmed. On appeal the Supreme Court ruled in a five to four decision that it was possible to impose liability on the school district in such a situation. The liability occurs not because one student sexually harasses another, but rather the school district wrongfully ignores it. The student would have to prove that school officials were deliberately indifferent to known incidents of sexual harassment and furthermore that the harassment was severe, pervasive and objectively offensive. The Supreme Court reversed and remanded.

In sum *Franklin*, *Gebser* and *Davis* decided the following under Title IX of the Educational Amendment Acts of 1972 (20 U.S.C.A. § 1681): (1) damages are available under Title IX; (2) to establish liability the official of the school district must have definite notice of the circumstances and have acted with deliberate indifference; (3) liability will be limited to situations in which the school has control over both the harasser and the nature in which the harassment occurs; and (4) the harassment must be severe, pervasive and objectively offensive that it discriminates against the victim and effectually deprives him or her of right to educational opportunities or benefits provided by the school (Alexander & Alexander, 2005).

In *Jackson v. Birmingham Board of Education,* 544 U.S. 16, 125 S. Ct.149. decided on March 29, 2005. Jackson, a girls' high school basketball coach during 2001, spoke out about athletic inequities his girls team was receiving in comparison to the boys'

basketball team. Shortly thereafter he was fired as the girls' basketball coach. The coach sued the board of education alleging that it retaliated against him in violation of Title IX and the regulations implementing it. The United States District Court for the Northern District of Alabama dismissed the complaint and the coach then appealed. The United States Court of Appeals for the Eleventh Circuit affirmed and *certiorari* was granted. The Supreme Court reversed and remanded the case stating that retaliation against a person because that person has complained of sex discrimination is a form of intentional sex discrimination encompassed by a Title IX private cause of action.

In *Fitzgerald v. Barnstable School Committee,* 555 U.S. 246, 129 S. Ct. 788, decided on January 21, 2009, an elementary school student and her parents filed § 1983 action against the school superintendent and school committee claiming the student suffered student-to-student sexual harassment in violation of Title IX, 20 U.S.C.A. § 1861 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The United States District Court for the District of Massachusetts dismissed the § 1983 claims on the grounds that Title IX's implied private remedy was sufficiently comprehensive to preclude the use of § 1983 to advance constitutional claims. The United States Court of Appeals for the First Circuit affirmed the case (504 F 3d. 165) and *certiorari* was granted. The Supreme Court reversed, holding that Title IX was not meant to be an exclusive tool for addressing gender discrimination in schools, or a substitute for § 1983 suits as a means of enforcing constitutional rights (555 U.S. 246). Thus, in a proper case a victim of sex discrimination may recover not only Title IX, but under the Equal Protection Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983.

United States Court of Appeals

Congress created the United States Court of Appeals in 1891 to lessen the appellate workload of the Supreme Court (Remy, 2003). The caseload of the appellate

courts has dramatically increased since 1980 from 23,000 to 55,000 cases in 1990 and to 68,473 cases in 2005 (www.uscourts.gov/statistics/judicialbusiness). Just as with Supreme Court judges in the Court of Appeals are appointed by the president for life upon confirmation by the Senate (Remy, 2003). The court may decide an appeal by upholding the original decision by the lower court, reversing the decision or remanding the case back to the lower court with instructions. Except for cases selected for review by the Supreme Court decisions made by the Courts of Appeals are final. An important provision in the court of appeals is the presence of more than one judge for every appeals case. Each court of appeals has three judges sitting for every appeals case, but in some instances all the judges sitting on the circuit participate in a decision. This is referred to as an *en banc* decision.

The Court of Appeals generally addresses matters of law, not fact (Williams, 2007). Since only a small percentage of Courts of Appeals decisions are reviewed *en banc* or by the Supreme Court. Thus, most often court of appeals decisions are final as to the litigants. In the past the appointees to the courts of appeals have been predominately Caucasian, affluent, politically active, 50 year old males who attended prestigious educational institutions (Kaheny, Haire & Benesh, 2008; Goldman, 1975). Recent years have seen the makeup of the bench shift to more women and minority appointees (Hurwitz & Lanier, 2008).

There is limited existing scholarship available on non-legal influences on judicial voting in K-12 educational gender employment discrimination cases at the Court of Appeals level. This study examines gender discrimination cases involving hiring, firing, promotion, demotion and leave policy in K-12 settings rendered in the United States Court of Appeals between 1964 and 2013. This research will help close the gap on the

limited research available regarding individual judge's voting and panel decision making in this category of cases.

Judges' Political Affiliation

Recent studies have demonstrated the important role that ideology plays in judges' voting. The United States Courts of Appeals once had been neglected as a research base for the study of judges' voting behavior. Judicial ideology and decision making is now being heavily studied at the appellate court level. Given the Supreme Court's declining case load, the circuit courts are the final deciders of the vast majority of federal appeals (Epstein, Boyd & Martin, 2008; Hurwitz & Kuersten, 2012; Smith 2011; Sterns, 2002). The link between the United States Court of Appeals judges' political affiliation and their vote cast on cases is one of the relationships studied in this investigation. Presidents often appoint judges who are members of their own political party and who share their own points of view because they wish to see their ideology put into effect in the courts (Remy, 2003; Yung, 2010; Weinshall-Margel, 2011). Judges are the president's legacy long after the president leaves office.

Prior research examining the judiciary of the United States Courts of Appeals has indicated that party affiliation was a variable with a strong link to voting behavior (Goldman, 1975; Howard, 2001; Songer & Crews-Myer, 2000). American political values fall into two broad but distinct patterns of opinions toward government and public policies, liberal and conservative. The liberal ideology believes that government has more social responsibility for providing education, health, welfare and civil rights. The conservative ideology generally believes that individuals and voluntary associations should be given more responsibility to make choices in these areas and limit the role of government except when promoting traditional moral values. Conservatives basically believe that private individuals should solve social problems, not the government (Remy, 2003). In

research, as well as political terminology, Democrats are considered more liberal while Republicans are considered conservative. Votes by judges are categorized in these terms as well. A vote in favor of a race, gender or minority member's civil rights claim would generally be considered "liberal" (Choi & Gulati, 2008; Smith, 2011; Stidham & Carp, 1987). A judge's vote in support of the government and supporting traditional values would be considered "conservative" (Smith 2011; Stidham & Carp, Date; Choi & Gulati, 2008; Remy, 2003).

A prior study that focused on the influence of judicial political ideology on judicial voting patterns within the United States Circuit Courts of Appeals conducted by Sunstein found that Democratic judges voted in favor of Title VII sex discrimination plaintiffs at a higher percentage rate than Republican judges (Smith, 2011). This result aligns with the liberal and conservative point of view. More studies confirm judges appointed by Republicans are more conservative than Democratic appointees, particularly in cases involving race or gender civil rights claims (Choi & Gulati, 2008; Boyd, et al., 2008; Smith, 2011; Songer & Tabrizi, 1999; Stidham & Carp, 1987).

Judges' Gender

Women have entered the legal profession at an increasing number since the 1970's, primarily due to Title IX which provided more opportunities for women to enter higher education and choose careers once dominated by men (Walters & McNeely, 2010). Women earning degrees in business, engineering, medicine and law have been increasing each year (Choi, Gulati, Holman & Posner, 2011; Frederick & Streb, 2008; Hurwitz & Lanier, 2008). According to the American Bar Association, as of 2006, 30 percent of all lawyers in the United States were women (American Bar Association Commission on Women in the Profession, 2006). With the increase of women in the legal profession there has been an increase of female judiciary at all levels (Choi, Gulati,

Holman & Posner, 2011; Collins & Moyer, 2008; Lens, 2003). Before the Carter administration in 1977, only eight women had served as federal judges (Johnson & Songer, 2009; Songer, Davis, Haire, 1994; Stidham & Carp, 1987). Carter administration, appointed 11 women to the United States Courts of Appeals and 29 to the federal district courts thereby creating a substantially more diversified judiciary (Johnson & Songer, 2009; Songer, Davis, and Haire, 1994).

In the past quarter century there has been a substantial increase of female representation on the appellate courts. The changing composition of the federal courts has led many to question what role judge gender plays in judicial decision making (Moyer, 2013). Existing research regarding gender and judicial decision making in the federal courts has become a significant interest of study among political scientists and legal scholars (Szmer, Kaheny, Sarver, and DeCamillis, 2013). Studies of judge gender and decision making often use the appellate courts as a data base for research because they have a rotating three judge panel and there are more opportunities for mixed sex panels deciding cases (Moyer, 2013). Prior research conducted shows inconsistent results in regard to the role that judges' gender plays in judicial decision making. Empirical studies indicate that there are differences in the behavior of male and female judges in sexual harassment cases, in sentencing cases and in support for the claims of government. These differences are most often at the trial court level (Boyd, Epstein and Martin, 2010; Peresie, 2005; Williams, 2007).

In a more recent article, *Rethinking Critical Mass in the Federal Appellate Courts* (2013), the author takes decisions from civil rights cases from 1982-2002 and employment discrimination cases filed between 1995-2002. The results indicated that female judges are more likely to support the plaintiff in employment discrimination appeals than male judges, which concurs with prior research.

Although prior research has been conducted in regard to employment discrimination cases at the appellate level, none specifically focus on K-12 education gender employment discrimination cases. Gender may have an impact but because this influence has not yet been established in the K-12 arena, this study explored that possibility.

Plaintiff Gender

Most research identifies pro-plaintiff or not pro-plaintiff voting without distinguishing between male and female plaintiffs. Wagar and Grant (1996) researched plaintiff gender effects by using a data base of 367 Canadian cases of employees who suffered adverse employment actions. These cases came from the Canada appeals court and included cases decided between1980 to 1993. The dependent variable was the outcome of decision. The investigators found that female plaintiffs were statistically more likely than male plaintiffs to have a court rule that the employer did not have just cause for dismissal. In other words the probability of a woman winning a wrongful dismissal case was significantly higher than for a male plaintiff.

Decision Date

Decision date is the date when the case is decided. There is currently no reported literature research that breaks down individual voting or panel decisional outcomes according to decisional date. The United States Courts of Appeals review decisions of trial courts for errors of law (Remy, 2001). Depending on the year that certain laws are enacted, would result in case decisions based upon those laws. An appeal involves an established legal principal, that principal will be reinforced, weakened or changed altogether by the review of the court (Lowi & Ginsberg, 1990). The appellate courts and even the Supreme Court can hold in favor of the litigant who is calling for a major change in legal principal. Changes in race relations would have taken longer if the

Supreme Court had not rendered the 1954 *Brown* v. *Board of Education* (347 U.S. 483), decision that redefined the rights of African Americans. Supreme Court cases that set legal precedence in Equal Protection Clause, Title VII and Title IX, for the lower courts to follow and set a tone or atmosphere for future cases in the years to come were discussed earlier in this chapter (see Appendix B).

Appointment Era

The Constitution grants the president the power to appoint judges to the Federal Courts of Appeals and the Senate approves these judicial appointments. This being said, the presidential appointee can alter the composition of the circuit courts towards a particular party and gives opportunity to shape the policy decisions stemming from the judicial branch for years to come after the judicial appointment. Democrat Presidents Kennedy, Johnson and Carter faced Democratic Senate majorities thereby making it easier for them to seat judges to their liking. President Carter was successful in appointing women and minorities to the bench based on ideological strategy which placed liberals in the federal courts (Stidham and Carp, 1987).

When discussing the Republican appointees (1981 and later) the increase of conservative direction voting came when the Reagan era cohort of judges tilt to a more conservative direction and are now revealed in the Republican policy and court decisions (Kastellec, 2011; Stidham and Carp, 1987). During the Clinton administration, Clinton was only able to appoint moderate circuit court judges in order to achieve confirmation through a Republican Senate (Smith, 2010). These results suggest that the more conservative arc of judicial appointment during the 1981 and later should result in more conservative individual voting and panel decisions by judges who were appointed during this time frame compared to those appointed in 1980 and before.

Chapter 3

Research Method

This investigation examined: (1) the relationship between judges' ideology, gender, appointment date and the decision date and plaintiffs' gender and individual voting and (2) panel ideological, appointment era and gender majority and plaintiffs' gender and decision date on outcomes in sex discrimination cases in the United States Courts of Appeals.

Research Questions

1. What is the relationship among United States Courts of Appeal judges' political ideology, gender, appointment era, plaintiffs' gender, decision date and judges' individual voting, in K-12 education employment gender discrimination cases brought under the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, and Title IX of the 1972 Education Amendments?

2. What is the relationship among United States Courts of Appeal panels' ideological , gender, and appointment era majorities, plaintiffs' gender, decision date, and outcomes in K-12 education employment gender discrimination cases brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, Title IX of the 1972 Education Amendments?

Hypotheses

The literature researched led to the following hypotheses in relation to the two research questions. The first six hypotheses pertain to research question one and hypotheses seven through eight pertain to research question two.

Individual Voting

Hypothesis 1: The odds of individual judges appointed by Republican presidents voting in a conservative pro-employer direction in K-12 gender discrimination

employment disputes for the entire period will be greater than that of judges appointed by Democratic presidents.

Hypothesis 2: The odds of individual judges appointed in *1981 and later years* voting in a conservative pro-employer direction will be greater than the judges appointed during *1980 and earlier years*. [appointment era individual voting].

Hypothesis 3: The odds of Republican judges appointed during 1981 and later years voting in a conservative pro-employer direction will be greater than Republican judges appointed during 1980 and earlier years.

Hypothesis 4: The odds of Democratic judges appointed during 1981 and later years voting in a conservative pro-employer direction will be greater than Democratic judges appointed during 1980 and earlier years.

Hypothesis 5: The odds of individual judges voting in a conservative-pro-employer direction *during* 1981 and later years will be greater than judges voting in 1980 and earlier years. [Decisional era individual voting]

Hypothesis 6: For the entire period the odds of judges voting in a conservative-pro-employer direction when the plaintiffs are male will be greater than when the plaintiffs are female.

Panel Decisions

Hypothesis 7: For the entire period the odds of a conservative pro-employer decision with a Republican majority panel will increase as compared to a Democratic majority panel.

Hypothesis 8: The odds of a panel rendering a conservative-pro-employer decision will increase when the panel is comprised of a majority of *1981 and later* appointees as compared to a majority of *1980 and earlier* appointees.

Hypothesis 9: The odds of a panel rendering a conservative-pro-employer decision will increase for decisions made during *1981 and later* compared to decisions rendered *1980 and earlier.*

Hypothesis 10: For the entire period, the odds of a panel majority rendering a conservative pro-employer decision will increase when the plaintiffs are males rather than females.

Research Design

Data Base

The data sets for the analyses below will be derived from 172 United States Courts of Appeals decisions involving sex-based employment discrimination claims brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII and Title IX stemming, from Kindergarten-grade twelve public school settings.

All decisions falling in these categories are located in the Westlaw data bases covering the period 1964 through 2013 were included in this analysis (See Table of Cases in Appendix). This means that all published and indexed Equal Protection and Title VII gender discrimination decisions issued by the Courts of Appeals since 1964, the year of Title VII's enactment, will be included in the data base. Similarly, all Title IX decisions rendered since 1972, the year of its enactment, were included as well, if they involved employment discrimination and originated in K-12 settings.

The number of judges votes included in the data base was 516. Data on the political affiliation of the judges as well as their gender were derived from standard biographic sources including the website of the *Federal Judicial Center* (2013).

Judgepedia (2013), and *The Judicial Research Initiative at the University of South Carolina* (2007) more commonly known as the *Songer Database*.

Individual Voting

Judge-Level Variables

The first independent variable was political ideology, with the party of the nominating president serving as a proxy for the conservative or liberal ideology of each judge. The political ideology predictor was coded '1' and '0' for judges nominated by Republican and Democratic presidents, respectively. The second judge-level variable studied was judges' gender. Female judges were coded "1" and males as "0". This facilitated an examination of the contribution of judges' gender to the variation in conservative pro-employer voting of female, as compared to male judges.

Extrinsic Variables

The third variable was judges' appointment. This variable refers to the date of a judges' appointment. This independent variable was identified as either Reagan and later periods or the pre-Reagan time frame. These correspond to 1981 and later, which was coded as '1' and 1980 and earlier which was coded as '0'. This division was selected because the arc of the Republican Court of Appeals appointments appeared to turn in a noticeably conservative direction during the Reagan years and thereafter (Smith, 2011; Stidham & Carp, 1987). Moreover, the number of Republican appointed conservative judges seated during 1981-2013 should also have resulted in measurably more conservative voting for the Courts of Appeal as a whole (Stidham & Carp, 1987).

The fourth variable was plaintiffs' gender. Female plaintiffs were coded with a '1' while male plaintiffs will be coded with a '0'. The fifth variable was the decision date of case. This was coded with a "1" for any cases whose decision was reached in 1981 and later or "0" for those cases in which decisions were made in 1980 and earlier.

Panel Decisions

Panel Gender Majority

In light of some recent studies indicating the importance of gender in panel decision making this gender panel composition was included as an independent predictor. *En banc* panels were eliminated from the panel composition analyses, since they could not be properly coded and the large number of votes on an *en banc* panel and the relation among the judges would not comparable to three-judge panels. Gender-panel effects were treated in a binary fashion so that a majority of female judges on a panel was coded with “1” and majority male judges on a panel were coded as “0”.

Panel Ideological Majority

The ideological majority composition of panel independent variable was treated like gender. On a panel of three members, a majority Republican panel of two or more Republican appointees was coded as “1” or “0” for a majority of Democrat appointees.

Panel Appointment Era Majority

The appointment era majority of the panel used the same metric as that used for gender and ideology majority. Panels with a majority of judges appointed during 1980 and earlier were coded as “0”, and panels with a majority of judges appointed during the 1981 and later were coded as “1”. The coding allowed the researcher to examine the effects of appointment era majorities on decisional outcome.

Panel Decision Era

The panel decision era used the same metric as that used for gender, ideology and appointment era majority. Panels with a case decision that occurred during 1980 and earlier were coded as “0”, and panels with a case decision that occurred during the 1981 and later were coded as “1”. The coding allowed the researcher to examine the effects of decision era on decisional outcome.

Dependent Measures

Individual Voting: Conservative-Liberal

A binary dependent measure, a liberal or conservative individual vote, was selected for the judges' ideology, gender, appointment era, plaintiffs' gender, and decision date independent variables. A vote was classified as "conservative" if it supported the defendant by either dismissing the action for failure to state a claim, granting summary judgment to the defendant, or ruling for the defendant after a trial. A vote was classified as "liberal" if it denied a defendant's motion to dismiss for failure to state a claim, denied summary judgment to the defendant, granted summary judgment to the plaintiff, or awarded judgment to the plaintiff after a trial. Conservative votes were coded "1" and liberal votes were coded as "0".

Case Decisional Outcome: Conservative-Liberal

The case decisional outcome dependent measure was coded as above with a '1' representing a conservative decision and '0' representing a liberal decision. There were approximately 172 decisions included in the analysis representing all of the cases included in the data base. This dependent measure was used to examine the relationship between panel gender majority, panel ideological majority, and panel appointment era majority, plaintiffs' gender, and decisional outcome.

Data Collection

The data for this research was collected by using a Westlaw search engine to identify all published and indexed cases in gender discrimination employment K-12 education issued since 1964 in which a gender based Equal Protection Clause, Title VII or Title IX claim was made in a K-12 setting and a decision rendered. The search terms included "Equal Protection," "Title VII" or "Title IX and the terms "school districts" and "teachers," in order to eliminate cases that are outside the K-12 arena. In order to locate

cases the Westlaw search path was pursued as follows; on the UTA library web-site : Library Data Base A-Z, Campus Research, Law link [upper left of screen], click key search link [Go], click civil rights, then education, and then click the tab sex discrimination. Upon the screen opening the terms “Equal Protection,” or “Title VII” or “Title IX” appeared. This path was used to ensure no applicable decisions were missed within the data base.

Another Westlaw search path was used on the UTA library web-site as indicated above, followed by entering the library data base A-Z, Campus research and then clicking the Law link in the upper left of screen. This enabled access to the Advanced Search screen and ability to type in the three paths of litigation into court, Equal Protection Clause, Title VII and Title IX. The second search line included and alternated between the terms “school district” and “teacher”. The third search line the term “sex discrimination” to cross check cases the term “gender discrimination” was also applied. Below the search window *American Jurisprudence* was checked and the box that indicates *All Federal Cases* was used as well.

All cases were collected and placed in the researcher’s data base spread sheet. The data base included all decisions rendered by the United States Court of Appeals for the years selected.

Data Base Coding

SPSS “Data Editor Window” [hereafter “Data View Tab] for Individual judges’ voting. A. In SPSS Data View each row of the data table represents data from one case and each column contains data from one variable. The data view for individual judges’ voting was set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Name of Federal Circuit Court issuing decision

Column 4 Date of Decision [1= 1981 and later, 0=1980 and earlier]

Column 5 Judge's Name

Column 6 Number Assigned to Judge

Column 7 Party of the President Appointing that Judge [1=Republican, and 0=Democrat]

Column 8 Judge's Gender [1=female, 0=male]

Column 9 Plaintiff's Gender [1=female, 0=male]

Column 10 Judges; Date of Appointment [1= 1981 and later, 0=1980 and earlier]

Column 11 Equal Protection Claim [1=yes, 0=no]

Column 12 Title VII Claim [1=yes, 0=no]

Column 13 Title IX Claim [1=yes, 0=no]

Column 14 Individual Vote [dependent measure][1=conservative-pro-employer, 0=liberal-pro-employee] for each of the 516 votes

B. SPSS Data editor window [hereafter "Data View Tab] for Panel Composition and Decisional Outcome.

In SPSS each row of the data table represents data from one case and each column contains data from one variable. The data view for panel voting will be set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Name of Federal Circuit Court issuing decision

Column 4 Date of Decision [1= 1981 and later, 0=1980 and earlier]

Column 5 Panel-Gender Majority [1=majority females, 0= majority males]

Column 6 Ideology-Panel Majority [1=majority Republican, 0=majority Democrat]

Column 7 Plaintiff's Gender [1=female, 0=male]

Column 8 Decisional Era [1= 1981 and later, 0=1980 and earlier]

Column 9 Equal Protection Claim [1=yes, 0=no]

Column 10 Title VII Claim [1=yes, 0=no]

Column 11 Title IX Claim [1=yes, 0=no]

Column 12 Decisional Outcome [1=conservative-pro-employer, 0=liberal-pro-employee] or each of the approximately 175 decisions

In order for the coding to be reliable, doctoral students, and co-researchers along with myself (the primary researcher) independently cross-checked the accumulated data spread-sheet coding for accuracy. To gain reliability in the coding the biographical information collected on each justice was crosschecked with the *Songer* database. The *Songer* database is a publicly available database which includes a set of randomly selected cases and judges' biographical information from all twelve Federal Circuit Courts (Collins, 2010).

Data Analysis

Since ordinary least squares regression is inappropriate when the dependent variable is dichotomous, as is the case in the present analyses, the parameters of the models were estimated by binary logistic regression techniques (Aldrich & Nelson, 1984). This statistic was selected because the data satisfies each of the assumptions for this technique; it is the most effective statistic for analysis of binary dependent variables; and it is the conventional method of examining judicial voting (Aldrich & Nelson, 1984). With respect to the last basis of selection, this enables comparisons with other studies using this analytic tool.

Logistic regression produces estimates of a model's independent variables in terms of the contribution each makes to the odds that the dependent variable falls into

one of the designated categories in this study, either conservative or liberal votes [in that part of the study investigating judges' individual votes] or conservative or liberal case outcome [in that part of the study investigating decisional outcomes. In essence, this technique allows the researcher to determine whether each independent variable improves the model relative to the model without that independent variable.

Five regression equations were run. In the first equation, the judges' ideology, judges' gender (judge level variables), plaintiffs' gender (case-level variables), judges' appointment era (1981 and later v. 1980 and earlier), case decision date (1980 and earlier v 1981 and later) were set up as independent predictors of the dependent binary measure of judges' individual votes rendered in the sex discrimination cases encompassing the data base. This enabled an assessment of the independent contribution of each of these predictors to the odds of a conservative or liberal vote in these K-12 cases.

The second equation examined, the judges' ideology, judges' gender (judge level variables), plaintiff's gender (case-level variables), appointment era (1981 and later v. 1980 and earlier), were set up as independent predictors of the dependent binary measure of judges' individual votes for the 1981 and later years only. This enabled an assessment of the independent contribution of each of these predictors to the odds of a conservative or liberal vote in these K-12 cases for the Reagan and later years.

The third equation examined the relationship among judges' gender (judge level variable), plaintiff's gender (case-level variables), judges' appointment era (1981 and later v. 1980 and earlier), case decision date (1980 and earlier v 1981 and later) as independent predictors of the dependent binary measure of judges' individual votes for the Democratic appointees only. This enabled an assessment of the independent

contribution of each of these predictors to the odds of a conservative or liberal vote for this group.

The fourth equation examined the relationship among judges' gender (judge level variable), plaintiff's gender (case-level variables), judges' appointment era (1981 and later v. 1980 and earlier), case decision date (1980 and earlier v 1981 and later) as independent predictors of the dependent binary measure of judges' individual votes for the Republican appointees only. This enabled an assessment of the independent contribution of each of these predictors to the odds of a conservative or liberal vote with this group.

The fifth equation examined the relationship of the panel gender majority, panel ideological majority, appointment era panel majority, plaintiffs' gender and date of decision set up as independent variables and case outcome (conservative or liberal) serving as the dependent measure. This design enabled an assessment of independent contribution of each predictors to the odds a conservative or liberal vote with case decisional outcomes.

For this study significant differences in the output produced by each independent variable were considered at the .10, .05, and .01 levels. Differences were determined to attain significance when the obtained probabilities were below each of these thresholds.

Before undertaking the logistic regression analysis, preliminary descriptive tables were developed to inform the analysis. The descriptive tables for the individual voting were comprised of the following:

1. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Pre-K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and

Title XI, in United States Courts of Appeals as a Function of Judges' Ideology.

2. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Pre-K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeals as a function of Judges' Gender.
3. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Judges' Appointment Era, for the combined Democrat and Republican Database.
4. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeals by Democratic Judges Appointed during 1981 and Later, and 1980 and Earlier.
5. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Courts of Appeals by Republican Judges appointed in 1980 and Earlier, and 1981 and Later.
6. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions after 1981 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Appointment Era.

7. Frequency and Percentage of Conservative Pro-employer and Liberal Not pro-Employer Votes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Date of Decision 1980 and Earlier and 1981 and Later.
8. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender.

The descriptive tables for the panel decisions consisted of:

1. Frequency and Percentage of Conservative Pro-Employer and Liberal Pro-Employer Case Outcomes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Panel Gender Majority.
2. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Panel Party Majority.
3. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Decisional Outcomes in K-12 Gender Discrimination Decisions between 1964and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal by Decision Date.
4. Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Outcomes in K-12 Gender Discrimination Cases Decided

between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender.

Chapter 4

Results

The relationship of the judge-level [ideology and gender] and extrinsic variables [appointment era, decisional era and plaintiffs' gender] to the United States Courts of Appeals individual voting in K-12 sex discrimination in employment cases was examined descriptively prior to performing logit analyses on the data sets. To study panel decisional outcomes in these cases judge-level [panel ideology and gender majority] and extrinsic variables [appointment era majority, decisional era and plaintiffs' gender] were examined descriptively before the logistic regression analyses were run.

Part A: Court of Appeals judges' individual voting

As shown in table 4.1 the frequency distribution and percent of the 516 individual votes cast categorized as conservative (pro-employer) or liberal (pro-employee) in K-12 gender discrimination decisions rendered between 1964 and 2013 as a function of the Court of Appeals judges' ideology. The percentage next to each entry is of the percentage votes cast within each ideological group. Table 4.1 reveals that between 1964 and 2013, Republican judges cast 81% of their 276 votes in a conservative (pro-employer) direction while Democratic judges cast 71% of their 240 votes in a conservative (pro-employer) direction. The direction of the conservative pro-employer voting was as expected. This statistical significance of the 10% differences was tested when the logit analysis was performed.

Table 4.1 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Pre-K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title XI, in United States Courts of Appeals as a Function of Judges' Ideology.

Party Ideology	Conservative	Liberal	Total
Republican	223 (81%)	53 (19%)	276 (53%)
Democrat	171 (71%)	69 (29%)	240 (47%)
Total	394 (76%)	122 (24%)	516 (100%)

Table 4.2 shows the frequency distribution and percent of judges' 516 votes categorized as conservative or liberal in K-12 gender discrimination decisions brought to the United States Court of Appeals as a function of judges' gender. The percentage next to each entry is of the total votes cast within each gender group. It can be seen that male judges cast 76% of their 439 votes conservatively while their female counterparts cast 81% of their 77 votes in a conservative direction. The direction of the voting is not as expected in that female judges voted more conservatively than their male counterparts. This difference was tested for its significance in the logit analysis.

Table 4.2 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in Pre-K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeals as a Function of Judges' Gender

Gender	Conservative	Liberal	Total
Male	332 (76%)	107 (24%)	439 (85%)
Female	62 (81%)	15 (19%)	77 (15%)
Total	394 (76%)	122 (24%)	516 (100%)

Table 4.3 shows the frequency distribution and percent of the 516 votes cast categorized as conservative or liberal in the K-12 gender discrimination decisions as a function of judges' appointment era. The percentage next to each entry is of the total votes cast within each appointment era. The table reveals that judges appointed during the *1980 and earlier* period cast 63% of their 217 votes in a conservative direction, while judges appointed during *1981 and later* cast 86% of their 299 votes in a conservative direction. The 23% difference in conservative-pro-employer voting suggests a strong substantive relationship between appointment era and individual voting for the combined group of Republican and Democratic judges. Its statistical significance was tested in the logit analysis below.

Table 4.3 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Judges' Appointment Era, for the combined Democrat and Republican Database

Appointment Era	Conservative	Liberal	Total
1980 and earlier	136 (63%)	81 (37%)	217 (42%)
1981 and later	258 (86%)	41 (14%)	299 (56%)
Total	394 (76%)	122 (24%)	516 (100%)

Results in table 4.4 show the frequency distribution of the 240 individual votes cast by Democratic appointed judges categorized as conservative or liberal during the two appointment eras of *1980 and earlier*, and *1981 and later*, in K-12 gender discrimination decisions rendered between 1964 and 2013. The table reveals that of the 142 votes cast by Democratic judges appointed in *1980 and earlier*, 62% of the votes were cast in the conservative direction. Democratic judges appointed *1981 and later* cast 85% of their 98 votes in the conservative manner. The 23% difference in conservative voting between the later as compared to the earlier period should have substantial practical impact on case outcomes. Moreover, this difference suggests that for Democrats, the confirmation process during the later as compared to the earlier period may have had a moderating influence on liberal voting within that group.

Table 4.4 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeals by Democratic Judges Appointed during 1981 and Later, and 1980 and Earlier

Democratic Judges Appointment Era	Conservative	Liberal	Total
1980 and earlier	88 (62%)	54 (38%)	142 (59%)
1981 and later	83 (85%)	15 (15%)	98 (41%)
Total	171 (72%)	69 (29%)	240 (100%)

Table 4.5 shows the frequency distribution and percent of Republican judges' 277 individual votes categorized as conservative or liberal by appointment era in K-12 gender discrimination decisions made between 1964 and 2013. Table 4.5 indicates that 64% of the 75 votes cast by Republican judges appointed in *1980 and earlier* were cast in a conservative direction, whereas 87% of the 194 votes cast by Republican judges appointed *1981 and later* were cast in a conservative direction. The 23% difference between the later as compared to the earlier period is substantively meaningful and consistent with the observation that Republican efforts to ensure selection of more conservative jurists during the later period were effective. Notably, the difference for conservative pro-employer voting between the two periods for Republican appointees (23%) as shown in Table 4.5 was equally as large of those observed for the Democratic appointees (23%), as shown in Table 4.4.

Table 4.5 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Courts of Appeals by Republican Judges appointed in 1980 and Earlier, and 1981 and Later

Republican Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	48 (64%)	27 (36%)	75 (27%)
1981 and later	175 (87%)	26 (13%)	201 (73%)
Total	223 (81%)	53 (19%)	276 (100%)

Results in table 4.6 display the frequency and percent of conservative pro-employer versus liberal pro-employee voting for the 447 votes rendered during *1981 and later* by judges' appointment era. Judges appointed before 1981 cast 149 votes of which 106 or 71 % were conservative pro-employer, while those judges appointed in *1981 and later* rendered 298 votes of which 248 or 87 % were conservative. This 16% difference in conservative pro employer voting in favor of the later appointed judges deserves further scrutiny.

Table 4.6 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions after 1981 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Appointment Era

Appointment Date	Conservative	Liberal	Total
1980 and earlier	106 (71%)	43 (29%)	149 (33%)
1981 and later	258 (87%)	40 (13%)	298 (67%)
Total	364 (81%)	83 (19%)	447 (100%)

Table 4.7 shows the frequency distribution and percent of the 516 individual votes recorded for the combined Democratic and Republican data bases by *date of decision,* as conservative or liberal during *1980 and earlier* or *1981 and later.* The total number of votes cast during 1980 or earlier was 69 with 30 or 43% of the votes in a conservative direction. During the years of *1981 and later*, 447 votes were cast with 364 or 81 % of the votes in a conservative direction. Thus, during the later as compared to the earlier period, the difference in conservative pro-employer votes was 38% for the combined Republican and Democratic data bases. This is a substantial substantive difference in the direction of the voting warranting greater scrutiny.

Table 4.7 Frequency and Percentage of Conservative Pro-employer and Liberal Not pro-Employer Votes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Date of Decision 1980 and Earlier and 1981 and Later.

Decision Date	Conservative	Liberal	Total
1980 and earlier	30 (43%)	39 (57%)	69 (13%)
1981 and later	364 (81%)	83 (19%)	447 (87%)
Total	394 (76%)	122 (284%)	516 (100%)

Results in table 4.8 show the frequency distribution of the 516 individual votes cast for the combined Republican and Democratic data bases by judges categorized as conservative or liberal as a function of plaintiffs' gender for the K-12 gender discrimination decisions rendered during the entire period. The percentage next to each entry represents the proportion of votes cast for plaintiffs of each gender. An overwhelmingly number of male plaintiff's claims received conservative (pro-employer) votes. Eighty-five percent of the 99 votes cast in connection with the male plaintiffs'

claims were conservative while 74% of the 417 female plaintiff claims received conservative-pro-employer votes. This table reveals that female plaintiffs filed many more K-12 gender discrimination cases in the United States Courts of Appeals for the period under study. The 11% difference in conservative outcomes for the male plaintiffs is of substantial practical import; its statistical significance was examined when the logit results were run. They are reported below.

Table 4.8 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Votes Cast in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender

Plaintiff Gender	Conservative	Liberal	Total
Male	84 (85%)	15 (15%)	99 (19%)
Female	310 (74%)	107 (26%)	417 (81%)
Total	394 (76%)	122 (24%)	516 (100%)

Table 4.9 shows the results of the logistic regression analysis performed on the 516 votes cast for the combined Republican and Democratic data base for the period 1964-2013. A test of the full model against a constant only model was statistically significant indicating that the predictors as a set reliability distinguished between conservative (pro-employer) and liberal (not pro-employer) votes of the individual judges ($\chi^2 = 47.93$, $p < .01$ with $df = 5$). Overall prediction success was 74.2%. Variability in the model's dependent measure accounted for by the independent variables was approximately .135 as measured by the Nagelkerke's R^2. Table 4.9 gives the Wald statistic and associated degree of freedom and probability value for each of the predicted

values. The Wald criteria demonstrated that appointment era (p = .003) and decision date (p = .000) each made a significant contribution to prediction.

The output indicates that for the combined Republican-Democratic data base judges *appointed* during the later as compared to the earlier period were significantly more likely to vote in a conservative pro-employer direction under controls for all other variables. For the two categories associated with the appointment era, calculations of the effect size revealed that the odds of judges appointed during the *1981 and later* period voting in a conservative pro-employer direction increased using a factor of 2.244. This finding is consistent with the prediction that judges appointed during the *1981 and later* period would vote more conservatively than judges appointed during the earlier period.

The output for *decision date* (1980 and earlier, and 1981 and later), indicated that votes made during the later as compared to the earlier period were significantly more likely to be in a conservative pro-employer direction with all other predictors held constant. For the two decision date categories calculation of the effect size showed that for individual voting in the combined Republican and Democrat data bases, the odds of judges voting in K-12 sex discrimination cases decided in *1981 and later* increased using a factor of 3.491, over the odds of voting in a conservative direction for cases decided in the 1980 or earlier.

Thus, the differences observed in conservative-pro-employer voting between the later and earlier appointment eras [23%] [appointment era variable], and the later and earlier decisional eras [38%][decisional era variable], each attained statistical significance when subjected to logit analyses. Plaintiffs' gender, judges' gender and the ideology predictors did not contribute significantly to the odds of a conservative pro-employer vote for the individual voting.

Table 4.9 Logit Analysis on the Odds of a Conservative Pro-Employer Vote under Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals in K-12 Gender Discrimination Cases Decided between 1964 and 2013, Combined Data Bases for Judges Nominated by Republican and Democratic Presidents

Independent Variables	*B* (S.E.)	Wald	*df*	*p*	Exp (*B*)
Ideology	2.82 (.240)	.1.387	1	.239	1.326
Appointment Era	808 (.271)	8.880	1	.003	2.244
Date of Decision	1.250 (.309)	16.325	1	.000	3.491
Judges' Gender	-.198 (.337)	.346	1	.556	.820
Plaintiff Gender	-.315 (.318)	.980	1	.322	.730

Table 4.10 shows the results of the logistic regression analysis performed on the 447 individual votes cast from 1981-2013 only in the in the K-12 sex discrimination cases comprising the combined Republican-Democratic data base. A test of the full model against a constant only model was statistically significant, indicating that the predictors as a set reliability distinguished between conservative (pro-employer) and liberal (not pro-employer) votes of the individual judges ($\chi^2 = 20.47$, $p < .01$ with $df = 4$).

Overall prediction success was 76.3 %. Variability in the model's dependent measure accounted for by the independent variables was approximately .067 as

measured by the Nagelkerke's R^2 square. Table 4.10 gives the Wald statistic and associated degree of freedom and probability value for each of the predicted values. The output indicates that for *the post-1980 voting* judges' appointment era (*1981 and later* or *1980 and earlier*) was significantly related to the choices of the individual judges between 1981 and 2013.

Judges appointed during the later as compared to the earlier period were more likely to vote in a conservative pro-employer direction under controls for all other variables. For the two categories associated with the appointment era, calculations of the effect size revealed that the odds of judges appointed during the *1981 and later* period voting in a conservative pro-employer direction increased using a factor of 2.225, over the odds of voting in a conservative direction for judges appointed during the *1980 and earlier* period. This finding is consistent with the prediction that the process for Court of Appeals appointments during the *1981 and later* period resulted in seating more conservative leaning judges than those appointed during the earlier period. The judges' ideology, gender and plaintiffs' gender variables did not contribute significantly to the prediction of conservative-pro-employer voting in this data base.

Table 4.10 Individual Votes Decision Date only Data Base of Logit Analyses on the Odds of a Conservative Pro-employer Decision in the United States Courts of Appeal in K-12 Gender-based Employment Discrimination Cases brought under the Equal Protection Clause, Title VII and Title IX during the 1981 and Later Years

Independent Variables	*B* (S.E.)	Wald	*df*	*p*	Exp (*B*)
Ideology	.426 (.276)	2.385	1	.123	1.530
Judge Gender	-.118 (.345)	.117	1	.733	.889
Plaintiff Gender	-.174 (.323)	.290	1	.590	.840
Appointment Era	.800 (.278)	8.262	1	.004	2.225

Note. Although it is impossible to run appointment era and decision date variables for *1980 and earlier*, it is possible to run ideology, judges' gender, and plaintiff's gender variables.

Table 4.11 shows the results of the logistic regression analysis performed on the 240 *Democrat only data* base for the period of 1964-2013. A test of the full model against a constant only model was statistically significant indicating that the predictors as a set reliably distinguished between conservative (pro-employer) and liberal (not-pro-employer) votes of the individual judges ($\chi^2 = 21.192$, $p < .01$ with $df = 4$). Overall prediction success was 72.5%. Variability in the model's dependent measure accounted for by the independent variables was approximately .121 as measured by the Nagelkerke's R^2. Table 4.11 gives the Wald statistic and associated degree of freedom and probability

value for each of the predicted values. The Wald criteria demonstrated that for the *Democratic appointees* appointment era (p = .004) and decision date (p = .016) made a significant contribution to prediction with all other variables controlled.

The output indicates that for the category associated with *appointment era*, calculations of the effect size revealed that the odds of judges appointed during the *1981 and later* period voting in a conservative pro-employer direction increased using a factor of 2.955. This finding is consistent with the prediction that Democratic judges appointed during the *1981 and later* period would vote more conservatively than Democratic judges appointed during the earlier period.

The output for *decision date* (1980 and earlier and 1981 and later), indicated that votes made during the later period, as compared to the earlier period, were significantly more likely to be in a conservative pro-employer direction. For the two decision date categories, calculation of the effect size showed that for individual voting the odds of Democrat judges voting in K-12 sex discrimination cases decided in *1981 and later* increased using a factor of 2.588 over the odds of voting in a conservative direction for cases decided in the 1980 or earlier. For the Democratic appointees neither the judges' gender nor plaintiff-gender variables attained significance as predictors of conservative pro-employer voting.

Table 4.11 Logit Analysis on the Odds of a Conservative Pro-Employer Vote under Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals in K-12 Gender Discrimination Cases Decided between 1964 and 2013, Democrat Database Only

Independent Variables	*B* (S.E.)	Wald	*df*	*p*	Exp (*B*)
Decision Date	.951 (.404)	5.546	1	.016	2.588
Judge Gender	-.171 (.418)	.167	1	.682	.843
Appointment Era	1.084 (.372)	8.493	1	.004	2.955
Plaintiff Gender	.267 (.406)	.432	1	.511	1.306

Table 4.12 shows the results of the logistic regression analysis performed on the 276 votes from the *Republican-only database* for the period of 1964-2013. A test of the full model against a constant-only model was statistically significant, indicating that the predictors as a set of reliability distinguished between conservative (pro-employer) and liberal (not-pro-employer) votes of the individual judges ($\chi^2 = 37.956$, $p < .01$ with $df = 4$). Overall prediction success was 84.1%. Variability in the model's dependent measure, accounted for by the independent variables, was approximately .206 as measured by the Nagelkerke's R^2. Table 4.12 gives the Wald statistic and associated degree of freedom and probability value for each of the predicted values. The Wald criteria demonstrated

that the decision date ($p < .001$) and plaintiffs'-gender ($p = .034$) variables made significant contributions to prediction when all other variables controlled.

The output for the Republican only data base indicated for the *decision date* variable *(1980* and earlier and 1981 and later) attained significance. Votes made during the later period, as compared to the earlier period, were significantly more likely to be in a conservative pro-employer direction. For the two decision date categories, calculation of the effect size showed that for individual voting the odds of Republican judges voting in K-12 sex discrimination cases decided in *1981 and later* increased using a factor of 6.683 over the odds of voting in a conservative direction for cases decided in *1980 or earlier*.

The output for *plaintiff-gender* variable indicated that Republican appointees were significantly more likely to render a conservative pro-defendant vote for male than for female plaintiffs. For the two categories, the odds of a conservative pro-defendant vote were reduced by a factor of .237 for female as compared to male plaintiffs. For this Republican appointee data base, neither the judges' gender variable nor appointment era attained significance as predictors of conservative pro-defendant voting. Notably, plaintiffs' gender variable attained significance for Republican ($p = .024$) but not for Democratic appointees ($p = .511$; Table 4.11). This interaction effect is discussed in the next chapter.

Table 4.12 Logit Analysis on the Odds of a Conservative Pro-Employer Vote under Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals in K-12 Gender Discrimination Cases Decided between 1964 and 2013, Republican Database Only

Independent Variables	*B* (S.E.)	Wald	*df*	*p*	Exp (*B*)
Decision Date	1.900 (.524)	13.152	1	.000	6.683
Judge Gender	-.091 (.024)	.024	1	.878	.913
Appointment Era	.338 (.456)	.551	1	.458	1.402
Plaintiff Gender	-1.359 (.640)	4.509	1	.034	.257

Part B: Panel Decisional Outcomes

Table 4.13 shows the case outcomes when the Courts of Appeals panels were comprised of zero, one, two or three female judges in the 172 K-12 gender discrimination cases brought under the Equal Protection Clause, Title VII and Title IX, between the years 1964 and 2013. When one female appeared on the panel, there was an 83% conservative outcome compared to a 92% conservative outcome when two females (panel majority) serve on a panel. On the panel with zero females a conservative outcome occurred 70% of the time. There was no judicial panel where all three judges were females, and 108 panels where there were no female judges. These results suggest

that no meaningful relationship existed between the number of female panel members and the likelihood of a conservative pro-employer outcome.

Table 4.13 Frequency and Percentage of Conservative Pro-Employer and Liberal Pro-Employer Case Outcomes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Panel Gender Composition

Number of Female Judges	Conservative	Liberal	Total
0	76 (70%)	32 (30%)	108 (63%)
1	43 (83%)	9 (17%)	52 (30%)
2	11 (92%)	1 (8%)	12 (7%)
3	0 (0%)	0 (0%)	0 (0%)
Total	130 (76%)	42 (24%)	172 (100%)

Table 4.14 represents the frequency and percentage of the 172 case outcomes by panel party affiliation for K-12 gender discrimination claims brought to the United States Court of Appeals under the Equal Protection Clause, Title VII and Title IX between the years 1964-2013. The table shows case outcomes as a function of the number of Republican judges sitting on a panel. More than three-quarters of the 172 case outcomes between 1964 and 2013 had a conservative outcome. When zero, one, two and three Republican judges were seated 68, 78, 72 and 88% of the panel decisions were conservative-pro-employer. When extrapolated from Table 4.14 it was revealed that when the panels were comprised of Republican majorities 76 of the 100 or 76% of the case outcomes were conservative-pro-employer. When zero and one panel members were Republicans, 54 out of the 72 case outcomes, or about 75%, were conservative-pro-employer. These differences made the outcomes indistinguishable from one another

based on ideological majorities. Finally, a comparison of united panels [R-R-R versus D-D-D] revealed that 88% conservative-pro-employer decisions for the Republicans and 68% for the Democrats.

Table 4.14 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Case Outcomes in K-12 Gender Discrimination Decisions between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in the United States Court of Appeals as a Function of Panel Party Affiliation

Number of Republican Judges	Conservative	Liberal	Total
0	15 (68%)	7 (32%)	22 (13%)
1	39 (78%)	11 (22%)	50 (29%)
2	55 (72%)	21 (28%)	76 (44%)
3	21 (88%)	3 (12%)	24 (14%)
Total	130 (76%)	42 (24%)	172 (100%)

Table 4.15 shows the frequency of conservative and liberal outcomes by decision date for the 172 K-12 sex discrimination cases under review. The table indicates that there were 23 total decisions made in *1980 and earlier*, of which 12 or 52% were made in a conservative direction. During the year *1981 and later* years, a total of 149 decisions were made of which 81% were conservative- pro-employer. The 29% difference in favor of conservative pro-employer versus liberal pro-employee outcomes during the later period, as compared to the earlier period, may be of important practical significance. Its statistical significance was tested below in the logit analysis.

Table 4.15 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Decisional Outcomes in K-12 Gender Discrimination Decisions between 1964and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal by Decision Date

Decision Date	Conservative	Liberal	Total
1980 and earlier	12 (52%)	11 (48%)	23 (13%)
1981 and later	121 (81%)	28 (19%)	149 (87%)
Total	133 (77%)	39 (23%)	172 (100%)

Table 4.16 displays the frequency of conservative and liberal decisions as a function of plaintiffs' gender for the 172 K-12 gender discrimination decisions rendered between 1964 and 2013. The percentage next to each entry represents the proportion of conservative and liberal outcomes by plaintiffs' gender. The 14% difference in favorable results for female as compared to male plaintiffs [87%-73%] aligns well with the individual voting [85%-74%] reported in the Table 4.7 and was tested for its statistical significance below.

Table 4.16 Frequency and Percentage of Conservative Pro-Employer and Liberal Not Pro-Employer Panel Decisions in K-12 Gender Discrimination Cases Decided between 1964 and 2013 under the Equal Protection Clause, Title VII and Title IX in United States Courts of Appeal as a Function of Plaintiffs' Gender

Plaintiff Gender	Conservative	Liberal	Total
Male	27 (87%)	4 (13%)	31 (18%)
Female	103 (73%)	38 (26%)	141 (82%)
Total	130(76%)	42 (24%)	172 (100%)

Table 4.17 shows the results of the logistic regression analysis performed on the judges' ideological, gender and appointment era panel majority variables, plaintiffs' gender and decision date variables, and case outcomes for the 172 K-12 sex discrimination decisions examined. A test of the full model against a constant-only model was statistically significant, indicating that the predictors as a set reliability distinguished between conservative (pro-employer) and liberal (not pro-employer) decisions of the cases ($\chi^2 = 18.91$, $p < .01$ with $df = 5$). Overall prediction success was 77.3%. Variability in the model dependent measure accounted for by the independent variables was approximately .158 as measured by the Nagelkerke's R^2. Table 4.17 gives the Wald statistic and *df* value for each predictor. The Wald criteria demonstrated that panel *appointment era majority* ($p = .025$) made a significant contribution to prediction.

The output indicates that the *appointment era majority* categories (1981 and later or 1980 and earlier) were significantly related to case outcome. Where panel majorities were appointed during the later as compared to the earlier period they were more likely to render case decisions in a conservative pro-employer direction under controls for all other variables. For panels comprised of a majority of the later appointed judges, calculation of the effect size revealed that the odds of cases resolving in a conservative pro-employer direction increased using a factor of 2.735 over odds of cases where judges were the majority appointment during the 1980 and earlier period.

Although the *decision date* effects did not attain significance, ($p = .218$) the results were in the direction predicted, that is, conservative-pro-employer decisions occurred more during the 1981 and later period than during and before 1980. Calculation of the effect size for this variable showed that the odds of a conservative pro-employer vote increased by a factor of 1.893 for decisions made during the later period, as compared to the earlier period. This effect size for the decision date categories is fairly

large, and parallels the descriptive data derived from table 4.12 above, which revealed a 29% difference between conservative-pro-employer outcomes for the *1981 and later* decisions compared those made in 1980 and earlier. The panel ideology majority, panel gender majority, and plaintiffs' gender variables, did not attain statistical significance as predictors for conservative pro-employer on the panel decisions considered.

Table 4.17 Logit Analyses on the Odds of a Conservative Pro-employer Decision in the United States Courts of Appeal in K-12 Gender-based Employment Discrimination Cases brought under the Equal Protection Clause, Title VII and Title IX between the years of 1964 and 2013.

Independent Variables	*B* (S.E.)	Wald	*df*	*p*	Exp (*B*)
Panel gender majority	.219 (.459)	.227	1	.634	1.245
Panel ideology majority	-.056 (.384)	.021	1	.884	.946
Plaintiff gender	-.365 (.603)	.367	1	.545	.694
Appointment era majority	1.006 (.450)	5.007	1	.025	2.735
Date of decision	.638 (.517)	1.520	1	.218	1.893

Results of Hypotheses

Individual Voting

Based on the investigations completed, the following are the outcomes of my hypothesis stated in Chapter 3. The first six hypotheses refer to the individual voting data bases for K-12 Gender Discrimination Decisions brought to the United States Courts of Appeals under Equal Protection, Title VII and Title IX between the years of 1964-2013. The outcomes of hypothesis seven through ten examined panel variable effects for the 172 decisions studied.

It was anticipated in hypothesis one that the odds of judges appointed by Republican presidents voting in a conservative pro-employer direction in K-12 gender discrimination employment disputes for the period 1964-2013 would be greater than that of judges appointed by Democratic presidents. Based on the logistical regression model that was performed, there was no support found for the hypothesis that the ideology of a judge influenced the judges' vote.

The logistic regression output confirmed hypothesis two in that the odds of judges *appointed* during the 1981 and later years voting in a conservative pro-employer direction in K-12 gender discrimination cases between 1964 and 2013 were significantly greater than the judges appointed during the 1980 and earlier years.

Based on the logistic regression, evidence was not found to support hypothesis three that the odds of the individual votes of Republican judges appointed during the 1981 and later period voting in a conservative pro-employer direction in K-12 gender discrimination cases between the periods would be greater than Republican judges appointed during the 1980 and earlier period.

The prediction of hypothesis four found support in that the odds of Democratic judges appointed during the 1981 and later period voting in a conservative pro-employer

direction was greater than Democratic judges appointed during the 1980 and earlier period. The prediction of hypothesis five was supported in the odds of individual judges voting in a conservative-pro-employer direction during 1981 and later was greater that judges voting in 1980 and earlier years. The prediction for hypothesis six was that for the entire period the odds of judges voting in a conservative-pro-employer direction when the plaintiffs are male would be greater than when they plaintiffs are female. Based on the logistic regression output this prediction was not supported.

Panel Decisions

It was expected in hypothesis seven that the odds of a conservative pro-employer outcome with a Republican majority panel will increase as compared to a Democratic majority panel in K-12 gender discrimination in employment disputes for the period 1964-2013. The odds of a Republican majority panel voting in a pro-conservative outcome did not increase as compared to a Democratic majority panel. Therefore this hypothesis was not supported.

It was expected in hypothesis eight that the odds of a panel rendering conservative-pro-employer decisions will increase when the panel is comprised of a majority of 1981 and later appointees as compared to a majority of 1980 and earlier appointees. The panel logistic regression analysis was consistent with this prediction. The logistic regression output did not support hypothesis nine that the odds of a panel rendering a conservative-pro-employer decision will increase for decisions made during 1981 and later compared to decisions rendered 1980 and earlier (Table 4.17). It was expected in hypothesis ten that the odds of panel majority rendering a conservative pro-employer decision will increase when the plaintiffs are males rather than females. Based on the logistic regression output this prediction was not supported.

Chapter 5

Discussion

This study differs from previous empirical studies of judicial behavior since it focused exclusively on sex discrimination cases arising in K-12 educational settings under the Equal Protection Clause, Title VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972, between the years of 1964-2013.

In this chapter the results reported in chapter 4 regarding the relationship among: (1) judge-level [ideology, gender] and extrinsic variables [judges' appointment era, decisional era and plaintiffs' gender] and individual voting and (2) panel-ideology majority, panel gender majority, panel appointment era majority, decisional era plaintiffs' gender and decisional outcomes, will be analyzed and discussed. The limitations of the current design and recommendations for further study will also be included.

Judges' Individual Voting

Political Ideology

This study included 516 individual votes cast by Republican and Democratic presidential appointees to the United States Court of Appeals using party of appointing president as a proxy for ideology. Hypothesis one stated that the odds of judges appointed by Republican presidents voting in a conservative pro-employer direction in K-12 gender discrimination employment disputes for the period 1964-2013 will be greater than that of judges appointed by Democratic presidents. Based on logistical regression output, there was little support found for this hypothesis. The difference in the odds of conservative pro-employer voting between theses ideological groups did not attain statistical significance (p=.239). Moreover, the effect size measure for this variable was merely 1.326, suggesting relatively minor practical differences in voting between the Republican and Democratic appointees. That said, there was a tendency for Republican

appointees to vote more conservatively than Democratic ones, the difference being 10% between these groups as revealed in the descriptive tables.

My results contrast with Sunstein, Ellman and Schakade's, in that they found judge ideology, measured by the party of the appointing president, was a strong contributor to individual voting in sex discrimination and harassment cases from 1995 to 2003 (Sustein, Ellman and Schakade, 2003). Their investigation used the United States Federal Court of Appeals judges' voting and included 1007 decisions with 3021 individual votes. The modest differences between Republican and Democratic appointees in my study and the larger ones observed by Sunstein, may be attributed to the fact that Sunstein's data base was far broader than mine and contained a much larger number of votes. This increased the likelihood of Sunstein finding voting differences significant as compared to the present study. Moreover, since my study included only employment claims in K-12 disputes, the narrowing in case types might account for the differences as well.

Another study focusing on the cases United States Court of Appeals as a data base was conducted by Peresie (2005). Peresie studied Title VII claims decided between 1999-2001 alleging sexual harassment and sex discrimination. His data base consisted of 556 total cases and 1666 individual votes (Peresie, 2005). Judges ideology was categorized by appointing president (similar to my study). Peresie concluded that "judicial ideology significantly affected the results" (p.4) in that judges appointed by Democratic presidents found for the plaintiff more often those Republican appointees (Peresie, 2005). The significant ideology based differences in voting observed by Peresie, but not in the present study, may also be attributable to the relative size of the data bases, case types and the time period included in the investigations.

The attitudinal theory of judicial behavior asserts that judges are political players who decide disputes based on ideological positions and (Weinshall-Margel, 2011). Although this study did not show significant differences in individual ideological voting over more than a half century when logits were run, the descriptive results still revealed a 10% difference between party appointees. Thus, this study is consistent with the expected direction of the voting despite its failure to attain the requisite probability levels between groups. As mentioned above the small number of votes counted, and the narrow category of cases included in the data base may account for this result. Moreover, judges' sensitivity to the fact that the conflicts arose in K-12 settings and according substantial deference to school official's decisions may have reduced expression of ideological differences between Republican and Democratic appointees observed in other settings.

Appointment Era

The *appointment era* variable had two levels: judges appointed by presidents in 1980 and earlier and judges appointed by presidents in 1981 and later (table 4.6). For the individual votes in the combined Democratic and Republican data base, more conservative voting was observed during the later appointment period compared to the earlier one at a 16% difference between groups. When the logit analysis was applied to the combined data base these differences were found to be significant ($p = .003$, Table 4.9) with all other variables controlled. The effects of appointment era on individual voting retain retained their vitality for the data based comprised of 1981 and later votes only. This suggests an enduring appointment era effect that is both meaningful and large.

For the Republican appointee only era data base (Table 4.5) there was more conservative voting by the 1981 and later Republican appointees than by the earlier appointed Republicans at 23% difference between each group. However when logistic

regression analysis was applied to the Republican only data base (276 individual votes), the output did not reveal significance for the appointment era variable (p=.458, Table 4.12). Therefore the results did not support hypothesis two, which predicted that in that the odds of the individual votes of Republican judges appointed during the 1981 and later period voting in a conservative pro-employer direction.

For the Democrat appointees greater conservative voting *was* observed for the 1981 and later appointees as compared to the earlier appointed Democrats (Table 4.4), with a 23% difference between each group. The logistical regression analysis performed supported hypothesis three (p = .004, table 4.11) which predicted that the odds of Democratic judges appointed during the 1981 and later period (1981 and later) voting in a conservative pro-employer direction would be greater than Democrats appointed during the 1980 and earlier period. The interaction observed for the appointment era effects for 1981 and later and 1980 and earlier voting indicated that the significant differences found for the combined Republican and Democratic data bases were attributable to differences in Democratic voting between the two periods and the overall effects observed were spurious (Table 4.9).

The most likely explanation for a more conservative voting by Democratic appointees is that President Clinton had to channel his judicial appointments through six years of a Republican controlled Senate, whereas Kennedy, Johnson and Carter enjoyed Democratic Senate majorities (Smith, 2011). Accordingly President Clinton may have been able to appoint only moderate circuit court judges in order to achieve confirmation through a Republican Senate (Smith, 2011).

In the article written by Christopher Smith (2011), *Polarized Circuits: Party Affiliation of Appointing Presidents, Ideology, and Circuit Court Voting in Race and Gender Civil Rights Cases,* he researched the influence of presidential political affiliation

on individual voting patterns of the judges. The research took 19,224 individual votes from cases from United States Court of Appeals concerning sex discrimination from the period of 1995-2004. Smith observed that post 1980 presidents President Reagan, Bush I and Bush II appointed strong conservative judges to the court while President Clinton appointed more moderate circuit court judges in order to achieve confirmation through a Republican Senate during his presidency (Smith, 2010). Results of Smith's study align with results from my study in that overall judges appointed during 1981 and later voted more conservatively than those judges appointed during the 1980 and earlier period and certainly this was true for the Democratic only data base.

Although no significant appointment era effects were observed between later and earlier Republican appointees this does not necessarily indicate that conservative trends in voting did not occur. Plainly the significance shown for the decision date variable (p=.000) when the appointment era variable was controlled suggests a distinct and large difference in conservative voting among all Republicans. Indeed the odds of Republicans voting conservative pro-employer were increase by a factor of 6.6 (Table 4.12) over all Republican voting in 1980 and earlier. Although the exact cause of this manifestation cannot be assessed with certainty possible sources of these differences include: an overall conservative trend in the country percolating into the culture of the court, and an interactive effect among later and earlier appointed judges, alteration in societal values.

Decision Date

The decision date variable is categorized by voting which occurred in cases that were decided 1981 and later and 1980 and earlier. For the combined Republican and Democratic data bases there appeared to be a strong tendency for the later voting as compared to the 1980 and earlier voting to go in a more conservative direction, the difference being 38% between the groups. The logit output for this variable showed that

votes made in later as compared to the earlier case were significantly more likely to be in a conservative pro-employer direction with all other variables controlled (p = .001, Table 4.9). Therefore the prediction of hypothesis five was supported.

The decision date variable remained significant when the logit analysis was performed with the Democrat-appointee only data base (p=.016, Table 4.11) which was comprised of 240 individual votes. Similar results obtained for the Republican appointee data base (p=.000, Table 4.12) which contained a total of 276 individual votes. Thus, Republican and Democratic appointees, when considered separately, each registered more conservative pro-employer votes during the 1981 and later period compared to the 1980 and earlier period.

There is currently no reported literature research that breaks down individual voting according to decisional era for the types of cases studied here. Since the logit analysis controlled for judicial ideology, appointment era, judge gender and plaintiff gender, the results indicated that overall voting has moved in a significantly more conservative direction from the earlier period in these K-12 Equal Protection, Title VII and Title IX cases with no interaction effects for party ideology.

Since important non-legal sources of influence were controlled in this study, a possible source of voting differences between the two eras is legal. In other words, if the Supreme Court became more conservative in its interpretation of the Equal Protection Clause, Title VII and Title XI during the two decisional eras, this presumably would be reflected in voting at the Courts of Appeals, since judges would be constrained by *stare decisis* principles to rule more conservatively, as a matter of duty. In this sense the law of the circuits might hve imposed similar constraints on voting within each court of appeals whose effects were not accounted for in this investigation.

If these propositions are correct, then future studies could include categorical independent variables representing each major decision rendered at the high court as well as each circuit and determine if they influenced voting at the courts of appeal level in the types of cases studied here. If such output was significant it would suggest that legal rather than solely attitudinal-ideological forces independently contributed to the voting, perhaps more so than is commonly assumed. Under such a scenario it might be necessary to build separate data bases for Equal Protection, Title VII and Title IX claims since each of these sources of law has separate elements and would require separate statistical treatment. This would apply to building data bases within each circuit as well. In that vein a further limitation in the current study was the absence of such controls. However, the current design allowed for a focus on the special environment associated with K-12 education and assessment of sex discrimination claims in that setting more generally.

Supreme Court decisions which may be of assistance in assessing legal influences on individual voting and panel decisions are contained in appendix B. These decisions span different time frames within each of the decisional eras thereby enabling the creation of categories which may be matched with voting and perhaps accounting for variance which is not studied in the current design.

Plaintiffs' Gender

The plaintiffs' gender variable is simply defined as whether the plaintiff bringing a claim is either male or female. Consistent with the prediction in hypothesis six, for the entire data base male plaintiffs experienced a higher rate of conservative outcomes than females, with the difference being 11% (Table 4.8). However, when a logit model considered plaintiff-gender across all other variables, the output did not show significance ($p = .322$) and the effect sizes were extremely modest (Exp. (B) =.730, table 4.9).

Therefore, hypothesis six which predicted more conservative voting when the plaintiffs were male was disconfirmed.

When a logit was performed on the 240 individual votes contained in the Democrat only data base for the entire period, no significance was found in voting for male versus female plaintiffs (p= .511) and the effects sizes were small as well (Exp (B)=1.306, Table 4.11).

When the logit was run for the 276 votes in the Republican only data base, for the plaintiff gender variable, significant differences in conservative pro-employer voting appeared (p=.034) and the effect sizes associated with the levels of this variable were quite large (Exp. (B)=.257). These Republican appointees were significantly more likely to render a conservative pro-defendant vote for male rather than for female plaintiffs.

This result may reflect Republican jurists emphasizing the remedial function served by anti-discrimination laws, that is, these appointees saw the purpose of these provisions as intending to protect the workplace rights of women and acted accordingly. By contrast the Democratic appointees may have interpreted the laws as more gender neutral and broader in their purpose; that is, taking a more expansive view of anti-discrimination laws by treating them as preventing discrimination of any kind. This would seem to be consistent with the philosophy of the two parties. In any case, in light of the narrow types of cases considered in this study compared to other investigations, the causes of the differences between Republican and Democratic appointees in their treatment of male and female plaintiffs is uncertain and must await further study.

Judge Gender

Judge gender is the last variable in the individual vote data base to be reviewed. There was no hypothesis for this variable since the literature did not suggest readily a particular outcome for individual voting for this variable. Female judges did have a slightly

moderate increase in conservative pro-employer voting direction when compared to male judges at a difference of 5%. However, the logit revealed no significance in judge gender effects for this variable (p=.556). Judge gender was not significant in the Democrat only data base (p=.682), nor the Republican only data base (p=.878).

Peresie (2005) examined sexual harassment cases that were decided in the federal courts of appeals between 1999 and 2001. The data base contained 773 judicial decisions, 127 decisions from female judges and 646 decisions from male judges. Applying regression analysis, Peresie's found that female judges ruled for plaintiffs more than did male judges. A difference between Peresie's study and mine is that my data base contained more limited case types encompassing only K-12 gender discrimination brought to court through Equal Protection, Title VII and Title IX. Moreover Peresie's large number of cases would have enabled smaller differences to attain statistical significance as compared to my study. Another explanation might be that judges exercise more deference to employment decisions rendered in public educational settings there by masking gender judge effects, which might be observable across all employment settings.

Boyd, Epstein and Martin in 2010 entitled *Untangling the Casual Effects of Sex on Judging* did extensive research on whether male or female judges decide cases differently (individual effects). The data base used in their study included United States Court of Appeals judges' votes in sex discrimination suits decided between the years of 1995-2002. Using a non-parametric matching method results indicated that the probability of a judge deciding a sex discrimination case in favor of the plaintiff decreases when the judge is a male. Since Boyd, *et al* Employed a matching technique which had the effect of reducing unaccounted for variance and enabling read differences to appear, it may be that matching judges on salient characteristics before comparing their votes in

sex discrimination cases, is a promising avenue of experimental design for this type of investigation. Unfortunately, the relatively small number of votes analyzed in this study may not lend themselves to effective use of matching techniques. In this sense, this is a limitation in the current paradigm.

In other studies using the U.S. Court of Appeals as a research ground for sex discrimination litigation cases, it was found that female judges were more likely to support the plaintiff in employment discrimination litigation but no differences in other areas of the law (Boyd, Epstein and Martin, 2010; Davis, Haire and Songer, 1993; Farhang and Wawro, 2004).

In contrast to the above two studies, Kulik, Perry, and Pepper (2003) examined sexual harassment and sexual discrimination cases in the United States Federal Circuit Courts between the years of 1981 and 1996. Judge gender was one of the variables used in this study and using logistic regression analysis their study revealed that judge gender had no effect on predicting a pro-plaintiff decision. Kulik's results are consistent with those obtained in the current investigation.

Although there are theoretical perspectives on why female judges will vote differently from their male colleagues their explanatory value has been rather limited as shown by the difference in results reported to date. In short, the effects of judge gender voting remain uncertain and perhaps may be expressed in particular ways in context specific settings.

Panel Decisional Outcomes

The variables researched in this study of 172 United States Court of Appeals panel decisional outcomes included; political ideological majority, panel judge gender majority, decision era, appointment era majority and plaintiffs' gender. The effects of each of these predictors are discussed in turn.

Panel Ideology Majority

Sustein, Ellman and Schkade (2003) took the same data base that was discussed earlier and researched panel political ideological majority and its influences panel voting. Sustein found that panel of majority of Democratic judges favored plaintiffs at a higher rate than a majority Republican panel.

Based on hypothesis seven regarding panel ideological majority, it was expected that the odds of a conservative pro-employer outcome would increase for majority Republican appointee panels compared to majority Democratic appointee panels in K-12 gender discrimination in employment disputes for the period 1964-2013. The logistic regression output for this variable did not attain statistical significance ($p = .884$, Table 4.17). This result is consistent with that obtained for the individual voting in this study: Republican and Democratic appointees did not differ statistically from one another in the odds of producing a conservative pro-employer vote ($p=.239$, table 4.9). Since other variables used in this analysis were controlled this suggests that judges voted in a manner independent of ideological considerations and legal considerations may have controlled panel voting.

As mentioned earlier precedents from the Supreme Court and the circuits were not controlled in this investigation. This line of research may be one that could be productively pursued. That said the relatively small number of decisions entered into the data base compared to other studies would have posed challenges to parsing the decisional outcomes by circuit. Moreover, the larger number of cases used by previous researchers compared to those used in this study would have enabled them to find statistical differences in light of the increased power derived from larger data bases. Finally, as previously suggested with respect to the individual voting, the special characteristics of K-12 environments may have produced as between ideological groups,

a greater level of consensus than typically occurs across all employment settings. These explanations are only tentative and must be investigated further before more definitive statements can be made.

Appointment Era Majority

Appointment era majority in panel composition is defined as a majority of the judges being appointed during 1980 and earlier or 1981 and later. Hypothesis eight predicted that the odds of a panel rendering conservative-pro-employer decisions will increase when the panel is comprised of a majority of 1981 and later appointees as compared to a majority of 1980 and earlier appointees. The panel logistic regression analysis supported this prediction (p=.025, Table 4.17). Indeed, the likelihood of a conservative pro-employer decision was 2.735 greater when a panel was composed of a majority of later compared to earlier appointees. Since other potential contributors to panel behavior were controlled, including ideological and gender majority variables as well as decision date and plaintiffs' gender, this finding is very meaningful. It strongly suggests that appointment strategies implemented at the White House and in the Senate may have borne substantial success, yielding more conservative voting for this group of majority panel appointees.

Panel Decision Date

Panel decision date was defined as all cases decided in 1980 or earlier and 1981 and later. Despite the fact that a 29% greater conservative pro-employer voting occurred during the later, compared to the earlier period (Table 4.15) and the logit output showed an effect size of 1.893, the logit output did not support hypothesis 10 (p=.218, Table 4.17) which predicted significantly greater conservative pro-employer case outcomes for the later compared to the earlier period. Although the effect size was appreciable the large

standard error (.517) associated with the coefficient estimate (.638) indicates there is uncertainty whether the effect size is real (Table 4.17).

Moreover, based on this relatively small data set I found no evidence that the decision date effect with respect to individual voting aggregates to the level of panel decision making. Finally, the relatively weak power associated with the "n" of 172 compared to much larger studies may also have contributed to the finding of non-significance. There is no reported research on case decisions dates 1980 and prior or 1981 and later. Decision date is a line of research that may be one that could be productively pursued using various decisions rendered in the United States Supreme Court throughout the period studied to determine if they influenced panel decisions at the court of appeals level in the types of cases studied here. Under such a scenario it might be necessary to build separate data bases for case decisions concerning Equal Protection, Title VII and Title IX claims since each of these sources of law has separate elements and would require separate statistical treatment.

Plaintiffs' Gender

For the entire period a 14% difference in panel voting occurred between female and male plaintiffs with female plaintiffs prevailing more often than the males (Table 4.16). This difference did not attain statistical significance when the logit analysis was applied (p=.545, Table 4.17). Thus hypothesis 10 which predicted that the odds of panel majority rendering a conservative pro-employer decision will increase when the plaintiffs are males rather than females was not confirmed. Although the effect size was appreciable the large standard error (.603) associated with the coefficient estimate (-.365) indicates there is uncertainty whether the effect size is real (table 4.17).

While no significant effects were observed for the plaintiffs' gender variable and panel decisional outcomes, they are not inconsistent with the interaction effects observed

for individual voting for the separate Republican and Democrat data bases whereby Republicans favored women plaintiffs but Democrats did not. Since panel members are assigned randomly to panels and this study did not account for various combinations of Republican and Democrats on panels and their relationship to case outcomes, the theoretical meaning of this logit output must await for further study.

Panel Gender Majority

There was no hypothesis for panel gender majority. This variable was included in order to examine the possible effects of a gender majority on the judicial panel in the United States Court of Appeals. Based on the panel logistic regression analysis, panel gender majority did not show significance (p=634, Table 4.17). Descriptive statistics revealed that there were only 12 cases out of 172 in which the majority of the panel was female this resulted in a 92% (11 cases) conservative decisional outcome.

Boyd, Epstein and Martin (2007), examined panel effects using sex discrimination cases in the United States Courts of Appeal (Sustein data base) between 1995 and 2002. Through logistic regression this research revealed that ruling in favor of the plaintiff increases when a female judge sits on the panel (Boyd, Epstein and Martin, 2007; Davis, Haire and Songer, 1993; Farhang and Wawro, 2004; Peresie, 2005). My results were inconsistent with these studies. Possible explanations for this variance are the smaller number of cases included in my data base, type of sex discrimination cases selected, judges' sensitivity to the fact that the conflicts arose in K-12 settings, and in this instance, the possible narrowing of differences between men and women judges over time. As women participate in more equal numbers they may acquire normative values similar to one another as to the meaning of sex discrimination. Since the design of this study did not enable providing answers to these questions their resolution will require further study.

Implications

This is the first empirical study which examined exclusively K-12 gender discrimination cases brought pursuant through the Equal Protection Clause, Title VII and Title IX in the United States Courts of Appeals. The principal findings for individual voting are: (1) for the combined Republican-Democratic database covering the period 1964-2013 judges appointed during 1981 and later voted more conservatively pro-employer than judges appointed during 1980 and earlier; (2) Democrat judges appointed during the 1981 and later period voted more conservatively pro-employer than Democratic judges appointed during 1980 and earlier; (3) judges in the combined Democratic and Republican data base voted more conservatively pro-employer during the 1981 and later decisional era as compared to 1980 and earlier period.

The principal finding for the panel composition investigation was that decisions rendering a conservative decision increased when the panel was comprised of a majority of 1981 and later appointees as compared to a majority of 1980 and earlier appointees. In time, the population of appellate judges will change and perhaps bring different characteristics to the courts on which they serve. These changes may result in differences in individual voting and panel behavior not currently observable. They will undoubtedly reflect societal changes, including cultural values related to the treatment of women in the workplace, especially in K-12 settings. As more women enter the legal field and the number of female judges increase, future studies regarding judge gender, behaviors, and judicial background would be beneficial to legal scholars.

This model was not as highly specified as it could have been. For example, it lacked controls for the circuit from which cases emanated and decisional law from the Supreme Court, these may be sources of variability in dependent measures unaccounted for in this study. Future studies may want to include these as a categorical independent

variable to enable greater understanding of individual voting and case outcomes. Moreover, further specification by using as predictors claims brought under Equal Protection, Title VII and Title IX theories as independent variables may produce different results than observed here.

Limitations

One main limitation to this study is that this research is highly focused on the K-12 education application of the law in regards to employment and gender discrimination cases brought to the United States Court of Appeals through Equal Protection, Title VII and Title IX. This particular study does not speak directly to higher education or any other particular environment. This study is unique in that there are a limited amount of cases within the time period (1964-2013) where major laws were put into effect when dealing with gender discrimination.

Another limitation would be that when looking at judge gender as a variable one must take into consideration that the number of female judges participating in decisions was very limited until the enforcement of Title IX (1972) when you saw more women entering the universities for higher education and various fields of employment one being law. This would account for a difference in gender voting or influence simply due to the fact more female judges were in the legal area of work after 1972. A future study in this area could look at the increase over time of female judges and what circuits are appointing more female judges to panels and determining any effects engendered by these changes. Research in that the cases are limited to this particular study are brought pursuant to court through the Equal Protection, Title VII and Title IX between the years of 1964-2013. This study will give current and future political scholars a better understanding to the particular legal decision-making theories when looking at judicial voting in K-12 education gender discrimination cases.

Appendix A

Definition of Key Terms

Brief- Statement setting out the legal contentions of a party in litigation.

Certiorari-A writ issued by an appellate court as a means for a case to be heard in a court of last resort within the jurisdiction.

Citation- Information about a legal document that will enable the researcher to find the document. For Example: 91 Fed 3rd 1547

Dismissal- Termination of an action or claim without further hearing.

Dissent- A disagreement with a majority opinion especially among judges.

En banc- All judges present and participating in full court.

Gender Discrimination-Discrimination based on an individual's sex.

Holding- Answer to the legal question provided by the court.

Issue- The legal question that is being addressed.

Litigation- The process of carrying on a lawsuit.

Plaintiff (s)- refers to the person or persons who brought a civil law suit in court.

Remand- The act or an instance of sending something back (such as a claims case) by a higher tribunal by a lower tribunal for further action.

Res judicata- A matter judicially decided.

Reversal- An appellate court's overturning of a lower court's decision.

Vacate- To nullify or cancel, make void or invalidate.

*These definitions were selected from the 5th and 7th editions of *Black's Law Dictionary* by Henry Campbell Black, West Publishing Co. Reprinted with permission of West Publishing Company in earlier editions of this book which was published by West Publishing Company, St. Paul. Minnesota.

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Appendix B

Supreme Court Cases

Supreme Court Cases	Citation	Year
Brown v. Board of Education	347 U.S. 483	1954
Cannon v. University of Chicago	441 U.S 677	1979
Clark County School District v. Breeden	532 U.S. 268	2001
Cleveland Board of Education v. LaFleur	414 U.S. 632	1971
Davis v. Monroe County Board of Education	526 U.S. 629	1999
Fitzgerald v. Barnstable School Committee	555 U.S. 246	2009
Franklin v. Gwinnett County Public Schools	503 U.S. 60	1992
Gebser v. Lago Vista	524 U.S. 274	1989
Geraldine G. Cannon v. University of Chicago	441 U.S. 677	1979
Green v. County School Board	391 U.S. 430	1968
Griffin v. Prince Edward	377 U.S. 218	1964
Grove City College v. Bell	465 U. S. 555	1984
Hazelwood School District v. United States	433 U.S. 299	1977
Jackson v. Birmingham Board of Education	544 U.S. 16	2005
Marbury v. Madison	5 U.S. 137	1803
Mississippi University for Women v. Hogan	458 U.S. 718	1982
North Haven Board of Education v. Terrel H. Bell, Secretary Department of Education	456 U.S. 512	1982
Plessy v. Ferguson	163 U.S. 537	1896
Swann v.Charlotte-Mecklemburg Board of Education	402 U.S. 1	1970
United States v. Virginia Military Academy	518 U.S. 515	1996
University of Pennsylvania v. Equal Employment Opportunity Commission	493 U.S. 182	1990
Wygant v. Jackson Board of Education	476 U.S. 267	1842

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Biographical Information

Rachel Roberts graduated from Sul Ross State University in Alpine, Texas with a Master Degree in Education. She began coaching and teaching in West Texas then moved to North Texas. In 2000 she entered the Administrative Certification program at the University of Texas in Arlington. After becoming an administrator Rachel Roberts applied into the graduate school at UTA to pursue her Ph. D. in Education. This is the pinnacle point of her academic career.

Research interests are of helping trouble youth and families recover from drug and alcohol addiction. Her career goals are to become a building principal and pursue teaching at the University level.