

NON-LEGAL FACTORS AND JUDGING IN K-12 RACE DISCRIMINATION CASES AT  
UNITED STATES SUPREME COURT: 1954-2013

by

RYAN MCCOY

Presented to the Faculty of the Graduate School of  
The University of Texas at Arlington in Partial  
Fulfillment of the Requirements  
for the Degree of

DOCTOR OF PHILOSOPHY

THE UNIVERSITY OF TEXAS AT ARLINGTON

August 2014

Copyright © by Ryan McCoy 2014

All Rights Reserved

## Acknowledgements

First and foremost I would like to thank my beautiful wife for putting up with me through this whole process. You have put up with this for too long. Time you did something nice for yourself now that this is done. In life, your family is all that really matters and it will be nice to just be able to focus on them now. For my mom who somehow raised my brother and me after dad died and helped us believe that we could make something of ourselves. I'd like to give a very special thanks to Dr. Wasserman for helping me through this process and understanding that I needed scheduling and deadlines to keep going. I couldn't have done this without your mentoring and support. You have made a huge impact on my life. Thank you Dr. Connelly for putting up with my constant data revisions and endless logistical regressions. Thank you Dr. Hardy and Dr. Bateman for your support in this process as well. I also would like to acknowledge the faculty and staff at UTA for their support and the incredible education they provided me as well as my cohort members for putting up with my constant questioning in class.

During this process I went from an assistant principal at an intermediate school to whatever my title was in Venus to Principal. Working with Donna, Craig, Ray, Rina, Monte, Gay, Chris, Lynn, and the rest of my close work associates has given me more knowledge and expertise than I ever knew I needed and definitely helped me in this process.

Now I have time to ride my mountain bike, play guitar, relax with my family, and grow my new campus into the highest performing school in Duncanville. Thank you everyone for your support. Perhaps now, I can support you.

June 17, 2014

Abstract

NON-LEGAL FACTORS AND JUDGING IN K-12 RACE DISCRIMINATION CASES AT  
UNITED STATES SUPREME COURT: 1954-2013

Ryan McCoy, Ph.D.

The University of Texas at Arlington, 2014

Supervising Professor: Lewis Wasserman

This study investigated the influence of political ideology, appointment era, decisional era, and religious affiliation on voting at the United States Supreme Court in K-12 race discrimination cases using binary logistic regression as its main statistical tool. The principal findings for this group of K-12 decisions covering the period 1954-2013 are: (1) justices appointed by Republican presidents voted significantly more often in a conservative pro-school district direction in K-12 race discrimination disputes than justices appointed by *Democratic* presidents; (2) justices *appointed* in 1981 and later [the Reagan and later appointees voted significantly more often in a conservative pro-school district direction in K-12 race discrimination disputes than justices *appointed* in 1980 and earlier; (3) no significant overall differences in conservative pro-school district voting was observed in conservative pro-school district voting between the 1981 and later period and the 1980 and earlier period; (4) Republican justices appointed during 1981 and later years voted significantly more often in a conservative pro-school district direction than Republican justices appointed during 1980 and earlier years; (5) Democratic justices appointed during 1981 *and* later years voted in a significantly more often in a conservative pro-school district

direction than Democratic justices appointed during 1980 and earlier years; (6) Mainline Protestant justices appointed by a Republican presidents voted significantly more often in conservative pro-school district direction in K-12 race discrimination disputes for the period 1964-2013 than Mainline Protestant justices appointed by Democratic presidents; (7) no significant differences in conservative pro-school district voting in K-12 race discrimination disputes were observed between Mainline Protestant justices appointed in 1980 and earlier and those appointed in 1981 and later; (8) no significant differences in conservative pro-school district voting was observed between the Catholic justices appointed by Republican presidents and Catholic justices appointed by Democratic presidents; (9) Catholic justices appointed during 1981 and later years voted in a conservative pro-school district direction significantly more often than the Catholic justices appointed during 1980 and earlier years; and (10) conservative pro-school district panel outcomes increased significantly as the number of Republican justices on a panel increased.

The implications of these results were considered in terms of the legal and attitudinal models of decision making at the Supreme Court. Overall, the results confirmed the viability of attitudinal model of judicial decision making as applied to K-12 race discrimination cases. Direction for future research in this area was suggested, and the limitations of the model used were also discussed.

## Table of Contents

Acknowledgements.....	vi
Abstract.....	iv
List of Tables .....	x
Chapter 1 Introduction.....	1
Importance of Topic.....	1
Research Questions/Research Design .....	2
Hypothesis .....	2
Chapter 2 Review of Literature.....	5
Historical Overview .....	5
Attitudinal Model.....	6
Theoretical Basis for the Research: Models Purporting to Explain Supreme Court Justices Voting.....	6
The Legal Model.....	9
The United States Federal Court System.....	10
Structure of the Federal Court System.....	10
The Role of the Supreme Court in the Federal System .....	11
Race Discrimination in K-12 Education .....	12
Legal Protection for Victims of Race Discrimination .....	12
Fourteenth Amendment Equal Protection .....	13
Fourteenth Amendment Due Process .....	13
The Privileges and Immunities Clause .....	13
Title VII .....	14

Title VI .....	14
Affirmative Action.....	14
Major Race Discrimination Cases Affecting K-12 Education at the United	
States Supreme Court .....	15
Plessy v. Ferguson .....	15
Brown v Board and beyond .....	16
Post-Brown v. Board.....	16
De Jure Segregation.....	17
De Facto Segregation.....	19
Non-legal Factors Affecting Individual Supreme Court Justices' Individual	
Voting and Decisional Outcomes .....	21
Justices Political Ideology .....	21
Party Affiliation.....	22
Justices' Religious Affiliation .....	23
Individual Votes .....	24
Panel Composition .....	25
Justices' Appointment Era .....	25
Panel Composition. ....	25
Chapter 3 Research Design.....	26
Independent Predictors for Individual Voting.....	27
Justice-Level Variables.....	27
Religious Affiliation .....	27
Appointment Era.....	28
Ideological Composition of the Court .....	28
Appointment Era Majority .....	29

Number of Protestants, Catholic, Jewish Justices .....	29
Decisional Era .....	29
Dependent Measures .....	30
Individual Voting: Conservative-Liberal.....	30
Case Outcome: Conservative- Liberal .....	30
Data Analysis.....	31
Eight regressions were run for this study. ....	32
Data Collection .....	33
Data Analysis.....	36
Chapter 4 Results.....	38
Individual Voting/Descriptive Tables.....	38
Individual Voting/Logistical Regressions .....	44
All Cases .....	44
Individual Votes/Non-Unanimous Cases.....	46
Panel Decision/Non-Unanimous Decisions.....	55
Chapter 5 Discussion.....	60
Individual Voting .....	61
Political Ideology.....	61
Appointment Era.....	62
Decisional Era .....	62
Religious Affiliation .....	64
Non-Unanimous Cases .....	64
Individual Voting-Republican Appointees.....	65
Individual Voting-Democratic Appointees.....	66
Individual Voting-Protestant Religious Affiliation.....	67



Individual Voting-Catholic Religious Affiliation .....	69
Panel Voting/All Cases .....	70
Number of Panel Republicans.....	71
Religious Affiliation Panel Effects.....	71
Appointment and Decisional Era Majority .....	71
Religious Affiliation Variable.....	71
Panel Voting/Non-Unanimous Cases .....	73
Conclusion .....	74
Appendix A Review of Cases.....	77
References.....	102
Biographical Information .....	106

List of Tables

Table 4.1 Frequency and Percentage of Conservative.....38  
Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race  
Discrimination Decisions Between 1954-2013 Under EP, DP, Title VII, and Title VI in the  
United States Supreme Court as a Function of Justices' Ideology.

Table 4.2 Frequency and Percentage of Conservative.....39  
Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race  
Discrimination Decisions Between 1954-2013 Under EP, DP, Title VII, and Title VI in the  
United States Supreme Court as a Function of Religious Affiliation

Table 4.3 Frequency and Percentage of Conservative.....40  
Pro-School District and Liberal Not Pro-School District Votes Cast by Democratic  
Appointed Justices in Pre-K – 12 Race Discrimination Decisions between 1954-2013 under  
EP, DP, Title VII, And Title VI in the United States Supreme Court by Religious Affiliation

Table 4.4 Frequency and Percentage of Conservative.....41  
Pro-School District and Liberal Not Pro-School District Votes Cast by Republican Appointed  
Justices in Pre-K – 12 Race Discrimination Decisions Between 1954-2013 under EP, DP,  
Title VII, and Title VI in the United States Supreme Court by Religious Affiliation

Table 4.5 Frequency and Percentage of Conservative.....41  
Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race  
Discrimination Decisions between 1954-2013 under EP, DP, Title VII, and Title VI in the  
United States Supreme Court as a Function of Justices' Appointment Era

Table 4.6 Frequency and Percentage of Conservative.....42  
Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race  
Discrimination Decisions Between 1954-2013 under EP, DP, Title VII, and Title VI in the

United States Supreme Court by Democratic Appointed Justices as a Function of Justices' Appointment Era

Table 4.7 Frequency and Percentage of Conservative.....43

Pro-school District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions between 1954-2013 under EP, DP, Title VII, and Title VI in the United States Supreme Court by Republican Appointed Justices as a Function of Justices' Appointment Era

Table 4. 8.Frequency and Percentage of Conservative.....43

Pro-School District and Liberal Not Pro-School District Votes Cast by Republican and Democrat Appointed Justices in Pre-K – 12 Race Discrimination Decisions Made with Decision Era 1981-2013 Under EP, DP, Title VII, and Title VI in the United States Supreme Court

Table 4.9 Logit Analysis on the Odds of a Conservative.....45

Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, And Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, Combined Data Bases for Justices Nominated by Republican and Democratic Presidents: 1954-2013 with Decision Era 1981 and Later.

Table 4.10 Logit Analysis on the Odds of a Conservative.....48

Pro-School District Vote for claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, Non-Unanimous Data Bases for Justices Nominated by Republican and Democratic Presidents: 1954-2013 with Decision Era 1981 and Later.

Table 4.11 Logit Analysis on the Odds of a Conservative.....49

Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, for

Justices Nominated by Republican Presidents: 1954-2013 as a Function of Justices' Religious Affiliation, Appointment Era and Decisional Era. .	
Table 4.12 Logit Analysis on The Odds of a Conservative.....	51
Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases for Justices Nominated by Democrat Presidents: 1954-2013 as a Function of Justices' Religious Affiliation, Appointment Era and Decisional Era.	
Table 4.13. Logit Analysis on the Odds of a Conservative.....	52
Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases for <i>Protestant Justices</i> : 1954-2013 as a Function of Ideology, Appointment Era, and Decisional Era	
Table 4.14 Logit Analysis on the Odds of a Conservative.....	53
Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court In K-12 Race Discrimination Cases for <i>Catholic Justices</i> : 1954-2013 as a Function of Ideology, Appointment Era, and Decisional Era .	
Table 4.15 Logit Analysis on the Odds of a Conservative.....	55
Pro-School District Case Outcomes for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases: 1954-2013	
Table 4.16. Logit Analysis on Panel Outcomes for Claims.....	57
made under the Equal Protection Clause, Title VII, and Title VI in Non-Unanimous Decisions in the United States Supreme Court in K-12 Race Discrimination Cases : 1954-2013	
Table 5.1 1981 and later Decisions by Justices' Appointment Era.....	62

Table 5.2 Decisions of Justices Appointed Before 1981 by Decisional Era.....	63
Table 5.3 Ideology Impact for Protestant Judges.....	67
Table 5.4 Appointment era effect for Protestant Judges.....	68
Table 5.5 Appointment Era Effect for Catholic Justices.....	69
Table 5.6 Ideology impact for Catholic Judges.....	70
Table 5.7 Panel Decisions by Appointment Era Majority.....	72
Table 5.8 Judicial Decisions by decision date.....	73
Table 5.9 Case outcome by Panel Composition (number of Republicans).....	74

## Chapter 1

### Introduction

This study will proceed in two strands. First, it will examine the relationship among extralegal factors and individual Supreme Court justices' voting in race discrimination cases affecting K-12 education. This phase studies justices' political ideology [with party of the appointing president serving as a proxy therefor], religious affiliation [mainline Protestant, Catholic and Jewish], justices' appointment era [Reagan and later (1981 and later) verses pre-Reagan period (1980 and earlier)], decisional era [1981 and later verses 1980 and earlier] voting in race discrimination disputes arising in K-12 education. Votes were classified in a binary fashion: "pro-defendant", that is, in favor of the educational agency as a "conservative" vote, or "pro-plaintiff," that is, in favor of the alleged victim(s) as a "liberal" vote. The individual voting database was comprised of 531 Supreme Court justices' votes rendered between 1954 and 2013.

The second strand will study the relationship among the Supreme Court's ideological composition [0-9 Republicans], panel composition [number of mainline Protestants, number of Catholics, and number of Jewish justices], panel appointment era majority [Reagan and later period verses pre-Reagan period], decisional era [post 1981 decision era verses 1980 and earlier decision], and case outcome. As with the individual votes, case outcome will be treated in a binary fashion and classified as pro-defendant/ educational agency [conservative] decision or pro-plaintiff/victim [liberal] decision. This phase of the study will examine 60 Supreme Court K-12 decisions involving allegations of race discrimination. Each investigative strand will interpret the data in terms of the two principal theories of judicial decision making: the attitudinal the legal theories.

### Importance of Topic

Although there has been extensive research on Supreme Court justices' voting, no study has focused exclusively on the relationship among justices' political ideology,

religious affiliation, appointment era, and decisional date on individual votes or the panel composition of the court and case outcomes in race discrimination cases affecting K-12 public education. The existing judicial theories applied in other settings have not been considered in light of the context and special circumstances of K-12 public education. This research is designed to address that gap in the literature.

#### Research Questions/Research Design

1. What is the relationship among justices' political ideology, religion, and judicial appointment era, decisional era, and individual voting in race discrimination cases affecting K-12 education decided by the United States Supreme Court between 1954-2013?

2. What is the relationship among the political-ideological and religious affiliation composition of the Supreme Court, justices' appointment era and decisional outcomes in race discrimination cases affecting in K-12 educational settings and decided between 1954 and 2013?

#### Hypotheses

##### Individual Voting/All Votes Data Base

*Hypothesis 1:* The odds of justices appointed by *Republican* presidents voting in a conservative pro-school district direction in K-12 race discrimination disputes will be greater than that of justices appointed by *Democratic* presidents for the period 1954-2013.

*Hypothesis 2:* The odds of justices *appointed* in 1981 and later voting in a conservative pro-school district direction in K-12 race discrimination disputes will be greater than that of justices *appointed* in 1980 and earlier for the period 1954-2013.

*Hypothesis 3:* The odds of votes cast in 1981 and later being conservative pro-school district will be greater than for the period 1980 and earlier in K-12 race discrimination disputes for the period 1954-2013.

Republican Data Base

*Hypothesis 4:* The odds of *Republican justices* appointed during 1981 and later years voting in a conservative pro-school district direction will be greater than Republican justices appointed during 1980 and earlier years.

Democratic Data Base

*Hypothesis 5:* The odds of *the Democratic justices appointed* during 1981 and later years voting in a conservative pro-school district direction will be greater than Democratic justices appointed during 1980 and earlier years.

Mainline Protestant Data Base

*Hypothesis 6:* The odds of Mainline Protestant justices appointed by a Republican president voting in conservative pro-school district direction in K-12 race discrimination disputes for the period 1964-2013 will be greater than the odds of Mainline Protestant justices appointed by Democratic presidents voting in a conservative pro-school district direction.

*Hypothesis 7:* The odds of Mainline Protestant justices appointed in 1981 and later voting in conservative pro-school district direction in K-12 race discrimination disputes for the period 1954-2013 will be greater than the odds of Mainline Protestant justices appointed in 1980 and earlier voting in a conservative pro-school district direction.

Catholic Database

*Hypothesis 8:* The odds of Catholic justices appointed by Republican presidents voting in a conservative pro-school district direction will be greater than the Catholic justices appointed by Democratic presidents for the period 1954-2013.



*Hypothesis 9:* The odds of Catholic justices appointed during the 1981 and later years voting in a conservative pro-school district direction will be greater than the Catholic justices appointed during 1980 and earlier years.

*Panel Composition and Decisional Outcome*

*Hypothesis 10:* The odds of a conservative pro-school district outcome in K-12 race discrimination cases will increase as the number of Republican justices on a panel increases.

The next chapter examines the literature pertinent to the research questions posed.

## Chapter 2

### Review of Literature

#### Historical Overview

On September 22, 1863, Abraham Lincoln issued the emancipation proclamation which declared:

“And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.” Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791-1991; Record Group 11; General Records of the United States Government; National Archives.

Although the emancipation proclamation was only enforceable in areas not under rebellion against the United States during the Civil War, it contributed substantially to the movement which eventually led to passage of the Thirteenth Amendment (Lemann, 2013).

In 1865, the ratification of the Thirteenth Amendment to the Constitution outlawed slavery and indentured servitude everywhere in the United States including those areas under rebellion (U.S. Const. amend. XIII). This emanated from the Reconstruction Acts which enabled confederate states to return to the union subject to its conditions (14 Stat. 428-430, c.153, 1867; 15 Stat. 2-5, c.6, 1867; 15 Stat. 14-16, c.30, 1867; 15 Stat. 41, c.25, 1868) As part of the process of returning to the union, states were also required to ratify the Fourteenth Amendment and grant voting rights to African Americans (U.S.

Const. amend. XIV). Perhaps the most important language in the Fourteenth Amendment is the statement that:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall and State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

In 1964, President Lyndon B. Johnson signed the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, et seq. (1970) into law. The Civil Rights Act of 1964 made illegal all forms of discrimination based on race, ethnicity, national and religious minority status, and sex. The Civil Rights Act of 1964 in conjunction with the Fourteenth Amendment would become the most used legal frameworks for lawsuits claiming race based discrimination in education. (Chemerinski, 2006; “Key Civil Rights”, 2013).

#### Theoretical Basis for the Research: Models Purporting to Explain Supreme Court Justices Voting

##### *Attitudinal Model.*

The attitudinal model of Supreme Court justice voting patterns was first proposed by Glendon Schubert in 1965 (Schubert, 1965). Schubert developed a method of placing cases into what he called ideological spaces. Rhode and Spaeth (1976) re-conceptualized Schubert’s model to allow for more complex analysis of voting behavior. Rhode and Spaeth added the dimension of the “attitude object” (ex. the race of the defendant, unions, public school employees, etc.) and the situation in which the case occurred. This means that you can look at individual case variables to see if the object and situation can stimulate different attitudes in justices. The attitudinal model originally derived from studying individual votes of justices and the object/situation interaction. It is

important to note that the defining work in attitudinal modeling excluded unanimous Supreme Court cases. This is because in unanimous cases, non-attitudinal factors are more likely to be influencing the case (Spaeth & Brenner, 1990).

Although many researchers have studied and expanded on the attitudinal model of Supreme Court justice voting (Segal & Spaeth, 2002; Bartels, 2010; Unah & Hancock, 2006), there has been no research on the attitudinal model as it applies exclusively to Supreme Court justices' voting with regards to race-based cases involving K-12 public education. The attitudinal model holds that justices decide cases based on their own "ideological attitudes and values" (Segal & Spaeth, 2002 p.86) with respect to the facts of the case. This means, according to the attitudinal model, that Supreme Court justices essentially decide cases by picking laws that support their own ideological preferences (Segal & Spaeth, 2002; Weinshall-Margel, 2011).

For this study I am using the party of the appointing president as proxy for the justice's ideology. Many researches have investigated the voting tendencies of justices with party affiliation of president as proxy for justices' ideology. Segal (2002) studied Supreme Court justice voting tendencies for justices appointed from Roosevelt (1945) to Bush (1993). Segal found that the party affiliation of the president had strong predictive power for voting outcomes. Segal specifically found that the votes of Republican appointed justices had the strongest predictive power in Supreme Court voting.

Later, Pinello (1999) conducted a meta-analysis of research on party affiliation and judicial voting patterns and concluded that political party affiliation is a strong indicator of ideology. Segal and Pinello's works are supported by Weiden's judicial politicization theory which holds that justices on highly political courts, like the Supreme Court, will most likely decide cases using ideological and attitudinal factors (Weiden, 2011).

The work of Siske and Heise (2012) further confirmed the link between ideology in judicial voting and decision making. When they investigated Establishment Clause cases from 1996-2005, they found that the ideology of justices has a greater impact on voting in courts with more judicial freedom. Specifically, they found that justices on appellate courts are more likely to vote based on ideology than judges on district courts who have less freedom to interpret laws. Attitudinal theory would hold that Supreme Court justices are most likely to be influenced by ideology because they have the most judicial discretion to decide cases based on the nature of cases they hear. Siske and Heise concluded that the gap between Republican and Democrat appointed justices has increased in the last decade, meaning the courts are becoming more polarized and ideology is becoming a greater predictor of judicial voting (2012).

The fact model is related to the attitudinal model and is supported by the work of Jeffrey Segal and Albert Cover (Segal, & Cover, 1989) who demonstrated that the facts of a case are important when looking at justices' decisions. This fact model of judicial voting described why a justice votes conservatively in one case and liberally in another. The fact model provides support for the attitudinal model.

Public opinion has also shown to have a significant effect on Supreme Court voting of moderate justices and less effect on non-moderate justices. (Mishler & Sheehan, 1996). The impact of public opinion in the voting patterns of Supreme Court justices (Mishler & Sheehan, 1996) is an important consideration. Chief Justice William Rehnquist wrote:

Justices, so long as they are relatively normal human beings, can no more escape being influenced by public opinion in the long run than can people working at other jobs. And if a judge on coming to the bench were to decide to hermetically seal himself off from all manifestations of public opinion, he would accomplish very little; he would not be influenced by

current public opinion, but instead would be influenced by the state of public opinion at the time he came to the bench. (Rehnquist, 1986)

Thus, justices' voting may sometimes reflect current public opinion in a particular case object/situation, but such influences can be difficult to detect, since the justices cannot be questioned about public opinion effects on their voting.

#### *The legal model*

The legal model assumes that personal attitudes and strategic plans are irrelevant because justices vote strictly based on precedent, statutory text, legislative history, and constitutional authority (Segal and Cover, 1989) The legal model completely disavows any autonomy justices may have in voting and constrains them to the written law with no interpretive powers.

The legal model carries more force in the lower courts since judges at those levels are constrained by precedent whereas the Supreme Court may choose not to follow its own precedent and overrule itself. Moreover, since the Supreme Court's decisions are not subject to further review its determinations will stand despite any deficiencies in its reasoning or analysis. It is important to note that the Supreme Court selects almost all of the cases it hears and it can chose issues which it considers important to resolve, whereas Courts of Appeals and U.S. District Courts must decide cases they are assigned. That said, the Supreme Court generally hears cases where there is dispute among the lower courts as to the meaning of a law. Since the Supreme Court justices will by definition decide cases based on plausible competing theories of constitutional and statutory interpretation, a Supreme Court justices' voting will often be based on individual ideological preferences and other attitudinal influences.

## The United States Federal Court System

### *Structure of the Federal Court System*

The Judicial branch of the Federal Government is divided into three levels. The first level is the Federal District Courts. The Federal District Courts have original jurisdiction and are found in every state. Once a case is decided at the Federal District Courts, an appeal can be heard by one of 11 Federal Courts of Appeals and the United States Court of Appeals for the District of Columbia. Each Court of Appeals serve anywhere from three to seven states including Puerto Rico. Federal Appeals Courts are presided over by a panel of three justices.

Judges in the United States District Courts and United States Courts of Appeal are nominated by the President and subject to approval by the Senate (U.S. Courts.gov, 2013). Occasionally, district court judges serve as acting judges on the United States Courts of Appeal when vacancies on a United States Court of Appeals require such service in order for the court to conduct its business. Appeals courts do not hold trials, they only have appellate jurisdiction and review Federal District Court cases for legal errors. Cases decided at the Federal Court of Appeals may be appealed to the United States Supreme Court (U.S. courts.gov, 2013).

The Supreme Court of the United States hears cases on appeal from the Federal Court of Appeals or from State Supreme Courts. There are nine Supreme Court justices. All are appointed by the president and confirmed by the United States Senate. They have original jurisdiction over cases involving diplomats, disputes between states, and disputes between Federal and State governments (U.S. Const. art. III. §2). On rare occasions, the Supreme Court exercises its original jurisdiction as set forth in the U.S. Constitution.

The Supreme Court is not required to hear all cases for which review is sought. They generally hear cases of greater importance involving an issue of national importance and/or a decision that will resolve a conflict in the law among the circuits. An

example of a conflict between the lower courts would be the case of *Brown v. Board of Education* (347 U.S. 483). *Brown* involved a review of five United States Court of Appeals decisions and one state Supreme Court decision over how the Equal Protection Clause should be applied to school segregation permitted or required under state law. Because of a conflict in the circuits and state Supreme Court interpretation of Equal Protection jurisprudence the cases were deemed appropriate for review.

In such situations the Supreme Court is likely hear the case to exercise its place as final arbiter of law. In 1803, the case *Marbury v. Madison* (5 U.S. 137) established the legal foundation that all United States courts are bound to follow the decisions of the Supreme Court unless the Supreme Court ruling is overturned by a constitutional amendment or the statute at the center of the case is changed by the state legislature or Congress. The Supreme Court can overrule its own decisions. *Plessy v. Ferguson* (163 U.S. 537, 1896) was overturned by the decision in *Brown V. Board* (347 U.S. 483, 1954).

#### *The Role of the Supreme Court in the Federal System*

The Supreme Court is the final authority on legal issues surrounding Federal Statutes and Constitutional Law. The Supreme Court has appellate authority over all Federal Courts and from State Supreme Courts where Federal issues are involved. The majority of cases appealed to the Supreme Court are not heard by the court. Approximately 10,000 cases are appealed to the Supreme Court every year and between 80 and 90 are heard ("Frequently asked questions", 2013). The Supreme Court utilizes its appellate jurisdiction by issuing writ of certiorari to lower courts. Writ of certiorari involves asking the lower courts for their holdings and records of specific cases. If the Supreme Court decides to hear a case it issues a grant cert and both sides are instructed to file legal briefs with the court outlining their case. Subsequently, groups that will be affected by the case can submit an amicae curiae brief on behalf of their cause (U.S. courts.gov, 2013). The next stage involves oral arguments. Each side is given 30 minutes to argue



their case. The justices then conference to state their opinions and decisions are made. The decisions are written both in majority and where applicable, in dissent. The chief justice writes either the majority decision (if he decides with majority) or dissenting decision with the next most senior judge writing the opposing opinion (U.S. courts. gov, 2013).

## Race Discrimination in K-12 Education

### *Legal Protection for Victims of Race Discrimination*

#### U.S. Constitutional Provisions Limiting State Power

The Tenth Amendment declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (U.S. Const. art. X). Since education is not mentioned in the constitution, states have broad oversight in the area of public education. This does not mean that the Constitution does not have a legal effect on education. Part of the Tenth Amendment is the wording "nor prohibited by (the constitution) to the states" (U.S. Const. art. X). This means that acts specifically prohibited by the constitution are applicable to states in areas where no federal constitutional authority to enact laws interact. In the case of education, states are free to enact their own educational laws, however, they cannot be in direct conflict with valid prohibitive federal legislation and the Constitution.

The Constitution has several prohibitions on the activities of states that directly affect education. Many education cases have been brought to the Supreme Court with constitutional amendments as the legal framework. The First Amendment has been used in cases involving free speech (*Engel v Vitals*, *Tinker v Des Moines*, *Bether v Frazer*). The Fourth Amendment has used in cases involving search and seizure protection for students(*New Jersey v. TLO*, *Board of education v Earls*). The Eighth Amendment has been used in cases involving illegal search and seizure. The most famous was *Ingram v*

*Wright* 430 U.S. 651, (1977) which held that the Eighth Amendment prohibition against cruel and unusual punishment does not apply to the conduct of school officials against students because the Eighth Amendment only applies in criminal proceedings or post incarceration situations. The Fourteenth Amendment will be discussed in the next section.

#### *Fourteenth Amendment Equal Protection*

In race cases, the most widely used constitutional claim involves the Fourteenth Amendment's Equal Protection clause (Chemerinsky, 2006). The Equal Protection Clause of the Fourteenth Amendment applies only to state and local governments and forbids states to "deny to any person within its jurisdiction the equal protection of the laws" (U.S.C.A. Const. Amend. 14). although it has been applied to the Federal Government most notably in *Bolling v. Sharpe* (347 U.S. 497, 1954) which held that segregated schools held no compelling governmental interest and was therefore unconstitutional.

#### *Fourteenth Amendment Due Process*

The Due Process Clause of the Fourteenth Amendment applies to states and local governments only and is nearly identical to the Fifth Amendment Due process Clause. Specifically, the states cannot "deprive any person of life, liberty, or property, without due process of law" (U.S.C.A. Const. Amend. 14).

#### *The Privileges and Immunities Clause*

The privilege and immunity clauses are found in article IV of the United States Constitution and the Fourteenth Amendment. The Privileges and Immunities states: "the citizens of each State shall be entitled to all privileges and immunities in the several states" (U.S. Const. amend. XIV. art. IV). This means that citizens of one state have the same rights as citizens of another state when they travel to that state (Chemerinsky, 2006). The privileges and immunities clauses allow citizens to move from one state to

another for work, affords them protection from state governments, access to the legal system, and the right of *writ of Habeas Corpus* (U.S. Const. amend. XIV. art. IV).

#### *Title VII*

Enacted under the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, Title VII forbids employers from discriminating on grounds of race, color, religion, sex or national origin. Title VII was enacted under the Commerce Clause of the U.S. Constitution and applies to both private and public employment.

#### *Title VI*

Title VI of the Civil Rights Act of 1964 forbids discrimination on grounds of race, national origin, or color for any organization receiving federal funds. Title VI is only applicable to the public sector. The Civil Rights Act of 1964 provided additional legal frameworks for educational claims to the Supreme Court. Specifically, Title VI and Title VII of the Civil Rights Act of 1964 have been used to bring claims to the court (*Mcdaniel v Barresi, Lau v Nichols*)

#### *Affirmative Action*

Affirmative action is the process of providing special consideration or favoring disadvantaged groups who may be discriminated against (Oxford Dictionary, 2014). In 1967 executive order 11926 extended affirmative action to include women (Exec. Order No. 10925, 3 C.F.R., 1967). In educational settings, affirmative action has been used to create more diversity on college campuses in college admissions policies. *Grutter v. Bollinger* (539 U.S. 306, 2003) was a landmark case in which the Supreme Court ruled that the State of California had a compelling governmental interest in increasing minority populations in the university system. Affirmative action cases must pass a strict scrutiny test and must prove a compelling governmental interest in having affirmative action policies (Karlán, 2002). In this study, affirmative action cases will be labeled liberal “0” if

the minority interest is protected and conservative “1” if the non-minority party is protected.

## Major Race Discrimination Cases Affecting K-12 Education at the United States Supreme Court

### *Plessy v. Ferguson*

In 1892, Homer Plessy attempted to board a segregated rail car in Louisiana. Plessy was one-eighth African American and was denied a seat in the whites only train car. Plessy sued on grounds he was denied his rights under the Thirteenth and Fourteenth Amendments. The landmark *Plessy v. Ferguson* (163 U.S.573, 1896) case found that “separate but equal” facilities were constitutional. The Plessy decision provided the precedent which allowed segregation of public schools in the United States for the next 58 years.

After *Plessy v. Ferguson*, three cases involving racial discrimination in public schools reached the Supreme Court. The first was *Cumming vs. County Board of Education* (175 U.S. 528,1899). This case involved a local public school taxation plan that served to improve the white only campuses. The court ruled that taxation was a state issue and did not violate the Fourteenth Amendment. The second case was *Farrington vs. Tokushige* (273 U.S. 284,1927). A private Japanese school brought suit under the Fifth and Fourteenth Amendments against Hawaii because they required a permit to teach foreign language. The Supreme Court found that private schools should be free from influence of the state and the due process of the respondents was violated. The third case was *Gong Lum v Rice* (275 U.S. 78, 1927). Gong Lum sued on behalf of his daughter claiming her Fourteenth Amendment rights were violated when she was denied access to an all-white school under Mississippi statutory law. The Supreme Court held that her rights were not violated because she was not denied schooling, she was just

forbidden to attend an all-white school. This was the last time *Plessy v. Ferguson* was used as precedent in a race discrimination case involving public schools..

#### *Brown v Board and beyond*

*Brown v Board* (347 U.S. 483, 1954) involved five combined cases: *Brown v. Board* (Kansas), *Briggs v. Elliott* (South Carolina), *Davis v. County School Board of Prince Edward County* (Virginia), *Bolling v. Sharpe* (Washington D.C.), and *Gebhart v. Belton* (Delaware), with Oliver Brown as the lead petitioner. The cases claimed the equal protection clause of the Fourteenth Amendment prohibited racial segregation in public schools. The Supreme Court unanimously held that segregation was unconstitutional under the Equal Protection clause and thus overturned its previous decision in *Plessy v Ferguson* (163 U.S.573, 1896)

It is also important to note the included case of *Bolling v. Sharpe* (347 U.S. 497,1964) in which the Supreme Court held that the Due Process Clause of the Fifth Amendment, which specifically applies to the Federal Government, forbids segregation in Washington D.C. schools. The other combined *Brown v. Board* cases cited the Fourteenth Amendment which applies specifically to the states. Therefore, segregation of public schools was made unconstitutional in all fifty states and the District of Columbia. It was these new precedents that would provide the foundation of the next 59 years of race-related Supreme Court cases.

#### *Post-Brown v. Board*

The post-*Brown v. Board* era can be categorized by claims involving *de jure* segregation where states and local districts try to avoid or prolong the implementation of desegregation and by cases of *de facto* segregation and the attempts to remedy *de facto* segregation at the local level.

### *De Jure Segregation*

The first *de jure* cases involved states legislatures and their statutory and constitutional attempts to circumvent the *Brown v. Board* decision. These cases typically deal with clever and often blatant attempts to delay or completely ignore *Brown v. Board*. The first test of the *Brown v. Board* ruling came in *Cooper v. Aaron* (358 U.S. 1, 1958). In *Cooper*, the Arkansas State legislature passed a constitutional amendment forbidding desegregation of public schools. As a result of the new constitutional amendment, the Little Rock Arkansas school district petitioned the Supreme Court to delay desegregation mandates. The Supreme Court denied the motion and asserted the Supremacy Clause of Article VI of the Constitution overruled the Arkansas constitution and thus invalidated its constitutional amendment.

Virginia also created statutory laws to circumvent desegregation orders. In case of *Green v. County School Board of New Kent County* (391 U.S. 430, 1968), the Supreme Court ruled that the Kent County “freedom of choice” plan, which allows students to choose what schools they want to attend, did not meet the spirit of “all deliberate speed” required by the *Brown* decision. In each of these cases, the State legislatures failed at their attempts to avoid desegregation through statutory means or constitutional amendments.

A second category of race-related *de jure* discrimination cases also reached the Supreme Court. These cases all involved local school districts and their attempts to either circumvent *Brown* or delay implementation of *Brown*. The first of these cases was *Goss v. Board of Education* (373 U.S. 683, 1963) in which the school district rezoned the school district in order to desegregate but they added a provision which allowed students to transfer back to their segregated schools strictly based their race in order to attend school where they were in the racial majority. This was overturned at the Supreme Court on grounds it violated the Fourteenth Amendment.

*Griffin v County School Board* (375 U.S. 391, 1964) was an attempt by the local school board to close all public schools and use local and state funds to fund private schools which allowed segregation. This was ruled a violation of the Fourteenth Amendment by the Supreme Court.

*Raney v. Board of Education* (391 U.S. 443, 1968) involved the use of “free transfers” of students to any school in the district. The Supreme Court held the “free transfer” system a violation of the rulings in *Brown v. Board* (347 U.S. 483, 1954) and *Green v. County* (391 U.S. 430, 1968).

In *Swan V Charlotte Mecklenburg Board of Education* (402 U.S. 1, 1970), a district court ordered the school district to group their campuses so that the racial make-up of each campus was roughly the same as the population of the city. In this case, the racial makeup of the city was 29% African American and 71% white. The case was appealed to the Supreme Court which ruled that district courts have the authority to force districts to follow a plan to desegregate when they fail to do so based on the *Brown v Board and Green v. County* rulings.

In *Wright v. Council of Emporia* (407 U.S. 451, 1972) the city of Emporia changed its official designation from town to city. As a result, they could remain part of the county school system even though they previously could operate their own school system. When *Green v. County* was decided by the Supreme Court, Emporia used its new city designation to withdraw from the county school system with the sole purpose of remaining segregated by only schooling students within their city limits which were predominately white. This created a segregated school system. The Supreme Court held that the outcome of their intent and actions violated the Fourteenth Amendment.

In *United States v Scotland Neck City Board of Education* (407 U.S. 484, 1972), Scotland Neck wanted to start its own school district and remove itself from the Halifax school system which was in the process of desegregating. The Supreme Court found that

Scotland Neck starting its own school system would hinder the desegregation process and is therefore unconstitutional.

The third category of *de jure* segregation cases involved attempts by local school districts to delay desegregation attempts by various means. After *Brown v. Board* overturned *Plessy v. Ferguson*, it took a year for the Supreme Court to work out all of the implications of the Brown decision. A year after *Brown v. Board*, the Court reconvened in 1955 and issued *Brown v. Board II* (349 U.S. 294, 1955) to determine the means by which the *Brown v. Board* decision would be implemented. In the decision, the Court ordered school districts to desegregate with "all deliberate speed". The wording "all deliberate speed" is at the heart of the cases involving delaying desegregation.

The most clarifying case in this category was *Alexander v. Holmes County Board of Education* (396 US 19, 1969). The appeals courts ordered the US Department of Health, Education, and Welfare to draft a desegregation plan for Mississippi. The department completed the plan but asked the courts to delay implementation of their plan. The Supreme Court heard the case and ruled school districts must order desegregated schools immediately. They set a clear deadline for desegregation of February 1<sup>st</sup> 1970. Similarly, in *Carter v. West Feliciana Parish* (396 US 226, 1969) the school district sought an extension of the desegregation deadline set in *Alexander v. Holmes County board of Education* (396 US 19, 1969.) The Supreme Court upheld the February 1<sup>st</sup> 1970 desegregation deadline.

#### *De Facto Segregation*

The Supreme Court heard many cases involving challenges of local school board attempts to desegregate by drawing school boundaries, gerrymandering, bussing, or other means with the intent of creating integrated schools. This category is defined by the distinction between *de facto* (by fact) and *de jure* (by law) segregation and the question of: how do we know when a school district is actually desegregated? *De facto*



segregation is the result of natural patterns of neighborhoods and communities. Thus, *De facto* segregation is not a result of the schools or their policies, however, schools often tried to remedy *de facto* segregation by creative bussing or boundary drawing. This attempt led to court challenges.

The case of *Davis v. Board of School Commissioners* (402 U.S. 33, 1953) was the first *de facto* segregation case. In Mobile Alabama, the school district was under a federal desegregation plan. The highway that divides the city was at the center of the case. A majority of the African American population lives on one side of the highway. The desegregation plan treated each side of the highway separately because of student safety concerns. The Supreme Court found that desegregation plans need to go beyond neighborhoods when necessary and bussing is acceptable in order to desegregate schools.

In *McDaniel v Baresi* (402 U.S. 39, 1971) Clark County School District devised a plan to bus students in order to achieve desegregation. A group of white parents petitioned the court for injunction based on the Equal Protection Clause of the Fourteenth Amendment claiming that bussing treats students differently based solely on race and therefore also violates Title VI of the Civil Rights Act. The Supreme Court once again held that bussing is permissible where the agency's intent is to create a unitary school system. The court held the plan did not violate Title VI because Title VI applied to Federal not State entities and the school district was a state entity. The court also held that the Equal Protection clause of the Fourteenth Amendment was intended for exactly this purpose. It is important to note *Spencer v. Kugler* (426 U.S. 1027, 1972) in which the Supreme Court affirmed that *de facto* segregation due to population shifts is constitutional if the state has an acceptable plan to desegregate in place.

## Non-legal Factors Affecting Individual Supreme Court Justices' Individual Voting and Decisional Outcomes

### *Justices Political Ideology*

#### Individual Votes

Rhode and Spaeth (1976) categorized justices' voting into three categories: (1) "equality", (2) "freedom", and (3) "economics". With relation to race-related cases, equality is the most relevant category. Equality concerns equal treatment under the Fourteenth Amendment and other statutory and constitutional mandates. A liberal vote in equality cases would be more sympathetic toward those who are being discriminated against than a conservative vote (Rhode & Spaeth, 1976; Baum, 1992). A liberal vote concerning "freedom", would more likely be in favor of the rights to freedom of expression and the right to privacy than a conservative vote (Baum, 1992). In a vote concerning "economics", a liberal vote would more likely favor regulation of business and would more likely be pro-union than a conservative vote (Baum, 1992).

In analysis of the 2001-2002 Supreme Court term, Thimson (2003) found that conservative justices Thomas and Scalia agreed on 89 percent of cases while liberal justices Souter and Ginsberg agreed on 92 percent of cases. In analyzing the similarities between these cases, Wrightman (2006) found four voting similarities among ideological groups. (1) Liberals are more sympathetic toward criminal defendants and their procedural rights while conservatives tend to support the criminal justice system. (2) liberals are more supportive of personal liberties and personal privacy, while conservatives are more likely to support values that are at odds with personal liberties like national security. (3) liberals are more supportive of expanding the rights of disadvantaged groups while conservatives are more inclined to be swayed by the cost of the program or the rights of private enterprises. (4) liberals favor government regulation to achieve their goals and protect individuals while conservatives support the rights of

business to be free of any interference from the government. These findings are in support of Rhode and Spaeth's (1976) findings that conservatives are more likely to vote against the individual in a case than against an organization or business.

### *Party Affiliation*

Although the party affiliation of a Supreme Court justice is never official, the president will usually appoint a justice who matches his political and ideological positions. The ideology of justices is often determined by the political affiliation of the appointing president as proxy. A justice's political affiliation is important because a Supreme Court justice's position is fairly consistent across the liberal to conservative continuum in every case they hear (Baum, 1992). This means that a justice who holds a conservative view on labor relations is likely to have conservative views on race discrimination cases. This likely makes party affiliation of the Supreme Court justice a good indicator/predictor of individual votes. This also means that the timing of Supreme Court justice's retirement is critical. A liberal justice who retires during a conservative president's term will likely be replaced by a conservative justice who could tip the ideological balance of the Supreme Court.

Party affiliation can be a strong indicator/predictor of case outcomes. Baum (1992) described a study of the individual votes of Supreme Court justices in 1989 and found interesting predictive measures. He observed that if the most conservative justice took a liberal position in a case, the rest of the court would take the same liberal position. If the second most conservative justice took a liberal position, the seven justices to the left of his ideal point would take a liberal position and so on. This finding is important because it helps explain the unanimous Supreme Court decisions where the attitudinal model fails to predict unanimous outcomes.

### *Justices' Religious Affiliation*

At the Supreme Court, three major religions have been represented on the court: (1) Catholicism, (2) Protestantism, and (3) Judaism.

Protestantism is the multitude of denominations of Christianity which do not accept the authority of the Pope. There are more than 30,000 denominations within the Protestantism and they are generally identified by the two doctrines of *sola scriptura* and *sola fide*. *Sola scriptura* is the concept that the bible is the source of authority in the Christian faith. *Sola fide* is the belief that salvation comes through a belief in Jesus Christ. The Supreme Court Protestant justices have come from the Episcopalians, Presbyterians, Methodists, Baptists, Unitarians, Quakers, Lutherans, and non-denominational Protestantism.

Catholicism is the oldest Christian church. Catholicism is different from Protestantism in that the authority and traditions of the church are seen as the mediators between humans and God. The Catholic Church was founded in the first century and is led by the Pope who is seen as infallible on certain matters. Although Catholicism is the oldest Christian religion, the historical settlement patterns in the United States and the influence of the British Government created a strong anti-Catholic sentiment in the United States where the Pope was commonly seen as the anti-Christ. There have been thirteen Catholic Supreme Court justices with six Catholic justices on the current court. This shift from a Supreme Court with only one "Catholic Seat" to a Catholic majority court is indicative of the change in American culture where anti-Catholicism is no longer the dominant tradition.

Judaism is the religion and philosophy of the Jewish people. Judaism predates Christianity and is differentiated from Christianity in that the Jewish faith does not believe that Jesus Christ is the son of God. The central philosophy is based around God's covenant with Abraham to provide for his people and the covenant between God and

Moses. There have been eight Jewish Supreme Court justices with three on the current court. This is due in part to historically anti-Semitic views in the United States. Anti-Semitism in the United States has not been as virulent as in it had been in Europe. Institutionalized racism was prevalent in the United States until the Civil Rights laws of 1964 made discrimination on the basis of race and religion illegal.

Currently, there are no Protestants on the Supreme Court. The court composition is currently six Catholics and three Jewish Justices. The attitudinal model holds that justices vote based on their attitudes and beliefs and as such, a Catholic majority court may have different voting patterns and provide predictability of votes based on their common religious backgrounds. The lack of Protestants on a court historically dominated by Protestants should yield interesting longitudinal data on individual voting patterns of justices and specific case outcomes for the court as a whole. Since the influence of a Jewish voting bloc on the Supreme Court should also provide interesting data as the Jewish faith and Catholic faith have diverging traditions and beliefs.

#### *Individual Votes*

Justices are appointed to the Supreme Court by the President of the United States and as such, the religion of the justice may play an important role in the decision to appoint them (Perry, 1991). Supreme Court justice appointments are political in nature and appointing a justice from a specific religious group could have significant political cache for the appointing president (Perry, 1991). It is reasonable that the appointment of a justice from a minority religious group might secure votes from the group in the next election. As the attitudinal model of judicial voting states that judges vote based on their own attitudes and beliefs and that justices seek the laws that support their personal attitudes on legal issues (Baum, 1992). A justice's religion likely shapes many of their attitudes and beliefs. The individual votes of justices are affected by their ideology and religious affiliation could prove to be a strong indicator of individual judicial votes.

### *Panel Composition*

The overall religious composition of the Supreme Court could be a strong predictor of judicial voting preference. The total number of representatives from the three represented religions could have a predictive effect. It is likely that a court with a large number of Catholic justices would be more conservative than a court with a large number of Jewish justices.

### *Justices' Appointment Era*

#### Individual Votes

The appointment era in this study is defined as before Reagan presidency (1980 and earlier) and after the Reagan presidency (1981 and later). This distinction is important because of the shift in Republican politics with the appointment of Reagan. Reagan stated in his inaugural address that; "Government is not the solution to our problem. Government is the problem". This distinction is important because research has shown that Republican justices appointed post-Reagan are markedly more conservative than pre-Reagan Republicans (O'Brien, 2011).

### *Panel Composition.*

Because the post-Reagan era is markedly more conservative than the pre-Reagan era, as the number of post-Reagan justices increases, a conservative case outcome might be more likely. The post-Reagan phenomenon is discussed further below.

## Chapter 3

### Research Design

In light of the foregoing investigations, I expect that: (1) party affiliation of the nominating president (serving as a surrogate for justices' ideology); (2) justices religious affiliation; (3) judicial appointment era; and (4) decisional era will have a significant impact on the justices' voting.

The data sets for the analyses below were derived from the 60 United States Supreme Court decisions involving race discrimination claims brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment, Title VII, and Title VI, starting with *Brown v. Board of Education* in 1954 emanating from K-12 public school settings, or which decisions substantially affect such settings.

All decisions applying these provisions and published in the Westlaw data bases covering the period 1954 through 2013 were analyzed. A schedule of those cases appears in Appendix 1, which includes the case name, citation, year of the decision and whether the decision was rendered under Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment, Title VII, or Title VI, and holding. This meant that all published Title VII and Title VI race discrimination decisions issued since 1964, the year of Title VII's enactment, as well as all decisions in which race based Equal Protection violations were alleged, going back to 1954 were included, if they arose in K-12 education settings or significantly influenced decision making in such cases.

The number of votes included in the data base was 531. Of the decisions studied here, forty-nine applied the Equal Protection Clause, one applied to Due process, eight applied Title VII, two applied Title VI.

Data on the political and religious affiliations of the justices as well as their race were derived from standard biographic sources such as *The American Bench*, *Who's Who in American Law*, and the web-site of the Federal Judicial Center.

#### Independent Predictors for Individual Voting

##### *Justice-Level Variables*

##### Political Ideology

The first independent [predictor] variable was ideology, with party of the nominating president served as a proxy for the conservative or liberal ideology of each justice. The political ideology predictor was coded "1" and "0" for justices' nominated by Republican and Democratic presidents, respectively.

##### Religious Affiliation

The levels of the second independent variable, justices' religious affiliation, were set-up by categorizing justices by the religious groups which have been represented on the Court: Catholic, Protestant and Jewish. Protestant denominations were grouped together as one level of the religious affiliation variable, since Protestant justices who have served on the Court have come from mainline denominations and previous researchers have observed no meaningful differences in the voting patterns among the mainline Protestant denominations (Songer & Tabrizi, 1999).

Two dummy variables were created to enable comparisons for the religious affiliation variable. To make the comparisons for the Mainline Protestants Catholics were coded "1" if the justice was a Catholic and "0," if "otherwise." Similarly, Jewish was coded "1" and "0" if "otherwise." This methodology allows the alternative category to serve as the reference group for mainline Protestant justices.

To make comparison for the Jewish justices, two dummy variables were created to enable comparisons for this group. Catholic justices were coded "1" if the justice was Catholic and "0," if "otherwise." Similarly, Mainline Protestants were coded "1" and "0" if



“otherwise.” This methodology allows the alternative category to serve as the reference group for Jewish justices with the other groups. The dummy coding enabled a comparison of the voting of each religious group to the other when statistical comparisons were made.

### *Extrinsic Variables*

#### Appointment Era

The third independent variable, appointment era is defined by the start date of the Ronald Reagan presidency. Reagan was elected in 1980 and began serving in 1981 and therefore the Supreme Court justices appointed in 1980 or earlier are coded as “0” and any justice appointed in 1981 or later is coded as “1”. This coding procedure enabled a voting comparison between all justices appointed during each of these time periods as well as between Democratic and Republican appointees only for the same time frames. This distinction is important because some research has shown that Republican justices appointed post-Reagan are markedly more conservative than pre-Reagan Republicans (O’Brien, 2011). This is further discussed in the composition of the court section below.

#### Decisional Era

The era during which a decision issued was identified as either Reagan and later periods or the pre-Reagan time frame. These corresponded to 1981 and later, which was coded as “1” and 1980 and earlier which was coded as “0”.

#### Predictors for Panel Decisions/Case Outcomes

##### *Ideological Composition of the Court*

In light of the recent studies indicating the importance of panel composition, this variable was included as an independent predictor in the second phase of the study.

Since the range of Republicans on the court may go from zero to nine, the panel composition for each decision was coded from zero, indicating no Republican appointee

participated in a decision to nine, which would mean that all nine panel members were Republican appointees.

#### *Appointment Era Majority*

The appointment era majority was included to determine if a panel with a majority of 1981 and later appointees has some predictive importance when determining the odds of a conservative (pro-school district) case outcome. For courts with five or more 1981 and later appointed justices, a “1” was coded. For courts with 4 or less 1981 and later appointees, a “0” was recorded.

#### *Number of Protestants, Catholic, Jewish Justices*

Three separate entries were included for the number of Protestant, Catholic, and Jewish justices. This was included to determine if there is some predictive value in the number of each distinct religious group on their own accounting for all other variables. For each religious group (Protestant, Catholic, Jewish) the total number of each was recorded from zero to nine with zero meaning no justice from the group membership and nine for nine members being from the religious group membership.

#### *Decisional Era*

For the second phase of the study the era during which a decision issued was identified as either Reagan and later periods or the pre-Reagan time frame. These corresponded 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 Supreme Court appointments appeared to turn in a markedly conservative direction during the Reagan years. Even before his presidency officially began, due to the age of several justices, speculation was rife about Ronald Reagan’s appointments to the Court. Reagan

had promised “to appoint only those opposed to abortion and the ‘judicial activism’ of the Warren and Burger Courts” (O’Brien, 2003).

Indeed, President Reagan was remarkably successful in achieving his ambitions. This is attributable to his administration’s meticulous screening of judicial nominees and hard-line positions with moderate Republicans challenging the norms of Senatorial patronage (Brownlee & Graham, 2003). The post-Reagan appointments representing a continuation of this approach are: Anthony Kennedy, Sandra Day O’Connor, Antonin Scalia, Clarence Thomas, John Roberts, Samuel Alito. David Souter’s appointment was an exception to this consistent trend; it was apparently intended to avoid a confirmation battle. Moreover, the number of Republican appointed conservative justices seated during the 1981-2013 should also have resulted in measurably more conservative voting for the Court as a whole.

#### Dependent Measures.

##### *Individual Voting: Conservative-Liberal*

A binary dependent measure, liberal or conservative vote, was selected for the ideology, religion, and appointment era, and decision era 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 a “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 code as “0.”

##### Case Outcome: Conservative- Liberal

The case outcome dependent measure was coded as above with “1” representing a conservative decision and “0” representing a liberal decision.

There were sixty 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 the ideological panel composition, appointment era majority [pre-Reagan and Reagan and later periods], decisional era, and number of Protestants, Catholics and Jewish justices participating in a decision and case outcome [pro-plaintiff or pro-defendant].

#### *Data Analysis*

Since ordinary least squares regression is inappropriate when the dependent variable is dichotomous (Aldrich & Nelson, 1995) as is the case in the present analyses, the parameters of the models were estimated by binary logistic regression techniques. This statistic was selected because the data satisfy each of the assumptions for this technique. Logistic regression does not assume a linear relationship between the dependent and independent variables; the dependent variable must be binary; the independent variable(s) need not be interval, or normally distributed, or linearly related, or of equal variance in each grouping; the categories must be mutually exclusive [a case can only be in one group] and exhaustive [every case must be a member of one of the groups]. Moreover, larger samples are needed for linear regression because the maximum likelihood estimates are large sample estimates. Logistic regression is the most effective statistic for analysis of binary dependent variables; and it is the conventional method of examining judicial voting. With respect to the last basis of selection, this enables comparisons with other studies using this analytic tool.

Logistic regression ("logit") 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 [here, conservative pro-defendant or liberal pro-plaintiff]. Technically, logistic regression forms a best fitting equation or function using the maximum likelihood method (MLM), which maximizes the probability of classifying the observed data into the appropriate category, given the regression Epstein coefficients.

In essence, this technique allows the researcher to determine whether each independent variable improves the model relative to the model without that independent variable.

### *Individual Voting*

Eight regressions were run for this study. In the first equation, the justices' political ideology, religious affiliation (the justice-level variables), appointment era (1981 and later v. 1980 and earlier), decisional era (1981 and later v. 1980 and earlier), were set up as independent predictors of the dependent binary measure of justices' 531 individual votes rendered in the race discrimination cases comprising the entire data base.

For the second equation, the justices' political affiliation and justices' religious affiliation (the justice-level variables), appointment era (1981 and later v. 1980 and earlier) decisional era (1981 and later v. 1980 and earlier), were set up as independent predictors of the dependent binary measure of justices' individual votes rendered in the race discrimination cases comprising the *non-unanimous* data base.

The third regression used the Republican only individual voting database. It was comprised of the 357 votes. The model's independent predictors were justices' religious affiliation (the justice-level variables), appointment era (1981 and later v. 1980 and earlier), and decisional date (1981 and later v. 1980 and earlier), The dependent binary measure was justices' individual votes recorded as conservative or liberal.

The fourth regression used the Democratic only individual voting data base. It was comprised of the 174 votes. The model's independent predictors were justices' religious affiliation (the justice-level variables), appointment era (1981 and later v. 1980 and earlier), and decisional date (1981 and later v. 1980 and earlier), The dependent binary measure was justices' individual votes recorded as conservative or liberal.

Regression five used the *Protestant* only individual voting database. It was comprised of 419 individual votes. The independent predictors were political ideology (the

justice level variable), appointment era (1981 and later v. 1980 and earlier), and decisional era (1981 and later v. 1980 and earlier).

Regression six used the *Catholic* only database consisting of 89 individual votes categorized as conservative or liberal. The independent predictors were ideology (the justice level variable), appointment era (1981 and later v. 1980 and earlier), and decisional era (1981 and later v. 1980 and earlier).

#### *Panel Decisional Outcomes*

Since logistic regression can successfully integrate ordinal and ratio predictors as well as binary ones, the seventh equation used the combined database to examine the relationship of: the panel party composition (0-9 Republicans), the number of Catholics, the number of Jewish justices, the number of Protestant justices, the appointment era majority (1981 and later v. 1980 and earlier), and decisional era 1981 and later, set up as independent variables and the 63 decisional outcomes coded as conservative or liberal serving as the dependent measure.

The eighth equation will used the non-unanimous database to examine the relationship of: the panel party composition (0-9 Republicans), the number of Catholics, the number of Jewish justices, the number of Protestant justices, the appointment era majority (1981 and later v. 1980 and earlier), and decisional date set up as independent variables and decisional outcome coded as conservative or liberal serving as the dependent measure.

#### Data Collection

A Digest of Supreme Court Decisions Affecting Education by Zirkel and Richardson (2009) was used to derive the decisions entered into the data base since it lists all K-12 cases decided by the United States Supreme Court going back to the nineteenth century. The digest was used as an initial guide to cases involving K-12 race discrimination cases in education. Data was then collected from Westlaw,

www.supreme.justia.com, and www.oyez.org to supplement the initial list of decisions derived from Zirkel and Richardson.

The websites were searched using specific keywords to identify cases involving race-based discrimination in k-12 education. Specifically, cases involving Equal Protection Clause of the Fourteenth Amendment from 1954-2013, Due Process Clause of the Fourteenth Amendment from 1954-2013, Due Process Clause of the Fifth Amendment from 1954-2013, and Title VI and Title VII cases from 1964-2013, These searches included the terms “education”, “school district”, “School Board”, and related terms like “university” and “higher education” to focus the search on K-12 educational settings. As I read court cases, cases mentioned in the decision as precedent were researched to determine if they were relevant to my study.

The data collection yielded 60 Supreme Court cases involving race-based discrimination from the years 1954-2013. For each case, a case summary was written including the case number, decision era, case overview, and decisional data. These summaries can be found in Appendix I.

A spreadsheet was created to collect and organize data for use in statistical tests. There were 16,210 unique data entries in the spreadsheet. For each case, every judge had their own row with entries in each data column. The spreadsheet had 25 columns representing the independent and dependent variables critical to the study. For column 1, I assigned a case number from 1-60. Column 2 was a unique judge number assigned for each justice numbered 1- 53. Political ideology, coded conservative “1” or Liberal “0 measured by the party of the appointing president,” was column 3. Column 4 was the decision era of the case. Column 5 was the justice’s start date. This column was used to assign each justices’ appointment era. Column 6 is Protestant and is coded “1” for Mainline Protestant and “0” for other non-Protestant. Column 7 is Catholic with “1” being Catholic and “0” being other non-Catholic. Column 8 is Jewish with “1” being

Jewish and "0" being other non-Jewish. Column 9 is a categorical religion category with "1" being Protestant, "2" being Catholic, and "0" being Jewish. Column 10 denotes cases in which a race based Due Process claim was asserted with "1" denoting yes and "0" denoting no. Column 11 denotes cases where an Equal Protection claim was made with "1" denoting yes and "0" denoting no. Column 12 denotes cases involving a Title VI claim with "1" denoting yes and "0" denoting no. Column 13 involves cases where plaintiff made a Title VII claim with "1" denoting yes and "0" denoting no. Column 14 involves any race-based case brought to the Supreme Court with any other claim like attorney's fees associated with race-based claims with "1" denoting yes and "0" denoting no. Column 15 is a categorical entry with Equal Protection being coded "1", Due Process coded "2", Title VI coded "3", Title VII coded "4", and other coded "5". Column 16 is the individual justice's vote with "1" being conservative vote and "0" being liberal vote. Column 17 is overall case outcome with "1" being a conservative outcome and "0" being a liberal outcome. Column 18 is the total number of Catholics on the Supreme Court ranging from 0-9 at the time the decision was made. Column 19 is the total number of Jewish justices ranging from 0-9 at the time the decision was made. Column 20 is the total number of Protestants on the court ranging from 0-9 at the time the decision was made. Column 21 is the total number of justices on the court appointed by Republican presidents at the time the decision was rendered and ranges from 0-9. Column 22 identifies the party majority on the court with "1" being Republican majority and "0" being Democratic majority. Column 23 is the total number of 1981 and later appointees to the court ranging from 0-9. Column 24 is the appointment-era majority of the court with "0" being the pre-Reagan (1980 and earlier) and "1" being post-Reagan (1981 and later) majority. Column 25 is the number of justices appointed 1981 and later with "0" being 1980 and earlier and "1" being 1981 and later. Column 26 is the decisional date 1981 and later with "0" being 1980 and earlier and "1"



being 1981 and later. Column 27 is the number of justices appointed 1986 and later with “0” being 1985 and earlier and “1” being 1986 and later.

In order to verify data entry, doctoral students, co-workers, and an independent (paid) consultant were used to cross-check and verify the data.

#### Data Analysis

In setting-up the religion variable in SPSS, the following categories were employed to study the contribution of denomination and sect affiliation on individual voting:

##### Mainline Protestants Justices

1. *Catholic-Other*. In this treatment Mainline Protestants were the reference group.

2. *Jewish –Other*. In this treatment Mainline Protestants were the reference group.

This treatment will enable a comparison of the Catholic and Jewish justices Mainline Protestant ones, on the odds of each group voting conservative pro-defendant.

##### Catholic Justices

1. *Mainline Protestants-Other*.

2. *Jewish –Other*.

This treatment enabled a comparison of the Mainline Protestant and Jewish justices to the Catholic ones, on the odds of each group voting in a conservative-pro-defendant direction.

##### Jewish Justices

1. *Mainline Protestants-Other*.

2. *Catholics-Other*.

This treatment will enable a comparison of the Mainline Protestant and Catholic justices to the Jewish ones, on the odds of each group voting conservative-pro-school district.

The second set of equations examined the relationship of the panel ideological composition (0-9 Republican appointees), appointment era (1980 and later v. 1980 and earlier), decisional era (1980 and later v. 1980 and earlier), and religious affiliation to case-decisional outcome, with the number of Republican appointed justices, appointment era, decision era, religious affiliation set up as independent variables and case outcome (conservative or liberal) serving as the dependent measure. This approach will be taken in examining the religious affiliation independent measure with number of Mainline Protestants, Catholic and Jewish justices, each serving as a predictor. In the same vein the appointment era and decision era will be treated as a predictors as well. This design enabled an assessment of the independent contribution of the political-ideological, religious, and appointment era, and decisional era panel composition to the odds of pro-conservative voting in case outcomes.

## Chapter 4

### Results

#### Individual Voting/Descriptive Tables

Table 4.1 shows the frequency distribution of the 531 votes cast in the race discrimination cases included in the database. Votes were categorized as conservative (pro-school district/defendant) or liberal (pro-plaintiff). The percentage next to each group indicates the percentage of votes cast by Republicans or Democrats. Of the 531 votes, 357 votes were cast by Republican-appointed justices and 174 were cast by Democratic-appointed justices. Forty-two percent of votes cast by Republican appointed justices were conservative (pro-defendant) and 23% of the votes cast by Democratic appointed justices were conservative (pro-defendant). This indicates about a 23% difference in conservative voting between the two groups. This was expected based on the existing research. As reported below, logit analysis was used to further examine these findings.

Table 4.1 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions Between 1954-2013 Under EP, DP, Title VII, and Title VI in the United States Supreme Court as a Function of Justices' Ideology.

<i>Party Ideology</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>Republican</i>	152 (42.5%)	205 (57.5%)	357(67.2%)
<i>Democrat</i>	40 (23%)	134 (77%)	174(32.8%)
<i>Total</i>	192 (36.2%)	339 (63.8%)	531(100%)

Table 4.2 looks at religious affiliation and direction of voting. There were 531 total votes in the database. 89 were cast by Catholics, 419 were cast by Mainline Protestants, and 23 votes were cast by Jewish justices. When categorized by justices' religious

affiliation, Table 4.2 reveals that, for the period under study, Catholics cast 49 conservative votes indicating that 55% of the time they voted conservative- pro-defendant. Protestants cast 272 conservative votes corresponding to 65% in a conservative direction. Jewish justices cast only 5 conservative votes which accounts for 21.7% of the total Jewish vote. These differences appear to be meaningful, but further study was conducted with a logistical regression to determine whether these differences are significant.

Table 4.2 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions Between 1954-2013 Under EP, DP, Title VII, and Title VI in the United States Supreme Court as a Function of Religious Affiliation.

<i>Religious Affiliation</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>Catholic</i>	49 (55%)	40(45%)	89(16.8%)
<i>Mainline Protestant</i>	272 (64.9%)	147(35.1)	419(78.9%)
<i>Jewish</i>	5((21.7%)	18(78.3%)	23(4.3%)
<i>Total</i>	339	192	531

Table 4.3 shows the frequency distribution of the votes cast by *Democratic-* appointed justices in race discrimination cases affecting K-12 education as a function of religious affiliation. There were 174 total votes cast by Democratic appointees. Looking at frequency distribution and percentages of votes cast across religious affiliation categories, there was 1 conservative vote among the three which were case cast by Catholics which accounted for 33.3% of the vote by the Democratic- appointed Catholics. There were 147 total votes cast by Democratic- appointed Mainline Protestants of which 23.1% were conservative (pro-school district). Jewish justices cast 23 votes of which 21.7% were conservative (pro-school district). The sample size for the independent

variable Catholic religious affiliation was not large enough to determine any significant differences.

Table 4.3 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast by Democratic Appointed Justices in Pre-K – 12 Race Discrimination Decisions between 1954-2013 under EP, DP, Title VII, And Title VI in the United States Supreme Court by Religious Affiliation

<i>Religious Affiliation</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>Catholic</i>	1(33.3%)	2(66.6%)	3(1.7%)
<i>Mainline Protestant</i>	34(23.1%)	114(77.5%)	147(85.1%)
<i>Jewish</i>	5(21.7%)	18(78.3%)	23(13.2%)
<i>Total</i>	40	134	174

Table 4.4 shows the frequency distribution of votes cast in K-12 race discrimination cases by *Republican*-appointed justices as a function of their religious affiliation. There were 357 votes cast by Republican appointed justices. Overall, 57.4% of those votes were conservative. There were no Jewish justices appointed by Republicans. When looking at religious affiliation, the Catholic-Republican justices voted conservatively (pro-school district) 43.5% of the time while Protestant-Republicans voted conservatively 41.7% of the time. Logistical regression was later used to determine if these differences were statistically significant.

Table 4.4 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast by Republican Appointed Justices in Pre-K – 12 Race Discrimination Decisions Between 1954-2013 under EP, DP, Title VII, and Title VI in the United States Supreme Court by Religious Affiliation

<i>Religious Affiliation</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>Catholic</i>	39(45.3%)	49(57%)	86(24%)
<i>Mainline Protestant</i>	113(41.7%)	158(58.3%)	271(74%)
<i>Jewish</i>	0	0	0
<i>Total</i>	205	152	357

Table 4.5 examines the frequency distribution of conservative pro-school district votes as a function of justices' appointment era for all votes cast between 1954 and 2013. Appointment eras were characterized as either 1980 or earlier or 1981 and later. For the justices appointed 1980 and earlier, 31.8% of the 459 votes they cast were in favor of the school district and are classified as conservative. For the justices appointed 1981 and later, 63.6% of the 72 votes they cast were conservative pro-school district. The direction of this voting was as expected and appears meaningful, but further analysis with logit regression was necessary to determine its significance.

Table 4.5 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions between 1954-2013 under EP, DP, Title VII, and Title VI in the United States Supreme Court as a Function of Justices' Appointment Era

<i>Appointment Era</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>1980 and earlier</i>	146(31.8%)	313(68.2%)	459(%)
<i>1981 and later</i>	46(63.9%)	26(36.1%)	72(13.6%)

Table 4.5 continued.

<i>Total</i>	192	339	531
--------------	-----	-----	-----

Table 4.6 examines the 174 conservative and liberal votes cast by *Democratic* appointed justices as a function of appointment era (1980 and earlier verses 1981 and later). About 22.7 % of the votes cast by justices appointed before 1980 were conservative (pro-defendant) while 38.5% of the votes cast by justices appointed 1981 and later were conservative. The direction of the voting among the Democratic appointees is consistent with my predictions and was studied under logistic regression analysis to determine its significance.

Table 4.6 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions Between 1954-2013 under EP, DP, Title VII, and Title VI in the United States Supreme Court by Democratic Appointed Justices as a Function of Justices' Appointment Era

<i>Appointment Era</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>1980 and earlier</i>	35 (21.7%)	126(78.3%)	161(92.5%)
<i>1981 and later</i>	5(38.5%)	8(61.5%)	13(7.5%)
<i>Total</i>	40	134	174

Table 4.7 shows the frequency distribution of the 357 votes cast by *Republican* appointed justices in Supreme Court race discrimination cases between 1954 and 2013 as a function of appointment era (appointed 1980 and earlier or appointed 1981 and later). For the Republicans appointed 1980 and earlier, 111 votes or 37.3% were conservative (pro-school district) votes. For the Republicans appointed 1981 and later, 69.5% of the votes were conservative (pro-school district). This represents a 32.2% difference in conservative voting in favor of the later period. This increase in percentage

of conservative votes was in the direction expected. The logistic regression analysis reported below provides a more detailed consideration of these results.

Table 4.7 Frequency and Percentage of Conservative Pro-school District and Liberal Not Pro-School District Votes Cast in Pre-K – 12 Race Discrimination Decisions between 1954-2013 under EP, DP, Title VII, and Title VI in the United States Supreme Court by Republican Appointed Justices as a Function of Justices' Appointment Era

<i>Appointment Era</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>1980 and earlier</i>	<i>111(37.3%)</i>	<i>187(62.3%)</i>	<i>298(83.5%)</i>
<i>1981 and later</i>	<i>41(69.5%)</i>	<i>18(30.5%)</i>	<i>59(16.5%)</i>
<i>Total</i>	<i>152</i>	<i>205</i>	<i>357</i>

Table 4.8 shows the frequency distribution of votes cast in K-12 race discrimination cases by Republican and Democrat appointed justices for the decision era 1981 and later only. There were 167 votes cast in the period 1981 and later. For Republican appointed justices, 53% of their 132 votes were conservative. For Democrat appointed justices, 42.9% of their 35 votes were conservative. The results represent an approximately 10% between ideological groups with Republican appointees voting more conservatively.

Table 4. 8 Frequency and Percentage of Conservative Pro-School District and Liberal Not Pro-School District Votes Cast by Republican and Democrat Appointed Justices in Pre-K – 12 Race Discrimination Decisions Made with Decision Era 1981-2013 Under EP, DP, Title VII, and Title VI in the United States Supreme Court

<i>Political Ideology</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Total</i>
<i>Republican</i>	<i>70 (53%)</i>	<i>62 (47%)</i>	<i>132(79%)</i>
<i>Democrat</i>	<i>15 (42.9%)</i>	<i>20 (57.1%)</i>	<i>35(21%)</i>
<i>Total</i>	<i>85</i>	<i>82</i>	<i>167</i>



## Individual Voting/Logistical Regressions

### *All Cases*

Table 4.9 shows the results of the logistic regression analysis performed on the 531 individual votes cast out of a pool of 561 potential votes, in K-12 race discrimination cases from 1954 to 2013 for the combined Republican and Democratic data base . Ten justices recused themselves or otherwise did not participate in the cases considered.

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-school district) and liberal (pro-plaintiff) votes of the individual Supreme Court justices ( $X^2=49.092$ ,  $p < .001$  with  $df=5$ ). Overall, the prediction success was 68.2%. Variability in the dependent measure accounted for by the independent variables was .121 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable. The appointment era, political ideology, and decision era variables each attained significance.

The *appointment era variable* attained significance at the .05 alpha level ( $p = .001$ ) with all other variables controlled. For post-1980 appointees, the odds of a justice voting in a conservative (pro-school district) direction in these race discrimination cases was 3.542 times greater than for justices appointed in 1980 and earlier.

For the *ideology variable*, Republican appointees were significantly more likely to vote in a conservative direction than Democratic appointees with the odds differences attaining significance at the .05 alpha level ( $p = .001$ ). The odds of Republican justices voting in a conservative (pro-school district) direction was 2.112 times greater than the odds of the Democratic appointed justices voting in a conservative direction with all other variables controlled.

Although the output for output for the decisional era variable did not reveal differences in the odds of a pro-defendant vote at the .05 alpha level of significance, it reached significance at the .10 level ( $p = .095$ ) with all other variables controlled.

Multiple logistical regressions were run to determine the relationship between individual voting and the religious affiliation of the justices. The output showed that there were no significant difference in the odds of a conservative vote between the religious groups.

For the Protestant to Jewish comparison, the logit failed to produce a significant difference between the two groups at the .05 alpha level ( $p = .147$ ). The logits also revealed no statistically significant difference at the .05 alpha level in the odds of a conservative voting between Protestant and Catholic justices ( $p = .122$ ). Moreover, Catholic justices were not significantly more likely to vote in a conservative direction than Jewish justices at the .05 alpha level of significance ( $p = .525$ ).

Table 4.9 Logit Analysis on the Odds of a Conservative Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, And Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, Combined Data Bases for Justices Nominated by Republican and Democratic Presidents: 1954-2013 with Decision

Era 1981 and Later.

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Protestant v. Jewish</i>	.819	.565	2.10	1	.147	2.269
<i>Protestant v. Catholic</i>	-.451	.292	2.388	1	.122	.637
<i>Political Ideology</i>	.748	.230	10.54	1	.001	2.112
<i>Appointment Era</i>	1.265	.380	11.10	1	.001	3.542

Table 4.9 continued.

<i>Decisional Era</i>	4.04	2.42	2.78	1	.095	1.498	.
-----------------------	------	------	------	---	------	-------	---

---

\* The Catholic v. Jewish variable was run in a separate logit. ( $B=.369$ ,  $S.E.=.580$ ,  $Wald=.404$ ,  $df.=1$ ,  $p=.525$ ,  $Exp(B)=1.446$ )

*Individual Votes/Non-Unanimous Cases*

Table 4.10 shows the results of the logistic regression analysis performed on individual votes cast in the 34 *non-unanimous* K-12 race discrimination cases from 1954 to 2013 with decision era 1981 and later compared to decisions made in 1980 and earlier. This group of cases was examined separately to determine whether greater effects for the independent predictors might be observed for what were apparently more controversial cases.

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-school district) and liberal (pro-plaintiff) votes of the individual supreme court justices ( $X^2=20.439$ ,  $p<.001$  with  $df=5$ ). Overall, the prediction success was 64%. Variability in the dependent measure accounted for by the independent variables was .088 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable.

The *appointment era variable* was the most significant indicator among the independent variables for the non-unanimous cases; it showed differences at the .05 alpha level ( $p=.002$ ) and had an effect size of 3.962. This means that the odds of justices appointed in 1981 and later voting in a conservative (pro-school district) direction was 3.962 times greater than justices appointed in 1980 and earlier, with all other variables held constant.

For these non-unanimous cases *political ideology* was significant at the .05 alpha level, closely approaching the .01 significance level (p=.013). The effect size for this variable indicated that the odds of a Republican appointed justice voting in a conservative pro-district direction was 2.14 times than a Democratic appointed justice, with all other variables held constant.

The odds differences between the 1981 and later decisions and those rendered during 1980 and before did not attain significance at the .05 alpha level (p=.356), with all other variables controlled.

None of the Protestant-Catholic-Jewish comparisons showed statistically significant odds differences in conservative voting at the .05 alpha level for these non-unanimous decisions.

In sum, the analysis for the non-unanimous data base produced no meaningful differences from the unanimous data base in terms of which indicators influenced justices' individual voting.

Table 4.10 Logit Analysis on the Odds of a Conservative Pro-School District Vote for claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, Non-Unanimous Data Bases for Justices Nominated by Republican and Democratic Presidents: 1954-2013 with Decision Era 1981 and Later.

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Protestant v. Jewish</i>	.968	.670	2.087	1	.149	2.632
<i>Protestant v. Catholic</i>	-.644	.362	3.166	1	.075	.525
<i>Political Ideology</i>	.760	.307	6.11	1	.013	2.138

<i>Appointment Era</i>	1.377	.437	9.922	1	.002	3.962
------------------------	-------	------	-------	---	------	-------

Table 4.10 continued.

<i>Decisional Era</i>	-.258	.278	.853	1	.356	.773	.
-----------------------	-------	------	------	---	------	------	---

---

\* The Catholic v. Jewish variable was run in a separate logit. ( $B=.323$ ,  $S.E.=.686$ ,  $Wald=.235$ ,  $df.=1$ ,  $p=.628$ ,  $Exp(B)=1.382$ )

Table 4.11 shows the results of logistic regressions performed on the 357 vote *Republican only* database generated from K-12 race discrimination cases from 1954 to 2013. Table 4.11 includes only religious comparison of Protestant to Catholic because there were no Jewish justices appointed by Republicans.

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-school district) and liberal (pro-plaintiff) votes of the individual Supreme Court justices ( $X^2=23.670$ ,  $p<.001$  with  $df=3$ ). Overall, the prediction success was 63.9%. Variability in the dependent measure accounted for by the independent variables was .086 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degrees of freedom, probability, and effect sizes for each independent variable.

The *appointment era variable* was significant at the .05 alpha level ( $p=.001$ ). The effect size revealed in the logit run indicated that the odds of Republican appointees voting in a conservative pro-school district direction was 4.294 times greater when they were appointed during the 1981 and later compared to those justices appointed in the 1980 and earlier period.

For the Republican appointees neither the Protestant-Catholic comparison ( $p=.120$ ) nor the decision era variable ( $p=.634$ ) revealed significant alpha differences at the .05 level in the odds of conservative pro-school district voting.

Table 4.11 Logit Analysis on the Odds of a Conservative Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases, for Justices Nominated by Republican Presidents: 1954-2013 as a Function of Justices' Religious Affiliation, Appointment Era and Decisional Era. .

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Protestant v. Catholic</i>	-.460	.296	2.417	1	.120	.631
<i>Appointment Era</i>	1.457	.401	13.23	1	.001	4.294
<i>Decisional Era</i>	.132	.277	.227	1	.634	1.141

Table 4.12 shows the results of logistic regressions performed on the 174 vote Democrat only database of K-12 race discrimination cases from 1954 to 2013. Table 4.12 includes the output for the religious affiliation, appointment era, and decisional era and variables.

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-school district) and liberal (pro-plaintiff) votes of the individual Democratic appointed Supreme Court justices ( $X^2=10.797$ ,  $p < .05$  with  $df=4$ ). Overall, the prediction success was 77.6%. Variability in the dependent measure accounted for by the independent variables was .091 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable.

The *appointment era* variable showed statistical differences between its levels at the .05 alpha level ( $p=.009$ ). The effect size associated with these differences revealed that for Democratic appointed justices, the odds of a conservative vote from a justice appointed 1981 and later was 3.542 times greater than a conservative vote cast by a justice appointed 1980 and earlier with all other variables held constant.

The decision era variable failed to show significance between the earlier and later rendered decisions at the .05 alpha level ( $p=.490$ ). Similarly, the religious comparisons [Catholic-Protestant, Protestant-Jewish, Catholic-Jewish] failed to reveal significant differences in conservative pro-school district voting at the .05 alpha level.

Table 4.12 Logit Analysis on The Odds of a Conservative Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases for Justices Nominated by Democrat Presidents: 1954-2013 as a Function of Justices' Religious Affiliation,

Appointment Era and Decisional Era.

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Protestant v. Jewish</i>	1.315	1.188	1.226	1	.268	3.726
<i>Protestant v. Catholic</i>	-.116	1.52	.06	1	.939	.891
<i>Appointment Era</i>	1.265	.485	6.844	1	.009	3.542
<i>Decisional Era</i>	.932	1.35	.476	1	.490	2.539

\* The Catholic v. Jewish variable was run in a separate logit. ( $B=1.20$ ,  $S.E.=1.572$ ,  $Wald=.583$ ,  $df=1$ ,  $p=.445$ ,  $Exp(B)=3.319$ )

Table 4.13 shows the results of logistic regressions performed on the *Protestant only database* of K-12 race discrimination cases from 1954 to 2013. It was comprised of 419 votes.

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-school district) and liberal (pro-plaintiff) votes of the individual Protestant Supreme Court justices ( $X^2=19.155$ ,  $p < .001$  with  $df=3$ ). Overall, the prediction success was 65.4%. Variability in the dependent measure accounted for by the independent variables was .062 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable.

For the Protestant justices, only the *political ideology* variable showed .05 alpha significant differences ( $p=.001$ ). Its effect size indicated that the odds of a Republican appointed Protestant justice voting in a conservative (pro-school district) direction was 2.21 times greater than a Democrat appointed Protestant justice. The appointment era and decisional era variables did not attain significance and are not indicators of the likelihood of a conservative (pro-school district) vote. In light of the fairly consistent appointment era effects observed in the other data sets, this outcome warrants further examination, which is made in the next chapter.

Table 4.13 Logit Analysis on the Odds of a Conservative Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases for *Protestant Justices: 1954-2013* as a Function of Ideology, Appointment Era, and Decisional Era

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Political Ideology</i>	.792	.236	11.27	1	.001	2.20
<i>Appointment Era</i>	.275	.486	.320	1	.572	1.316



Table 4.14 continued.

<i>Decisional Era</i>	.389	.256	2.298	1	.130	1.475	.
-----------------------	------	------	-------	---	------	-------	---

---

Table 4.14 shows the results of logistic regressions performed on the 89 votes cast in the *Catholic only database* of K-12 race discrimination cases from 1954 to 2013. Table 4.14 includes the ideology, appointment era and decision era variables [1981 and later v 1980 and earlier].

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-school district) and liberal (pro-plaintiff) votes of the individual Catholic Supreme Court justices ( $X^2=31.123$ ,  $p < .001$  with  $df=3$ ). Overall, the prediction success was 79.3%. Variability in the dependent measure accounted for by the independent variables was .403 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable.

The *appointment era variable* achieved significance at the .05 alpha level ( $p=.001$ ). The results indicated that the odds of a Catholic justice, appointed in 1981 and later, voting in a conservative (pro-school district) direction was 9.416 times greater than a Catholic justice appointed in the 1980 and earlier period with all other variables held constant. For the Catholic justices neither the the decisional era variable ( $p=.485$ ) nor the ideology variable ( $p=.848$ ) produced .05 alpha significant differences.

Table 4.14 Logit Analysis on the Odds of a Conservative Pro-School District Vote for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court In K-12 Race Discrimination Cases for *Catholic Justices*: 1954-2013 as a Function of Ideology, Appointment Era, and Decisional Era .

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Political Ideology</i>	.294	1.541	.037	1	.848	1.344
<i>Appointed 1981 And later</i>	2.242	.788	8.09	1	.004	9.416
<i>Decision era 1981 and Later</i>	.556	.797	.487	1	.485	1.744.

Panel Regressions/All Decisions

Table 4.15 displays the results of the logistic regression analysis performed on 63 case outcomes in all cases in K-12 race discrimination cases from 1954 to 2013.

A test of the full model against a constant only model was statistically significant at the 0.05 level, indicating that the predictors as a set reliability distinguished between conservative (pro-school district) and liberal (pro-plaintiff) panel decision outcomes ( $X^2=14.945$ ,  $p < .05$  with  $df=6$ ). Overall, the prediction success was 70%. Variability in the dependent measure accounted for by the independent variables was .301 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degrees of freedom, probability, and effect sizes for each independent variable.

The only variable that attained .05 alpha level significance in the panel regression was the number of Republicans variable ( $p=.021$ ). The effect size for this variable indicates that for each additional Republican appointed justice on the panel, the odds of a conservative (pro-school district) vote is 3.27 times greater.

The number of Catholic justices (0-9), Jewish justices (0-9), and Protestant justices (0-9) did not reach .05 alpha significance and were not a factor in the odds of a conservative case outcome. This means that as the number of justices affiliated with each of these variables increased from 0, there was no statistically significant increase in conservative voting associated with such increase

Although the appointment era majority variable did not achieve significance, the output revealed that conservative pro-school district outcomes were observed more often during the earlier compared to the later period. This is seemingly an anomalous result. Indeed, the effect size of .026 means that the odds of obtaining a liberal vote during the later as compared to the earlier period increased by a factor of 3.84 over the odds of getting that result during the earlier period. The large standard error of 2.597 relative to the B coefficient of -3.662, indicates that these are spurious results and may have resulted from the fact that only seven cases were heard in this period.

Finally, the decisional era variable for these panels failed to attain .05 alpha significance ( $p=.937$ ), meaning it did not contribute significantly to the odds of Supreme Court panels voting in a conservative pro-school district direction

Table 4.15 Logit Analysis on the Odds of a Conservative Pro-School District Case Outcomes for Claims made under the Equal Protection Clause, Title VII, and Title VI in the United States Supreme Court in K-12 Race Discrimination Cases: 1954-2013

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Appointment Era</i>						
<i>Panel Majority</i>	-3.662	2.597	1.989	1	.158	.02
<i>Number Republicans</i>	1.185	.514	5.316	1	.021	3.271
<i>Decision era 1981</i>	-.070	.890	.006	1	.937	.932
<i>And Later</i>						
<i>Number Catholic</i>	.144	1.256	.013	1	.908	1.155
<i>Number Jewish</i>	1.057	1.458	.526	1	.468	2.878
<i>Number Protestant</i>	-.344	1.091	.099	1	.753	.709

Panel Decision/Non-Unanimous Decisions

Table 4.16 displays the results of the logistic regression analysis performed on case outcomes in the 34 *non-unanimous* cases in K-12 race discrimination cases from 1954 to 2013.

A test of the full model against a constant only model was not statistically significant at the .05 alpha level indicating that the predictors as a set did not reliability

distinguish between conservative (pro-school district) and liberal (pro-plaintiff) case outcomes ( $\chi^2=2.984$ ,  $p> .05$  with  $df=6$ ). Overall, the prediction success was 61.8%. Variability in the dependent measure accounted for by the independent variables was .113 as measured by Nagelkerke's R square test. The table gives the Wald statistic, degree of freedom, probability, and effect sizes for each independent variable.

Neither the appointment era majority, ideology, nor decision era variables attained .05 alpha significance for these non-unanimous cases. Moreover, increases in the numbers of justices from each of the three religious groups failed to show significant effects as they increased in their numbers on the Court. The absence of ideological effects measured by the number of Republicans sitting on the Court in these non-unanimous decisions did not go in the expected direction and appears to be inconsistent with the significant differences observed for the all-cases data base represented in Table 4.15. These results may have resulted from the large standard error (1.15) associated with the B coefficient (.622), suggesting the outcome is unreliable and spurious. This will be discussed further in the next chapter.

Table 4.16 Logit Analysis on Panel Outcomes for Claims made under the Equal Protection Clause, Title VII, and Title VI in Non-Unanimous Decisions in the United States Supreme Court in K-12 Race Discrimination Cases : 1954-2013

<i>Independent Variables</i>	<i>B</i>	<i>SE</i>	<i>Wald</i>	<i>df</i>	<i>Sig</i>	<i>Exp(B)</i>
<i>Appointment Era</i>						
<i>Majority</i>	-1.825	6.468	.8	1	.778	.161
<i>Number Republicans</i>	.622	1.15	.293	1	.588	1.863
<i>Decision era 1981</i>	.062	.995	.004	1	.950	1.064
<i>And Later</i>						

Table 4.16 continued.

<i>Number Catholic</i>	1.995	2.334	.731	1	.393	7.350
<i>Number Jewish</i>	1.810	3.429	.178	1	.598	6.108
<i>Number Protestant</i>	1.411	1.909	.547	1	.460	4.101

---

## HYPOTHESES

### Individual Voting/All Votes Data Base

*Hypothesis 1:* The odds of justices appointed by *Republican* presidents voting in a conservative pro-school district direction in K-12 race discrimination disputes will be greater than that of justices appointed by *Democratic* presidents for the period 1954-2013. This hypothesis was confirmed.

*Hypothesis 2:* The odds of justices *appointed* in 1981 and later voting in a conservative pro-school district direction in K-12 race discrimination disputes will be greater than that of justices *appointed* in 1980 and earlier for the period 1954-2013. This hypothesis was confirmed.

*Hypothesis 3:* The odds of votes cast in 1981 and later being conservative pro-school district will be greater than for the period 1980 and earlier in K-12 race discrimination disputes for the period 1954-2013. This hypothesis was not confirmed.

### Republican Data Base

*Hypothesis 4:* The odds of *Republican justices* appointed during 1981 and later years voting in a conservative pro-school district direction will be greater than Republican justices appointed during 1980 and earlier years. This hypothesis was confirmed.

### Democratic Data Base

*Hypothesis 5:* The odds of *the Democratic justices appointed* during 1981 and later years voting in a conservative pro-school district direction will be greater than

Democratic justices appointed during 1980 and earlier years. This hypothesis was confirmed.

#### Mainline Protestant Data Base

*Hypothesis 6:* The odds of Mainline Protestant justices appointed by a Republican president voting in conservative pro-school district direction in K-12 race discrimination disputes for the period 1964-2013 will be greater than the odds of Mainline Protestant justices appointed by Democratic presidents voting in a conservative pro-school district direction. This hypothesis was confirmed.

*Hypothesis 7:* The odds of Mainline Protestant justices appointed in 1981 and later voting in conservative pro-school district direction in K-12 race discrimination disputes for the period 1954-2013 will be greater than the odds of Mainline Protestant justices appointed in 1980 and earlier voting in a conservative pro-school district direction. This hypothesis was not confirmed.

#### Catholic Database

*Hypothesis 8:* The odds of Catholic justices appointed by Republican presidents voting in a conservative pro-school district direction will be greater than the Catholic justices appointed by Democratic presidents for the period 1954-2013. This hypothesis was not confirmed.

*Hypothesis 9:* The odds of Catholic justices appointed during the 1981 and later years voting in a conservative pro-school district direction will be greater than the Catholic justices appointed during 1980 and earlier years. This hypothesis was confirmed.

#### Panel Composition and Decisional Outcome

*Hypothesis 10:* The odds of a conservative pro-school district outcome in K-12 race discrimination cases will increase as the number of Republican justices on a panel increases. This hypothesis was confirmed.





## Chapter 5

### Discussion

The main dataset was comprised of a total of 541 cases representing voting in K-12 race discrimination conflicts reaching the United States Supreme Court between 1954 and 2013. Ten votes were not cast due to justices' recusals or other reasons. The dependent variable was a dichotomous indicator of each justice's individual voting decision, either liberal (pro-employee) or conservative (pro-employer). Of the individual votes, 339 (62.6%) were in the liberal (pro-employee) direction and 192 (36.2%) were in the conservative (pro-employee) direction.

Variables included in the model pertain primarily to the attitudinal theory of judicial behavior. The key predictors of interest pertaining to this theory are the party of appointing President, serving as a proxy for justices' ideology, whether the judge was appointed prior to or during the Reagan era and later years, and also whether the case was decided during the earlier or later period, and the religious affiliation of the justice.

Theoretical considerations and related empirical work give strong grounds for expecting judicial decision making to have moved in a more conservative direction in the period following Ronald Reagan's ascension to the Presidency in 1980.

The reasons for distinguishing between the period each justice was appointed versus the period in which the case was decided is that it is not known whether the hypothesized trend in the conservative direction would result simply from the selection of more conservative justices, or whether it reflects sweeping changes in the political climate during the Reagan and later years that might have contributed to more conservative voting by justices appointed *before* Reagan, as well as well as those justices appointed by Democratic Presidents.

Since the dependent variable was dichotomous, a logistic regression was applied to the various data bases. Where applicable, these analyses were followed-up by additional calculations which were dictated by the results.

#### Individual Voting

In the first equation, the justices' political ideology, religious affiliation, appointment era (1981 and later v. 1980 and earlier), decisional era (1981 and later v. 1980 and earlier), were set up as independent predictors of the dependent binary measure of justices' 531 individual votes rendered in the K-12 race discrimination cases comprising the entire data base.

#### *Political Ideology*

Consistent with the attitudinal model the odds of justices appointed by Republican presidents voting in a conservative pro-school district direction in K-12 race discrimination disputes were significantly more likely than Democratic appointees. Indeed, the odds were about 2.112 times greater for Republican appointees voting in that direction than those justices appointed by *Democratic* presidents for the period 1954-2013. The result for the 531 votes examined here reflects the long-standing preferences of Republican presidents to nominate Supreme Court justices with a conservative bent as compared to Democratic presidents. Since appointment era, decisional era and religious affiliation were held constant in the logit analysis, this difference, considered over a period of about 60 years, appears to reflect genuine and enduring ideological-attitudinal differences in racial matters involving K-12 education between these groups. Although political ideology variable, as measured by party of the appointing president, is an indirect measure of justices' attitudes, it has proven a reliable predictor of voting, especially in civil rights related controversies. And it did so here.

*Appointment Era*

The expectation that justices appointed in 1981 and later would vote significantly more conservatively than justices appointed in 1980 and earlier was confirmed. The odds of justices appointed in 1981 and later voting in a conservative pro-school district direction in K-12 race discrimination disputes were about 3.542 times greater than that of justices appointed in 1980 and earlier for the period 1954-2013. Notably, the appointment eras covered involved 27 years for the earlier and about 33 years for the later period. Since the justices' political ideology, religious affiliation and decisional era were controlled for purposes of this comparison, this difference in voting appears to be genuine and reflect an overall historical conservative trend in judicial appointments from the earlier to later period, at least in K-12 race discrimination matters.

To examine the appointment era effects more closely the voting of 1980 and earlier appointees was compared to the votes made by 1981 and later appointees on decisions *made during 1981 and later only*. This apples-to-apples comparison showed the following:

Table 5.1 1981 and later Decisions by Justices' Appointment Era

	1980 & earlier appointment	1981 & later appointment
Pro-Plaintiff	56 (58.9%)	26 (36.1%)
Pro-Defendant	39 (41.1%)	46 (63.9%)
Total	95 (100%)	72 (100%)

The comparison revealed that 63.9% of the 1981 and later appointees voted conservative pro-school district while only 41.1% of the justices appointed in 1980 and earlier voted in that direction for these 1981 and later Supreme Court decisions. This approximately 22% swing in voting suggests an appointment era effect which is real and robust.

Decisional Era

As revealed in Table 4.9 the logit run on decisional era variable did not attain significance at the .05 level for the 531 votes studied. It did however reach the .10 alpha level, with more conservative votes being cast during the later period.

Since the decisional era-appointment era distinction is of considerable theoretical importance, I revisited the raw data to help interpret the findings from the previous logistic regression. The results are shown in a cross-tabulation set out in Table 5.2.

Table 5.2 Decisions of Justices Appointed Before 1981 by Decisional Era

	1980 & earlier decisions	1981 & later decisions
Pro-Plaintiff	257 (71%)	56 (59%)
Pro-Defendant	107 (29%)	39 (41%)
Total	364 (100%)	121 (100%)

This display shows that justices appointed before 1981 voted predominantly in a liberal direction in cases of interest here and did so during the later decisional era as well, although the percentage of difference fell by 12%, providing evidence that the political climate which occurred during the Reagan and later years also impacted justices not selected by Reagan or any of his successors.

Stated otherwise the comparison revealed that for the pre-1981 appointees 29% of the pre-1981 votes were conservative pro-school district, while 41% of the 1981 and later votes were conservative pro-school district. That said, the extent that the decisional era contributed to the voting its influence was much weaker than appointment era.

These results suggest that expanding the data base to include decisions arising from other governmental settings might be helpful in understanding more completely any decisional era effects which might exist independent of appointment era effects.

Justices appointed during 1980 and earlier included: Black(R), Reed(D), Frankfurter(D), Douglas(D), Jackson(D), Burton(R), Minton(D), Clark(D), Warren(R),

Harlan II(R), Brennan(R), Stewart(R), Whittaker(R), Goldberg(D), White(D), Fortas(D), Marshall(D), Burger(R), Blackmun(R), Powell(D), Rehnquist(D), (R) and Stevens(R).

Justices appointed in 1981 and later included: O'Connor (R), Scalia (R), Kennedy(R), Souter(R), Thomas(R), Ginsburg(D), Breyer(D), Roberts(R), Alito(R), and Sotomayor(D).

The results are consistent with the literature which states that Reagan, Bush I and Bush II appointed judges to the Supreme Court based on a scrupulous review of their conservative credentials. Notably, of the 10 justices appointed in 1981 and later, seven were Republican appointees. Since Sotomayor only cast one vote in this data base the effects of these appointments might be even greater than the number of Republican appointees reflects, even with Souter's liberal voting. This suggests the more vigorous screening of justices for their personal attitudes and convictions (O'Brien, 2011) during the Reagan and later periods compared to earlier Republican efforts, was successful in these K-12 race based cases. It may account for the overall appointment era effects.

#### *Religious Affiliation*

No significant differences were observed in voting among the three religious groups studied (Protestant, Catholic, Jewish), when all other variable were controlled. It appears that whatever religious affiliation effects might exist they were subsumed by the political ideology, appointment era and possibly decisional era influences.

#### *Non-Unanimous Cases*

For the second equation, the justices' political affiliation and religious affiliation (the justice-level variables), appointment era (1981 and later v. 1980 and earlier) and decisional era (1981 and later v. 1980 and earlier), were set up as independent predictors of the dependent binary measure of justices' individual votes rendered in the 34 cases comprising *non-unanimous* data base.

Although non-unanimous decisions might be expected to produce greater conflict in the justices' voting, there was no evidence for that here. Indeed, like with the entire individual voting data base, the predictors attaining significance, political ideology and appointment era, were the same. Moreover, the effect sizes for ideology [2.138 -non-unanimous voting and 2.112-all voting] and appointment era [3.962-non-unanimous voting v. 3.542-all voting] were similar. This implies that the justices may have operated independently, asserting their values on race discrimination issues, regardless of how their colleagues may have voted and the powerful salience of race discrimination controversies.

#### *Individual Voting-Republican Appointees*

The third regression used the Republican only individual voting database. It was comprised of the 357 votes. The model's independent predictors were justices' religious affiliation, appointment era (1981 and later v. 1980 and earlier), and decisional date (1981 and later v. 1980 and earlier). The dependent binary measure was justices' individual votes, recorded as conservative or liberal.

The output for these variables demonstrated a significant appointment era, but no religious affiliation effect. The odds of later Republican appointees voting conservative-pro-school district were 4.294 times greater than the earlier appointed Republican appointees with religious affiliation and decisional era controlled. Thus, the Reagan, Bush I and Bush II strategies bore fruit in terms of appointing and holding conservative voting blocs over time, at least in these race discrimination cases. This result is consistent with ideological-attitudinal models of judicial voting.

Again, as with the entire data set for all 531 votes, the principal indicator for conservative voting for Republican appointees, was appointment data, rather than when justices cast their votes. Because public opinion was not selected as an independent variable, it cannot be stated with certainty if it contributed to the voting in these cases.

Nevertheless, it seems that any changes in public opinion which occurred during the later decisional period was not a likely influence in the voting of Republican appointees, since date of decision, at least in terms of broad decisional eras was controlled for in this analysis.

#### *Individual Voting-Democratic Appointees*

The fourth regression used the Democratic-only individual voting data base. It was comprised of the 174 votes. The model's independent predictors were justices' religious affiliation, appointment era (1981 and later v. 1980 and earlier), and decisional date (1981 and later v. 1980 and earlier), and the dependent binary measure was justices' individual votes, recorded as conservative or liberal.

Like with the Republican appointees the Democratic ones showed a significant appointment era effect with the later appointed justices voting more conservatively with religious affiliation and decisional era controlled. The later appointed justices were 3.542 times more likely to vote conservatively than the earlier appointed Democrats. Although the later appointed Democratic appointees Justices Ginsberg, Breyer and Sotomeyor are left leaning, they are probably more moderate than very liberal justices like Thurgood Marshall, Abe Fortas, and Arthur Goldberg, and William Brennan, for example, and this may account for the direction of the voting. That said, a significant limitation on these results is that during the 1981 and later period the Democratic appointees cast a total of only 13 votes while rendering 161 during the 1980 and earlier period [Table 6.6]. Thus, despite the statistical significance resulting from the logit analysis the results must be taken as tentative at best. To test appointment era effects for the Democratic appointees it is probably necessary to expand this data set beyond the public school setting [given the small number of 1981 and later K-12 cases available for analysis], in order to meaningfully examine appointment era effects and race discrimination voting.

*Individual Voting-Protestant Religious Affiliation*

Regression five used the *Protestant* only individual voting database. It was comprised of 419 individual votes. The independent predictors were political ideology, appointment era (1981 and later v. 1980 and earlier), and decisional era (1981 and later v. 1980 and earlier). For the Protestant justices only the *political ideology* variable attained significance with the odds of Republican-Protestants voting in a conservative-pro-district direction being 2.21 times greater than a Democrat appointed Protestant justice. The results for the political ideology variable are consistent with expectations.

However, the logit analysis failed to produce significance differences in the odds of conservative pro-school district voting for the appointment era and decisional era variables. This result is surprising in light the consistently significant overall appointment era effects for the entire 531 individual vote data base, the individual non-unanimous decision data base, the Republican-only individual vote data base, and the individual Democratic-only data base.

I revisited the raw data to understand why this was so, performing a cross tabulation on a dataset comprising only Protestant judges, almost 79% of all the votes.

With respect to ideology, the relevant cross tabulation is shown in Table 5.3, which shows a large difference in the voting direction (19%) of judges appointed by Democrats versus Republicans, consistent with the results from the full dataset.

Table 5.3 Ideology Impact for Protestant Judges

	Ideology	
	Democratic	Republican
pro-employee	114 (77%)	158 (58%)



pro-employer	34 (23%)	113 (42%)
	148 (100%)	271 (100%)

What remains to be explained here is why the large appointment date effect present in the original analysis disappears when only Protestant justices are considered. This is all the more surprising since the vast bulk of the votes in the original dataset were cast by Protestant justices.

However, the relevant cross tabulation set out in Table 5.4 suggests an explanation. Although there is a large change in the percentage differences between justices appointed during the two appointment eras, it turns out that there were only 22 votes involving Protestant judges in the post 1980 period (as opposed to 397 such cases in the pre-1980 period).

Table 5.4 Appointment era effect for Protestant Judges

	appointment date	
	before 1981	after 1981
pro-employee	262 (66%)	10 (45.5%)
pro-employer	135 (34%)	12 (54.5%)
	397 (100%)	22 (100%)

From a statistical perspective, the question then, is whether the relevant differences could plausibly be attributed to chance. In fact, the question here is directly analogous to the example of tossing a coin 22 times. If 10 of those coin tosses yielded “heads” and 12 yielded “tails” one would not in turn conclude that the coin must be biased. Clearly, the difference would be within a range that could plausibly be attributed to chance. The same logic explains why the percentage difference in liberal versus conservative outcomes for Protestant judges appointed after 1980 does not yield

statistical significance – there are simply not enough such appointees to provide a basis for statistical inference.

*Individual Voting-Catholic Religious Affiliation*

Regression six used the *Catholic* only database consisting of 89 individual votes categorized as conservative or liberal. The independent predictors were ideology, appointment era (1981 and later v. 1980 and earlier), and decisional era (1981 and later v. 1980 and earlier).

Among these predictors only the appointment era variable attained significance for the votes in this data base. It showed a large effect size of 9.416. The direction of this output was consistent with that observed for entire 531 individual vote data base, the individual non-unanimous decision data base, the Republican-only individual vote data base, and the individual Democratic-only data base: appointment era mattered and later Catholic appointees voted more conservatively than the earlier ones.

However, here it was found that whereas appointment date continued to be a predictor of voting direction, there was no longer any ideology effect.

To understand this result more completely a cross-tabulation was performed on the dataset comprising only Catholic judges, just under 17% of all the votes. It appears in Table 5.5 below. With respect to appointment era, the relevant cross tabulation is shown immediately below, which shows a huge difference in the voting direction (58%) of judges appointed before and after 1980, consistent with the results from the full dataset.

Table 5.5 Appointment Era Effect for Catholic Justices

	appointment date	
	before 1981	after 1981
pro-employee	41(80%)	8 (22%)

pro-employer	10 (20%)	28 (78%)
	51 (100%)	36 (100%)

What remains to be explained here is why the ideology effect present in the original analysis disappears when only Catholic judges are considered. However the relevant cross tabulation set out in Table 5.6 suggests an explanation very similar to that just given for the apparently anomalous results in the Protestant-only database. Here, we have only 3 cases involving Catholic judges appointed by Democratic Presidents. Clearly this is a not a large enough number of cases to provide a basis for any statistical inference.

Table 5.6 Ideology impact for Catholic Judges

	Ideology	
	Democratic	Republican
pro-employee	2 (67%)	47 (56%)
pro-employer	1 (33%)	37 (44%)
	3 (100%)	84 (100%)

Panel Voting/All Cases

Regression seven used the *decisional outcome* database for the 60 K-12 race discrimination cases under review. The independent predictors were number of Republicans on the panel, appointment era majority (1981 and later v. 1980 and earlier), decisional era (1981 and later v. 1980 and earlier) and number of Protestants, Catholics and Jewish justices each serving as separate independent variables.

### *Number of Panel Republicans*

The number of Republicans on the panel was the only variable that achieved significance in the panel regression. The effect size output indicates that for each additional Republican appointed justice on the panel, the odds of a conservative (pro-school district) vote is 3.27 times greater. This suggests not only the continuing viability of the attitudinal/ideological model, but reflects powerful group effects related to each Republican appointee who was added to the panel.

### *Religious Affiliation Panel Effects*

The number of Catholic justices (0-9), Jewish justices (0-9), and Protestant justices (0-9) did not achieve significance and were not a factor in the odds of a conservative case outcome. This means that as the number of justices affiliated with each of these variables increased from 0, there was no statistically significant increase in conservative voting was associated with such increase and apparently no meaningful influence on outcome either.

### *Appointment and Decisional Era Majority*

Neither the appointment era nor decisional era majority panel analysis reveal significant differences in the odds of pro-school district conservative voting. In each case the large standard errors [2.597, .890] associated with the B coefficients [-3.662, -.070] for the appointment era and decisional era majorities, respectively, suggest instability in the result and make it difficult to interpret the result with any certainty.

### *Religious Affiliation Variable*

No significant contribution of panel decisional outcome was observed when the number of Protestants, Catholic and Jewish justices were set up as independent predictors.

### *Reexamination of the Panel Outcomes*

A similar analysis to the cross-tabulations was conducted for the panel aggregate outcomes, a total of 60 cases in all. The question which lingers most forcefully here was why the appointment era effect in the database of individual votes did not carry over to the panel database?

Note that the appointment era effect was operationalized somewhat differently with respect to the panel database than the individual data bases. Here, the whole panel, comprising 9 judges each, must be coded as being either before 1981 or after 1980. As such, the appointment era refers to whether a *majority* of the judges were appointed after 1980, which immediately implies some dilution of the analogous individual effect.

This is not the real issue at stake, however. Table 5.7 shows the relevant cross tabulation. While again there appears to be a large difference in the voting trends of panels coded as before 1981 or after 1980, in terms of the raw numbers, there were only 7 panels out of the 60 involved panels a majority of which were appointed after 1980. Again, this is not a large enough number of cases to provide a basis for statistical inference. Consequently, no appointment era effect shows up when a logistic regression is performed on the panel database.

Table 5.7 Panel Decisions by Appointment Era Majority

	appointment era	
	before 1981	after 1981
pro-employee	35 (66%)	3 (43%)
pro-employer	18 (34%)	4 (57%)
	53 (100%)	7 (100%)

The relevant cross tabulation for decision date tells a similar story in Table 5.8. The difference in voting trends for those panels in which a majority was appointed after

1980 applies to only 19 cases. The same question arises as to whether the apparent percentage differences could plausibly be attributed to chance. Resoundingly, the answer is the same.

Table 5.8 Judicial Decisions by decision date

	decision date	
	before 1981	after 1981
pro-employee	30 (73%)	8 (42%)
pro-employer	11 (27%)	11 (58%)
	41 (100%)	19 (100%)

#### Panel Voting/Non-Unanimous Cases

Regression eight used the *decisional outcome* database for the 34 non-unanimous K-12 race discrimination cases under review. The independent predictors were number of Republicans on the panel, appointment era (1981 and later v. 1980 and earlier), and decisional era (1981 and later v. 1980 and earlier).

None of the independent variables set up in the non-unanimous decisional model produced significant differences in the odds of conservative pro-school district panel outcomes.

A similar cross-tabulation analysis to those described above was conducted for the 34 non-unanimous cases. The surprise here was why the composition of the panel, operationalized here in terms of the number of Republicans on the panel, did not appear to yield any effect, when the role of ideology has been a reliable predictor in both the individual and panel databases considered thus far.

This again comes down to an issue of having a large enough N to yield the desired statistical power. For some perspective on this, for a standard level of desired statistical power of .8 (i.e., to have an 80% probability of correctly rejecting a false null hypothesis), one would need an effect size (measures in terms of an odds ratio) of well over 6 when the sample size is as small as 34.

The relevant cross tabulation contained in Table 5.9 shows the raw data. Again, the numbers are too small to support statistical inference and even then, there is nothing that indicates any steady linear effect.

Table 5.9 Case outcome by Panel Composition (number of Republicans)

	4	5	6	7
pro-employee	2	0	2	11
pro-employer	0	2	2	15

#### Conclusion

This study investigated the influence of political ideology, appointment era, decisional era, and religious affiliation on voting at the United States Supreme Court in K-12 race discrimination cases. Although examination of the effects of these variables on Supreme Court justices' voting this type has been done before, it has never been done through the lens of race discrimination cases involving students in a K-12 educational setting.

The principal findings for this group of K-12 decisions covering the period 1954-2013 are:(1) justices appointed by Republican presidents voted significantly more often in a conservative pro-school district direction in K-12 race discrimination disputes than justices appointed by *Democratic* presidents; (2) justices appointed in 1981 and later [the

Reagan and later appointees] voted significantly more often in a conservative pro-school district direction in K-12 race discrimination disputes than justices *appointed* in 1980 and earlier; (3) no significant overall differences in conservative pro-school district voting was observed in conservative pro-school district voting between the 1981 and later period and the 1980 and earlier period; (4) Republican justices appointed during 1981 and later years voted significantly more often in a conservative pro-school district direction than Republican justices appointed during 1980 and earlier years; (5) Democratic justices appointed during 1981 *and later years* voted in a significantly more often in a conservative pro-school district direction than Democratic justices appointed during 1980 and earlier years; (6) Mainline Protestant justices appointed by a Republican presidents voted significantly more often in conservative pro-school district direction in K-12 race discrimination disputes for the period 1964-2013 than Mainline Protestant justices appointed by Democratic presidents; (7) no significant differences in conservative pro-school district voting in K-12 race discrimination disputes were observed between Mainline Protestant justices appointed in 1980 and earlier and those appointed in 1981 and later; (8) no significant differences in conservative pro-school district voting was observed between the Catholic justices appointed by Republican presidents and Catholic justices appointed by Democratic presidents; (9) Catholic justices appointed during 1981 and later years voted in a conservative pro-school district direction significantly more often than the Catholic justices appointed during 1980 and earlier years; and (10) conservative pro-school district panel outcomes increased significantly as the number of Republican justices on a panel increased.

The attitudinal model proposed by Segal and Spaeth was largely supported by the results of this study. Segal and Spaeth propose that a justices' "ideological attitudes and values" (2002, p.86) are what inform Supreme Court judicial voting.



Overall, appointment era and party-ideological influences exerted a statistically significant effect on the justices' individual voting. The ideological and appointment era effects were robust and unchanging, suggesting that the attitudes of justices in K-12 race discrimination questions are relatively fixed. On the other hand religious affiliation bore little relationship to the voting.

Although decisional era effects on individual voting were not significant at the .05 alpha level, the large standard errors and small number of cases occurring in the 1981 and later period implicated uncertainty in the results and a limitation of this study. Nevertheless, some subsequently conducted cross-tabulations suggested possible decisional era effects independent of appointment era effects. Increasing the size of the data base outside of K-12 settings could solve this problem and enable greater understanding of decisional era influences separate from those associated with appointment era effects.

The number of Republicans sitting on the Supreme Court had a positive and significant effect on the Supreme Court's conservative pro-school district panel voting.

The results in this study confirmed the continued viability of attitudinal theory as a predictor of Supreme Court justices' voting and extended the literature to K-12 educational settings in race discrimination type disputes. Moreover, this research illustrated the importance of justices' appointment date as a predictor of the justices' voting, an indicator which is underemphasized in the existing research.

That said, the multiple predictors accounted for a relatively small percentage of the variance in conservative-pro-school district voting. Future researchers may wish to add more specified legal indicators to the independent variables used to see if they add to the robustness of the model.

## Appendix A

## Appendix A

### Review of Cases

#### *Plessy v Ferguson (Equal Protection) (race)*

Petitioner Homer Plessy argued his thirteenth and fourteenth amendments rights were violated when respondent Judge John H. Ferguson of Orleans parish Louisiana ruled that the State of Louisiana had the right to regulate railroad traffic in their state and require railroads to segregate passengers when in their state. Plessy was one-eighth African American and when he boarded the coach on the East Louisiana Railway, he took a seat in the car for white passengers only. He was asked to move to the non-white coach and when he refused he was arrested and forcibly removed. Judge Ferguson ruled the state had the right to enforce segregation laws on railroad companies as long as they are in the state boundaries.

The court ruled 7-1 in rejecting both of Plessy's arguments. The court found Plessy's fourteenth amendment rights were not violated nor were his thirteenth amendment rights violated.

#### *Cumming vs. County Board of Education (equal protection) (race)*

Petitioner Cumming argued their fourteenth amendment rights were violated when the respondent Richmond Georgia County Board of Education levied a Tax to maintain and improve the segregated white high school and not the non-white schools. They argued this was a violation of the equal protection clause because the school taxes created an inequitable system of education for colored children. The Supreme Court decided the petitioners' Fourteenth Amendment rights were not violated and therefore this was a States issue and was not in the Supreme Courts interest to interfere with state taxation unless the fourteenth amendment rights were clearly violated.

*Farrington vs. Tokushige (due process) (national origin/race)*

Petitioner Farrington argued that the permit required to teach foreign language to students was not in violation of the due process clause of the fifth and fourteenth amendments and asked the injunction temporarily preventing the enforcing of the permits be lifted. Respondent Tokushige had successfully petitioned for an injunction in lower courts and argued the act denied them due process and would deprive them of liberty and property. The Supreme Court found that the fifth amendment does apply to private schools and they should be afforded the same protection from the Federal Government as are in public schools. The court also held the fourteenth amendment affords protection to private schools from interference from the states.

*Gong Lum v Rice (equal protection) (race)*

Petitioner Gong Lum claimed his daughter, Marta Lum's, fourteenth amendment rights were violated when she was not allowed to attend an all white school in Mississippi. The respondents claim that the state's statutory laws do not deprive Martha Lum from attending school; they simply prohibit her from attending the all-white school. The Supreme Court held Lum's Fourteenth Amendment rights were not violated because she was not denied education. Plessy v. Ferguson was cited as precedent for the constitutionality of public school segregation.

*Brown v Board (equal protection) (race)*

Petitioner Oliver Brown argued that the segregation of Kansas public schools was unconstitutional as "separate but equal" facilities violated the equal protection clause of the fourteenth amendment. The Supreme Court unanimously found that the "separate but equal facilities are inherently unequal" and that segregation of public schools is unconstitutional. This overturned Plessy v Ferguson.

*Bolling v Sharpe*

A group of parents in Washington D.C. formed a group called Consolidated Parents Group and petitioned the Washington D.C. school district to allow the new school being built to be an integrated school. They were denied and petitioned the Supreme Court under the Due Process Clause of the Fifth Amendment which applies to the government as opposed to the fourteenth amendment which applies to states. The court found that segregation holds no compelling governmental interest and ruled school segregations unconstitutional under the due process clause of the fifth amendment.

*Cooper v Aaron*

In response to Brown v board, The Governor of Arkansas and the Legislature amended the constitution to try to avoid desegregating schools. The Little Rock school board and superintendent petitioned the courts to allow them a two-year phase-in of the desegregation plan because of safety concerns for the students. They were granted the motion however it was overturned on appeal. The Supreme Court restated that the equal protection clause made segregation unconstitutional and most importantly, ruled that states are bound by supreme court decisions based on the Supremacy clause of article VI of the constitution.

*Goss v Board of education*

A group of African American students sued their local Tennessee school board under the fourteenth amendment based on the district's desegregation plan which has a provision to allow transfers for students who request them based strictly on race and with the purpose of placing them in a school where they are the majority race. The Supreme Court reversed the court of appeals decision based on the inevitability of this race based provision leading to segregation and cited Brown v Board.

*Griffin v County school board*

A group of African American Students brought a case seeking to enjoin funding from the private schools. The county board of Prince Edward County had devised a plan to close the public school system and use the public and state funds to support private schools that would not admit minorities in order to keep schools segregated. The injunction was granted in district court but overturned on appeals. The Supreme Court granted certiorari under the violation of fourteenth amendment. The district court decision was affirmed.

*Bradley v School Board of Richmond*

The petitioners were granted expenses and attorney's fees in part under *Green v County School Board of New Kent County*. *Green v County* held that freedom of school choice plans, like the one adopted in Richmond, were improper when other methods were available to speed up the process. The slow process caused the petitioners to incur costs as the district court did not implement the petitioners plan. Certiorari was granted under the Education Amendments Act of 1972 which grants federal courts the authority to award the prevailing party attorney's fees when in final stages of desegregation cases.

*Rogers v. Paul, 382 U.S. 198 (1965) Decided December 6, 1965*

Two African American students petitioned the courts in Fort Smith Arkansas to allow them to transfer to another all white school. There were three issues raised in the petition. The first dealt with segregation based on race. The second dealt with the segregation of faculty in the schools. The third dealt with courses offered at the white campus that were not offered at the non-white campus. Also in question was the motion to add parties to the case because the original students were graduated or seniors. The court ruled the segregation based on race was unconstitutional citing *Brown v. Board*. The Supreme Court also ruled that race based faculty allocation denies equal educational

opportunities. They held that students could be granted immediate transfers to access the more rigorous curriculum.

*Green v. County School Board of New Kent County 391 U.S. 430 Decided May 27, 1968*

The New Kent County school board was forced to segregate even in the wake of *Brown v. Board* by statutes put in place by the Virginia Government in an attempt to circumvent *Brown*. The New Kent Board enacted a plan called “freedom of choice” which essentially allowed student to apply to attend the white campus or the non-white campus. The Supreme Court cited *Brown II* in stating that the freedom of choice acts did not go far enough and were not desegregating the schools with the “deliberate speed” required by *Brown II*.

*Raney v. Board of Education 391 U.S. 443 May 27, 1968*

The school board of Gould County Arkansas adopted a freedom of choice plan like in *Green v. board*. They still maintained segregated schools. There were 28 African American students denied transfer to the all-white campus based on space availability. They filed for injunctive relief based on requirement to attend a specific campus, inferior facilities at the non-white campuses, and the overall segregation of the school system. The court found the school board in violation of *Brown I* and *II* and *Green v. County School Board*.

*Monroe V. Board of Commissioners of City of Jackson 391 U.S. 450 May 27, 1968*

The Jackson Schools were operating under a segregated system. The board developed a court ordered system to remedy the system of segregation which included automatic assignment to schools based on attendance zones and a free transfer provision. The intent was to start at the elementary campus and within a four year window, move the system to the upper grades. The elementary school was still segregated after one year. The petitioners claimed the plan was administered in a way to

gerrymander the districts and to deny free transfer to other campuses. The court cited Green V. County School Board in its ruling and found the free transfer system would only serve to delay integration.

*United States v Montgomery County Board of Education 395 US 225 June 2, 1969*

The district court ordered Montgomery County Board of Education to desegregate the faculty and students on the Montgomery County School District. The Board appealed the decision and it was upheld with modifications. The Supreme Court felt the respondents and petitioners were not far apart in their arguments and upheld the appeals court's decision to modify the District Courts ruling.

*Alexander v Holmes County board of Education 396 US 19 October 29, 1969*

Southern states were using the "all deliberate speed" wording in Brown II to slowly desegregate if at all. The appeals courts ordered the US department of Health, Education, and Welfare to draft a desegregation plan for Mississippi. The Department completed the plan but asked the courts to delay implementation. The Supreme Court heard the case and ruled school districts must develop desegregated schools immediately.

*Dowell v Board of Education 498 US 237 Jan 15, 1991*

The Oklahoma City Public Schools wanted to redraw school boundaries. The he district court approved the plan and ordered the district to submit a desegregation plan shortly thereafter. An appeals court overruled the district court and said the plan presented by the school board was not appropriate. The Supreme Court overturned the appeals court decision should have allowed the district's plan to continue. The intent of the court was to maintain local control over school and end federal desegregation orders.

*Carter v West Feliciana Parish School Board 396 US 226 December 13, 1969*



Three districts in Louisiana sought injunction from the courts to delay the February 1<sup>st</sup> 1970 deadline to desegregate per Alexander v Holmes County. The appeals court granted the extension. The Supreme Court heard the case and citing the ruling in Alexander v. Holmes County Board of Education overturned the appeals court decision and upheld the February 1, 1970 deadline to desegregate.

*Northcross v Board of Education 397 US 232 March 9, 1970*

The Memphis Board of Education was ordered by a district court to desegregate by January 1, 1970 and to provide enrollment maps and data. The decision was overturned on appeals on grounds that the Board had developed a unitary system and therefore Alexander v Holmes did not apply. The Supreme Court ruled that there was no data submitted to verify desegregation and the school district was operating a dual system. They denied injunction and ordered certiorari.

*Griggs v Duke Power Co, 401 US 424 March 8, 1971*

The court granted a writ of certiorari to the appeals court based on the Civil Rights Act 1967 title VII. The Duke Power Company had a history of discriminatory hiring and race-based promotion. The Power Company had five departments in the hierarchy and African Americans were mainly hired into the lowest ranked jobs in the system. When the Civil Rights Act was implemented, the Duke Power Company instituted entry requirements to promotion and hiring practices. In order to gain promotion, you must have a high school diploma and score satisfactorily on an IQ test. Being that this would predominantly exclude African American candidates who traditionally attended inferior schools.

*Williams v Mcnair 401 U.S. 951*

This case involves schools which are restricted to one sex. Court found that a limited number of state schools are segregated by gender is constitutional if the program offered is of interest to mainly one gender.

*Swan V Charlotte Mecklenburg Board of Education 402 U.S. 1*

When the school district failed to desegregate, the district court ordered the district to group schools so that the racial make-up of each campus was roughly the same as the population of the city which was 29% African American and 71% white. The case was appealed to the supreme court which ruled that district courts have the authority to force districts to follow a plan to desegregate when they fail to do so. This was due to the equal protection clause of the fourteenth amendment as interpreted in *Brown v Board*.

*Davis v Board of School Commissioners 402 U.S. 33*

In Mobile Alabama, the school district was under a federal desegregation plan. At issue is the highway that divides the city. A majority of the African American population lives on one side of the highway. The desegregation plan treated each side of the highway separately because of student safety concerns. The Supreme Court found that desegregation plans need to go beyond neighborhoods when necessary and bussing is acceptable in order to desegregate. The equal protection clause of the Fourteenth Amendment was cited as precedent.

*North Carolina Board of Education v Swann 402 U.S. 43*

This case was heard along with *Swann V Charlotte- Mecklenberg*. In this instance, the state passed anti-bussing laws and the Supreme Court found that anti-bussing laws designed to avoid desegregation are unconstitutional on the grounds that laws designed to obstruct segregation do not meet the intent of *Brown v Board*.

*McDaniel v Baresi 402 U.S. 39*

Clark County School District devised a plan to bus students in order to achieve desegregation. A group of white parents petitioned the court for injunction based on the equal protection clause of the fourteenth Amendment and that bussing is treating students differently based solely on race and it violates Title IV of the Civil Rights Act. The Supreme Court found that this is permissible for the intent of creating a unitary school system. The court found it did not violate Title IV because Title IV applied to federal not state entities and that the equal protection clause of the Fourteenth Amendment was intended for exactly this purpose.

*Spencer v. Kugler 426 U.S. 1027*

The Supreme Court affirmed that de facto segregation due to population shifts is constitutional if the state has an acceptable plan to desegregate in place.

*Wright v. Council of Emporia 407 U.S. 451 June 22, Equal Protection*

The city of Emporia changed its designation from town to City in order to be able to operate their own school system. They decided to remain part of the county school system even though they could operate their own system. When *Green v. County* was decided by the Supreme Court, Emporia withdrew from the county school system with the purpose of remaining segregated by only schooling students within their city limits. This created a segregated school system within the county. The Supreme Court held that they were not concerned with the intent of the leaders but the outcome of their actions which violated the fourteenth amendment. They ruled with district courts and overturned the appeals court verdict.

*United States v Scotland Neck City Board of Education 407 U.S. 484 March 1, 1972*

*Equal Protection*

Scotland Neck wanted to start its own school district and remove itself from the Halifax school system which was in the process of desegregating. The supreme court found that Scotland Neck starting its own school system would hinder the desegregation process and is therefore unconstitutional. *Wright v Emporia* is a similar case.

*Keyes v School District # 1, Denver Colorado 413 U.S. 189 June 21, 1972 Equal*

*Protection*

This case identified segregation in Northern States and involved the school district which was partially segregated. Although much of the school district is desegregated when portions of the district are segregated, it is the burden of the school district to prove it did not act with intent to segregate.

*Northwood v Harrison 413 U.S. 455 1973 Equal protection*

Mississippi provided all students in the state free textbooks regardless of whether they attended public or private schools. The public schools were under orders to desegregate and the Supreme Court found that providing free textbooks to segregated private schools constitutes state support for discrimination and violates the fourteenth amendment.

*Lau v Nichols 414 U.S. 563 January 21, 1974 Equal Protection*

Lau claimed their rights were violated under title VI of the Civil Rights Act of 1964 because the schools were not providing the students with instructional help to compensate for their lack of English language. The Supreme Court held that the students' fourteenth amendment rights were violated. This case expanded the rights of English language learners across the nation.

*Cleveland Board of Education v Laflaur* 414 U.S. 632 January 21, 1974 Due Process (5 and 14)

The Supreme Court found that required maternity leave for Women in the public schools of Cleveland was unconstitutional and violated the due process clause of the fifth and fourteenth amendments. This was in part because the requirement was arbitrary and not based on medical information.

*Mayor of Philadelphia v. Educational Equality League* March 25, 1974 415 U.S. 605

The mayor of Philadelphia appoints a board that in turn recommends school board candidates. The case was brought to the district court claiming that the mayor had discriminated against African American candidates. The district court dismissed the case on grounds there was no proof of discrimination. The appeals court overturned. The Supreme Court held that the appeals court erred in overturning the case because a violation of the fourteenth amendment was not proved.

*Gilmore v. City of Montgomery* June 17, 1974 417 U.S. 556

A group of African Americans sued the city of Montgomery for operating segregated city parks and pools. They won in both the district and appeals court. After the cases were decided, the city worked with local groups like the YMCA to segregate facilities once more. Again, the courts found this to be unconstitutional. This case involves the next attempt of the city to maintain segregated pools by offering exclusive access to groups that operated as segregated. The Supreme Court held that the city violated the fourteenth amendment by giving exclusive access to segregated groups.

*Milliken v Bradley* 418 U.S. 717 July 25, 1974 Equal Protection

The court defined the difference between de jure and de facto segregation in this case. Detroit schools were segregated and a plan was introduced to include bussing and 53 surrounding schools to help desegregate Detroit schools. The Supreme Court found it

impermissible to involve surrounding schools in the desegregation plan of Detroit when it cannot be shown they had anything to do with Detroit's segregated system. They remanded the case for decree.

*Washington v. Davis June 7, 1976 426 U.S. 229*

Petitioners claim the District of Columbia's police recruiting policy and written test are in violation of the due Process Clause of the Fifth Amendment, 42 U.S.C. § 1981, and D.C.Code § 1-320. The test given was disproportionately failed by African American applicants. The Supreme Court held that the appeals court erred in claiming violation of due process under Title VII. The discrimination was not invidious just because a disproportionate amount of African Americans failed the test.

*Runyon v McCrary June 25, 1976 427 U.S. 160*

A private school was denying admission to African American students strictly based on race. The suit was brought on the grounds the denial of admission violated Title 42 section 1981 under the civil rights act of 1866. The Supreme court held that private, non-sectarian, commercial schools cannot deny admission based on race. The first amendment does not allow schools to discriminate based on their segregationist views which are protected. Essentially, you can believe that segregation is best but you cannot discriminate simply because you believe it is best

*Pasadena City Bd. of Educ. v. Spangler June 28, 1976 427 U.S. 424*

Pasadena schools had been ordered to desegregate and developed a plan. The district court ordered Pasadena Schools to create schools with "no majority" and found they violated the fourteenth amendment. The supreme court held that "no majority" clause was ambiguous and the racial makeup of the schools was a result of neighborhood demographic patterns and not an intentional action to segregate by Pasadena schools.

*Village of Arlington Heights v. Metropolitan Housing Development Corp.* January 11, 1977 429 U.S. 252

The Metropolitan housing development corporation was contracted to build low-income integrated housing. They were denied by the village of Arlington Heights in part because of a zoning regulation forbidding multi-house facilities in the area. The suit claimed violation of the Equal Protection Clause of the Fourteenth Amendment and the Fair Housing Act. The Supreme Court held they did not prove a violation of the Fourteenth Amendment. Disproportionate impact on a specific racial group does not necessarily constitute discrimination. "A racially discriminatory intent, as evidenced by such factors as disproportionate impact, the historical background of the challenged decision, the specific antecedent events, departures from normal procedures, and contemporary statements of the decision makers, must be shown." FROM THE DECISION Pp. 429 U. S. 264-268.

*Teamsters v. United States* 431 U.S. 324 May 31, 1977

The United States brought suit under Title VII of the civil rights act of 1964 claiming the teamsters practice of hiring and promotion discriminated against minority candidates. The Supreme Court held the United States met the burden of proof and ruled that Title VII had been violated and awarded retroactive seniority.

*Milliken v. Bradley* 433 U.S. 267 June 27, 1977

The supreme court held that the district courts requirement to provide compensatory education services for past de jure segregation is constitutional. They also held that

"The Tenth Amendment's reservation of non-delegated powers to the States is not implicated by a federal court's judgment enforcing the express prohibitions of unlawful state conduct enacted by the Fourteenth

Amendment, nor are principles of federalism abrogated by the decree.

P. [433 U. S. 291.](#)”

*Hazelwood School District v United States 433 U.S. 299 June 27, 1977*

The United States brought suit against Hazelwood School District claiming the district's hiring practices were intentionally discriminatory and violated title VII of the civil rights act of 1964. The district court found the government failed to establish and intentional pattern of discrimination. The appeals courts found that the statistical analysis of populations of teachers in the district compared to those in the job market was not used properly. The Supreme Court held that the appeals court did not properly compare the hiring practices before and after title VII and should have remanded the case back to district courts for further analysis.

*Dayton Board of Education v Brinkman 443 U.S. 526 July 2, 1979*

Petitioners allege the Dayton Board of education is operating a segregated school system in violation of the equal protection clause of the Fourteenth Amendment. The Supreme Court held that they had no basis to change the ruling of the appeals court that the board had failed to meet the intent of Brown v Board and never attempted to desegregate and dismantle the dual school system in violation of the fourteenth amendment.

*Nashville Gas Co. v. Satty 434 U.S. 136 December 6, 1977*

The petitioning employer practices required *inter alia* pregnant employees to lose all seniority and upon return from pregnancy, they were only granted a temporary job. The Supreme Court held that these practices were in violation of section 703(a) (2) of Title VII. Although neutral on the surface, women are not afforded the same protection as men because pregnancy is specifically affected by this practice.



*Regents of the University of California v Bakke 438 U.S. 265 June 28, 1978*

University of California medical school had a special committee to admit candidates from a pool of disadvantaged minority candidates. The students selected by this committee competed against one another and not the general pool of applicants and could be admitted with lower scores than the general pool applicants. A disadvantaged white student filed injunction for his admission to the university based on a violation of the equal protection clause of the fourteenth amendment and title VI of the civil rights act of 1864. The Supreme Court affirmed the lower court decision to admit him to the medical school and to invalidate the special admissions process. The Supreme Court also reversed the lower court and ended race based admissions.

*Southeastern Community college v Davis 442 U.S. 397 June 11, 1979*

A hearing impaired individual applied for admission to Southeastern Community College and was denied admission because the college felt her disability made it impossible for her to safely complete the clinical requirements. Suit was filed alleging *inter alia* in violation of section 504 of the Rehabilitation Act of 1973. This section of the law forbids entities that receive federal funds from discriminating solely on disability *inter alia*, a violation of § 504 of the Rehabilitation Act of 1973, which prohibits discrimination against and a handicapped person (who is otherwise able to perform the task) solely based on their disability.

The Supreme Court held that nothing in section 504 prevented an educational institution from placing physical qualifications for admission. The court also held that disability does not assume inability to perform the physical tasks, section 504 does not impose and affirmative action obligation on institutions receiving federal funds, and

section 504 does not hold institutions accountable to lower standards or to make substantial modifications to support a handicapped individual.

*United Steelworkers of America, AFL-CIO-CLC v. Weber* 443 U.S. 193 June 27, 1979

The collective bargaining agreement which was designed to increase the number of African American employees used a fifty percent rule to ensure that minority candidates were hired until the number reached a proportion similar to the local labor market. When a more senior white employee was passed over for a position by a less senior minority candidate, he sued claiming violation of § 703(a) and (d) of Title VII of the Civil Rights Act of 1964. The Supreme Court held "Title VII's prohibition in §§ 703(a) and (d) against racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans". Pp. 443 U. S. 200-208.

*Columbus Board of Education v U.S.* 449 July 2, 1979

Columbus Board of Education was operating a segregated school system in violation of the 14<sup>th</sup> amendment. The district court and appeals court agreed that the segregation in Columbus was "the direct result of cognitive acts or omissions of those school board members and administrators who had originally intentionally caused and later perpetuated the racial isolation" (supreme justia). The Supreme Court held there was no reason to disturb the district court's ruling; The Board did not prove they were not operating a dual system, the district court in ruling that there was no proof that the Due Process clause of the 14<sup>th</sup> amendment was violated.

*Dayton Board of Education v Brinkman (Dayton II)* 443 U.S. 526 July 2, 1979

Dayton I found that the past actions of the board were responsible for segregation and the district did not remedy the situation. Dayton II was the result of Dayton I and the Supreme Court found that the boards remedy for segregating was acceptable and the board had a continuing responsibility to desegregate.

*Board of Education v Harris 444 U.S. 130 November 28, 1979*

The city School District of New Your was found to have discriminatory racial assignment of minority teachers to schools with respect to minority population in said schools. The Supreme Court held that the intent of the ESAA law is discriminatory impact and taking the intent of the law to mean that only schools with a history of discrimination apply is not the intent of the ESAA act. They also held that it is the responsibility of the petitioning board to disprove statistical evidence for discriminatory practices.

*Board of Education v Rowley 458 U.S. 176 June 28, 1982*

A hearing Impaired child was denied an interpreter to aid in her education. She was provided with hearing assistive devices. She performed better than her peers but the petitioners argued she was not meeting her potential and her ability did not match her performance. The Supreme Court held, *inter alia* that the state was only required to provide access to education and not to maximize educational potential.

*Washington v Seattle School District No. 1 458 U.S. 457 June 30, 1982*

The State of Washington enacted a law that prohibited bussing students for any reason except special education, dangerous schools, overcrowding, or poor physical facilities. The Supreme Court held that the States law must fall because it used a racial component in its decision to enact the law thus creating an undue burden on minority students.

*Crawford v Board of Education 458 U.S. 527 June 30, 1982*

In 1970 the courts determined that the City of Los Angeles had *de jure* segregation in violation of the equal protection clause of the California state constitution. In 1979 the California voters passed Proposition I which does not allow the courts to reassign pupils unless there is a violation of the Equal Protection clause of the fourteenth amendment. The Supreme Court held Proposition I does not violate the Fourteenth

Amendment. This is because California did more than the Fourteenth Amendment to remedy segregation and this proposition only served to repeal where California went above and beyond the Fourteenth Amendment.

*Grove City College v. Bell* 465 U.S. 555 February 28, 1984

Grove City College did not receive any direct federal money and contended they were not bound by Title IX. They did however accept Basic Educational Opportunity Grants under the Federal Department's Alternative Disbursement System. This money was granted to students and found its way into the college. The Supreme Court held that the College was in violation of Title IX and was subject to denial of funds from the Federal Government.

*Irving ISD v. Tatro* 468 U.S. 883 July 5, 1984

Amber Tatro was a child with Spina Bifida and needed intermittent catheterization. Because Irving ISD received federal funds, they were obligated to provide a free and appropriate education under the Education of the Handicapped act. Irving ISD refused to provide catheterization to Amber Tatro. The Supreme Court held that catheterization was a "related service" under the Education of the Handicapped Act and she was entitled to the service.

*Smith v Robinson* 468 U.S. 992 July 5, 1984

A boy with Cerebral Palsy was told by the School Committee that they would no longer fund his special education placement. They sued for violation of the Education of the Handicapped act, section 504 of the Rehabilitation Act of 1973, and on 42 U.S.C. § 1983. The court found the School Committee violated their right to a free and appropriate education but that they would not receive their attorney fees because they did not exhaust their Equal Protection claim under EHA and circumvented the process by their 504 and 1983 claims.

*Burlington School Committee v Department of Education* 471 U.S. 359 April 29, 1985

A child's father did not approve of the proposed IEP plan and enrolled his child in private school. The Act in 20 U.S.C. § 1415(e) (2) and (e) (3) provides for parents to receive relief from the courts and will allow them to remain in their current placement until the IEP is enacted. Although the parents removed the child from his current placement, the Supreme Court held that the school district had to pay for the private school for the years 1979 and 1980 because they eventually agreed that the private school was the best placement. Importantly, if the results would have been different and the private school setting was not the ultimate decision, the cost of that school year would be on the parents.

*Wygant v Jackson Board of Education* 476 U.S. 267 May 19, 1986

In a collective bargaining agreement, those with most seniority would be retained in a layoff scenario unless a larger percentage of minority teachers would be laid off as a result. When layoffs happened, some minority teachers with less seniority were retained while non-minority teachers with greater seniority were laid off. The white teachers sued claiming a violation of the Equal Protection Clause. Supreme Court held that this did not meet the strict scrutiny and did not have a compelling state purpose. This would have been constitutionally valid if there was evidence of past discrimination.

*Local 28 of the Sheet Metal Workers' International Association. Equal Employment Opportunity Commission* 478 U.S. 421 July 2, 1986

In 1975 the petitioner was found guilty of violating the Title VII of the Civil Rights Act of 1964 in its practice of recruitment, training, hiring, and admission to the union. They were required to develop a 29% non-white workforce which is equivalent to the local labor pool. Petitioners were given a deadline of June 1981; they were granted extension and eventually held in contempt for not meeting the court orders. They were

fined and ordered to create a fund to ensure the local labor force represented in the workforce. The Supreme Court upheld the judgment of the appeals court which found the non-white membership goals and fine were appropriate.

*United States v. Paradise* 480 U.S. 149 February 25, 1987

In 1972, the courts ordered the Alabama department of public safety to create a system of promotion that does not discriminate against black candidates. By 1979, no blacks had been promoted. The court ordered the department to ensure that 50% of the new promotions be African American applicants. The appeals court overturned on grounds it violated the 14<sup>th</sup> amendment's equal protection clause. The Supreme Court overturned the ruling on grounds the 50% quota had a compelling governmental interest in eradicating the past discrimination.

*School Board v Arline* 480 U.S. 273 March 3, 1987

A teacher had tuberculosis in 1957 and had relapses in the 1980's. She was terminated for having a contagious disease. She filed suit based on violation of section 504. The Supreme Court held that her contagious respiratory disease was a handicapped condition based on the fact that tuberculosis limited a major life function (a condition of section 504) and she established a history of impairment. The contagious nature of her condition did not disqualify her from being disabled. They also ruled that the courts did not prove that her handicap was "otherwise qualified" under section 504.

*Honig v Doe* 484 U.S. 305 January 20, 1988

Two students with emotional disturbances were expelled from school for incidents related to their disability. The Supreme Court held that under 1415(e)(2) and (e)(3), the child was allowed to stay in current placement and seek relief from the courts and the school did not grant them their rights to be involved in the placement of their disabled child.

*Dellmuth v Muth* 491 U.S. 22 June 15, 1989

A boy's parents disagreed with the districts IEP and removed the child to private school pending a hearing. The hearing was delayed and eventually, the IEP was upheld. The respondents petitioned the courts for violation of the Education of the Handicapped act. The Supreme Court held the EHA did not abrogate the Eleventh Amendment for states.

*Missouri v. Jenkins*, 491 U.S. 274 491 U.S. 274 June 19, 1989

A group represented by the NAACP appealed for attorney's fees based on current market values and not value at the time of the case under Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. § 1988) because the state was slow in paying the fees awarded. The Supreme Court held the eleventh amendment does not forbid enhancement of a fee.

*Franklin v Gwinnett County Public Schools* 503 U.S. 60 February 26, 1992

Franklin sued the school district under Title IX because she was subject to repeated sexual harassment by her teacher. The teacher resigned upon condition that the complaint was dropped and the school district ceases the investigation. District court ruled Title IX does not entitle the student to damages. The Supreme Court ruled that damages are available under Title IX and that it is enforceable through an implied right of action based on *Canon v University of Chicago*.

*Freeman v Pitts* 503 U.S. 467 March 31, 1992

In 1969 the District Court entered a consent agreement with DeKalb County Schools to oversee the implementation of a desegregation plan. In 1986, the district court found that the school system did achieve a unitary system with respect to student populations but did not meet the standard set forth in *Green v. School Ed of New Kent*

County in faculty assignment and resource allocation. The Supreme Court held that the District court could relinquish oversight in specific areas and retain oversight in others.

*Florence County School District four v Carter* 510 U.S. 7 November 9, 1993

Shannon Carter was a learning disabled student and her parents disagreed with the IEP. During the challenge to appeal the IEP, her parents enrolled her in the Trinity academy. They sued for tuition reimbursement. The District Court ruled that the IEP violated ADA and the placement in the private school was appropriate. The Supreme Court upheld the decision and held that a court may order reimbursement of tuition for private schools if the placement is appropriate.

*United States v Virginia* 518 U.S. 515 Decided June 26, 1996

Virginia Military Institute was sued by the U.S. government for refusing to accept female students. The Supreme Court held this policy to be a violation of the Equal Protection clause as it failed the strict scrutiny test and there was no proven compelling state interest in denying females admission.

*Gebser v Lago Vista ISD* 524 U.S. 274 Decided June 22, 1998

Gebser had a sexual relationship with one of her teachers. She sued for violation of Title IX which provided protection against discrimination. The School District fired the teacher but did not explicitly know of the relationship prior to the student complaint. The Supreme Court held that the school district cannot be held liable under Title IX because no one with the official capacity to act on the claim knew of the activity and they were not deliberately indifferent toward the issue.

*Bragdon v Abbott* 524 U.S. 624 Decided June 25, 1998

A woman with HIV went to the dentist and was told that she could have her cavity operated on in the hospital but would have to pay for the hospital use. She sued under



the Americans with Disabilities Act 1990. The supreme court held that HIV was a disability as it impaired a major life function, namely reproduction.

*Cedar Rapids Community School District v Garret F. 526 U.S. 66 Decided March 3, 1999*

A boy who was wheelchair bound and on a ventilator was denied enrollment in Cedar Rapids Community Schools on the basis they were not required to provide him a nurse. The Supreme Court held that the School must provide a nurse as a “related service” under IDEA.

*Davis v Monroe County Board of Education 526 U.S. 629 Decided May 24, 1999*

A female student filed suit under Title IX claiming sexual harassment by another student on campus. The District court and appeals court found that peer on peer actions are not subject to damages under Title IX. The Supreme Court held that student on student harassment can violate Title IX and damages can be sought only if the district has express knowledge of the situation and is deliberately indifferent to the actions. In this case, the Principal knew of the situation and had the authority to act on it. The case was remanded to the lower court.

*Gratz v Bollinger 539 U.S. 244 June 23, 2003*

The petitioners were denied admission to the University of Michigan and sued the school for violation of Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, and 42 U. S. C. § 1981 in part because the University had an admissions policy that granted 20 points out of 100 to those deemed “underrepresented minorities”. The Supreme Court held that the admissions policy concerning underrepresented minorities is not narrowly tailored and does not serve a compelling state interest.

*Grutter v Bollinger 539 U.S. 306 June 23, 2003*

Grutter filed suit against the University of Michigan Law school on grounds that the university discriminated against her based on her race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. § 1981. The Supreme Court held the narrowly tailored race based admission standard meets strict scrutiny and has a compelling state interest.

*Forest Grove School District v T.A. 557 U.S. 230 Decided June 22, 2009*

A private specialist deemed a child to have learning disabilities. His parents removed him from school and enrolled him in private schools. The parents then requested a hearing to determine eligibility for special education services. The school district contended that because he was not previously in special education they were not responsible to pay for his private school. The Supreme Court held that it is not necessary for the student to have previously been enrolled in a special education program to receive reimbursement when the placement in private school is appropriate.

## References

- Aldrich, J.H., & Nelson, F. (1995). *Linear probability and probit models*. Sage: Thousand Oaks, California: Sage.
- Chemerinsky, E. (2006). *Constitutional Law*. (2nd ed.). New York, NY, NY: Aspen.
- Bartels, B. L. (2010). Choices in Context: How Case-Level Factors Influence the Magnitude of Ideological Voting on the U.S. Supreme Court. *American Politics Research*, 39(1).
- Baum, L. (1992). *The Supreme Court*. Washington D.C.: Congressional Quarterly
- Brownlee, W.E., & Graham, H.D. (2003). *The Reagan presidency: Pragmatic conservatism and its legacies*. St. Lawrence : U.Press of Kansas. as reprinted in O'Brien, D.M. (2013). *Why many think that Ronald Reagan's court appointments may have been his chief legacy*, History news network. retrieved from <http://www.nn.us/articles/10968.html>.)
- Bergara, M., Richman, B., and Spiller, P.T., (2003). Modeling supreme court decision making: the congressional constraint. *Legislative Studies Quarterly*, 28(2), 247-280.
- Crawford, J. (2012). Roberts switched views to uphold healthcare law. Retrieved from [http://www.cbsnews.com/8301-3460\\_162-57464549/roberts-switched-views-to-uphold-health-care-law/](http://www.cbsnews.com/8301-3460_162-57464549/roberts-switched-views-to-uphold-health-care-law/).
- Frequently Asked Questions, (2013). Retrieved from <http://www.supremecourt.gov/faq.aspx#faqj9>
- Epstein, L., Landes, W.M., Posner, R.A. (2013). *The behavior of federal judges: A theoretical and empirical study of rational choice*. Cambridge. Harvard University press.

- Federal Judicial Center. (2014). Federal Judicial Center. Retrieved from:  
<http://www.fjc.gov/>
- Gerstein, J. (2013). John Roberts, the Supreme Court's chief peacemaker, retrieved from  
<http://www.politico.com/story/2013/06/john-roberts-doma-gay-marriage-conservative-push-93485.html>
- Karlan, P.S. (2002). Easing the spring: Strict scrutiny and affirmative action after the redistricting cases. *William and Mary Law Review*. 43(4).
- Key Supreme Court Cases for Civil Rights. (2013). Retrieved August 30, 2013, from  
<http://www.civilrights.org/judiciary/supreme-court/key-cases.html>.
- Kimball, J., Brown, R., Madrid, J.S., & Pandya, R. *The American bench 2013: Judges of the nation*. Dallas, Foster-Long
- Lemann, N. (2013). Deconstructing reconstructionism, *Washington monthly*, 45(12). 18-20
- McCarty, M.M., Cambron-McCabe, N.H., Eckes, S.E. (2013). *Public School Law: Teachers' and students' rights*. Boston: Pearson
- Mishler, W., Sheehan, R.S. (1996). Public opinion, the attitudinal model, and Supreme Court decision making: a micro-analytic perspective. *The journal of politics*. 58(1). p.169-200.
- O'Brien, D.M. (2003). *Storm Center: The Supreme Court in American politics*. New York: W.W. Norton and Company
- Oxford Dictionary. (2014). New York: Oxford University Press
- Perry, B.A. (1991). *A "representative" Supreme Court?: The impact of race, religion, and gender on appointments*. New York: Greenwood Press.
- Perry, H.W. (1991). *Deciding to decide: Agenda setting in the United States Supreme Court*. Cambridge, Massachusetts: Harvard University press.

- Pinello, D.R. (1999). Linking party to judicial ideology in American courts: A meta-analysis. *Justice systems journal*. 20(3), 219-240.
- Rehnquist, W.H. (1986). Constitutional law and public opinion from speech at Suffolk university law school in Boston April 10, 1986. p 40-41.
- Schubert, G. (1965). *The judicial mind*. Evanston: Northwestern Press.
- Segal, J.A. & Cover, A. D. (1989) "Ideological values and the votes of the supreme court justices. *American political science review*. 83(1) 557-565).
- Segal, J. A., & Spaeth, H. J. (2002). *The Supreme Court and the attitudinal model revisited*. Cambridge, UK: Cambridge University Press.
- Songer, D. R., & Tabrizi, S. J. (1999). The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts. *The Journal of Politics*, 61(2), 507.
- Spaeth, H.J., Brenner, S. (1990). *Studies in U.S. Supreme Court behavior*. New York: Garland.
- Sisk, M, & Heise, G. (2005). Judges and ideology: Public and academic debates about statistical measures. *Northwestern university school of law review*. 99(2). 743-767.
- Thimsen, S. (2003). A psychological analysis of United States Supreme Court voting patterns. Unpublished senior honors thesis, department of psychology, university of Kansas, Lawrence Kansas)
- Unah, I., & Hancock, A. (2006). U.S. Supreme Court Decision Making, Case Salience, and the Attitudinal Model. *Law Policy*, 28(3).
- Weiden, D.L. (2011). Judicial politicization, ideology, and activism at high courts of the United States, Canada, and Australia. *Political Research Quarterly*, 66(3), 335-337.

Weinshall-Margel, K. (2011). Attitudinal and Neo-Institutional Models of Supreme Court Decision Making: An Empirical and Comparative Perspective from Israel. *Journal of Empirical Legal Studies*, 8(3), 556-586.

Who's Who In American Law: 2011-2012, (2012). 17th ed. Who's Who in America

Wrightsman, L.S. (2006). *The psychology of the Supreme Court*. New York Oxford University press.

Wrightman, L.S. (2006) the psychology of the supreme court. Oxford press: new york\_

Zirkel, P.A., Richardson, S.N., & Goldberg, S.S. (2001). *A digest of Supreme Court cases affecting education*. Arlington, VA: Phi Delta Kappa International

### Biographical Information

Ryan McCoy is a lifelong educator. He has been a teacher and has held many different administrative jobs in the K-12 public education sector. He specializes in turning around at-risk and failing schools through a data-driven, student-centered process. He preaches the need to refocus educational systems by assessing weaknesses in student knowledge and curriculum programs. This allows schools focus on individual student needs and intensive interventions to fill in gaps. His academic research interests lie in educational law and best instructional practices. Ryan earned a bachelor degree from the University of North Texas in Geography with a minor in secondary education in 1999. He earned his master degree in educational leadership and policy studies from the University of Texas Arlington in 2009. His Ph.D. was conferred in 2014 from the University of Texas Arlington in K-16 leadership and policy studies. His future plans include continuing to improve educational outcomes for struggling students in public education and perhaps a university teaching position in the education preparation program.