The Pervasive Influence of Judges’ Political Affiliation on Circuit Court Decisions

To what extent can the ideological inclination of circuit court judges, as inferred from the party of the U.S. president who nominated them, help predict the outcomes of circuit court cases? Utilizing a novel dataset that I have assembled, comprising approximately 670,000 circuit court cases spanning a 35-year period starting from 1985, my analysis shows that political appointments can help predict outcomes in a vastly larger universe of cases than has been suggested by prior research.

Much of the empirical literature examining whether judges’ political affiliations systematically influence their decisions has relied mainly on two standard hand-collected datasets. These datasets contain only a small set of cases, focusing on ideologically contested or salient subjects in published cases (The Songer Project: Dataset of the U.S. Court of Appeals Database and Sunstein et al. (2004, 2006)). The rationale behind focusing on published cases dealing with “controversial issues,” such as abortion, affirmative action, capital punishment, and sex discrimination, is the belief that “outside of such domains, [Republican and Democratic judges] are far less likely to differ.”

In this study, I seek to contribute to filling this gap in the literature by testing whether the political affiliation of judges affects their decisions in cases other than those that have been published or are ideologically contested. I show that systematic differences between Democratic and Republican judges can be found in a much wider universe of cases than previously studied. Knowing the political composition of the circuit court panel can help predict outcomes in the vast majority of circuit court cases. Thus, notwithstanding the forces of “professional discipline and legal consensus,” the outcomes of cases decided by circuit court judges depend to a great extent on the “luck of the draw.”

The study focuses on two types of cases: those in which the parties are ostensibly of “unequal power” (over 80% of circuit court cases) and those in which the parties are ostensibly of “equal power” (about 12% of circuit court cases).

For the first type cases, I hypothesize the following *Pro-weak* hypothesis: In litigation between parties of ostensibly unequal power, the higher the number of Democratic judges on the panel, the greater the tendency for the panel to side with the ostensibly weaker party.

What could be the rationale for this hypothesis? It is possible that Democratic judges are more likely than Republican ones to support liberal legal positions, which in many cases correlates with favoring the weaker party. Additionally, Democratic judges might have a greater sympathy for the weak in general, or they may be more concerned about the disadvantaged position of the weaker party in the preceding stages of the case.

To test this hypothesis, I identified the universe of cases involving parties of unequal power and found that in such cases, having a higher number of Democratic judges on the panel correlates with higher likelihood of a Pro-weak outcome. I defined a *Pro-weak* outcome as equal to 1 if: (1) the three-judge panel decided to reverse the case and the party initiating the appeal was the ostensibly weaker party; or (2) the panel chose not to reverse the case and the party initiating the appeal was the ostensibly stronger party. In all other scenarios, such an outcome was defined as equal to zero.

The identified association is not merely statistically significant but also meaningful in magnitude. To illustrate, for the approximately 550,000 cases, switching from an all-Republican panel to an all-Democratic panel is associated with an increase of 55% in the baseline likelihood of a *Pro-weak* outcome. Thus, the likelihood of a *Pro-weak* outcome very much depends on the political affiliations of the judges randomly assigned to the case, and thus on the “luck of the draw.”

In a majority of cases, *Pro-weak* outcomes align with decisions to reverse, reverse in part, or remand. I therefore tested whether the results are driven by Democratic judges being more *Pro-reversal* rather than being more *Pro-weak*. My findings show that Democratic judges are more likely to reverse the lower court decision when the appeal is initiated by the weaker party, but less likely to do so when the appeal is brought by the stronger party. These findings suggest that the relationship identified is not driven solely by a *Pro-reversal* tendency.

Previous studies have suggested that any such relationship would be most evident in ideologically contested cases. Following Sunstein et al.’s (2004) methodology, I categorized cases as ideologically contested if they involve any of the fourteen specified legal topics considered to be saliently ideological. I add to this list LGBTQ and Second Amendment issues. Contrary to expectations, my analysis reveals that the observed judicial behavior is not confined to these ideologically charged cases. Rather, it is also prevalent in a majority of cases which were not classified as ideologically contested.

The results should not be interpreted as a mere association between politics and outcomes in non-ideologically contested cases. Instead, they suggest that the “non-ideological” contested cases often possess underlying ideological dimensions. These dimensions are approached differently by judges of varying political affiliations, particularly in relation to perceived power imbalances between litigants. This pattern holds true regardless of whether the case involves an ideologically or non-ideologically contested topic.

Previous studies exploring this association have focused primarily on published cases, meaning those with precedential value. However, considering that only a minority of decisions are published, further investigation is need to determine whether this association extends to unpublished cases. My dataset allows for such an inquiry. The findings reveal a significant presence of this association in unpublished cases, at a similar level of magnitude as in the published cases. Additionally, the analysis confirms that this association is not confined to specific circuits or time periods.

In the second type of cases, I explore the *Pro-Intervention* (or *Less Deference*) hypothesis. This hypothesis posits that in litigation where the parties appear to have equal power, a higher number of Democratic judges on the panel increases the likelihood of the panel not deferring to the district court decisions.

To test this hypothesis, I analyzed approximately 80,000 civil appeals (representing about 12% of all cases) where it was not evident whether one party was weaker or stronger.

This hypothesis derives from the possibility that Democratic and Republican judges may value the costs and benefits of less deference differently, or that they may place less emphasis on the resource-saving efficiency gains from deferring to district court decisions. My findings from this extensive sample of cases in which the parties are presumed to have equal power are consistent with this hypothesis.

Lastly, I investigated whether Democrat and Republican judges are similarly influenced by their peers. Given that circuit court judges typically make decisions in panels of three, it is plausible that when judges make decisions, they are shaped not only by their individual preferences but also by the influence of their colleagues. Having more judges from the same party on the panel might amplify a judge’s individual preference, whereas having on the panel members from the opposing party might moderate these preferences.

To assess this question, I compared the impact of removing a lone Democrat (shifting from two Republicans and one Democrat to an all-Republican panel) to that of removing a lone Republican (moving from two Democrats and one Republican to an all-Democrat panel). The results indicate a disparity, with the removal of a lone Republican having a more pronounced effect than the removal of a lone Democrat.

This disparity may be attributed to Democrats possibly being more susceptible to amplification or group polarization effects in a “single-party” panel. Additionally, Democrats might be more open than Republicans to being persuaded by a lone judge of the opposing party, or more inclined to accommodate a lone judge from the opposite party in order to avoid conflict, prevent a dissenting opinion, and secure a unanimous decision and collegial outcome.

In summary, my analysis indicates that judges’ political affiliations, inferred from the party of the appointing president, are associated with decision outcomes, providing a predictive tool for outcomes in 92% of circuit court decisions studied. This association is far more widespread than previously documented in prior research.

It should be emphasized that while my study identifies systematic differences between the decisions of Democratic and Republican judges, it does not make a determination as to whether Democratic judges are overly protective or Republican judges are insufficiently protective of ostensibly weaker parties. The main contribution of this analysis is that it demonstrates that the two groups of judges systematically differ in their decisions in cases involving parties that could be perceived to be unequal in power, and that knowing the judges’ political affiliations can help predict the outcomes in such cases.

Furthermore, it is important to stress that these results do not imply that political affiliations are the sole determinants of judicial decisions. Legal factors undoubtedly play a substantial role in influencing outcomes. My analysis does show that while political affiliations do not dictate judicial outcomes, they certainly have an impact on decisions. The political composition of the panel does not guarantee an exact prediction of its decisions, but it does help in assessing the likelihood of certain outcomes.

My study uses very simple, coarse, and easily observable characteristics of cases to identify parties potentially perceived as weaker. Future research could build on this by using more sophisticated and richer methods to measure the power imbalance between parties and consider other relevant aspects of cases.

I see my research as an initial step and sound foundation for such future work.