

A Political Effect on Judicial Decision Making. Does Ideology or Election Effect the Way Judges Decide?

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ABSTRACT

Politics have shown to have a strong effect on most things in our country. There has been lots of research on our state judicial systems and their effects on judicial decisions. Judges have been accused of having underlying reasons to their decisions even though they are not supposed to.

Past research has suggested that how the judge is retained has a small but relevant effect on judicial decision making. The literature review discusses effects of the state's system of judicial selection. That leads us to question more about political effects on decision making. I analyze how the ideology of a state and all that entails may affect the decisions made by judges on joining a majority overturning precedent. My data comes from the Pollock States Dataset which is made up of political variables on states, the Judge File Data that is variables on cases separated by state such as the salience and retention systems, as well as some variables I added. The States Dataset focuses on different state statistic and the Judge File data is on variables that effected judicial decisions. All the data I used was based around the 2016 election year including all cases in the Jude File Data. The judicial decisions are focused on a judge choosing to join the majority in overturning precedent rulings. I analyze factors associated with politics to judicial decisions. When cross examining these factors, I expect to see a correlation between how a judge decides and the ideology of that state. I think there will be a connection to other factors such as competitiveness and major social issues. There was not a significant connection between the decision to overturn precedent and a state's partisan characteristics.

Competitiveness of the 2016 election and overturning precedent did show a correlation. The Democratic party was affected more by competitiveness. A states ideology influenced the judge's decision to overturn precedent.

INTRODUCTION:

There has been scholarly research on many aspects of the judicial system and the variables that affect it. Understanding why a judge might make the decision that they do has been the focus of discussions for many years. There has been research on whether their decisions are affected by how they are selected. Some have noticed a connection between a judge who is elected and their decisions. Other researchers have found no connection with an appointed judge versus an elected judge's decision-making. These theories cannot give an answer to what situation would be more beneficial to the public. They do try to see if the judge's choices are altered by variables that come with how they gained their position. Some find public opinion influences how a judge voted on a publicized case. (Calvin, Collins, & Eshbaugh-Soha, 2010). When a judge is running for election or re-election the public's opinion is seemingly important. For a judge who is appointed and guaranteed (in most situations) a long-term position, they may show more activism. Understanding a question such as this one can potentially make the judicial system accountable depending on if there can be changes made. On top of that what would be the most beneficial. To this day, more research and data are coming forth to evaluate judicial behavior.

LITERATURE REVIEW:

Judicial Systems Matter

There are obvious variables that would lead a person to believe there is a connection between the judge's decision and how they are selected. If a judge is appointed by a person in power such as a governor, they are commonly granted long term positions which could

potentially bring them to use more activism. Or, Conversely, a judge knows they will be fighting for re-election by the people of the community they may feel more inclined to follow the opinion of the public in their professional decisions. That may or may not mean following precedence.

The justice system has its own checks and balances and has gained our trust on their decisions (Regoli, 2018). Some research has shown that judicial decisions made are affected by voters and the timing of an election. (Lehne & Reynolds, 1978). It can show whether the decision was based solely on the law or what the judge thinks may get them retained. In smaller courts, like state and local, a judge can be voted in by their communities. The judge campaigns to get the position. Once elected they have terms and need to be re-elected. (Lindquist, 2017). They expect votes if they do what the public in that area see as right, but in some cases that may not be what the law calls for. Judges closer to elections feel pressure to decide on certain types of cases. Huber (2004) found that there is a belittling of justice when the judges worry about running for office and keeping their position. Huber states that based on election timing, it could affect the judge's decisions more when voters are not paying as much attention. That seems surprising but when people are not paying attention to what's going on it brings a sense of freedom and they may rule based on more personal agendas or unpopular views. The Modern Courts research is based more on empirical information. Judges who campaign, also tend to receive significant donations and benefits in return for their supporting statements which shows a red flag to their honesty in decision making. (American Bar Association, 2017). Research talks more about how apparent it is that the courts commonly respond to the publics' outlook in their rulings. Realistically you would think the courts and voters would want the best decisions for the communities and be somewhat similar but that is not always the case.

The connection can still cast fear on the coercion of representation. We really need to understand whether it is a good or a bad factor. “Because the law no longer supports them, judges must turn to the people for the political power they need. In so doing, they redefine the constitutional judicial power to include patently political activity designed to affect a realignment of government—a realignment that puts the courts in a position of leadership sometime in the twenty-first century” (Williams, 2007, p.93). In many of these articles there is more than one question to help fully understand how these scholars see the situation panning out and affecting our system. When a judge is appointed by a person in power there is a smaller group to impress. In a partisan situation, the party affiliation is a clear consensus of views that are being followed. Once appointed, higher court positions have longer terms. If they stick with party beliefs in their decision-making process, they commonly hold their position. When a judge is appointed for a long-term spot or even lifetime position, they could steer away from their affiliation's preferences without the risk of termination. With a connection between selection and decision-making, our choice on what the solution is says a lot about where we want our judicial system heading.

Judicial Systems Do Not Matter

Many scholars find that, there is no correlation between the selection system of a judge and how they make decide. Research in the "time in term" variable has shown no effect on case decisions in a non-partisan elected judge compared to a control group of judges. (Choi, 2007). In reference to this question, there is more correlation with retention elected judges. That being judges who keep their job based on voters. Miller (2019) has analyzed variables that affect the judicial system. His research on the electoral connection to stare decisis takes other important

variable into account when weighing the significance of the connection. He uses a variety of sources to explain a justice's reasoning to shift policy towards their preferences.

Miller creates a four-category system to test theories that refer to the judge's selection process. His research found judges in partisan elections will be less likely to overrule precedent as election time draws closer. Non-partisan judges are less sensitive to term time or salience (high publicity). When it comes to partisan and retention elections, the salience of a case is found to be important. Partisan institutionally retained judges are shown to overrule precedent on non-salient cases and salient cases equally. Appointed judges feel less obligated to any outside factor in their decision. However, they hear the same public opinions as anyone else and often get more public attention.

As stated previously, research finds that the decision to overrule precedence is affected more by other variables and only slightly if at all by selection. Salience is seemingly more connected to case decisions but still found to minimally affect a judge's decision. The incentives for judges are different depending on how they are selected but fortunately, data shows they often choose to rule on the law no matter how they are selected. This research shows judges are generally committed to good faith law interpretation. (Gibson, 2012). Some theorists say the fact our country holds multiple types of selection benefits the system and ensures the justice held in a judge's decision. The pros of judicial discretion are a common defense to this question rather than an exact answer.

Further Questioning

Though research has found mixed connections between how a judge decides and how they are selected there are other variables to be looked at. It is researched from different views

but one area I think should be investigated deeper is whether the state is competitive or non-competitive in political ideology. I analyze the state's ideology and their competitiveness with the way they decide then compare those results with how they were selected.

Where states have highly competitive elections between the two parties that could alter strategies and decisions by judges. In states with low competition between the two parties like California or Wyoming, a judge may see less reason to alter their decisions. If the state is Republican dominant or Democrat dominant there may be a change in how a selection affects a judge's decision. In states where it is a close fight, a judge must be more careful. Also, the ideology of the state itself should go in with this research. In a Republican state do you see a pattern in judicial decisions? Do you see the opposite in states that are Democratic? There is a multitude of influences on how a judge decides but the party in control of the state might show a correlation.

METHODS AND ANALYSIS:

Introduction to Data

Based on the information from the literature review, I grew more curious about other reasons. The data I analyzed shows that there are variables other than how the judge is elected that seem to affect the vote pattern even more. I investigated the things noted in that research as well as some of my own hypotheses. When a judge decides on a case, they can either follow the precedent, (previous decisions and guidelines), or they can vote against precedent. I used the States data set from pollock and the Judge data set that contains 5751 cases. The Judge Case file includes the states these cases were decided in and if the vote was with precedent or was against precedent. Then it gives us a few details on the case. Additional variables give us more

information to understand the case better such as its salience (how much media coverage), criminality (is it a criminal based case), election type (what was the retention system used for those judges). I created state level variables and then used them to test my hypotheses. One variable was based on how many times a state voted to overturn precedent and the percent difference. I also created a variable to tell us what ideology that state voted for in the 2016 election and one was if the state had low or high competition between parties in that election.

Hypothesis

In a comparison of states, judge's in Republican states will be more likely to vote to join the majority to overturn precedence and judge's in states that are Democratic will be less likely to vote to join the majority overturning precedent. The unit of analysis is the state, the states ideology is the independent variable and the dependent variable is their vote on precedent overturning majority. When comparing states with competitive elections between parties, competitive states will be more likely to vote no to overturning the precedent then noncompetitive states. Democratic states are more likely then Republican states to vote no to overturning the precedent when the state has a definitive opinion on social issues.

Analysis Selection

There is a clear connection between judicial decisions in a state and the state's political beliefs, but it is unknown how significant it is. Does the states ideology or political competitiveness influence how a judge votes on overturning precedent? There is so much that comes with deciding on precedent and the judge can see what the outside opinions are. There needed to be a test of comparison to understand the connection. The judge file I used as my main set of data had variables to test these ideas. The Judge file data was from around 2016. I found

data collected from around the same time to get a more valid conclusion. Using Politico Database election results I made new variables on the ideologies of the states.

By separating each states case by if they voted with or against precedent and cross tabulated it with the ideology and competitiveness of election. The results in Table 1 demonstrate if the ideology has an influence on whether the judge voted to overturn precedent or not and Figure 1 shows how it corresponds with competitiveness. I do believe we will see that competitiveness and ideology will influence the decisions. I get that from the idea that if a judge is retained based on voters they must have appealed to that party in their campaign and would want to follow through with that ideology in their decisions. If there is high competition between parties in that state, the judges are going to be more hesitant to overturn because they don't want to lose any votes.

I ran a comparative means test on variables from the State's dataset to see the significance of Democratic and Republican states opinion on social issues compared to the percent of overturning votes. These results are shown in Table 2. These social issues have been strongly related to a state's political views. If a state strongly favors their ideology on social issues it could show that they would favor their judicial decisions based on ideology as well. Figure 2 correlates my hypotheses with the information given by the literature review. The mean for votes overturning precedent are compared with how the judges were retained and then layered by ideology. It brings up an interesting correlation. The way a judge is retained may have shown a small effect on decisions but when you divide it by ideology it shows a pattern that indicates the effect is stronger.

Table 1: States Overturn, Party and Competitiveness Results

STATE	NO	YES	TOTAL	PARTY	VERTU	COMPETITIVE
IL	81	37	118	Democrat	45.7	1
NC	43	12	55	Republican	27.9	2
FL	120	23	143	Republican	19.2	1
KS	112	18	130	Republican	16.1	2
CO	145	23	168	Republican	15.9	1
TN	63	9	72	Republican	14.3	1
MT	50	7	57	Republican	14	2
NM	22	3	25	Democrat	13.6	1
ID	37	5	42	Republican	13.5	2
UT	39	5	44	Republican	12.8	2
MO	49	6	55	Republican	12.2	1
OR	56	6	62	Democrat	10.7	1
CA	210	21	231	Democrat	10	1
ND	54	5	59	Republican	9.3	2
MN	68	5	73	Democrat	7.4	1
AL	425	30	455	Republican	7.1	2
TX	174	11	185	Republican	6.3	2
OK	129	8	137	Republican	6.2	2
AK	82	5	87	Republican	6.1	2
WV	121	7	128	Republican	5.8	1
GA	108	6	114	Republican	5.6	1
NE	323	16	339	Republican	5	2
LA	131	6	137	Republican	4.6	1
CT	114	5	119	Democrat	4.4	2
WI	178	7	185	Democrat	3.9	1
NV	175	4	179	Republican	2.3	1
AR	126	0	126	Republican	0	1
AZ	21	0	21	Republican	0	1
DE	15	0	15	Democrat	0	2
HI	19	0	19	Democrat	0	2
IN	55	0	55	Republican	0	2
IA	90	0	90	Democrat	0	1
KY	50	0	50	Republican	0	2
ME	168	0	168	Democrat	0	1
MD	70	0	70	Democrat	0	2
MA	122	0	122	Democrat	0	2
MI	47	0	47	Democrat	0	1
MS	119	0	119	Republican	0	2
NH	126	0	126	Republican	0	1
NJ	109	0	109	Democrat	0	2
NY	116	0	116	Democrat	0	2
OH	198	0	198	Republican	0	1
PA	103	0	103	Democrat	0	1
RI	118	0	118	Democrat	0	2
SC	123	0	123	Republican	0	2
SD	75	0	75	Republican	0	2
VT	39	0	39	Democrat	0	1
VA	69	0	69	Republican	0	1
WA	97	0	97	Democrat	0	1
WY	38	0	38	Republican	0	2

Statistical Testing

In the Table 1 you see how many cases each state voted yes to overturn the precedent or no to overturning the precedent and the ideology the state voted in the 2016 election. There is a column for the if the states election was competitive or not, 1 meaning no and 2 meaning yes. The percent over overturning votes shows that Republican states had a higher number of cases they voted yes to then Democratic states. There were states that gave a larger amount of cases to the research because they carry more politicalized courts and that results in them seeing more cases. Considering some states have more cases in the dataset, it is still an even representation of both parties. The Democratic states show a very small percentage of yes votes and though a yes vote is still not very common for Republican states they have a higher percentage.

In Figure 1, we see that between Democrats and Republicans, both were more likely to overturn majority when the competition in the election was at a high level. Voting mean was very low for Democratic states when competition was low. The Republican state judges had a higher overturning mean when competition was low. This shows that is an effect on overturning vote by the competitiveness of the elections. The affect was stronger on Democratic states, but the Republican states varied as well. It seems that when the competition is low the parties are more likely to do the extreme, whether that be overturn more often or less often. When the competition is high, they were more equal on the decision to overturn and that could be in attempts to gain votes.

Figure 1. Means of Overturning Votes Compared to Competitiveness of The State

Based on Ideology

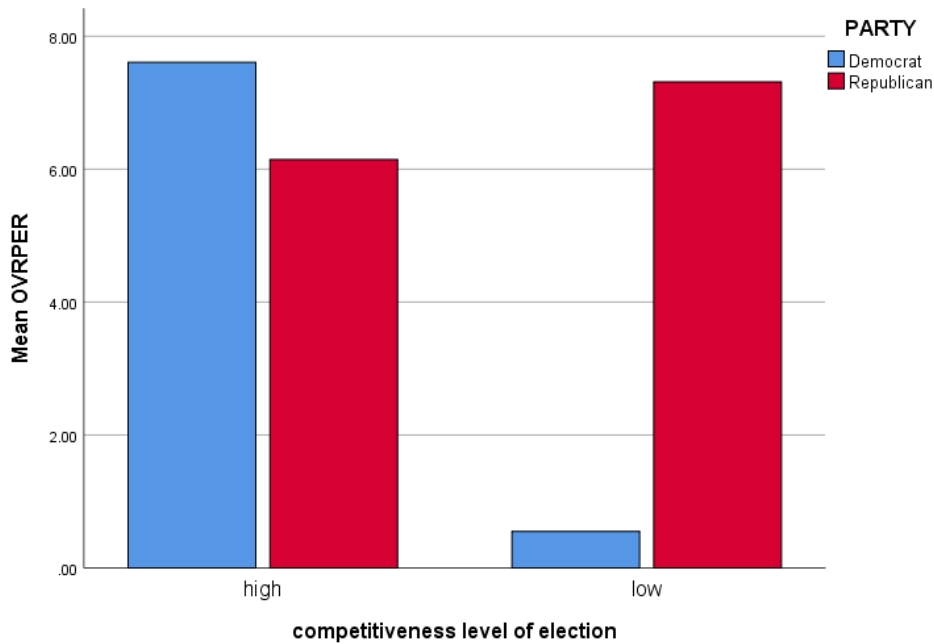


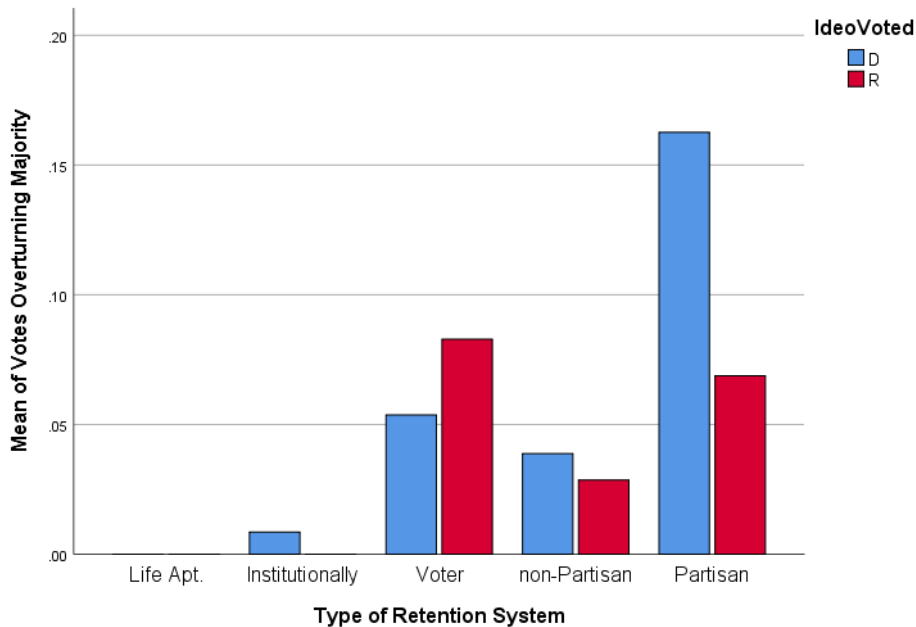
Table 2 is on social issues and the mean comparison they have with overturning precedent. These variables are based on a conservative or liberal value in the States dataset. There is no statistical significance in any of these comparisons, but it is still an interesting concept. The literature review mentions that salience seems to have a high impact on the decisions made by judges so a comparison of means on issues that have a high public opinion rate and the parties mean of votes to overturn precedent could be useful.

Table 2: Major Social Issues Between Parties Compared to Overturning Votes

ISSUE	LIB OVERTURN	CON OVERTURN	MEAN DIFFERENCE
Gay Policy	5.69	6.2	0.505
Gun Rights Restrictions	6.36	6.88	0.52
Abortion Restrictions	6.67	3.84	-2.83
*significant at .o5 or less level			

The gay policy is based on liberal view or conservative views. Gun restrictions had a less restrictions and a more restriction division. The abortion restrictions were also separated by more restriction and less restrictions. Con Overturn and Lib Overturn are defined by the characteristics of the party. More restrictions on abortion was the conservative and less restrictions was the liberal, that's how it worked with gun rights as well. The conservative overturn mean is higher when comparing to both gay policy and gun rights but lower in comparison to abortion restrictions. The means are close in gay policy and gun restrictions but have a decent gap in abortion restrictions. Table 2 may indicate that a state's view on social issues are not always voted for based on the same ideology as elections which could imply that neither are judicial decisions. Though there is no significance in the tests it can open the door for more testing. In table 2 there is also no statistical significance and the mean in overturning as a comparison between ideology and gun ranking is higher in liberals.

Figure 2: Mean of Overturn Votes Compared to Type of Retention Based on Ideology of that State



The Figure 2 is based on the hypotheses studied in the literature review and compares it to the question of whether the ideology matters. The X-axis the type of retention system for the judges. This variable was from the Judge file data. The mean of votes overturning precedent is the Y-axis. It is layered by the ideology of the state's judges. The results show that Republican's decisions vary among the voter, non-partisan and partisan. It is at its highest in voter retained judges. On the other hand, Democrats have a small amount of overturning decision when being institutionally retained, close to Republican range by voter and non-partisan retention and a very high mean of overturns by the partisan retained judges. It could be affected by the amount of

cases that were represented from those states in a graph like this. There are no results for life appointed judges and that could be an interesting find. If we could ensure there is an even amount data given on every state for life appointed judges, there is potential for a significant effect on decision making. This graph shows there is an effect on overturning precedent by the retention system when it is correlated with the ideology.

CONCLUSION:

Variable's that affect how a judge decides are endless and not completely understood. Every judge is a different person, but we can try to find connections and patterns that give us an idea of why they decide how they do. Over time trends cause research to refuse a set conclusion on this question but so far find the selection method affects decisions only occasionally. Comparable with other variables on judicial decisions they find this one to have small effects. How a judge obtains their position does not dictate how they will keep it which can also cause controversy. Judicial selection closely mirrors that of presidential elections.

The results of this study give contradicting indications. Both sides of the argument seem to have an equal amount of logic and data backing their side. Sources have given data that have shown slight connections between a judge's decision and the way and time they are selected. Deciding if it is a good or bad thing to have a connection between the two is unclear. "In many states today, judicial selection is not working" (American Bar Association, 2017). Many researchers did not find a strong connection. The ideology of a state helps draw a stronger connection with how a judge decides. The results of the analysis express the many factors that go into a judge's decision. The data used is recent, but it would have to be done often to show the

continuance of a connection between the decision and that variable. That is a big reason I think researching the ideology can give more support to the argument.

Activism in judges is frowned upon and the law is what should dictate their decision to overrule the precedence. Using these variables to study if that is in fact how they are ruling will keep the justice system in the right direction. Evidence suggests that once a judge gains the authority to make decisions, they are affected less by their selection and public opinion than one might think. That is if they are doing their job correctly. This data should be taken into consideration by voters. Since voters have a harder time monitoring these effects a single action can manifest a significant influence in the election. Judges who run know this which can potentially blind their decisions according to Huber. We are slowly seeing a sway in the politically of the judicial system unfortunately and we need to continue this research to ensure justice in our community courts. We have already seen the growth in outside factors on judicial decision making and it is my belief it will grow.

The results confirm my hypotheses but not as strongly as I suspected. The bar graph showed me that my hypothesis and the information from the literature review do correlate and prove there is a connection between judicial decisions and politics based on ideology and judicial retention. This information was one of the most interesting and deserves even more research. Figure 1 proved my hypothesis for competitions effect on the overturning votes, but it was not as extreme as expected. I was surprised that the overturning votes were higher when competition was at a medium level for both Democratic and Republican states.

The focus of my research is shown best through the charts. In Table 1, votes made by each state and the ideology it is proved that Republican states are more likely to join a majority overturning precedent. The Democratic states had very low overturning vote percentages. Table

2 on how states felt about major social issues, explained that states didn't always vote with party ideology on serious social matters. I took that as maybe there are factors that affect the decisions more than ideology or retention. If I were to continue this research, I would investigate effects of salience on the judge's decisions based on my results from the comparative means tests. Under the circumstances my hypothesis was confirmed and even gave me more insight on how to continue understanding reasons behind judge decision making.

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