Web appendix to "Hierarchical and Collegial Politics on the U.S. Courts of Appeals"

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Coding Procedures

This section of the appendix describes how each of the various datasets used in the paper were compiled and discusses various coding procedures used in the analyses. If the paper is accepted for publication, I plan to make the data and replication code available on my web page.

Updating the Sunstein dataset

Sunstein and his colleagues collected information on more than 6,000 cases in more than 20 issue areas. Their dataset contained the following information: the name of each case, year, circuit, and the votes and party of each judge. I first selected all the issue areas in which they found panel effects to exist. (As explained in the paper, I subsequently dropped racial discrimination cases, since they were all decided before 1986. I also dropped cases involving the FCC's interpretation of regulatory law, since I was not able to replicate the authors' coding of the FCC cases). The number of cases in each issue varies from less than 50 to more than 1,000. For most issue areas, I retained all the cases in the Sunstein data. For three issue areas with a large number of cases, I first drew a random sample, and then oversampled all cases that were decided in Democratic circuits. The latter step was taken to help generate more precise estimates of the effect of mixed panels in such circuits, given that the majority of circuits during the time of analysis were controlled by Republicans.[1] Finally, I dropped all cases not decided between 1986 and 2005.

    With this sample in hand, I used the name of the case to find it on Lexis-Nexis. A few cases could not be located, and were dropped. For each case, I identified the three judges serving on the panel. I then read the case and double-checked the coding of each judge's

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[1]The two issues for which I sampled from among those included in the Sunstein dataset were ADA and sex discrimination cases. For sex discrimination cases, I used all the cases analyzed by **?**, who also analyzed a subset of the Sunstein dataset, and then added all cases heard in Democratic circuits.

vote, following the coding procedures set forth in Sunstein et al. (2006). For all cases, liberal votes are coded as 1 and conservative votes are coded as 0. In a small percentage of cases, the coding of votes did not correspond to the coding procedures outlined in Sunstein et al. (2006), and I corrected these votes. Table A-1 provides information on the coding rules for each issue area, as well as the number of judge votes in each issue—both in terms of all judges in the dataset as well as votes issued by judges on Democratic and Republican majorities. For each case, I also coded the direction of the lower court or agency's decision, using the same coding protocol.

Partisan control of the federal judiciary

For each circuit and each year from 1986-2005, I collected the name and party of the appointing president of every active judge from the biographical database of the Federal Judicial Center, available at `http://www.fjc.gov/public/home.nsf/hisj`. I counted a judge as being active in a given year if he or she served at least six months in that year. Senior judges were not included. For example, if a judge took senior status in May 2003, she was not counted as having been active in 2003. The denominator in each of the proportion of Democratic or Republicans appointees is *not* the size of the circuit, but the number of active judges in a given year.

Party of the appointing president and judicial ideology

Information on each judge's appointing president, party of the appointing president, home state and year of appointment was taken from the appeals court judges attribute database (Gryski and Zuk 2008); for district court judges sitting by designation, the same information was taken from the district court judges attribute database (Gryski, Zuk and Goldman 2008). In some cases, either a judge from the Federal Circuit or a non-Article III judge (for

example, one from the U.S. Court of International Trade) sat on a three-judge panel. I used the biographical database of the Federal Judicial Center to identify the judge's appointing president and the president's party.

The measure of judicial ideology used in the regression analyses are the scores created by Giles, Hettinger and Peppers (2001). They involve using the common space scores (that is, ideal point estimates of members of Congress that are comparable across time and across the House and Senate) of the appointing president and/or a nominee's home state senators (Poole 1998). The procedure is the same for all appeals court judges and district court judges. The first step is to determine whether senatorial courtesy is in effect. Following Giles, Hettinger and Peppers (2001), I assume that senatorial courtesy exists whenever one senator from a nominee's home state is of the same party as the president. If one (and only one) senator is of the same party, then the GHP score takes on that senator's Common Space score. If both senators are of the home state party, the GHP score is average of their common space scores. If neither senator is of the president's party, the GHP score takes on the president's common space score. I assume that senatorial courtesy is not in effect for judges appointed to the D.C. Circuit, judges who come from U.S. territories, all non-Article III judges. Thus, for these judges, their GHP scores is the common space score of their appointing president.

For each judge I coded their appointing president's common space score, the common space scores of the judge's home state senator, and whether senatorial courtesy was in effect during the judge's nomination. In some cases, more than two senators served during the Congress in which a nominee was appointed. Using the "Biographical Directory of the United States Congress," I determined which two senators were in office at the time of the judge's nomination.[2] I then created GHP scores using the above criteria.

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[2]The directory can be accessed at `http://bioguide.congress.gov/biosearch/biosearch.asp`.

References

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		Number of Observations		
Issue	Coding Procedure	Total	Democratic majorities	Republican majorities
11th Amendment	1 if the judge voted that Congress had properly abrogated sovereign immunity under the statute at issue, 0 otherwise	306	137	98
ADA	1 if the judge voted to grant the plaintiff any relief, 0 otherwise	1,278	496	476
Affirmative Action	0 if the judge voted to hold unconstitutional any part of an affirmative action program, 1 otherwise	348	191	73
Campaign Finance	0 if the judge granted any relief to the party challenging a campaign finance provision, 1 otherwise	168	87	44
Commercial Speech	0 if the judge voted to hold unconstitutional a law restricting commerical speech, 1 otherwise	228	111	68
Contracts Clause Violations	1 if judge granted any relief to party alleging a Contracts Clause violation, 0 otherwise	147	85	28
EPA	1 if the judge upheld an agency decision challenged by industry or reversed an agency decision challenged by a public interest group, 0 otherwise	492	219	153
Piercing the Corporate Veil	1 if judge voted to grant any relief to party attempting to pierce the veil, 0 otherwise	315	153	90
NEPA	1 if the judge agrees with plaintiff that federal agency has not properly considered environmental effects, 0 otherwise	261	89	106
NLRB	same as EPA	207	103	52
Obscenity	1 if the judge voted to grant defendant any relief, 0 otherwise	84	47	16
Race Discrimination	1 if judge voted to grant African-American plaintiff any relief, 0 otherwise	1,074	572	245
Sex Discrimination	1 if judge voted to grant plaintiff any relief, 0 otherwise	1,392	714	350

Table A-1: *Coding protocols and sample sizes, by issue areas. For more information on each case area, see Sunstein et al. (2006). For the number of observations, the first column gives the total number of judge votes, regardless of panel majority or minority status. These numbers correspond to the number of votes analyzed in Figure 1 in the paper. The next two columns give the number of votes made by Democratic and Republican judges who were in the majority of the panel, respectively. These correspond to the votes analyzed in Table 1 in the paper.*

Table A-2

Republican majorities

	Random Effects (MLM) Coef. (S.E.) (1)	Coef. (S.E.) (2)	Logit (w/ Fixed Effects) Coef. (S.E.) (3)	GEE (w/ Fixed Effects) Coef. (S.E.) (4)
Intercept	-1.39* (0.30)	-1.39* (0.18)	0.86* (.44)	-.85 (0.58)
Ideology	-0.39 (.25)	-0.34 (.23)	-0.31 (.21)	-0.05* (.12)
Lower court vote	1.18* (.09)	1.17* (.09)	1.15* (.10)	1.14* (0.14)
Democratic circuit	0.39 (0.25)	.42* (.24)	0.61* (.22)	0.59* (0.36)
Counter-judge	0.39* (0.09)	0.37* (0.09)	0.39* (.09)	0.38* (0.14)
Democratic circuit $\times$ counter-judge	-0.31 (0.26)	-0.31 (0.26)	-0.32 (.26)	-0.28 (0.40)
Groups		*Included in Model?*		
Issue	Yes	Yes	Yes	Yes
Circuit	Yes	Yes	No	No
Year	Yes	No	Yes	Yes
Judge	Yes	No	No	No
N	3,004	3,004	3,004	3,004
% Correctly Classified	70.4	70.1	70.6	70.5
% Reduction in Error	8.4	7.4	9.0	8.6

Democratic majorities

	Random Effects (MLM) Coef. (S.E.) (1)	Coef. (S.E.) (2)	Logit (w/ Fixed Effects) Coef. (S.E.) (3)	GEE (w/ Fixed Effects) Coef. (S.E.) (4)
Intercept	0.19 (0.29)	0.27 (0.26)	0.32 (.60)	0.12 (.85)
Ideology	-0.09 (0.46)	-0.15 (0.42)	-0.02 (.40)	-0.07 (0.19)
Lower court vote	1.32* (0.13)	1.29* (0.13)	1.30* (.13)	1.31* (0.18)
Republican circuit	0.27 (0.26)	0.13 (.24)	-0.04 (.24)	-0.06 (.38)
Counter-judge	-0.50* (0.15)	-0.53* (0.15)	-0.45* (0.15)	-0.46* (0.23)
Republican circuit $\times$ counter-judge	-0.44* (0.26)	-0.42* (0.25)	-0.49* (0.26)	-0.47 (0.40)
Groups		*Included in Model?*		
Issue	Yes	Yes	Yes	Yes
Circuit	Yes	Yes	No	No
Year	Yes	No	Yes	Yes
Judge	Yes	No	No	No
N	1,799	1,799	1,799	1,799
% Correctly Classified	67.8	66.1	65.4	65.3
% Reduction in Error	26.1	22.8	21.2	20.3

Table A-2: *Robustness Check. For Republican and Democratic majorities, Model 1 for each replicates the models from Table 1 in the paper. Model 2 is similar, but only include random effects for issues and circuits. Model 3 is a regular logit with fixed effects for issues and years. Model 4 is a General Estimating Equations (GEE) Model with an exchangeable correlation structure, which accounts for non-independence among votes among judges deciding the same case. This model also includes fixed effects for issues and years. Standard errors in parentheses. * indicates $p < .05$, one-tailed test.*