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Different Voices: Measuring Female Judges' Influence on Women's Rights Issues in the U.S. Courts of Appeal

By

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Abstract: Beginning with President Carter and continuing with each successive president, the federal bench has become more diverse. This has caused scholars to turn their attention to how personal characteristics such as race and sex affect judging. Understanding the effects of gender and race on judging is crucial because white female and minority female judges may bring a different perspective to the bench than their male counterparts due to their shared experiences with discrimination. To fill a gap in the literature, this study examines the impact of women in terms of legal influence and voting behavior. The results demonstrate that women are cited more often than their male counterparts when they author sex discrimination cases but not abortion or cases concerning the Americans with Disabilities Act (ADA cases). However, I do not find significant differences in legal influence or voting behavior in any area when white women and minority women are compared. In sex discrimination and abortion cases, female judges' voting behavior was similar to their same-party male colleagues. Only in ADA cases did I find Republican women were more liberal than their male counterparts.

Lay Summary: Beginning with President Carter and continuing with each successive president, the federal bench has become more diverse. Researchers and scholars have turned their attention to how personal characteristics such as race and sex affect judging. Understanding the effects of gender and race on judging is crucial because white female and minority female judges may bring a different perspective to the bench than their male counterparts due to their shared experiences with discrimination. To fill a gap in the literature, this study examines the impact of women in terms of legal influence (measured by citations of majority opinions) and voting behavior. The results demonstrate that women are cited more often than their male counterparts when they author sex discrimination cases but not abortion or ADA cases. However, I do not find significant differences in legal influence or voting behavior in any area when white women and minority women are compared. In sex discrimination and abortion cases, female judges' voting behavior was similar to their same-party male colleagues. Only in ADA cases did I find Republican women were more liberal than their male counterparts. These results offer insight into the importance of studying race and gender (and their intersection) in the federal judiciary system. With more minorities gaining seats on the federal bench, judicial policy-making could become more dynamic because there are more viewpoints to consider.

During a speech at the Berkley School of Law in 2002, Justice Sonia Sotomayor spoke of the transforming judiciary she had seen over the course of her career. "I have seen a quantum leap in the representation of women…in the legal profession and particularly in the judiciary" (Sotomayor 2002). While Sotomayor acknowledges the federal judiciary for its successful diversification efforts, she also points out that the addition of federal female judges is still slow and infrequent. She cited the small number of women, especially minority women, currently sitting on the U.S. Courts of Appeals. Perhaps the most shocking statement made in her speech was one addressing how the experiences of women and people of color will "affect our decisions," a bold statement given the notion that the judiciary is supposedly impartial. However, she calls this impartiality "aspirational," as it is true that a person's experiences can have an effect on how they cast a vote (Sotomayor 2002). Sotomayor's speech highlights several important reasons why scholars should take a broad view of judicial diversity and its impact.

One of the most important areas of concern when studying the judicial system is the disjuncture between how judges decide cases in reality versus how people believe judges should decide cases. People believe judges should be completely impartial when deciding a case and in a perfect system that would occur. However, judges are human beings and their ideological and personal values will interact with how they decide a case (Spaeth 2002). The latter perspective is known as the attitudinal model, which is used to explain judges' votes in the process of judicial decision making. While many judges believe that they adhere to one of the facets of the legal model (e.g., adhering to precedent, plain meaning, framers' intent, or balancing social interests), they often

accuse fellow judges of deciding a case based on their policy preferences (Spaeth 2002). This demonstrates that judicial decision making may not be as impartial as some believe.

As Justice Sotomayor pointed out, white and minority women have slowly come to earn a seat on a federal bench, bringing different viewpoints and experiences to many areas of law. Race and gender, observed together and by themselves, can impact professional opportunities available to attorneys. As many judges who have come to sit on the U.S. Courts of Appeals had prior experience in a private law firm setting, it is important to note that (minority) female attorneys face "significant disadvantages in advancement," (Collins, Dumas, and Moyer 2016). For example, "A black woman partner from a major Chicago firm noted that she had been taken for a court reporter at every deposition she had ever attended" (Rhode 1994, 65). White and minority women generally have taken a different path to the federal bench than white males. Women who were among the first group to attend law school attended top-tier law schools before moving onto private practice.

Examining President Carter's appointees, Elliot Slotnick (1983) discovered that 48.5% of women were graduates of elite law schools while only 39.9% of male appointees graduated from the same type of institution. As Judge Ilana Rovner stated "You know, the young women today can't possibly … understand the pressures of being first … Nothing was good enough, and it took me an awful lot of years to realize how good many of the women really were in relationship to the men's talents. I mean, when I think of it, men that were hundreds of places below us in class were getting great jobs and there were no jobs for us," (Moyer and Haire 2015). This statement demonstrates

how women who were among the first to graduate law school struggled finding a job simply because they were a woman.

Work experience also differed between white and minority women and white men. White and minority women (and minority men) were more likely to work in various levels of government while white men were more likely to have private practice experience. This is due in part to an executive order issued by President Johnson that "commanded them [private firms] to hire women and minorities," (Haire and Moyer 2015). Federal Judge Mary Schroder recalled, "I had my pick of all the best government jobs," because government agencies went to the major law schools looking for minorities to hire after the executive order (Haire and Moyer 2015). However, this does not mean women did not have any private practice experience. Of the female minority appointees, three of nine did not have any private practice experience (Haire and Moyer 2015). While white men's professional backgrounds were more concentrated in the realm of private practice, their academic accomplishments were sometimes less than their white and minority women counterparts (Haire and Moyer 2015).

However, the most striking difference between white male and female experiences in law occurred in the workplace. These differences were most apparent to working mothers. For instance, when Federal Judge Mary Schroeder learned she was pregnant in the 1970s, she was advised by a senior lawyer her to keep her pregnancy a secret for as long as possible. She responded to this by saying "Well, I'll see how long I can stay a little bit pregnant." This only lasted for four months; when she showed up in a maternity dress, lawyers around the office started talking and saying "We told you so"

(Haire and Moyer 2015). This demonstrates the discriminatory manner in which women were treated in the workplace simply for being women.

This study builds on existing research to examine areas that have received less attention with respect to women's impact on the U.S. Courts of Appeals: sex discrimination (including pregnancy discrimination) and abortion. I look at two facets of impact: legal influence (as measured by citations to majority opinions) and voting behavior.

Below, I begin by identifying existing trends in voting and influence in women's rights cases from 1993 until 2008, as well as highlighting areas that have not garnered as much attention in the research. I will lay out the overall structure of the U.S. Courts of Appeals, followed by a discussion of gender composition within the courts and the barriers women faced coming into the realm of judicial politics. Following that, I discuss voting, on an individual level. Next, I examine intersectionality within the courts. Finally, I conclude with citation influence analysis of female judges. For this, I use the Federal Judiciary Center and the U.S Courts of Appeals Multi-user Database to gather citation counts of opinions authored by females in the three salient areas. My findings suggest that women have begun to make strides on the U.S. Courts of Appeals by becoming influential policy-makers in sex discrimination cases, but are less influential in other kinds of cases. Furthermore, minority females vote in similar ways to their white female colleagues when deciding sex discrimination and abortion cases. Finally, my findings suggest that female judges' voting habits do not differ from their same-party male colleague in two of three issue areas. Only in ADA cases were Republican women more liberal than their Republican male peers.

Literature Review

The U.S. Courts of Appeals

The U.S. Courts of Appeals is the intermediate court that acts as both a reviewer and a filter. It may review cases that come up from trial courts, resolving appeals from lower courts. The Courts of Appeals can also set precedent within their circuit. For many litigants, the US Courts of Appeals is the court of last resort because the Courts of Appeals hear many more cases than the US Supreme Court (the U.S. Courts of Appeals heard 54,244 cases in 2015 (http://www.uscourts.gov 2015) while the Supreme Court averages 80 cases per year (www.supremecourt.gov 2017). Litigants who lose a federal district court decision are (most of the time) entitled to one appeal. They will take their appeal to the US Courts of Appeals which are divided into eleven numbered districts that are geographically defined, with two additional courts; one designated to decide cases within the District of Columbia and the Federal circuit that has specialized jurisdiction (Bowie, Songer, and Szmer 2014).

The main function of the courts is to identify legal, rather than factual, errors made by the lower trial courts (Hettinger, Lindquist, and Martinek 2006). It is important to have 3-judge panels rather than a single judge because the U.S. Courts of Appeals serves as a filter for cases that will go to the Supreme Court. Requiring consensus from multiple judges reduces the number of cases that advance to the Supreme Court because it is more difficult to get at least two judges to agree rather than relying on the decision of just a single judge. On average, there are between six and 29 judges in a circuit and judges typically hear cases in panels of three. If the litigant loses at the U.S. Courts of Appeals level, they may petition for the entire circuit's review

sitting *en banc* or review by the Supreme Court (Bowie, Songer, and Szmer 2014). The judges then meet in conference one to three days after hearing oral arguments in which they give a tentative opinion. However, the final decision and explanation, along with any precedent they may set must wait until the opinion is officially released.

The time to write and length of the opinions depends on the complexity and controversy associated with the issue. For example, a study showed the average length for a case concerning civil rights averaged nine pages while a case concerning criminal or prisoner petitions averaged seven pages. The longer opinions for civil rights cases could in part be due to the controversy that surrounds them; judges may feel the pressure to provide a more comprehensive and detailed justification for the position of the majority (Bowie, Songer, and Szmer 2014).

One aspect of the U.S. Courts of Appeals is the crucial role the courts play in the creation of public policy. Public policy is defined as "the authoritative allocation of values and resources" (Easton 1953). Decisions handed down by judges allocate resources between the parties directly affected in the case; the enforcement of norms or development of legal rules can also appropriate resources or values because they can favor one group in society over another. Furthermore, unless the U.S. Supreme Court intervenes, a circuit court's ruling remains the precedent for all federal courts within that circuit's geographic jurisdiction. That is, a federal court outside of the declaring circuit's geographic jurisdiction does not have to follow the precedent set in that circuit. However, a precedent could be persuasive for another circuit but judges are not forced to follow any precedent set forth by another circuit. The U.S. Supreme Court can also resolve conflicts among circuits by making sure the national law is uniform. However,

because the U.S. Courts of Appeals hear many more cases per year than the Supreme Court, many of their decisions are not challenged and therefore stand as precedent (Hettinger, Lindquist, and Martinek 2006).

Composition of the Courts

Since President Carter's attempts to diversify the bench in the 1970's, one demographic group has benefitted more than any other: white women. For Presidents Carter, Reagan, and G.H.W. Bush, diversification primarily meant white women or black men (Wheeler 2009). It wasn't until President Clinton and every subsequent administration where meaningful numbers of minority women were given the opportunity to have a seat on the bench (Haire and Moyer 2015). Despite the increase of presidential appointments of female judges, these appointments still do not accurately reflect the number of women with law degrees in the United States. In the academic year 1970-71, 91.4% of those who received their J.D.'s were male, meaning only 8.6% were female. However, these numbers began to increase throughout the mid-1980's as females have accounted for at least 40% of the graduating class. Since 2012 those numbers are in the mid to high 40% range (www.americanbar.org 2012).

The composition of the circuits also varies depending on the court. The Ninth Circuit has the most women on the court with roughly 14, and the First Circuit falls in last with only one female judge between the years of 1978 and 2008 (Haire and Moyer 2015). Likewise, the Ninth is the most ethnically and racially diverse, and the First is the least diverse in terms of ethnicity and race (Haire and Moyer 2015).

Barriers Facing Women on the Courts

Women faced discrimination when they began attending law schools across the country, especially if they were among the "trailblazer" group of women who began attending law school in the 1950's through the 1970's (Moyer and Haire 2015). Beginning in 1970, women made up 8.6% of law school attendees. However, those that entered during this time had admission applications that looked different from males applying to the same schools. Overall, women who entered law school in the 1960's through the 1980's had higher undergraduate GPA's but lower LSAT scores than their male counterparts. Not only did women face prejudice in the admissions process, they also experienced it the classroom. Women reported lower self-confidence and more experiences with gender discrimination than men (Clydesdale 2004). Oftentimes they were not received well by male classmates and professors, as they were seen as "taking a good man's place," and even called out by professors on "Ladies Days" within the university (Haire and Moyer 2015). They even endured hazing by male students via a practice called "shuffling" whenever a female student walked into a room (Haire and Moyer 2015). Despite these obstacles, women in the 1970's through the 1980's graduated at higher rates with better GPA's than men (Clydesdale 2004).

Discrimination did not stop after graduation; it continued to follow women through their professional lives as well. For example, 48.5% of President Carter's female appointees were graduates of top-tier law schools while 39.9% of male appointees were graduates of the same institutions: a difference of almost nine percent. The women that graduated from these top-tier schools also graduated at the top of their class in order to obtain a seat on the bench, while men did not necessarily have to be at the top of their class.

Furthermore, women experienced discrimination from potential employers. Many did not want to hire women and most would only consider hiring one if they had a specialty that was desperately needed within the realm of law (Haire and Moyer 2015). Childcare was also an obstacle because it was hard to find full-time childcare for the first generation of female federal judges. As efforts to diversify the bench grew, so did efforts to diversify the pool from which presidents chose their appointees. While Ivy League educated women still received consideration, President George W. Bush expanded his search to include other universities such a Tulane, Emory, Akron, and Virginia, easing the elitist preferences of many before him and giving more women a chance to have a seat on the US Court of Appeals (Haire and Moyer 2015). President Bush's step away from the Ivy League schools changed a decades-long tradition of choosing students with a similar background from the same select schools. By expanding his appointment pool beyond the Ivy League, he opened the door for more ethnic minorities and persons with different socio-economic backgrounds. Furthermore, this could lead to different voting patterns among individuals because of different viewpoints stemming from different life experiences.

Individual Voting

Research has found that, as a whole, women are more likely to cast liberal votes than men (Boyd, Epstein, and Martin 2010), especially in sex discrimination cases.[1] In a study conducted by Haire and Moyer in 2015, it was discovered that women born in or

[1] Because the U.S. Courts of Appeals hears cases in panels of three, there is a group dynamic that can include different perspectives and influence. Several studies have shown that having at least one female seated with two men can influence how a panel will vote, especially in sex discrimination cases (Boyd, Epstein, and Martin 2010; Moyer and Tankersley 2012; Moyer and Haire 2015).

before 1945 had the highest likelihood of casting a liberal vote in sex discrimination cases when compared to women born after 1945 and male judges born after 1945. Support for plaintiffs in sex discrimination cases is correlated with women who entered the legal profession during a time of "overt discrimination" of women (Haire and Moyer 2015). However, one cannot begin to analyze how a judge will vote in a case pertaining to women's rights without first defining what constitutes a "women's issue."

Representation can be defined by two different types: descriptive and substantive. As Pitkin (1964) argued in the context of legislative bodies, descriptive representation is described as "standing for" constituents "by virtue of a correspondence or connection between them." The increase of women in the political arena over the past few decades has posed the question as to whether or not the increase of women has led to an increase of more substantive representation of women's issues. Substantive representation occurs "when legislators consciously act as agents for constituents and their interests," that can be performed no matter their personal background or group memberships (Davidson, Oleszek, Lee, and Schickler 2016). Substantive representation increases for women's issues when there is a "critical mass" of women (usually about 15-30%) in a legislature (Childs and Krook 2006). This could include women championing causes for women or advocating for rights for minority groups that may or may not include women (Davidson, Oleszek, Lee, and Schickler 2016). This type of representation can also be seen as "acting for" (Pitkin 1964). However, the definition as to what constitutes a "woman's issue" in politics is an area of disagreement in feminist scholarship. Some issues reinforce limited stereotypes such as the notion that the woman is the caregiver within society while others do not represent minority women.

In terms of women's issues, the concept of acting for was not always viewed as prevalent because women did not have a voice strong enough in politics to represent issues that pertained to them. In a study conducted by Vega and Firestone in 1995, they found that female members of Congress have been increasingly representing women's issues including legislation that called for equality in the workplace and beyond. This legislation includes bills to improve women's social, economic, and political status (Childs and Krook 2008; Bratton 2005). Women's issues in legislation can also be those that affect women in a different manner than men such as abortion, as well as issues that women are more broadly associated with including welfare, education, and health (Bratton 2005). From the 97th Congress to the 102nd Congress, there was a steady increase in the number of bills introduced by women that contained legislation pertaining to women's issues, with the expectation the trend would continue as more women gained a voice in politics (Vega and Firestone 1995). This increase can be explained in part by the critical mass theory. In Kanter's 1977 book *Men and Women of the Corporation*, she explored the effect of critical masses and concluded that women may not "act for," or represent women's issues substantively until there are enough women to effectively advocate for and create policy. With stronger numbers, women are able to form more "supportive alliances" that empower them to represent issues close to them (Childs and Krook 2008; Dahlerup 2006).

The increase of women's issues in the legislative branch through the election of more female members to Congress can also affect the judicial branch, especially the U.S. Courts of Appeals. The more laws passed pertaining to women's issues can mean that there could be more challenges to said laws in court. As the Courts of Appeals often

serve as a filter for cases that may go to the Supreme Court, they hear many cases attempting to identify and remedy any legal errors made by the lower trial courts. With an increase in laws being passed pertaining to women's issues, this may affect the number of cases in the pipeline related to such laws (Vega and Firestone 1995). Vega and Firestone's study also highlighted that race and ethnicity can have influence among other judges when deciding whether or not to support women's issues, which could increase support for women's issues as Congress becomes more ethnically diverse.

Intersectionality

Minority females may bring an entirely different perspective to the bench due to their experiences not only as a woman but also as a racial or ethnic minority. For instance, in a study of criminal appeals, it was found that minority females were the most liberal race-gender cohort (Collins and Moyer 2008). Being members of two out-groups seems to produce distinct voting behavior. Women of color experience racism and sexism in different ways than their male and female counterparts respectively (Crenshaw 1991). Many times, African American women and Latinas are not accounted for in the single axis frame used to define women's issues, which typically represent white heterosexual women (Smooth 2011).

However, in much of the literature on gender, this axis is often portrayed as representing all women, thus leaving out many of the marginalized and vulnerable minority groups. For example, in *DeGaffenreid v General Motors*, the district court rejected the plaintiff's attempt to bring suit against General Motors because they should not have been able to combine sex and race into a discrimination lawsuit to create a "super remedy." This meant that the court came to one of two conclusions: Congress

did not consider the fact that black women could be discriminated against as black women or they did not intend to protect them when discrimination was experienced (Crenshaw 1989). Likewise, in *Moore v Hughes Helicopter Inc.,* the Ninth Circuit approved of a district court's rationale in a sexual discrimination case because Moore's attempt to specify her race did not comply with the allegation that her employer discriminated "against females," and by specifying her race she could not adequately represent white female employees (Crenshaw 1989).

What many consider a "woman's issue" does not necessarily represent all women (Smooth 2011). Therefore, salient issues for white women could be different from salient issues for African American women. Because of this issue gap, voting behavior between white and minority females may be different in terms of certain types of cases such as discrimination cases. For example, minority women may be the more likely to vote in a liberal direction than a white female as they may have had the most experience with discrimination. An increase of substantive representation with respect to issues concerning all women is needed in order to give all women a voice in politics. Therefore, an intersectional approach to politics and the gender gap is one way to help alleviate the essentialist view of women and their voice in politics (Smooth 2011; Crenshaw 1989). Over time, social scientists have embraced different methods for analyzing the complexity and fluidity of intersectionality by using time series analysis. Time series analysis "can account for changes in the status of variables over designated periods, which can help capture the fluctuations in the power relationships among race, gender, class, sexuality, and other socially constructed categories over time" (Smooth

2011). This new approach can help bring trends to light that were previously not seen because of the single axis framework (Smooth 2011).

The intersectionality perspective suggests that minority female women may see different issues as salient, compared to white women and minority men, and affect their voting behavior. In the next section, I examine how judges' identities may also affect their collective decision making processes.

Influence

In terms of politics and law, influence can take on very different forms. For this study, influence is measured by the number of citations an opinion receives. In other contexts, influence can be the power of persuasion. This can be seen at the panel level when one or two judges change their vote after listening to another panel member (Boyd, Epstein, and Martin 2010; Songer, Davis, and Haire 1994; Moyer and Tankersley 2012; Moyer and Haire 2015). Finally, persuasion can be seen in an overridden judgement because the judge that overrode the previous decision gave thought to the rationale behind the decision and was not persuaded by his argument, choosing to write their opinion based on a different argument.

Influence within the U.S Courts of Appeals is important because there is not just one judge deciding a case as with a trial court. Wielding influence on a panel with two other colleagues can change the outcome of the case. Numerous studies have shown that "when faced with a majority view that differs from their own, [people] not only adopt the majority position but they convince themselves of the truth of that position by considering the issue only from the majority perspective" (Nemeth and Goncalo 2004). This could mean influence could have short-term and long-term effects; a judge may

change his or her vote in a single case but they could also begin to see that area of law in a different way and change their behavior in the future.

For this thesis, influence will be defined as the number of times a judge is cited by subsequent cases. Female influence within the U.S. Courts of Appeals has received less scholarly attention than studies of decision making. However, in a study conducted by Choi and colleagues (2011), female influence was tested in several areas of law by measuring the number of times a female judge was cited as compared to a male judge in the same area. They measured the number of outside state majority opinions in several areas of law including rights. For this area, men were cited more often than women, but the difference was not statistically significant (Choi, Gulati, Holman, and Posner 2011).

Overall, a growing number of comprehensive studies that analyze female voting and influence in Title VII sex discrimination cases find that female judges (no matter their race) are much more likely to vote in favor of the plaintiff. Many also conclude that females are able to persuade their male colleagues to also cast a vote in favor of the plaintiff (Songer, Davis, and Haire 1994; Boyd, Epstein, and Martin 2010; Moyer and Tankersley 2012; Moyer and Haire 2015). Furthermore, minority female judges have the highest rate of liberal votes in criminal cases (Collins and Moyer 2008). But will this play out differently in other issue areas? Less research has focused on individual-level voting differences in the areas of abortion (Oakey 2003) and disability discrimination. Similarly, there is limited research on how influential female judges are in these issue areas, as measured by citations from other judges (Choi et. al 2011).

Theory

Sex Discrimination

The Civil Rights Act of 1964 included Title VII which prohibited employers from "discriminating against employees on the basis of sex, race, color, national origin, and religion." Title VII has been very successful in helping women gain access into areas of employment that had been previously out of their reach such as law and medicine (Bartlett and Rhodes 2010). While Title VII has helped women in the workplace, sex discrimination is still prevalent. For many years, women faced outright discrimination in the legal profession; some were only hired if they had a specialty within law that was desperately needed by employers (Haire and Moyer 2015).

Experiencing discrimination when searching for a job could potentially make female judges more sympathetic to plaintiffs in a sex discrimination case because they personally experienced discrimination on the basis of sex that prevented them from fully participating in society. This leads to a liberal outcome (Boyd, Epstein, and Martin 2010; Songer, Davis, and Haire 1994). This also lends support to the informational account (Boyd, Epstein, and Martin 2010) and feminist legal theory (Songer, Davis, and Haire 1994) in helping explain female voting and influence on sex discrimination cases.

Abortion

Even after the Supreme Court's 1973 landmark decision in *Roe v. Wade*, abortion has remained a part of appeals' courts dockets. After *Roe*, many states responded with laws that restricted abortions, including laws restricting abortion in the first trimester more so than Roe, as well as parental consent laws, waiting periods of any duration, and abortion-specific informed consent provisions (Oakley 2003). The federal courts have heard many challenges to these and other laws restricting access to abortion. Overall, many of these restrictive acts did reduce abortion rates throughout the US as many

conservative decisions came down from the US Courts of Appeals. The Supreme Court then upheld many of these restrictions (Oakley 2003).

Since the 1980's abortion is often regarded as one of the most divisive issues between the Republican and Democratic parties. According to a study done by the Pew Research Center in 2016, Republicans have become more polarized on the issue with 59% saying it should be illegal in all cases in 2016 compared to 48% in 1995. Democrats have maintained steady numbers for support of abortion in all or most cases with 70% agreeing with it today and 64% agreeing in 1995. However, gender differences within the parties are slim: only 35% of Republican women believe abortion should be legal in all or most cases, while 40% of Republican men believe it should be legal. Sixty-seven percent of Democratic women believe it should be legal at all times, while 75% of Democratic men believe it should be legal (Fingerhut 2016). Overall, Democratic women are less likely than their male counterparts to support abortion in all or most cases.

Party differences can also be seen on the bench. When examining panel effects, Republican appointees cast a pro-choice vote 46% of the time, while Democratic appointees cast one 72% of the time (Sunstein, Schkade, Ellman, and Sawicki 2006). Furthermore, Democratic appointees are more likely to change their vote if seated with two Republican appointees, but no change in voting was seen with Republican appointees when seated with two Democratic appointees (Sunstein, Schkade, Ellman, and Sawicki 2006). These party differences suggest that the debate on abortion is rooted in ideological differences rather than gender.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was a comprehensive civil rights bill signed by President Bush in 1990 that prohibits discrimination and allows those with disabilities to have "equal opportunity" under the law to "participate in the mainstream of American life," (www.ada.gov 2017). While there is some ambiguity to the language in the law, one must have a "physical or mental impairment that substantially limits one or more major life activities," (www.ada.gov 2017). As with sex discrimination and abortion, there have been a number of cases in the U.S. Courts of Appeal since its inception making it a good comparison category for this project. For the purpose of this thesis, ADA cases will be used only as a comparison category because cases based on disability discrimination are not gender-salient issues (as sex discrimination and abortion cases are).

Gender Effects

The increase of female judges on the US Courts of Appeals have led scholars to develop several theories regarding gender effects on judging. Songer, Davis, and Haire (1994) posit three separate effects women can have on the bench regarding search and seizure, obscenity, and employment discrimination cases. One states female judges will be more liberal in all three areas, the second states that there will be no differences between men and women regarding the three areas, and the last rests on feminist legal theory and says that women will be more conservative than men only when deciding obscenity cases as it perpetuates the oppression of women. The feminist legal theory (which will be discussed in this paper) states that there will be differences between male and female judges that are not simply liberal or conservative but rather that females will only be more liberal in areas of discrimination that prevented those who claimed

discrimination from full participation in the community. Their research showed that women are only likely to be more liberal than men when deciding employment discrimination cases (Songer, Davis, and Haire 1994).

In addition to the feminist legal theory, this paper will also focus on the informational account as described by Boyd, Epstein, and Martin (2010), which states that "women possess unique and valuable information emanating from shared professional experiences," and effects can be seen on panel issues where females possess "valuable expertise, experience, or information." This account provides the most support for why women are more likely to be influential when writing an opinion for sex discrimination or abortion cases because historically they are issues that have either plagued women or are strictly matters that only a woman has the possibility to face in their lifetime.

Hypotheses

I expect influence in the three salient areas to yield three separate hypotheses. Because women have had professional and academic experiences different from that of men, it has helped shape their interpretation of statutes with respect to their constitutionality.

First, I posit opinions regarding Title VII sex discrimination (including pregnancy discrimination) and abortion will be more influential (cited more often) if authored by a woman (white or minority) rather than a man (white or minority). This could be due in part to the fact that these three case areas affect only females or heavily affect females thus making their opinion more influential. I do not expect there to be differences in

ADA cases based on gender because they include cases that affect men and women equally.

H1: In sex discrimination and abortion cases, opinions authored by women will receive more citations than male-authored opinions.

Second, it is expected minority women will be more likely than white women to cast a liberal vote in sex discrimination (including pregnancy) and abortion cases. Because of their different experiences with racism and sexism, minority women will be more likely than even white women to cast a liberal vote. As with the first hypothesis, I do not expect differences for ADA cases.

H2: In sex discrimination and abortion cases, minority women will cast a higher proportion of liberal votes than white women.

Last, I expect that all female judges will be more likely than all male judges to support the plaintiff in sex discrimination cases because of professional experiences shared by many women on the bench. However, with abortion cases, I expect voting differences to reflect ideology rather than gendered experiences and viewpoints. I do not expect statistically significant results in this analysis for the comparison category of ADA cases.

H3: The only significant differences in abortion cases will be between Republican and Democratic judges.

Data and Variables

For this project, I utilize existing datasets compiled by Cass Sunstein and updated by Epstein, Landes, and Posner in 2013, as well as the Federal Judicial Center

biographical database to ascertain information on the sex and race of each judge. This was accessed through Stata. To supplement these sources, I also collected original data on citations to a sample of published majority opinions from these datasets. In all analyses that follow, the unit of analysis is at the individual level; that is, I do not examine panel effects.

Due to the limited scope of this study, a matching approach is used in order to compare cases. For each category, observations were matched based on the opinion author's gender, race, appointing party, decision year, and ideological direction of the decision. A five-year window was used in order to count citations. This approach allows for comparison of citations while holding constant competing explanations for differences in citations.

In order to gather citation counts for each case, I utilized LexisNexis Academic Database to look up cases about sex discrimination, abortion, and ADA cases in order to compare the number of citations received by different race-gender cohorts.[2] I counted the total number of citations each judge received within their circuit, outside their circuit, and by the U.S. Supreme Court. Only citing court decisions were counted; citations by law reviews, treatises, briefs, or periodicals were not used. I considered positive and negative treatment for this project because even negative treatment could mean it was influential. The categories positive and negative are assigned by Lexis and refer to the manner in which the cases were treated with respect to the case by which

[2] For the purposes of this project, I use the distinctions "white" and "minority" rather than breaking down minority into specific racial and ethnic groups because almost all of the minority women were African American.

they were cited.[3] Cases could be cited negatively in order to help the opinion author explain their rationale for why they disagree, but the author still had to consider the implications of the decision in order to decide if they agreed or disagreed with the rationale, demonstrating that it had some degree of influence.

Next, I discuss the variables used for the citation and decisional analyses. (Table 1 in the appendix displays all coding rules for variables.) First, a series of variables describes judicial characteristics (race, sex, and party), then case characteristics (cite, year, outcome, circuit, and issue area), and finally citation information (number of citations, outside circuit citations, and Supreme Court citations). Dummy variables for judge characteristics include those for the sex of the judge (male=0, female=1), race of the judge (white=0, nonwhite=1), and party of the nominating president[4] (Democrat=1, Republican=0). The "cite" variable is the case legal citation and "year" refers to the year the case was decided by the court. A dummy variable indicates the direction of the case outcome (liberal=1, conservative=0). Circuit was denoted with the circuit number with the D.C. circuit numbered as 12. Abortion cases were coded with a "1," sex discrimination as "2," and ADA cases as "3." There are also indicators for whether or not cases cited by the U.S. Supreme Court and other district or appeals courts in the nation. If a case was cited out-of-circuit then it was coded with a "1," while those cited

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[3] If a case received positive treatment in LexisNexis, it means that it has positive history. This could include affirmation or denial of judicial review. Furthermore, the case could have been followed by a minority opinion in the same circuit or a different circuit. If a case received negative treatment, it means that judicial review or reconsideration was allowed or it was reversed by a higher court. Subsequent courts could have disregarded the case or questioned the rationale behind the decision.

[4] For the purposes of this project, when I discuss Republican or Democratic judges it is to be assumed to be the party of the nominating president not the ideology of the judge. The ideology of the judge is not available. Furthermore, it should be noted that not every judge will vote in the same direction as the party of the nominating president. There are exceptions. For instance, Sonia Sotomayor was elevated to the appeals court by President George W. Bush (a Republican) but is a relatively liberal leaning judge.

in-circuit were given a "0." Similarly, if a case was cited by the Supreme Court it was coded as "1" and those that were not were given a "0." It is important to note that judges do not have to cite cases outside of their own circuit as those cases are not binding in their circuit. Therefore, the cases that are cited from out-of-circuit are more "persuasive" for judges.[5] Most comparable cases for each issue area were chosen from the same year; however, there were a few matched cases that were plus or minus three years from the original case.

Results

For all three issue areas, I took a sample of cases from the Sunstein dataset. For the sex discrimination category (including pregnancy discrimination), there were thirty-two cases. Eight were written by minority women and had four conservative outcomes and four liberal. The cases were then matched with cases with the same outcome authored by white men, minority men, and white women. For abortion, all of the thirty-six cases were authored by white males or females.[6] Each case authored by a white female (eighteen total) was matched with a case authored by a white male within two to three years of the original case authored by a female. There were three cases with a conservative outcome and fifteen cases with a liberal outcome and the original eighteen were matched with a case with the same outcome and party. Lastly, there were also thirty-six ADA cases; however, these were more varied in terms of race. There were nine cases authored by minority women (three liberal outcomes, five conservative) that were

[5] "Persuasion" in this context can mean a judge agreed with a case from another circuit finding it convincing thus causing him to cite said case in support of his argument. It could also mean the judge saw a flaw in the rationale of the case cited and used it in explanation of why he or she did not rule in the same manner.

[6] There were not enough opinions in the abortion category authored by minority women to do a comparison.

matched with white women, white men, and minority men depending on outcome (liberal or conservative). In the cases studied, a liberal vote is one in favor on the plaintiffs for sex discrimination and ADA cases. For abortion cases, a conservative vote means that the judge voted to restrict abortions and a liberal vote means that the judge voted to uphold previous standards. I included ADA cases as a comparison category for the two women's issue areas: sex discrimination and abortion.

Beginning first with citations as an indicator of legal influence, I look at differences across issue areas. Overall, sex discrimination cases had the highest overall average number of citations with an average of two hundred sixty-three. Sex discrimination and ADA cases were most likely to be cited outside of the circuit but abortion cases were most likely to be cited by the Supreme Court.

(See Figures 1.1- 1.6)

Next, I generated a series of box plots that shows the distribution of citations for cases written by various groups of judges. In Figure 1.1., we see the distribution of citations in sex discrimination, broken down by judge gender. Furthermore, we also see more variation in citations for women than men. This can be seen in the inter-quartile range—for women the IQR is 602 citations with a minimum of 24 and a maximum of 1,153 citations while the IQR for men is 130 with a minimum of five and a maximum of 296. Therefore, the IQR and minimum and maximum values for female judges is much greater than male judges. (Note that the results for sex discrimination cases reflect that all cases in the sample were authored by Democratic judges). In figure 1.2, we see minority women have an IQR of 670 with a minimum of 65 and a maximum of 1,153 citations. White women had an IQR of 408 with a minimum of 24 and a maximum of

656 citations. These results suggest that the first hypothesis regarding female judges wielding more legal influence than men in the form of citations in sex discrimination and abortion cases is true, for sex discrimination cases. Furthermore, the results suggest that while minority women have a higher number of citations than white women, this finding is not statistically significant.

In comparison, Figure 1.3 shows citations to majority opinions about abortion, by the sex of the opinion author. For these cases, there were not statistically significant results. Overall, the IQR was similar for male and female, with the median values much closer for these cases than sex discrimination (the median for male-authored cases was 62 citations while the median for female-authored cases was 41 citations). This demonstrates that women do not wield as much legal influence in terms of citations when they author the majority opinion for abortion cases compared to men. This means that the first hypothesis was only supported in terms of sex discrimination cases. Figure 1.4 compares male and female judges within each party. When analyzing Democratic females and Democratic males, the median for Democratic females was 39 while the median for Democratic males was 47 citations. Republican women had a median of 44 while Republican men had the highest median between both parties and sexes with 75 citations. Overall, there is more variation when comparing men in both parties. Figure 1.4 also shows that Republican men are cited more overall than female Republicans and male and female Democrats. This suggests that my hypothesis stating women would be more influential when writing the majority opinion for abortion cases is not supported, as men in both parties are cited more often than women in both parties.

Finally, Figure 1.5 shows citations by party and sex of majority opinion author for ADA cases, the comparison category. As with sex discrimination cases, ADA cases only contain cases authored by Democrats. The median for female-authored opinions was 103 with an IQR of 240 citations while the median for men was 81 with an IQR of 147 citations. While there is some variation across gender, the variation is not statistically significant. This demonstrates that men nor women wield more legal influence over the other for ADA cases. This supports the hypothesis that differences would not be seen between men and women because disability discrimination is not gender salient. In Figure 1.6, minority women and white women were also compared. Overall, results comparing race and gender were statistically significant; minority women had a median of 286 citations while white females had a median of 90 citations. This demonstrates that minority females are cited more often than their white counterparts with respect to ADA cases.

However, box plots are limited in their ability to help evaluate the hypotheses. In order to determine whether or not there was a significant relationship between judge characteristics and citations, I performed difference-of-means tests (i.e., t-tests). I use this test in order to determine if the average number of citations for one group of judges is significantly different from the average of another group. If the "p-value" is less than 0.05 then it is considered statistically significant (Acock 2016). Tables 1 – 3 show the results from difference-of-means tests, beginning first with sex discrimination cases.

[Table 1 here]

For sex discrimination cases, the average number of citations is substantially higher for women than men (424, compared to 102). Because the cases were all

authored by Democratic judges (there were not enough Republican judges for this comparison), the averages remained the same when party was added. This difference is statistically significant, lending further support for part of the first hypothesis stating that women would be more influential in sex discrimination cases. No sex discrimination cases in this study were cited by the Supreme Court. In Table 1, race and gender were compared for females only. Minority females had an average of 536 citations while white females had an average of 312. However, while minority females had more citations overall, this finding is not statistically significant. In terms of sex discrimination cases, my hypothesis was supported. Women (regardless of race) were more influential than men when they authored a sex discrimination case opinion.

[Table 2 here]

For abortion cases, Table 2 demonstrates there was no statistical significance between male and female citations, with an average for male judges of 70 citations and females 68 citations. While this is not statistically significant, it should be noted that men are cited more often than their female counterparts. Table 2 also breaks down averages between party and gender, again with no statistical significance. However, it should be noted that Republican males had the highest average number of citations with 124 citations and Democratic males had the lowest average with 60 citations. This does not support the first hypothesis that stated female judges will be more influential than their male counterparts because males overall had a higher citation average than female judges. As there were not enough minority authors for abortion cases, this area contains only white men and women.

[Table 3 here]

Table 3 shows the average number of ADA citations (the comparison category) is not statistically significant with the average for women being 186 for females and 176 for males. As with sex discrimination cases, this area contains opinions authored by Democratic judges as there were not enough Republican judges for a comparison. This supports my first hypothesis as a difference between men and women was not expected because disability discrimination is not a gender salient issue. Table 3 also demonstrates race and gender differences for females only, showing statistical significance in the average number of citations—minority females had an average of 263 while white women had an average of 110 citations. This shows minority females are cited more often than white women with respect to ADA cases.

[See Tables 4-6]

Next, I ran cross-tabulations between judge characteristics and votes, using Chi-squared tests. I hypothesized that minority women would be more liberal in both sex discrimination and abortion, but did not find strong support for that expectation. In sex discrimination cases, there was no significant difference between the number of liberal votes white and minority females cast (see Table 4). Likewise, in abortion cases, there were no significant differences between white and minority female judges (see Table 5). In ADA cases, there was no statistical significance between minority and white female judges (see Table 6.). With respect to sex discrimination and abortion cases, my hypothesis that minority women would be more likely to cast a liberal vote in these two areas did not find support.

[See Tables 7-9]

Last, this study examined voting by Republican and Democratic female judges in sex discrimination and abortion cases, with the expectation that voting will vary along party lines for abortion because it is more of a divisive partisan issue than sex discrimination. This was also measured using cross-tabulations with a Chi2 test in order to determine statistical significance. Following the conventions used in the literature, I use the party of the nominating president as a proxy for the party of the judge.

Looking first at sex discrimination cases (Table 7), we see that Democratic females cast a liberal decision in sex discrimination cases 51% of the time while Republican women cast a liberal vote 38% of the time. Republican women cast a conservative vote 61.3% of the time, while Democratic women cast a liberal vote 51.0% of the time. When broken down by party and gender, the results for Republican women and men are not statistically significant. Likewise, for Democratic women and men, the results did not meet the threshold to be considered statistically significant (Table 7).

Next, in Table 8, we see that abortion cases follow a similar pattern, with strong partisan differences between Republican and Democratic women. Republican women cast a liberal vote in abortion cases only 40% of the time while their Democratic counterparts cast a liberal vote 71% of the time. However, the results for gender within party were not statistically significant.

With respect to ADA cases as the comparison category, the results for Republican females and Democratic females did not meet the threshold to be considered statistically significant. However, when broken down by party and gender, Republican women cast a conservative vote 56% of the time while Republican men cast a conservative vote 69%

of the time. That is, Republican women voted to protect the plaintiff in disability cases more often than their male counterparts. For Democratic men and women, the results were not statistically significant.

Discussion

The results from the sex discrimination analysis are supported by the informational account of judging and the feminist legal theory while abortion results are supported by the attitudinal model of judging. Female judges possess unique and valuable information emanating from a shared experience that affected their ability to participate fully in the community. Overall, women seem to be making strides on the bench; they went from fighting for a place on the bench to becoming influential judges specifically in terms of sex discrimination cases. Women could wield more legal influence in terms of sex discrimination cases because historically they have more personal experiences with it than men. However, females could come much further in terms of legal influence when voting on cases concerning other women's rights issue areas such as abortion. Female judges were much more likely to be cited within their own circuit and circuits throughout the country when they were the author of sex discrimination cases, but not abortion cases. In fact, in the cases sampled, women did not even wield more influence in the Supreme Court for an issue (abortion) that can only affect females. Furthermore, this study examined liberal and conservative women's voting in sex discrimination and abortion cases and found there were strong partisan differences for abortion cases between Republican and Democratic females. When analyzing male and female judges broken down by party, all Democratic appointees were more likely to cast a liberal vote than their Republican counterpart.

My findings show that females were more influential than male judges in terms of the number of times they were cited for sex discrimination cases but not abortion cases. Therefore, the informational account that "women possess unique and valuable information emanating from shared professional experiences (Boyd, Epstein, and Martin 2010) is supported by the outcome for sex discrimination cases. Overall, this study found other courts in surrounding circuits do not value female authored opinions concerning abortion over those written by a male, even though it is an issue specifically pertaining to women, but do value their opinions when authoring sex discrimination cases. This discrepancy could be due in part to the strong partisan difference on abortion. While there were statistically significant results for sex discrimination cases, the differences were not as large for sex discrimination cases as abortion cases which could indicate that polarization regarding sex discrimination cases is not as prevalent as it is for abortion cases. Also, it should be noted that Republican women are at a disadvantage when analyzing the number of citations for abortion cases compared to Republican men because there are not as many Republican appointed females as Republican men.

The attitudinal model of judging can also help explain the results, especially for abortion. While a degree of judicial impartiality is expected, judges are human beings with certain ideological and personal values that do not disappear when they vote on a case (Spaeth 2002). This is true for an extremely polarized issue such as abortion and can help explain the divide between Republican and Democratic women. Despite the fact that it is a woman's issue, personal ideological values will come to light when deciding these cases. This can also be true for sex discrimination cases as more

conservative votes were cast by Republican women (61.3%) and more liberal votes were cast by Democratic women (51.0%) suggesting that women do in fact divide along party lines for sex discrimination cases although not to the extent of abortion cases.

The feminist legal theory found some support in sex discrimination cases. In these cases, it is not surprising that female judges voted in favor of the plaintiff because their case centers around discrimination based on sex in the workplace, school, or other institution inhibiting their ability to participate fully in society. With respect to female judges deciding sex discrimination cases, their own personal experiences will shape their decision and authorship of opinion because they, unlike the majority of men, have had concrete experience with sex discrimination and will recall their own inability to move forward in their profession or schooling simply due to their sex. Female authors may have been cited more for this exact reason: they once experienced sex discrimination whereas most men (not all, especially minority men) have been more removed from the effects of sex discrimination. Therefore, other judges authoring opinions dealing with sex discrimination both in-circuit and out-of-circuit may choose to cite decisions authored by females more often because of personal female experience.

The race and gender non-finding is particularly interesting as the study conducted by Collins and Moyer in 2008 found that liberal women were more likely to cast a liberal vote in criminal cases. If minority women were more likely to side with the defendant in criminal cases, then they could also be more likely to side with women claiming discrimination based on their sex, or women claiming their right to have an abortion has been infringed upon because these two issues areas where women as a whole have experienced discrimination and inequality. This can be explored further

through the study of Obama's minority women appointments. I would expect results for sex discrimination and abortion cases to become statistically significant due to the influx of minority women Obama appointed during his two terms as president. This could also mean women, regardless of race, are influenced by their similar discriminatory path to the bench.

One limitation of this study is that it only examines a small window of time in judicial history, 1993 until 2008, and does not include the appointments of President Barack Obama. To build on this thesis, researchers could use the same methods I employed by gathering citation counts in LexisNexis for cases beginning with President Carter's appointees in the 1970's through Barack Obama's appointees in order to evaluate whether female judges' influence has grown throughout the past 40 years. Additional research could also expand the women's rights issues studied. For instance, instead of simply addressing abortion, researchers could expand their focus to include reproductive health in general. Furthermore, as (hopefully) more minority women are appointed to the bench, more could be done on intersectionality. With so few minority women in this study, I choose to collapse African American, Latina, and Asian American women into the category "minority." If more minority women are appointed to the bench, then there will be more opportunities to parse differences across race-gender groups, as well as identify similarities in judicial decision making.

In spite of these and other limitations, this study makes an important contribution to the literature on judicial decision making, by focusing on how female judges have come to be *influential* on the bench in terms of women's rights issues. This is important to study in order to demonstrate how the bench is no longer dominated by

men. This study also highlights the importance of intersectionality and its effect on judging. It is advantageous to study white and minority women because race in addition to sex may affect how a judge will vote on a particular case.

***Table 1*: Gender and racial differences in citations of sex discrimination opinions**

Difference-of-means test

Group	**Mean (S.E.)**	**95% confidence interval**
Gender and Party		
Democratic male (n = 16)	102* (23.4)	52.5, 152
Democratic Female (n = 16)	424* (85.7)	241, 607
Difference	-321* (89.0)	-503, -140
Race and Gender		
White Female (n = 8)	312 (87.6)	104, 519
Minority Female (n = 8)	536 (142.6)	199, 873
Difference	-224 (167.4)	-583, 135

Notes: * denotes $p < .05$ (two-tailed). For gender and party analysis, two-sample $t(30) = 3.6$, $p = 0.001$ (two-tailed). For gender and race analysis, two-sample $t(14) = -3.1$, $p = 0.2$.

***Table 2*: Gender, racial, and party differences in citations of abortion opinions**

Difference-of-means test

Group	**Mean (S.E.)**	**95% confidence interval**
Gender		
Male (n = 18)	70.4 (15.7)	37.6, 103
Female (n = 18)	68 (17.6)	30.8, 105
Difference	2.39 (23.5)	-45.4, 50.2
Gender and Party		
Democratic Male (n = 15)	59.7 (14.7)	28.1, 91.2
Democratic Female (n = 15)	68.2 (20.1)	25.0, 111
Difference	-8.5 (24.9)	-59.6, 42.6
Republican Male (n = 3)	124 (55.1)	-113, 361
Republican Female (n = 3)	67 (40.6)	-108, 242
Difference	57 (68.5)	-133, 247

Notes: * denotes p< .05 (two-tailed). For gender analysis, two-sample t(34) = .102, p = 0.92 (two-tailed) For gender and party analysis, (Democratic) two-sample t(28) = -.3, p = .73 (two-tailed). For gender and party analysis (Republican) two-sample t(4) = 0.8, p = .45 (two-tailed).

***Table 3*: Gender and racial differences in citations of ADA opinions**

Difference-of-means test

Group	**Mean** **(S.E.)**	**95% confidence interval**
Gender and Party		
Democratic Male (n = 18)	176 (63.2)	42.5, 309
Democratic Female (n = 18)	186 (42.8)	96.2, 277
Difference	-152 (79.5)	-321, 16.4
Gender and Race (females only)		
Minority Female (n = 9)	263* (75.6)	88.3, 437
White Female (n = 9)	110* (24.7)	53.4, 167
Difference	-152* (79.5)	-321, 16.4

Notes: * denotes $p < .05$ (two-tailed). For party and gender analysis, two-sample $t(34) = -0.14$, $p = 0.90$. For gender and race analysis (females only), two-sample $t(16) = -1.9$, $p = 0.07$ (two-tailed).

***Table 4*: Female judge race and voting in sex discrimination cases**

Two-way measure of association with Chi2

Direction of vote	**Race and Gender** White Women	**Race and Gender** Minority Women	**Total**
Liberal	107 (44.4%)	28 (57.1%)	135 (46.6%)
Conservative	134 (55.6%)	21 (42.95)	155 (53.5%)
Total	241 (100%)	49 (100%)	290 (100%)

Notes: * denotes p< .05 (two-tailed). Pearson chi2 (1) = 2.6967 Pr = 0.260

***Table 5*: Female judge race and voting in abortion cases**

Two- way measure of association with Chi2

Direction of vote	**Race and Gender** White Women	**Race and Gender** Minority Women	**Total**
Liberal	35 (66.0%)	1 (25%)	36 (63%)
Conservative	18 (34.0%)	3 (75%)	21 (36.9)
Total	53 (100%)	4 (100%)	57 (100%)

Notes: * denotes p< .05 (two-tailed). Pearson chi2 (1) = 3.7663 Pr = 0.152

***Table 6*: Female judge race and voting in ADA cases**

Two- way measure of association with Chi2

Direction of vote	**Race and Gender** White Women	**Race and Gender** Minority Women	**Total**
Liberal	209 (45.8%)	34 (46.0%)	243 (45.8%)
Conservative	247 (54.2%)	40 (54.1%)	287 (54.2%)
Total	456 (100%)	74 (100%)	530 (100%)

Notes: * denotes $p < .05$ (two-tailed). Pearson chi2 (1) = 1.4704 Pr = 0.479

***Table 7:* Judge vote and party of nominating president for sex discrimination cases**

Two- way measure of association with Chi2

Direction of vote	**Party and Gender** Republican Women	**Party and Gender** Democrat Women	**Total**
Liberal	41 (38.7%)*	94 (51.0%)*	135 (46.6%)
Conservative	65 (61.3%)*	90 (49.0%)*	155 (53.5%)
Summary	Chi2= 4.2		290 (100%)
Liberal	Republican Women 41 (38.7%)	Republican Men 311 (31.77)	352 (32.4%)
Conservative	Republican Women 65 (61.3%)	Republican Men 668 (68.2%)	733 (67.6%)
Summary	Chi2= 2.1		1,085 (100%)
Liberal	Democratic Women 94 (51.1%)	Democratic Men 208 (45.4%)	302 (47%)
Conservative	Democratic Women 90 (51.1%)	Democratic Men 250 (54.6%)	340 (53%)
Summary	Chi2= 1.7		642 (100%)

Notes: * denotes p< .05 (two-tailed).

***Table 8:* Judge vote and party of nominating president for abortion cases**

Two- way measure of association with Chi2

Direction of vote	**Party and Gender** Republican Women	**Party and Gender** Democratic Women	**Total**
Liberal	6 (40.0%)*	30 (71.4%)*	36 (63.2%)
Conservative	9 (60.0%)*	12 (28.6%)*	21 (36.8%)
Summary	Chi2= 4.7		57 (100%)
Liberal	Republican Women 6 (40.0%)	Republican Men 86 (51.5%)	92 (50.5)
Conservative	Republican Women 9 (60.0%)	Republican Men 81 (48.5%)	90 (49.5)
Summary	Chi2= 0.7		182 (100%)
Liberal	Democratic Women 30 (71.4%)	Democratic Men 68 (61.9%)	98 (64.5)
Conservative	Democratic Women 12 (28.6%)	Democratic Men 42 (38.2%)	54 (35.5)
Summary	Chi2= 1.2		152 (100%)

Notes: * denotes $p < .05$ (two-tailed).

***Table 9*: Judge vote and party of nominating president for ADA cases**

Two- way measure of association with Chi2

Direction of vote	**Party and Gender** Republican Women	**Party and Gender** Democratic Women	**Total**
Liberal	68 (44.2%)	175 (46.5%)	243 (45.8%)
Conservative	86 (55.8%)	201 (53.5%)	287 (54.2%)
Summary	Chi2= .3		530 (100%)
Liberal	Republican Women 68 (44.2%)	Republican Men 491 (30.9%)	559 (32.1%)
Conservative	Republican Women 86* (55.8%)	Republican Men 1,098* (69.1%)	1,184 (67.9%)
Summary	Chi2= 11.3		1,743 (100%)
Liberal	Democratic Women 175 (46.5%)	Democratic Men 408 (48.7%)	583 (48%)
Conservative	Democratic Women 201 (53.5)	Democratic Men 430 (51.3%)	631 (52.0%)
Summary	Chi2= 0.5		1,214 (100%)

Notes: * denotes p< .05 (two-tailed).

Figure 1.1

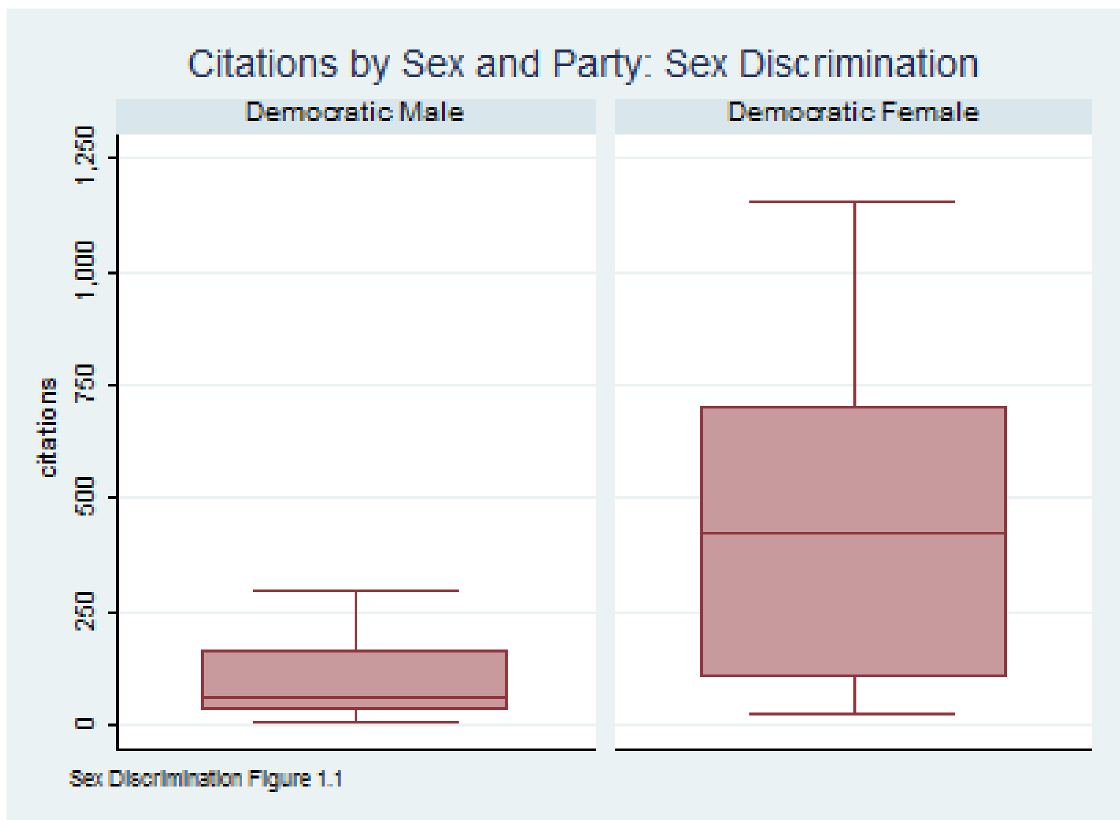


Figure 1.2

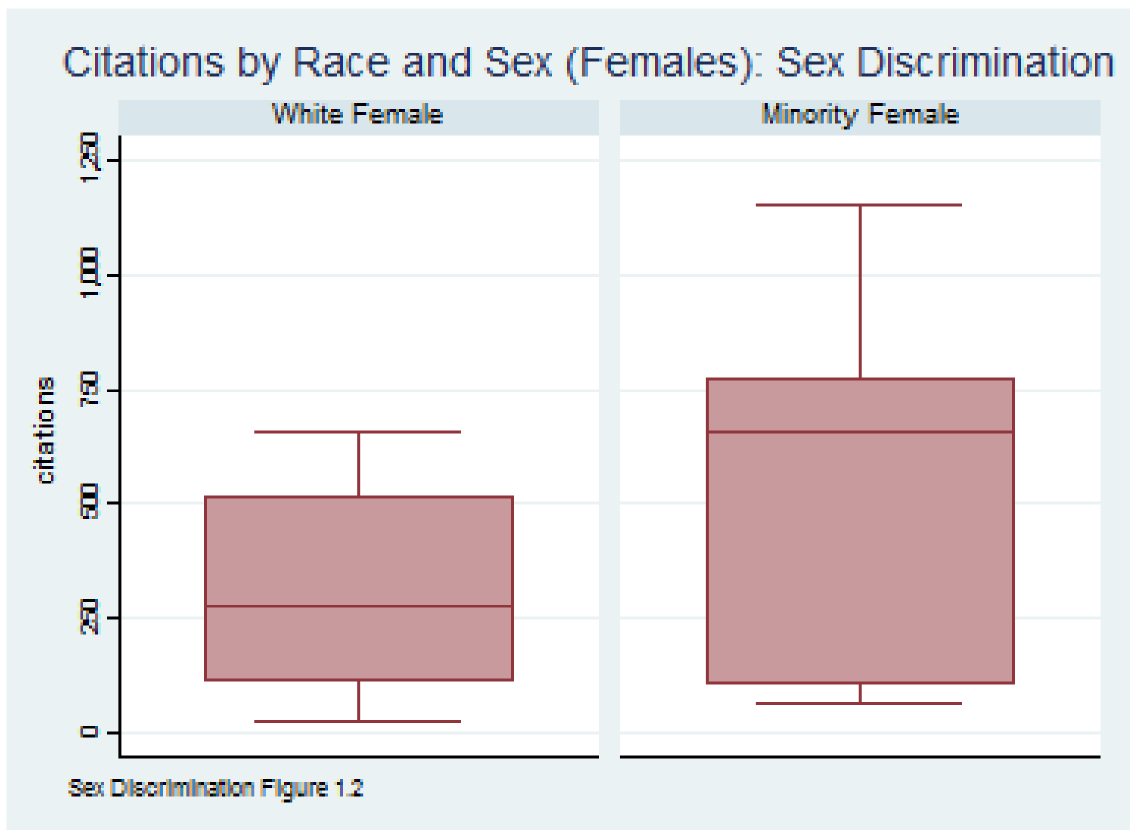


Figure 1.3

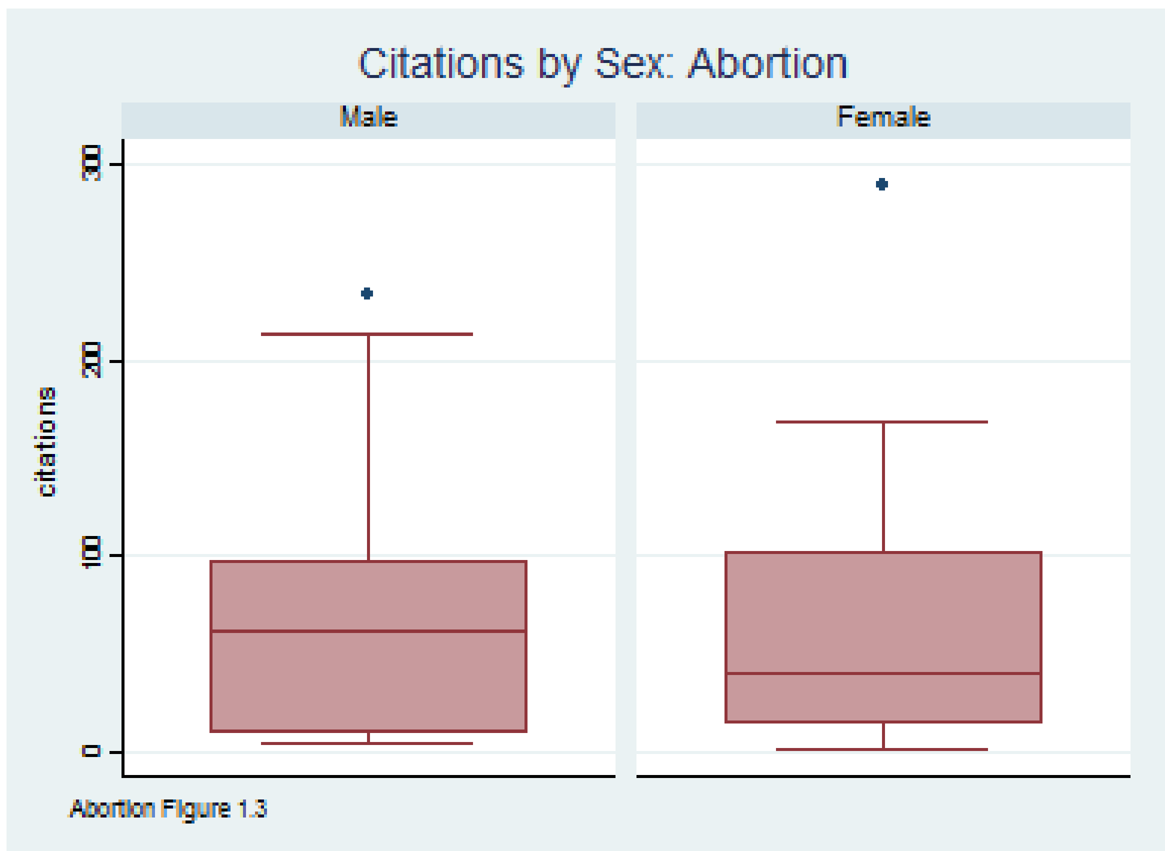
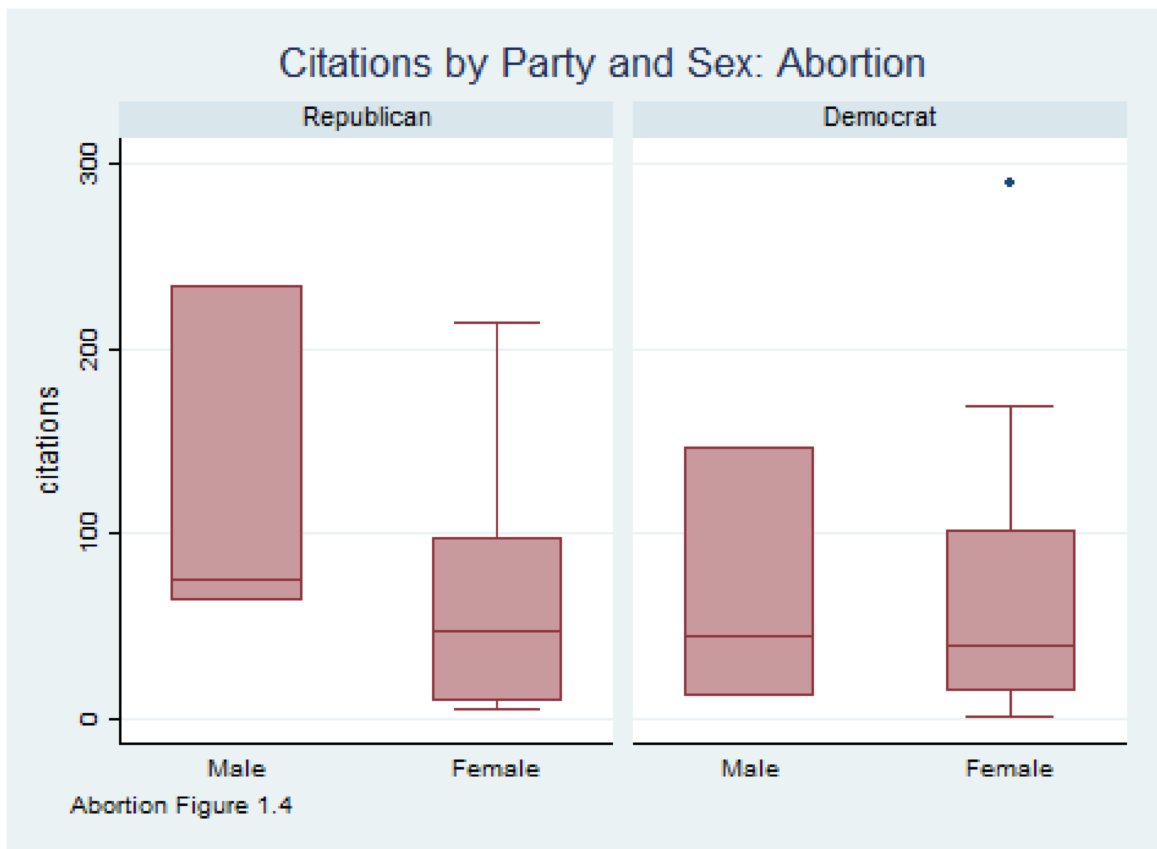


Figure 1.4



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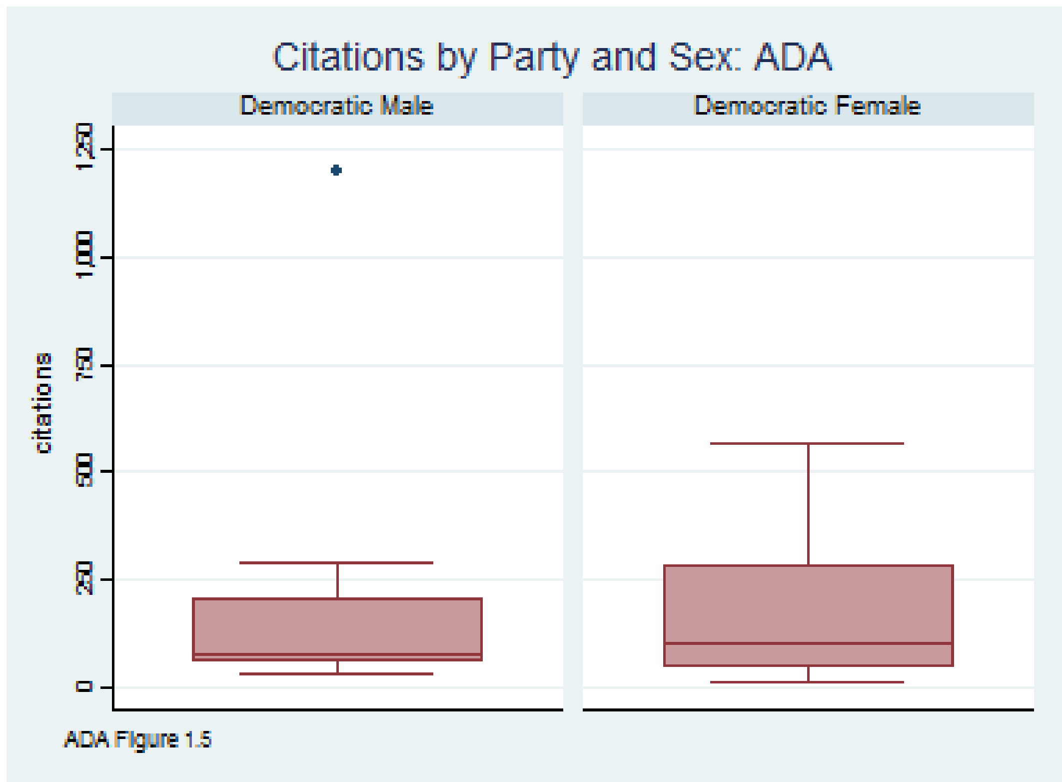
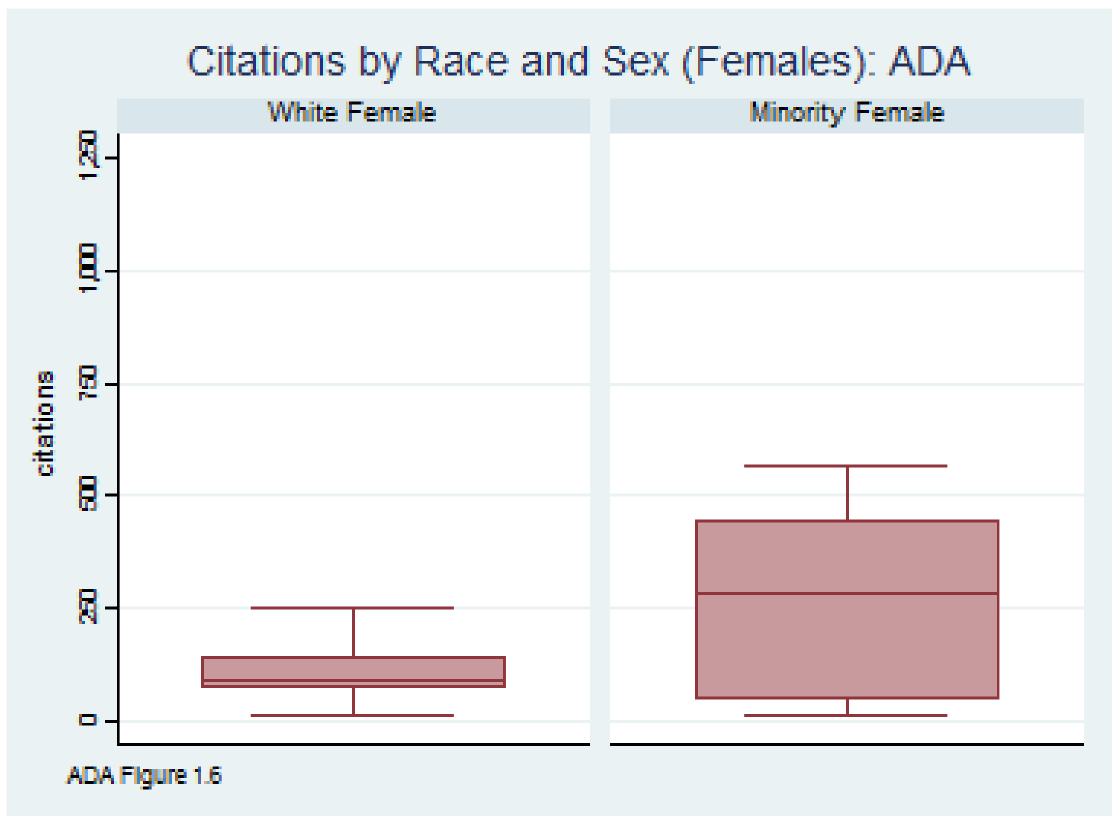


Figure 1.6



Appendix: Code for Variables

Cite	By citation number
Year	By year
Party	Democrat= 1, Republican= 0
Sex	Female= 1, Male= 0
Race	Nonwhite= 1, White= 0
Circuit	1-12, DC Circuit is numbered 12
Category	Abortion= 1, Sex Discrimination= 2, ADA= 3
Outcome	Liberal= 1, Conservative= 0
Citations	By number of citations
Outside	If cited outside the deciding circuit= 1, if not= 0
SCT	If cited by the Supreme Court= 1, if not= 0

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