ASHER LOUIS RIVNER
The Impact of Selection Method on Counter-Majoritarian Behavior by State Supreme Courts
(Under the Direction of STEFANIE LINDQUIST)

This thesis presents a preliminary systematic examination of the effect that selection method and term length have on a state supreme court justice's decision to overturn legislation through the exercise of judicial review. It examines all judicial review cases heard between 1995-1999 by the Alabama, Georgia, Michigan, Tennessee, Wisconsin, Pennsylvania, Kansas, New Jersey, Iowa, New York, and South Carolina supreme courts. This study produced statistically significant results indicating that term length and selection method both play a role in judicial decision making. It also found that term length has a greater influence on the decision making of elected justices than on appointed justices. It reinforces the importance of the theoretical debate amongst judicial scholars over what role a non-elected body should play in a democratic system. These results also suggest a new avenue for judicial politics scholars to pursue in future research.

INDEX WORDS: Judicial review, State supreme courts, Appelate Court, Judicial, Judicial selection, State court, Counter-majoritarian,

THE IMPACT OF SELECTION METHOD ON COUNTER-MAJORITARIAN BEHAVIOR BY STATE SUPREME COURTS

by

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DEDICATION

I would like to dedicate this thesis to my Mom and Dad. Their love, support and confidence in me is what has allowed me to be able to complete this work. They taught me never to do less than my best, and I hope this thesis makes them proud.

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CHAPTER 1

INTRODUCTION

Legal scholars have long debated the proper role of judicial review in democratic governance. The concept of judicial review seems contrary to the majoritarian basis of democracy, especially in a federal system where judges are appointed for life and the power of judicial review enables them to invalidate the enactments of elected officials. Critics of judicial review assume that an elected body will be more responsive to the desires of the majority population than a non-elected body. Indeed, in the introduction to a recent paper, Barry Friedman described "reconciling judicial review with democracy" as "the central problem of constitutional law for roughly half a century" (Friedman 2000, 1). According to legal scholars, the "problem" with judicial review is not the ability of one branch to override the decisions of another, but rather, in the case of the federal courts, the ability of a non-elected branch to override an elected one. Alex Bickel (1962, 18) has even gone so far as to label the process of judicial review "a deviant institution in the American democracy" because it has the power to undo the work of the majority. Presumably, these critics would be less concerned with judicial review if all judges were elected and therefore subject to the same majoritarian constraint.

By framing the problem in this manner, legal scholars assume that the federal judiciary, due to its institutional nature as an appointed body, behaves differently when it comes to judicial review than would an elected judiciary. Yet, the underlying assumption that elected and appointed courts will render decisions differently is susceptible to empirical validation. If a group of appointed federal courts does not behave differently from a hypothetical group of unappointed federal courts, then much criticism of judicial review will ring hollow. If elected and unelected judges behave the same, then there is no

counter-majoritarian problem with judicial review. Unfortunately, there is no way to test how federal judges would exercise judicial review if they were subject to different institutional guidelines, including electoral constraints because all federal judges are appointed.

While there is only one federal court system, there are fifty state court systems each with its own appellate court. This paper will focus on the state supreme courts because, as courts of last resort, they all serve as the highest arbiter of law in their state and closely parallel the United States Supreme Court in purpose and scope. Because the states use a variety of means to select state supreme court justices, including election and appointment, by comparing the states we can gain insights regarding judicial review that cannot be gained from studying the United States Supreme Court.

Examining the behavior of state supreme court justices, does more than simply shed light on an academic question. While court reformers and state governments have long rejected the federal model for organizing the judiciary, most states have been unable to find a means of selection that can satisfactorily balance the desire to have an judiciary that is free to exercise fair and legitimate review over the other branches of government, but is still concerned with the popular will. The recent explosion in campaign spending and in the competitiveness of judicial races, has caused some states, who elect their justices, to place stricter restrictions on campaigning or to consider switching to appointed justices (Glaberson 2000). In Ohio's most recent judicial raise, special interest groups targeted justices who wrote opinions they disagreed with, causing many in Ohio to reevaluate their judicial selection system (Glaberson 2000). In Texas, lawmakers have recently considered plans as drastic as abandoning the electoral system in favor of a merit based one, to the relatively modest proposal of instituting strict campaign finance laws for judicial races (Talbot, Kaplan, and Moyers 1999, 22). By examining judicial behavior in the state

supreme courts, researchers can provide court reformers with the knowledge they need when considering how they want to structure the courts.

This paper examines how the different schemes used by the states for choosing justices, as well as differences in term length, affect the exercise of judicial review. In particular, eleven states are examined in order to explore whether selection method and term length influence state supreme court justices' willingness to override legislation through the exercise of judicial review.

CHAPTER 2

PREVIOUS APPROACHES TO STUDYING STATE COURT BEHAVIOR

A. Institutional Effects on Judicial Voting Behavior

Research on legislative behavior has amply demonstrated the electoral connection between elected representatives and their constituencies (Mayhew 1974). Most of the research dealing with the impact of judicial selection method on judicial decision-making has been conducted within the framework of neo-institutional theory, which explains political phenomena in terms of institutional constraints. These studies seek to find a link between judicial behavior, the institutional constraints placed on the judges through structural rules, term limits, selection method, environmental influences, and the political and social environment. Melinda Gann Hall and Paul Brace have conducted the majority of the leading state court institutional research. Their research has found a strong link between these institutional constraints and judicial voting behavior.

In a 1987 study, for example, Hall conceptualized the role that institutional constraints play in shaping judicial behavior. Hall examined the effects of perceived constituent pressure on the willingness of elected judges to engage in a risk-taking behavior by voting to dissent. Dissents involve risk-taking because they can attract public scrutiny and remove the judge's ability to hide behind the safety of court unity when justifying an unpopular vote. Although it is difficult to show a direct link between voter displeasure and a judge's decision, Hall demonstrated that judges fear losing reelection. As a result, they tend to behave in a manner consistent with constituent beliefs. In particular, Hall conducted confidential interviews with elected Louisiana state supreme court justices and then examined their judicial voting records. One of the justices interviewed was a liberal who was elected by a conservative constituency. Hall (1987, 1120) found that he

moderated his views on the death penalty to remain in line with his constituents' beliefs. Although the judge dissented from 26 percent of conservative decisions involving issues with low constituent salience, he dissented only 3.3 percent of the time in cases upholding the death penalty, an issue of high salience to his conservative constituents (Hall 1987, 1122). This finding is in line with a recent poll conducted by the Texas supreme court, which found that half of all judges in Texas consider their ability to appeal to campaign donors when making decisions on the bench (Talbot, Kaplan, and Moyers 1999, 22)

While this study provides no systematic quantitative evidence to indicate a relationship between reelection and judicial behavior, it provides a starting point for future investigation. Indeed, Hall's findings are pertinent to research regarding judicial review because the death penalty cases that she examined involved challenges to the constitutionality of the Louisiana death penalty statute. In other words, the example presented by Hall not only reveals much about the nature of dissenting behavior, but also explores judicial decision-making in cases involving the exercise of judicial review. Hall's study suggests that electoral concerns serve as a meaningful institutional constraint on the decision to overturn legislation.

The justice's fear of retribution for unpopular decisions is more than senseless paranoia. Unpopular decisions can not only motivate a challenger to run against a justice, but it can also improve the ability of the challenger to successful raise money. In a recent study examining the "friends and neighbors effect" in judicial fund-raising, Gregory Thielemann (1993) found that candidates not only received the bulk of their funds from contributors who lived in the same district that they did, but their opponent also did best in these districts. He concludes that since the justices' home districts are the most familiar with their voting record, votes which displease residents of these home districts will be more likely to organize against the incumbent. There is also anecdotal evidence of state supreme court decisions leading to justice's losing their seats. During the 1980s, Texas

had the most pro-plaintiff supreme court. This court would routinely strike down tort reform laws passed by the Texas legislature and upheld many expensive verdicts. This greatly angered insurance providers, business interests, and the Texas medical community, and these organizations decided to take action. They organized TEXPAC which recruited less plaintiff friendly candidates, pumped large sums of money into their campaigns, and then used the contact between doctors and their patients to distribute voting slates for the upcoming election. TEXPAC was hugely successful in their efforts, winning five out of six races. This has lead to Texas becoming the least plaintiff friendly court in the nation (Talbot, Kaplan, and Moyers 1999).

The results Hall (1987) found in her judicial interviews were confirmed by a more recent study in which party affiliation, state party competition, selection method , and term length were found to significantly affect the voting behavior of state supreme court justices in death penalty cases (Brace and Hall 1997, 1219-22). These results show that selection method and term length will have an effect on judicial behavior, in this case whether or not a judge votes to dissent in a death penalty case, and that elected justices behave in a manner that best preserves their ability to stay in office. Other Hall and Brace studies (1995, 2000) have found consistent results regarding the effects of selection method and term length on judicial decision- making.

Research by Hall and Brace has thus confirmed the general consensus that judges who decide cases in a manner consistent with the wishes of their constituency have greater electoral success than judges who vote against the wishes of their voters (see Sheldon 1997, 19). Since most judges want to keep their jobs, they normally decide cases in a manner that minimizes their constituents' displeasure (Sheldon 1997). Empirical research has also shown justices will avoid dissenting in cases involving controversial issues. Doing so presumably minimizes their chances of being targeted by angry constituents in future

elections. Siding with the majority provides safety in numbers, making it difficult to target individual justices for electoral defeat (Hall 1992; Hall and Brace 1993).

When he examined business law, criminal law, and family cases, Daniel Pinello found another example of elected justices behaving differently from non-elected justices. His research revealed that appointed justices favored the individual over the state, while elected justices favored state interests over the individual (Pinello 1995, 130). In interpreting these results, Pinello views the appointed justice's willingness to support minority and criminal rights, legal areas that he deems to be unpopular with the general population, as a product of their greater independence (Pinello 1995, 131).

A large body of research has thus demonstrated that institutional constraints, like selection method, will moderate state supreme court justices' preferences and ideology to conform to constituent beliefs. It has also shown that when dealing with controversial issues, judges will try to minimize their exposure to controversy by voting as part of a large coalition rather than filing separate opinions and dissents. While this research has shown that electoral constraints play a vital role in judicial behavior, none of these works has explicitly examined judicial review from a neo-institutional standpoint. Nevertheless, the studies' results provide a basis to hypothesize about the manner in which institutional constraints will affect judicial review.

B. The Integrated Case-Related Model of Judicial Decision-Making

Craig Emmert (1992) is the first scholar to systematically examine judicial review in the state supreme courts. Emmert creates an integrated model of judicial review using a combination of explanatory variables to predict whether a court overturns legislation through the exercise of judicial review. For the five year period between 1981 and 1985, Emmert examined all cases decided by state courts of last resort that involved a constitutional challenge to a state statute. Emmert's aim was to test the validity of a "case-related" model of judicial review by combining this model with other variables commonly

used to predict judicial behavior (Emmert 1992, 543). The case-related model uses the issues associated with each case to predict the likelihood of a state court striking down legislation through the exercise of judicial review. For example, his model evaluates whether a state court will be more likely to strike down legislation in an economic regulation case or a criminal case, while simultaneously controlling for a series of other independent variables.

Emmert begins with the issue-based model, which posits that the issues raised in a particular case are likely to affect a court's activism (Emmert 1992, 544). Here activism relates to the willingness of the court to act on a given issue by overriding the legislative branch. Declaring legislation unconstitutional is generally considered an activist decision because the court is substituting its ideas for that of a coequal branch (Canon 1982). Emmert examines five different types of cases: criminal, economic regulation, private law, civil liberties, and government and political. Emmert's hypothesis is that the court will be most likely to strike down laws supporting class-based distinctions or limitations on fundamental freedoms because courts in America have traditionally viewed themselves as protectors of civil liberties (Emmert 1992, 546). Emmert expects the presence of a civil liberty issue to be strongly associated with the exercise of judicial review. On the other end of the spectrum, Emmert expects to find crime legislation overturned the least because criminal defendants tend to bring appeals based on recurring legal issues. Such recurring challenges limit the likelihood of a court overturning legislation in any given case because it recently may have rejected a challenge to the law. Also, many criminal appeals tend to rely on a "shotgun approach," raising as many challenges as possible, which may cause the court to discount issues being raised by the defendant.

Emmert also incorporates to this model variables associated with the "party capability" model, based on the theory that organizational litigants are often more successful in court than individuals due to their access to superior resources and greater

likelihood of being a repeat player (Galanter 1974; Sheehan and Songer 1992). According to party capability theories, government litigants will be the most successful, followed by political groups, business and professional litigants, and finally individuals (Emmert 1992, 546-7). Previous research has shown that in the federal appellate courts certain parties perform better than others (Songer and Sheehan 1992). Wheeler et al. (1987, 443) also examined the comparative advantage enjoyed by "stronger parties" over "weaker parties," finding that the "haves" consistently performed better than the "have-nots" in state supreme courts during the hundred year period of 1870-1970. Most notably, Wheeler and his coauthors (197, 427) found that the government won about seven percent more often than did other litigants.

Emmert also examined the influence that raising multiple issues in an appeal has on the likelihood that a court would nullify a statutory enactment. Emmert hypothesizes that, the more options available to the court when making a decision, the less likely the court would be to overturn legislation. If the justices can find another means to resolve the case, rather than overturning the legislation, they will resolve it in that manner. Therefore, the more issues raised in a case, the more likely that the court will ignore the constitutional claim and instead focus on something else (Emmert 1992, 547). Similarly, Emmert hypothesizes that courts would be more likely to overturn legislation challenged purely on state constitutional grounds rather than on both state and federal constitutional grounds. Emmert believed this to be true because state supreme courts have the final say in legislation challenged under the state constitution, thus shielding them from reversal by a federal court in such circumstances. On the other hand, when a case raises a federal constitutional challenge, the United States Supreme Court has the authority to review the actions of the state court. Since no justice likes having decisions reversed, he will behave in a more activist manner when he can render the final decision about the law (Emmert 1992, 547).

Finally, Emmert incorporates a control for the direction or outcome of the lower court ruling. Based on research first developed in the context of the United States Supreme Court, Emmert suggests that the higher court would be more likely to overturn legislation if a lower court had previously ruled to overturn the statute (Emmert 1992, 548).

Emmert's integrated model of judicial review thus incorporated variables reflecting case type, multiple issues, party capability, and lower court outcome. Using logistic regression, he estimated the impact of these variables on the dichotomous dependent variable: whether or not the court overturned the statute. His analysis was highly successful, as his model yielded a reduction in error of 38%. All of the variables had explanatory power, suggesting that approaches focusing on only one explanatory factor provide incomplete information about the judicial decision-making process (Emmert 1992, 549).

Emmert's study provides an excellent starting point for the study of judicial review in state courts; however, it ignores three key areas of exploration. First, it does not incorporate the attitudinal model of judicial decision-making. In this model, the greatest predictor of how a justice will decide a case is the justice's personal preference for its outcome. A conservative justice will vote in favor of restricting abortion rights, regardless of the legal precedent or constitutional theories, because he favors abortion restrictions. The attitudinal model views justices as policy actors in the same manner that legislators are policy actors. Segal and Spaeth (1994) have shown this model to have great explanatory power in the United States Supreme Court, and Brace and Hall (2000) have included judicial attitudes in their model of state court behavior. Second, Emmert does not examine the role that institutional constraints such as term length and selection method play in state courts' exercise of judicial review. Third, Emmert models court decisions rather than the individual justice's vote. However, examining whole court decisions can

obscure what is actually taking place on the court. When using court decisions a narrow decision is coded the same as an unanimous decision by the court. This study builds on the body of research started by Emmert by adding the judicial independence model to his integrated model of judicial decision-making and by using the individual justices as the unit of analysis. In order to incorporate ideas about selection method into this model, one must first have basic knowledge about the way in which the states developed the various methods used.

C. Judicial Selection in the States

In the beginning of our nation's history, the entire American Judiciary, including state courts, were appointed by executives. During the Jacksonian era, a movement began that sought to turn judgeships into elected positions. The Jacksonians held a strong belief in the power of direct democracy and believed that all public officials, including judges, should be selected by the people (Dubois 1980). The initial electoral systems that were created used a partisan primary to choose the candidates, and these elections were conducted in a manner similar to that of any other campaign. As time went on, however, many reformers ceased to be satisfied with this system. In the later decades of the nineteenth century, dissatisfaction arose over the control that party bosses were able to exercise over the electoral system, so a movement began to replace partisan elections with nonpartisan ones.

This distinction in electoral systems continues today. Nine states currently rely on partisan elections, while thirteen rely on nonpartisan elections to choose their supreme court justices (The Council of State Governments 1996). It is generally assumed that partisan judicial elections tend to generate a greater deal of scrutiny and competition than do nonpartisan elections. Nevertheless, Melinda Gann Hall (2001) has found, in the only recent study to systematically compare judicial elections, that both partisan and nonpartisan judges are voted out of office at about the same rate. In the year of 1982,

20% of all judges running in nonpartisan elections lost their seat, while only 4.2% of partisan judges lost their seat. She also found 25.5 % of all elected justices faced a close race when the incumbent wins with 55% or less of the vote (Hall 2001, 318). Hall also found that nonpartisan judges had a more difficult time winning their initial seat, often facing three or more opponents. Since partisan judges only had to contend with one opponent, their initial elections are easier, but they may face stronger opposition for reelection. In some states the partisan label can be meaningless, since in some states one party has traditionally been able to dominate another. Given the generally low saliency of judicial elections, it is also unlikely that state political parties target partisan incumbents when recruiting candidates. For all these reasons, I do not feel that there is an actual difference in terms of judicial behavior. between partisan and nonpartisan elected justices.

The movement to elect judges went out of fashion in the 1930s when the American Bar Association started advocating the merit system plan. Under the merit system, a legal selection committee provides the governor with a list of possible and qualified candidates. This committee is nonpartisan and usually consists of both lawyers and nonlawyers who are typically chosen by either the governor, the state bar associate, or a combination of the two. (Berkson 1981, 6) This committee will then generate a list of several qualified individuals who are interested in serving on the court. The governor then will appoint one of the candidates from this list; the appointment is then followed by a trial period (on average a year) during which voters will have the opportunity to observe the judge's performance. After the year ends, a retention election is held to determine whether to keep the judge or to have the governor appoint a new one. By 1976, twelve states had adopted this standard (Dubois 1980).

In theory, merit selection falls between election and appointment as an approach to judicial selection. In reality, however, the merit selection system differs little from gubernatorial selection. Since the justices in a merit system only run against themselves,

retention elections fail to provide a real check on the sitting justice. Also, the justice is still put into office by the sole discretion of the governor, who chooses the name off of the list.

The foregoing discussion suggests that, while the states follow a variety of selection systems, the critical distinction among them is between elected (partisan and nonpartisan) and non-elected (appointment and merit system). Grouping the individual states' different selection methods into two broad categories is supported in the literature. In Daniel Pinello's (1995, 17) recent book examining the relationship between judicial selection method and court policy orientation, he grouped partisan and nonpartisan courts together and treated merit system courts the same as appointed courts. When including selection method as a variable, Hall and Brace (1995, 1997, 2000) also have consistently grouped justices into either the elected or the non-elected categories.

CHAPTER 3

A REVISED INTEGRATED MODEL OF JUDICIAL DECISION-MAKING: RESEARCH HYPOTHESES

The integrated model combines selection variables related to judicial review with these variables related to case-specific legal issues, party capability, and institutional constraints.[1] As noted above, Emmert's (1992) seminal study, while comprehensive in many respects, failed to account for judicial selection method or term length as potential influences on the exercise of judicial review. Yet term length has the potential to impact judicial activism. Previous works studying strategic behavior have found that judges behave in a more activist manner when they face less frequent elections (Brace and Hall 1995; Hall 1992; Langer 1997). Since this study focuses on the willingness of one branch of government to override another, there should be a strategic dimension to a justice's decision whether to overturn legislation. When constructing a model of judicial behavior, it is useful to consider the possible strategic interactions taking place on the court. A justice might not be willing to risk a showdown with the legislature, or run the risk of having legislators help an opponent, if there is a face frequent reelection campaign.

In addition, longer term lengths may embolden justices because the more years a judge is on the court, the easier it is to build an independent power base within the electorate. Long-serving incumbent judges in contested judicial races often receive more

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[1]I initially hoped to include an attitudinal variable in my model. Unfortunately, constructing a reliable attitudinal measure for this research project proved to be an impossibility. Since this project is the first research to examine the role of institutional constraints on the willingness of justices to overturn legislation through judicial review, it can still provide good results without containing all the control variables that an ideal study would have.

contributions than their opponents (Baum 1995, 21). Much like senators in the United States Congress, who feel less pressured to raise funds as quickly as member of the House, justices with long term lengths can take longer to rebuild their financial resources for the next campaign. This gives them the freedom to vote against a bill popular with a wealthy interest without having to fear retribution in the form of reduced campaign funding. Previous works have found that the longer a judge is in office, the more likely he is to vote in a manner contrary to constituents' preferences. For example, one study found that judges with terms over eight years were about twice as likely to vote in a manner inconsistent with what might have been expected, given their partisan affiliation (Nagel 1971, 403). For these reasons, the following hypothesis:

Hypothesis 1: The longer the term length, the more likely a state supreme court justice will vote to invalidate legislation through the exercise of judicial review.

Existing research also suggests a connection between selection method and the exercise of judicial review. In states with elected justices, it is a distinct possibility that overriding a popular law could result in electoral reprisals, which may cause elected justices to be reluctant to exercise judicial review. A justice who votes to strike down a law is challenging legislation that a majority of popularly chosen legislators voted to enact. Assuming that many of the voters supported the legislation that was passed, the justice's vote could provide valuable ammunition for a political opponent to use in the next election. In contrast, appointed justices or those who face only a retention election will vote to overturn a higher percentage of legislation because these justices do not have to worry about losing their jobs if they contradict the will of the people. The findings of other researchers (Brace and Hall 1993; Brace, Hall, and Langer 1996) thus suggests that elected justices who must answer to constituents constrain their preferences and moderate their opinions so as to conform to constituent preferences; non-elected justices are freer to challenge the dominant majority coalition.

Hypothesis 2: State supreme court justices will be less likely to vote to invalidate legislation through the exercise of judicial review In states where judges are elected.

There should also be an interactive effect to exist between selection method and term length. Since elected judges hesitate to overrule for fear of electoral reprisal, a fear that is highly diminished for an appointed judge, the buffer provided by a long term will be of greater importance to the elected justice. For this reason, the expected effect of term length will be greater for elected justices than for appointed ones, and an interactive term will capture this relationship.

Hypothesis 3: Term length will have a greater positive affect on elected justices than on non-elected justices.

The first three hypotheses constitute the main innovative contribution of this study, as the relationship between selection method, term length, and judicial review has yet to be systematically evaluated. In addition to these critical variables, however, it is necessary to incorporate controls for other influences on judicial behavior. Emmert (1992) provides a good source for relevant control variables. First, he controlled for case type or issue. Hypotheses that held true for the behavior of the court as a whole should also be true for the individual justice's behavior. The expectation here is that the cases involving more pressing issues, or issues which the court views as falling within their legitimate exercise of power will be the most likely to trigger a justice to vote to overturn a law. Criminal cases will be the least likely to result in the exercise of judicial review because these cases tend to deal repeatedly with the same challenges to legislation. Justices often views these cases as little more than last ditch attempts by defendants to postpone punishment and often deal with them as matters of routine (Emmert 1992, 545). Private law cases often deal with divorce, malpractice, and statutes of limitations; these are areas that also tend to be viewed by the appellate courts as fairly routine (Emmert 1992, 545). While economic cases address routine contractual matters, they also have a greater likelihood of containing

a new challenge than criminal and private law cases. Generally speaking, justices assume a more activist posture when dealing with issues that fall into what the court believes is its specialized jurisdiction. The court often views itself as the venue where disputes between other branches of government should be resolved. In a case of a dispute stemming from government regulations of private, social, or economic activity, justices may view it most appropriate to invalidate legislation (Emmert 1992, 545). From this the following hypothesis is developed:

Hypothesis 4: State supreme court justices will be more likely to vote to invalidate legislation through the exercise of judicial review in government regulation cases than in those involving criminal, private, or economic issues.

During the twentieth century, the courts have been viewed as the traditional protectors of civil liberties. When other branches of government encroach on individual liberties, the court is expected to provide a remedy for those disadvantaged by the law. This remedy often takes the form of overturning legislative enactments that restrict civil liberties. Accordingly, in Emmert's (1992, 546) study cases challenging legislation for violating civil liberties resulted in the most decisions by the court to overturn legislation.

Hypothesis 5: State supreme court justices will be most likely to vote to invalidate legislation through the exercise of judicial review in civil liberties cases.

Some litigants are more successful at winning cases than others. Individual litigants tend to be the least successful, often due to their inexperience with the legal system or lack of resources. State government litigants tend to be the most successful, due to their experience with the process and their ample resources. In general, the greater the resources and experience available to a litigant, the better the litigant will do in court (Wheeler et al.1987). The next four hypotheses incorporate the party capability model, which Emmert (1992) used as a control in his integrated model of judicial review. As

explained above, party capability theory suggests that government litigants are the most likely to succeed, followed by nonprofit groups, business and professional litigants, and individuals.

Hypothesis 6: Government litigants will be most successful in their challenge to the constitutionality of state laws, followed by nonprofit groups, business and professional litigants, and individuals.

As discussed in chapter 2, justices prefer not having to overturn legislation. If litigants provide an opportunity for an effective remedy without invalidating state laws, the justice will prefer that remedy. In contrast, where an appeal rests solely on state constitutional grounds, then the justice will be forced to make the decision whether to strike down the law (Emmert 1992, 547). Thus the fewer options presented to the judge, the more likely the judge will choose to invalidate legislation (Emmert 1992, 548).[2]

Hypothesis 7: The fewer the number of issues that a case raises, the more likely it is that a justice will vote to invalidate legislation through the exercise of judicial review.

For convenience these hypotheses are provided in Table 1.

[2]My integrated model only includes the variable for the number of issues raised and does not incorporate Emmert's ideas concerning the presence of a federal constitutional claim. I found that in my model it was too closely related to the variable for number of issues raised. My model used a much smaller sample size than Emmert's. I use 11 state supreme courts, while Emmert used 51. In future research projects where I may incorporate more state courts, I may be able to add this into my model.

Table 1: Research Hypotheses

Variables Related to Judicial Independence	
H_1	The longer the term length, the more likely a state supreme court justice will vote to invalidate legislation through the exercise of judicial review.
H_2	In states where judges are elected, state supreme court justices will be less likely to vote to invalidate legislation through the exercise of judicial review.
H_3	Term length will have a greater positive affect on elected justices than on non-elected justices.
Variables Related to Case -Specific Legal Issues	
H_4	State supreme court justices will be more likely to vote to invalidate legislation through the exercise of judicial review in government regulation cases than in those involving criminal, private, or economic issues.
H_5	State supreme court justices will be the most likely to vote to invalidate legislation through the exercise of judicial review in civil liberties cases.
Variables Related to Party Capability	
H_6	Government litigants will be the most successful in their challenge to the constitutionality of state laws, followed by non-profit groups, business and professional litigants, and individuals.
Variables Related to Institutional Constraints	
H_7	The fewer the number of issues that a case raises, the more likely it is that a justice will vote to invalidate legislation through the exercise of judicial review.

CHAPTER 4

DATA AND METHODS

A. Scope

The data for this study are drawn from cases involving constitutional challenges to state statutes heard in eleven state courts of last resort: Alabama, Georgia, Kansas, New Jersey, Iowa, Michigan, New York, Pennsylvania, South Carolina, Tennessee, and Wisconsin. This sample of states was selected so as to maximize variation on the pertinent independent variables. Furthermore, given data collection constraints, most studies of state supreme court voting behavior are limited to a sample of states (e.g. Hall and Brace 1992, 1993, 1994, 2000). These states were selecting according to the research strategy of ``selecting oberservations on the explanatory variable," as suggested by King, Keohane, and Varba (1994). The explanatory variables in this case were selection method and term length. The goal in choosing which courts to consider was to create a representative sample of states that used varied selection methods and would yield roughly the same number of votes per category. For the purposes of this study, there are two types of courts: those where the justices are elected and those where they are initially appointed. States were chosen to give an equal distribution of short, medium, and long relative term lengths for each of the two selection methods. This resulted in six elected courts and five appointed courts. Table 2 provides information about each court.

Table 2: State courts by selection method (term length in years)

	Elected	Appointed
Short Term	Alabama (6)	Kansas (6)
	Georgia (6)	New Jersey (7)
Medium Term	Michigan (8)	Iowa (8)
	Tennessee (8)	South Carolina (10)
Long Term	Wisconsin (10)	New York (10)
	Pennsylvania (10)	

(Source: *The Book of the States: Volume 31*)

Table 3: Frequency Distribution for term length by type of selection method.

Term length (in years)	Elected	Appointed
Six	9	6
Seven	0	2
Eight	7	5
Ten	5	7
Eleven	1	4
Twelve	0	1
Life	0	3

(Source: *The Book of the States: Volume 31*)

All of the states selected have intermediate courts of appeal. The presence of an intermediate appellate court will have an effect on the exercise of judicial review because, in states that lack an intermediate appellate court, the state supreme court must take all cases on appeal. In states with intermediate appellate courts, however, the state supreme court generally has the discretion to shape its own docket. The justices are able to use the

lower courts to screen out the more mundane cases, which by their nature, are less likely to raise a viable constitutional challenge[3] (Atkins and Glick 1976). Similar to how other studies of the state supreme courts, this study hopes to reduce variation that is attributable to differences in case complexity and look at a comparable set of cases (Lindquist and Pybas 1998). To this end, the fifteen states that lack intermediate appellate courts were excluded from initial consideration.[4]

B. Dependent Variable:

In the revised integrated model of judicial decision-making, the dependent variable is measured as an individual level, dichotomous variable reflecting whether or not the justice voted to overturn legislation. The dependent variable was coded such that a score of one indicates a justice's decision to overturn legislation. Prior to assigning values to the dependent variable, the majority opinion, along with all concurrences and dissents, were read in their entirety and the score for each justice's vote was recorded in light of the context of the case being examined. In order to receive a value of one, the justice's vote – when considered in connection with the associated opinion – must have clearly reflected

[3]For a more in-depth discussion of how the presence of an appellate court effects state supreme court case selection, refer to Atkins and Glick (1976)

[4]The data in this study consist of all judicial review cases heard by the selected courts from 1995 to 1999. To gather the data, I ran a Westlaw search to generate a case list. The following search terms were used: "(((CONSTITUTIONAL! UNCONSTITUTIONAL!) /P CHALLENG! & CONSTITUTION & (SECTION STATUT! ACT ENACTMENT LEGISLATION)) 361K57) & DA(AFT 1994 & BEF 2000) & CO(HIGH)." This generated a list of cases for each state. I then reviewed each case on this list to determine whether or not it involved a request by one of the litigants for the court to invalidate legislation. This gave me a total of 335 cases across the eleven states. Since the dependent variable is justice vote rather than court decisions, these 335 cases resulted in data set that included 2097 votes. Appendix A contains all of the cases that this search returned for each of the eleven states being examined. The cases that were incorporated into the study have been marked in bold.

an intention to invalidate the enactment. For a description of how the independent variables are operationalized, please refer to Table 4.

Table 4: Operizationalization of Variables

Dependent Variable	
Judicial Vote	1 = a vote to invalidate legislation through the exercise of judicial review 0 = a vote not to invalidate legislation through the exercise of judicial review
Selection Variables Related to Judicial Independence	
Term Length	term length in years
Elected Judge	1 = elected judge 0 = non-elected judge
Term Length X Elected	term length X elected
Variables Related to Case-Specific Legal Issues	
Criminal	1 = case based on a criminal issue 0 = case based on a non - criminal issue
Private	1 = case based on a private law issue 0 = case based on a non- private law issue
Economic	1 = case based around an economic issue 0 = case based around a non-economic issue
Regulatory Law	1 = case based around a government or political issue 0 = case based around a non-government or political issue
Civil Liberties (reference category)	1 = case based around a civil liberties issue 0 = case based around a non-civil liberties issue
Variables Related to Party Capability	
Individual	1 = individual litigant 0 = non-individual litigant

Table 5: Frequency Distribution of Dependant Variable by State

Votes	Upheld Law	Struck Down Law	Total
Alabama	146 81.11%	34 18.89%	180
Georgia	266 76.22%	83 23.78%	349
Kansas	172 78.54%	47 21.46%	219
New Jersey	135 79.41%	35 20.59%	170
Iowa	195 84.05%	37 15.95%	232
Michigan	76 74.51%	26 25.49%	102
New York	115 69.70%	50 30.30%	165
Pennsylvania	173 66.03%	89 33.97%	262
South Carolina	79 65.83%	41 34.17%	120
Tennessee	63 81.82%	14 18.18%	77
Wisconsin	125 56.56%	96 43.44%	221
Total	1545 73.68%	552 26.32%	2097

Table 5 displays a general pattern which confirms some of the expectations. Generally speaking, in the states where justices are not elected and have longer terms,

justices appear more willing to overturn legislation than the elected justices in states with shorter terms. However, several exceptions exist. Wisconsin, an elected state, has the highest percentage of votes to overturn. The expectation is that term length and non-elected are both positively correlated with the dependent variable; therefore, an increase in term length and the presence of a non-elected justice should increase the percentage of votes to overrule. If one is only considering term length and selection method, then one would expect the non-elected state with the longest term length to have the highest percentage of votes to overturn legislation. New York is the appointed state with the longest term length; however, its justices do not have the highest percentage of votes to overturn legislation. This suggests that there are other factors influencing a justice's decision to overturn legislation.

Table 6: Frequency Distribution of Dependant Variable by Selection Method

Overrule	Elected	Not Elected
Vote Against Percent	696 76.82%	849 71.28%
Votes For Percent	210 23.18%	342 28.72%
Total	906	1191

The summary statistics presented in Tables 5 and 6 suggest that some relationship may exist among the relevant variables, although it is impossible using the frequencies shown in Tables 5 and 6 to determine the true relationship between the dependent variable, selection method and term length, in the absence of relevant. This suggests the need to examine the relationships between these variables from a multivariate approach.

Business	1 = business or professional party 0 = non-business or professional party
Organization	1 = private nonprofit organization as litigant 0 = not a private nonprofit organization as litigant
Government (reference category)	1 = government litigant 0 = non-government litigant
Variables Related to Judicial Institutional Restraints	
Issues	number of issues in case
Intermediate	1 = intermediate appeals court ruling 0 = no intermediate appeals court ruling

C. Descriptive Statistics.

A frequency distribution and correlation matrix of the dependent variable were run for each state and for the selection method variable. The results are in Tables 5 and 6. The average number of votes per state is 212, and the votes are distributed fairly evenly among the states. Alabama has the most votes per state with 349, and Tennessee has the least with only 77 votes. The variation in the number of votes among the states can largely be attributed to the states having different bench sizes. States with larger courts will have more votes. A roughly equivalent amount of votes were given for both elected and non-elected justices (906 elected votes, 1191 non-elected votes).

D. Methods.

As illustrated by the descriptive statistics, a model is needed that will allow one to measure each independent variable's individual effect on the dependent variable while controlling for other potential influences. This suggests the need to use a form of multiple regression analysis. A review of the literature suggests that logistic regression ("logit") is the best tool for this study (Emmert 1992; Songer and Haire 1992). Since the dependent variable is dichotomous, OLS will not produce reliable results (Aldrich and Nelson 1984). Logit estimates the effect of one variable on the probability of the dependent variable equaling one, while controlling for other independent variables. Logit calculates both the maximum likelihood estimate (MLE) of each parameter and the parameter's standard error (SE). The MLE estimates the independent variable's contribution to the probability of the dependent variable being a one or a zero (Songer and Haire 1992).

CHAPTER 5

RESULTS AND ANALYSIS

A. Results.

Table 7 presents the results from the logit model of votes in judicial review cases. The model performs well, with an impressive 30.5 % reduction in error over the null model. As presented in Table 7, many of the independent variables reach conventional levels of statistical significance, and all of the critical independent variables behave as hypothesized. Most importantly, this model confirms the importance of selection method and term length to the analysis of judicial behavior.

Table 7: Effect of Term Length and Selection Method on State Supreme Court Votes to Overturn Legislation Through Judicial Review. (1994-1999)

Independent Variable	Logit Parameter Estimate	Standard Error
Intercept	-1.6440	0.3518
Termlength	0.0935**	0.0316
Criminal Law	-0.3482*	0.1903
Private Law	-0.3586*	0.1903
Economic Law	-0.1438	0.1575
Regulatory Law	-0.3326*	0.1652
Individual Appellant	-0.2221	0.2027
Business Appellant	-0.0128	0.2085
Private Organization Appellant	-0.0592	0.2671

Number of Issues Raised in Appeal	-0.0613***	0.0168
Intermediate Appeals Court Decision	-0.1262	0.1317
Amici Brief	0.8306***	0.1120
State as Opposition	0.1437	0.1302
Elected	-0.7313*	0.4162
Term Length X Elected	0.1283**	0.0478
Chi-Square = 146.395 Degrees of Freedom = 14 Log Linear = 2270.465 % Correct (null) = 64.3 % Correct (model) = 75.2 Reduction of Error = 30.5%		
N=2097 *p<=.05 **p<=.01 ***p<=.001 Significance tests are one-tailed.		

First, that the elected justices would be less likely to vote to invalidate legislation through the exercise of judicial review in light of potential electoral reprisal. Consistent with my initial hypothesis, the dummy variable is negative and is significant at the .05 level, indicating that the likelihood of the association being random is less than five percent. This finding indicates that justices who are elected behave in a constrained manner and are more reluctant to override the decisions of majoritarian institutions. The non-elected justices do not need to fear electoral reprisal from their votes, allowing them to assume a more activist stance and thus to override legislation more frequently.

Second, it was hypothesized that the longer the term length, the less reluctant a justice would be to vote in favor of overriding legislation through judicial review and that term length would have a greater influence on elected justices than on non-elected justices.

Consistent with these hypotheses, term length is positively related to overriding behavior and significant at the .01 level. Due to the use of an interactive term in the model, the term length variable represents the effects of term length when the election dummy variable equals zero. The interactive term (Term length X Elected) is also positively related to the dependent variable, and statistically significant at the .01 level; it shows the additional effect that term length has on elected justices.[5]

This model contained two major categories of control variables, those related to legal issues raised and those related to party capability. Three of the four legal issue variables were statistically significant at the .05 level. Based on Emmert's research, it was predicted that with civil liberties as the reference category, the other issue variables would be negatively related to a vote to override legislation. Since all of the coefficients for these variables are negative, and three (criminal law, private law, and regulatory law) are significant, the data confirm this hypothesis. Because justices prefer to resolve cases without overturning existing law, it was also hypothesized that the greater the number of issues in addition to the claimed constitutional violation, the lower the probability of a justice voting to override legislation. The logit model produced results that were consistent with this hypothesis and were statistically significant at the .001 level. The variables related to party capability were not statistically significant, although they did have the predicted negative coefficient when compared against the reference category of government litigants.

The performance of the control variables is important. If the control variables performed in a manner contrary to expected or failed to generate any significant results, it would cast a doubt over their appropriateness as controls. Also, the purpose of this model is to identify the effect that term length and selection method have in the context of a

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[5] For a more in-depth discussion of the acceptability of interactive terms in multiple regression models and on how to interpret these variables, see Friedrich (1982).

comprehensive model of judicial behavior. By including statistically relevant control variables in my model, it is possible to develop a model that more accurately resembles the judicial decision-making process and the role institutional constraints play in it.

B. Discussion

This study shows that term length and selection method influence a justice's decision to override legislation through the exercise of judicial review. While other factors identified in previous research do affect a justice's decision to override legislation, the findings in this study leave little doubt that term length and selection method play a major role in that decision as well. Unfortunately, these findings do not make clear what is causing these institutional features to modify judicial behavior. They probably operate in one of two ways. First, the neo-institutional literature has found that, when voting in dissents, elected judges will modify their policy preference or vote with the majority on an unpopular decision to shield themselves from electoral reprisal (Sheldon 1997; Hall 1992; Hall and Brace 1993). If elected justices modify their dissenting behavior, which is less likely to be noticed by the public, then they will certainly be likely to modify their behavior in connection with high-profile cases challenging legislative enactments. Indeed, the decisional calculus is probably similar in both situations. When asked to make a decision regarding whether to override legislation through judicial review, justices who face election in the near future might be in a difficult predicament. The justices may assume that since the same constituents that elected them also elected the legislators from their area, the constituents may also favor the legislation. Because they fear angering thier constituents, the justices may vote to uphold the law despite personal policy preference or concerns over the appropriateness of the law. Justice who are more isolated from the electorate, either by appointment or longer term, do not need to be as concerned with thier constituents' wishes.

The second explanation for the difference in behavior between elected and appointed justices could involve consistency between the preferences of legislators and justices in states that elect justices. If one assumes that voters elect officials with agreeable policy preferences, then it is very likely that voters would elect legislators and justices with similar policy preferences. This means that the justices on an elected court may more often support the challenged legislation than justices on an appointed court. Moreover, the more frequently justices must face reelection or reappointment, the more frequently they will be reminded of their constituents' wishes; this can explain why justices with longer terms overturn legislation more frequently. The fear of reelection suggests another area for research that might yield interesting results. A future study could examine if there is any change in judicial behavior as the justices approach the end of their term. The results in this paper, would lead one to suspect, that the closer justices are to reselection, the less likely that they would be to vote against legislation. If a future researcher, were to substitute the term length variable with years until reselection, it may yield interesting results, probably indicating a positive relationship between years before reselection and the overturning of legislation.

A third way for future researchers to discover what is driving this difference in behavior, would be to select one or two state supreme courts and interview the justices on those courts concerning what type of considerations go into a decision to overturn legislation. If granted anonymity the justices might be willing to discuss the pressures and concerns that drive their decision making process. The interviewer should also look at supreme courts, such as Georgia's, where some judges were initially appointed to fill midterm vacancies and others are elected. The interview should focus on the justices' motivations for seeking office. This project may show differences between the motivations of elected and appointed justices in how they decided to seek office, and in how they view their role in government.

The previous theoretical discussion illustrates the need for further research on this subject, specifically the inclusion of an accurate attitudinal variable as a control. Unfortunately creating this variable poses a daunting research burden. First, for extremely recent decisional data, no attitudinal measure exists and surrogates for the true attitude of the justices are often either unavailable or unreliable. Second, party affiliation is often not available, and where it is available, judge's party affiliation often reflects norms within the state rather than an actual ideological framework. In Georgia, all of the justices would be identified as Democrats; however, the attitudes of Georgia's justices vary widely from justice to justice. Some of the justices on the Georgia Supreme Court have views that are more conservative than those of Republican justices in other states. The presence of state norms thus renders partisanship a less useful surrogate measure of policy preferences.

Third, all attitudinal measures are plagued by reliability problems. It is very difficult to get a true measure of a justice's preferences because justices are often reluctant to discuss them openly. This often leads researchers to develop other methods to assess the justice's policy beliefs that rely on a circular type of logic. For example, Segal and Spaeth (1993) use a combination of lower court rulings made by the justice prior to nomination to the Supreme Court, editorials published during confirmation, and previous decisions to construct an attitudinal measure. This method is problematic, however, because all three of these measures are based on a justice's previous voting record. In essence, they only predict a justice's future votes by suggesting that judges behave consistently with past behavior. These are just some of the difficulties that future researchers will face when attempting to incorporate attitudinal variables in future research on state supreme courts.

Along with providing new directions for research, this study is useful because it adds credibility to one of the principal debates in legal theory. Many law review articles and books have been written concerning how the United States Supreme Court should behave given the countermajoritarian nature of judicial review. While such works attempt

to set forth theories concerning when judicial review would be legitimate, they appear to assume that the United States Supreme Court would behave differently if it were elected rather than appointed (Chopper 1980; Ely 1980; Posner 1995; Scalia 1997; Friedman 2001). By examining differences in voting behavior between both appointed and elected state supreme court justices, this study demonstrates that there is a difference in how courts exercise the power of judicial review, depending on selection method. This findings, and the future research that will expand beyond the scope of this study, show that there is a statistically significant difference between the willingness of elected and appointed justices to overrule legislation through judicial review. This difference can be attributed to selection method and to term length. This finding supports the concerns of judicial theorists over the counter-majoritarian nature of judicial review in the federal system, where all judges are appointed.

Most importantly, this study has broadened our understanding of judicial behavior. Political scientists now have evidence that institutional constraints affect whether justices choose to invalidate legislation, which will allow political scientists to provide better information concerning potential reforms to state court systems. For example, a recent *New York Times* article focused on how many states are considering modifying their court system to restrict the influence of special interests and of constituent pressures on the judiciary. In the last year both the Pennsylvania and the Michigan legislatures have considered legislation that would change their judicial selection system from an elected system to an appointed one (Glaberson 2001). The results of this study could be taken into account by those contemplating such reforms. By switching from an elected to an appointed system, the legislators of these states could unintentionally create a system in which legislation is more frequently invalidated by the courts. This article emphasizes the importance of exploring how institutional constraints affect judicial behavior and

demonstrates how the ideas tested in this paper have importance for the world beyond academia.

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APPENDIX A.

CASE LIST

This appendix contains the case list generated by my WESTLAW search. The cases in bold are the ones that were included in the study.

Alabama

1. Town of Brilliant v. City of Winfield, 752 So.2d 1192 (Ala., Dec 03, 1999) (NO. 1980856)
2.Wells v. Storey, 1999 WL 1065143 (Ala., Nov 24, 1999) (NO. 1970450)
3.South Cent. Bell Telephone Co. v. State, 1999 WL 1455085 (Ala., Nov 17, 1999) (NO. 1960591)
4.Tillis Trucking Co., Inc. v. Moses, 748 So.2d 874 (Ala., Nov 12, 1999) (NO. 1960674, 1960715)
5.Ex parte Rice, 766 So.2d 143 (Ala., Nov 05, 1999) (NO. 1980846)
6..McKowan v. Bentley, 1999 WL 667290 (Ala., Aug 27, 1999) (NO. 1971357)
7.Alabama Power Co. v. Citizens of State, 740 So.2d 371 (Ala., Jul 16, 1999) (NO. 1961087, 1961262, 1961088, 1961175)
8.Abbott Laboratories v. Durrett, 746 So.2d 316, 1999-1 Trade Cases P 72,559 (Ala., Jun 25, 1999) (NO. 1960464)
9.Ex parte Melof, 735 So.2d 1172, 23 Employee Benefits Cas. 2079 (Ala., May 28, 1999) (NO. 1971900)
10.State ex rel. Pryor ex rel. Jeffers v. Martin, 735 So.2d 1156, 136 Ed. Law Rep. 1100 (Ala., May 14, 1999) (NO. 1970109)
11.Goodyear Tire and Rubber Co. v. Vinson, 749 So.2d 393 (Ala., Apr 23, 1999) (NO. 1972057, 1972186)
12.City of Hoover v. Oliver & Wright Motors, Inc., 730 So.2d 608 (Ala., Mar 26, 1999) (NO. 1970366, 1970368)
13.Williams v. Alabama Power Co., 730 So.2d 172 (Ala., Mar 12, 1999) (NO. 1970267)
14.Oliver v. Towns, 738 So.2d 798 (Ala., Jan 15, 1999) (NO. 1970312)
15.Ex parte McCollough, 747 So.2d 887 (Ala., Jan 08, 1999) (NO. 1962015)
16.Rice v. Sinkfield, 732 So.2d 993 (Ala., Dec 18, 1998) (NO. 1970449)
17.Ex parte Boyette, 728 So.2d 644 (Ala., Dec 18, 1998) (NO. 1971554)
18.Life Ins. Co. of Georgia v. Parker, 726 So.2d 619 (Ala., Nov 20, 1998) (NO. 1951583)
19.Life Ins. Co. of Georgia v. Johnson, 725 So.2d 934 (Ala., Aug 21, 1998) (NO. 1970037)

20.In re Anonymous, 720 So.2d 497 (Ala., Aug 03, 1998) (NO. 1971860)
21.M & Associates, Inc. v. City of Irondale, 723 So.2d 592 (Ala., Jul 31, 1998) (NO. 1962143)
22.St. Elmo Irvington Water Authority v. Mobile County Com'n, 728 So.2d 125 (Ala., Jul 31, 1998) (NO. 1961482)
23.Knutson v. Bronner, 721 So.2d 678 (Ala., Jul 24, 1998) (NO. 1951233, 1951355)
24.Kirby v. City of Anniston, 720 So.2d 887 (Ala., Jul 24, 1998) (NO. 1970999)
25.Life Ins. Co. of Georgia v. Smith, 719 So.2d 797 (Ala., Jul 17, 1998) (NO. 1951773, 1951776, 1951797, 1951774, 1951777, 1951798, 1951775, 1951796, 1951799)
26.Ex parte Jenkins, 723 So.2d 649 (Ala., Jul 17, 1998) (NO. 1961520, 1961531)
27.Kmart Corp. v. Kyles, 723 So.2d 572 (Ala., May 22, 1998) (NO. 1961790)
28.State v. Alabama Mun. Ins. Corp., 730 So.2d 107 (Ala., May 22, 1998) (NO. 1961555)
29.Ex parte Clark, 728 So.2d 1126 (Ala., May 15, 1998) (NO. 1951368)
30.South Cent. Bell Telephone Co. v. State, 711 So.2d 1005 (Ala., Mar 20, 1998) (NO. 1960591)
31.Ex parte Jefferson County, 710 So.2d 908 (Ala., Mar 06, 1998) (NO. 1970081)
32.Looney v. Davis, 721 So.2d 152 (Ala., Feb 13, 1998) (NO. 1951825)
33. Ex parte State ex rel. James, 711 So.2d 952 (Ala., Jan 23, 1998) (NO. 1951975, 1960839, 1960927, 1960572)
34. Schulte v. Smith, 708 So.2d 138 (Ala., Dec 19, 1997) (NO. 1960476)
35.Ex parte State Mut. Ins. Co., 715 So.2d 207 (Ala., Dec 16, 1997) (NO. 1960410, 1960455, 1960589)
36.Cherokee Elec. Co-op. v. Cochran, 706 So.2d 1188 (Ala., Dec 12, 1997) (NO. 1960582)
37.James v. Alabama Coalition For Equity, Inc., 713 So.2d 937, 128 Ed. Law Rep. 483 (Ala., Dec 12, 1997) (NO. 1960327, 1960471, 1960489, 1960328, 1960472, 1960490, 1960470, 1960473)
38.Jefferson County Bd. of Educ. v. Moore, 706 So.2d 1147, 124 Ed. Law Rep. 1135, 13 IER Cases 806 (Ala., Nov 14, 1997) (NO. 1960615, 1960616)
39.Ellis v. Pope, 709 So.2d 1161 (Ala., Nov 13, 1997) (NO. 1961789)
40.Talent Tree Personnel Services, Inc. v. Fleenor, 703 So.2d 917, 13 IER Cases 482 (Ala., Sep 12, 1997) (NO. 1951954, 1952087)
41.Ford Motor Co. v. Sperau, 708 So.2d 111 (Ala., Sep 05, 1997) (NO. 1931591)
42.Pace v. State, 714 So.2d 332 (Ala., Aug 29, 1997) (NO. 1960029)
43.Life Ins. Co. of Georgia v. Johnson, 701 So.2d 524 (Ala., Aug 15, 1997) (NO. 1940357)
44.Akin v. State, 698 So.2d 238 (Ala., Jun 13, 1997) (NO. 1960712)
45.BMW of North America, Inc. v. Gore, 701 So.2d 507, 65 USLW 2800 (Ala., May 09, 1997) (NO. 1920324)
46.Ex parte Myers, 699 So.2d 1285 (Ala., May 09, 1997) (NO. 1951981)
47.James v. Langford, 695 So.2d 1158, 119 Ed. Law Rep. 736 (Ala., May 09, 1997) (NO.

1960728, 1960797)

48.Opinion of the Justices, 694 So.2d 1307 (Ala., May 07, 1997) (NO. 363)

49.Williams v. Hank's Ambulance Service, Inc., 699 So.2d 1230, 54 Soc.Sec.Rep.Ser. 421, Medicare and Medicaid Guide (C 45,194 (Ala., Apr 18, 1997) (NO. 1950683)

50.City of Mountain Brook v. Green Valley Partners I, 690 So.2d 359 (Ala., Mar 21, 1997) (NO. 1951577)

51.Ex parte Knowles, 689 So.2d 832 (Ala., Mar 14, 1997) (NO. 1940721)

52.Ex parte Trawick, 698 So.2d 162 (Ala., Feb 28, 1997) (NO. 1951209)

53.Mitchell v. Probate Court of Jefferson County, 689 So.2d 17 (Ala., Jan 17, 1997) (NO. 1941515)

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61.State v. Griffin, 564 N.W.2d 370 (Iowa, May 21, 1997) (NO. 97/95-1148)
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79.State v. Smith, 546 N.W.2d 916 (Iowa, Apr 17, 1996) (NO. 52, 95-1077)
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81.State v. White, 545 N.W.2d 552 (Iowa, Mar 20, 1996) (NO. 16, 95-710)
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83.Iowa Supreme Court Bd. of Professional Ethics and Conduct v. D.J.I., 545 N.W.2d 866 (Iowa, Mar 20, 1996) (NO. 50, 95-1801)
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8. State v. Crow, 266 Kan. 690, 974 P.2d 100 (Kan., Jan 29, 1999) (NO. 79,287)
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11. Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ., 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (Kan., Oct 30, 1998) (NO. 80,000)
12. State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kan., 265 Kan. 779, 962 P.2d 543 (Kan., Jul 10, 1998) (NO. 81,074)
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21. Adams v. St. Francis Regional Medical Center, 264 Kan. 144, 955 P.2d 1169 (Kan., Mar 06, 1998) (NO. 77,848)
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27. State v. Bailey, 263 Kan. 685, 952 P.2d 1289 (Kan., Jan 23, 1998) (NO. 77,657, 77,805)
28. State v. Sanders, 263 Kan. 317, 949 P.2d 1084 (Kan., Dec 12, 1997) (NO. 76,807)
29. State v. Roseborough, 263 Kan. 378, 951 P.2d 532 (Kan., Dec 12, 1997) (NO. 77,718)
30. State v. Cellier, 263 Kan. 54, 948 P.2d 616 (Kan., Oct 31, 1997) (NO. 74,976)
31. State v. Lee, 263 Kan. 97, 948 P.2d 641 (Kan., Oct 31, 1997) (NO. 76,483)
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37. Lemuz By and Through Lemuz v. Fieser, 261 Kan. 936, 933 P.2d 134 (Kan., Mar 07, 1997) (NO. 76,624)
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44. Peden v. State, 261 Kan. 239, 930 P.2d 1 (Kan., Dec 20, 1996) (NO. 75,205)
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51. State v. Green, 260 Kan. 471, 920 P.2d 414 (Kan., Jul 12, 1996) (NO. 74,199)
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62. Labette Community College v. Board of County Com'rs of County of Crawford, 258 Kan. 622, 907 P.2d 127, 105 Ed. Law Rep. 760 (Kan., Dec 08, 1995) (NO. 72,062)

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17. LOIS VARGO, Personal Repre- sentative of ESTATE OF JANET VARGO, Deceased, Plaintiff-Appellant, v. HAROLD SAUER, M.D., Defendant-Appellee, SISTERS OF MERCY HEALTH CARE CORPORATION, doing business as T. LAWRENCE HOSPITAL, JAMES RAWLINSON, M.D., C.P. MAKHOUL, D.O. and B. LANDESS, CRNA, jointly and severally, Defendants., --- N.W.2d ----, 1999 WL 111998 (Mich., Mar 05, 1999) (NO. NO. 106262)

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19.HILDEGARD GORA, THE LOVING TOUCH, INC., JACQUELINE MAXWELL, LEA M. PERKINS, TRACI L. LEPRO and DAWN L. SPANGLER, Plaintiffs-Appellees, v. CITY OF FERNDALE, a Municipal body corporate of the State of Michigan; and VALERIE E. KITCHEN in her official capacity as City Clerk for the City of Ferndale, Defendants-Appellants., 1998 WL 795226 (Mich., Nov 18, 1998) (NO. NO. 106783)

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3. Dale v. Boy Scouts of America, 160 N.J. 562, 734 A.2d 1196 (N.J., Aug 04, 1999) (NO. A-195 SEPT.TERM 1997, A-196 SEPT.TERM 1997)

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25.State v. Afanador, 151 N.J. 41, 697 A.2d 529 (N.J., Jul 23, 1997) (NO. A-146 SEPT.TERM 1996)

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27.General Motors Corp. v. City of Linden, 150 N.J. 522, 696 A.2d 683 (N.J., Jul 21, 1997) (NO. A-106 SEPT.TERM 1996)

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30.Brady v. Department of Personnel, 149 N.J. 244, 693 A.2d 466 (N.J., May 22, 1997) (NO. A-103SEPT.TERM1996)

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36. State v. Martini, 144 N.J. 603, 677 A.2d 1106 (N.J., Jun 28, 1996) (NO. A-164 SEPT.TERM 1995)

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39.Rivkin v. Dover Tp. Rent Leveling Bd., 143 N.J. 352, 671 A.2d 567, 64 USLW 2571 (N.J., Feb 29, 1996) (NO. A-26)

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44. Jacobs v. Stephens, 139 N.J. 212, 652 A.2d 712 (N.J., Jan 25, 1995) (NO. A-1 SEPT. TERM 1994)

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3.Cohen v. State, 94 N.Y.2d 1, 720 N.E.2d 850, 698 N.Y.S.2d 574, 1999 N.Y. Slip Op. 08345 (N.Y., Oct 14, 1999) (NO. 145)

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6.Grumet v. Pataki, 93 N.Y.2d 677, 720 N.E.2d 66, 697 N.Y.S.2d 846, 139 Ed. Law Rep. 986, 1999 N.Y. Slip Op. 04392 (N.Y., May 11, 1999) (NO. 38)

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9.In re Benjamin L., 92 N.Y.2d 660, 708 N.E.2d 156, 685 N.Y.S.2d 400, 1999 N.Y. Slip Op. 01384 (N.Y., Feb 11, 1999) (NO. 2NO.7)

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12.Schulz v. New York State Executive, 92 N.Y.2d 1, 699 N.E.2d 360, 677 N.Y.S.2d 1, 1998 N.Y. Slip Op. 05432 (N.Y., Jun 09, 1998) (NO. 47)

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14.Henry v. Milonas, 91 N.Y.2d 264, 692 N.E.2d 554, 669 N.Y.S.2d 523, 1998 N.Y. Slip Op 01712 (N.Y., Feb 24, 1998) (NO. 21)

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16.Matter of Sayeh R., 91 N.Y.2d 306, 693 N.E.2d 724, 670 N.Y.S.2d 377, 1997 N.Y. Slip Op. 11112 (N.Y., Dec 22, 1997) (NO. 217)

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19.New York State Employment Relations Bd. v. Christ the King Regional High School, 90 N.Y.2d 244, 682 N.E.2d 960, 660 N.Y.S.2d 359, 155 L.R.R.M. (BNA) 2632, 120 Ed. Law Rep. 226, 1997 N.Y. Slip Op. 05589 (N.Y., Jun 12, 1997) (NO. 104)

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22.Matter of Professional, Clerical, Technical Employees Ass'n (Buffalo Bd. of Educ.), 90 N.Y.2d 364, 683 N.E.2d 733, 660 N.Y.S.2d 827, 1997 N.Y. Slip Op. 04433 (N.Y., May 08, 1997) (NO. 64, 65)

23.Grumet v. Cuomo, 90 N.Y.2d 57, 681 N.E.2d 340, 659 N.Y.S.2d 173, 119 Ed. Law Rep.603, 1997 N.Y. Slip Op. 04300 (N.Y., May 06, 1997) (NO. 61)

24.Rogers v. New York City Transit Authority, 89 N.Y.2d 692, 680 N.E.2d 142, 657 N.Y.S.2d 871, 25 Media L. Rep. 1788, 1997 N.Y. Slip Op. 04257 (N.Y., May 01, 1997) (NO.67)

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26.Blue Cross and Blue Shield of Cent. New York, Inc. v. McCall, 89 N.Y.2d 160, 674 N.E.2d 1124, 652 N.Y.S.2d 218 (N.Y., Nov 19, 1996) (NO. 254)

27.Ballentine v. Koch, 89 N.Y.2d 51, 674 N.E.2d 292, 651 N.Y.S.2d 362 (N.Y., Oct 22, 1996) (NO. 211)

28.People v. Knowles, 88 N.Y.2d 763, 673 N.E.2d 902, 650 N.Y.S.2d 617 (N.Y., Oct 22, 1996) (NO. 219)

29.Gagliardo v. Dinkins, 89 N.Y.2d 62, 674 N.E.2d 298, 651 N.Y.S.2d 368, 20 A.D.D. 439, 9 NDLR P 10 (N.Y., Oct 22, 1996) (NO. 210)

30.People v. Foy, 88 N.Y.2d 742, 673 N.E.2d 589, 650 N.Y.S.2d 79 (N.Y., Oct 17, 1996) (NO. 206)

31.Pringle v. Wolfe, 88 N.Y.2d 426, 668 N.E.2d 1376, 646 N.Y.S.2d 82 (N.Y., Jun 28, 1996) (NO. 166)

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33.Goodwin v. Perales, 88 N.Y.2d 383, 669 N.E.2d 234, 646 N.Y.S.2d 300 (N.Y., Jun 06, 1996) (NO. 125)

34.People v. Payne, 88 N.Y.2d 172, 666 N.E.2d 542, 643 N.Y.S.2d 949 (N.Y., May 07, 1996) (NO. 85, 86, 87)

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36.Lee TT. v. Dowling, 87 N.Y.2d 699, 664 N.E.2d 1243, 642 N.Y.S.2d 181 (N.Y., Apr 04, 1996) (NO. 54, 55)

37.Archbishop Walsh High School v. Section VI of New York State Public High School Athletic Ass'n, Inc., 88 N.Y.2d 131, 666 N.E.2d 521, 643 N.Y.S.2d 928, 110 Ed. Law Rep. 350 (N.Y., Apr 02, 1996) (NO. 74)

38.Matter of Backal, 87 N.Y.2d 1, 660 N.E.2d 1104, 637 N.Y.S.2d 325 (N.Y., Nov 30, 1995) (NO. 283)

39.People v. Shack, 86 N.Y.2d 529, 658 N.E.2d 706, 634 N.Y.S.2d 660 (N.Y., Nov 02, 1995) (NO. 231)

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41.People v. Allen, 86 N.Y.2d 101, 653 N.E.2d 1173, 629 N.Y.S.2d 1003 (N.Y., Jul 06, 1995) (NO. 175)

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3.Com. v. Fisher, 559 Pa. 558, 741 A.2d 1234 (Pa., Nov 24, 1999) (NO. 219 CAP. APP.)

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6.Com. v. Stevens, 559 Pa. 171, 739 A.2d 507 (Pa., Oct 27, 1999) (NO. 0229)

7.Com. v. Walker, 559 Pa. 285, 740 A.2d 180 (Pa., Oct 25, 1999) (NO. 30 E.D.1998)

8.Com. v. Holloway, 559 Pa. 258, 739 A.2d 1039 (Pa., Oct 01, 1999) (NO. 0191CAPITALAPPEAL)

9.Com. v. Lopez, 559 Pa. 131, 739 A.2d 485 (Pa., Oct 01, 1999) (NO. 185CAPITALAPPEAL)

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24.Com. v. Williams, 557 Pa. 207, 732 A.2d 1167 (Pa., Jun 04, 1999) (NO. 193)

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28.Com. v. Blystone, 555 Pa. 565, 725 A.2d 1197 (Pa., Feb 26, 1999) (NO. 136)

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30.Rogers v. Pennsylvania Bd. of Probation and Parole, 555 Pa. 285, 724 A.2d 319 (Pa., Jan 22, 1999) (NO. 0009 M.D. 1997, 0010 M.D. 1997, 0008 M.D. 1997)

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63.Scott v. Pennsylvania Bd. of Probation and Parole, 548 Pa. 418, 698 A.2d 32 (Pa., Jul 03, 1997) (NO. 66 M.D. 1996)

64.Bible v. Com., Dept. of Labor and Industry, 548 Pa. 247, 696 A.2d 1149 (Pa., Jun 13, 1997) (NO. 65 M.D. 1995, 73 M.D. 1995, 69 M.D. 1995, 71 M.D. 1995)

65.Com. v. Smith, 548 Pa. 65, 694 A.2d 1086 (Pa., May 20, 1997) (NO. 115)

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68.Com. v. Wingait Farms, 547 Pa. 332, 690 A.2d 222 (Pa., Feb 26, 1997) (NO. 81 E.D. 1995)

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70.In re Avellino, 547 Pa. 385, 690 A.2d 1138 (Pa., Feb 07, 1997) (NO. 2 E.D. 1997)

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72.Com. v. Appel, 547 Pa. 171, 689 A.2d 891 (Pa., Jan 28, 1997) (NO. 112)

73.Com. v. Gibson, 547 Pa. 71, 688 A.2d 1152 (Pa., Jan 22, 1997) (NO. 113 C.A.)

74.In re Hasay, 546 Pa. 481, 686 A.2d 809 (Pa., Dec 24, 1996) (NO. 81 M.D. 1995)

75.Com. v. Chambers, 546 Pa. 370, 685 A.2d 96 (Pa., Nov 20, 1996) (NO. 93 C.D.)

76.Blackwell v. City of Philadelphia, 546 Pa. 358, 684 A.2d 1068 (Pa., Nov 14, 1996) (NO. 66 E.D.1995)

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78.Com. Dept. of Transp., Bureau of Driver Licensing v. Clayton, 546 Pa. 342, 684 A.2d 1060, 9 NDLR P 79 (Pa., Nov 01, 1996) (NO. 78 W.D. 1994)

79.Com. v. Morris, 546 Pa. 296, 684 A.2d 1037 (Pa., Oct 30, 1996) (NO. 0094 C.A.)

80.Ken R. on Behalf of C.R. v. Arthur Z., 546 Pa. 49, 682 A.2d 1267 (Pa., Oct 04, 1996) (NO. 45 M.D. 1995)

81.Court of Common Pleas of Erie County (6th Judicial Dist.), Juvenile Probation Dept. v. Pennsylvania Human Relations Com'n, 546 Pa. 4, 682 A.2d 1246 (Pa., Sep 17, 1996) (NO. 42 W.D. 1995)

82.Com. v. Gordon, 546 Pa. 65, 683 A.2d 253 (Pa., Sep 16, 1996) (NO. 0060 E.D. 1995)

83.Com. v. duPont, 545 Pa. 564, 681 A.2d 1328 (Pa., Aug 19, 1996) (NO. 81 E.D. 1996, 96 E.D. 1996, 89 E.D. 1996, 91 E.D. 1996)

84.Com. v. Barud, 545 Pa. 297, 681 A.2d 162, 65 USLW 2159 (Pa., Jul 30, 1996) (NO. 64 W.D. 1994)

85.Com. ex rel. Nicholas v. Pennsylvania Labor Relations Bd., 545 Pa. 288, 681 A.2d 157 (Pa., Jul 29, 1996) (NO. 40 E.D. 1993)

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