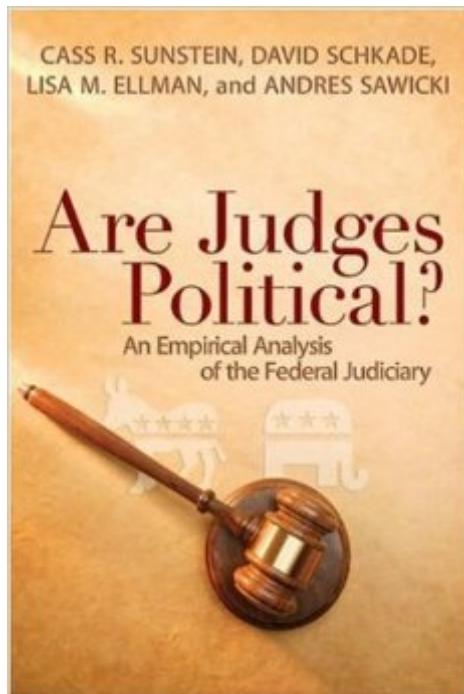


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# Are Judges Political?: An Empirical Analysis Of The Federal Judiciary



## Synopsis

Over the past two decades, the United States has seen an intense debate about the composition of the federal judiciary. Are judges "activists"? Should they stop "legislating from the bench"? Are they abusing their authority? Or are they protecting fundamental rights, in a way that is indispensable in a free society? *Judges Political?* cuts through the noise by looking at what judges actually do. Drawing on a unique data set consisting of thousands of judicial votes, Cass Sunstein and his colleagues analyze the influence of ideology on judicial voting, principally in the courts of appeal. They focus on two questions: Do judges appointed by Republican Presidents vote differently from Democratic appointees in ideologically contested cases? And do judges vote differently depending on the ideological leanings of the other judges hearing the same case? After examining votes on a broad range of issues--including abortion, affirmative action, and capital punishment--the authors do more than just confirm that Democratic and Republican appointees often vote in different ways. They inject precision into an all-too-often impressionistic debate by quantifying this effect and analyzing the conditions under which it holds. This approach sometimes generates surprising results: under certain conditions, for example, Democrat-appointed judges turn out to have more conservative voting patterns than Republican appointees. As a general rule, ideology should not and does not affect legal judgments. Frequently, the law is clear and judges simply implement it, whatever their political commitments. But what happens when the law is unclear? *Judges Political?* addresses this vital question.

## Book Information

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## Customer Reviews

This is the second of two current book-length examinations of judicial behavior on the United States Courts of Appeals. The other book is "Judging on a Collegial Court" by Hettinger et al., also reviewed on . The Courts of Appeals, or middle level of the federal court system, merit such attention because for nearly all federal litigation, they are the ultimate court of decision as they oversee the 93 or so district courts. As was the case with the Hettinger volume, while there is no denying that the authors rely upon statistical methods and even (perish the thought!) an occasional chart displaying data, the analysis is so clear and well developed that one does not have to be a political scientist or statistician to follow the discussion quite nicely. And this is vital because these courts are extremely important. The authors set out to test three fundamental hypotheses with data drawn from examination of 6,408 cases involving some 19,224 separate judicial votes during the 1995-2004 period. First, in ideologically-contested controversial cases, can voting "tendencies" be predicted based on the party of the appointing president? Next, does "ideological dampening" -- that is, the presence of two judges of a different political party on the panel -- influence a third judge of a different party? Finally, is there "ideological amplification" of judicial attitudes if all three judges on a panel are of the same party, so that more extreme positions are taken than with a mixed panel? The authors find that all three of these hypotheses are supported in a wide range of cases involving 13 issues such as campaign finance, sexual discrimination, and commercial speech. However in five areas, the authors find that party identification of the judge does not matter: criminal justice; federalism & commerce clause; takings under the 5th Amendment; punitive damages; and standing questions. As for abortion and capital punishment (and perhaps gay/lesbian rights), attitudes are so entrenched that no matter what the panel's composition, its members will not modify their previous views. There is much more to the authors' analysis than space allows for discussion. The key point raised by the book is the importance of maintaining an ideologically diverse federal judiciary, an increasingly difficult task given recent GOP campaigns to fill the courts with conservative judges. The authors do find that the federal judiciary is becoming more conservative and so the point is more than an academic one. This is an important book published by the Brookings Institution here in Washington that serves as a well-documented introduction to discussions of this very important issue.

The review/summary by Ronald H. Clark here would be hard to add to or improve on, it is exceptionally intelligent. This book is very good and important. Anyone interested in our court system should read it and every library should have a copy. One of the professional reviews here is

by the director of the Judicial Evaluation Institute, this has been called a front group for the Chamber of Commerce. They go all over the country trying to influence the election of judges, including State Supreme Court Justices. Given what is happening with the open seat on the Supreme Court now, this book is especially relevant. I recommend this book highly as well as Mr. Clark's review. Cass Sunstein has authored a number of very good books. Good books and other information on Law here: [mwir-law.blogspot.com/Midwest Independent Research](http://mwir-law.blogspot.com/Midwest Independent Research)

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