

Partisanship Suppressed: Judicial Decision-Making in Ralph Nader's 2004 Ballot Access Litigation

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INTRODUCTION

IN 1993, JEFFREY Segal and Harold Spaeth published *The Supreme Court and the Attitudinal Model*. Within this text the authors made the following prediction: "if a case on the outcome of a presidential election should reach the Supreme Court . . . the Court's decision might well turn on the personal preferences of the justices" (Segal and Spaeth 1993, 70; 2002, 1). Seven years later, such a scenario presented itself in *Bush v. Gore*, 531 U.S. 98 (2000). The Supreme Court's 5-4 decision to halt Florida recounts was controversial for a number of reasons. Most notably, this decision was the equivalent of declaring George W. Bush president-elect, and the majority consisted of the Court's most conservative members—all of whom were appointed by Republican presidents. The two justices appointed by a Democratic president, Ruth Bader Ginsburg and Stephen Breyer, did not favor this remedy and would have allowed more time for recounts.¹

As one federal judge noted, the outcome in *Bush* "just seemed so politically partisan" (Greenhouse 2000, A32). Some legal scholars, too, recognized the partisan nature of the Court's decision and chastised the majority for

indulging in the "low" politics of partisan favoritism (Balkin 2001, 1408; Balkin and Levinson 2001, 1061; Gillman 2001a, 7; Levinson 2001, 8). And one political scientist claims that three forces motivated the majority's decision—"partisanship, partisanship, and partisanship . . ." (Geer 2002, 85).

Strangely, issues relating to election law and partisanship receive relatively little attention in the judicial behavior literature. As *Bush v. Gore* clearly demonstrated, courts have the ability to influence the outcome of a presidential election. If the courts can influence a presidential election then, to use the cliché, nothing is sacred. Courts throughout the country regularly decide a plethora of election-related legal issues. The issues judges confront vary in complexity. Some election law issues are rather simple, such as determining whether a polling location should be open past the mandated closing time. Other issues are more complex, such as determining which candidates appear on the ballot for a given election. This study considers the latter.

When a potential candidate wishes to run for elected office, he must file candidate petitions with the state (or county) election authority (e.g., secretary of state or the board of elections).² The election authority then determines

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¹ It is worth noting that two Republican appointees, Justices John Paul Stevens and David Souter, broke with the majority and would have allowed more time for recounts. Thus, the case votes in *Bush* did not fall entirely along party lines.

² Each state has varying procedures as to how candidates officially file to run for elected office. Generally, a candidate will collect and submit a number of eligible elector signatures as specified by the state election code.

whether to certify the candidacy of the individual seeking office. If the election authority certifies the candidate petitions, the individual receives a position on the ballot. However, if the prospective candidate or an outside party challenges the certification process, sometimes the election authority provides for an administrative appeals process. A potential candidate will usually file an appeal if the state election authority does not certify the candidate petitions. An outside party may challenge the certification for numerous reasons, including the ineligibility of petition circulators, improper signature collection methods, and fraudulent elector signatures, among others. If a party is unsatisfied with the final decision of the election authority, the party can appeal the decision to a state appellate court.³ At this stage, judges act as ballot gatekeepers and decide whether ballot access is appropriate under the state election code.

Since a judge's ballot access decision may have serious ramifications for an election, it is important to understand whether judges rely on their personal partisan preferences to arrive at a ballot access decision. As an initial step to answer this question, I focus on the 2004 presidential ballot access litigation involving Ralph Nader. Using Nader's litigation as a case study seems appropriate due to the competitiveness of the 2004 presidential election. The narrow margin of victory in the 2000 presidential election increased the intensity of the 2004 election. In the event of another close race, Nader could have been the deciding factor of the 2004 presidential election. In short, allowing Nader on the ballot was no small political matter. Thus, the electoral conditions of the 2004 presidential election should have increased the probability of partisan preferences influencing a judge's decision.

If judges rule in a manner that is consistent with their partisan preferences, I expect to find a relationship between a judge's partisan affiliation and the decision to grant ballot access to Ralph Nader. More specifically, Democratic judges should be less likely to grant ballot access to Nader than Republican judges. Democrats should rule in this manner out of concern that Nader would receive votes that otherwise would be likely to go to Senator John Kerry; Republi-

can judges should be likely to grant ballot access to Nader for the same reason.⁴

Based on a probit analysis of Nader's ballot access claims in fifteen states, and accounting for factors that could influence partisanship in the judicial decision-making process, I find that a judge's partisan affiliation is not a statistically significant determinant of a judge's case vote. However, the decision of the state election authority to grant ballot access is a significant determinant of a judge's ruling. The analysis demonstrates that partisanship did not have a systematic effect on judicial behavior in Nader's 2004 ballot access litigation. Instead, all things being equal, judges were more likely to defer to the decision of the state election authority when hearing these cases.

Perceived Partisanship in Election Law

In addition to *Bush v. Gore*, anecdotal evidence suggests that partisanship—that is, deciding a case in a way that benefits one's own political party, harms the opposing party, or both—affects the judicial decision-making process. For example, in 2005, California voters considered Proposition 77, a ballot initiative that would have deprived the Democratic-controlled State Legislature of its redistricting powers, and instead established a three-member panel of retired judges to redraw California's legislative and congressional districts. Repub-

³ At times state law may allow an appeal to a state trial court. Additionally, if a federal legal issue is raised, for example a freedom of speech/association or equal protection claim, a potential candidate has the right to file a suit in federal district court, although state courts can also hear claims regarding federal constitutional issues. For the purpose of this study, however, I focus only upon the state courts. I discuss the reasons for doing so later in the article.

⁴ Although Nader was viewed as less of a threat in the 2004 presidential election than in the 2000 election (Kiely 2004), he was still a potential liability for John Kerry in several key electoral states (Rosenblatt 2004). As I discuss later, Democrats actively challenged Nader's attempts to gain ballot access. If the Democratic Party did not view Nader as a political threat, there would have been no need to expend time, money, and other resources to challenge Nader's candidacy. Thus, it can be assumed that the Democratic Party viewed Nader as a political obstacle in the 2004 election.

licans may have stood a better chance of gaining seats in the state legislature and Congress if Democrats no longer controlled the redistricting process. Opponents of Proposition 77 sought to remove the initiative from the November ballot, citing an error in the wording of the proposition.⁵ After a state trial court ruled that the initiative should not appear on the November ballot, a split decision by the court of appeals affirmed; the two judges in the majority were both Democrats, and the dissenting judge was a Republican. On appeal, the California Supreme Court stayed the lower court decision and ordered the proposition on the November ballot.⁶ The majority that issued the stay consisted of all Republicans.⁷ Did partisanship influence the decisions of the majority? One cannot say for certain, but it is curious that almost all the judges who ruled favored the outcome preferred by their own political party.

In Illinois, there is evidence that a Democratic member of the state supreme court, Justice Joseph F. Cunningham, switched his vote in a redistricting case⁸ to gain political advantage. Illinois Republicans favored the redistricting plan under review, yet Cunningham broke with his Democratic colleagues and voted with the Republican justices in a 4–3 decision upholding the redistricting plan. A few years later, a dissenting opinion explained why Cunningham voted with the court's Republican members—Cunningham intended to switch political parties and run as a Republican for the state supreme court in 1992 (Williams 1998, 285–287; see also Note 2001, 888–890).⁹ Although Cunningham did not appear on the 1992 ballot for the state supreme court, he may have intended to run at the time he ruled in the redistricting case. Therefore, Justice Cunningham had a compelling incentive to support the interests of the Republican Party.

Perhaps the appearance of partisanship among judges is not surprising given that partisan interests often shape the formulation of election law. Since the passage of the Help America Vote Act in 2002, state legislatures have enacted a multitude of election reform measures, although Democrats and Republicans often disagree over the proper reform policies (Tokaji 2005, 1207; 2006, 689, 695; Hasen 2007b, 18–20; Elmendorf 2008, 6). It is

probable that partisan electoral advantage was the motivation for some of these positions (Hasen 2007b, 15). One of the most controversial reform measures is the requirement of voter identification to cast an in-person ballot. Republican officials generally favor voter ID laws as a means to deter in-person voter fraud. Democrats typically argue that voter ID laws cause more problems than they solve because these laws disenfranchise otherwise eligible voters who cannot produce the proper identification on Election Day. Voter ID laws are thought to disadvantage the Democratic Party because those individuals who are most likely to lack the proper identification are minority and impoverished voters, and these voters usually support Democratic candidates. Additionally, every state voter ID law enacted since 2000 has largely passed along party lines (Hasen 2007a, 2).

The partisan divide over voter ID laws also appears in the courts. For example, when the Michigan Supreme Court considered the validity of the state's voter ID law, the five Republican justices voted to uphold the law, while the two Democratic members voted to overturn it.¹⁰ The U.S. Supreme Court recently considered a facial challenge to Indiana's voter ID requirement in *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008).¹¹ Although the Supreme Court did not decide the case entirely along party lines,¹² there was a partisan split when the Seventh Circuit Court of Appeals decided *Crawford*; the two Republican appointees voted to uphold the Indiana law, while the Democratic appointee voted to over-

⁵ See Lowenstein, Hasen, and Tokaji (2007, 38–39) for discussion on legal challenges to Proposition 77.

⁶ See *Costa v. Superior Court*, 128 P.3d 149 (Cal. 2005). See also *Costa v. Superior Court*, 128 P.3d 675 (Cal. 2006).

⁷ One Republican appointee, Justice Joyce Kennard, joined Justice Carlos Moreno, a Democratic appointee, in dissent to deny the stay of the lower court's decision.

⁸ See *People ex rel Burris v. Ryan*, 588 N.E.2d 1023 (Ill. 1991).

⁹ See Justice Moses W. Harrison II's dissent in *People ex rel Burris v. Ryan*, 634 N.E.2d 1067 (Ill. 1994).

¹⁰ See *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1 (Mich. 2007).

¹¹ The Indiana Democratic Party was one of the petitioners in this case arguing against Indiana's voter ID law.

¹² Justice David Souter joined Justices Ruth Bader Ginsburg and Stephen Breyer in dissenting.

turn (Hasen 2007a, 15; 2007b, 42).¹³ The dissenting judge, Terence Evans, explicitly noted in his opinion the partisan interests presented in *Crawford*: “The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic” (Hasen 2007b, 42).¹⁴ These instances of partisan voting by judges are not exceptional. Elmendorf (2008, 7) reviewed numerous voter ID cases decided between 2005 and 2007 and found that Democratic and Republican judges usually voted in a manner that was consistent with their political party’s interests. Specifically, Democratic judges voted against photo ID requirements fourteen times, and in their favor three times. Republican judges voted against photo ID laws three times, and in their favor fifteen times.

The appearance of partisanship among judges could be detrimental to the judiciary’s reputation.¹⁵ Given that election-related litigation has greatly increased since 2000, and political parties employ litigation strategically (e.g., Hasen 2005; Smith and Shortell 2007), presumably judges will have more influence on the outcome of elections as compared with years past. As such, it is important to understand if judges decide election law cases based on partisan preferences.

Measuring the Preferences of Judges

Scholars have employed numerous methods over the years to measure judicial preferences in the decision-making process, with a primary emphasis on the U.S. Supreme Court. These measures serve to explain or predict a judge’s decision in a particular case or series of cases. One of the earliest forms of measurement is Glendon Schubert’s (1965) use of cumulative scaling, or Guttman scaling, which allows researchers to rank the ideology of judges on one dimension based on past case votes. Although many judicial scholars employed this method, some found it problematic because it is not an independent measure of judicial ideology—i.e., it uses case votes to predict case votes. Segal and Cover (1989; see also Segal et al. 1995) later developed an independent measure of U.S. Supreme Court justice ideology by content an-

alyzing editorials of major newspapers printed at the time of a justice’s nomination. Emmert and Traut employed Segal and Cover’s (1989) method at the state court level when analyzing California State Supreme Court justice ideology in death penalty cases. However, this is a unique study among state court judges because California Supreme Court justices receive more publicity in the nomination process than their counterparts on other state supreme courts, thereby making a content analysis of newspaper articles possible. In recent years, other scholars have developed more complex measures of judicial preferences, particularly at the federal level (e.g., Bailey 2007; Epstein et al. 2007; Giles, Hettinger, and Peppers 2002; Martin and Quinn 2002).

Due to the limited information available on state court judges, scholars often employ partisan affiliation as an indicator of judicial ideology. Early studies of judicial politics demonstrated marked differences in the decisions of state court judges, contingent on their partisan affiliation (e.g., Nagel 1961; Ulmer 1962). These differences persist in modern scholarship as well (e.g., Brace and Hall 1995, 1997; Hall and Brace 1994, 1996). This research finds, not surprisingly, that Democratic judges tend to be more liberal in their decisions than Republicans.¹⁶ Although researchers can distinguish the general ideological differences among state court judges based on partisan affiliation, this is not a reliable measure of judicial preference.¹⁷ For this reason, Brace, Langer, and Hall

¹³ *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007).

¹⁴ 472 F.3d at 954 (7th Cir. 2007).

¹⁵ See, for example, Elmendorf (2007, 334): “[T]here is an ever-present danger that the courts’ reputation for political neutrality—a reputation on which public support for the judiciary probably depends—will founder on the shoals of judicial intervention in the political process.” Although this is a valid concern, there is some evidence to suggest that the U.S. Supreme Court, in particular, did not lose institutional legitimacy as a result of its decision in *Bush v. Gore* (see Gibson, Caldeira, and Spence 2003).

¹⁶ For example, studies by Paul Brace and Melinda Gann Hall use partisan affiliation as a measure of judicial ideology in state supreme court death penalty cases. Democratic justices, because they are more liberal than Republican justices, are less likely to uphold death penalty sentences.

¹⁷ For example, the ideologies of Democratic and Republican judges vary by geographic region.

(2000) developed a party-adjusted surrogate ideology score (PAJID) as a more accurate measure of ideology. However, even the PAJID measure is limited because it only applies to judges who sit on state courts of last resort. Because of the limited information available on judges' past decisions and career histories, measuring the preferences of state trial court and intermediate court judges is a particularly difficult task.

Fortunately, when analyzing an issue such as Ralph Nader's ballot access litigation, the use of partisan affiliation as a measure of judicial preference is appropriate because these cases involve a partisan electoral interest—Democrats had an electoral interest in keeping Nader off the ballot, while Republicans had an interest in keeping him on the ballot. In this study, I use partisan affiliation as a measure of a judge's partisan preference, not as an indicator of a judge's ideology. If judges are rational political actors, one should expect them to support legal decisions that benefit their political party, especially given that political parties can serve an important role in a judge's nomination, re-election/retention, and/or pursuit of another political office. Therefore, a judge's partisan affiliation should be a valid measure of judicial preference for the purpose of this study.

Judicial Decision-Making and Partisanship

Judicial scholars have generally relied on two types of models to explain and predict the behavior of judges: legal and extra-legal models. Legal models vary in the extent to which law influences judicial decisions (Baum 2006, 8–9; Segal and Spaeth 2002, 48–49). The role of law in legal models can range from a formal or mechanistic conception of law where judges seek to apply the correct law to the given circumstances of a case, to a post-positivist conception of law where “decisions are considered legally motivated if they represent a judge's sincere belief that their decision represents their best understanding of what the law requires” (Gillman 2001b, 486). In short, legal models can best be summarized as follows: “one way or the other, law matters” (Ibid., 466).

Political scientists have developed two extra-legal models that emphasize the legal policy preferences of judges in the decision-making process.¹⁸ The first extra-legal model is the attitudinal model (e.g., Segal and Spaeth 1993, 2002). This model of judicial decision-making emphasizes the psychological motivation of making good policy when deciding cases. Essentially, the model holds that judges decide cases with their sincere policy preferences in mind, and with little regard for outside factors. In recent years, however, proponents of the attitudinal model became more accepting of strategic considerations, which is the result of the other dominant model of judicial decision-making in the political science literature—the strategic model.

The strategic model of judicial decision-making has its roots in a rational-choice framework (e.g., Epstein and Knight 1998). Much like the attitudinal model, the strategic model assumes that policy preferences motivate judicial behavior. However, in this model judges act strategically to attain the best possible outcome for their long-term goals, and judges take into account the actions of other relevant actors. Some examples of strategic behavior include defensive denials of cases in the certiorari process, switching case votes in hopes of “watering-down” a court opinion, and assigning case opinions to an ideologically proximate colleague on the court.

Partisanship does not squarely fit into either one of the extra-legal models, and it has no place in traditional conceptions of the legal model.¹⁹ Both the attitudinal and strategic models deal with policy preferences of judges and mainly apply to civil liberties or economic cases. Segal and Spaeth (2002, 313) cite *Bush v. Gore* as an example of a Supreme Court decision in which justices allowed their personal

¹⁸ Extra-legal models typically apply to the U.S. Supreme Court and other courts in which judges act in a rather unconstrained manner.

¹⁹ As noted above, ruling in a manner that specifically benefits one's own political party, harms the opposing party, or both, constitutes partisanship for the purpose of this study. Numerous studies examine the differences between judicial decisions of Democratic and Republican judges. These differences, however, do not necessarily constitute partisanship as I use the term in this text and may instead be the result of ideology.

preferences for individual litigants to influence the case outcome.²⁰ However, the attitudinal model usually predicts case votes based on the issue areas of law, not individual litigants. For this reason, scholars have criticized the Supreme Court for engaging in “low” politics by acting on their political preferences at the expense of their preferred constitutional modes of interpretation.²¹

There are numerous reasons why a judge might favor his political party’s interests when deciding an important election law case. For example, a judge may receive political benefits by deciding a case in a partisan manner. Cheek and Champagne (2005) note that in states where judges are selected through partisan elections, judges may act in a partisan manner in order to gain substantive benefits and support from their political party, such as campaign workers and funding. Sheldon and Maule (1997, 70) argue that:

The most common and perhaps most telling criticism of popular [judicial] elections, and especially partisan elections, is that judicial independence is sacrificed. . . . Having to please . . . partisan leaders and those who contribute to campaigns can keep judges from giving full attention to the rule of law.

Even in non-partisan election states, if a judge wishes to seek a political office at another point in his career, he may have an incentive to decide cases in a way that would gain him favor with a particular political party.²²

Beyond the substantive political benefits that one might receive from acting in a partisan manner, there are psychological benefits as well. Social identity theory provides some explanation as to why individuals would support decisions favored by their own political party.²³ If a judge personally identifies as a partisan and renders a ruling that benefits his political party (i.e., the judge’s in-group), it is possible that the judge will derive some psychological satisfaction from this action. Additionally, it is possible that as a member of a political party, a judge will feel obligated to render a decision that favors his political party.

Failing to do so would result in harm to his in-group.

There are both instrumental and psychological motivations that may compel a judge to decide a case in a way that benefits his political party. However, without knowing the exact motivations that drive a judge to act in a partisan manner, it is impossible to know if a judge’s behavior is due to instrumental or psychological motivations. Regardless of the motivation, there are theoretical reasons to believe that judges could decide election law cases in a partisan manner.

Although the impact of partisan preferences in the judicial decision-making process could have serious implications for a case’s disposition, only a limited number of empirical studies expressly examine this issue, most of which focus on the federal judiciary. When analyzing

²⁰ Segal and Spaeth (2002, 313) note the distinction between attitude objects (litigants, persons, institutions, etc.) and attitude situations (issue areas of the law—e.g., free speech claims, equal protection claims, economic cases, etc.) in explaining judicial behavior. According to Segal and Spaeth, *Bush v. Gore* was a case in which the justices gave more weight to attitude objects than to the attitude situation.

²¹ For example, the majority in *Bush v. Gore* was chastised for invoking the Equal Protection Clause of the Fourteenth Amendment when they rarely do so in other cases, and for interfering in an issue involving federalism when conservative justices normally defer to the states.

²² Hall (1987; 2001) notes that strategic considerations, specifically constituency effects, can influence judicial behavior in state courts. In Hall’s (1987) examination of Louisiana Supreme Court justices, she found evidence that some justices were likely to withhold dissenting opinions in death penalty cases out of fear that such dissents would be used by their political opponents in future re-election campaigns. Since most Louisiana residents favored the death penalty, a dissenting death penalty opinion could be used as leverage against a justice seeking re-election. In Hall’s (2001) study of state supreme court justice retirements, she finds that justices selected through partisan elections are more attuned to instances of possible electoral defeat, and therefore decide to strategically retire instead of running for re-election. In these studies, the voting public is the constituency that affects judicial behavior. Given the importance of political parties in partisan election states, judges may view their own political party as a constituency and adjust their behavior to gain their favor for re-election or retention purposes.

²³ For an in-depth discussion of social identity theory see Tajfel and Turner (1979) and Tajfel (1981). Additionally, Brewer (2001) provides an excellent review of the major contributions to social identity theory.

U.S. district court decisions in reapportionment cases between 1964 and 1983, Lloyd (1995) found that judges' partisan affiliation influenced their case votes. Specifically, when one political party controlled the reapportionment process in a state legislature, judges who shared the partisan affiliation of the majority party in the legislature struck down contested reapportionment plans at a lower rate compared to instances where the judge's partisan affiliation differed from the legislature. In other words, if a Democratic judge reviewed a reapportionment plan submitted by a Democratic-controlled state legislature, the judge was less likely to rule against the plan than when the plan was submitted by a Republican-controlled state legislature. Although judges were likely to strike down any challenged reapportionment plan submitted by a state legislature controlled by a single political party, Lloyd's findings suggest that judges are less inclined to rule against their own political party's interests.

Cox and Katz (2002) noted similar behavior when examining redistricting cases between 1964 and 1970. They found that a reapportionment plan reviewed by a "friendly court"—that is, a court with the same partisan composition as the majority party in the state legislature—was more likely to be upheld than if the plan was reviewed by a "hostile court." In exploring the substantive effects of a friendly court, Cox and Katz estimated that if a court reviewed a plan with a 12.8% maximum population deviation, there would be a 0.75 probability that such a plan would be upheld by a friendly court, but only a 0.35 probability that the same plan would be upheld by a hostile court (Ibid., 80).

Using an updated sample of U.S. district court reapportionment cases between 1981 and 2006, McKenzie (2007; see also McKenzie 2004; 2006) reached similar conclusions. McKenzie argued that federal judges are "constrained partisans" in the sense that they are "constrained by the law and institutional norms of the lower federal courts" (114). Ultimately, McKenzie found that:

Judges do not necessarily favor their own party's plans in court cases anymore than

they do plans created by both parties under divided government. But, when a federal judge reviews a redistricting plan drawn up by a different party, and where the judge's own party is the victim of partisan line-drawing, she will be more attuned to issues of unfairness in the process. (ix)

In addition to redistricting cases, Cox and Miles (2008) examined the role of partisan preferences among judges ruling on Voting Rights Act § 2 claims since 1982. In their empirical model, a judge's partisan affiliation is used both as a measure of ideology and partisan preference. Liberal judges tend to receive appointments from Democratic presidents, while conservative judges tend to receive appointments from Republican presidents. Because there is a liberal/conservative divide over support for minority voting rights claims (liberal judges are more likely to favor these claims than conservative judges), this often translates to a partisan divide as well. When a judge rules in favor of a plaintiff in a § 2 vote dilution claim, this usually benefits the electoral interests of the Democratic Party because minority voters often support Democratic candidates (Ibid., 19). As such, a judge may perceive a partisan electoral interest in the outcome of a § 2 case. Cox and Miles found a statistically significant relationship between the partisan affiliation of a federal judge and case votes in § 2 cases. Republican judges imposed liability in only 21.2% of cases, while Democrats imposed liability in 36.2% of cases (Ibid., 21).

Another study of partisanship and judicial decision-making in the federal courts examined a variety of cases where a political party appeared as a litigant before the U.S. courts of appeals (Meaders 2002). Meaders determined that partisanship was not a systematic influence on judicial decision-making across all cases examined. However, in a few instances, he uncovered partisan behavior on the part of federal judges. He concluded that Democratic and Republican judges were likely to be "protective" of their own political party when it appeared as a defendant before the court (Ibid., 69), thus echoing the findings of McKenzie (2007). Even

though judges favored their own political party when it appeared as a defendant, they did not systematically favor their party when it appeared as a plaintiff. Additionally, judges did not consistently rule against the opposing political party, regardless of whether the opposing political party appeared as a plaintiff or defendant.

At the state court level, there are even fewer studies of partisanship in the judicial decision-making process. Williams (1998) examined the influence of partisan interests in four cases that came before the Illinois Supreme Court between 1980 and the early 1990s.²⁴ In each of the cases examined, both the Democratic and Republican Parties had a stake in the outcome of the case. Williams used a chi-square test to determine if there were any significant case vote differences between Democratic and Republican justices of the state supreme court, and found that the justices voted overwhelmingly along party lines in these cases.²⁵ Although Williams' findings are *prima facie* evidence of partisanship on the part of state judges, one must use caution when drawing conclusions from the results. The small sample size makes the generalizability of the results quite difficult, especially given that all four of these cases involved different issue areas of law, only three of which specifically pertain to election law.

I have uncovered only one study that addresses partisanship among state judges deciding ballot access cases. Graves (2003) examined ballot access cases filed in state courts of last resort during the mid-1990s. He found that state supreme court justices were less likely to extend ballot access when the justice shared the same partisan affiliation as the party that controlled the majority of state government, but this relationship was dependent on the state's method of judicial selection. State supreme court justices selected by gubernatorial/legislative appointment or through non-partisan elections were likely to display these partisan effects, although justices selected through partisan elections did not have a statistically significant relationship between their partisan affiliation and case vote. Graves states that expanded ballot access is detrimental to the controlling party in state government because state officials are usually the litigants seeking

to limit ballot access for a given candidate. Using this logic, Graves argues that ballot access cases involve partisan interests, and then justifies the lack of a partisan effect in partisan election systems by concluding that "the popular association of judges with parties resulting from partisan elections puts pressure on justices to avoid votes that appear too favorable to their own party label" (280).

Although Graves' research is an important step in understanding the role of partisanship in state ballot access cases, there are a few additional factors that I hope to account for in this study. For example, Graves does not directly account for the decision of the state election authority. Rather, he assumes that in all instances the state election authority ruled against the potential candidate, which then led to ballot access litigation in the state courts. My analysis directly accounts for the certification decision of the state election authority and has the added benefit of holding the candidate seeking ballot access constant across a variety of jurisdictions.

While Graves finds that partisan judicial elections do not encourage judges to rule in a partisan manner, Cheek and Champagne (2005) and Sheldon and Maule (1997) provide support that partisanship may be heightened in these states. Additionally, given the intensity of the 2004 presidential campaign, a cam-

²⁴ In total, Williams examined four state supreme court cases: *Rock v. Thompson*, 426 N.E. 2d 891 (Ill. 1981), involving a writ of mandamus that would allow Democrats to elect the president of the Illinois Senate; *In Re Contest of Election for Governor*, 444 N.E. 2d 170 (Ill. 1983), regarding the contested gubernatorial election between Governor James R. Thompson and Adlai E. Stevenson III; *Reed v. Norman*, No. 70833 (unpublished order, Oct. 12, 1990), involving third-party ballot access that would increase competition for Democratic votes; and *People ex rel Burris v. Ryan*, 588 N.E. 2d 1023 (Ill. 1991) (follow-up case citations omitted), regarding state legislative redistricting plans. It should be noted that *People ex rel Burris v. Ryan* was litigated in the Illinois Supreme Court three separate times because of changes in a redistricting plan. Using each justice's case vote as an observation, Williams' total sample size is 42.

²⁵ Of the 42 case votes, there were only two occasions where a Democratic justice voted in favor of the Republican Party's interests, while the other 20 case votes cast by Democratic justices favored the interests of the Democratic Party. As for the 20 case votes cast by Republican justices, every case vote favored the interests of the Republican Party.

paigned environment not present in Graves' sample, it seems likely that partisanship would be accentuated in states that employ partisan judicial elections. Along these same lines, the effect of partisanship should be pronounced in electoral swing states²⁶ because of Nader's presidential candidacy. If a state traditionally votes Democrat or Republican, ballot access cases involving third parties or independent candidates will have very little effect on the election. Therefore, judges should see no need to take into account the desires of their political party. However, in states where the electorate is closely divided between Democrats and Republicans, an additional candidate could have significant implications for the outcome of an election. In this situation, a judge may feel compelled to rule in a manner favorable to his political party due to personal preferences, pressure from party officials, or both.

Competition for Votes, Partisanship, and the Nader Campaign

Lewis-Beck and Squire (1995) note that major political parties seek to limit the competition of votes from third parties, particularly among their ideologically proximate third parties. One could infer that major political parties have an incentive to increase the competition for votes between an opposing major political party and the opposing party's ideologically proximate third parties. Ralph Nader was a liberal presidential candidate who increased competition for Democratic and liberal votes. Did Democrats seek to limit the competition for votes by opposing Nader's candidacy? And did Republicans seek to foster this competition between Nader and the Democrats? As will become apparent below, the answer to both of these questions is a resounding yes.

On February 23, 2004, the White House Press Corps presented then-White House Press Secretary Scott McClellan with a question: "So how loud was [the] cheering yesterday when Ralph Nader announced he was getting into the race?" (McClellan 2004). It was no secret that Republicans welcomed the idea of Ralph Nader entering the race in hopes that he would take away votes from John Kerry in the same

manner he diverted votes from Al Gore in 2000. A few months later, on May 19, Kerry personally met with Nader to discuss the 2004 presidential election. Although Kerry did not specifically ask Nader to drop out of the race, Nader's withdrawal as a presidential candidate was Kerry's goal. Following the meeting, Kerry was quoted in an Associated Press interview as stating, "a vote for Ralph Nader is a vote for George Bush," thereby emphasizing the importance of liberal voters rejecting Nader as a possible vote choice (Glover 2004). The Congressional Black Caucus (CBC) also conveyed these same thoughts to Nader in a June 22 meeting. Shortly after this meeting with the CBC, Democrats in Arizona filed the first state-level challenge to Nader's candidacy (Hananel 2004).

In every case examined in this study, the Democratic Party challenged Nader's candidacy in some way. Democrats filed formal complaints with state election authorities citing irregularities in the collection and/or submission of candidate petitions, recruited electors from the general public to file legal challenges to Nader's candidacy,²⁷ and occasionally appeared as a named litigant challenging Nader's candidacy.²⁸ Across the nation, Democrats spent thousands of man-hours photocopying submitted candidate petitions, comparing the signatures to the voter registration rolls, and taking note of any discrepancies in hopes of challenging Nader's candidacy.

Throughout this ordeal, the Republican Party took steps to aid Nader in his ballot access efforts. In Michigan, the Nader campaign submitted roughly 5,000 signatures to the secretary of state on the final day to submit candidate petitions. This was well under the 30,000 signatures required to be an Independent can-

²⁶ This term is synonymous with "battleground states."

²⁷ Democrats recruited citizens or had individual members of their party file legal challenges in Arizona, Maine, Michigan, and Pennsylvania. I conducted an Internet and LEXIS/NEXIS search which revealed that the litigants listed in court documents were members of a Democratic state or county committee, or were active in Democratic politics in some way.

²⁸ According to court documents and newspaper accounts, the Democratic Party was a named litigant in Arkansas, Colorado, Florida, Nevada, Oregon, and Wisconsin.

didate for president in the state of Michigan. Later that afternoon, the Michigan Republican Party submitted an additional 45,000 signatures on behalf of Nader (Hoffman 2004a). Such partisan involvement was common in swing states where Nader tried to obtain ballot access.

By mid-July, *Newsweek* reported that one in ten of Nader's donations exceeding \$1,000 came from supporters of the Bush-Cheney campaign and the Republican Party (Bailey 2004). In Florida, the state that decided the 2000 election, as much as one-third of Nader's major donors had also given large contributions to the Bush campaign and/or the Republican Party (March 2004). Some of the wealthiest supporters of President Bush donated \$2,000 to the Bush campaign, and then donated another \$2,000 to Ralph Nader (Littlefield 2004).

When state courts heard arguments to decide whether Nader should be granted ballot access, it was clear that Democrats opposed ballot access for Nader while Republicans favored it. There is anecdotal evidence to suggest that judges were aware of this partisan interest and acted on it. In New Mexico, Judge Wendy York was forced to withdraw her decision against Nader after Nader campaign officials and members of the Republican Party discovered that she donated \$1,000 to Kerry's presidential campaign (Hoffman 2004b).²⁹ Judge York was promptly accused of letting partisanship influence her decision and some political figures called for her immediate resignation.

Yet, there is some evidence that judges acted in a non-partisan manner when considering these cases, or at the very least they were aware of their partisan biases and took steps to counteract them. In Ohio, Chief Justice Thomas J. Moyer recused himself from hearing Nader's appeal, as did Chief Justice Edward L. Chavez and Justice Richard C. Bosson in New Mexico. Granted, one cannot be certain that a partisan bias was the reason for these recusals. However, given the political implications of these cases, such a conflict of interest is a likely explanation.

In the following section, I present a model to test the hypothesis that partisanship influenced the decision of judges presiding over Ralph Nader's ballot access litigation. If partisanship did influence the decision of these judges,

Democratic judges should be less likely to grant Nader ballot access than Republican judges.

Research Methods

The data in this analysis consist of 109 individual case votes of state trial, intermediate, and supreme court judges who ruled in Ralph Nader's 2004 presidential ballot access litigation.³⁰ Using a list of states where ballot access litigation took place,³¹ I conducted a WESTLAW search to obtain any available state court opinions. For state courts that did not publish their opinions, I determined the disposition of the case and case votes in one of three ways. First, I conducted an online search of the court's web page to determine if the opinion was available for download. If this failed, I contacted the clerk of the court to obtain the case information. Finally, I used the news article search feature through LEXIS/NEXIS to identify articles that discussed the case outcome and the individual votes cast by each judge.

²⁹ Judge York's decision is included in the data analysis below.

³⁰ I only examine cases decided before the 2004 presidential election. As a result, I dropped six observations from Hawaii, where litigation continued through March of 2005. Additionally, although some trial judges are included in the sample, these judges ruled primarily on questions of law, making their rulings commensurate with those of appellate judges. The cases examined in the analysis include *Schultz et al. v. Nader et al.* (Arizona, Case No. CV2004-011968), *Populist Party of Arkansas et al. v. Chesterfield* (Arkansas, S.W.3d 359 Ark. 58), *Democratic Party v. Nader* (Colorado, case number unknown), *Reform Party of Florida et al. v. Hood* (Florida, 885 So.2d 303), *Nader et al. v. Illinois State Board of Elections* (Illinois, 354 Ill.App.3d 335, 819 N.E.2d 1148, 289 Ill.Dec. 348), *Melanson v. Secretary of State* (Maine, 861 A.2d 641), *Nader for President 2004, et al. v. Maryland State Board of Elections* (Maryland, Case No. 76 September Term, 2004), *Deleuw v. State Board of Canvassers* (Michigan, 263 Mich.App. 497, 688 N.W.2d 847), *McKinley v. Heller* (Nevada, 131 P.3d 622), *Nader v. Griego* (New Mexico, Case No. S-0001-SC-2004-28900), *Blankenship et al. v. Blackwell et al.* (103 Ohio St.3d 567, 817 N.E.2d 382), *Kucera et al. v. Bradbury et al.* (Oregon, 337 Or. 384, 97 P.3d. 1191), *In re Nomination Papers of Ralph Nader* (Pennsylvania, 579 Pa. 561, 858 A.2d. 58), *State of West Virginia v. Nader* (West Virginia, Case No. 04-misc-332), and *State of Wisconsin ex rel. Ralph Nader and Peter Camejo v. Circuit Court for Dane County, et al.* (Wisconsin, Case No. 04-2559-W). For ease of reporting, I omit lower court citations.

³¹ Theresa Amato, campaign manager for Nader-Camejo 2004, graciously provided a list of states where litigation took place.

I originally intended to examine all available case decisions rendered before Election Day 2004 relevant to Nader's ballot access litigation. However, 24 federal district court and courts of appeals observations were dropped because 23 federal judges ruled against Nader;³² thus there was virtually no variation in case outcome.³³ In each instance, Nader or one of his supporters filed suit in federal court after receiving an unfavorable decision from the state election authority or a state court. These suits raised several constitutional claims, usually on equal protection or First Amendment grounds. Nader argued that state election codes placed an unfair burden on independent or third party candidates³⁴ to file for ballot access in a timely manner, required a constitutionally impermissible number of elector signatures for candidate petitions, or placed excessive restrictions on petition circulators. Despite the fact that Nader had numerous successes with his federal court litigation during the 2000 presidential campaign, and that Nader's 2004 federal suits may have had legal merit (see Winger 2005), the federal courts were not willing to order relief on Nader's behalf in 2004. In the end, I decided to limit my analysis to state courts because there was (1) a larger number of observations than in the federal courts; (2) greater variation in case outcome; and (3) a greater probability that partisan considerations would influence state judges rather than federal judges.³⁵

In the state courts, judges primarily decided whether the state election authority properly followed the election code in the petition certification process, and the timeliness of Nader's legal challenges.³⁶ The specifics of the legal issues varied from state to state, but judges generally had the ability to reach a decision by relying on their personal partisan preferences because the legal issues before the courts often did not have clear precedents to guide a judge's decision. For example, in Ohio, one of the main legal issues related to the doctrine of laches—whether Nader had waited too long to assert a legal claim. In Florida, one of the main issues related to the legal status of the Reform Party under Florida law and whether Nader qualified to be its official presidential candidate. In Pennsylvania, the parties disagreed, among

other issues, over the term “qualified elector” as used in the Pennsylvania state election code.³⁷

For cases in which Nader (and/or his electors) was a state court litigant, I gathered several data: the case vote of each judge (dependent variable), the partisan affiliation of the

³² Of these 24 federal judges, thirteen were appointed by Republican presidents and eleven were appointed by Democratic presidents.

³³ These cases were *Nader v. Brewer* (Arizona, No. 04-1699 D. Arizona.; 386 F.3d 1168, 1169 9th Circuit), *Nader v. Yoshina* (Hawaii, Case No. 04-611 D. Hawaii), *Nader v. Keith* (Illinois, Case No. 04 C 4913 N.D. Illinois; 385 F.3d 729 7th Circuit), *Nader v. Land* (Michigan, Case No. 04-72830 E.D. Michigan; 115 Fed. Appx. 804 6th Circuit), *Nader v. Bartlett* (North Carolina, Case No. 5:04-cv-675-BR E.D. North Carolina; one other case was filed in the Middle District under the same case name, Case No. 1:04-cv-00793); *Blankenship v. Blackwell* (Ohio, 341 F. Supp. 2d 911 S.D. Ohio; 2004 WL 2390113 6th Circuit), and *Nader v. Connor* (Texas, 332 F. Supp. 2d. 982 W.D. Texas; 388 F.3d 137 5th Circuit). The only success Nader had in federal court was *Gladstone v. Vigil-Giron* (New Mexico, Case No. CV-04-1078 D.N.M.). However, the decision in this case was not necessary because ongoing litigation in the New Mexico Supreme Court resulted in a favorable decision for Nader (see Winger 2005, 568, n. 4).

³⁴ The term “third-party candidates” is synonymous with “minor-party candidates” for the purpose of this study, although some states may differentiate between these two terms in their respective election codes.

³⁵ It is important to note, however, that the decision to file a lawsuit in federal or state court is not a random occurrence. For this reason, I also estimated a two-step probit selection model to account for a possible selection effect that might influence the results of the probit model presented later. The results of the two-step model and the model without the selection equation were not substantively different from each other. For brevity, I do not present the two-step probit model.

³⁶ In some instances, Nader or his supporters raised federal constitutional issues in their state level litigation. For example, in Pennsylvania Nader successfully argued that the application of state “sore loser” laws (§§ 951 and 976 of the Pennsylvania Election Code) violated his First and Fourteenth Amendment rights. Previously, the Commonwealth Court held that Nader violated the state election code because he was nominated by the Reform Party in other states, and therefore could not run as an Independent candidate in Pennsylvania. To cite another example, in Ohio, Nader unsuccessfully argued that a state law barring non-state residents from circulating candidate petitions violated the First and Fourteenth Amendments. Following Nader's failures in the state supreme courts of Oregon and Pennsylvania, he sought relief in the U.S. Supreme Court, but was denied a stay in the Oregon case and denied certiorari in the Pennsylvania case. The bulk of the legal questions raised in state courts did relate to matters of state law, however.

³⁷ See Justice Thomas G. Saylor, dissenting, *In re Nomination Papers of Ralph Nader* (2004, 580 Pa. 134, 860 A.2d. 1).

TABLE 1. 2004 RALPH NADER BALLOT ACCESS LITIGATION STATES

State	Election Authority Ballot Access Decision	Partisan Judicial Elections	Swing State	Number of Democratic Judge Observations	Number of Republican Judge Observations	Number of Trial/Intermediate Court Observations	Number of Court of Last Resort Observations	Total Number of Judicial Observations	Final Ballot Access Status
Arizona	Denied	No	No	0	1	1	0	1	Denied
Arkansas	Granted	No	No	7	1	1	7	8	Granted
Colorado	Granted	No	Yes	1	0	1	0	1	Granted
Florida	Granted	No	Yes	6	2	1	7	8	Granted
Illinois	Denied	Yes	No	4	0	4	0	4	Denied
Maine	Granted	No	No	5	3	1	7	8	Granted
Maryland	Denied	No	No	8	0	1	7	8	Granted
Michigan	Neutral	No	No	0	3	3	0	3	Granted
Nevada	Granted	No	Yes	6	2	1	7	8	Granted
New Mexico	Granted	Yes	Yes	6	1	2	5	7	Granted
Ohio	Denied	Yes	Yes	2	5	0	7	7	Denied
Oregon	Denied	No	Yes	5	3	1	7	8	Denied
Pennsylvania	Granted	Yes	Yes	18	11	15	14	29	Denied
West Virginia	Granted	Yes	No	1	0	1	0	1	Granted
Wisconsin	Granted	No	Yes	4	4	1	7	8	Granted

judge(s) hearing the case, the state election authority's ballot access decision, swing state status, whether the state employs partisan elections to select judges, and whether a judge made monetary contributions to Democrats or Republicans. These data were fitted to a probit model, clustered by state with robust standard errors.³⁸

Table 1 lists the states from which the data were drawn, information regarding the decision of the state election authority, final ballot access status, and number of Democratic and Republican judges, among other items.

Case votes were determined by referring to court documents or news articles pertaining to the cases. I obtained information on a judge's partisan affiliation in a number of ways. For states that utilize some form of a partisan election, I contacted the state election authority to determine a judge's partisan affiliation. Obtaining partisan affiliation data is particularly difficult for states with non-partisan judicial elections, merit selection, and gubernatorial appointment systems.³⁹ For those judges whose partisan affiliation was unknown, I took a series of steps to obtain these data. First, I con-

tacted each judge's chambers by telephone to request their partisan affiliation.⁴⁰ If this approach failed, I then contacted the state or county election authority in the jurisdiction where each judge resides to request this information.⁴¹ If this method failed, I then contacted the law librarian or other appropriate faculty/staff members at the state's largest law school to request help in identifying a judge's partisan affiliation. In the event these steps

³⁸ Clustering is appropriate because all observations for a given state are not independent of each other. Failing to account for this lack of independence is problematic because the standard errors will be inaccurate.

³⁹ Professor Chris Bonneau kindly provided the partisan affiliations for some judges in these states.

⁴⁰ Interestingly, I received a mixed response from many of the judges and their staff. Some refused to disclose their partisan affiliation because they felt it would be unethical to do so. This was primarily the case for states with non-partisan and merit selection systems. However, others were very forthcoming and were willing to help a young scholar with his research.

⁴¹ Each state has different regulations for maintaining voter registration information. The state of Michigan, for example, does not maintain partisan affiliation information on any voters. These varying regulations made data collection quite difficult at times.

failed, I conducted another LEXIS/NEXIS news search to determine if any newspapers published information on a judge's partisan affiliation.⁴²

I obtained the certification decision of the state election authority by referring to court documents, the web site of the state election authority, or news articles that covered the ballot access litigation. This variable acts as an indicator of legal considerations in the probit model, assuming that the state election authority does not act in a partisan manner when evaluating Nader's candidate petitions; I address this possibility later.

To determine whether a state employs partisan elections as a method of selection, I referred to the American Judicature Society's "Judicial Selection in the States" web page,⁴³ and I coded all states that utilize a partisan election to select their judges. However, I decided to classify Ohio as a partisan election state because it utilizes partisan primary elections for judges, and political parties are active in Ohio judicial campaigns. Thus, Ohio seems to resemble other partisan election states more than non-partisan judicial election states.⁴⁴ The partisan election variable will be used in combination with a judge's partisan affiliation as an interaction term because partisan behavior should be pronounced among judges in partisan election states due to campaign support and other political incentives as discussed previously. In the model, the effect of *Partisan Election State* refers to the probability of a Republican judge in a partisan election state ruling in Nader's favor, while the interaction effect of *Judge Partisan Affiliation* \times *Partisan Election State* refers to the probability of a Democratic judge in a partisan election state ruling in Nader's favor.

In the Electoral College, some states consistently support Democratic candidates, while others support Republican candidates. Swing states that fluctuate between supporting Democratic and Republican candidates are of the most concern in presidential elections. Technically, one could argue that all the states in this analysis, perhaps excluding Maryland, are swing states due to their competitiveness in past presidential elections. But even if one were to make this assertion, clearly some states are more competitive than others.

Daron Shaw's *The Race to 270* (2006, 57) identifies several categories of swing states according to the Bush, Gore, and Kerry campaigns for the 2000 and 2004 presidential elections. Depending on Shaw's classifications, in the 2004 election there were as many as 24 swing states or as few as fifteen. Abramowitz (2002) uses swing states in a statistical analysis of gubernatorial influence in presidential elections. He identifies these states as a dichotomous variable "in which the winning candidate's share of the major party vote was 53 percent or less . . . All other states were classified as non-battleground states" (Ibid., 702). Unfortunately, there is no definitive method of classifying swing states and non-swing states. For the purpose of this study, I adopt a swing state status scheme using the returns of the 2000 presidential election. If the margin of victory in a state was less than 5% in 2000, then the state was coded as a swing state.⁴⁵

Much like the partisan election status, swing state status will be used as an interaction term.

⁴² After all of these steps, there was only one judge for whom I could not determine a partisan affiliation, Judge Richard D. Hicks of the Thurston County Superior Court in Olympia, Washington. Had I obtained the partisan affiliation for Judge Hicks my sample size would be 110.

⁴³ See <<http://www.judicialselection.us>>, accessed May 26, 2008.

⁴⁴ This is particularly true of elections for the Ohio Supreme Court. Since all of the state court observations from Ohio are for the state supreme court, coding Ohio as a partisan election state seems appropriate. Additionally, the substantive results of my model do not change if Ohio is coded as a non-partisan election state.

⁴⁵ I do not adopt Abramowitz's measure because his classification emphasizes the percentage of votes received by the winning candidate, not the margin of victory. Swing state status denotes a close election, which should place the primary emphasis on a candidate's margin of victory, not total share of votes. If presidential elections were limited to two candidates, Abramowitz's coding scheme would be a direct measure of a candidate's margin of victory. However, in the 2000 election approximately 4% of Americans voted for a candidate other than Bush or Gore. Thus, it is possible that a candidate could obtain a majority of votes with a sizable margin of victory (as much as ten percentage points if one assumes that 4% of the electorate voted for a third party or independent candidate), but due to Abramowitz's classification, that state would be coded as a swing state. Because of this problem, I instead opt for a direct measure of a candidate's margin of victory as a means of determining swing state status. The 5% threshold seems appropriate because other scholars have used a similar classification scheme (see Smith and Shortell 2007).

TABLE 2. POLITICAL CONTRIBUTIONS TO DEMOCRATS
(DEMOCRATIC JUDGES ONLY)

	<i>Number</i>	<i>Percent</i>
Contributed	16	21.92%
Did Not Contribute	57	78.08%
Total	73	100%

Partisanship should be heightened in swing states because judges may feel that their decisions will have a greater impact on the presidential election. In the model, the effect of *Swing State* refers to the likelihood of a Republican judge in a swing state ruling in Nader's favor, while the interaction effect of *Judge Partisan Affiliation* \times *Swing State* refers to the likelihood of a Democratic judge in a swing state ruling in Nader's favor.

Lastly, using the Federal Election Commission (FEC) candidate contribution database,⁴⁶ I cross-referenced every judge in the dataset to determine if the judge contributed money to Democratic/Republican political candidates for federal office or the Democratic/Republican Party.⁴⁷ Tables 2 and 3 are cross-tabulations of Democratic and Republican judges, respectively, who made political contributions before the 2004 election. The inclusion of the political contribution variables in a separate model acts as an additional test of the hypothesis that judges ruled in a manner consistent with their partisan preferences. Those judges who donate money to a political party should strongly support that political party, and therefore should be more likely to rule in a partisan manner.⁴⁸

I propose two models of case votes in the Nader ballot access cases. The first, a "reduced model," accounts for the partisan affiliation of the judge, the candidacy certification decision

rendered by the state election authority, partisan judicial elections, swing state status, an interaction between partisan affiliation and partisan elections, and an interaction between partisan affiliation and swing state status. The second model, the "full model," includes two additional dummy variables—one denoting whether a judge contributed money to the Democratic Party or Democratic candidates, and another denoting whether a judge contributed money to the Republican Party or Republican candidates.

Pennsylvania is an important state in this dataset because it accounts for 29 of the 109 observations. In Pennsylvania, the secretary of the commonwealth certified Nader's candidacy. After Democrats challenged Nader's candidacy in state courts, the Pennsylvania State Supreme Court remanded the case to the Commonwealth Court to determine the validity of petition signatures. A special panel of Commonwealth Court judges reviewed, by hand, Nader's candidate petitions. Upon finding a sufficient number of signatures invalid,⁴⁹ the Commonwealth Court unanimously ruled against Nader, and the Pennsylvania Supreme Court affirmed. To ensure that these observations do not have leverage over the results, I reestimate the above models in a separate analysis without the Pennsylvania observations.

It is worth noting the absence of a few variables that might otherwise be included in this model. I do not include variables indicating whether the Democratic or Republican Parties were involved in the litigation or events lead-

TABLE 3. POLITICAL CONTRIBUTIONS TO REPUBLICANS
(REPUBLICAN JUDGES ONLY)

	<i>Number</i>	<i>Percent</i>
Contributed	12	33.33%
Did Not Contribute	24	66.67%
Total	36	100%

⁴⁶ See <<http://www.fec.gov/finance/disclosure/norindsea.shtml>>, accessed May 26, 2008.

⁴⁷ There were no cross-party donations among these judges (i.e., a Democratic judge did not donate money to a Republican candidate and vice-versa).

⁴⁸ See Appendix A for variable coding information on all variables used in the analysis.

⁴⁹ The secretary of the commonwealth did not verify the validity of the elector signatures. Instead, the Bureau of Elections, Commissions and Legislation only counted the total number of signatures to determine if the petitions met the 25,697-signature threshold specified in the state election code (25 P.S. § 2911). The Commonwealth Court determined that of the 51,273 signatures collected by the Nader campaign, only 18,818 were valid. For a signature to be valid, an individual must be a registered voter, and his name and address on the petition must match his registration record.

ing up to the litigation for these ballot access cases. If these variables were to be included, they would be dropped immediately due to lack of variation. In every case, the Democratic Party and Republican Party were involved in these cases directly (e.g., appearing as a named litigant) or indirectly (e.g., recruiting members of the public to act on the party's behalf in aiding or hindering Ralph Nader). If there were variation in the level of involvement of the Democratic and Republican Parties in these cases, then measures of party activity would be included as explanatory variables in the model.

Another variable that does not appear in this model is the partisan affiliation of the state's chief election officer. The reason for this variable's exclusion is its lack of theoretical reason for motivating judicial behavior. In order for this variable to possibly influence judicial behavior it must be interacted several times with variables such as the *Election Authority Decision* and *Judge Partisan Affiliation*. Such a complex interaction, given the limited sample size of judges, would make the statistical results difficult to interpret. However, difficulty of interpretation should never be an excuse in and of itself to exclude a variable from a model; there must be theoretical grounds for excluding variables. But, there is good reason for excluding this particular variable.

Although positions such as secretary of state are sometimes elected offices, and this officeholder oversees the official certification of candidacies, it is unlikely that chief election officers would have adequate opportunities to single-handedly exercise their partisan preference in the candidate petition certification process. The office of a state election authority usually consists of a sizable bureaucracy that processes candidate petitions in a systematic manner, and the state's chief election officer mainly rubber-stamps the decisions of the civil servants who process these candidate petitions. Therefore, it would be quite difficult for a partisan chief election officer to act unilaterally with many civil servants and non-political appointees overseeing the bulk of this certification process.⁵⁰ This may explain why two state chief election officers did not act in accordance with their partisan interests, even though partisan behavior might have been expected of them.

In Pennsylvania, Governor Edward Rendell, who served as Chairman of the Democratic National Committee from 1999–2001, appointed Pedro A. Cortés to serve as secretary of the commonwealth.⁵¹ Despite Governor Rendell's past leadership in the Democratic Party, his secretary of the commonwealth certified Nader's candidate petitions. Such a decision was contrary to the interests of the Democratic Party, especially in such an important swing state. A second, and perhaps more surprising example, is then-Ohio Secretary of State J. Kenneth Blackwell. During his term of office, Blackwell was criticized for participating in a variety of partisan activities. Blackwell served as co-chair of the Bush-Cheney 2004 campaign in Ohio, and he was strongly rebuked in the Conyers Report for taking actions as secretary of state that allegedly disenfranchised thousands of voters in Ohio, which benefited the Bush campaign (U.S. House of Representatives 2005). For all the accusations waged against Blackwell, one might expect that he would have welcomed a Nader candidacy in Ohio. However, Secretary Blackwell did not certify Nader's candidate petitions, and Nader never received a position on the Ohio ballot.

To help determine if chief election officers acted in accordance with their political party's preferences, in Table 4 I present a cross-tabulation and chi-square test of the partisan affiliation of the chief election officer of each state and the election authority's ballot access decision. The chi-square test determines if there is a significant difference between the decisions of Democratic and Republican election officers.

As noted in Table 4, Democratic chief election officers were slightly more likely to certify

⁵⁰ I do not mean to imply that chief election officers always act in a non-partisan manner. There is an abundance of evidence demonstrating that chief election officers sometimes engage in partisan political activity (e.g., Hasen 2005). Specifically relating to Nader's ballot access cases, there were accusations that then-Florida Secretary of State Glenda Hood acted in a partisan manner when she certified Nader's candidate petitions (see Editorial 2004a, 2004b; Hasen 2005), and similar accusations were made when then-Virginia Secretary of the Commonwealth Jean Jenson did not initially certify Nader's candidate petitions (see Janofsky 2004).

⁵¹ The secretary of the commonwealth is Pennsylvania's chief elections officer.

TABLE 4. CHIEF ELECTION OFFICER PARTISAN AFFILIATION AND BALLOT ACCESS DECISION

	<i>Non-favorable Nader decision</i>	<i>Favorable Nader decision</i>	<i>Total</i>
Democratic Election Authority	2	5	7
Republican Election Authority	4	4	8
Total	6	9	15

Pearson chi-square (1 df) = 0.714; $p < 0.40$.

Note: If Michigan is excluded from the analysis, $p < 0.58$.

Nader's candidate petitions than Republican chief election officers. However, the chi-square test does not attain traditional levels of statistical significance, meaning that the differences in decisions made by Democratic and Republican chief election officers are not statistically distinguishable. As a result, the chief election officers do not appear to be making ballot access decision solely based on partisan interests, and therefore the inclusion of the partisan affiliation of the state election authority in the probit model is not necessary.

Findings

Tables 5 and 6 present cross tabulations of the partisan affiliation of judges in the dataset and their case votes. Table 5 presents data for all observations; Table 6 excludes observations from Pennsylvania. The distribution of decisions for and against Nader appears to be fairly even for Democratic judges—38 judges decided in Nader's favor; 35 decided against him. For Republican judges, most judges rendered favorable decisions for Nader—22 decided for Nader; 14 ruled against him. Absent observations from Pennsylvania, as noted in Table 6, the findings for Republican

judges are generally the same. But, Democratic judges are now more likely to support Nader compared with the results in Table 5—35 decided in favor of Nader; 20 ruled against him. At first glance it would appear that Democrats are not deciding these cases in a partisan manner because a majority ruled in favor of Ralph Nader, which is contrary to the interests of the Democratic Party. Of course, it is possible that a greater majority would have ruled for Nader were it not for partisan interests. Republican judges largely support Nader as well, which is consistent with the interests of the Republican Party and possibly indicative of partisan behavior. Yet, one cannot be certain if partisanship is at work without referring to the results of the probit model.

Table 7 presents the results of the four probit models. The first model is the reduced model for all observations. The second model includes two additional political contribution variables. The third and fourth models re-estimate the first and second models, excluding all observations from Pennsylvania.

The only variable to reach statistical significance in every model is *Election Authority Decision*. Surprisingly, none of the partisanship variables or their interactions reach statistical significance, including *Contributed to Democrats* and *Contributed to Republicans*. In the first two models, the variable *Partisan Election State* reaches statistical significance. Since *Partisan Election State* is interacted with *Judge Partisan Affiliation*, the variable *Partisan Election State* is the "main effect" and relates to the likelihood of a Republican judge in a partisan election state ruling in favor of Ralph Nader. The coefficient for this variable is negative, meaning that Republican judges in partisan election states were less likely to rule in favor of granting Nader ballot access. Such an outcome is not in the interest of the Republican Party and, therefore, is evidence that judges did not con-

TABLE 5. JUDGE PARTISAN AFFILIATION AND CASE VOTE

	<i>Anti-Nader Decision</i>	<i>Pro-Nader Decision</i>	<i>Total</i>
Democratic Judge	35	38	73
Republican Judge	14	22	36
Total	49	60	109

TABLE 6. JUDGE PARTISAN AFFILIATION AND CASE VOTE
(EXCLUDING PENNSYLVANIA)

	<i>Anti-Nader Decision</i>	<i>Pro-Nader Decision</i>	<i>Total</i>
Democratic Judge	20	35	55
Republican Judge	8	17	25
Total	28	52	80

sistently decide these cases in a manner that benefited their political party (although, this finding is most likely due to the large number of observations from Pennsylvania, which is a partisan election state). In models 3 and 4, which exclude the observations from Pennsylvania, this variable is no longer significant. Aside from *Partisan Election State* reaching statistical significance, it appears that the large

number of observations from Pennsylvania does not greatly influence the results.

Because *Judge Partisan Affiliation* is interacted several times in the models, one can better interpret the effects of partisanship through the use of predicted probabilities. Table 8 presents several predicted probability profiles to demonstrate how changing the levels of the independent variables leads to a probability of a

TABLE 7. LIKELIHOOD OF A PRO-NADER CASE VOTE

<i>Independent variables</i>	(1)	(2)	(3)	(4)
Constant	0.80 (0.72)	0.71 (0.74)	0.77 (0.75)	0.67 (0.87)
Judge Partisan Affiliation (0 = Republican, 1 = Democrat)	-0.75 (0.93)	-0.71 (0.96)	-0.90 (1.01)	-0.82 (1.09)
Election Authority Decision (0 = Does not favor Nader, 1 = Favors Nader)	1.08* (0.52)	1.10* (0.52)	1.30* (0.63)	1.31* (0.63)
Partisan Election State (0 = Non-Partisan, 1 = Partisan)	-0.95* (0.56)	-1.00* (0.56)	-0.46 (0.73)	-0.52 (0.69)
Judge Partisan Affiliation × Partisan Election State	-0.35 (0.57)	-0.34 (0.55)	-0.30 (0.78)	-0.28 (0.71)
Swing State (0 = Non-Swing State, 1 = Swing State)	-0.87 (0.97)	-0.82 (0.92)	-0.97 (1.00)	-0.90 (0.99)
Judge Partisan Affiliation × Swing State	0.49 (1.05)	0.39 (1.03)	0.69 (1.11)	0.60 (1.12)
Contributed to Democrats (0 = No, 1 = Yes)	—	0.40 (0.33)	—	0.13 (0.52)
Contributed to Republicans (0 = No, 1 = Yes)	—	0.19 (0.44)	—	0.19 (0.82)
Number of Cases	109	109	80	80
Log-Pseudolikelihood	-57.91	-57.38	-39.83	-39.76
χ^2	17.52	23.49	21.42	28.54
Pseudo-R ²	0.228	0.235	0.231	0.232
Percent Correctly Predicted	77.06%	77.06%	76.25%	76.25%
Reduction in Error	48.98%	48.98%	32.14%	32.14%

Standard errors in parentheses. Models employ clustering by state and robust standard errors.

* $p < .05$, one-tailed test.

TABLE 8. PREDICTED PROBABILITIES OF A PRO-NADER CASE VOTE

<i>Profiles</i>	<i>Non-Partisan Election State, Non-Swing State</i>	<i>Partisan Election State, Non-Swing State</i>	<i>Non-Partisan Election State, Swing State</i>	<i>Partisan Election State, Swing State</i>
Democratic Judge, Non-Favorable State Election Authority Decision	0.516 [0.117, 0.897]	0.138 [0.007, 0.475]	0.378 [0.094, 0.740]	0.075 [0.002, 0.286]
Republican Judge, Non-Favorable State Election Authority Decision	0.740 [0.238, 0.987]	0.457 [0.041, 0.944]	0.466 [0.062, 0.918]	0.159 [0.030, 0.385]
Democratic Judge, Favorable State Election Authority Decision	0.818 [0.375, 0.995]	0.439 [0.060, 0.898]	0.764 [0.574, 0.906]	0.296 [0.102, 0.571]
Republican Judge, Favorable State Election Authority Decision	0.928 [0.596, 0.999]	0.746 [0.137, 0.997]	0.810 [0.496, 0.976]	0.521 [0.356, 0.678]

Predicted probabilities are for model 1. All variables held at their minimum values unless otherwise noted. Observations from Pennsylvania are included in this analysis. 95% confidence intervals reported in brackets.

pro-Nader vote.⁵² The predicted probabilities relate to model 1 because it performed the best out of the four models—it had the largest percent correctly classified (77.06%) and the largest reduction in error (48.98%).

Across the different predicted probability profiles, Republican judges had a greater probability of ruling in favor of Nader. However, upon examining the 95% confidence intervals, it is apparent that there is a great amount of overlap between Democratic and Republican judges. This is indicative of *Judge Partisan Affiliation* and its interactions failing to reach statistical significance in the model. Considering the probabilities across the profiles for a favorable and non-favorable state election authority decision, there appear to be more distinct differences between the predicted probability profiles. For example, in a non-swing state that does not employ partisan elections, a Democratic judge has a 0.516 probability of ruling in favor of Ralph Nader when the state election authority did not certify Nader's candidacy. When the state election authority favors Nader, a Democratic judge now stands a 0.818 probability of ruling in Nader's favor. Furthermore, in a swing state that employs partisan elections, a Republican judge has only a 0.159 probab-

ility of ruling in Nader's favor if the state election authority does not certify Nader's candidacy, but this probability increases to 0.521 when the election authority favors Nader.

The predicted probability profiles confirm that the decision of the state election authority influences the probability that a judge will rule in favor of Nader, while the effects of partisanship cannot be adequately discerned due to large standard errors. Yet, it is worth considering the change in predicted probabilities across the different profiles to understand the potential influence of partisanship. If partisanship truly motivated a judge's actions, partisanship should be most pronounced in partisan election states and swing states. However, when moving from the profile of a non-swing state that does not employ partisan elections to the profile of a swing state that employs partisan elections, the probability that either a Democratic or Republican judge rules in Nader's favor decreases sharply. If judges ruled in a

⁵² The predicted probabilities were calculated using Gary King's CLARIFY software package in STATA. See <<http://gking.harvard.edu/clarify/docs/clarify.html>>, accessed May 26, 2008.

partisan manner, one could expect the probability of a Democratic judge ruling in Nader's favor to decrease, while the probability of a Republican judge ruling in Nader's favor to increase. But, this was not the case; both Democrats and Republicans were less likely to rule in favor of Nader in swing states and partisan election states. As a result, these changes across the predicted probability profiles do not support the hypothesis that partisanship was a significant determinant of case votes.

Discussion and Conclusion

Although much of the judicial politics literature indicates that judges behave in a partisan manner when deciding cases that involve a partisan interest, this did not occur in the context of Ralph Nader's 2004 ballot access litigation. Instead, the certification decision by the state election authority was the most powerful, and only statistically significant, predictor of whether a state court judge decided in favor of Nader. Such a finding is unexpected given the highly politicized and partisan nature of the 2004 election and these ballot access lawsuits. Even those judges who donated money to the Democratic or Republican Parties, the very individuals who should be the most partisan of all the judges included in the dataset, were not predisposed to rule in a way that favored their own political party.

What might account for this behavior? There are several possibilities. One explanation is that deferring to the state election authority was a way for judges to shift responsibility from themselves to the bureaucracy in hopes of avoiding the appearance of partisan impropriety. Because these ballot access cases could have influenced the presidential election, it is likely that a judge's decision would be subject to scrutiny by the news media and the general public. This additional scrutiny provides an incentive for judges to put aside their partisan preferences in the decision-making process. It is also possible that some judges did not accept the premise that Nader would siphon a significant number of votes from Senator Kerry. If a judge believed that Nader's impact on the 2004 election would be minimal, then there would

be no reason to keep Nader off the ballot. Another likely explanation is that judges decided these cases in accordance with the state election code without regard to any political considerations, which is consistent with the legal model of judicial decision-making. As noted in the above, bureaucrats within the state election authority often have systematic standards in place to certify candidates for public office. Therefore, it is likely that the election authority's decision to certify or deny ballot access is non-partisan in nature and in accordance with the state election code.⁵³ As such, judges should give considerable weight to the election authority's decision when hearing ballot access cases. And given that 23 of the 24 federal judges ruled against Nader after the state election authority did not certify his candidacy, this provides additional evidence that the certification decision of the state election authority was a strong determinant of Nader's success in court.

This study's findings, however, should not be construed to suggest that partisanship was entirely absent from the judicial decision-making process. There were likely instances where partisanship did influence a judge's decision; this may have been the case when Judge Wendy York ruled against Ralph Nader in New Mexico after she contributed \$1,000 to John Kerry's presidential campaign. It is true that any evidence of partisanship in the judicial decision-making process is troubling in that it compromises judicial independence and fairness, but this study's findings suggests that, at the very least, partisanship was not a widespread problem among state court judges in the context of the 2004 presidential election.

One shortcoming of this research is that the analysis is limited to a single type of election—a presidential election. The results may be generalizable to other salient election law cases decided in a highly politicized environment. Yet, it is uncertain if judges would act in a partisan manner in the context of less salient elections (e.g., statewide elections, congressional elections, local elections, etc.). Broadly speaking,

⁵³ As noted in Table 4, there was not a statistical difference between the ballot access decisions of Democratic and Republican chief election officials.

TABLE 9. ALTERNATIVE MODEL OF CASE VOTES

<i>Independent variables</i>	(1)	(2)
Constant	-0.43 (0.56)	-0.43 (0.56)
Judge Partisan Affiliation (0 = Republican, 1 = Democrat)	0.23 (0.74)	0.23 (0.74)
Election Authority Decision (0 = Does not favor Nader, 1 = Favors Nader)	1.11* (0.74)	6.54* (0.65)
Judge Partisan Affiliation × Election Authority Decision	-0.77 (0.76)	-5.67 —
Number of Cases	109	80
Log-Pseudolikelihood	-71.16	-40.81
χ^2	9.08	—
Pseudo-R ²	0.051	0.212
Percent Correctly Predicted	61.47%	73.75%
Reduction in Error	14.29%	25.00%

Standard errors in parentheses. Models employ clustering by state and robust standard errors.

* $p < 0.05$, one-tailed test.

research should be undertaken to better understand if and under what conditions partisanship influences judicial decision-making among state court judges. In other areas of election law involving partisan interests, do state judges act in a partisan manner? If judges behave as they did regarding the Nader ballot access cases, the answer will be no. Yet, there is reason to believe that given the often highly politicized nature of state judgeships, partisanship might have a greater influence in other areas of judicial decision-making.

Appendix A: Variable Codes

Case Vote: This dependent variable is coded as 1 if a judicial decision favors Nader and 0 if against Nader.

Judge Partisan Affiliation: This variable is coded as 1 if the judge is a Democrat and 0 if a Republican.

Election Authority Decision: If the state election authority granted ballot access to Ralph Nader this variable is coded as 1, otherwise 0.⁵⁴

Partisan Election State: This variable is coded as 1 if a state employs partisan judicial elections

according to the American Judicature Society, and all other states coded as 0.

Swing State: Swing state status is coded as 1 if the margin of victory for a presidential candidate in a state was less than 5% in the 2000 election, otherwise 0.⁵⁵

Contributed to Democrats: If a contribution was listed for a Democratic judge in the FEC database this variable was coded as 1, otherwise 0.

Contributed to Republicans: If a contribution was listed for a Republican judge in the FEC database this variable was coded as 1, otherwise 0.

⁵⁴ The code 0 is not synonymous with denying ballot access. This is because the Michigan Secretary of State was unable to reach a conclusive judgment on the validity of candidate petitions because of a deadlocked State Board of Canvassers vote, thus the action was neither grant nor deny ballot access. Therefore, all instances where a state election authority certified Nader's candidacy are coded as 1, and all others are coded as 0.

⁵⁵ One could argue that it would be best to treat this variable as either ordinal or continuous. However, it does not seem likely that campaign officials and politicians would think of states on a continuum of competitiveness. Instead, it seems more likely to think that a state is "in play" if it falls within a certain margin of victory. For this reason, I believe a dichotomous classification is appropriate.

TABLE 10. CASE VOTES WHERE ELECTION AUTHORITY DECISION = 1
(EXCLUDING PENNSYLVANIA)

	<i>Favorable Nader Decision</i>	<i>Non-Favorable Nader Decision</i>	<i>Total</i>
Democratic Judge	27	9	36
Republican Judge	13	0	13
Total	40	9	49

Appendix B: Alternative Models of Case Vote

In this appendix, I present alternative models of a judge’s case vote that are not included in the main body of this text. Admittedly, there are numerous ways to model a judge’s decision. I believe the model presented earlier in this article adequately tests for the effects of partisanship in partisan election states and swing states. Model 1, presented in Table 9, is a simplified model that does not account for partisan election state or swing state status. This model accounts for *Judge Partisan Affiliation*, *Election Authority Decision*, and an interaction between these variables.

In a one-tailed test, the only variable to reach statistical significance is *Election Authority Decision*. Because this is the “main effect,” this variable refers to the likelihood of a Republican judge ruling in favor of Nader when the state election authority certified Nader’s candidacy. The two other variables, *Judge Partisan Affiliation* and the interaction term, do not reach statistical significance. *Judge Partisan Affiliation* refers to the likelihood of a Democratic judge ruling in favor of Nader when the state election authority does not certify Nader’s candidacy; the interaction term refers to the likelihood of a Democratic judge ruling in Nader’s favor when the state election authority certifies Nader’s candidacy. Although the interaction term does not reach statistical significance, it is negatively signed, which could be indicative of partisan behavior. A most likely explanation is that the variable is negatively signed due to the large number of observations from Pennsylvania. Because eighteen of the 29 observations

from Pennsylvania are Democratic judges, this might explain why the interaction term is negatively signed.

Model 2 re-estimates model 1, excluding observations from Pennsylvania. Due to the small sample size, the interaction term does not produce standard errors and STATA reports that thirteen successes are completely determined. Table 10 presents a cross-tabulation of a judge’s case vote and *Judge Partisan Affiliation* in states where the state election authority certified Nader’s candidacy. This cross tabulation illustrates the reason for the estimation problem.

Model 2 encounters estimation problems because thirteen Republican judge observations do not vary when *Election Authority Decision* = 1. Additionally, when all the variables in a

TABLE 11. ALTERNATIVE MODEL EXCLUDING THE INTERACTION TERM

<i>Independent variables</i>	(3)	(4)
Constant	-0.11 (0.46)	-0.05 (0.49)
Judge Partisan affiliation (0 = Republican, 1 = Democrat)	-0.29 (0.28)	-0.39 (0.51)
Election Authority Decision (0 = Does not favor Nader, 1 = Favors Nader)	0.61 (0.63)	1.26* (.60)
Number of Cases	109	80
Log-Pseudolikelihood	-72.06	-43.45
χ^2	1.59	4.48
Pseudo-R ²	0.04	0.161
Percent Correctly Predicted	61.47%	73.75%
Reduction in Error	14.29%	25.00%

Standard errors in parentheses. Models employ clustering by state and robust standard errors.

* $p < 0.05$, one-tailed test.

model are interacted, it is the equivalent of estimating two models—one model where *Election Authority Decision* = 0, and another model where *Election Authority Decision* = 1. The sample size for each of these models is 31 and 49, respectively, which is not large enough to produce robust estimates.

An additional way to estimate the alternative model is to drop the interaction term. Although not a perfect model, it is parsimonious and provides a direct test of whether partisanship influences case votes. In Table 11, model 3 includes the explanatory variables *Judge Partisan Affiliation* and *Election Authority Decision*; model 4 re-estimates model 3, excluding observations from Pennsylvania.

In model 3, none of the variables reach statistical significance. Again, this may be the result of the large number of observations from Pennsylvania. In model 4, *Election Authority Decision* reaches statistical significance, but *Judge Partisan Affiliation* does not. Overall, these alternative models do not provide support in favor of my hypothesis that partisanship influences case votes. There is some evidence that the state election authority's decision to certify Nader's candidacy was a significant determinant of case votes. In model 1, Republican judges were likely to rule in favor of Nader when the secretary of state certified Nader's candidacy. Granted, Republicans had an interest in ruling for Nader. However, the difference between Democrats and Republicans when the secretary of state did not certify Nader's candidacy is not statistically significant. If partisanship was a motivator of judicial behavior, *Judge Partisan Affiliation* should achieve statistical significance in at least some of the models presented in the main body of this article, or here in the appendix, regardless of the state election authority's decision.

Given that the models in the main body of this text produce a higher percent of outcomes correctly predicted, a higher reduction in error, and have the added benefit of testing partisanship in situations where it may be heightened (e.g., partisan election states and swing states), I believe the previous models are an improvement over the alternative models presented in this appendix.

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