Red vs. Blue States: Cases of Employment Discrimination Influenced by Geography?

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ARTICLE INFO

Available Online March 2014

Key words:
Employment Discrimination;
Red vs. Blue States.

ABSTRACT

The seemingly increasing political divide in the United States between Democrats and Republicans has often resulted in both parties working to advance their ideology rather than forge a consensus with the other side. This polarization can often be seen in the geography of the nation which can characterize most of the states as either solidly "red" (Republican/conservative) or "blue" (Democratic/liberal). With federal judges appointed by the President and confirmed by members of Congress, one wonders if these politically appointed judges reflect in their rulings the ideology of those who appointed/confirmed them and/or if the "color" of the state in which they preside has any bearing on the number of cases brought before them. In a random sample of federal employment discrimination cases (n=657), this study sought to examine the influence of geographic location and the political ideology/leanings of states may have on both the frequency and outcomes of employment discrimination claims. The results revealed noteworthy and significant differences between states in both the frequency (more or less cases than would be expected to be filed based on relative population size) and degree of plaintiff success/failure in such cases. As a result of these findings, implications are advanced for employees and employers as a consequence of these geographic and political differences.

1. Introduction

The seemingly increasing political polarization of American voters along Democratic and Republican lines is highlighted every four years during the national presidential campaign season. The ideological differences between Democrats and Republicans come to the fore and are debated and analyzed by political strategists from both sides seeking a political advantage that will resonate with voters and help lead to victory in a general election. Thus political parties develop platforms and candidates espouse ideas that serve as a means of defining their candidate/party and clearly delineating them from the opposition. However, with the victor in an American presidential election ultimately determined by the Electoral College (and not a sum of the nation's popular vote), the campaigns focus on the number of electoral votes from individual states and concentrate their campaigns' efforts in those states in which they believe their candidate can win a majority of the votes. Because many states have a pattern of consistently supporting a particular party they have been characterized by some as being either "red" (Republican or conservative) or "blue" (Democratic or liberal) states (Brooks, 2001; Farhi, 2004). In such red and blue states, elections for president (and most of the other statewide elected officials) tend to favor members of one political party. The significance of this historical voting tendency is exemplified by the fact that two-thirds of United States' residents live in solidly red or blue states and are thus largely ignored by presidential campaigns as their states' support is viewed as a mere formality (Raskin, 2008).

With so many voters and states solidly classified as either red or blue, researchers have begun to explore and attempt to explain these states' voting tendencies. Rugy (2011) found that despite red states generally being lower in income, they supported more limited government while blue states were more supportive of increased federal spending. Similar state-level voting tendencies are suggested in another study (Gelman et.al. 2008) despite the fact that nationwide, poor individuals in America were found to vote more

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Democratic and the wealthy tend to vote more Republican. This study advanced a "red-blue paradox" (which the authors claim emerged in the 1980s and became more pronounced after 1992) when examining the wealthy and poor at the state-level. Specifically, the authors found that wealthy states tend to vote Democratic but that wealthy individuals tend to vote Republican. Their explanation for this red-blue paradox is that the rich people in rich states have shifted to the Democratic Party over the last 20 years while the rich people in poorer states have remained or shifted to the Republican Party. Others have studied such diverse state-level factors as the postmodern family formation (e.g., a father-absent family scale, and a small/delayed family scale) as significant predictors of states' voting preferences (even after controlling for differences in the composition of states' populations) (Monson & Mertens, 2011).

While researchers have posited numerous factors to potentially explain or predict the differences between red and blue states' voting patterns, not much has been done to examine what impact the political leanings of a state may have on other significant issues within each state beyond the presidential election every four years. One such issue is the influence that political ideology or preference could have on the judicial branch with regards to court case outcomes. For while the legislative and executive branches of government are conspicuous in their efforts to advance their political views, the judicial branch has attempted to hold itself as a model of impartiality as it relates to the interpretation of the law. The characterization of "blind justice" is meant to reinforce this view that judges and the legal system seek impartial truth and do not reflect the views of any political party.

Despite these claims of impartiality, it has been asserted by some that judges' decisions in both civil and criminal court cases often reflect the views of a political party and/or a geographic location of the case. For example, Friedl and Honoree (2007) found that the result of employment discrimination cases varied significantly by the political party of the president who appointed the judge. Case decisions involving performance appraisals were found to vary by the location of the case within the U.S. Circuit Courts of Appeals system (Werner & Bolino, 1997), while selection discrimination cases were found to be significantly influenced at both the federal district court (by state) and U.S. appellate court locations (Terpstra & Kethley, 2002 A).

While political parties and geographic locations in other studies have been suggested to influence discrimination case outcomes, it seems probable that states might also vary in their relative frequency of discrimination cases. That despite their population size, some states may be more or less litigious, with regards to the number of employment discrimination lawsuits being filed. If a discrepancy in the frequency of such employment discrimination cases were found to exist between states (resulting in an increased/decreased chance of litigation), this would certainly become a critical issue for both employees and employers to consider. For example, in states with an above average number of such lawsuits, employers would have to take additional steps to ensure their organization is proactively monitoring its myriad of human resource activities (e.g., application procedures, interviewing techniques, promotion policies, termination policies, etc…) that could be challenged in court. Some have suggested that the differences in the relative frequency of employment discrimination cases are due to geographic factors such as the populations' demographic diversity, sensitivity to employment discrimination, and their perceptions of the odds of being successful (Terpstra & Kethley, 2002 A). It is suggested then that the states may indeed differ in their relative frequency and/or likelihood of employment discrimination cases and that this may also be as a result of each state's political leanings (blue or red).

In short, we wish to determine if the polarizing voting characteristics of state color (red, blue) has an influence in the frequency and outcome of federal employment discrimination cases. It is our assertion that states with a more Democratic/liberal tendency (blue states) will have a higher relative frequency of such cases and that their courts would more often find in favor of the plaintiffs when they allege employment discrimination against their employers. This is due to the Democratic Party being more often aligned with supporting the rights of workers and unions against "big business" and its history of seeking to regulate businesses and protect the rights of workers. Conversely, we then also assert that the states with a more Republican/conservative tendency (red states) will have a lower relative frequency of such cases and that their courts more often support the defendant organizations/employers against employment discrimination claims. This is due to the Republican Party having traditionally been at odds with the pro-labor movement and the fact that it is generally considered to be the party that is more "business friendly" by supporting less regulation and interference than its political counterpart. These views of red and blue state judges, if found to be true, would be consistent with the politically-influenced results found in Friedl and Honoree (2007).

The primary purposes of this study are to examine the influence that geographic location (specifically individual states) and political leanings (blue vs. red states) may have in federal employment discrimination cases. Specifically, the first objective was to see if the number of observed cases from each state in the sample corresponded with the expected number of cases from each state (based on the relative populations of each state). By comparing this sample's observed number against the expected number of cases, we wished to identify those states that may be either more or less litigious (per capita) with regards to employment discrimination. The second objective examined the case outcomes across the states to note in which states plaintiffs were more or less successful with their employment discrimination claims. The third objective was to investigate whether any relationships exist between the color of a state and its relative frequency of employment discrimination cases. Finally, the fourth and perhaps most important objective then sought to determine if differences would be found in the outcomes of employment discrimination cases amongst blue (more liberal), red (more conservative), and "purple" (battleground or contested) states.

2. Methodology

To address the objectives of this paper, this study conducted a number of analyses on the results of federal employment discrimination cases in U.S. District Courts. Because all states have multiple courts spread throughout each state (with many states also having more than one district), our sample totaled the case results of all cases held within each state. It should be noted that this sample did not include cases at the U.S. Circuit Court of Appeals, which involve district court cases which are later appealed to a panel of judges in each of the twelve federal circuits.

For a number of reasons, we examined the judicial outcomes of employment discrimination cases brought before the United States District Courts. First, disputes in federal employment discrimination cases generally only involve a plaintiff (an individual employee or small group of individuals) and a defendant (usually a corporation or some branch of local, state or federal government). Second, in such employment discrimination cases, the plaintiffs allege that the defendants discriminated against them due to such factors as the plaintiff's race, gender, age, disability or religion. Most plaintiffs in these types of cases rely on federal statutes such as Title VII of the Civil Rights Act (1964), the Americans with Disabilities Act (1990), or the Age Discrimination in Employment Act (1967) to allege employment discrimination and thus these cases are typically filed in federal court. Finally, information regarding decisions by judges in federal employment discrimination cases is readily accessible via electronic databases.

Consistent with the purposes of this study, the sample of cases selected only involved those cases in which the defendant presented to the court a motion for summary disposition (summary judgment) of the plaintiff's lawsuit, and the judge ruled on the motion. One reason for this was due to the fact that in these cases, a decision is clearly made by the judge in favor of one party over the other. Case outcomes were then assigned one of two values. In cases where the defendant's motion was granted and the case was dismissed with prejudice (i.e., the plaintiff was not permitted to refile), the case was assigned the value of "defendant wins." In all other cases, the value of "plaintiff wins" was assigned. This included cases where either the defendant's motion was denied or where the motion was granted in part and denied in part. Cases involving a partial denial of summary judgment to the defendant were also considered a "victory" for the plaintiff because such a verdict allowed the plaintiffs to continue their litigation in federal court. For many plaintiffs this may be considered a successful outcome, as it allows for them to proceed to trial and present their case before a jury. Moreover, by surviving summary judgment, the plaintiff is given significant bargaining power with the defendant, which often leads to a settlement of the plaintiff's claims. These summary judgment cases were also selected because cases decided by a jury verdict are not reported in a national legal database and are not relevant to the purposes of this study.

Utilizing a Lexis electronic database searching United States District Courts, this study generated a random sample of cases over a relatively broad time frame. Desiring a sample that reflected the hypothesized red/blue state influence and a data set that spanned multiple years, the time parameters were narrowed to four with randomly selected months to include: January 1-31, 2000 (145 cases); June 1-30, 2003 (133 cases); December 1-15, 2005 (141 cases); and March 1-31, 2007 (482 cases). The use of more recent cases in the sample reflected our desire to emphasize a more current situation with respect to employment discrimination in the workplace. We then eliminated from the initial sample of 901 cases all which did not meet the criteria necessary for the purposes of this study. Thus removed from the initial sample were all

cases that did not involve a claim of employment discrimination, all cases which did not involve a motion for summary judgment by the defendant, duplications of the case, and all cases decided by U.S. district court magistrate judges. The resulting sample included 657 federal employment discrimination cases.

In addition to the generation of a random sample, additional secondary research was also performed. First, utilizing the data from 2010 U.S. Census (United States Census, 2010), the populations of each state were determined. This information was then used to calculate the expected percentage of cases to be found in each state and then used to compare with the actual observed percentages found in the sample. Also, to determine the "color" of each state, the party of each presidential candidate that successfully carried each state in the 1996, 2000, 2004, and 2008 general presidential elections were utilized. If a state was carried by the same party's candidate in each of these four elections, they were labeled either "red" for Republican or "blue" for Democrat. States in which the majority of citizens voted for one party's candidate in three of the last four elections were similarly labeled "red 3" or "blue 3." Finally, only three remaining states (Florida, Ohio, and Nevada) were left and they were each evenly divided (siding twice with Republicans and twice with Democrats) and thus were labeled as "purple" (otherwise known as "swing" or "battleground" states).

3. Results

Table 1: State District Court case sample results: Number and percentage of observed and expected cases, and the plaintiff win percentages

States	States		Total Cases	Total Cases	Odds For
	Red or	Sum of Claims	Observed	Expected	Plaintiff
States	Blue	by State	Percentage	Percentage	Percentage
Alabama	Red	15	2.3%	1.5%	40.0%
Alaska	Red			0.2%	
Arizona	Red (3)	9	1.4%	2.0%	55.6%
Arkansas	Red (3)	9	1.4%	0.9%	11.1%
California	Blue	19	2.9%	11.9%	31.6%
Colorado	Red (3)	11	1.7%	1.6%	63.6%
Connecticut	Blue	12	1.8%	1.1%	33.3%
Delaware	Blue	7	1.1%	0.3%	0.0%
Florida	Purple (2)	17	2.6%	6.0%	35.3%
Georgia	Red	24	3.7%	3.1%	29.2%
Hawaii	Blue			0.4%	
Idaho	Red	3	0.5%	0.5%	66.7%
Illinois	Blue	71	10.8%	4.1%	45.1%
Indiana	Red (3)	17	2.6%	2.0%	5.9%
Iowa	Blue (3)	6	0.9%	1.0%	66.7%
Kansas	Red (3)	11	1.7%	0.9%	54.5%
Kentucky	Red (3)	6	0.9%	1.4%	16.7%
Louisiana	Red (3)	17	2.6%	1.5%	35.3%
Maine	Blue			0.4%	
Maryland	Blue	10	1.5%	1.9%	0.0%
Massachusetts	Blue	5	0.8%	2.1%	40.0%
Michigan	Blue	20	3.0%	3.2%	25.0%
Minnesota	Blue	10	1.5%	1.7%	40.0%
Mississippi	Red	10	1.5%	1.0%	50.0%
Missouri	Red (3)	11	1.7%	1.9%	27.3%
Montana	Red			0.3%	
Nebraska	Red	6	0.9%	0.6%	16.7%
Nevada	Purple (2)	2	0.3%	0.9%	50.0%
New Hampshire	Blue (3)	3	0.5%	0.4%	66.7%
New Jersey	Blue	4	0.6%	2.8%	50.0%
New Mexico	Blue (3)	1	0.2%	0.7%	0.0%
New York	Blue	90	13.7%	6.2%	38.9%
North Carolina	Red (3)	14	2.1%	3.1%	14.3%

North Dakota	Red			0.2%	
Ohio	Purple (2)	28	4.3%	3.7%	35.7%
Oklahoma	Red	5	0.8%	1.2%	40.0%
Oregon	Blue	6	0.9%	1.2%	66.7%
Pennsylvania	Blue	53	8.1%	4.1%	41.5%
Rhode Island	Blue	1	0.2%	0.3%	100.0%
South Carolina	Red	18	2.7%	1.5%	33.3%
South Dakota	Red	1	0.2%	0.3%	100.0%
Tennessee	Red (3)	8	1.2%	2.0%	50.0%
Texas	Red	42	6.4%	8.0%	14.3%
Utah	Red	2	0.3%	0.9%	0.0%
Vermont	Blue	1	0.2%	0.2%	0.0%
Virginia	Red (3)	6	0.9%	2.6%	16.7%
Washington	Blue	5	0.8%	2.2%	40.0%
West Virginia	Red (3)			0.6%	
Wisconsin	Blue	9	1.4%	1.8%	44.4%
Wyoming	Red	1	0.2%	0.2%	0.2%
Other					
Guam	*	1	0.2%	0.1%	100.0%
Puerto Rico	*	2	0.3%	1.2%	50.0%
N. Mariana Islands	*			0.0%	
U.S. Virgin Islands	*			0.0%	
Washington, DC	*	28	4.3%	0.2%	14.3%
Total		657			

4.

State color determined by voting record of states in four previous United States Presidential races.

Observed percentage determined by dividing number of cases from each state by sample total.

Expected percentage determined by utilizing the 2010 United States Census for each state divided by total population of the nation.

Odds for Plaintiff Percentage determined from the success rate of plaintiffs from each state found in the study's sample.

3.1 Objective 1 – Number of Observed vs. Expected Cases (by State)

Consistent with the first objective, we wished to examine whether the sample number of observed cases from each state was relatively consistent with what one would expect to find from each state (see Table 1). The "Expected Percentage" was simply determined by comparing each state's population relative to the nation's total population utilizing the 2010 Census data. The "Observed Percentage" was similarly calculated by dividing each state's observed number of cases by the total number of cases in the sample (n=657). Given their relatively small populations, it is interesting to note that the sample did include cases from the District of Columbia (28) and some of the U.S. territories (Puerto Rico 2; Guam 1). Also, it is important to note that this sample did not include any cases from six relatively small population states (West Virginia, Hawaii, Maine, Montana, Alaska, and North Dakota). This should not be that surprising as these smaller states each have relatively low populations in relation to the nation as a whole (with expected percentage of cases from these states ranging from .2% to .6% of the total U.S. population).

To infer if some states are more or less litigious (per capita) when it comes to employment discrimination cases, we first compared the "Observed" and "Expected" percentages of cases from each state. Noteworthy is the fact that six states (Observed/Expected: Massachusetts 0.8%/2.1%, Virginia 0.9%/2.6%, Nevada 0.3/0.9%, Washington 0.8%/2.2%, Utah 0.3%/0.9%, and Florida 2.6%/6.0%) had less than half or a third as many cases as would be expected based on their relative populations. Even more interesting was the fact that this random sample found less than a quarter of what would be expected from the very large states of California (2.9%/11.9%) and New Jersey (0.6%/2.8%). On the other hand, this sample found three large states to have about twice as many cases as would be expected (New York 13.7%/6.2%, Pennsylvania 8.1%/4.1%, and Illinois 10.8%/4.1%) and for relatively small Delaware (1.1%/0.3%) to have almost four times as many cases as anticipated. The most dramatic difference in results was found not in a state but in

the District of Columbia in which the observed percentage was almost 22 times as many cases as was expected (4.3%/.2%).

3.2 Objective 2 – Differences in State Case Outcomes

The second objective also examined employment discrimination cases at the state level, but instead focused on the outcomes of such cases (see Table 1). Overall, plaintiffs were found to be successful in 34.2% of the 657 cases in the sample. Of the 47 geographic groups represented in the sample (44 of which were states, 2 were US territories, and the District of Columbia), 27 were found to have plaintiff success rates above the sample average and 20 were found below it. However, many of these states/territories were represented with a very small number of cases and thus a closer examination of the sample considered only those with at least ten cases. A resultant eighteen states (AL, CA, CO, CT, IL, IN, KS, LA, MI, MN, MS, MO, NY, NC, OH, PE, SC, TX) were thus selected with each having from 10 to 90 cases each. In ten of these states the odds of plaintiff success rate was above the sample average and in eight states it was found to be below. Of particular interest was how successful plaintiffs were found to be in Colorado (63%), Kansas (54.5%) and Mississippi (50%). However, plaintiffs were found to be much less successful in employment case outcomes in North Carolina (14.3%), Texas (14.3%) and Indiana (5.9%).

Thus in response to both objectives one and two, it is quite apparent from viewing these specific results and a cursory view of Table 1, that the states in this sample do vary dramatically with regard to the relative frequency of employment discrimination cases filed in each state and their resultant case outcomes. Managers must thus pay particular attention to which state(s) their companies currently operate and those in which they are considering expanding when considering any of the eighteen states in which a higher frequency of employment discrimination cases have been found. A particular caution should be given to those operating or considering operating in the states of New York, Pennsylvania, Illinois, Delaware, and the District of Columbia where a much higher than expected number of employment discrimination cases were filed. Managers must also note the relatively high success rate of plaintiffs against organizations in employment discrimination cases in Colorado, Kansas, and Mississippi. While many reasons may account for these discrepancies in the relative frequencies of what was expected and what was found in this sample and the odds for plaintiff success, our next set of objectives more closely examined the potential influence of each state's color (or political leanings) may have on employment discrimination cases.

Table 2: Number of red, blue, and purple states with more, less or the same number of cases as expected.

State Color	Number of States with more cases than Expected	Number of States with less cases than Expected	Number of States with the same amount of cases as Expected	Total
Red	10	10	2	22
Blue	7*	12	1	20
Purple	1	2	0	3
Total	18	24	3	45

*Includes the District of Columbia

6 States had no cases in the sample (Red: AK, WV, MT, ND; Blue: HI, ME)

3.3 Objective 3: State Color & the Frequency of Cases

When viewed through the prism of red, blue and purple oriented states and the amount of cases observed vs. expected, a number of differences emerge (see Table 2). Of the twenty-six total red states, six either had no cases observed (Alaska, Montana, North Dakota, and West Virginia) or were the same as expected (Idaho, Wyoming). The twenty remaining red states were found to be evenly divided with ten having more cases than expected and ten having less. However, if one includes the six aforementioned red states, then sixteen of the twenty six red states were below (or the same) as would be expected. It should be noted that none of the red states that had more observed than expected were by very large margins (usually higher by 1% point or less). These results are thus consistent with the authors' supposition that overall, red states would have a lower relative frequency of cases than would be expected given their populations.

Applying the same analysis to the frequency results of the blue states proved to be less decisive. Two (Hawaii & Maine) of the twenty-one total blue states had no cases observed in the study and thus were added to the number lower than expected blue states (see Table 2). Contrary to what was expected (and consistent with the red states), fourteen of the blue states were found to have less than expected frequencies of employment discrimination cases, while only seven states were found to have more than expected. However, it is important to note that despite more blue states being below the expected percentage, the three large blue states of Illinois, New York, and Pennsylvania were found to have at least twice as many cases as expected. When coupled with the blue District of Columbia (22 times as many cases as expected), these four locations comprise over a third of the entire sample. Thus along with the blue states of Delaware (4 times as many cases as expected), Connecticut and New Hampshire, these seven states/district should be of particular concern to managers and are consistent with our contention that blue states would see a higher frequency of observed cases. It would be interesting to examine in future studies the reasons for the differences between these blue seven and the other fourteen blue states which had less observed cases than expected.

Finally, the three purple states were divided as it relates to their relative frequency of employment discrimination cases. Two of the three states (see Table 2) were found to have less than the expected number of cases (Florida & Nevada) and one was found to have more (Ohio). Both Ohio and Nevada had a difference of .6% between what was expected and what was observed. However, the state of Florida observed a dramatically lower observed amount of cases than would be expected (6% expected, only 2.6% observed). Given the political divide found in each of these purple states, it is perhaps consistent that no strong pattern can be found among these three political battleground states.

Table 3: Red, Blue and Purple states with 20 or more cases along with plaintiff success percentage.

	Red or	**Plaintiff**	
State	**Blue State**	**Success %**	**# of Cases**
New York	Blue	38.9%	90
Illinois	Blue	45.1%	71
Pennsylvannia	Blue	41.5%	53
Texas	Red	14.3%	42
Ohio	Purple	35.7%	28
Georgia	Red	29.2%	24
Michigan	Blue	25.0%	20
			328
Overall Win % for All Cases	**34.20%**		

3.4 Objective 4 – Differences in Red/Blue/Purple State Case Outcomes

Thus pursuant to investigating objective four, we began by selecting the states from the sample which had a sufficient number of cases (at least twenty cases) to begin to investigate the relationship between state color and employment discrimination case outcomes. Table 3 presents the resultant seven states that met this criterion and illustrates each state's voting preference color and respective percentages of plaintiff success. These seven states are all largely populated states (within the top ten in US population) and alone account for about half of the cases from the original sample (328 of 657 total). What initially caught our attention was the fact that with the exception of the purple state of Ohio, the remaining six states plaintiff success percentages were each very different than the overall sample average of 34.2% (e.g., Texas was almost 20 percentage points lower than this average while Illinois was almost 10 percentage points above). Wishing to perhaps explain a portion of why these seven large states were so different than the average result, we considered the potential influence of the political leanings of each of these states. When looked at in this light, it is noteworthy that plaintiff success was considerably higher in three of the four blue states (New York, 38.9%; Illinois, 45.1%; Pennsylvania, 41.5%). Michigan was the only exception at 25%. Both of the red states were considerably below the sample average (Texas, 14.3%; and Georgia, 29.2%). Furthermore, the plaintiff success percentage in the purple ("swing" or "battleground") state of Ohio was found to be between these polarized extremes and more closely mirror that of the overall sample average (

35.7% in Ohio). These results were consistent with our contention that judges in blue states would look more favorably upon plaintiffs' claims of employment discrimination than judges in red states. Armed with these results, we wished to see if a similar statistical significant difference could be found between all the red, blue and purple states.

Table 4: Cross tabulation results of red, blue, and purple states with regard to case outcomes.

	Plaintiff	Plaintiff	Defendant	Defendant	Total
State Color	Wins	Win %	Wins	Win %	# of Cases
Red	74	30.1%	172	69.9%	246
Blue	128	38.4%	205	61.6%	333
Purple	17	36.2%	30	63.8%	47
Total	219		407		626*
Chi Square =	4.376, df = 2, .112			Plaintiffs' Overall Win Percentage = 34.9%	

*Only States from sample used - no territories or D.C.

Table 4 presents the cross-tabulation results of red, blue and purple states with regard to case outcomes. Given their relatively small populations and wishing to comment only on the fifty red, blue and purple states, this sample omitted the few U.S. territories and the District of Columbia (n=626). As was hypothesized and consistent with the findings from the sample of seven large states, in red states the plaintiffs were less successful (30.1%) than the plaintiffs in blue (38.4%) and purple (36.2%) states. The 47 cases from the purple or contested states were again found to be closer to this sample's average of 34.9% than the more polarized red and blue state results. Also consistent with the previous results, was the fact that the purple state plaintiff success percentage was between that of red and blue states. For this reason, it is not surprising that the resultant Pearson Chi-Square results, (x^2= 4.376, df= 2, p =.112) were not found to be significantly different.

Table 5: Cross tabulation results of red and blue states only with regard to case outcomes.

	Plaintiff	Plaintiff	Defendant	Defendant	Total
State Color	Wins	Win %	Wins	Win %	# of Cases
Red	74	30.1%	172	69.9%	246
Blue	128	38.4%	205	61.6%	333
Total	202				579*
Chi Square =	4.350, df = 1, .037		Plaintiffs' Overall Win Percentage = 34.8%		

*Only States from sample used - no territories or D.C.

Wishing to examine if the apparent difference between red and blue state plaintiff success rates alone were statistically significant, an additional cross tabulation analysis was conducted but this time limited to only red and blue states (no territories or the District of Columbia utilized, see Table 5). As expected, the over eight percentage point gap in plaintiff win percentage (blue 38.4% vs. red 30.1%) was found to be statistically significant (Pearson Chi-Square results: (x^2 = 4.350, df = 1, p =.037). With regards to employment discrimination case outcomes, these results lend credibility to the claims of the influence political polarization has between red and blue states and highlights the mitigating influence of purple states on the sample/nation as a whole.

5. Discussion

The study revealed noteworthy geographical differences by state in both the frequency and the degree of plaintiff success/failure, in federal employment discrimination cases. For example, a number of states were extremely underrepresented (Massachusetts, Virginia, Nevada, Washington, Utah, Florida, California, and New Jersey) in their observed percentages, while three very large states were overrepresented by more than double (New York, Pennsylvania, and Illinois) than what was expected. The results also seem to indicate that significant differences exist in the case outcomes of employment discrimination cases that are filed in either blue or red states. Furthermore, that the purple states of this nation, in addition to being divided with regards to their choice of presidential candidates due to party affiliation, appear similarly divided with regard to outcomes of employment discrimination cases. Plaintiff success rates in purple states were consistently found to fall between that of red and blue states and very close to the overall sample average.

What factors might attest for these differences in both frequency and plaintiff winning percentage in the states? First, one should consider the disparate demographic composition of the various states as they suggest a multitude of reasons for the discrepancies found in this study. Differences in such factors as race, gender, religious affiliation, and age in the populations of the states are sure to influence the potential for litigation alleging federal employment discrimination. With a more diverse population, employees may be more sensitive to and more apt to recognize perceived discrimination in the workplace. Furthermore, the differences in the success rate of plaintiffs may also be influenced by the demographic composition of these locations. Previous research suggests (Terpstra & Kethley, 2002 A; Terpstra & Kethley, 2002 B) that the plaintiffs' odds of winning differ depending on the type of employment discrimination claim (e.g., odds are better for a plaintiff to win a racial discrimination case rather than a case alleging age discrimination). Locations with a more racially diverse composition may as a result have a higher percentage of their cases alleging racial discrimination and thus a resultant higher plaintiff success rate. Therefore, additional research may wish to examine the varying demographic factors of these locations and consider the types of discrimination claims made by the plaintiffs.

A second factor to consider in examining the differences found in this study is the various economic conditions of these diverse locations. While all part of the broader nation, at different times and in different ways, the economy of these fifty states can be vastly dissimilar. In a prosperous economy, one may find that the number of alleged employment discrimination cases found in a region would be significantly less than that of a region experiencing layoffs and high unemployment in an economic downturn. The types of jobs (white collar vs. blue collar, high wages vs. low wages etc…) and their relative percentage in each region may also influence the frequency of employment discrimination cases and their plaintiff success rate. Thus future research should examine the types of industries, the general economic conditions, and the employment factors that may be influencing these discrimination case results.

A third factor to consider in explaining the differences found in this study is what us to examine the differences in political leanings of the various locations. Results of objectives three and four suggest that the deep political and ideological divide between Democrats and Republicans, manifested in red, blue, and purple states, may also be influencing the frequency of federal employment discrimination cases and their outcomes. Consistent with a more conservative, pro-employer ideology, the red states had in general lower frequencies than would be expected based on their populations. Also in this study, red state plaintiff success rates were often way below the overall plaintiff success average (e.g., Texas at 14.3% was almost twenty points below the 34.2% sample average) and overall were significantly lower (30.1%) than that found in blue states (38.4%). The significantly higher plaintiff success rates in blue states were found to be consistent with a more liberal or pro-employee ideology as was suggested. It was interesting to note that the two large political battleground states of Ohio (35.7%) and Florida (35.3%) were truly purple in their plaintiff success rates as they were between that of the red and blue states and very close to the overall sample plaintiff success rate of 34.2%.

6. Implications

The major implication of this study is that location, as it relates to employment discrimination cases, matters. Both employers and employees stand to benefit by being aware of their locations' frequency of

cases and the probability of plaintiff success by state. Employers located in overrepresented or higher plaintiff success states may need to be more proactive than their counterparts in other states with regard to activities that will better protect the organization from potential discrimination litigation. As such, these organizations would be wise to provide better training for their managers in such areas as selection and performance appraisals and more vigilant in the enforcement of company human resources policies. Some organizations may even consider these results in their determination of which states to expand their businesses as they contemplate the relative legal costs and impact on their companies' reputations that employment discrimination cases would involve. For employees, their perceptions of the odds of winning discrimination cases in their respective states may also explain the differences in the relative number of cases filed in the various locations. This may explain why states with higher plaintiff winning percentages (e.g., New York, Illinois, and Pennsylvania) were also overrepresented with regards to their relative populations, and states with lower winning percentages(e.g., Texas, North Carolina) were underrepresented, and why these trends may continue. Both plaintiffs and defendants may wish to consider these results as they consider or contend with legal challenges. In states where plaintiffs enjoy higher rates of success (e.g., Colorado, Kansas, Mississippi), employers may be more inclined to settle outside of court rather than risk the costs of losing. Likewise, potential plaintiffs may consider their location in the likelihood of their prevailing in court before undertaking the substantial costs of a legal challenge (e.g., Texas, North Carolina, and Indiana).

The last implication to consider is the impact of red and blue states on the federal judiciary. These disparate results in employment discrimination cases may very well be found in other types of legal actions brought before federal judges and thus its impact may be much more significant than detailed in this study. How presidentially appointed federal judges are ultimately selected may have an impact on their resultant decisions from the bench. Federal judges are often recommended for appointment (and ultimately approved) to the President of the United States by the statewide-elected senators from each state. For example, in a situation with a Democrat in the White House, a conservative senator from a red state can block the appointment of a liberal judge before it ever gets to the Judiciary Committee for approval. It is likely that the political ideology of the state-wide elected senators reflect that of their states' citizens who elected them and will thus most likely manifest itself in the nomination and confirmation of judges who share the same ideology. This process is likely to continue to produce judges with ideological perspectives that are consistent with the state's majority and thus may impact how they rule in the court room. If this is indeed happening, the results of this study question the impartiality of the judiciary and suggest that the color of the blindfold on lady justice (red or blue) really matters.

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