The Toothless Tiger: An Overview of the Structural and Partisan Issues that Affect the Federal Election Commission

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The Federal Election Commission (FEC) is the primary agency to enforce campaign finance laws in the U.S. and it has long been portrayed as a toothless tiger. Given the importance of administering campaign finance regulations in a democracy, the characterization of the FEC as a failed enforcer is problematic as it decreases trust and integrity in the system. The criticism may be warranted given the agency was effectively closed from 2017 through 2020, with the exception of a 28-day period in 2019, as a result of being unable to maintain at least four commissioners on the panel, the number legally required to form a quorum and proceed with most business. This paper examines how the structure and partisanship of the FEC panel is ultimately the cause of these shutdowns and prevent the effective enforcement of campaign finance laws.

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The Federal Election Commission (FEC) faces a crisis of confidence in the last few years that is the result of too few commissioners present to conduct agency business. As discussed previously, empty seats effectively shut down the agency during most of the 2020 election. This is the second presidential contest in the last twelve years for which the FEC was non-functioning, the previous one was in 2008. These shutdowns are occurring during an era of extraordinary campaign fundraising; the last few presidential election cycles saw at least a billion (or more) dollars in campaign spending (opensecrets.org 2021). As a result of the shutdown, a large backlog grew of cases either waiting to be heard or waiting for decisions (Derysh 2020). In her comments on Trump's new appointments in December 2020, Commissioner Weintraub (2020) reported a backlog of 446 matters awaiting some action by the Commission, including staff reports, recommendations to find Reason to Believe (RTB), 35 "SOL-imperilled" cases which means that they were close to the five-year statute of limitations to investigate and punish. These matters include a variety of offenses including those examining alleged foreign financing of campaign related activities.

A functional FEC is important because the agency's mission is "to protect the integrity of the federal elections by providing transparency and fairly enforcing and administering federal campaign finance laws." (FEC 2020, 1). This agency's primary goal is to ensure that those involved in financing (both fundraising and spending) campaigns for federal offices abide by the laws governing the conduct of campaigns and elections (Mann 2005). The agency's role in campaign finance oversight is one of the most important elements in the election cycle and it ends long after an election concludes (Norris, Cameron, and Wynter 2019). The agency's success in carrying out its mission is essential to the integrity and fairness of the political process and to building public trust in our election system (Norris 2014; Potter 2020).

To achieve these ambitious goals, the agency was tasked with four primary duties: 1) to disclose campaign finance information, 2) to administer public presidential election funds, 3) to serve as a clearinghouse for election related material, and 4) to enforce federal campaign finance laws (Sheppard 2007, 60). To carry out these mandated duties requires the agency to investigate claims of wrongdoing, to issue fines, and to explain new rules when new campaign finance laws are passed that require further explanation or when federal court decisions require additional clarity. The duty that requires the most resources, in terms of money, personnel, and time, is investigating claims of wrongdoing (Sheppard 2007). Claims investigated by the FEC may be brought by any person or committee accusing another person or committee of wrongdoing, or by the FEC itself if it uncovers discrepancies or evidence of illegalities from the reports filed with the agency. Claims made to the agency about potential violations of campaign finance laws are referred to as Matters Under Review (MURs). Each MUR is assigned a number and receives an initial investigation conducted by FEC staff. The staff reports their initial findings and recommendations to the Commission to vote on. The staff may recommend further investigation or recommend disciplinary action if they find a Reason to Believe (RTB) or they may recommend the case to be dropped if they find No Reason to Believe (NRTB).

Surprisingly, the agency that is charged with these momentous tasks is a remarkably small one with only 300 employees or so per year, give or take a few dozen as the budget allows (Sheppard 2007). The FEC is led by a commission of six members, referred to as commissioners.[1] These Commissioners are nominated by the president and approved by

[1] The FEC is led by a chairperson chosen from the current bench of commissioners. The chairperson serves a one-year term and has limited powers. Members rotate into this role with no member serving more than once per six-year term (Sheppard 2007).

Congress to serve a six-year term.[2] Terms are staggered so that two new commissioners are seated every two years. If retiring, or otherwise leaving, commissioners were replaced in a timely manner the design of the agency should effectively produce a steady turnover of members and create a politically balanced commission. However, for reasons that will be discussed shortly, there is not a steady rotation of new commissioners being appointed to the FEC and this is causing problems for the agency.

Another interesting part of the design of the FEC that may be impacting the agency's ability to function is that Congress chose to have openly partisan commissioners serve on the Commission. Although they required that no more than three Commissioners hail from one party at any given time. This legal requirement of no more than three partisans to come from one party allows Congress to infuse politics openly into the decision-making while promoting the idea of bipartisanship. Further enhancing the idea of bipartisanship is the legal requirement that a minimum of four of the six members must agree to proceed on any action, whether it be rulemaking, extensive investigations, levying of fines, approving audits, and/or advisory opinions (Gallagher 2018). The requirement that four members vote together to proceed, or the rule of four, is considered an important element in obtaining bipartisan consensus when conducting agency business and making decisions about the enforcement of campaign finance law. The decision may be to proceed with an investigation, or it may be to not proceed, either way the case reaches a conclusion with bipartisan consensus. Given the nature of the agency's business and the design of the commission, the need for bipartisan consensus is crucial if the

[2] Initially only two of the members were appointed by the president, the other four were appointed by Congress, and the House Clerk and Senate Secretary served as ex officio members. Congress amended the Federal Election Campaign Act of 1979 (FECA) shortly after it was passed to give the president the power to nominate all of the members, with two of these seats being subject to appointment every two years (Sheppard 2007).

agency is going to be controlled by partisans. If bipartisan consensus is achieved a majority of the time, it prevents partisanship from driving the decision making at the agency.

If commissioners vote successfully (four consensually vote yea or nay) it signifies that the agency is effective in reaching a bipartisan consensus. The consensus may be to proceed with an investigation, or it may be to not proceed, either way the case reaches a conclusion with bipartisan consensus and therefore is considered successful. If four or more commissioners are unable to reach a bipartisan consensus, this signifies that the agency is unable to reach a conclusion and therefore is considered unsuccessful. If four commissioners do not vote together then the MUR closes by default, rather than proceed (four commissioners cast an affirmative vote) or close with consensus (four commissioners cast a dissenting vote). A case closing by default is unsuccessful because it is the same as a consensual decision to not proceed for lack of merit. Either way it effectively kills the investigation. Since it only requires three commissioners to block consensus from occurring it is easier for a vote to fail than it is for it to succeed. If a consensus is reached, then it was reached with bipartisan consensus. However, given that only three commissioners may hail from one party, getting four commissioners to agree to proceed is a difficult threshold to meet. The number of commissioners set at six is a structural problem for the FEC. It is often too few to meet the quorum of four required to proceed on most agency actions (La Forge 1996; Skahan 2018). Challenges to maintaining a legal quorum seem to be the result of a confluence of factors.

First, it is difficult to achieve bipartisan consensus on matters related to campaign finance laws, especially in today's hyper partisan political environment (Weiner 2019). Congress required that no more than three of the six commissioners may hail from one party at any given time to prevent the capture of the commission by either party. However, since there are only six

total commissioners, achieving a consensus to proceed is indeed a difficult task. To achieve four concurring votes, all three commissioners from one party must agree plus one from the other party or two commissioners from both parties. The intense political polarization prevalent in the U.S. (Klein 2020) is spilling over into the FEC and it is increasingly preventing the commissioners from reaching a consensus (Streb 2013; Potter 2019; Franz 2018).

A second factor that decreases the likelihood of achieving a bipartisan consensus happens when commissioners recuse themselves from voting. Commissioners self-recuse from particular FEC cases because they have a conflict of interest with a party in the case. This is done to prevent decision-maker bias. Given that the commissioners are partisan and often come from political backgrounds, serving as campaign finance consultants and attorneys for the political parties and their candidates and some have even run for and/or held electives office, this presents a conflict of interest and increases the likelihood of self-recusals. Although self-recusals are not the main cause of dysfunction at the agency, they are certainly an impediment as they decrease the ability of the commission to achieve the number of votes required to meet the legal threshold required to proceed on an investigation or finalize a decision. When commissioners self-recuse from voting it decreases the odds that a case will proceed or close with consensus because it reduces the numbers of members voting because the number required to proceed does not change. Therefore, the simple majority requirement of four commissioners becomes a super majority requirement with a reduction of even one member from the Commission. Although there is literature addressing self-recusals that examines legislators or judges, the topic, as it relates to the FEC, is not broached by administrative, legal, or political scholars and represents a gap in the literature probing the topic of politicized decision making.

This leads to the third factor that makes achieving a bipartisan consensus difficult, empty seats on the commission. Congress established the commission so that commissioners serve one six-year term and that two of the six seats rotate every two years. However, that does not appear to be occurring (Confessore 2014; Garrett 2015; Derysh 2020; Lee 2020; Potter 2020). Empty seats, much like recusals, threaten the agency's ability to function because the legal requirement that a quorum of four commissioners be present to conduct agency business does not change. When there are empty seats the number of commissioners legally required to proceed does not change, but the simple majority requirement becomes a super majority requirement when there are fewer commissioners present making it less likely a case will proceed. If there are fewer seats and self-recusals, then it reduces the chances further and may even threaten the quorum. However, self-recusals occur on a case-by-case basis, but a commission seat may sit empty for months or, shockingly, years may pass before a seat is filled (Weiner 2019).

Empty seats result from commissioners who exit before the expiration of their six-year term. Early exits are problematic because the seats left empty could stay empty for quite some time afterwards. This is a plausible scenario because the appointment timeline is not a legally mandated. There is also not a legal requirement that the president or Congress follow this appointment timeline. During the last half of President Trump's term multiple seats sat empty, debilitating the agency in the run-up to the 2020 election. He did nominate at least two candidates, but their appointments were not confirmed by the Senate until December of 2020.

At best, this provides evidence that there is no longer the senatorial courtesy for presidential appointments that used to exist, especially when operating under a divided government (Binder and Maltzman 2004) and, interestingly, even if the majority party in Senate is the same as the president's party. At worst, this provides evidence that there was a coordinated

effort between the President and the Majority Leader to slowdown the nomination process in order to disable the agency in the lead up to the 2020 elections. Given the control that President Trump had over the Republican Party during his time in office (Binder 2018; Heersink 2018), it is hard to believe that he was unable to push the Republican controlled Senate to approve his appointments to the FEC earlier than at the end of his one term in office. If President Trump had pushed the Republican Senators, he would have ensured that the FEC was up and running before the 2020 election and thus prevented the backlog that grew as a result. President Trump chose not to push his party, which he probably could have managed to make happen with one or two tweets.

If it were not for the commissioners serving in "hold-over" status, meaning they continue to serve the commission past their initial six-year term, this agency, at times, might not have had any commissioners serving at all, which this study will illustrate in the next chapter. By the time the new appointments were confirmed to their posts restoring the quorum on the commission, which was in December of 2020, Commissioner Weintraub (2020) reported a backlog of at least 446 matters awaiting some action by the Commission, including staff reports, recommendations to find Reason to Believe (RTB), 35 that were "SOL-imperilled" which means close reaching the five-year statute of limitations to investigate and punish. When that threshold is reached matters before the commission must be released without further investigation or enforcement. Matters waiting to be heard may include a variety of offenses, from low level violations like illegal use of campaign funds to higher level ones like the foreign financing of campaign related activities.

The fact that the Republicans in office at the time were derelict in their duty, raises suspicions about the power of political elites to control the status quo on campaign finance enforcement and other matters. Their willingness to allow seats to sit empty at the agency and to

replace the hold-over commissioners indicates the agency's relationship between the FEC and the elected officials that it regulates is problematic (Olson 1982; Oldaker 1986; Datta 2020; Potter 2020). The president and members of Congress are regulated by the agency, but at the same time they have powerful controls over it. Even though the agency is designated as independent, it is unique in that it is one of the few agencies in the U.S. that must police the behavior of those that sustain it in one form or fashion; Congress and the President (Olson 1982; Oldaker 1986; Sheppard 2007). These elected officials are the primary fundraisers and spenders of campaign contributions in U.S. elections and therefore they are also the primary targets of FEC regulations. Regulations which are mostly "by or for the political officials who control or sustain the FEC, and many believe that as a result the agency has not been sourced properly to keep up with the growing needs of the agency," (Sheppard 2007, 33). This conflict of interests makes it seem highly unlikely that the FEC is truly independent (Olson 1982; Oldaker 1986; LaForge 1996; Skahan 2018; Potter 2020).

The recent developments at the FEC leads many (Skahan 2018; Sheppard 2007; Potter 2020) to believe the agency was designed to fail, believing that the FEC was not established to mitigate partisanship nor prevent electoral corruption. The agency is administered by partisan commissioners representing their own political parties while rendering verdicts on claims of political wrongdoing and violations of campaign finance law. The claims they investigate and vote on may be brought by any person, by any committee, or by the agency itself when they uncover violations from the reports filed with the agency accusing another person or committee, known as the respondent, of wrongdoing. The design of the agency allows for one party to easily block an investigation, and this leads to exactly what Congress stated it was attempting to avoid, the capturing of the agency by one party (Potter 2020). The decision to allow partisans to render

verdicts on campaign finance matters is debatable given that it makes reaching a consensus difficult and makes it unlikely that complaints proceed to an investigation (Arceneaux 2019).

Even before the campaign finance laws were loosened by the federal courts, the agency was portrayed as weak and ineffective because of the questionable design of the partisan committee and the requirement that four must agree in order to proceed (Olson 1982; La Forge 1996; Potter 2020). Democratic Senator Harry Reid, a proponent of campaign finance reform, used the term "toothless tiger" to describe the agency (La Forge 1996) believing it was designed from the start to be ineffective in enforcing campaign finance laws.

It is difficult to dispute that the empty seats and stalled confirmations at the agency have debilitated it at times, which is a function of structure. From the start of the agency, its unique mission, which is to oversee the campaign finance activity of the principles that have indirect control over it, was capricious. There were bound to be problems at the Commission when control over the agency's appointments, budgets, and actual design was given to the primary recipients of the agency's investigations and enforcements. This relationship has created an institutional sclerosis at the agency and essentially rendered the agency useless, and not at all independent. An appropriate metaphor is the aphorism 'the foxes guarding the henhouse' (Oldaker 1986). To know if this expression correctly captures the agency, we have to consider whether the agency has been rendered ineffective. To do this we need to determine if the agency is functioning. Functioning is defined by the periods of time that the commission panel has the number of seats needed to make quorum. To determine if the commission panel is able to make quorum the membership of the panel was explored. The members were ordered by entrance and exit on to the panel and then the members were organized by 'sets' to assess the unique panels that form as members enter and exit the panel. This provides us the opportunity to assess the

panel is able to make the legal quorum required to proceed with most agency business. It also provides an opportunity to assess partisanship of the members on the panel and the partisan balance of the panel. Table One presents this information below.

Table One: Characteristics of the Commissioner Sets

Set	Duration of Each Set	Total Number of Members	Quorum Present	No of Democrats	No of Republicans	No of Independents	Partisan Balance	Party with Majority
1	990 Days	6	Yes	3	3	0	Yes	Neither
2	141 Days	5	Yes	3	2	0	No	Democrats
3	429 Days	6	Yes	2	3	1	No	Republicans
4	288 Days	5	Yes	2	2	1	Yes	Neither
5	179 Days	3	No	1	1	1	Yes	Neither
6	1,684 Days	6	Yes	2	3	1	No	Republicans
7	221 Days	5	Yes	1	3	1	No	Republicans
8	41 Days	4	Yes	1	2	1	No	Republicans
9	1,246 Days	6	Yes	2	3	1	No	Republicans
10	329 Days	5	Yes	1	3	1	No	Republicans
11	618 Days	4	Yes	1	2	1	No	Republicans
12	194 Days	3	No	1	1	1	Yes	Neither
13	105 Days	4	Yes	1	2	1	No	Republicans
14	113 Days	3	No	1	1	1	Yes	Neither

Table One (see above) illustrates more precisely the structural and partisan differences of each set and the imprecise nature of the characteristics of these sets over an 18-year period that have resulted from empty seats and partisan imbalance. This table illustrates the duration of each set, total number of members per set, whether there was a quorum present, the number of members by partisanship, if the set has partisan balance, and which party controlled the most seats. The illustration of the differences by set also indicates the erratic differences in the commissioner sets as they vary widely regarding the duration of time served, the number of commissioners serving at a time, and the resulting partisan balance at the FEC.

First, these sets vary widely regarding the number of days per set, the number of commissioner's present, the number of delegates from each party, whether there is a quorum present, and overall partisan balance. In the period which is the focus of this research there are a total of 6,578 days and the sets last, on average, 470 days. The range is wide, from a low of 41 days in Set Eight to a high of 1,684 days in Set Six. Often these sets last for a shorter time

because a commissioner exits early and of the time it takes to replace them. In a few instances, the set lasts longer than expected because commissioners do not exit at the end of their term.

The number of members also varies widely from set to set. There are only four sets when six members are present, Sets One, Three, Six, and Nine. This represents a total 4,349 days of the total 6,578 days, or 66.11% of the time that the Commission had a full bench over the last 20 years. There are three sets with less than four members present, Sets Five, Twelve, and Fourteen. This represents a total of 486 days, or 7.39% of the days that the FEC lacked a quorum. This information answers the first research question. How often is the agency unable to form a quorum? When looking at this question from the angle of sets, then, as stated, there are three sets out of 14 that were unable to form a legal quorum. This is a small percentage of time compared to the amount of time when the Commission has a full bench. However, the period of time that the agency was unable to function represents a year and four months. This is an excessive amount of time that the agency lacked a quorum in the last 20 years, especially given the important task of the FEC. It is notable that a third of that time occurred in the last few sets, beginning in late 2019, when the Republican dominated government failed to fill the seats. For the bulk of time in the last 20 years, or the scope of this study, the agency was functioning, with the one exception noted in 2008. That period without a quorum lasted six months. This is not to deflate concerns over the lack of a quorum, but rather to add some perspective that this appears to be a more recent phenomenon. It should be noted that each of the periods without a quorum occurred during a presidential election cycle, the busiest time for the election commission. The rule of four is not an impossible threshold to reach most of the time but there have been more than enough days that the FEC could not proceed, and the threat of a lack a quorum is prevalent enough to be of concern.

The periods of time that the commission has a quorum, but still fewer than six commissioners, may give them the looming feeling that the quorum is always under threat. There are four sets when only five members are present, Sets Two, Four, Seven, and Ten. This represents a total of 979 days, or 14.88% of the days that they hovered just above the number required to form a quorum. There are three sets when only four members are present, Sets Eight, Eleven, and Thirteen. This represents a total of 764 days, or 11.61% of the days that were right at the number required to form a quorum. These sets combined represent, seven of the fourteen sets, or a whopping 26.5% of the sets that hover at, or right above, the number require to proceed with most agency business. If you combine the duration of days of these sets with the duration of days of sets that have less than four commissioners, then that is 33.89% of the days that have less than six commissioners or about a third of the time the bench has empty seats. These findings reiterate that there is always the threat of an absence of a legal quorum hanging over the agency's head, which may present interesting psychological effects in the members as they consider and vote on agency business.

Although the periods where they hover above the number required to make quorum only represent 14.88%, this is still substantial and provides evidence that political tactics have damaged the agency. This leads to the next research question, how often is the agency politically imbalanced, or does not have an even ratio of Democrats to Republicans? If comparing the overall number of Republicans to Democrats that have served on the Commission in the last 20 years when looking at the total of 16 commissioners, nine of them are Republicans, six of them are Democrats, and one is an Independent. This indicates that there has been one third more Republicans than Democrats. This is not a huge number, but when some stay longer than others this deficit is more pronounced evidenced by the uneven ratio of Democrats and Republicans in

most sets. In only five of the 14 unique sets of commissioners (Sets One, Four, Five, Twelve, and Fourteen) are there an even number of partisans or partisan balance. This represents a total of 1,764 days, or 26.82% of the total days that the Commission had a partisan balance. Unfortunately, during three of five sets there was the absence of a quorum (Set Five, Twelve and Fourteen) which represents 7.39% of the days in the study, therefore the commission only had an even ratio of Democrats to Republicans, 19.43% of the days in the study. There is not an even ratio of Democrats and Republicans in nine of the 14 unique sets of commissioners (Sets Two, Three, Six, Seven, Eight, Nine, Ten, Eleven, and Thirteen). This represents a total of 4,814 days, or 73.18% of the days in the study that the Commission did not have a partisan balance and answers the second research question.

Even more alarming than the inordinate lack of partisan balance in the sets is the partisan asymmetry that is occurring as a result of this imbalance. This partisan asymmetry occurs as a result of the balance of power held by one party when they control the majority of seats for a long period of time. That balance of power does not lie with the Democrats, as they have only one set (Set Two) where they hold the majority of seats when compared to the Republicans who have eight sets (Sets Three, Six, Seven, Eight, Nine, Ten, Eleven, and Thirteen) where they hold the majority of seats. Put another way, the Republicans have held the majority of seats 71% of the days in the study compared to the Democrats who only held the majority of seats 2% of that time. This is clear example of partisan asymmetry in government. That does not represent partisan balance whether you frame the result in sets, days, or number of partisans. Clearly, in the last 20 years, this has been a Republican dominated FEC.

This has undoubtedly been caused by seats left open from several early exits. A large reason for the partisan imbalance is that too many of the commissioners stay well past their six-

year term, and this throws off the scheme of two new members joining every two years. Although we do not know for sure it is suspected that many of holdover commissioners stay past their six-year term because they do not want to leave the commission in a bind. They cannot help but be aware that the president and the Senate often fail to do their job in nominating and confirming candidates in a timely manner. The terms of two of the longest serving commissioners are going to expire. The president or the Senate, perhaps sensing these commissioners do not wish to leave the FEC with no ability to act, do not prioritize the appointments. When commissioners finally do retire, after serving terms long past six years, the president and the Senate have clearly failed to act quickly in replacing them, especially when they are Democrats. Several commissioners might has well have had a lifetime appointment as they have served longer than some Supreme Court justices.

However, this situation has also unmistakably been caused by the partisan maneuvers that have been executed to block the other party from being represented on the Commission. The history of the confirmations described earlier prove that the appointment of Democratic commissioners has been blocked by at least two former Republican presidents. Republican President Bush filled a Democratic seat with an Independent Commissioner and President Trump failed to push his nominees through for years. Democrats failed to confirm in a timely manner in 2008 followed by the Republicans from 2017-2020 and both parties have failed to name replacements for several members who have served well past their appointed six-year terms. This political maneuvering has had long-term effects on the partisan balance of the commission. Recently one party, the Republicans, clearly has had the opportunity to drive the decision-making at the FEC.

These findings indicate that the Commission does not have the bipartisan balance intended by the original design of the FEC and provide a clear example of partisan asymmetry in governing. The only thing stopping Republican domination of the FEC is the empty seats at that occasionally open up and the rule of four. This structural requirement may make it difficult to proceed in a quick manner, but it is also stopping obvious one-party rule of the agency given that they cannot legally have four members, although, as proven in this chapter they have found ways around that. Current proposals to reform the FEC by reducing the number of commissioners would only make things worse. Does the structure and partisan balance affect the time to process an MUR? Does the structure and partisan balance affect the ability to achieve consensus? If so, is one party less likely to agree than the other and if so, on what subjects and decisions?

Research Design

The next figures presented will answer the research questions posited above by exploring the decisions by the panel on MURs. These are the investigations or matters under review (MURs) by the FEC, as the acronym suggests. There may be one or more decisions voted on by the panel on a specific MUR. It depends on the complexities of the case. The votes on a MUR are released after the case is closed. They are made public on the FEC's website where you can search through detailed reports on each case. This includes the votes cast by each commissioner unless the case or vote is redacted. The decisions made by the panel will serve as the dependent variable when assessing most questions on voting on MURs. Decisions on MURS between December 06, 2002 through December 08, 2020 were collected for this study. This included a

total 3,761 unique decisions by the panel on 1,981 unique MURs. This included a total of 19,783 individual commissioner votes. The number of commissioner recusals/did not votes totaled 878.[3]

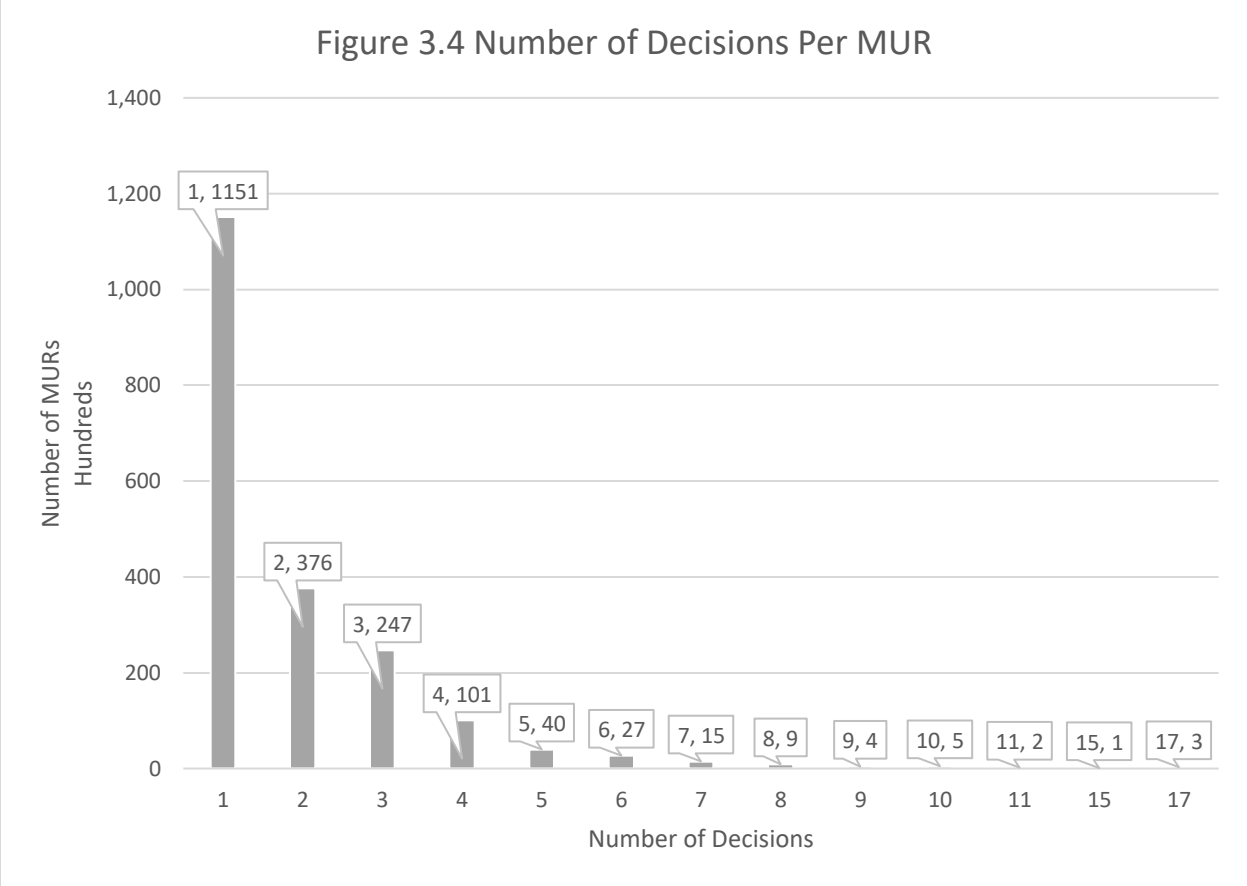
Specifically, the following data for each panel decision was collected: the subject of the case, date of the decision, the decision, the affirmative votes by party, and the negative votes by party. Votes were tallied for each decision to produce an overall vote count. If there were four or more votes cast in the affirmative for a decision, then it was coded as a success (achieved consensus). If the affirmative votes for a decision totaled three or less, then it was coded as a failure (unable to achieve consensus). The overall vote count was coded as unanimous if all commissioners reached the same decision, as a super majority if all but one voted for the decision cast by the majority, a simple majority if it was only the required four commissioners that cast the consenting vote, and if it was three or less commissioners voting for the resolution then it was coded as no consensus. The dates of the decisions were also used to code them by commissioner set and by partisanship of the commissioners voting. The time covered in this study represents fourteen unique sets of commissioners made up of 16 individual commissioners: nine Republicans, six Democrats, and one Independent. The findings are presented in multiple figures and further explanation of concepts, definitions, and the design of the illustrations are provided as necessary. The first illustration (see Figure 3.1 below) considers the actual number of total decisions per commissioner set to determine if there are multiple decisions per MUR.

RQ: Are there multiple decisions per MUR?

[3] There were a handful of decisions that were redacted; therefore, these cases were not included in the set. In 17 decisions, the posting date of the decision was after the fact and into the next set of commissioners, in these cases the actual date the letters were signed was used for the date of the decision.

The next illustration (see Figure 3.4 below) considers the number of decisions per MUR to determine if the commissioners can decide the outcome of a case within a few decisions or if it takes multiple decisions to decide the fate of a case. This allows us to determine whether cases are drug out or are decided quickly.

Figure 3.4: Number of Decisions per MUR



Very few decisions are required for most MURs (see Figure 3.4 above). There is a total of 1,981 unique MURs in this study. An overwhelming majority of these MURs (1,151) had only one decision. A smaller number of MURs (376) had two decisions. An even smaller number of MURs (247) had three decisions. A marginal number of MURs (101) had four decisions. Three MURs had the maximum number of decisions (17). However, these cases are extreme outliers. Those that had the maximum number of decisions were MUR 5440, MUR 7122, and MUR 5453.

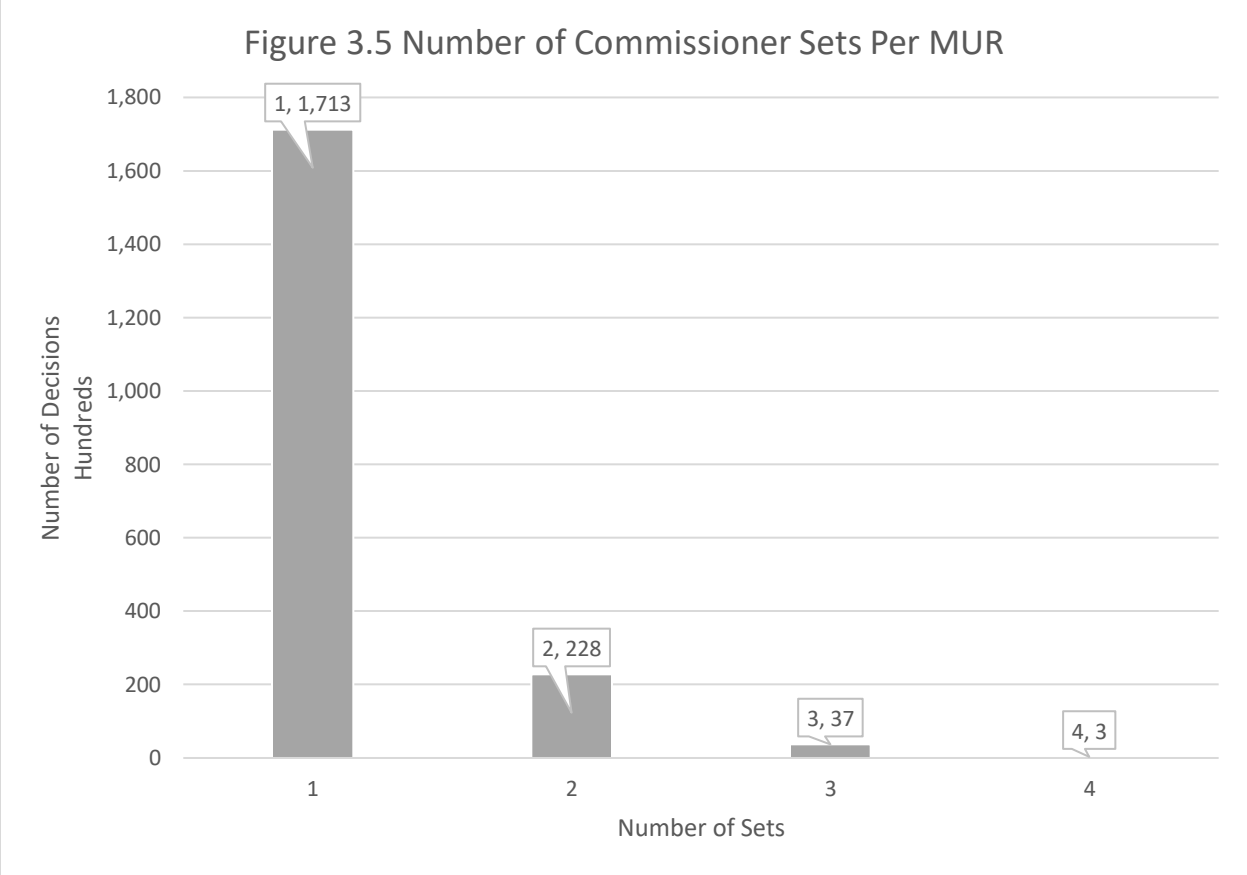
The respondent in MUR 5440 was The Media Fund. This group was alleged to have failed to register as a PAC. They were also accused of knowingly accepting corporation and/or union contributions, exceeding the legal limits, and with failure to report them. The first decision on whether or not to find Reason to Believe (RTB) occurred in September of 2004. There were several decisions that followed to determine the specifics of the violations. This was followed by a conciliation agreement (CA). The last decision to approve the factual and legal analysis (FLA) occurred in November of 2007. Almost all of the decisions made on this MUR were consensual if not unanimous.

The respondent in MUR 5453 was the Giordano for United States Senate committee. This group was alleged to have received contributions exceeding the legal limits from corporations, as well as receiving illegal loans, and with not reporting these matters appropriately. The first decision on whether to find RTB occurred in May 2004. There were several decisions that followed to determine the specifics of the violations. These were then followed by a CA. The last decision, to accept the CA, occurred in December 2005. Almost all of the decisions made on this MUR were consensual if not unanimous.

The respondent in MUR 7122 was the Right to Rise USA committee. This group was alleged to have accepted donations from foreign nationals. The first decisions, in March of 2017, were whether to find RTB. Several decisions followed to determine the specifics of the violations, followed by a CA. The last decision, regarding the CA, was in March of 2019. In this case there were several decisions from which a few commissioners recused themselves or did not vote. This is what likely dragged out the process. In most of the decisions on this MUR there was consensus if not unanimous consensus when not including the recusals.

These cases were the exception not the rule. These findings indicate that even in the most extreme cases, most MURs are wrapped up within a few years and with a high degree of consensus. These cases did not drag out due to gridlock but instead required more time because there were several aspects to consider on each case. Most of these MURs required several FLAs to move the cases to a close. However, an estimated 95% of the MURs in this study (covering an 18-year period of time) had only one decision compared to the 5% that required multiple decisions. Given the literature on the ideological divide over campaign finance this was unexpected and certainly bodes well for the panel's ability to function in a timely manner for most cases under review. The next illustration (see Figure 3.5 below) considers the number of sets per MUR to determine if this data also supports these findings.

Figure 3.5 Number of Commissioner Sets Per MUR



RQ: Are there multiple commissioner sets making decisions on MURs?

There are not multiple commissioner sets making decisions on most MURs (see Figure 3.5 above). There is a total of 1,981 unique MURs in this study. An overwhelming majority of them (1,713) are decided on by only one commissioner set. A smaller number of MURs (228) have decisions made by two commissioner sets. An even smaller number of MURs (37) have decisions made by three commissioner sets. There are only three MURs that are heard by four commission sets, the highest number for any case in the study. Interestingly, the three MURs that were heard by four commissioner sets were also the same cases that had 17 decisions each.

Even though a small fraction of MURs are decided on by multiple commissioner sets (14%), it is still worth noting given the impact of different compositions of commissioners on the panel might have on the overall decision on the matter. Although it might be more democratic if cases are decided by multiple sets, it would also indicate that the commissioners cannot agree or are gridlocked. However, the determination of most MURs is made by one commissioner set. A whopping 86% of the MURs in study over the last 18 years were decided on by only one commissioner set.

These findings support the findings presented earlier and indicate that the FEC is largely functioning for most of the MURs going before the panel, even if the number of decisions is trending downward at a time when they should be climbing considering that the costs of elections is growing. Given the literature on the ideological divide over campaign finance it was expected that it might take a great number of commissioners sets to close an MUR but that is not demonstrated to be the case. The next graphic considers if consensus is achieved on MURs by commissioner set.

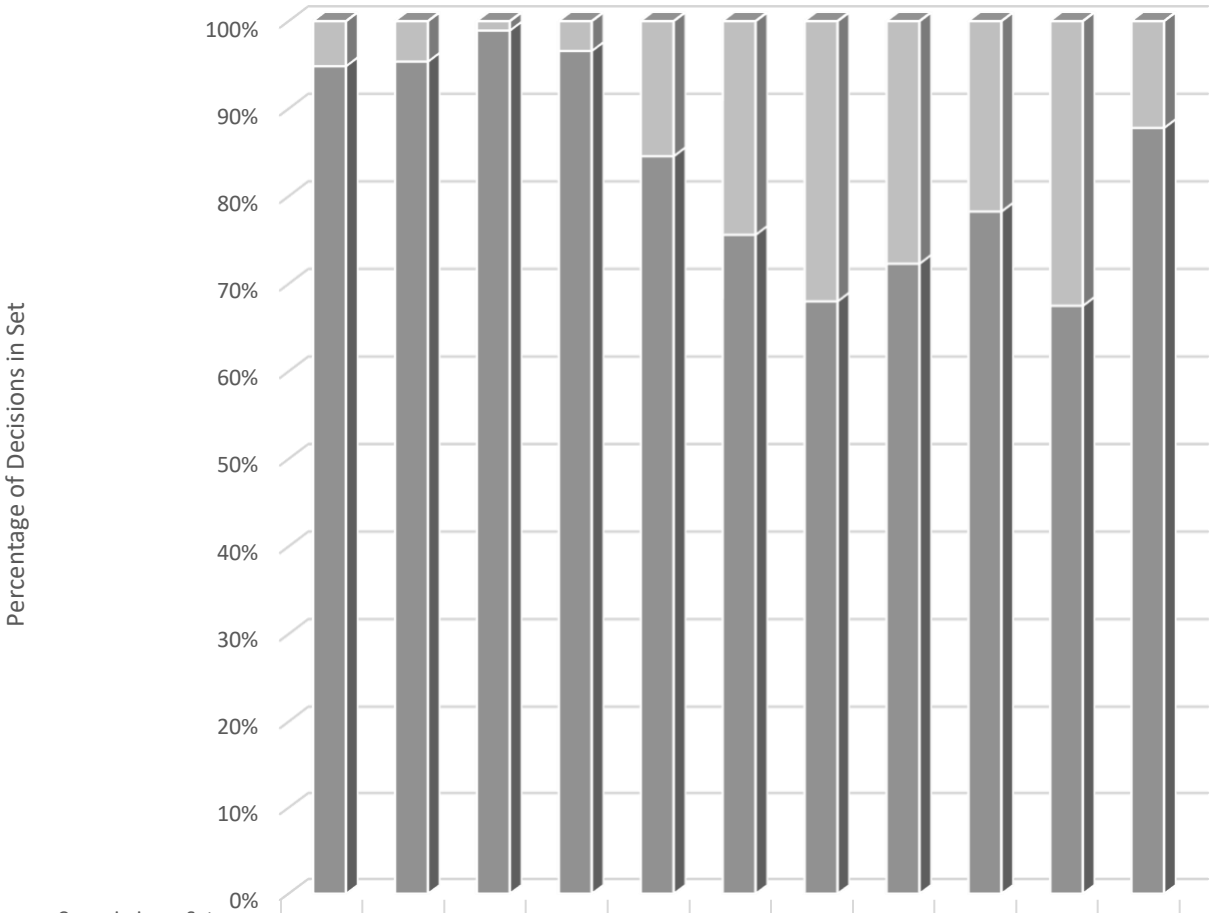
RQ: Are commissioners achieving consensus most of the time when making decisions on MURs?

We do not know if these cases are closing with consensus or if they 'hang in the wind' and essentially close by default because of the inability of the panel to reach a consensus within the legal timeframe allowed. During the data collection it was noted that there was often consensus to close a case only after the panel was unable to reach a consensus on the merits of the case. Therefore, the next section considers whether there is consensus on the panel and if so, to what degree? The first illustration (see Figure 3.6 below) assesses the rate of consensus on the panel by considering the percentage of decisions that succeed versus fail by commissioner set. Success is defined as four more commissioners agreeing to the decision. Failure is defined as fewer than four commissioners agreeing on the decisions

Are the Commissioners Able to Achieve Consensus?

Figure 3.6: Rate of Consensus by Commissioner Set

Figure 3.6 Rate of Consensus by Commissioner Set

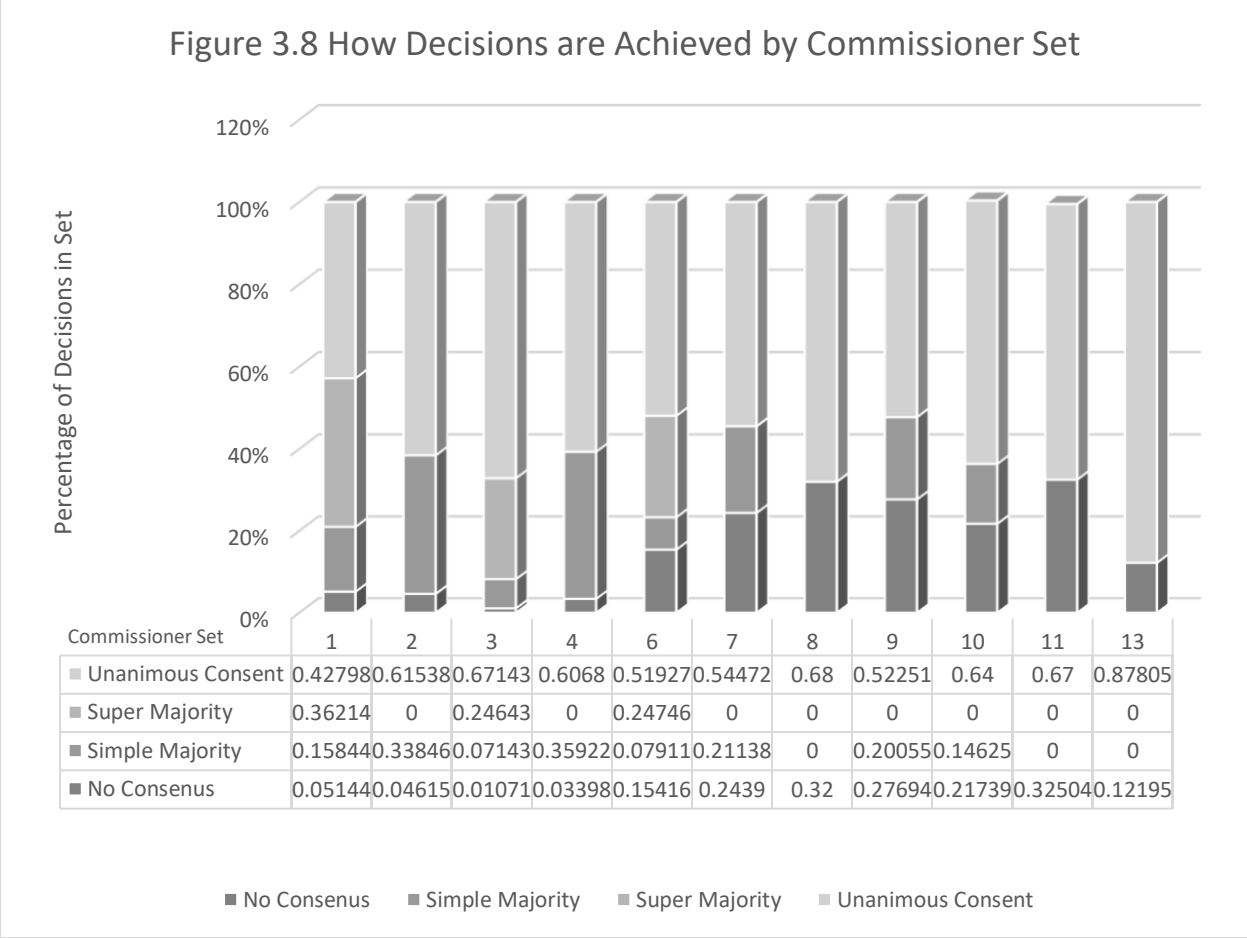


Commissioner Set	1	2	3	4	6	7	8	9	10	11	13
Failure as % of set total	0.05144	0.04615	0.01071	0.03398	0.15416	0.2439	0.32	0.27694	0.21739	0.32504	0.12195
Success as % of set total	0.94856	0.95385	0.98929	0.96602	0.84584	0.7561	0.68	0.72306	0.78261	0.67496	0.87805

The panel is achieving consensus a majority of the time when making decisions on MURs, although the trendline is decreasing with time (see Figure 3.6 above). The panel is shown to achieve a higher rate of consensus in the earlier sets, achieving a rate of 95% or higher, compared to the later sets, which dip to a low of 67%. The rate of consensus on the panel appears to begin dropping in Set 6, to around 83%, then drops by a few percentage points in each successive commissioner set. The rate of consensus on the panel increases slightly in Sets 9 and 10 but then dips to the lowest level in Set 11, at 65%, before reaching a high in Set 4, about 85%.

The rate of consensus on the panel recovers by about 20% in Set 13, which is promising, but that might be the result of this set following a non-functioning set. Interestingly Set 13 only has four commissioners present which one might think would decrease the rate of consensus. Especially given the sets with the least consensus (Sets 7-11) only have four or five commissioners present, except for set 9 which has six commissioners. These findings indicate that the panel is achieving consensus on decisions on MURs most of the time, but the rate is certainly waning. This is significant enough in these findings to raise more questions. The next graphic (see Figure 3.8 below) illustrates the data by commissioner set to determine if this is the case for some the panels with fewer commissioners present.

Figure 3.8: How Decisions are Achieved by Commissioner Set



Commissioner Set	1	2	3	4	6	7	8	9	10	11	13
Unanimous Consent	0.42798	0.61538	0.67143	0.6068	0.51927	0.54472	0.68	0.52251	0.64	0.67	0.87805
Super Majority	0.36214	0	0.24643	0	0.24746	0	0	0	0	0	0
Simple Majority	0.15844	0.33846	0.07143	0.35922	0.07911	0.21138	0	0.20055	0.14625	0	0
No Consenus	0.05144	0.04615	0.01071	0.03398	0.15416	0.2439	0.32	0.27694	0.21739	0.32504	0.12195

RQ: *How are decisions achieved by commissioner set?*

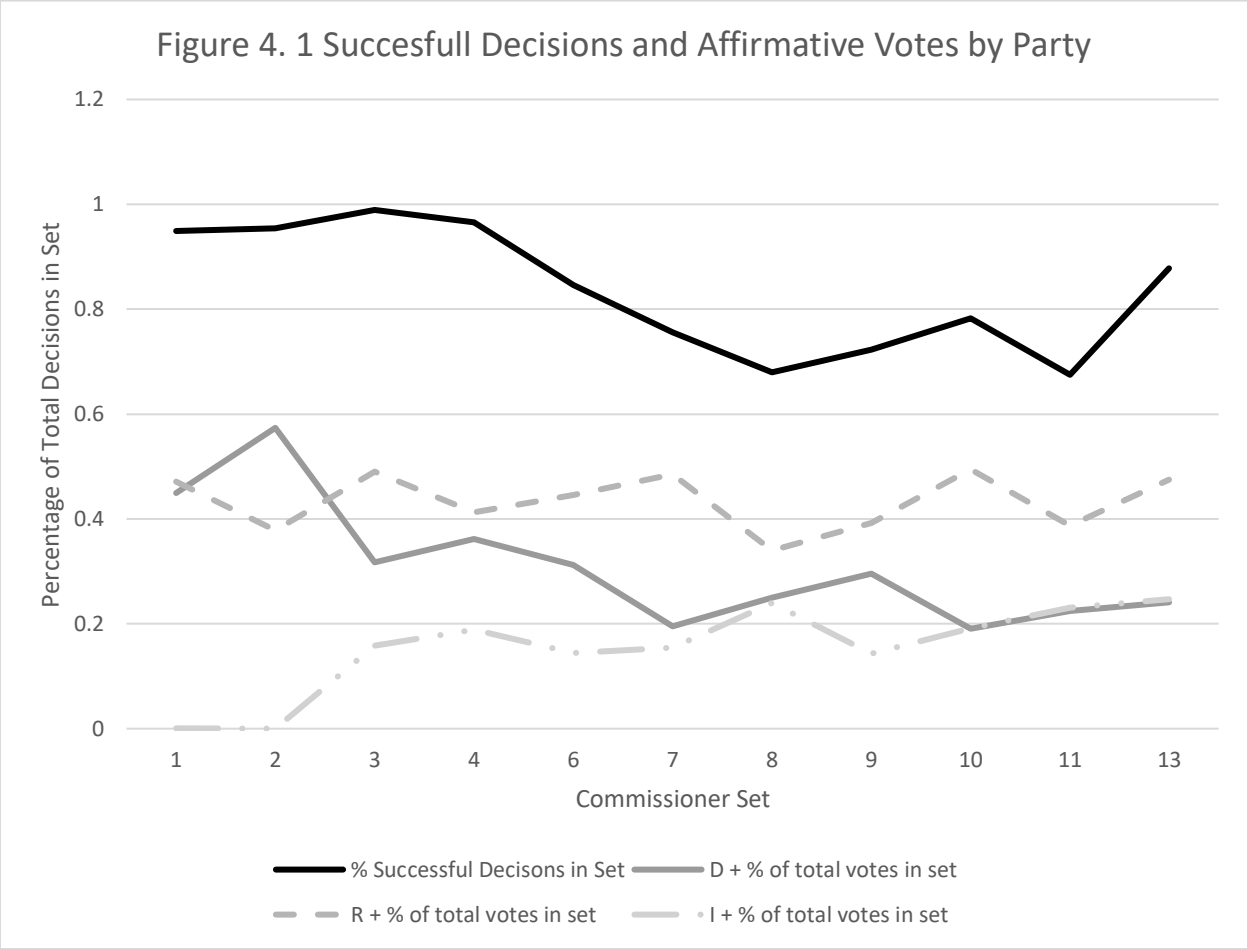
Decisions are achieved with a majority consensus most of the time and unanimous consent some of the time for most of the duration of the study (see Figure 3.8 above). Interestingly, unanimous consent on the panel is achieved at a higher rate in the earlier sets as the later sets are unable to achieve a high rate of consensus. The earlier sets are also more likely to have a higher rate of simple or super majority on the panel. This is likely a result of the earlier sets having more numerical range to make decisions since they are more likely to have more commissioners present on the panel than in the later sets. Sets 1, 3, 6, and 9 have all six commissioners present on the panel and therefore have the best ability to achieve consensus. Sets 2, 4, 7, and 10 have five commissioners present on the panel giving them some range. The sets with fewer commissioners, which tend to be the later sets, are left with only the options to unanimously agree or not agree. Sets 8, 11, and 13 only have four commissioners on the panel and therefore are in this predicament. In spite of this challenge, the later sets with fewer commissioners present on the panel seem to be able to achieve unanimous consensus at a higher rate than the earlier sets, even though they have more commissioners present. These findings indicate that when there are more commissioners present on the panel, they are not more capable of achieving unanimous consent at a higher rate, but overall, they achieve consensus at a higher.

Interestingly, the inability to achieve consensus increases significantly beginning with Set 6 (at 15%), then climbs in Sets 9 (28%) and 10 (22%), but spikes at the highest rate in the study in Set 11 (33%). Part of that might be the result of fewer commissioners in the later sets however it might also be the product of the rise in partisanship or ideological voting on the commission which is explored in more detail in the next chapter. To determine if the decrease in affirmative voting correlates with the decreasing rate of consensus, the next illustration (see Figure 3.9

below) considers the direction of votes by commissioner set. Affirmative votes are defined as yeah votes and negative votes are defined as nay votes. This is one way to measure ideological voting on the panel given the different approaches held by each party toward investigating and prosecuting violations of campaign finance laws.

Are There Differences in Affirmative and Negative Voting by Party?

Figure 4.1: Rate of Successful Decisions and Affirmative Votes by Party



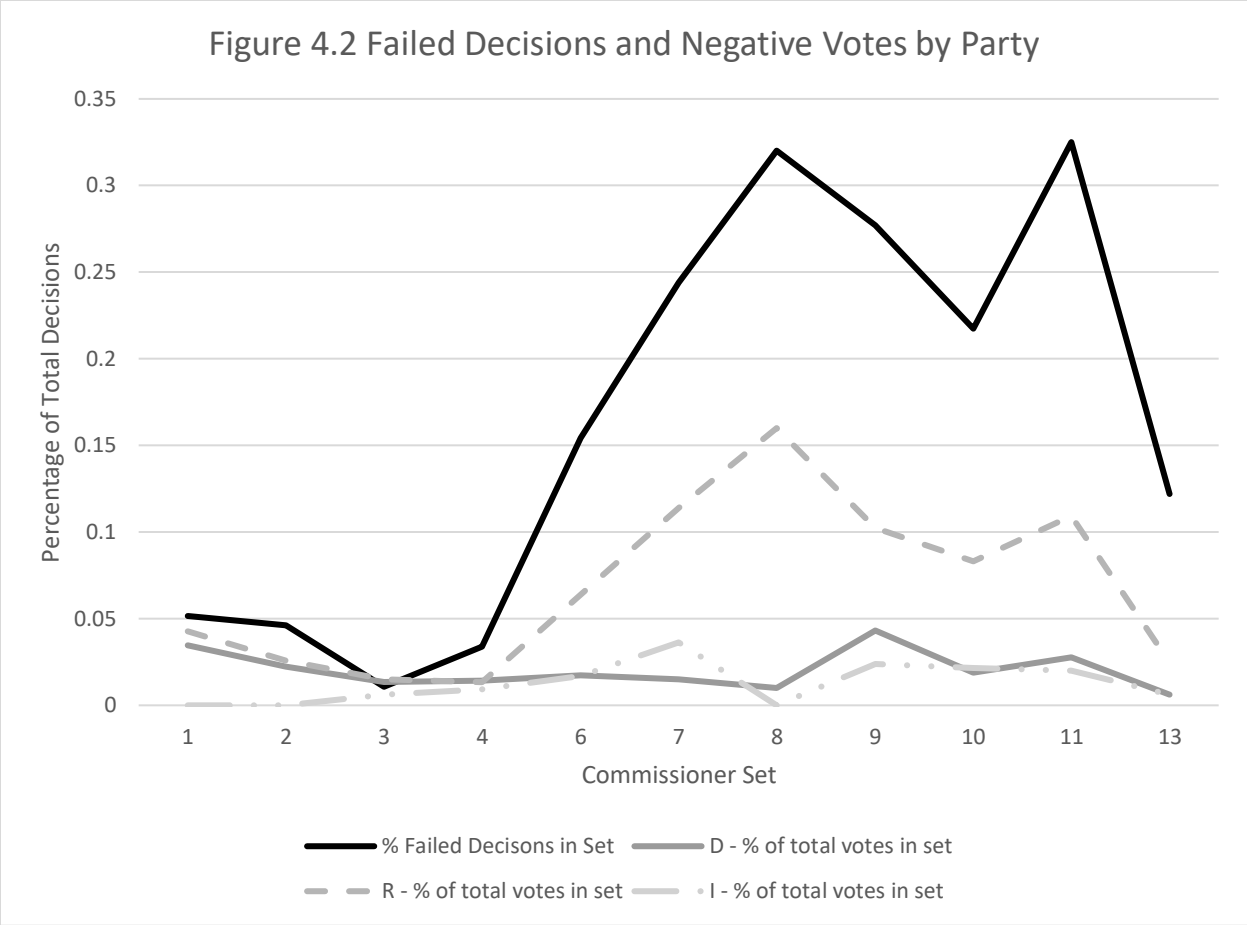
RQ: Is there a difference by party in the rate of affirmative voting on successful decisions?

The data shows differences in affirmative voting by party (see Figure 4.1 above). The Republican commissioners have steadily voted in the affirmative, with slight abbreviations,

averaging around 40% per commissioner set, with less than a 15% difference observed in most sets, even as the number of successful decisions wane. Democratic commissioners have a steady percentage decrease when voting in the affirmative, initially voting at a higher percentage than Republicans, around 60% in earlier sets, but their rate declines to around 20% in the later sets. The Independent commissioner arrives in Set 3 and votes in the affirmative steadily through the sets, making up around 20% of the affirmative votes per commissioner set. Overall, the percentage of successful decisions is declining in later sets but beginning to recover in the later sets. The rate was near 100% then declines in the middle sets to below 70% with slight curtailments.

These findings are not surprising given that the Democratic commissioners have held fewer seats over the years, therefore accounting for a smaller percentage of votes. Republican commissioners have controlled a larger number of seats and thus account for a higher percentage of voting overall. It was expected they would be more likely to vote in the negative out of loyalty to their ideology on campaign finance matters therefore their steady rate of affirmative voting is a little surprising. However, the rate of consensus is also dropping simultaneous to the steady affirmative voting by the Republicans. Therefore, it is important to consider the subject matter and decisions considered by the panel when they cast their votes in the affirmative or negative. Before that is considered, the next illustration (see Figure 4.2 below) illustrates the percentage rate of failed decisions and negative votes to determine whether there are partisan differences that correspond with the trend in affirmative voting and successful decisions.

Figure 4.2: Rate of Failed Decisions and Negative Votes by Party



RQ: Is there a difference by party in the rate of negative voting on failed decisions?

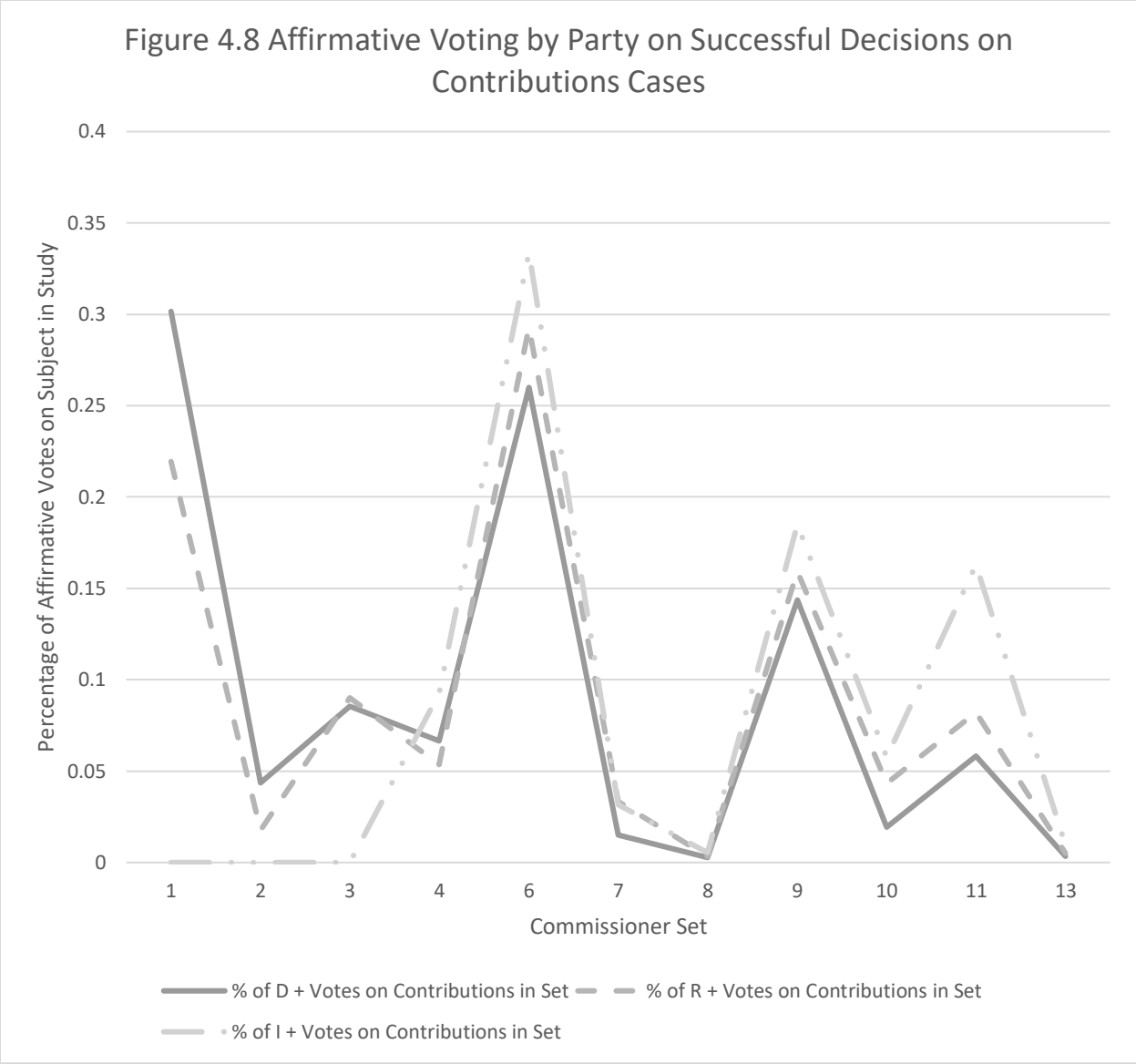
There are differences in negative voting by party on the panel (see Figure 4.2 above). The Republican commissioners on the panel vote in the negative at a higher percentage rate than Democratic commissioners until the later sets. The percentage of negative voting by Republican commissioners increases from a low of less than 5% in Set 3 to a high of more than 15% in Set 8. The Democratic commissioners have a steady increase to right around 30% in the middle sets before their percentage rate also wanes in later sets. This is in spite of having the Democrats holding fewer seats, indicating they too are likely increasingly voting in the negative when considering decisions on MURs. The Independent commissioner arrives in Set 3 and has a fairly steady percentage, around 5% or less, of negative voting as time proceeds, which is consistent

with this commissioner's pattern of affirmative voting. Overall, the percentage of failed decisions significantly increases in later sets. The rate was near zero then increases in the middle sets to a high near 35% with moderate decrease to below 15% in the later sets.

The Republicans have held a larger number of seats on the panel and therefore it is not surprising they account for a higher percentage rate of the negative voting. However, it is surprising that the Democrats maintained their steady percentage rate of negative voting given their deficit in the number of seats they have controlled on the panel compared to Republicans. It is, therefore, important to consider the subject matter and decisions being considered to understand these patterns. The next illustration (see Figure 4.8 below) describes the affirmative voting by party on successful decisions on contribution cases.

Are There Partisan Differences in Affirmative and Negative Voting by Subject Matter?

Figure 4.8 Affirmative Voting by Party on Successful Decisions on Contribution Cases



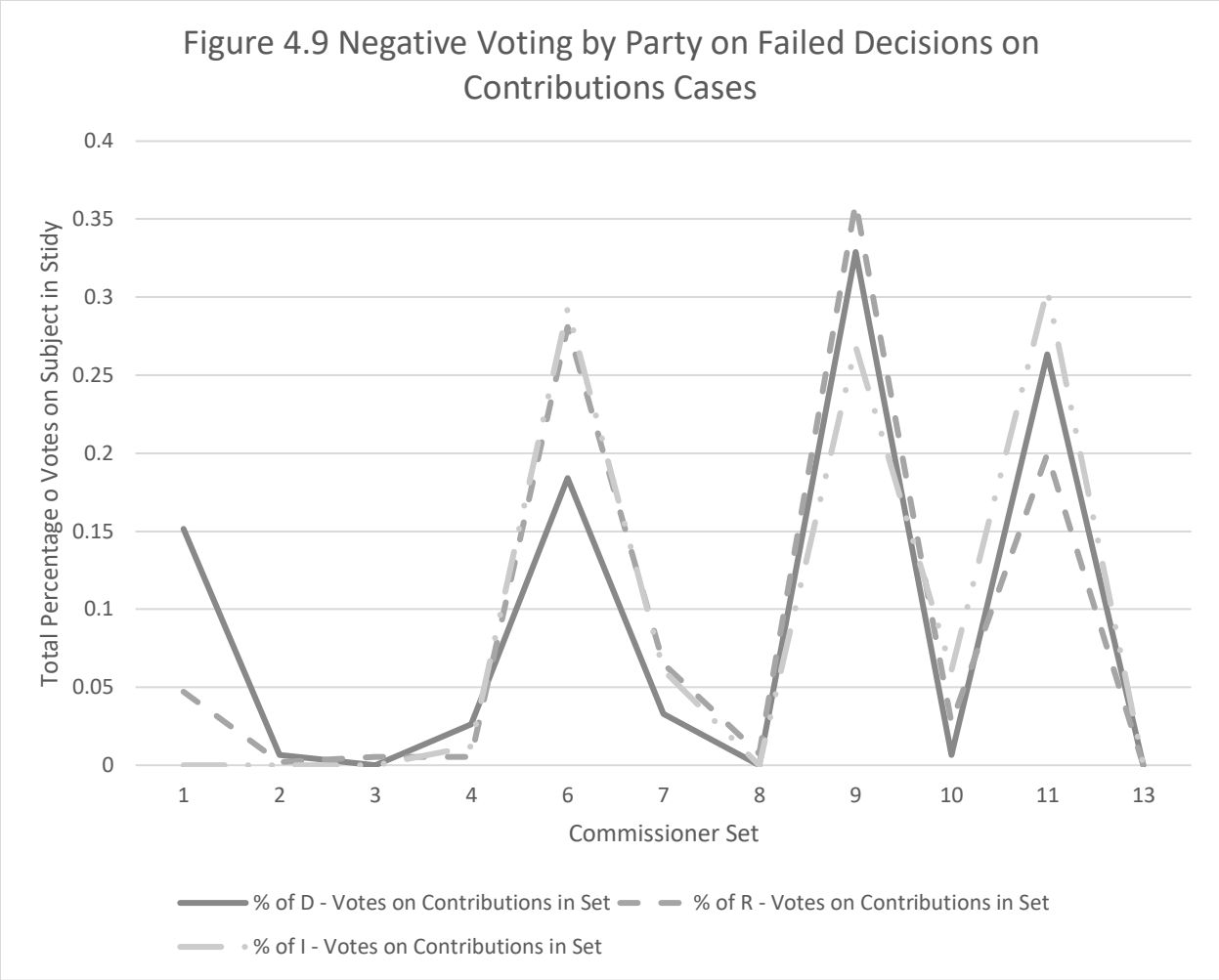
RQ: Are there partisan differences in affirmative voting on successful decisions on contributions cases?

There is little partisan difference on the panel in affirmative voting on successful contributions cases (see Figure 4.8 above). The Democratic commissioners are voting in the affirmative on successful cases at a slightly higher percentage rate in the earlier sets than the Republican commissioners slightly exceed them the rest of the time. The outlier appears to the independent commissioner who in the later sets votes more in the affirmative on successful cases

at a higher percentage rate than their partisan commissioners. Overall, the percentage rate of affirmative voting on successful decisions is irregular but trending downward in later sets. The rate is around 30% in Set 1 then declines quickly in Sets 2 and 3 before recovering to a high of 35% in Set 6 then the rate drops off again before recovering again in Sets 9 and 11.

These results support the earlier findings on the overall declining rate of successful decisions. Although the Republican commissioners have maintained a steady rate of affirmative voting, they are also increasingly voting in the negative along with the Democratic commissioners, which is leading to a declining rate of affirmative voting overall on the panel. This has led to the rate of successful decisions to also decline as a result, and about contribution cases as indicated by these findings. However, the findings in the previous chapter indicate there is a declining rate of contributions cases thus these findings are less consequential. The next illustration (see Figure 4.9 below) describes negative voting by party on failed decisions on contribution cases.

Figure 4.9 Negative Voting by Party on Failed Decisions on Contributions Cases



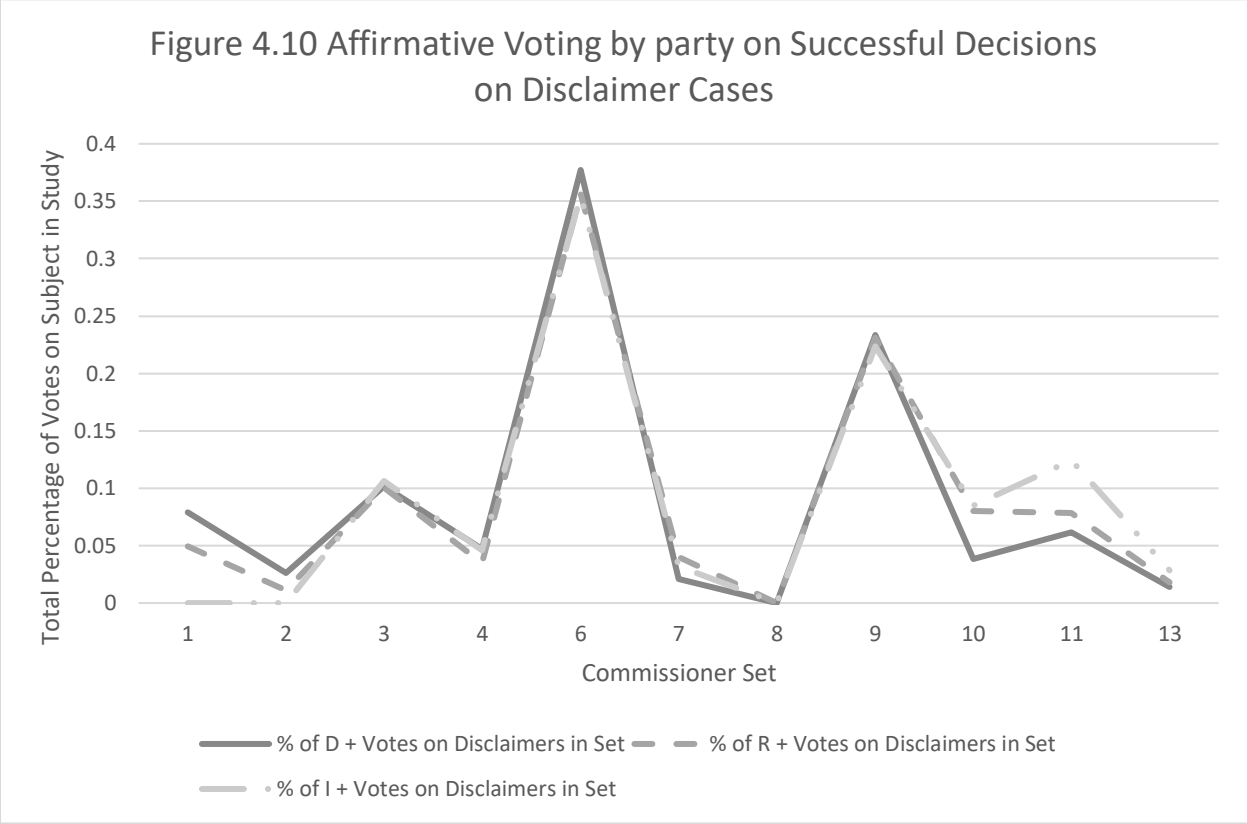
RQ: Are there partisan differences in negative voting on failed decisions on contributions cases?

There is also little partisan difference on the panel in negative voting on failed decisions on contributions cases (see Figure 4.9 above). Though the Democratic commissioners are voting at a slightly higher percentage rate in the earlier sets than the Republican commissioners but that changes by the middle sets. The outlier again in the study is the Independent commissioner who in the later sets is voting at a higher percentage rate than their partisan counterparts on the panel. Overall, the percentage rate of negative voting on this subject matter is irregular but is increasing with marginal differences throughout the sets. The rate is around 15% in Set 1 then increases to

around 30% quickly in Set 6 then recedes in Set 8 before reaching a high of 35% in Set 9 and 30% in Set 11. The findings are like the trends in affirmative voting on successful cases just in the opposite direction.

These results are expected given the Republicans dominate the seats on the panel starting in the middle sets and they are increasingly voting in the negative along with the Democrats which is leading to an increasing rate of negative voting overall on the panel. This has led to the rate of failed decisions to decline, and about contribution cases as indicated by these findings. These results indicate that all the commissioners are voting in the negative at about the same rate indicating this is a subject they continue to agree on even as the subject matters wanes. The next illustration (see Figure 4.10 below) describes the affirmative voting by party on successful decisions on disclaimer cases.

Figure 4.10 Affirmative Voting by Party on Successful Decisions on Disclaimer Cases



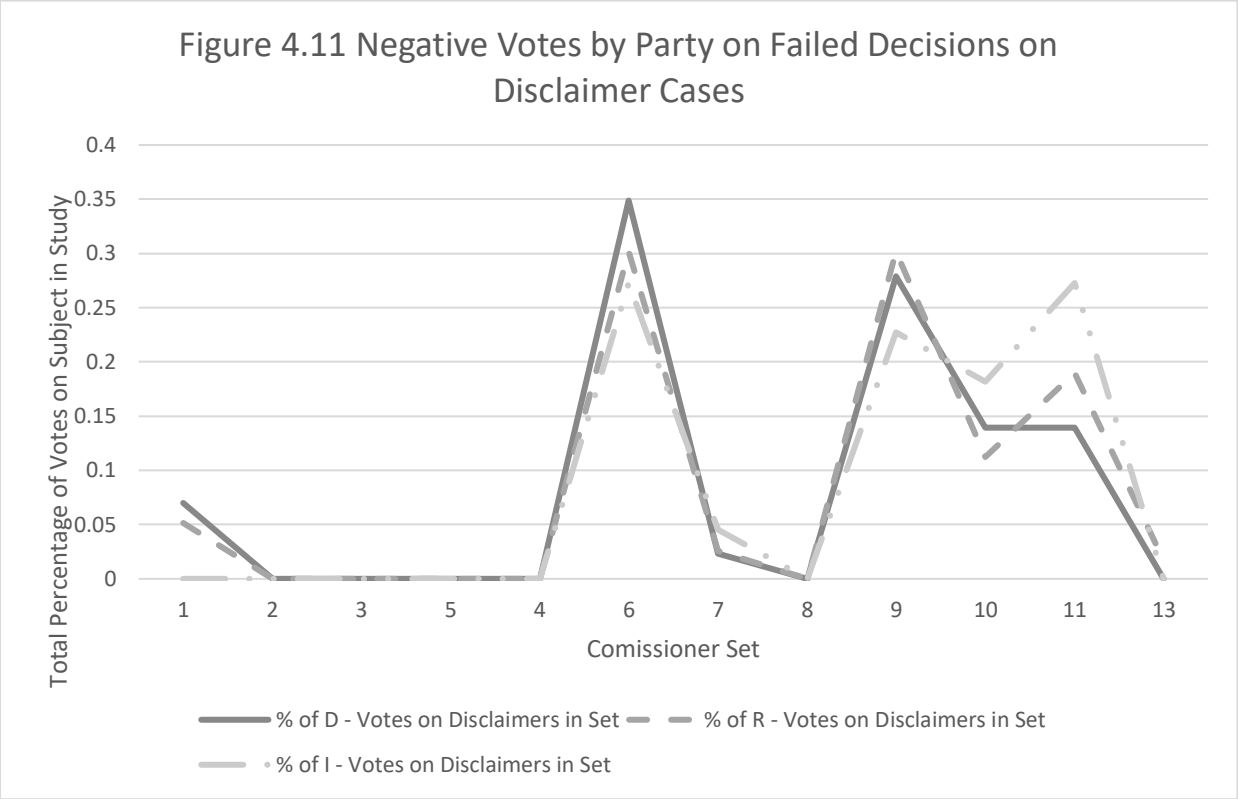
RQ: Are there partisan differences in affirmative voting on successful decisions on disclaimer cases?

There are almost no partisan differences on the panel in affirmative voting on successful decisions on disclaimer cases (see Figure 4.10 above). The partisan commissioners from both sides of the aisle are voting on this subject matter at almost the same percentage rates with very little difference throughout the sets. The Democratic commissioners are voting in the affirmative on successful cases at a slightly higher percentage rate in the earlier sets than the Republican commissioners. The percentage rates are identical until Set 11 when the Republican commissioners on the panel vote at a slightly higher rate. The outlier in the study appears to be again the independent commissioner who in the later sets is voting at a higher percentage rate on successful than their partisan commissioners on the panel. Overall, the rate of affirmative voting on this subject matter is irregular but is decreasing in later sets. The rate is around 10% in Set 1 then is relatively flat before increasing to high of almost 40% in Set 6 before receding in subsequent sets and then increasing again in Set 9 to around 25% and then waning by the last sets.

These results support the earlier findings on the declining rate of successful decisions by the panel. The Republican commissioners have maintained a steady rate of affirmative voting but again they are also increasingly voting in the negative along with the Democratic commissioners which is leading to a declining rate of affirmative voting and successful decisions on the panel, and it appears on this subject matter too. The commissioners are voting less in the affirmative on disclaimer cases just as they are on contributions cases as time passes. The difference is the disclaimer cases are on the rise unlike contributions cases as illustrated by the previous chapter.

The next illustration (see Figure 4.11 below) describes the negative voting by party on failed decisions on disclaimer cases.

Figure 4.11: Negative Voting by Party on Failed Decisions on Disclaimer Cases



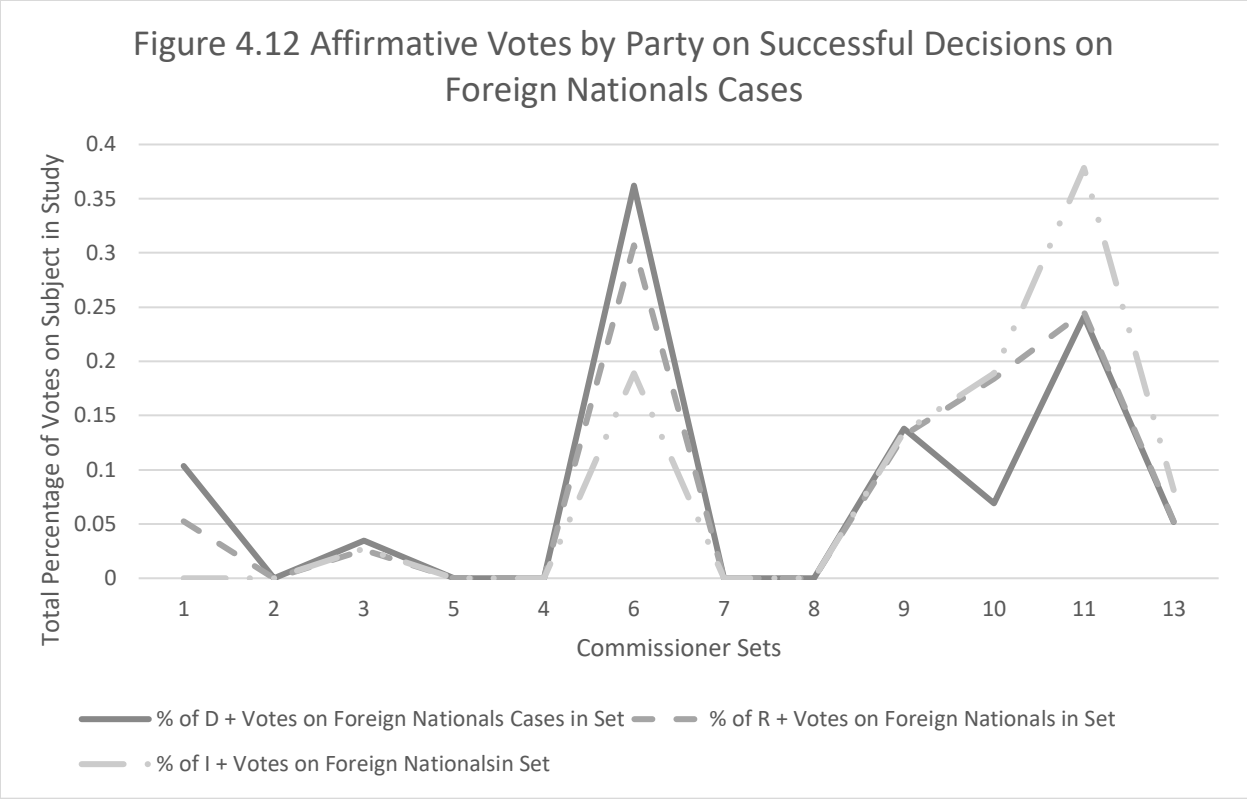
RQ: Are there partisan differences in negative voting on failed decisions on disclaimer cases?

There are little partisan differences on the panel in negative voting on failed decisions on disclaimer cases (see Figure 4.11 above). The partisan commissioners from both sides of the aisle are voting in on this subject matter in similar percentage rates with only marginal differences throughout the sets. This is like the results for the contribution cases and affirmative voting on disclaimer cases with only slight differences in the later sets. The percentage rate of is extremely low in early sets but by Set 6 the rate drastically changes when there is a stark increase, up to 35 percent. The Democratic commissioners are voting at a slightly higher

percentage rate than the Republican commissioners on the panel but then they are exceeded in the later sets. The outlier again appears to the independent commissioner in the later sets who is voting at a higher percentage rate than the partisan commissioners on the panel. Overall, the rate of negative voting on failed decisions is irregular but is slowly increasing in later sets. The rate is flat is around 10% in the Set 1 is flat until Set 6 when it increases to a high of 35% then falls again before rising again in Set 9 to around 30% and slightly decreasing in later sets.

These results are expected given the Republicans dominate the seats on the panel starting in the middle sets and they are also increasingly voting in the negative along with the Democrats which is leading to an increasing rate of negative voting and failed decisions on the panel, and apparently on this subject matter too. The commissioners are voting increasingly in the negative on disclaimer cases indicating disagreement on the subject matter similar to the contribution cases. However, unlike the contribution cases, this subject matter is on the rise as indicates in the previous chapter. The next illustration (see Figure 4.12 below) describes the affirmative voting by party on successful decisions on foreign national cases to determine if the trends hold up for this subject matter.

Figure 4.12 Affirmative Voting by Party on Successful Decisions on Foreign Nationals Cases



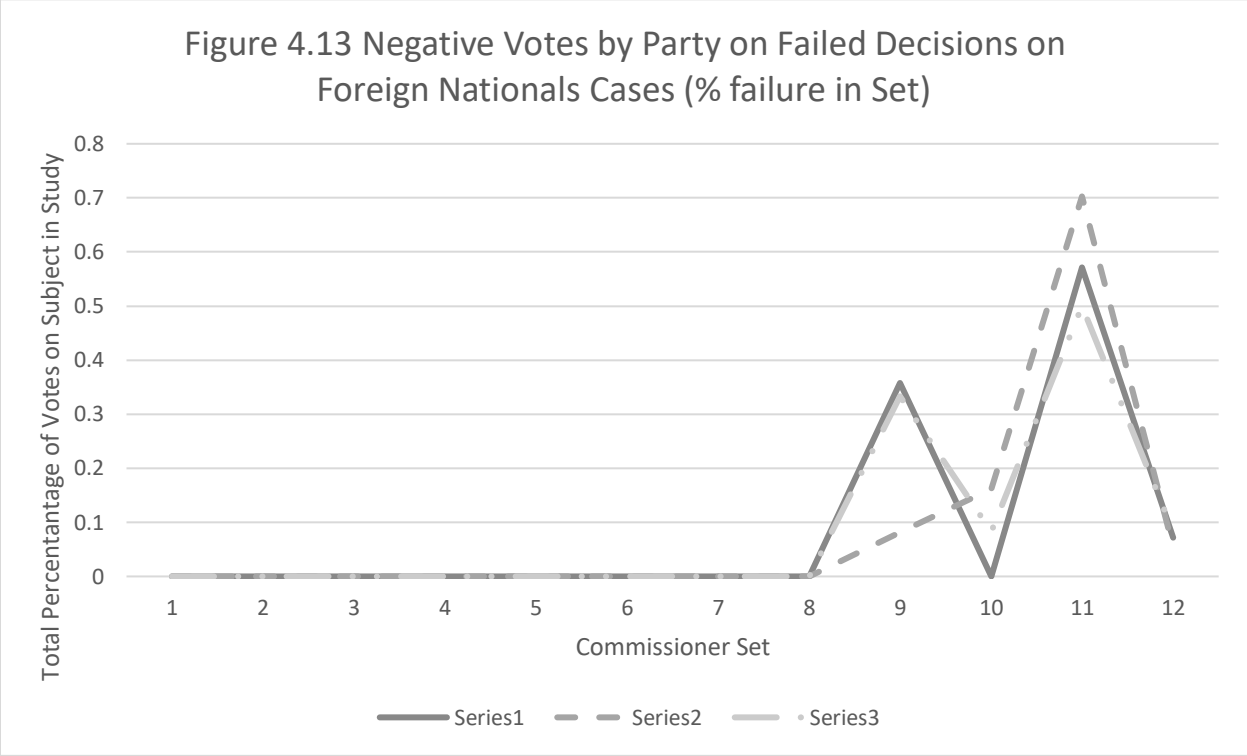
RQ: Are There partisan differences in affirmative voting on successful decisions on foreign national cases?

There are some slight partisan differences in affirmative voting on successful decisions on disclaimer cases (see Figure 4.12 above). The Democratic commissioners are voting at a higher percentage rate compared to the other commissioners on the panel. By Set 10 the Republican commissioners vote at a slightly percentage higher than the Democrats. The partisan commissioners from both sides of the aisle are largely voting at almost the same percentage rates from the middle to later sets. The outlier again is the independent commissioner who in the later sets is voting in the affirmative on at a higher percentage rate than their partisan counterparts on the panel. Overall, the rate of affirmative voting on foreign national cases is irregular but is slowly increasing. The rate is around 10% in Set 1 then is relatively flat before increasing to high

of 35% in Set 6 before receding in Set 8 and then increasing again in Set 9 to 15% and 35% in Set 11.

The commissioners are all voting more in the affirmative on foreign national cases even as the subject matter continues to increase. These findings are little surprising in spite of the percentage rate of successful voting in the middle sets is high and the sustained affirmative voting by the Republican commissioners who dominate the seats on the panel perhaps because in recent years this subject matter is certainly more partisan. The Republicans likely being the more liberal on the topic than the Democrats. The next illustration (see Figure 4.13 below) describes the negative voting by party on failed decisions on foreign national cases to determine if there are similar surprising results.

Figure 4.13: Negative Voting by Party on Failed Decisions on Foreign Nationals Cases

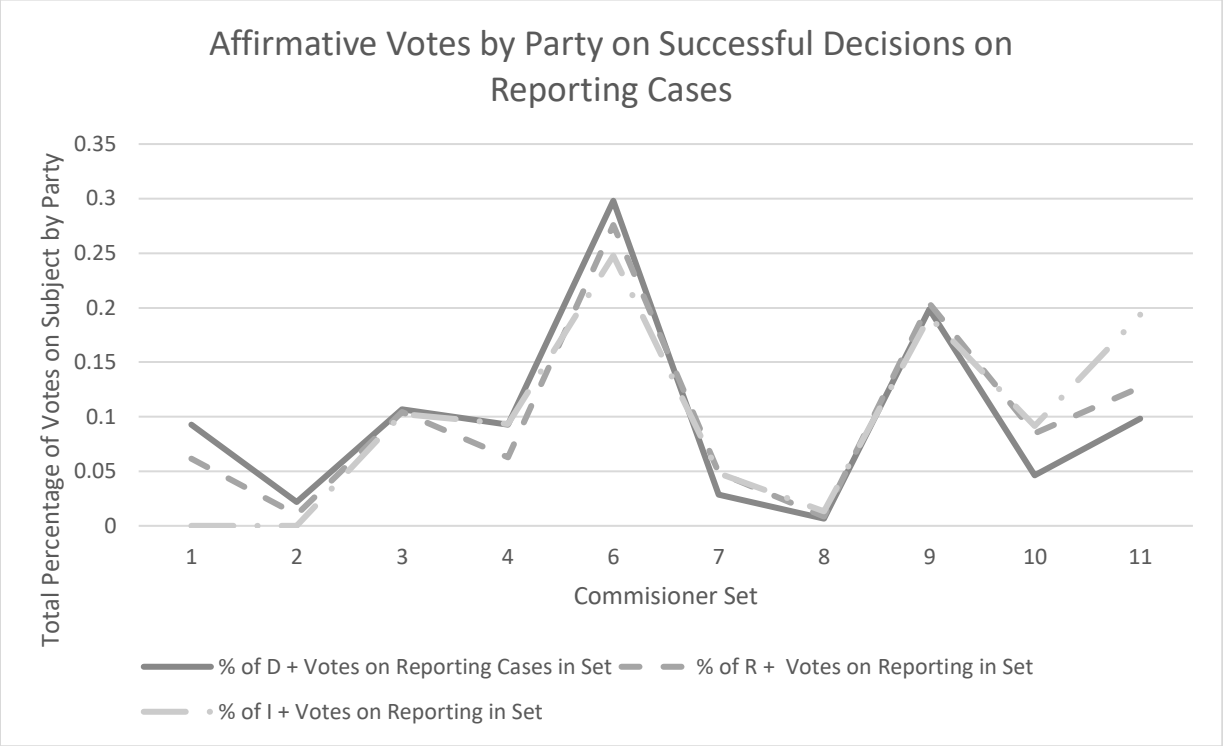


RQ: Are there partisan differences in negative voting on failed decisions on contribution cases?

There are only slight partisan differences in negative voting on failed decisions on foreign national cases (see Figure 4.13 above). Partisan commissioners from both sides of the aisle are voting on this subject matter in similar percentage rates. There are few negative votes on foreign national cases in the early sets but by Set 8 there is an increase in the percentage rate. The percentage increase is more pronounced for the Democratic commissioners. Overall, the rate of negative voting on failed decisions are increasing in later sets. The rate is flat until Set 8 when it increases to 35% then recedes before rising to a high of 70% again in Set 11 before receding in the last set.

These results are not entirely surprising given the rise of negative voting by the Republican commissioners who dominate the seats on the panel starting in the middle sets but they are also increasingly voting in the negative along with the Democratic commissioners. This is leading to an increasing rate of negative voting overall on the panel. Given the partisan stances on this subject matter in recent years by the Republicans this also makes these results less surprising, but it runs counter to their increasing affirmative votes on the topic. It is surprising that the Democrats would vote increasingly in the negative on this subject given their parties stance on the subject. The results do indicate this is a subject there is some disagreement on and even as the subject matter rises in the ranks of MURs. Therefore, including the types of decisions being made on the subject is imperative for the study and will follow the last partisan assessments on subject matter. The next illustration (see Figure 4.14 below) describes the affirmative voting by party on successful decisions on reporting cases.

Figure 4.14 Affirmative Voting by Party on Successful Decisions on Reporting Cases



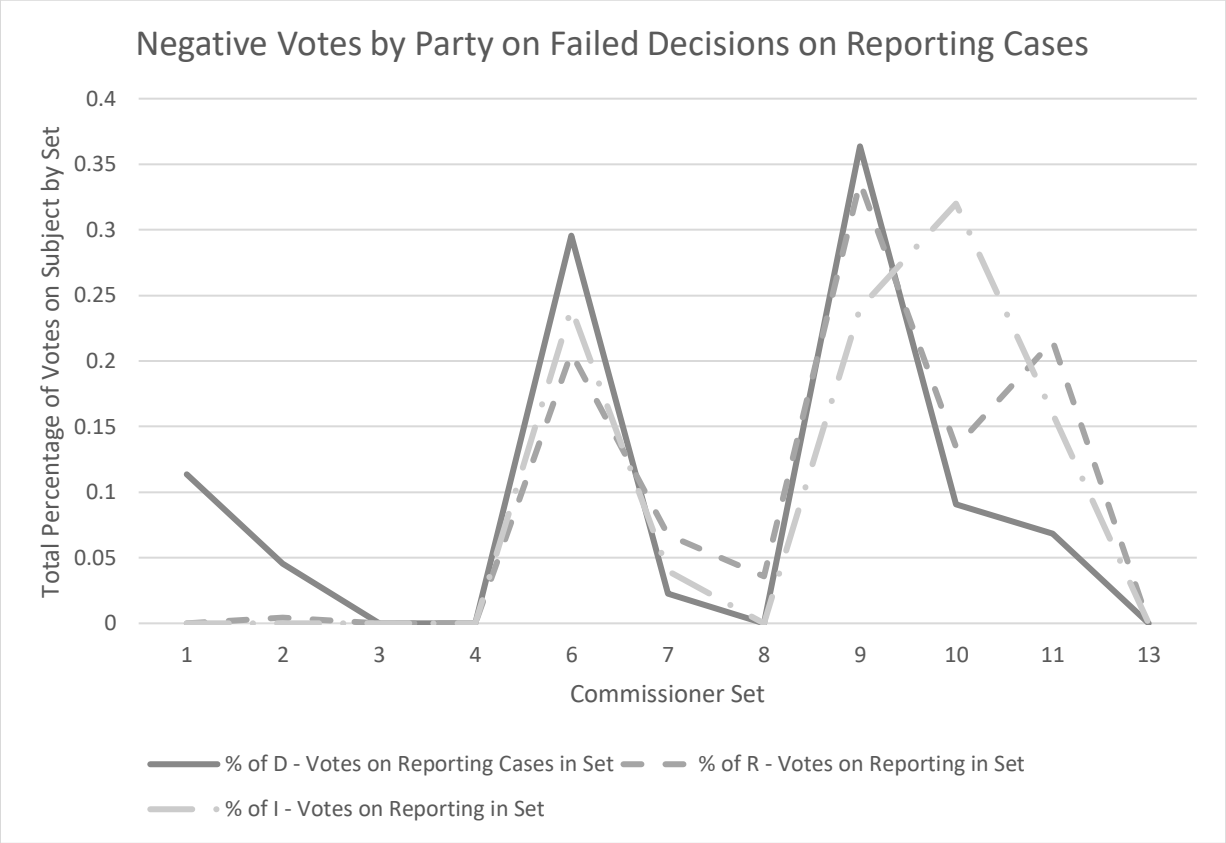
RQ: Are there partisan differences in affirmative voting on reporting cases?

There are almost no partisan differences on the panel in affirmative voting on successful decisions on reporting cases (see Figure 4.14 above). The partisan commissioners from both sides of the aisle are voting in on this subject matter at almost the same percentage rates with very little difference throughout the sets. There is one exception, Set 10 when the Republican commissioners vote at a slightly higher percentage rate in than Democratic commissioners. Overall, the percentage rate of affirmative voting is irregular but is increasing. The rate is around 10% in Set 1 then is relatively flat before increasing to high of 30% in Set 6 before receding in Sets 7 and 8 and then increasing again in Set 9 to 20% and 15% in Set 11.

These results are little surprising but given the Republicans dominate the seats on the panel starting in the middle sets and they have a steady rate of affirmative voting. Therefore, this indicates a subject there might be some agreement on and may be one of the few subjects to

sustain affirmative voting. These findings indicate there is little partisan differences in affirmative voting on the subject matter and given these cases are on the rise but that is a relatively positive finding. The next illustration (see Figure 4.15 below) describes the negative voting by party on failed decisions on reporting cases to determine if there are similar results.

Figure 4.15: Negative Voting by Party on Failed Decisions on Reporting Cases



RQ: Are there partisan differences in negative voting on failed decisions on reporting cases?

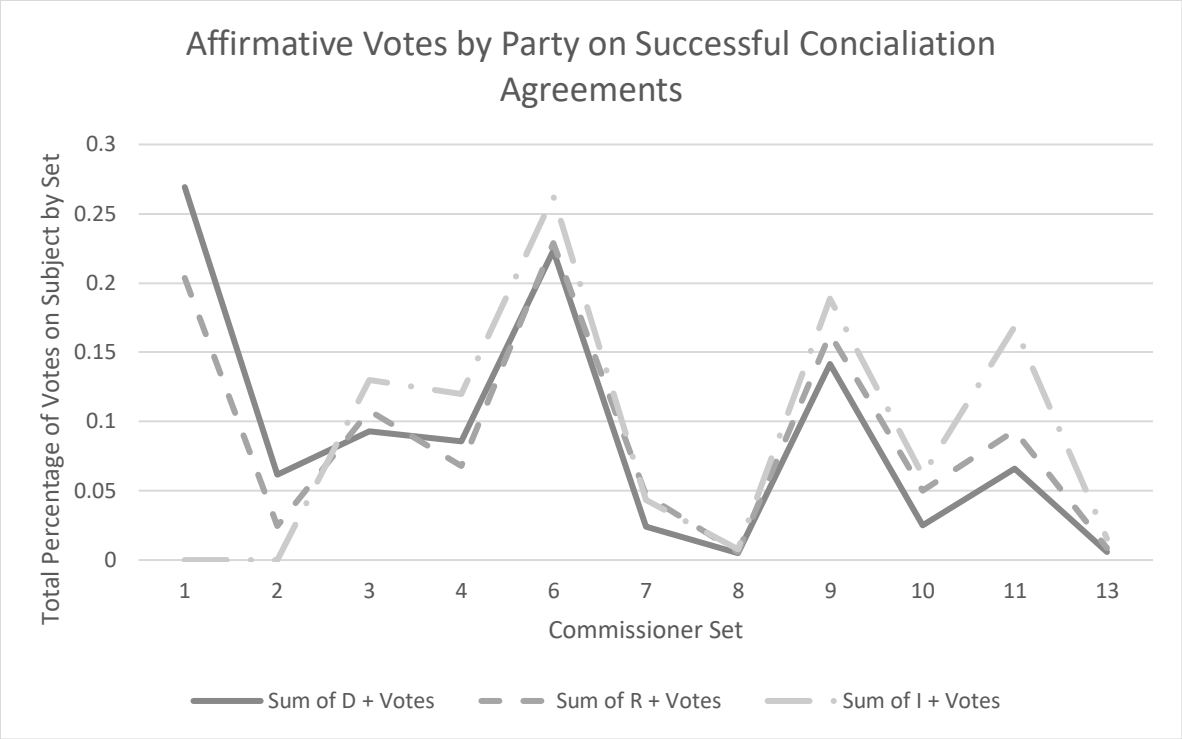
There are partisan differences on the panel in negative voting on failed decisions on reporting cases (see Figure 4.15 above). The partisan commissioners from both sides of the aisle are voting in on this subject matter in similar percentage rates until Set 10 when the Republican

commissioners rate drops. There are few negative votes on reporting cases in the early sets but by Set 6 the disagreement on this topic increases with all of the commissioners. The differences in percentage rate by party appear to be the greatest in the later sets. Overall, the percentage rate of negative voting on failed decisions is irregular but is increasing in later sets. The rate is around 10% in Set 1 then is flat until Set 6 when it increases to 30% then recedes before rising to a high of 35% again in Set 9 then then recedes slightly in the last sets.

These results are surprising given the earlier findings that indicated affirmative voting on the subject matter was slowly increasing. However, these results infer disagreement on the topic and instead indicate this of the main subjects driving the increasing rates of negative voting and failed decisions on the panel. The topics of contributions, foreign nationals and reporting have the highest rates of disagreement on the panel, but the foreign national and reporting cases appear to have the widest range of disagreement between the parties with the Republican commissioners voting less negatively on the subject matter. However, we need to assess what decisions they are voting on to truly understand the root of their partisan gridlock. Therefore, the next section (see Figures 4.16- 4.25 below) addresses the partisan differences in the types of decisions they are considering on these subject matters. The first illustration (see Figure 4.16 below) describes the affirmative voting by party on successful CA decisions.

Are There Partisan Differences in Affirmative and Negative Voting by Type of Decision?

Figure 4.16 Affirmative Voting by Party on Successful Conciliation Agreement Decisions



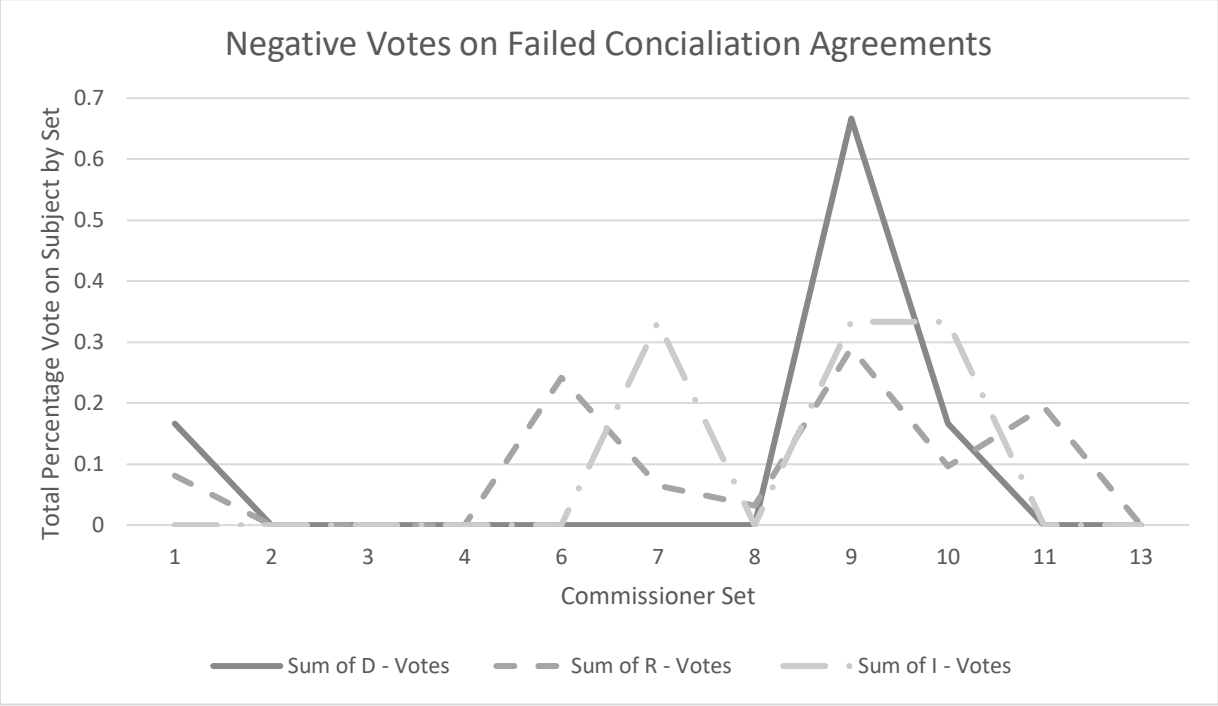
RQ: Are there partisan differences in affirmative voting on successful conciliation agreement decisions?

There are some partisan differences on the panel in affirmative voting on successful decisions on CAs (see Figure 4.16 above). The partisan commissioners from both sides of the aisle are voting in the on this subject matter at in similar percentage rates though the rate is slightly more pronounced for Republican commissioners in later sets and the Independent commissioner in the middle and later sets. The Democratic commissioners have a high percentage rate in Set 1 above 25% then a steep decrease in the earlier sets before rising in the middle sets to around 20% then waning again in later sets. The Republican commissioners have a high percentage rate in Set 1above 20% then a steep decrease in the earlier sets before rising in the middle sets to around 20% then waning again in later sets. The Independent commissioner enters in Set 3 with percentage rate close to 15% and then rising to a high over 25% before also waning in successive sets. Overall, the rate of affirmative voting on this subject is irregular but is

slowly decreasing in the later sets. The percentage rate is around 25% in Set 1 then recedes before increasing to similar rates in Set 1 before receding in Sets 7 and 8 and then increasing again in Set 9 to 20% and 15% in Set 11.

These findings are little surprising given the nature of CAs which is to resolve the MUR and proceed with a satisfactory resolution for all parties involved. The decreasing percentage rates of affirmative voting on this subject matter by all commissioners indicates that this is a topic that may be gridlocking the panel. Given the Republicans also dominate the seats on the panel starting in the middle sets and they have a steady rate of affirmative voting, these results are little surprising however the rise of negative voting is likely the cause. The next illustration (see Figure 4.17 below) describes the negative voting by party on failed CA decisions to determine if this data provides similar results.

Figure 4.17: Negative Voting by Party on Failed Conciliation Agreement Decisions

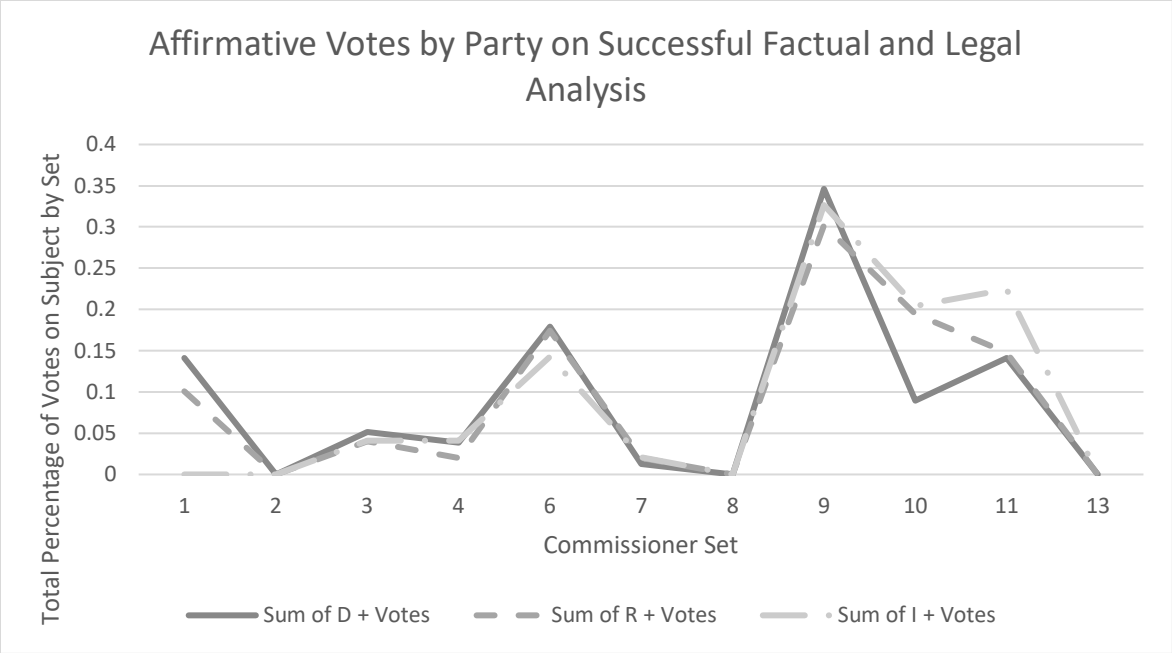


RQ: Are there partisan differences in negative voting on failed conciliation agreement decisions?

There are partisan differences in negative voting on failed decisions on CAs cases (see Figure 4.17 above). Initially, there are few negative votes on CAs but by the middle sets the percentage rate begins to increase as the Republican and Independent commissioners begin to vote in the negative at higher rate than Democrats. The Democratic commissioners have a percentage rate in Set 1 right under 20% then a steep decrease in the earlier sets before steeply rising in Set 8 to almost 70% then waning again in later sets. The Republican commissioners have a percentage rate in Set 1above 10% then a steep decrease too in until Set 4 to around 25% before waning and rising again in later sets. The Independent commissioner enters in Set 3 with percentage flat rate until Set 7 when his rate rises to around 30% before also waning and rising again in later sets. Overall, the percentage rate of negative voting is increasing acute in the later sets. The percentage rate of negative voting on failed decisions is irregular but overall is increasing in later sets. The rate is around 15% in Set 1 then is flat until Set 6 when it increases to slightly over 20% then recedes before rising to a high of 60% again in Set 9 then then recedes in the last sets.

These findings are less surprising given the percentage rates of affirmative voting are declining. Given the Republicans also dominate the seats on the panel starting in the middle sets and they have a steady rate of negative voting along with the Democrats, these results are not surprising. The increasing percentage rates of negative voting along with the decreasing rate of affirmative voting on this subject matter by all commissioners indicates that the is a topic that may be gridlocking the panel. The next illustration (see Figure 4.18 below) describes the affirmative voting by party on successful factual and legal analysis decisions.

Figure 4.18 Affirmative Voting by Party Successful Factual and Legal Analysis Decisions



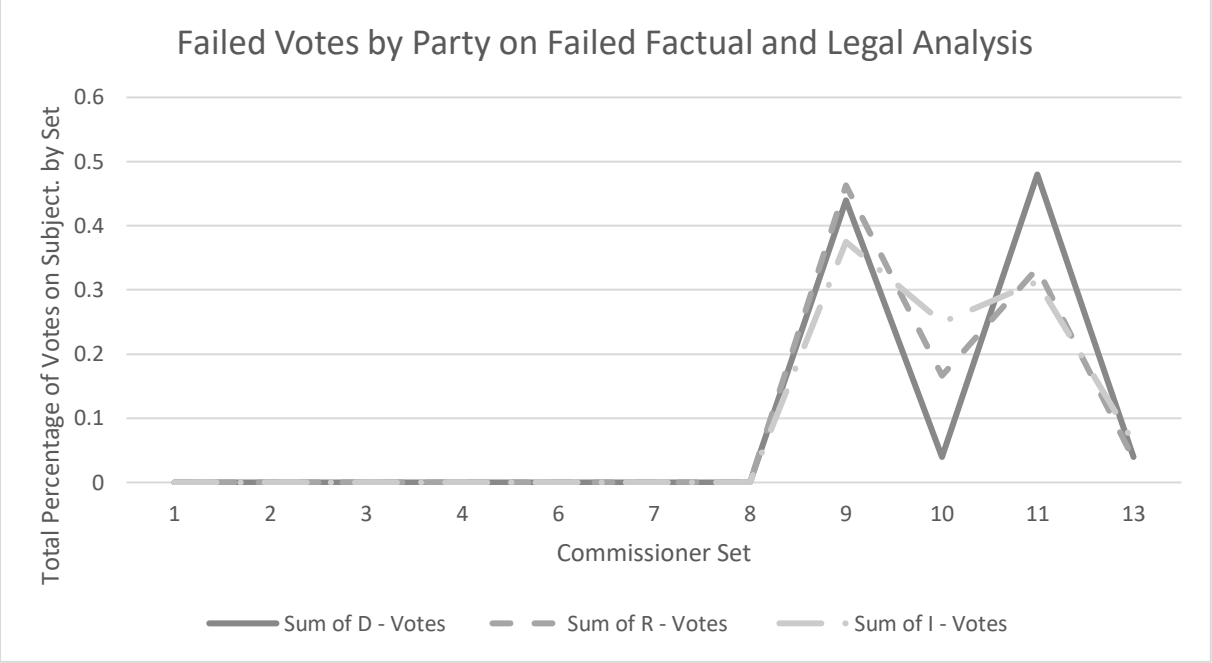
RQ: Are there partisan differences in affirmative voting on successful factual and legal analysis decisions?

There are marginal differences in affirmative voting on successful decisions on FLAs (see Figure 4.18 above). The partisan commissioners from both sides of the aisle are voting in the affirmative on FLAs at almost the same percentage rates with very little difference throughout the sets. The Democratic commissioners have a percentage rate in Set 1 right under 15% then a steep decrease in the earlier sets before rising slowly and waning again in the middle sets then rising steeply rising in Set 9 to almost 35% then waning again in later sets. The Republican commissioners have a percentage rate in Set 1above 10% then a steep decrease before shrinking the gap with the Democratic commissioners by the later sets. The Independent commissioner enters in Set 3 with flat percentage rate until Set 6 when his rate rises to around 15% before waning and rising. Overall, the rate of affirmative voting on successful decisions is irregular but slowly is decreasing. The percentage rate is around 15% in Set 1 then recedes

before increasing to around 20% in Set 6, then receding in Sets 7 and 8 before increasing again in Set 9 to 35% and 20% in Set 11 and then finally receding in Set 13.

These findings are little surprising given the nature of FLAs which are basically prepared legal statements of purpose and evidence presented by the FEC commissioners consultants and lawyers. Although there is a decreasing percentage rate of affirmative voting and successful decisions, the FLAs and CAs are the decisions that logically would receive a higher rate of affirmative voting. Given the Republican commissioners have a steady rate of affirmative voting these results are a little surprising. This indicates that decisions on FLAs may be gridlocking the panel. The next illustration (see Figure 4.19 below) describes the negative voting by party on failed FLA decisions.

Figure 4.19: Negative Voting by Party on Failed Factual and Legal Analysis Decisions

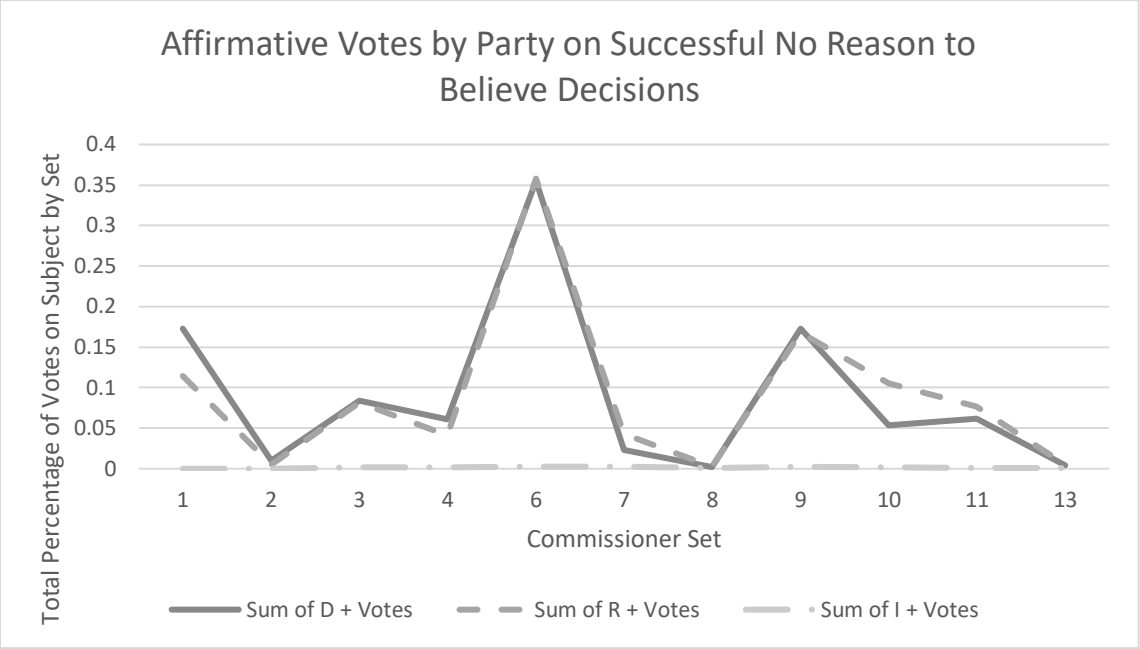


RQ: Are there partisan differences in negative voting on failed factual and legal analysis decisions?

There are some partisan minor differences in negative voting on failed decisions on FLAs (see Figure 4.19 above). The Democratic commissioners have a flat percentage rate until a steep increase in Set 9 to almost 50% then a steep decrease in Set 10 before rising to a slightly higher rate than they held in Set 9. The Republican commissioners have a similar pattern as the Democratic commissioners with a slightly higher rate in Set 10 and a slightly lower rate in Set 11. The Independent commissioner shares a similar pattern as the Republican commissioners with a slight deviation in Set 10 when he has a slightly higher percentage rate. Initially there are few negative votes on failed FLAs but Set 8 all the commissioners are voting increasingly in the negative on failed cases. The rate is around 15% in Set 1 then falls flat before increasing to around 20% in Set 6 before receding in Sets 7 and 8 and then increasing again in Set 9 to 35% and 20% in Set 11 and receding in Set 13.

These findings are not surprising given the decreasing percentage rate of affirmative voting on the topic and overall increase in negative voting and failed decisions. However, again the nature of FLAs would infer that this decision would be one that would garner more consensus. These results prove that is not the case and given the flat rate of negative voting until the later sets indicate that FLAs are one of the areas they are increasingly voting in the negative on and may be gridlocking the panel. The next illustration (see Figure 4.20 below) describes the affirmative voting by party on successful NRTB decisions.

Figure 4.20 Affirmative Voting by Party on Successful No Reason to Believe Decisions

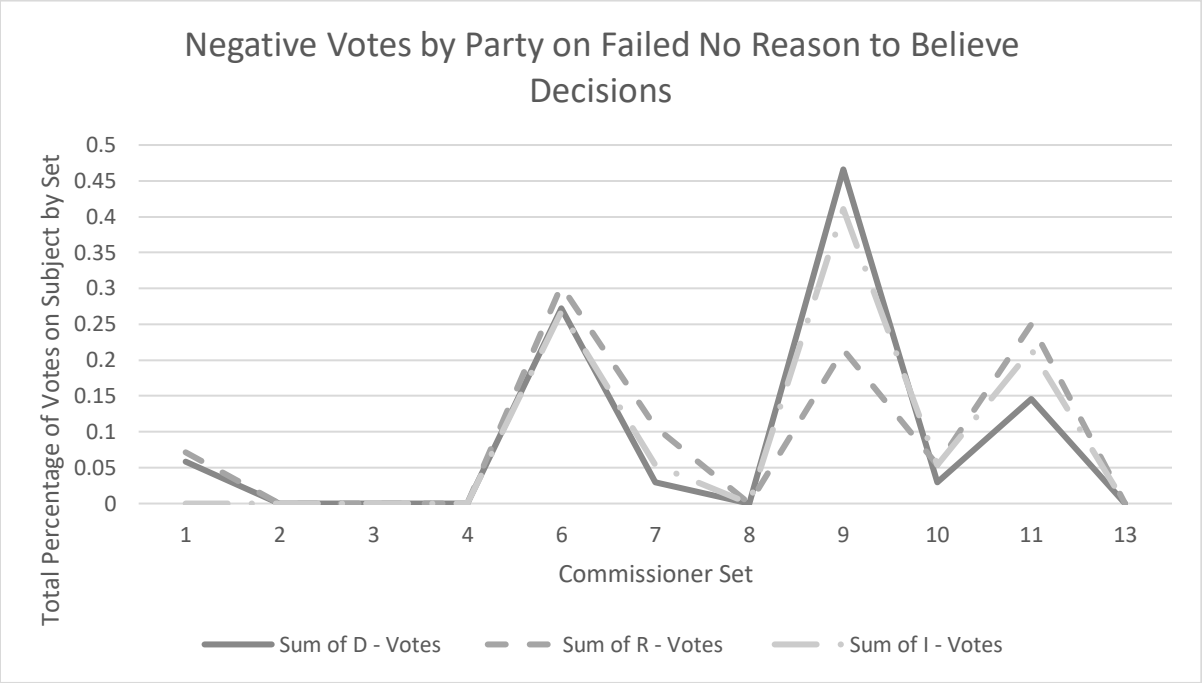


RQ: Are there partisan differences in affirmative voting on successful no reason to believe decisions?

There are marginal differences in affirmative voting on successful decisions on NRTBs (see Figure 4.20 above). The partisan commissioners from both sides of the aisle are voting in the affirmative on NRTBs at almost the same percentage rates with very little difference throughout the sets. The Democratic commissioners have a percentage rate right above 15% in Set 1 then their rate recedes in the earlier sets before steeply rising in Set 6 to around 35% then waning and rising again in Set 9 before waning again in the last sets. The Republican commissioners have a similar pattern as the Democratic commissioners with a slightly higher rate in Set 10. The Independent commissioner have a completely flat rate from his entrance in Set 3 and throughout the sets. Overall, the percentage rate of affirmative voting is irregular but overall is decreasing. The rate is around 15% in Set 1 then recedes before increasing to around 35% in Set 6 before receding in Sets 7 and 8 and then increasing again in Set 9 to 15% and 5% in Set 11 and receding in Set 13.

These findings are little surprising given the Republicans dominate the seats on the panel starting in the middle sets therefore it would be expected they would be voting at a slightly higher rate for NRTB decisions given their stance on campaign finance regulations. The rate of affirmative votes on successful NRTBs are dropping by the later sets however this type of decision was also beginning to decrease as the rate of consensus decreases too. These findings indicate this might be one of the issues that may be gridlocking the panel. The next illustration (see Figure 4.21 below) describes the negative voting by party on failed NRTB to determine if there are similar patterns.

Figure 4.21: Negative Voting by Party on Failed No Reason to Believe Decisions



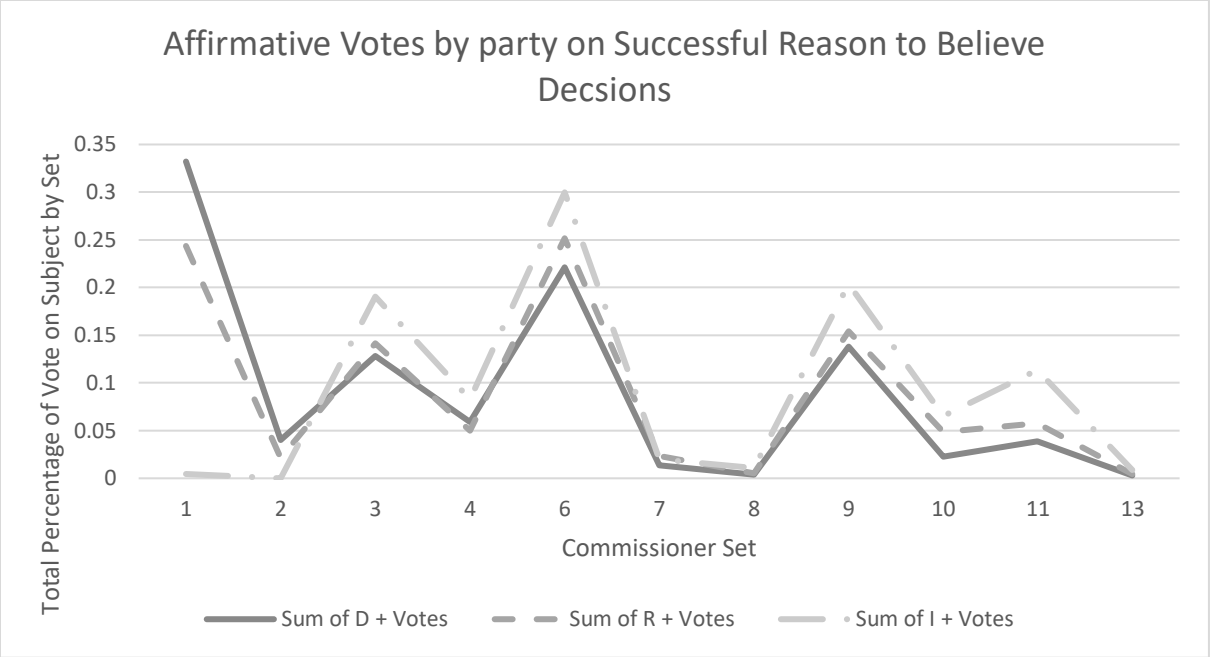
RQ: Are there partisan differences in negative voting on failed successful no reason to believe decisions?

There are some partisan differences in negative voting on failed decisions on NRTBs (see Figure 4.21 above). The Democratic commissioners have a low percentage rate right above 5% in Set 1 then their rate recedes in the earlier sets before steeply rising in Set 6 to around 25% then

waning and rising again to a high around 45% in Set 9 before waning again in the last sets. The Republican commissioners have a similar pattern as the Democratic commissioners in the early sets. Their rates are slightly higher rate than the Democrats in Sets 6-8 but then much lower in Set 9 then higher in Set 11. The Independent commissioner has a similar pattern to his partisan counterparts in the early and middle sets then has similar rate to Republicans in Set 9 but then a rate like Democrats in Set 11. Overall, the rate of negative voting on this decision is irregular but is increasing in later sets. The rate is flat until Set 6 and then it jumps to 30% then recedes before increasing to a high of 45% in Set 9 then decreasing to around 25% Set 11 then recedes again.

These results are not surprising given the decreasing rate of affirmative voting on NRTBs and rate of successful decisions overall and given the Republicans along with the Democrats are voting increasingly in the negative. However, this type of decision is decreasing and yet for these decisions they are disagreeing more. These findings indicate that NRTBs are one of the decisions that is gridlocking the panel. The next illustration (see Figure 4.22 below) describes the affirmative voting by party on successful RTB decisions to determine if there are similar patterns with what is essentially the opposite decision.

Figure 4.22 Affirmative Voting by Party on Successful Reason to Believe Decisions

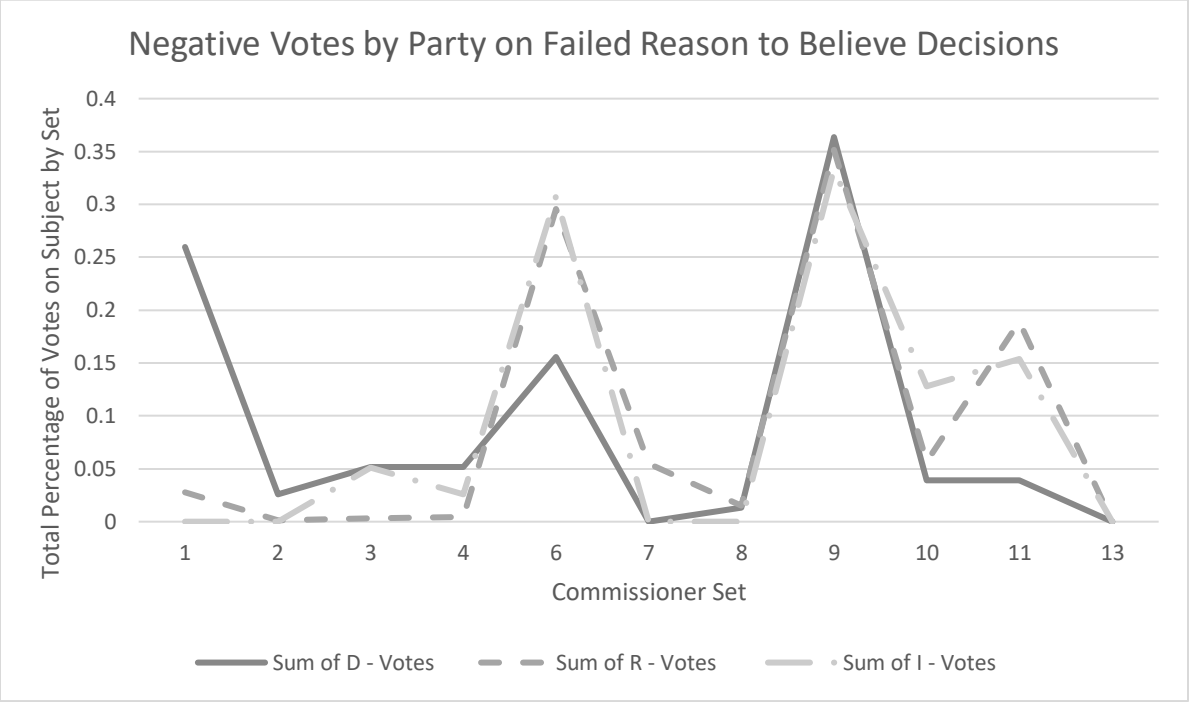


RQ: Are there partisan differences in affirmative voting on successful reason to believe decisions?

There are marginal differences in affirmative voting on successful decisions on RTBs (see Figure 4.22 above). The partisan commissioners from both sides of the aisle are voting in the affirmative on RTBs at similar percentage rates with some difference throughout the sets between the Democrats or Republicans. The Democratic commissioners have a percentage rate close to 35% in Set 1 then their rate recedes in the earlier sets before rising in Set 6 to around 20% then waning and rising again in Set 9 before waning again in the last sets. The Republican commissioners but with slightly pronounced rates throughout the sets. The Independent commissioner follows the same pattern as his partisan colleagues but with a slightly higher percentage rate than the Republicans. Overall, the rate of affirmative voting on successful decisions is irregular but is decreasing. The rate is around 35% in Set 1 then recedes before increasing to around 30% in Set 6 before receding in Sets 7 and 8 and then increasing again in Set 9 to 20% and 10% in Set 11 and receding in Set 13.

Again, these results are not surprising given the Republicans dominate the seats on the panel starting in the middle sets therefore it would be expected they would be voting at lower rates given their stance on campaign finance regulations however it might be expected that the Democrats would vote increasingly in the affirmative on the decision to find RTB. These results indicate this decision is also gridlocking the panel much like the decision to find NRTB. The next illustration (see Figure 4.23 below) describes the negative voting by party on failed reason to believe decisions to determine if there are similar results.

Figure 4.23: Negative Voting by Party on Failed Reason to Believe Decisions



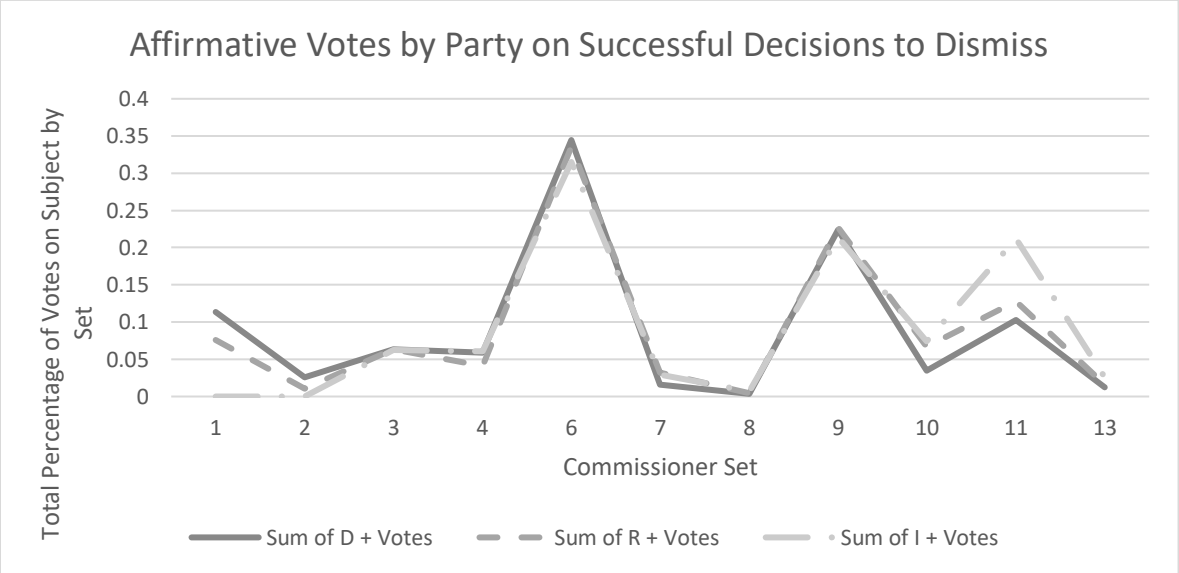
RQ: Are there partisan differences in negative voting on failed reason to believe decisions?

There are partisan differences in negative voting on failed decisions on RTBs (see Figure 4.23 above). The Democratic commissioners have a high percentage rate around 25% in Set 1 but the rate drops off until Set 6 when it climbs to 15% then recedes before spiking to a high of

35% in Set 9 before waning at the end. The Republican commissioners have a much lower rate until Set 6 when they hit a high percentage rate around 30% and then share the same rate with the Democrats until Set 11 when their rate is more pronounced. The Independent commissioner follows the same pattern as the Republicans. Overall, the rate of negative voting on failed decisions is irregular but is increasing in later sets. The rate is around 25% in Set 1 then is flat until Set 6 when it jumps to 30% then recedes before increasing to a high of 35% in Set 9 then decreasing to around 20% Set 11 then recedes again.

These results are not surprising given the findings on affirmative voting on RTB decisions and the overall increasing negative vote and failed decisions. Given the Republicans dominate given the seats on the panel and they along with the Democrats are increasingly voting in the negative. However, the number of decisions on NRTBs is decreasing and yet they are disagreeing more on this decision. These findings indicate that RTBs are one of the decisions the commissioners are increasingly voting gridlocked on. The next illustration (see Figure 4.24 below) describes the affirmative voting by party on successful dismiss decisions.

Figure 4.24 Affirmative Voting by Party on Successful Dismiss Decisions

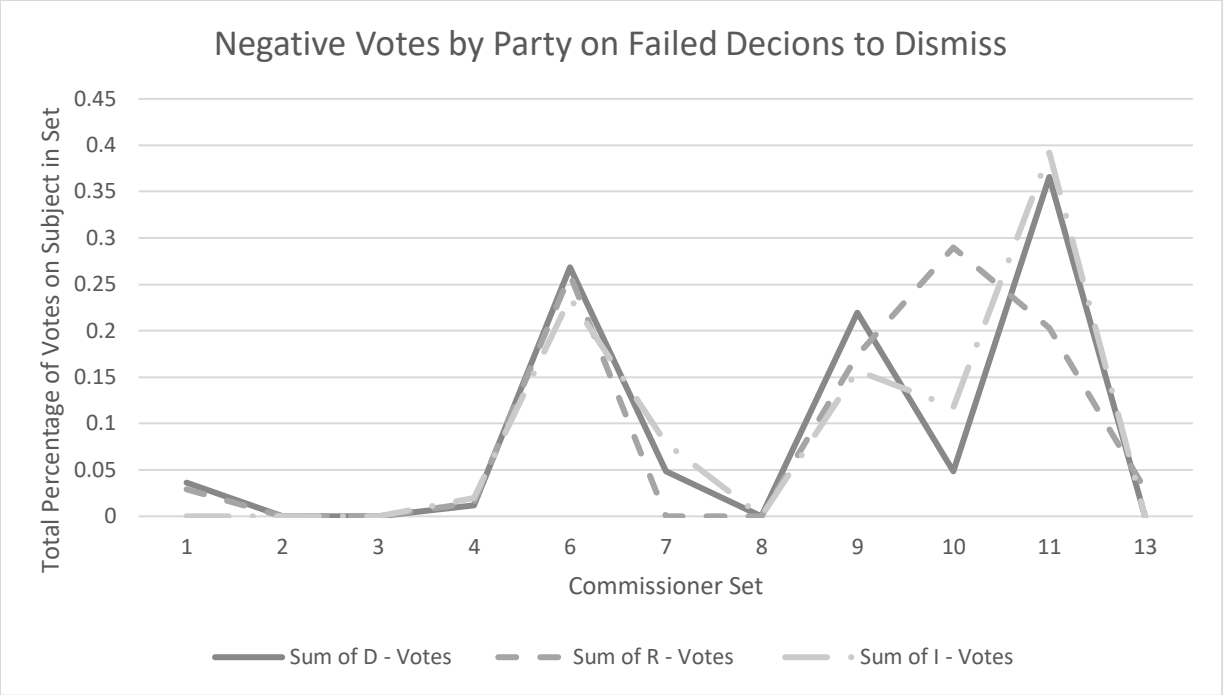


RQ: Are there partisan differences in affirmative voting on successful dismiss decisions?

There are marginal differences in affirmative voting on successful dismiss decisions (see Figure 4.24 above). The Democratic commissioners have a low percentage rate under 15% in Set 1 and the rate drops begins to climb before hitting a high in Set 6 around 35% then recedes before spiking to a high of 25% in Set 9 before waning at the end. The Republican commissioners have a similar rate that is only slightly higher than the Democrats in Set 11. The Independent commissioner follows the same pattern as his partisan colleagues with even higher rate than the Republicans in Set 11. Overall, the rate of affirmative voting on successful decisions is irregular but is decreasing. The rate is around 10% in Set 1 then recedes before increasing to around 35% in Set 6 before receding in Sets 7 and 8 and then increasing again in Set 9 to 20% and 15% in Set 11 and receding in Set 13.

These results are not surprising given the decreasing rate of affirmative voting and successful decisions but the fact that the decision to dismiss is waning is a little surprising given this usually the last step in closing a case, therefore would seem like the one decision that would receive a high rate of affirmative voting. During the observations during data collection, it appeared this was a decision that was considered the most often. The rate of affirmative votes on successful decisions to dismiss cases are dropping by the later sets even as this decision type increasingly is the decisions, they consider the most. These findings indicate this is one of the decisions they are disagreeing more on and therefore also an issue that is gridlocking the panel. The next illustration (see Figure 4.25 below) describes the negative voting by party on failed dismiss decisions to determine if there are similar results.

Figure 4.25: Negative Voting by Party on Failed Dismiss Decisions



RQ: Are there partisan differences in negative voting on failed dismiss decisions?

There are some partisan differences in negative voting on failed decisions to dismiss cases (see Figure 4.25 above). The Democratic commissioners have a low percentage rate under 5% in Set 1 and the rate remains flat unto it begins to climb in Set 6 to around 25% then recedes before increasing to right over 20% in Set 9 before waning and climbing again to a high over 35% in Set 11. The Republican commissioners a similar rate with a slightly higher rate than Democrats in Set 10 and a lower rate in Set 11. The Independent commissioner follows the same pattern as his partisan colleagues. Overall, the rate of negative voting on failed decisions is irregular but is slowly increasing. These results are not surprising given the increasing percentage rates of negative vote and failed decisions and the fact that the Republicans dominate the seats on the panel and they along with the Democrats are voting more negatively by the middle sets. These findings indicate that the decision to dismiss is one of the areas that is increasingly voting gridlocking the panel.

Conclusion

The rate of consensus is declining as the panel is disagreeing more often on the issues, they make enforcement decisions on. This paper reveals that the rate of disagreement or negative voting is asymmetric as the Republicans make up the largest percentage of negative voters. Of course, they also contribute the most votes as they have dominated the panel for years. Although the Democrats are also experiencing a decrease in affirmative votes like the Republicans however because they hold fewer seats, they make up a smaller percentage of the negative vote. There has also been a rise of recusals, and that too is asymmetric as the Republicans are more likely to recuse than Democrats. Regarding the subject matter of the cases, the panel is disagreeing more on contributions cases, disclaimer cases, foreign nationals' cases, reporting cases. However, the reporting and foreign nationals' case are on the rise while the others are receding, which indicates more of these cases are closing because of the inability to reach a consensus, or closing be default. Regarding the decisions made on the cases, the panel is disagreeing more on CAs, FLAs, NRTB, RTB, and dismiss. Instead of deciding about RTB or NRTB the pane is starting to skip that step and go straight to the decision to dismiss.

At the beginning of the study, around late 2002, there was bipartisan agreement and bipartisan disagreement and that begins to change around 2010 to partisan agreements and partisan disagreements then by 2015 just partisan disagreement, regardless of the subject matter or decision. The panel has become unable to agree on whether to agree to the FLAs produced by their staff, unable to agree to find RTB or NRTB, and increasingly move to dismiss a case without investigating the violation or penalizing the alleged violator. The commissioners are increasingly disagreeing over MURs related to contributions, disclaimers, reporting, and foreign nationals.

These findings are likely the result of the decreasing percentage rate of affirmative voting. For the Democratic commissioners on the panel this begins around Set 3 and little later for the Republican commissioners. The Independent commissioner arrives in Set 3 also reducing the number of seats held by the Democrats by one for all future sets. Simultaneous to the loss of a Democratic seat to an Independent, is the increasing time it takes to fill the seats after a commissioner exit, making it even more likely they hold fewer seats. Although the Republicans are not immune to the slow appointment process, they still makeup a higher number of seats and therefore are able to maintain a higher rate of affirmative voting than the Democratic delegation. These findings are not surprising given the Democratic commissioners have fewer seats over the years, therefore they make up a smaller percentage of votes. The Republican commissioners hold a higher number of seats and therefore have a higher percentage of voting overall. It was expected they would be more likely to vote in the negative out of loyalty to their ideology on campaign finance matters therefore their steady rate of affirmative voting is a little surprising.

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