

FEC Divided
Ideological Polarization in Commission Votes Since 1990

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ABSTRACT

This paper investigates ideological polarization on the Federal Election Commission. A long literature has documented the polarization of elites in Congress, in state legislators, and among Justices on the Supreme Court. The assumption also is that polarization is present at FEC, the regulatory agency tasked with administering and enforcing federal campaign finance laws. The commission has been characterized as toothless and ineffectual, but in recent years these charges have been coupled with claims that Republican Commissioners have done more to sabotage enforcement than Democratic Commissioners. Some evidence supports this, as deadlocks on Commission actions have skyrocketed in recent years. This paper advances these questions by using over 5,000 Commission votes to estimate Martin-Quinn ideal points for all Commissioners since 1990. The evidence supports claims that asymmetric polarization has come to characterize Commission voting patterns, with Republican Commissioners moving to the right faster than Democratic Commissioners have moved to the left.

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Introduction

Election lawyer Brett Kappel called it “The Great Bagel Compromise,” but the *Wall Street Journal*’s account of the Federal Election Commission’s (FEC) planned 40th anniversary party highlighted unprecedented levels of polarization at the federal agency.¹ Commissioners could not agree on whether to have a party, what to serve as food, and when to hold it. Former commissioners were invited, but when asked at the event to say some words about their service, no one volunteered to speak. The bagel controversy surrounded whether to serve bagels or doughnuts, with some suggesting the latter were not healthy (and others scoffing at the objection). It was agreed to serve both, a breakthrough of sorts in the planning of the event.

Created by Congress as a result of major campaign finance reform in 1974, the FEC is tasked with regulating and enforcing federal campaign finance laws, along with disseminating disclosure reports filed by registered federal committees. The Commission has long been the subject of scrutiny and derision. It has become common for scholarly accounts of the Commission to relay characterizations of it as weak, for example as a “toothless tiger” or a “lapdog” (Thomas and Bowman 2000).

The Federal Election Commission is comprised of six commissioners, with no more than three from one party. Commissioners are nominated by the President and confirmed by the U.S. Senate. Criticism of the Commission has come from both the left and right. From the left, it is often assailed as a creature of Congress, created solely (or merely) to protect incumbents (Oldaker 1986). From the right, it is often characterized as strangling innovation from campaigns through a rigid application of the law; one account

¹ “Party Politics: FEC at Loggerheads on How to Celebrate Anniversary,” by Rebecca Ballhaus and Brody Mullins, *Wall Street Journal*, 4/16/15.

called the FEC “toothless like an anaconda” (Smith and Hoersting 2002). In total, no one really likes or appreciates the Commission, though one sympathetic account called it “the devil we know” (Franz 2009).

Commission rules require that any action have the affirmative vote of four commissioners, thereby requiring at least some nominal bi-partisanship in Commission actions. However, the prevalence of deadlocks has been long-noted at the Commission (Franz 2009, Garrett 2015). The four-vote requirement is not amended when the Commission has vacant seats, and as of the summer 2018 only four commissioners were serving, two Democrats and two Republicans. Any dissent from the four results in deadlock. For a brief period in 2008, the commission had fewer than four serving commissioners, effectively preventing the agency from answering questions or enforcing violations. Given the importance of preserving an electoral process that is viewed as free and fair, and given that federal elections cost a lot of money, it is important to consider the agency’s role in the American electoral process.

This paper advances these questions by using over 5,000 Commission votes to estimate Martin-Quinn ideal points for all Commissioners since 1990. Martin-Quinn scores are most often used to estimate the ideological position of Supreme Court justices (Martin and Quinn 2002). In this paper, I treat the commissioners like justices on a court, who decide to vote yea or nay on the “cases” before them, namely enforcement matters and unresolved legal questions about the scope and reach of the law. One might hope that (movement of) commissioner ideal points would not mimic the partisan polarization often noted to characterize Congress and the larger public. Still, Congress created the Commission to be balanced in its partisan design, which admits the likely entrance of

ideology into Commission decision-making. The 4-vote requirement, however, conversely suggests that Congress meant for consensus to drive that decision-making. Has the Commission witnessed polarization that tracks broader trends noted in other political institutions? Does the application of the Martin-Quinn scoring technique uncover such polarization on the Commission? The implications of the analysis are broadly important to understanding how effectively the Commission functions and might inform policy-makers about the efficacy of even-numbered commissions.

All told, the evidence indeed supports claims that asymmetric polarization has come to characterize Commission voting patterns, with Republican commissioners moving to the right faster than Democratic commissioners have moved to the left. For many, this will raise concerns about the well-being of the FEC, at least providing some evidence to back up common claims—both anecdotal and empirical—that the FEC is dysfunctional. In some senses, the data suggest that the Commission is indeed dysfunctional. In other senses, recent trends in the data might be attributable to very specific Commissioners. There may yet be time to rehabilitate the Commission. The end of the paper considers in greater detail these and other implications of the analysis.

An Ideological FEC?

Scholars in recent years have spent considerable energy estimating ideal points for a whole range of political actors, sometimes using roll call data in Congress (McCarty, Poole, and Rosenthal, 2006; Poole and Rosenthal 2007), campaign finance data (Bonica 2013, 2014, 2018), legislative speech (Beauchamp 2012), tweets, (Barberá 2015), and expert assessments (Richardson, Clinton, and Lewis 2018). Donors, judges,

clerks, incumbents, challengers, corporate executives, agencies, and PACs have all been the focus of research in recent years.

Richardson, Clinton, and Lewis (2017) estimate ideal points for federal agencies, and I show in Figure 1 the distribution of liberal to conservative estimates for the agencies in their data set. I have highlighted in black the location of the four agencies with some jurisdictional authority over campaign finance.² The FEC, as an agency, is estimated to be slightly to the left of center. Richardson, Clinton, and Lewis (2017) solicit feedback from experts (specifically federal employees) on whether federal agencies “slant liberal, slant conservative, or neither consistently in both Democratic and Republican administration” (p.304). Chen and Johnson (2015) use campaign finance data from agency employees (itemized contributions from employees to registered federal committees) to estimate ideological locations for 78 federal agencies in the five pre-Trump administrations. The FEC in their data moves between -0.45 and 0.34 in that time period.³

[Figure 1 here]

Both analyses use the agency as the unit of analysis and leverage different sources of data, expert assessments of (probably) Commissioner behavior versus scaling of campaign contributions from FEC staff. Indeed, the different sources of data produce notable variance between agency estimates. The FEC is one clear agency in the

² The IRS reviews tax-exempt applications of outside groups; the SEC enforces regulations for publicly trade corporations; and the FCC regulates television and radio.

³ These are actually large movements in the Chen and Johnson (2015) data. For 78 agencies across five administrations, the most liberal agency was -0.51 and the most conservative was 0.722.

comparison of both data that uncover different assessments of ideological location (see bottom left panel of Figure 2 in Richardson, Clinton, and Lewis [2017, p.306]).

The analysis in this paper will estimate Commissioner-level ideal points using recorded votes on enforcement cases, specifically estimating Martin-Quinn scores, which are most commonly used to scale voting by Supreme Court justices. In this case, I treat FEC Commissioners as like a court with six members and votes as issued opinions on cases. Appendix B list the full set of Commissioners who have served since its creation in 1975. There have been 30 commissioners in its history, and the analysis in this paper can estimate ideal points for 22.⁴ For simplicities sake, I treat the only independent to serve on the Commission, Steven Walther, as a Democrat.

Data

The underlying data used for the ideal point estimates come from recorded votes by FEC commissioners on two forms of regulatory actions: 1) advisory opinions (AOs), which are issued opinions to political actors about proposed campaign financing actions (where these actors posit, “can I do this?”); and 2) Matters Under Review (MURs), which are investigations of alleged violations of federal campaign finance laws.⁵

AOs might include a whole range of proposed behavior, from the relatively minor (can a candidate use campaign funds to buy his or her own book) to the much more

⁴ As noted in the Appendix, commissioners early on were often reappointed for a second term. This changed in 1997. See Garrett (2018, ft 23).

⁵ I do not include votes on enforcement cases resolved through two other channels: the Alternative Dispute Resolution (ADR) process and the Administrative Fine (AF) program. These two other enforcement mechanisms (initiated at the FEC in 2001) deal mostly with less controversial violations of campaign finance laws, such as the inadvertent failure to file a form by a deadline. The MUR process produces much higher fines than the ADR and AF programs. See <https://transition.fec.gov/press/bkgnd/EnforcementStatistics.shtml> [last visited on 7/17/18].

complex (can citizens contribute bitcoins to registered political committees).⁶ These questions are often the consequence of certain gray areas in the law and/or questions about the application of the law in light of technological advancements (i.e., the reach of regulations for electioneering online). Anyone can request from the FEC an advisory opinion about whether a proposed electoral activity is permitted under existing campaign finance laws. In the case of AOs, the FEC's Office of General Counsel (OGC) drafts one or more opinions that answer the questions at hand and submits the draft(s) to the commissioners for consideration. Observed votes are usually on whether to accept one of the drafts under consideration.⁷

MURs are instigated in response to complaints made to the Commission by political opponents or by attentive citizens.⁸ For MURs, each stage of the enforcement process requires a vote. The OGC oversees the initial investigation and makes a report to the six commissioners about the viability of the case; for example, about whether a contribution from a particular person or entity is permissible under the law. If four commissioners vote to find reason to believe that a violation has occurred (one step in the process), the MUR is pursued further. The Commission might investigate and find a violation (voting to agree a violation was likely) but choose not to pursue a penalty. If commissioners wish to fine those implicated, they can do so only if respondents willingly

⁶ This latter question was considered in AO 2014-02, and Commissioners voted 6-0 to accept a particular draft (of three) from the general counsel of the FEC. The unanimity in the vote, however, masks some underlying disagreement across the commissioners, as expressed by separate statements released by three Commissioners. Regardless, the 6-0 vote is all that enters the calculations in the analysis that follows.

⁷ I do not include procedural votes in the database, such as whether to accept the minutes of a prior meeting or to move on to consideration of a new AO draft.

⁸ The FEC may also initiate enforcement matters in light of an inadvertent discovery of a possible violation. The FEC cannot, by statute, conduct random audits of registered committees.

enter a conciliation agreement with the FEC (and subject again to a vote of the commissioners).

I collected all votes posted to the FEC.gov through the end of July 2018. There are certain limits to the available data. AO votes are posted to the FEC's site only back to 1990. They are included as a document attached to each specific AO response. Coders need to click on each document and record the vote. MUR votes are only available for completed enforcement cases and generally for cases back only to about 1998. All resolved MURs are searchable on FEC.gov through the "enforcement query system," but recorded votes are not itemized for each case until the late 1990s. For both the AO and MUR votes, it was necessary to enter the votes by hand for each commissioner. Total recorded votes are over 5,000, amounting to nearly 30,000 commissioner-level votes.

Figure 2 plots the number of recorded votes by the date (for MURs) or year (for AOs). AO votes are slightly more abundant earlier in the time series because the Commission has generally issued fewer opinions in more recent years (Franz 2013). The full set of MUR votes has generally totaled over 200 per year, providing ample coverage over the last 20 years.

[Figure 2 here]

Figure 3 shows the distribution of votes by outcome for MURs and AOs.⁹ As has often been noted, there is considerable agreement at the Commission on most votes. 35

⁹ It is not uncommon for the Commission to be without a full complement of six commissioners. As of the middle of 2018, for example, the Commission had only four commissioners. The plotted distribution of results in Figure 3 does not distinguish a 5-0 vote where only 5 commissioners were serving versus a 5-0 vote because of an abstention or absence by a currently serving commissioner. The estimation of ideal points,

percent of recorded AO votes are 6-0, as are 45 percent of MUR votes. This degree of unanimity in voting should not be understated. An additional 23 and 24 percent of AO and MUR votes, respectively, are 5-0, either because of an abstention or absence or because the Commission has a seat unfilled by resignation or delay in Senate confirmation. About 1 in every 10 votes across AOs and MURs are formal deadlock votes, though, where fewer than four commissioners voted for or against a proposal.

[Figure 3 here]

I describe the estimation of Commissioner ideal points using these data in the next section, but importantly that process excludes unanimous votes. It considers only votes where there is some dissent registered. For purposes of this analysis, I define dissents to include an abstention or absence. It is nearly impossible to discern the reason for an abstention across these votes (i.e., for conflict of interest reasons) or whether absences are strategic (i.e., to avoid voting on some controversy). As such, I allow these non-votes to be recorded as dissents. Figure 4 looks at the distribution of votes across all non-unanimous ones in the data. The figure shows that 42 percent of these votes are either 4-0 or 5-0—therefore votes with either one or two abstentions or absences. 13 percent are 5-1; 17 percent are 4-1 or 4-2; 18 percent are 3-2 or 3-3 deadlock votes.

[Figure 4 here]

Moreover, of the over 4,300 commissioner-level votes classified as dissents, 1 in 4 are abstentions while just 7 percent are absences. Fully half of the recorded absences were from just two commissioners, Lee Ann Elliot and Danny McDonald. Absences are incredibly rare in more recent years. Appendix A breaks down the number of affirms,

however, which only uses votes that have at least one dissent or abstention, does adjust for the size of the commission.

dissents, abstentions, and absences in the full data set by commissioner and MUR/AO. For a handful of commissioners, there are very limited data; for example, Josefiak appears in only 99 votes given his term ended in December 1991, right at the beginning of the covered time series.

All told, the data point to considerable amount of consensus in FEC voting, but they also signal a fair amount of dissents and abstentions from Commissioners. Indeed, dissents appear to be more frequent in recent years, which I expect to influence the estimated commissioner ideal points. For example, Figure 5 looks more directly at trends across time in FEC gridlock. I split the votes into 5 time periods, covering roughly similar numbers of commission votes in each period (~1000): 1990-2000 (the longest time block, in part because it contains the fewest votes and mostly from AOs); 2000-2004; 2005-2008; 2009-2012; and 2013 to 2018. I count the number of votes in each time period that had fewer than 4 yea or nay votes (i.e., 3-3, 3-2, 3-1).¹⁰

[Figure 5 here]

The Figure shows that in the 1990s, and even through about 2008, deadlocks were rare, only about 5 percent of recorded votes before 2000. However, since 2009, and especially since 2013, deadlocks are much more frequent, about one in every four AO and MUR votes. Interestingly, deadlocks are more frequent on AOs than on MURs. Between 2009 and 2012, the FEC could not reach consensus on about 15 percent of MUR votes compared to 27 percent of AO votes. In every time period, even though the differences are often small, AO deadlocks exceed MUR deadlocks.

¹⁰ This operationalization excludes from the numerator some votes where the “nay” votes totaled 4 or more. These are not technically gridlock votes (though they are instances where a proposal failed) and are instead bi-partisan opposition votes to the question at hand. There are 96 of these votes to 570 true “deadlock” ones.

Consider some recent examples of deadlock votes. The FEC deadlocked three times in 2017 on draft opinions to the group “Take Back Action” about the application of disclaimer rules to Facebook ads. Existing rules require disclaimers on what the FEC deems “public communications,” and since 2006 these have included ads placed online for a fee. However, FEC regulations also exempt from disclaimer mandates communications for which adding a disclaimer would be impractical or inconvenient, such as on a bumper sticker or a campaign pin; this is the so-called “small items” exemption. Take Back Action wanted the FEC to advise on whether Facebook ads were akin to those smaller types of campaign messages, whether reduced disclaimers were permitted, or whether disclaimers similar to those required for radio or television ads were necessary. Interestingly, all five commissioners agreed that disclaimers for the proposed ads were necessary, but Republican and Democratic commissioners disagreed on how broadly to draw the conclusion. Democratic commissioners wanted a firm statement that Facebook video ads could not qualify for the “small items” exemption, while Republican commissioners refused to go that far.

In a different case, MUR 7086, the FEC initially deadlocked on whether to open a case against the group “Stop Hillary PAC,” an anti-Hillary Clinton group. Existing FEC regulations prevent outside groups from using federal candidates in their own name. Whereas “Stop Hillary” seems fairly cut and dry—at the time Clinton was a declared candidate for president—the three Republican commissioners in December 2015 abstained from a vote to open an enforcement case. However, by June of 2016 all six commissioners were in agreement to pursue enforcement, and the final outcome was a

\$5,500 fine against the group. The group also agreed to change its name unless Clinton was no longer an active candidate for federal office.

All told, there are certain advantages and disadvantages in these data. They are not a complete universe, for example, nor are they a random sample. They exclude MURs currently open, which might bias the data towards cases easier to investigate and conclude. This would possibly move ideal points towards the center if they disproportionately include cases on which it is easier to induce consensus. Figure 5 would be evidence against this, though, as there are many concluded cases in recent years with significant dissents from commissioners (though recall that deadlocks are more frequent in the AO data). The data also exclude votes on regulatory making, which would require more digging in FEC meeting minutes. Because of these data advantages and limits, the estimates offered below should be interpreted with some caution.

Ideology Estimates

The estimation of Commissioner ideal points are Martin-Quinn (MQ) Scores, commonly used to scale Supreme Court Justices onto one dimension presumed to represent liberalism to conservatism. Martin and Quinn's (2002) paper has been cited over 1,100 times according to Google Scholar, though see Farnsworth (2007) and Bailey (2013) for critical assessments of the estimation (including concerns about comparability of scores across time). Despite such concerns, MQ Scores are well-accepted estimates of judicial ideal points. I estimate scores for FEC commissioners in R, using the `MCMCirt1d` package.¹¹ This package also allows for a simultaneous estimation of ideal

¹¹ I modified the replication code from the Martin-Quinn website to estimate FEC scores: <http://mqscores.lsa.umich.edu/>

points across subsections of the data, most often different time blocks. All the underlying data and R code for the figures in this paper are available from the author on request.

The estimation utilizes an “item response” structure. Assume each commissioner has an ideal point (θ_i). A vote yea or nay has some outcome (π_1) over another (π_2). The utility of a vote for either option is modeled as a standard quadratic loss function, where:

$-(\theta_i - \pi_1)^2$ represents the utility of outcome 1; and

$-(\theta_i - \pi_2)^2$ represents the utility of outcome 2

The commissioner votes for outcome 1 when:

$$-(\theta_i - \pi_1)^2 - (-(\theta_i - \pi_2))^2 > 0; \text{ or}$$

$$-(\theta_i - \pi_1)^2 + (\theta_i - \pi_2)^2 > 0$$

We only observe yea (1) or nay (0) votes, however. We presume that a yea vote means the utility of outcome 1 is greater than that for outcome 2. The estimation finds the value of θ_i that make the observed data most likely by simulating values of θ_i . Martin and Quinn (2002) provide the full technical overview of item response models, and Farnsworth (2007) walks through a layman’s version. The underlying structure of the estimation makes the assumption of an attitudinal model in FEC commissioner voting, namely that voting on AOs and MURs is entirely structured by the ideological positions of the commissioners and their relationship to the possible outcomes of voting for or against a proposal.

Nothing in the analysis focuses on the content of the votes, such that Democratic commissioners could be staking a stronger claim on particularly polarizing issues and more moderate ones on less important issues. Republican could be more consistently conservative on all votes. That would suggest looking at votes on substantively

important matters, which is hard operationalize. It would also mean that votes are not universally structured by commissioners' ideological proximity to the possible outcomes of the cases and controversies before them.

The estimation of MQ Scores using the `MCMCirt1d` package requires a set of starting values and constraints for each commissioner. These are, in essence, one's Bayesian priors in the estimation. I assign a set of relatively simple constraints to start the estimation process. I assume that Republican commissioners are to the right of Democratic ones. I also provide a set of somewhat diffuse starting values, setting each Democratic commissioner at an MQ Score of -0.25 and each Republican commissioner at a starting value of 0.25. Given Figure 5, however, I assume that ideal points have likely polarized across the parties. As such, I assign Democrats Weintraub and Ravel and Independent Walther to have starting values of -1, and I assign Brad Smith, a Republican with very public opinions in opposition of campaign finance regulations, to have a starting value of 1. The estimation is done 5,000 times to establish a distribution of estimated ideal points for each commissioner.

Figure 6 shows the means of the simulations, with error bars representing two standard deviations on either side. This visualizes 95 percent of the simulated ideal points for each commissioner. Commissioners are lined up from most liberal to most conservative, and the estimated mean scores range from about -1 to 4. Independent Steven Walther is the most liberal commissioner in the data, with Ellen Weintraub, Karl Sandstrom, and Ann Ravel the next most liberal. Walther and Weintraub are both current commissioners. Republicans are much more distributed along the scale, with Daryl Wold and David Mason estimated to have Martin-Quinn scores near 0. This is in contrast to

current GOP commissioner Lee Goodman, the most conservative in the set with a score past 4, along with current Trump White House counsel and former FEC commissioner, Donald McGahn, whose score is just below 4.

[Figure 6 here]

I run two robust checks on the estimation of Martin-Quinn scores. First, I consider a more basic estimation of commissioner voting patterns. I create Commissioner dyads and record the correlation of votes between each commissioner. For example, for all non-unanimous votes, the correlation of yea or nay votes between Democrat Ellen Weintraub and Republican Lee Goodman is -0.586. I do this for each dyad, recording also whether the pairing is within party or across parties. I then take the mean within and across party correlations for each commissioner. I plot this against the estimated MQ score.

The results of this check are shown in Figure 7, and I make one modification to visualize better the results. For Republicans, I subtract the mean out-party correlation from the within party correlation. This is most often a positive number minus a negative number, making most of these comparisons a positive number. For Democrats, I do the opposite, most often subtracting a positive number from a negative one, putting the dyad lower on the y-axis.

The results suggest that the item response scaling is very closely related to the simpler mean of the correlations. Commissioners with mean correlations that tend toward 0 (i.e., no pattern in voting for that commissioner in comparison to commissioners in each party) have MQ Scores that suggest more moderate ideal points. Commissioners with high positive correlations within party and highly negative correlations with the

other party have more extreme MQ Scores. In two instances, the MQ Score finds ideal points that are less extreme than might be suggested from just the correlations. And in one instance, for Lee Ann Elliot, the MQ Score seems more extreme than the simpler correlation of voting patterns.

[Figure 7 here]

The second robustness check looks at MUR and AO votes separately and calculates MQ Scores on each set of data. One might argue that voting on AOs would be driven by a different set of factors than votes on MURs. Commissioners may see AOs as a way to set precedent on uncertain areas of the law (creating, perhaps, more division across parties) but see MURs as about a comparatively simpler application of existing law and regulations to potential violations. If this is the case, a strict assumption of the attitudinal model to all FEC voting might not be appropriate.

On the other hand, there is nothing particularly different about the questions and controversies that come before the FEC in the form of AOs and MURs. Both of them often involve the difficult task of reading into the gray areas and ambiguities of the law. The same underlying divisions across parties may feature in both sets of voting data. And, indeed, the results in Figure 8 suggest this is the case. The R-squared value in a fitted line between both estimates is 0.98. A commissioner with an extreme ideal point in the MUR data is estimated to be at nearly the same location in her voting on AO-related questions. I take the evidence in both Figures 7 and 8 to suggest that the estimates for the twenty-two commissioners in the data are, indeed, uncovering important differential voting patterns.

[Figure 8 here]

And those patterns matter a lot when one takes a more temporal look at the data. The final analysis re-runs the simulations to produce ideal points for commissioners in the same five time blocks used in Figure 5. (This is done with the `MCMCdynamIcIRT1d` option.) Remarkably, the results suggest clear asymmetric polarization across parties. Republican and Democratic commissioners have always been on the opposite sides of the ideological scale, but the differences are far more substantial in the last five years. And the rightward shift is far more noticeable than a leftward one.

[Figure 9 here]

Much of this is driven by four recent Republican commissioners: Lee Goodman, Donald McGahn, Caroline Hunter, and Matthew Petersen. All four were appointed in 2008 or later and have mean inter- and out-party correlations that exceed all others. Indeed, these Republican commissioners were far more likely to vote together than pairs of previous commissioners, even current and recently serving Democrats like Ann Ravel and Ellen Weintraub. Consider the paired vote correlations of Goodman/Hunter (0.79), Goodman/Petersen (0.81), Hunter/McGahn (0.66), Hunter/Petersen (0.89), Petersen/McGahn (0.64). The vote correlations, in contrast, of Weintraub/Walthar (0.14), Weintraub/Ravel (0.44), and Walthar/Ravel (0.36) are lower.

Implications

One interpretation of these results would put the critical emphasis on the rightward move of commissioners. In looking at the evidence in this paper, it is clear that deadlocked votes are at all-time high and commissioner ideal points are the farthest apart they have been in the covered time period. The rightward shift in particular is extreme

and reflects (one might argue) the harder line drawn currently by GOP policymakers on many issues, including campaign finance. Even advocates for deregulation at one point paired those proposals with aggressive pro-disclosure requirements. One such advocate, Senate Majority Leader Mitch McConnell, has since revised his position to be against nearly any requirements/mandates/restrictions on campaign financing. Moreover, asymmetric polarization is well documented in Congress, and characterizations of it have tended to indict the Republican Party as the party of obstruction (Mann and Ornstein 2016). The results here would add evidence to the charge that Republicans have mobilized anti-government positions into even regulatory agencies. The blame for dysfunction could justifiably be put at their feet.

Another interpretation is less damning, however. Questions of campaign finance are often complex. Statutes are often vague and do not cover the many technological changes that influence how campaigns reach voters. Consider one recent controversy noted above: disclaimer requirements for ads placed on social media. Campaign finance law does not address online or social media ads. Existing regulations make exemptions in “paid for by” requirements for things like bumper stickers or pins (given their small size). As campaigns embraced social media, certain questions became obvious. Are small banner ads or “sponsored posts” in Facebook, which are relatively small in size, more like bumper stickers? Or are they like print media ads, where disclaimers are required? One could imagine that differing perspectives on the issue, which line up clearly as pro or anti-reform positions, are informed not by nefarious instincts (pro-dark money vs anti-First Amendment views) but by differing senses of the way the

Commission should handle changes in electioneering that were unanticipated by Congress.

Having said that, the analysis here nonetheless raises some important concerns. The FEC is beset by a double whammy as of 2018. How can the agency work in the context of both regulatory dysfunction (two current vacancies with little energy from the president or Congress to fill them) and divergence in the application of the law(s), as evidenced by the polarization uncovered in Figure 9? The vacancy issue is even more extreme than it seems. All four commissioners are currently in their position despite the end of their term. Ellen Weintraub's term ended in 2007, and the others ended in 2011 or 2013. That is, all four commissioners are well past their term of service, and one additional resignation will formally handcuff the agency from any decision-making and enforcement. Can the FEC really function in that context, on the ever-present brink?

What reform is possible? Franz (2013, pp.757-762) provided some tenuous evidence of the effectiveness of state-level regulatory agencies, suggesting that odd-numbered commissions outperform even-numbered ones. Moreover, odd-numbered commissions are far more numerous across the states, meaning the FEC has not often been the model for regulating *state* campaign financing. Regulatory reform could look to reimagine the Commission structure, perhaps with five commissioners. Under that formulation, deadlocks would not be an issue. This could pair two Republican and two Democrats with a fifth commissioner of bi-partisan stature. Another recommendation would be to require that vacancies be filled with commissioners who do not express the ideological positions of their party. That is, the model could be to fill vacancies with moderates. This would mean changing the norm that parties get veto power over

nominees. If Democrats could pick Republican vacancies and vice versa, for example, it would seem nearly inevitable that the Commission would be staffed with moderates.

Of course, any such recommendations are easier said than done. It seems almost nonsensical to make institutional reform suggestions in the current political climate. As with nearly every big policy question before Congress in recent years, stalemate is the norm. More recently, critics of the FEC have wondered whether the agency's *elimination* might be a better solution than hand wringing over institutional redesigns (Crenny 2018). Still, one might hope that putting the spotlight on certain empirical trends at the Commission might be important evidence that would inform policy debates. And there is also the not-to-be-lost insight that in the nearly 30,000 commissioner-level votes in these data, the modal outcome is unanimity. Even in the current context, the Commission has issued ten advisory opinions to date in 2018, with nine issued by a unanimous 4-0 vote.

No regulatory agency with jurisdictional authority over campaign finance will ever be popular. And changing institutional structures are never a panacea. But changing the norms in the Senate over who gets appointed might be a likely option. The Commission is teetering on the edge of true dysfunction; a real conversation is needed about creating an enduring and generally appreciated agency.

Conclusion

This analysis has many limitations. The data begin only with AO votes in 1991 and with MUR votes in 1998. Data before these time periods can and should be added to provide a more complete assessment of commissioner ideal points—and voting patterns more generally. That work will require considerable effort to wrangle the data stored in multiple places, but it is important work nonetheless.

American elections are waged and fought within the confines of very specific rules of engagement. These rules are numerous, but none are more important than the ones governing campaign finance. Congress has the authority to make these rules, but they need enforcing and clarification. As Crenny (2018) notes, “By failing to do its job, [the FEC] exacts a high opportunity cost, occupying a space in the regulatory landscape that could be filled by more motivated and functional actors and serving as an exonerating idol for opponents of reform, who can argue that a lack of action demonstrates that all is well in our campaign finance system.”

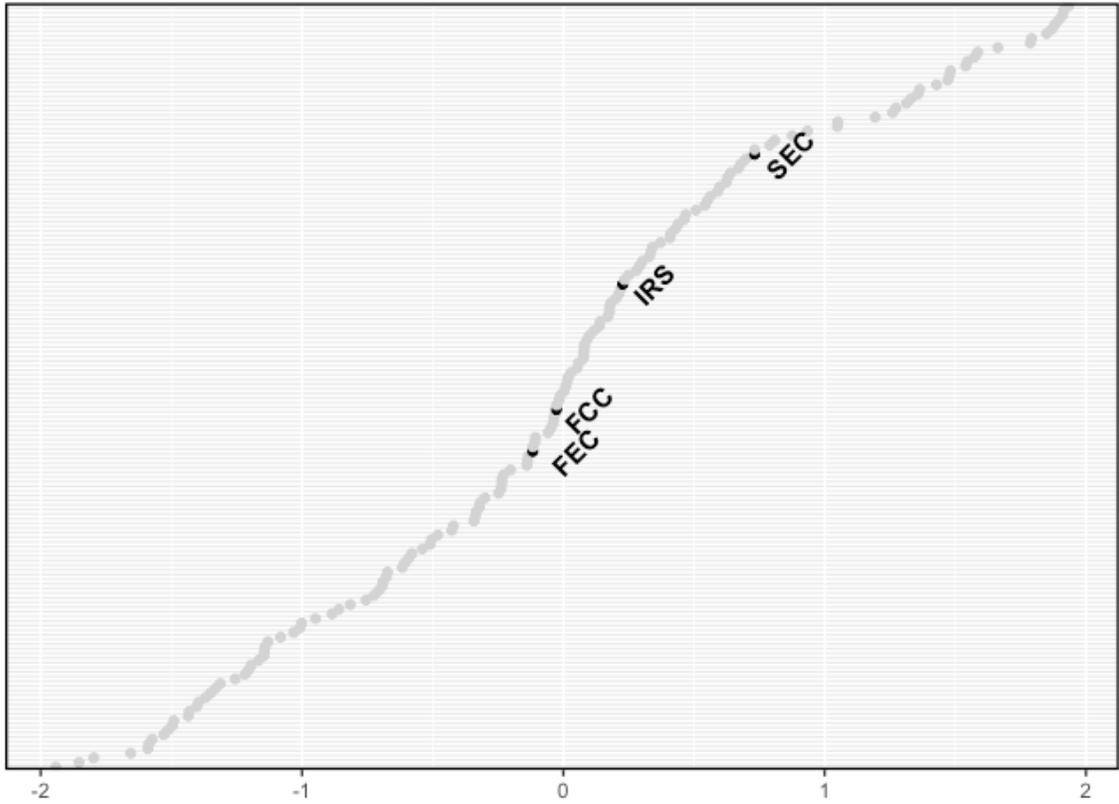
The FEC, as such, is an incredibly important political institution. How it functions and what hampers success is broadly important to the integrity of the electoral process. Reasonable minds may disagree over the scope and power of a regulatory agency, but it seems commonsensical that it should perform its job without delay or legislative control, and that commissioners should value consensus over partisanship.

Tables and Figures

Figure 1

Agency Ideal Points

Richardson, Clinton, and Lewis (2017, JOP)



Ideal Point estimate (from lib to conser)

Agencies in black have some jurisdictional authority over campaign finance

Figure 2

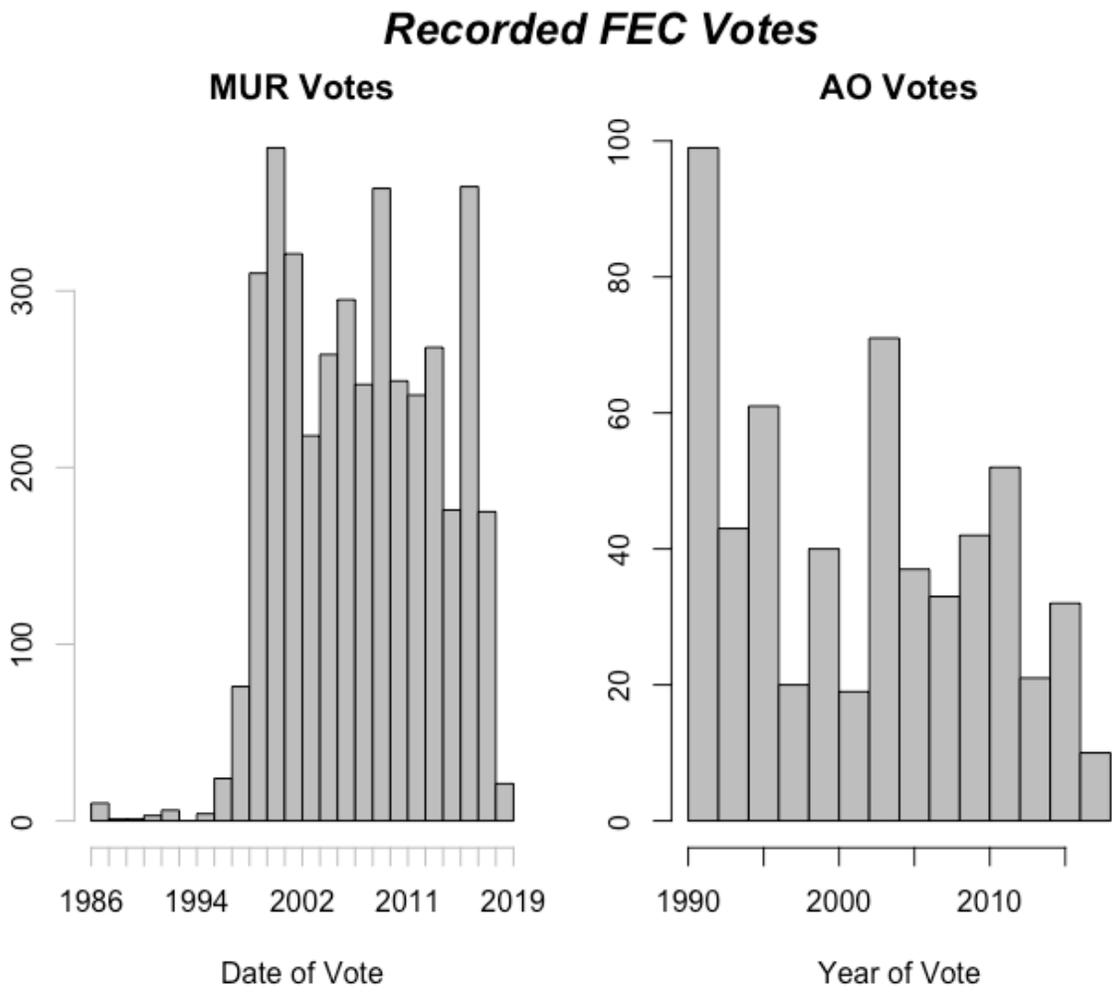


Figure 3

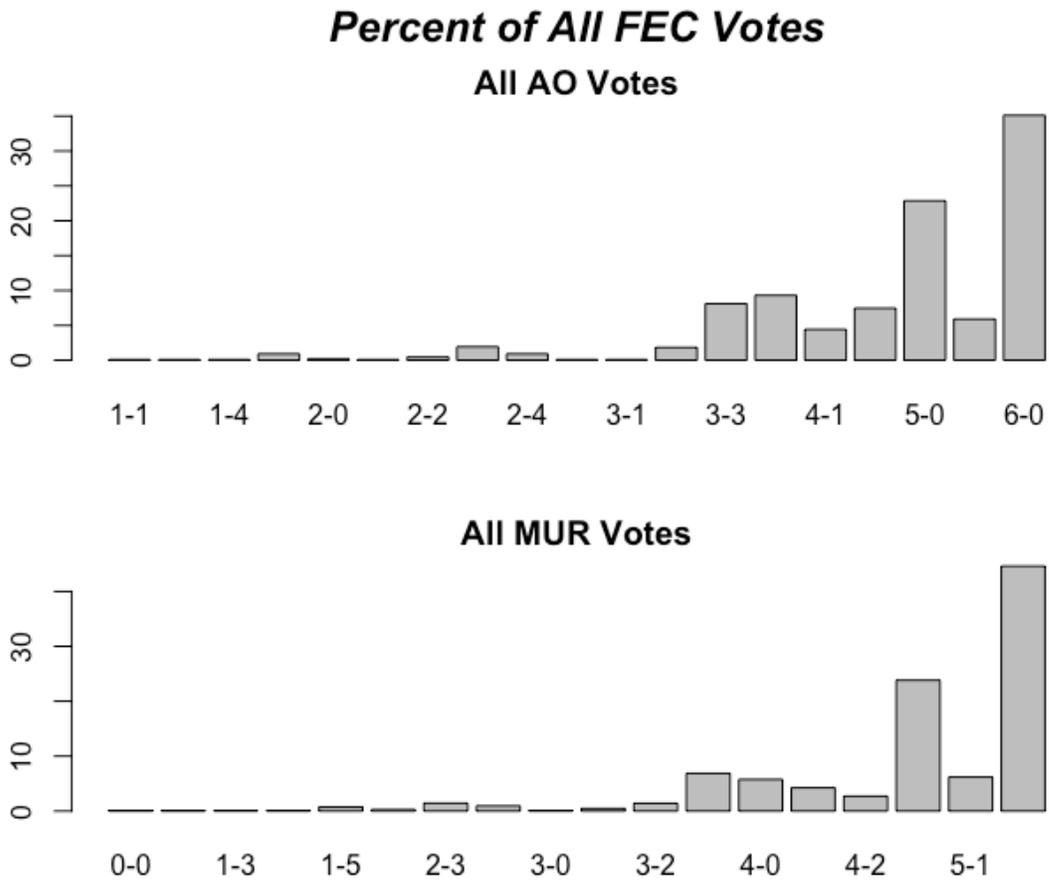


Figure 4

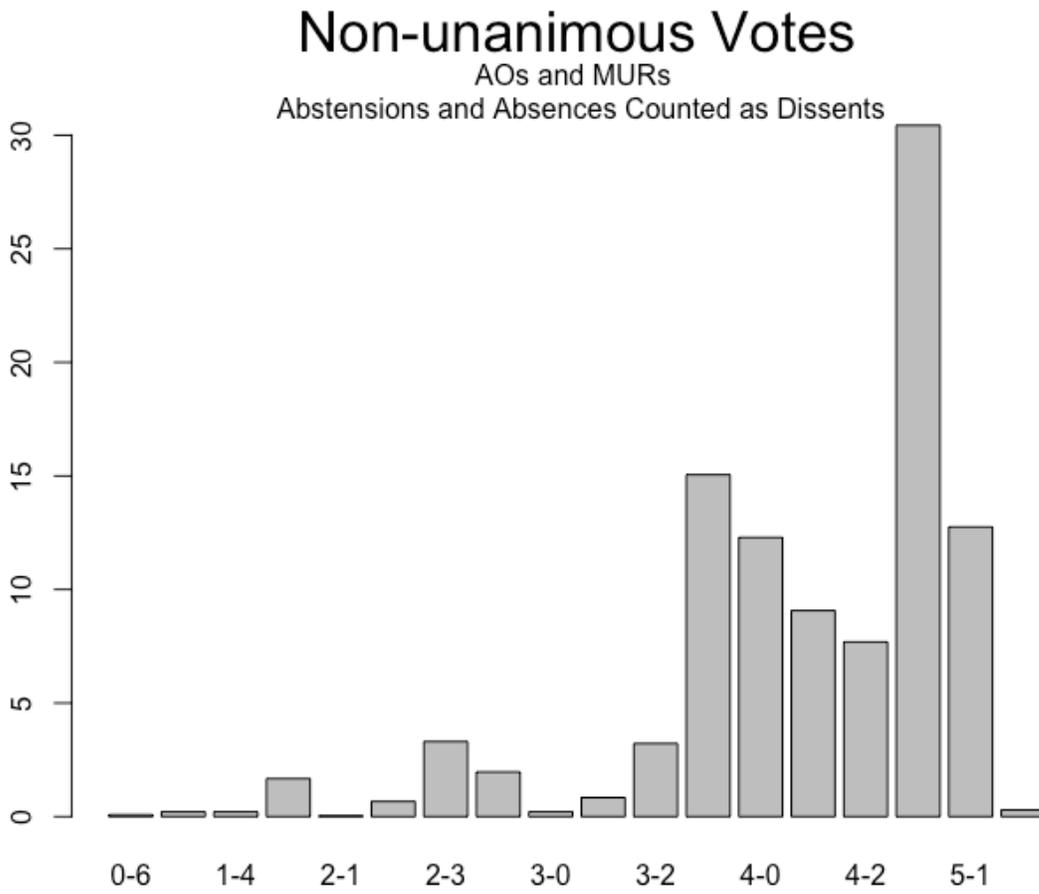
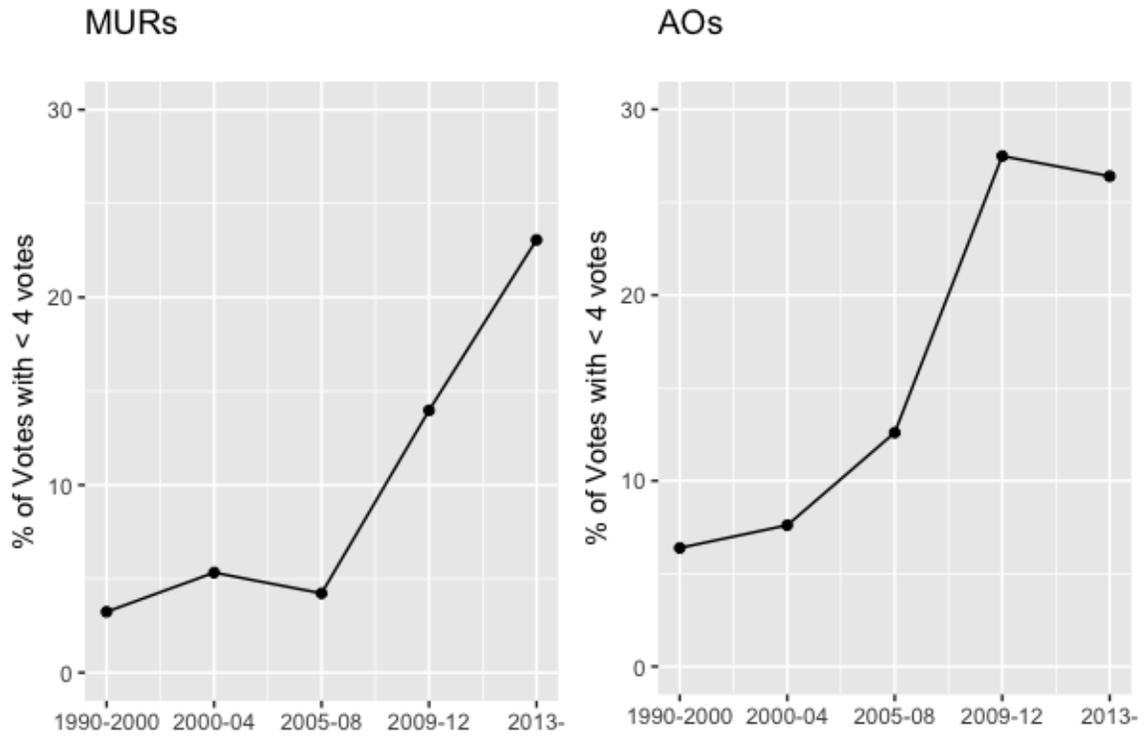


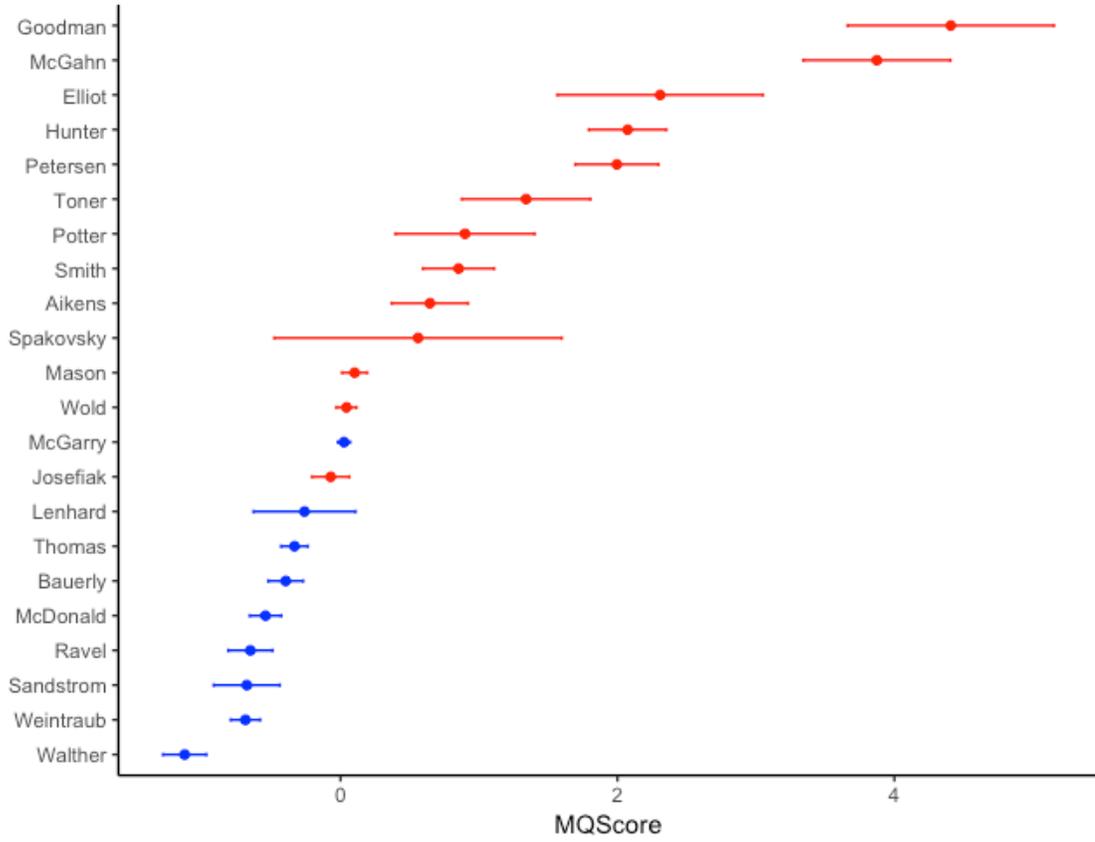
Figure 5



Source: FEC website, author coding

Figure 6

Commissioner Ideal Points



Source: FEC.gov, with author coding; scaling with MCMCirt1d package in R

Figure 7
MQ Score against Vote Correlations

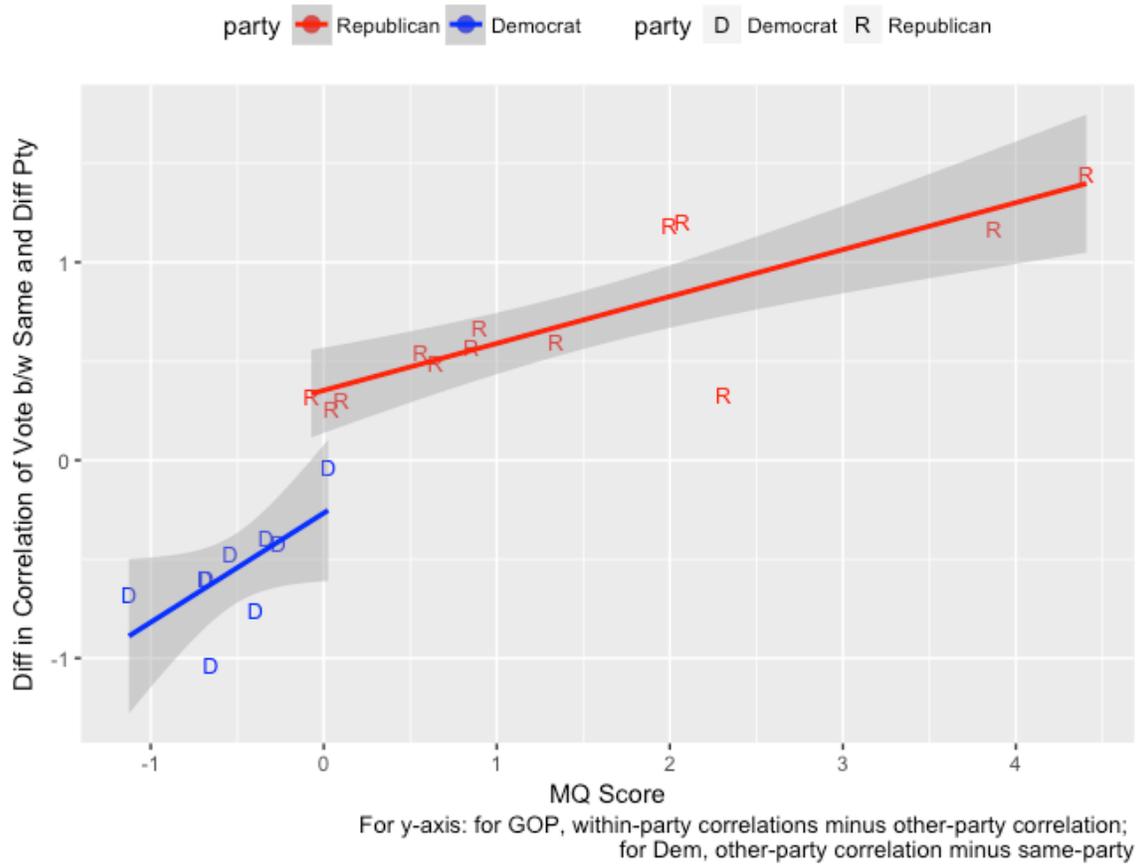


Figure 8
AO vs MUR Scaling

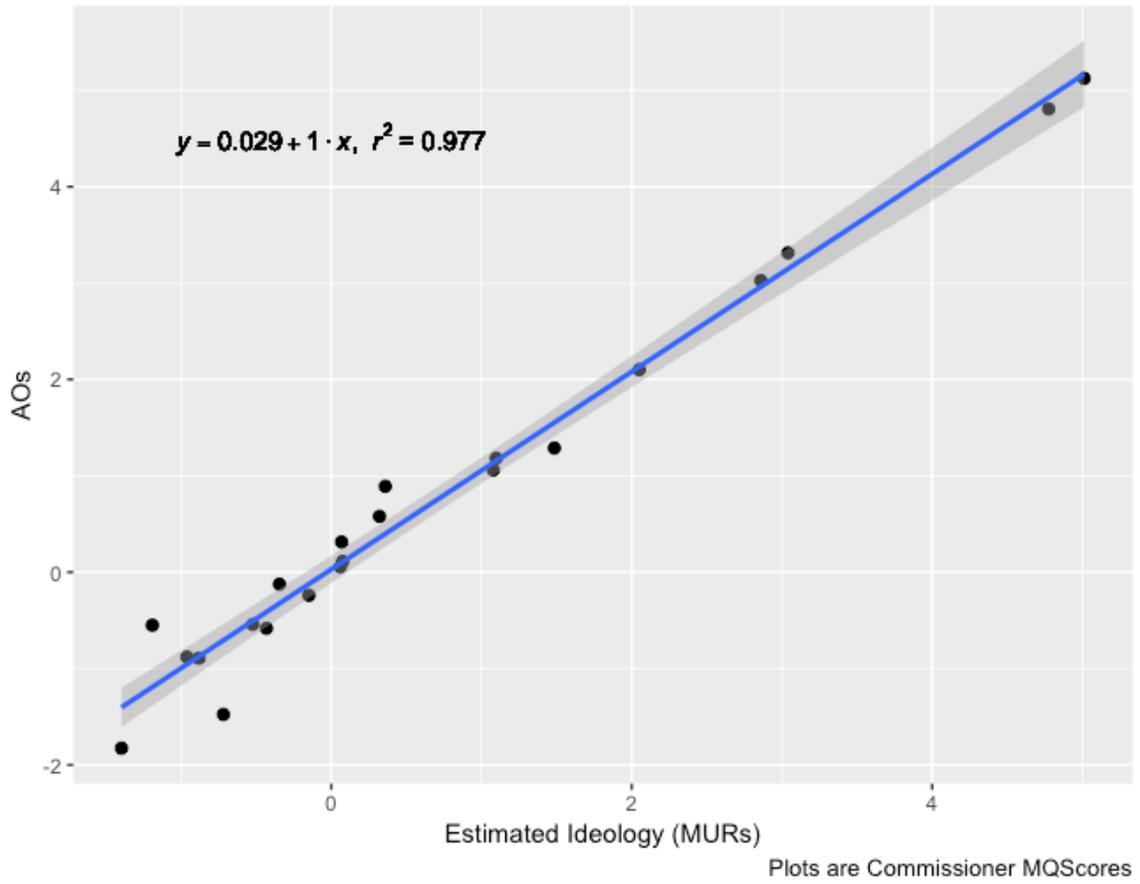
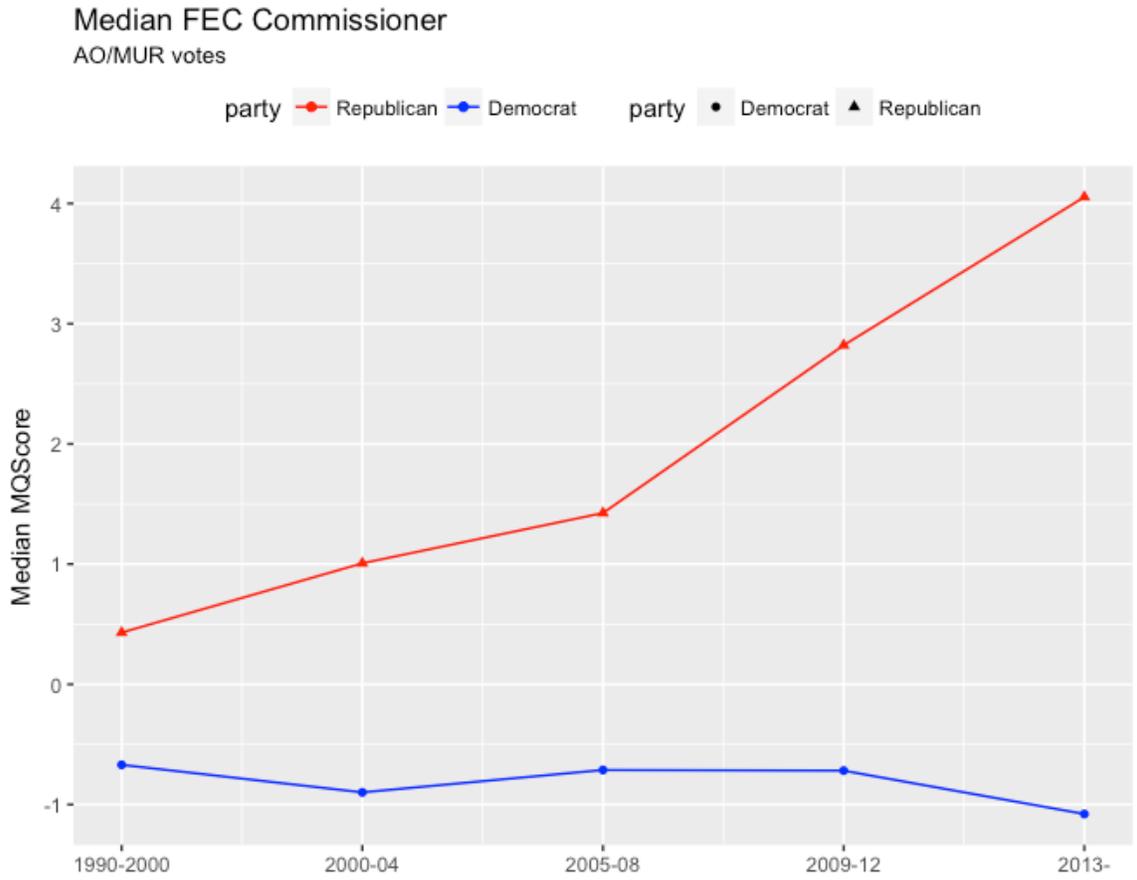


Figure 9



Source: FEC website, author coding

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Appendix A—Recorded Votes, 1990-2018

	Type	Affirms	Abstains	Absences	Dissents
Thomas	mur	1549	34	16	90
McGarry	mur	111		9	1
McDonald	mur	1515	78	9	87
Elliot	mur	416	4	45	62
Josefiak	mur	15			
Aikens	mur	103	13		9
Potter	mur	2	8		
Mason	mur	1920	24	3	87
Sandstrom	mur	864	74	16	62
Wold	mur	741	68		69
Smith	mur	904	45	8	139
Toner	mur	800	85	12	56
Weintraub	mur	2443	195		228
Walther	mur	1960	130		224
Lenhard	mur	414	34		18
Spakovsky	mur	439	3		24
Bauerly	mur	882	40		49
McGahn	mur	879	78		135
Hunter	mur	1543	24		281
Petersen	mur	1551	20		277
Goodman	mur	553	25		134
Ravel	mur	545	5		89
Thomas	ao	581	12	18	64
McGarry	ao	367	4	26	13
McDonald	ao	532	14	65	63
Elliot	ao	392	2	38	46

Josefiak	ao	80		2	4
Aikens	ao	363	8	26	23
Potter	ao	174	1	11	18
Mason	ao	289	2	4	31
Sandstrom	ao	118	1	2	7
Wold	ao	107		1	3
Smith	ao	162	10	1	15
Toner	ao	151	14	1	19
Weintraub	ao	397	28		100
Walther	ao	263	19		108
Lenhard	ao	56	1		6
Spakovsky	ao	52	3		8
Bauerly	ao	160	4		37
McGahn	ao	171	6		36
Hunter	ao	270	3		54
Petersen	ao	271	4		52
Goodman	ao	86	2		17
Ravel	ao	61			23
total		25,252	1,125	313	2,868
% of non-affirms			26.1%	7.3%	66.6%
% of total		85.4%	3.8%	1.1%	9.7%

Appendix B—FEC Commissioners

Commissioner	Term Begin	End	President at appointment	Dem – controlled Senate	Reappointed at end of term?	Party ID	Notes
Curtis	Apr-75	May-76	Ford	Yes	No	GOP	
Aikens	Apr-75	Apr-76	Ford	Yes	Yes	GOP	
	May-76	Nov-81	Ford	Yes	Yes		
	Dec-81	Jul-83	Reagan	No	Yes		
	Aug-83	Sep-89	Reagan	No	No		
	Oct-89	Apr-95	Bush	Yes			
Harris	Apr-75	Apr-76	Ford	Yes	Yes	Dem	
	May-76	May-79	Ford	Yes	Yes		
	Jun-79	Oct-86	Carter	Yes	No		
Staebler	Apr-75	Apr-76	Ford	Yes	Yes	Dem	
	May-76	Oct-78	Ford	Yes	No		
Thomson	Apr-75	Apr-76	Ford	Yes		GOP	
	May-76	Jun-79	Ford	Yes	Yes		
	Jan-81	Dec-81	Reagan	No	Yes		
Tiernan	Apr-75	Apr-76	Ford	Yes	Yes	Dem	
	May-76	Nov-81	Ford	Yes	No		
Springer	May-76	Jan-79	Ford	Yes	No	GOP	
McGarry	Oct-78	Jun-83	Carter	Yes	Yes	Dem	
	Jul-83	Sep-89	Reagan	No	Yes		
	Oct-89	Apr-95	Bush	Yes	No		
	May-95	Jul-98	Clinton	No			
Friedersdorf	Mar-79	Dec-80	Carter	Yes	No	Dem	
Reiche	Jul-79	Aug-85	Csrtter	Yes	No	GOP	
Elliott	Dec-81	Jun-87	Reagan	No	Yes	GOP	
	Jul-87	Jun-94	Reagan	Yes	Yes		

	Jul-94	Apr-99	Clinton	Yes	No		
McDonald	Dec-81	Jun-87	Reagan	No	Yes	Dem	
	Jul-87	Jun-94	Reagan	Yes	Yes		
	Jul-94	Jun-00	Clinton	Yes	Yes		
	Jul-00	Dec-06	Clinton	No	No		
Josefiak	Aug-85	Dec-91	Reagan	No	No	GOP	
Thomas	Oct-86	Oct-91	Reagan	No	Yes	Dem	
	Nov-91	Jun-98	Bush	Yes	Yes		
	Jul-98	Jan-06	Clinton	No	No		
Potter	Nov-91	Oct-95	Bush	Yes	No	GOP	
Mason	Jul-98	Dec-05	Clinton	No	Yes	GOP	
	Jan-06	Jul-08	Bush II	No	No		
Sandstrom	Jul-98	Dec-03	Clinton	No	No	Dem	
Wold	Jul-98	Dec-03	Clinton	No	No	GOP	
Smith	May-00	Aug-05	Clinton	No	No	GOP	
Toner	Mar-02	Mar-07	Bush II	Yes	No	GOP	Recess appointment in 2002; confirmed in '03
von Spakovsky	Jan-06	Dec-07	Bush II	No	No	GOP	Recess appointment
Lenhard	Jan-06	Dec-07	Bush II	No	No	Dem	
Weintraub	Dec-02	Apr-07	Bush II	Yes	No	Dem	
	Apr-07	Current	Bush II	No			Stayed in position until replaced
Hunter	Jun-08	Apr-13	Bush II	Yes	No	GOP	
	Apr-13	Current	Obama	Yes			Stayed in position until replaced
Bauerly	Jun-08	Apr-11	Bush II	Yes	No	Dem	
	Apr-11	Feb-13	Obama	Yes			Stayed in position until resigned
McGahn	Jun-08	Sep-13	Bush II	Yes	No	GOP	
Petersen	Jun-08	Apr-11	Bush II	Yes	No	GOP	
	Apr-11	Current					Stayed in position until replaced
Walther	Jan-06	Dec-07	Bush II	No	Yes	Ind	Initially a recess appointment

	Jun-08	Apr-09	Bush II	Yes	No		
	Apr-09	Current	Obama	Yes			Stayed in position until replaced
Goodman	Oct-13	Feb-18	Obama	Yes	No	GOP	Left before end of term
Ravel	Oct-13	Mar-17	Obama	Yes	No	Dem	Left before end of term