The Outer Limits of Bureaucratic Neutrality: A Natural Field Experiment of Private Financial Interests and Decision-Making on the National Labor Relations Board

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Abstract: Do private financial interests inhibit neutral bureaucratic decision-making in federal agencies? I theorize that bureaucratic agents engage in strategic behavior based on their personal asset allocations when deciding crucial issues of public policy. I examine the role played by National Labor Relations Board (NLRB) Members' private financial interests in their approach to the adjudication of disputes in industrial relations. There are two competing theoretical expectations regarding the effect of Members' personal financial interests on their adjudicatory decisions. I expect that Members' ownership interests in firms from particular economic sectors will result in either (1) a long-term *precedent creation* strategy involving the creation of Board precedent intended to shield future employer disputants in that sector from administrative intrusion; or (2) a short-term *competitor punishment* strategy in which they support increased administrative scrutiny into organizational practices at competitor firms from sectors in which they own stock in order to reinforce the financial wellbeing of those firms in which the Member has a personal interest. Empirically, I leverage an institutional feature of the NLRB that functions as a natural field experiment of political elites: the random assignment of three-member panels to the labor disputes that reach the NLRB. I find that Board Members engage in competitor punishment when adjudicating labor disputes. This study is normatively important, as it suggests that personal financial interests – and not simply bureaucratic neutrality – affect administrative agency decisions. Methodologically, this is one of the few true natural field experiments where bureaucrats are randomly assigned to make public policy decisions.

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"Compromise…has no place in the interpretation and enforcement of the law."
- Franklin Roosevelt, 1935, Statement on Signing the National Labor Relations Act (NLRA)

The organizational ideals of bureaucratic government depend on the execution of public policy by neutral bureaucrats who implement the law without partiality and based on their technical expertise or professional specialization. Relative freedom from the influence of partisan politics and ideology, particularly as compared with those public officials who gain access to political power by competing in and winning elections, has been presented as a central feature of bureaucratic neutrality (Weber 1958). Given, however, the diverse and far-reaching social and economic consequences of bureaucratic policy choices, partisan or ideological commitments are not the exclusive source of complications for the conceptual ideal of bureaucratic neutrality. I argue that – in addition to the traditional political and institutional factors associated with bureaucratic decisions – executive branch officials' private financial interests bear on their decision-making with respect to matters of public policy, as well.

The necessity of bureaucratic neutrality for a properly functioning public bureaucracy has prevailed in theories of American government since the rise of the administrative state. After reviewing the pending legislation that would culminate in the creation of the National Labor Relations Board in 1935, Secretary of Labor Frances Perkins expressed her optimism that the proposed Board, intended to bring peace and justice to American industrial relations, would "ignore all propaganda in an administration and devote its entire time to the quiet unimpassioned performance of the judicial process." Despite garnering praise for its professionalism and efficiency, the NLRB has nevertheless received criticism from left and right alike that Members are agents of more powerful political actors and inflexibly partisan, with Republican Board Members generally ruling in favor of employer disputants, while their

Democratic counterparts regularly support organized labor (Flynn 2000). Here, I intend to expand the consideration of NLRB decision-making beyond these established partisan tendencies by examining the role played by Board Members' private financial interests in their approach to disputes between management and labor. I seek primarily to answer two questions: (1) Do the personal financial interests of NLRB Members affect their decision-making in industrial disputes?; and (2) What strategies does calculated behavior on the part of NLRB Members related to their private financial interests entail?

I theorize that federal bureaucrats take into account their personal financial interests when making decisions. In the case I examine, I argue that National Labor Relations Board Members will consider their own personal financial investments when deciding on claims by employer and labor disputants who come before the Board. Board Members whose investments include equity interests in firms from economic sectors involved in industrial disputes will support those adjudicative outcomes that benefit the firms in which they have substantial equity holdings. My theory suggests that Members' impulse to resolve labor disputes in the manner most favorable to their own financial portfolio should manifest in one of two ways: either (1) a long-term *precedent creation* strategy, involving the establishment or extension of Board precedent intended to shield future employer disputants in that sector from as much administrative intrusion in their workplace bargaining environment as possible; or (2) a short-term *competitor punishment* strategy in which Members support increased administrative scrutiny into organizational practices at firms from the same economic sectors as those whose stock the Members own, in order to disadvantage the competitors and reinforce the financial wellbeing of those firms in which the Member has a personal financial interest.

The specific institutional characteristics of the NLRB make it an ideal vehicle for studying the influence of personal financial interests on bureaucratic decision-making. Once a localized dispute related to an unfair labor practice complaint or an employee petition for a representation election has been decided by an administrative law judge (ALJ), regional director, or hearing officer, a three-Member panel of the full five-Member NLRB is randomly convened to consider the dispute's appeal. Random assignment of Members to cases constitutes a natural experiment within the institution itself. This allows the identification of a causal effect of individual Members' financial interests on their decision-making related to disputes in industrial relations. Natural field experiments with random assignment of elite subjects is rare in the study of the bureaucracy, and relatively uncommon for the study of political elites generally (Butler 2014; Grose 2014).

I test my argument's claims by examining the relationship between NLRB Members' votes in labor disputes from 2011 until 2014, and the Members' aggregate personal financial interest in firms from the same economic sector as the employer disputant in each case. No scholar has examined whether there is a relationship between bureaucrats' private investments and their decision-making related to public policy.

I find that NLRB Members are less likely to side with employer or management disputants given increased ownership in stock from firms in the same economic sector as the employer. These results complicate and compromise the ideal of bureaucratic neutrality by suggesting that labor relations policy has developed not only as a function of legalistic reasoning by the NLRB or ideological control by external political principals, but also as a result of sophisticated, strategic choices by Board Members to make decisions that advance their private financial interests in the resolution of industrial disputes.

Theory: Private Financial Interests Influence Bureaucratic Decision-Making

As the administrative state continues to expand, unelected officials working in the federal bureaucracy enjoy an increasing amount of influence over vital matters of public policy (Lowi 1969). While some theories of bureaucratic preferences maintain that bureaucratic decisions result from considerations that reflect administrators' specialization and professional training such as the agency's specific task environment (Wilson 1989; Warwick 1975) or internal organization (Downs 1967; Thompson 1967), there is also substantial evidence that administrative choice is constrained by political forces by which bureaucracy should theoretically be unburdened (Wood and Waterman 1994). Although bureaucratic neutrality figures among the most prominent Weberian ideals for bureaucratic organization and conduct, the suggestion that administrative decision-making falls short of this conceptual ideal is hardly new. The failure to achieve (or even approximate) neutrality might arise because bureaucratic actors make value-laden choices (Whitford 2007), or because they lack sufficient insulation from external political actors to exercise professionalized judgment independent of overhead political control (Noll 1985; Weingast and Moran 1983).

Indeed, the possibility that administrative agents exercise their discretion in order to engage in "non-neutral," value-laden decision-making probably does not represent categorical reason for alarm, depending on which values bureaucrats substitute for objective neutrality and which impetus leads them to deviate from the ideal. If a hypothetical bureaucrat faced with a policy decision encumbered by a rigid legal framework subsequently employs whatever flexibility their position affords them in the interest of some equitable outcome, the ideal of bureaucratic neutrality meets with a reasonable, if idiosyncratic, objection. Complications arise, however, when bureaucrats supplant their neutrality with

motivations that seem unrelated to concerns about inefficiency or injustice in the administrative apparatus. It is into the latter category that administrative agents making policy choices that advance their private financial interests most likely fall.

Bureaucratic actors will make regulatory and adjudicatory decisions in the financial interests of firms in which they themselves have a financial stake. The exercise of bureaucrats' private financial interests is not expected to operate to the exclusion of other potential determinants of bureaucratic preferences, including the agency's organizational norms and political control by officials in other government institutions. Many heads of administrative agencies arrive at their position as political appointments who are generally expected to promote and fulfill their appointing President's preferred policy agenda (Snyder and Weingast 2000), as opposed to career civil servants whose approach to the agency's mission primarily results from substantive expertise and professional dedication. However, I expect that in addition to these political factors, unelected bureaucrats will work to enhance their own financial interests.

While there has been some scholarly consideration of bureaucrats' motivations at an individual level independent of external political control, no prior scholar has theorized that bureaucrats may engage in policy decisions that will enhance their own personal financial interests. Others have noted that bureaucrats make policy choices to maximize their own policy preferences (Brehm and Gates 1999; McNollgast 1987), to maximize the agency's budget (Niskanen 1971), or to increase the agency's budget conditional on the agency head's policy preferences (Bertelli and Grose 2011), and prior work has suggested that members of Congress make choices based on their personal investments (Peterson and Grose 2015; Welch and Peters 1983), but no one has theorized or shown that bureaucrats implement policy in a way that advances their own financial interests. In fact, in contrast to my

argument, some suggest that political appointees have little financial interest in serving in government positions, arguing that many exit public service for financial reasons (e.g., Joyce 1990).

Bureaucrats who make regulatory or adjudicative decisions that materially further their own private financial interests might well be in part a function of bureaucracy whose organization is characterized not by the traditional ideals of specialized civil service, but by its political and ideological subservience to other institutions in government. Demonstration of this novel theory regarding the role played by private financial interests in bureaucratic decision-making would suggest that officials in the American administrative state operate at the outer limits of bureaucratic neutrality. Significant normative implications for governance and transparency may also follow, including investigation of the efficacy of federal legislation prohibiting executive or administrative decision-making to enhance personal financial well-being.

Decision-Making at the NLRB: Precedent, Partisanship, and Private Interests

In order to test the theory of private financial interests in bureaucratic decision-making, I study decisions made by the National Labor Relations Board from 2011-2014. An independent agency in the executive branch, the NLRB was initially a product of the National Labor Relations Act of 1935 (the Wagner Act), with its statutory mandate substantially modified by the Labor-Management Relations Act of 1947 (the Taft-Hartley Act) and the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act). The Board is primarily responsible for the adjudication and resolution of unfair labor practice and union representation concerns arising in the course of American labor relations (Gross 1996). The NLRB is substantively important given that its decisions have

far-reaching consequences for both labor and business. The Board is the primary adjudicatory institution responsible for the resolution of disputes arising between labor unions, employers, and both organized and unorganized workers, and is responsible for the development and refinement of its own internal body of case law and precedent related to the National Labor Relations Act (Gregory and Katz 1979).

The NLRB's fulfillment of its statutory mandate proceeds in a political environment influenced not only by procedural rules internal to the organization, but also by attempts at political control by public officials external to the Board. Previous research has suggested the possibility of external political control by the President (Delorme and Wood 1978), Congress (Moe 1985), and the judiciary (Wohlfahrt 2010). Despite its formally independent status, Board Members are readily identified as Republicans or Democrats (Cooke et al. 1995; Delorme and Wood 1978; Snyder and Weingast 2000) who generally vote in keeping with these partisan identities (Semet 2016). Moreover, an organizational norm regarding partisan makeup on the NLRB has developed in the years since the Board's creation, dictating that at any given time no more than three of the five Members should come from one party (with the party majority reserved for the party of the incumbent President). The Board's development of American labor relations policy, then, takes place subject to various internal and external political constraints. Prior studies of NLRB decision-making, however, have not considered the way in which Members' adjudicatory rulings might be influenced by their individual asset allocation.

Since the NLRB as an institution operates at the front lines of legal conflicts between labor and management regarding economic policy, the possibility that Board decisions might be related to the personal financial interests of Board members implicates serious normative concerns related to the impartiality and social bases for the NLRB's administration of U.S.

labor policy. Furthermore, it is a difficult case for a test of my theory as the Board has been regarded as "one of the most professional, efficient, and successful of government agencies" (Moe 1985). Thus, if I find evidence that Board Members' financial interests influence decisions in the case of the NLRB, it is likely that financial interests may also influence agencies that are less professionalized. Additionally, due to the format of Board adjudicatory decisions, the NLRB is often "continually forced to choose between labor and business" (Moe 1985), making it straightforward to measure Board Members' choices that could help or hurt firms, industries, or unions.

My theory suggests that, all else equal, a Board Member will rule in disputes before the NLRB in order to advance their personal financial interests. Although Congress and the Office of Government Ethics have collaboratively enacted a robust regulatory framework prohibiting executive branch officials from making decisions that redound directly to their economic benefit (18 U.S.C. § 208; 5 C.F.R. Part 2635), there remain indirect ways in which federal bureaucrats might make policy that enhances their investment portfolio. There are two countervailing observable implications of the hypothesized approach to adjudicatory decision-making at the NLRB: (1) the precedent creation strategy; and (2) the competitor punishment strategy.

The precedent creation strategy involves Board Members intentionally extending or establishing internal Board precedent in order to protect future employer disputants from firms in sectors in whose success Members themselves have a substantial financial interest. This approach is akin to the adage that a rising tide lifts all boats; by purposively capitalizing on their role in the administrative construction of industrial relations policy, Board members seek to shield those economic sectors in which they are most exposed from subsequent administrative scrutiny. The establishment of Board precedent is particularly important

since precedent is generally respected by the administrative law judges who handle the disputants' initial NLRB adjudication. Further, Board Members serve only five-year terms, so precedent creation may serve as the most enduring way for them to influence the legal environment of economic sectors in which they have personal financial interests. While this strategy assumes Board Members consider a relatively long time horizon as regards the return on their investments, Members' unique expertise in a somewhat arcane area of law and public policy assures they are capable of such sophisticated and prospective conduct, intended to guard economic sectors in which they are heavily invested from undue administrative intrusion. This motivates the *precedent creation hypothesis:*

> **Precedent Creation Hypothesis**: The **greater** a Member's personal financial investments in a certain economic sector, the **more likely** that Member will rule in favor of that sector's employer/management disputants before the NLRB.

It is possible, alternatively, that Board Members engage in a more short-term mode of strategic calculation regarding the furtherance of their private financial interests when they decide on labor disputes. In contrast to the notion of precedent creation, the competitor punishment strategy locates the optimal tactic for Board Members to advance their personal financial interests in their ability to marshal the full remedial capacity of the NLRB to sanction firms competing with those in which the Members own stock. This alternative approach suggests that the precedent creation strategy's protection of firms in "friendly" economic sectors (i.e., those in which the Member owns more stock) may prove ineffective. Namely, the probability that other firms from the same sector in which the Member is heavily invested will reap the benefits of pro-management precedent may be comparatively low. By the zero-sum terms of the competitor punishment approach, in contrast, the Member affirmatively singles out for administrative retribution those firms from sectors in which the Member owns more stock. The Board's expansive remedial authority allows it to

financially hamstring and even bankrupt companies found to have violated their employees' right to organize free from interference. This approach emphasizes the relative scarcity of economic success, and reflects suspicion that Board precedent can even be constructed in such a manner that it applies differentially or uniquely to different economic sectors. Indeed, the scope of substantive inquiry in matters before the NLRB is arguably relatively narrow in nature, both by congressional design and as befits the theoretical justification for bureaucratic organization. This substantive focus may limit the sector-specific relevance of Board precedent, rendering a precedent creation strategy ineffectual even independent of its extended time horizon. Instead, Members' immediate financial holdings in competing firms from the same sector as disputants before the Board are expected to perform favorably if competitor firms involved in labor disputes are penalized by the NLRB. This, along with the likelihood that the Board is structurally ill-fitted to craft industry-specific precedent, suggests a more aggressive approach to the advancement of private financial interests, reflected in the *competitor punishment hypothesis:*

> **Competitor Punishment Hypothesis**: The **greater** a Member's personal financial investments in a certain economic sector, the **less likely** that Member will rule in favor of that sector's employer/management disputants before the NLRB. As the Member must recuse when the case involves a firm in which they directly own stock, a vote against immediately punishes a competitor firm in the same sector.

Although the observable implications predicted by these two hypotheses appear to contradict one another, empirical support for either expectation would reflect fundamentally the same phenomenon underlying NLRB adjudication: a demonstrable tendency among Board Members to resolve industrial disputes in a way that advances their personal financial interests. The possibility that Board Members and other bureaucratic officials make policy decisions in furtherance of their private financial interests might be tempered by professional

and organizational imperatives, especially if the foremost classical rationales for vesting policymaking power in a bureaucracy rather than elected officials, including political neutrality and technical expertise, remain relevant. In addition, bureaucratic actors including Members of the NLRB may be constrained by numerous external political principals as well as judicial review. However, given the relative lack of attention paid to NLRB decisions in the general public, this creates an opportunity for their policy preferences to be affected or informed by their private interests even faced with the norms of bureaucratic neutrality.

There is a second face, then, to bureaucrats' freedom from electoral pressures, in the form of attenuated accountability to voters and citizens. Despite the existence of myriad court-enforced mechanisms of review intended to monitor bureaucratic decision-making, including judicial review of NLRB adjudications, these procedural devices tend generally to prevent only the most egregious and inexcusable agency actions. Further, they may reflect political or ideological objections to administrative policies by federal courts as much as they do a mechanism for indirect oversight of bureaucratic choices by the judiciary. Likewise, the comparatively politicized nature of agency heads in the American bureaucracy serves to distance U.S. administrative agencies in operation from the technocratic ideal. This distance might, however, additionally enable or empower administrative agents to make decisions related to public policy that are also related to their own private investments. Here, I intend to focus empirically on decision-making at the National Labor Relations Board in order to examine the effect of bureaucratic officials' private financial interests on their adjudicatory choices.

Identification Strategy: NLRB Assignment-to-Disputes as a Natural Experiment

The institutional design of the National Labor Relations Board enhances its appeal as a component in research that considers the role of personal financial interests in bureaucratic decision-making. Since 1947, the Board has been composed of five members serving staggered terms, with the party occupying the Presidency generally (but not without exception) controlling a majority of the five seats. Upon adjudication of a dispute related to either an alleged unfair labor practice or a contested representation election, brought pursuant to sections 8 and 9 of the National Labor Relations Act and reaching the Board after a localized dispute has been decided by an administrative law judge or NLRB regional director, a three-Member panel of the five-Member Board is randomly assigned to consider the appeal, subject to further judicial review by the United States Courts of Appeals (29 U.S.C. § 158-159).

The random assignment of Board Members to disputes functions as a natural field experiment. This natural experiment allows me to identify the causal role of individual Board Members' financial interests and their investment profile in their decision-making, as long as the Board Members have sufficiently distinct financial assets and investments. This identification strategy allows for a clean, exogenous measure of each Member's financial interests, which is often not possible when studying political institutions (Grose 2014).

Prior studies have considered the influence of public officials' private financial interests on their decision-making using a research design that is observational in nature, and others have utilized the natural experiment present in the Board's procedure for the assignment of Members to disputes in order to consider the effect of Members' partisan identification on either their pro-labor or pro-management tendencies. No previous scholar, however, has used a natural experimental design to investigate the role played by public

officials' personal financial interests on their decision-making. This strategy takes advantage of the NLRB procedure for random assignment of Board Members to disputes in order to support plausible causal claims about the effect of Members' personal investments on their decision-making in labor disputes.

In order to assess the claim of random assignment of NLRB Members to disputes over the time period in question, the results of a randomization check are presented in Table 1. If randomization of member assignment occurred, then I would expect to find no statistically significant difference in means in Table 1. This table compares the distribution of labor disputes across Members on Member-level covariates, and the results of a difference of means test suggest that the null hypothesis of equal means between the expected and actual dispute distributions cannot be rejected based on the covariates of gender and party.[1]

[TABLE 1 ABOUT HERE]

Data and Methods

In order to examine the influence of private financial interests on decision-making by Members of the National Labor Relations Board, I estimate a logistic regression model. To construct the dependent variable and key independent variables, I created an independent dataset containing information for all the cases decided by the NLRB from 2011-2014 (over 900 labor disputes). This original dataset includes the labor dispute *outcomes* (whether Members favored the labor or management disputant), the *industry* of the management

[1] While there is no statistically significant difference in either mean, I nevertheless include a covariate for party in models I estimate below in keeping with strong expectations about partisan decision-making on the NLRB.

[2] The industries coded were agricultural, automotive, casino, construction, education, finance, food/grocery, hotel, manufacturing, medical/pharmaceutical, media, mining, property management, retail, telecommunications, transportation, and waste management.

[3] The initial adjudication of labor disputes pursuant to the NLRA is performed by an ALJ in unfair labor practice claims (which make up about 85% of overall cases) and a regional director or hearing

disputant,[2] and the *initial disposition* of the case (whether the Member voted to overturn the underlying holding by the administrative law judge, regional director, or hearing officer).[3] Next, I gathered the financial disclosure forms for all NLRB Members from 2011-2014; most forms for the period were available online at the Executive Branch Office of Government Ethics website,[4] and additional forms were obtained by contacting an Ethics Officer at NLRB. These additional forms were given to me as hard copies by the Ethics Officer, totaling many hundreds of pages. I then transcribed and coded each Member's assets (including the type of investment, their valuation, and the economic sector of the stocks owned), and created aggregate measures of their financial holdings (including but not limited to total wealth, total stock ownership, and total stock ownership by industry). These two sets of information – detailing the circumstances and outcome of NLRB disputes, and Members' asset allocation – represent the core components of the data used in the subsequent analysis of NLRB decision-making.

The unit of analysis is Board Member-Case, and the dependent variable is the *Vote in the NLRB Dispute* (coded 0 for a pro-labor vote, 1 for a pro-management vote). This dependent variable coding has been used in studies of the effect of partisanship on NLRB outcomes (e.g., Moe 1985). The independent variable of interest is the Member's *Personal Financial Interest* in the outcome, measured as the total amount of stock owned by the Board Member during that year in the industry that the management/employer disputant operates

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[2] The industries coded were agricultural, automotive, casino, construction, education, finance, food/grocery, hotel, manufacturing, medical/pharmaceutical, media, mining, property management, retail, telecommunications, transportation, and waste management.

[3] The initial adjudication of labor disputes pursuant to the NLRA is performed by an ALJ in unfair labor practice claims (which make up about 85% of overall cases) and a regional director or hearing officer in disputes related to representation petitions. More often than not, the Board tends to defer to the factual findings and legal judgments of both (Taratoot 2013).

[4] Financial disclosure forms from recent years for executive branch nominations and appointments are accessible by submitting OGE Form 201 at http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments.

in (measured in hundreds of thousands of dollars).[5] The precedent creation hypotheses predicts that larger values of *Personal Financial Interest* will make a pro-management vote more likely, while the competitor punishment hypothesis predicts that larger values of *Personal Financial Interest* will make a pro-labor vote more likely. In the language of an experiment, this is the treatment variable, as each member is randomly assigned to a case. Of all NLRB Members who could be assigned to a case, there is random assignment of those Members' financial holdings. While stock holdings *generally* are not randomly assigned, as we are limited to what the Members' holdings already were among the universe of all Members on the Board, the gains on identification are still much greater than had I analyzed a different agency or board where there is no random assignment of agents to decisions.

The other independent variables are intended to account for the political, financial, and administrative circumstances that might bear on NLRB Members' decision-making in labor disputes.[6] Because research has demonstrated that Board Members appointed by Democratic presidents tend to favor labor while Members appointed by Republican presidents tend to favor management, I include the independent variable *Party* (coded 0 for Democrat, 1 for Republican). In order to account for the possibility that wealthier Members in general tend to favor management disputants over labor because of a pro-business bias, I include an independent variable measuring the *Total Wealth* of the Member for the year (measured in hundreds of thousands of dollars). Last, the independent variable *Administrative Law Judge (ALJ) Decision* (coded 0 for a pro-labor holding, 1 for a pro-management holding) controls for the suggestion from both scholarly literature and anecdotal evidence that Board

[5] The possible economic sectors are those listed when describing the construction of the independent variable of interest in footnote 1.

[6] These additional independent variables are needed as prior literature has demonstrated their importance. I also need to include *Party* of the Member in case financial holdings are correlated with party.

Members exhibit substantial deference to the underlying judgments by administrative law judges (or regional directors or hearing officers).

Results: NLRB Members Engage in Competitor Punishment

Table 2 displays the results of the model that estimates the likelihood of NLRB Members voting for either labor or management disputants based on the Members' personal financial interest in the disputants' industries. The results of the model confirm the expectations associated with the competitor punishment hypothesis regarding the role of Board Members' personal financial interests in their adjudicatory decision-making. The findings in Table 2 indicate that all else equal, the more stock an NLRB Member owns in a given economic sector, the less likely that Member is to vote in favor of management disputants from that sector in cases that reach the Board. The research design with random assignment of Members to cases allows for a more direct causal test of the effect of financial holdings on bureaucratic decisions than would be possible in other bureaucratic settings.

[TABLE 2 ABOUT HERE]

This result follows from the logic of the competitor punishment hypothesis, and suggests that Board Members ruling on industrial disputes apply a strategic calculus to their adjudicatory decisions by considering the industry of management disputants relative to their own asset allocation. Instead of Members being more favorably disposed to management or employer disputants from economic sectors in which those Members are more heavily invested, as advanced in the precedent creation hypothesis, Board Members systematically vote against management disputants given increased private financial exposure to the economic sector in which those employers operate. Among the most plausible explanations for why Members would choose this strategy to advance their personal financial interests by their adjudicatory decisions rather than attempting to create precedent favorable to those

economic sectors in which they are most heavily invested is that the substantive law applied by the Board does not lend itself to the establishment of industry- or sector-specific precedent. The existence of consistent sets of factual and legal circumstances that are unique to a given industry or economic sector is a necessary condition for precedent creation to be an effective means to advance Members' sector-level private financial interests. It seems, however, that the relatively narrow class of disputes that the Board is statutorily permitted to resolve – i.e., those related to the rights of private-sector employees to organize and collectively bargain – does not give rise to circumstances that are consistently unique to one economic sector or the other. As a result, precedent creation proves a suboptimal strategy for the promotion of industry-level interests.

The expected difference in Board Members' likelihood of supporting labor versus management disputants given increasing levels of personal financial interest is presented in Figure 1. The figure indicates that all else equal, the probability of a Board Member voting against a management disputant decreases from just over 20 percent, if a Member has zero equity investments in the economic sector in which the management disputant operates, to under 4%, if the Member has $1,000,000 invested in equities from that sector.

This evidence suggests that Board Members with substantial holdings in a firm or firms that is a competitor to a firm before the NLRB actively punish that firm by deciding against the competitor. Some NLRB decisions result in severe penalties and fines that have in the past caused some firms to go bankrupt or to face severe capital restrictions for a period of time. These negative NLRB decisions by Board Members against firms competing with industries in which they have substantial monetary holdings help competitor firms by increasing market share and decreasing competition. Thus, the Board Members' short-term financial interests are boosted by these negative decisions punishing competitors.

[FIGURE 1 ABOUT HERE]

The results in Table 2 also indicate, as expected and as previously demonstrated, that Democratic Board Members show a pronounced tendency to favor labor disputants, while Republican Board Members are significantly more likely to vote on the side of management. Likewise, Board Members tend to defer to the underlying decisions of administrative law judges, regional directors, and hearing officers, regardless whether the preceding outcome favored labor or management.

The results in Table 2 are robust to an important alternative specification. As presented in the text, the results in Table 1 are based on a logistic regression model that analyzes all industrial relations disputes coming before the NLRB from 2011 through 2014 (i.e., both unfair labor practice and union representation claims). Some prior research, however, has limited the empirical analysis of decision-making on the Board to Members' votes in unfair labor practice claims alone due to the notion that the ideological preference for labor or management is more clear-cut in such disputes as compared to the more doctrinally obscure representation petitions (see, e.g., Bodah and Schneider 2012). The results of an additional logistic regression model with the same dependent and independent variables but with the sample restricted to unfair labor practice disputes are presented in Table A1 in the Appendix, and the original findings from Table 1 are robust to the exclusion of representation disputes. Additionally, as is evident from the predicted probabilities of supporting management disputants given varying levels of personal financial interests presented in Figure 1, the results indirectly underscore the common claim that the NLRB is a fundamentally pro-labor institution, as management disputants prevailed in only about a quarter of the disputes that reached the Board during the time period in question. Further, given the established partisan tendencies of Democratic and Republican Board Members to

support labor and management disputants, respectively, the preponderantly pro-labor outcomes at the NLRB from 2011-2014 are likely also attributable to the exclusive incidence of Democratic-majority Boards during the period under consideration.

Discussion and Conclusion

I theorized that bureaucrats – especially political appointees – are likely to consider their own personal financial interests when making policy decisions. In addition to the influence of political control and their own policy preferences, their financial interests can shape and influence bureaucratic decision-making. In the case of the NLRB, Board Members were more likely to vote against a firm in which the Member held substantial dollar amounts of stock in competitor firms in the same sectors. This implies that Board Members' personal financial interests drove decisions to go against management when such a decision harmed a competitor firm. Such a decision with significant punishments to the firm is likely to help the competitor firms, thus having the potential to increase the competitor firms' stock prices – and thus the NLRB Members' bottom lines.

The findings also suggest several potential avenues for future inquiry that take into account public officials' private financial interests. First, and more narrowly, additional consideration of decision-making at the NLRB itself may be instructive in more precisely identifying the circumstances in which Board Members vote based on their personal asset allocation, as well as more clearly understanding why Members' evidently self-regarding choices manifest in competitor punishment as opposed to precedent creation.[7] Future

[7] Ideally, additional investigation into the role of private financial interests in decision-making at the NLRB would also include greater longitudinal variation, particularly to control for changes in the nature of external political influence on the Board; unfortunately, however, the Office of Government Ethics General Records Schedule 2.8 item 2 demands that executive officials' personal financial disclosure forms be destroyed six years after their submission unless the forms are necessary

research of this type could incorporate additional measures and conceptions of what it means for an NLRB Member to vote either "for labor" or "for management" by contemplating the complicated remedial framework of the National Labor Relations Act (NLRA). It seems possible that not all punishments are created equal, and that the binary conception of pro-labor and pro-management rulings compresses important gradations in both the type and severity of NLRA remedies. In other words, in addition to the results presented here, Board Members may also choose to apply remedial sanctions differentially in magnitude across economic sectors based on their own personal investments.

Second, my future work will take seriously the considerable degree of institutional variation across agencies in the American federal bureaucracy in order to begin developing what may eventually become a unified theory of the conditions under which administrative officials make decisions based on their personal financial interests. It may be that certain agencies and types of agencies enable bureaucrats to more easily "feather the nest," while others erect more substantial institutional constraints on the exercise of private financial interests in administrative decision-making. Potential axes of differentiation across the bureaucracy include but are not limited to the nature of the agency's substantive mission, the scope of the agency's regulatory or adjudicatory authority, and the agency's relative independence from external political influences. Future research must confront not only whether certain classes of agencies tend to institutionally constrain decision-making based on personal financial interests, but also whether some agencies or types of agencies might attract individuals who are more apt than others to make policy decisions based on their private investments. Addressing such questions should contribute to the development of a fully specified theory of administrative decision-making related to bureaucrats' personal

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for an ongoing investigation, so further historical inquiry into these questions will encounter practical limitations.

finances that accounts for institutional diversity as well as other behavioral tendencies and characteristics of administrative agents.

The results presented here emphasize the importance of carefully analyzing the political and legal environment of bureaucratic decision-making in order to supplement the conventional wisdom regarding the determinants of administrative choices. As a result of the attenuated connection between the federal bureaucracy and electoral politics on the one hand, and the American bureaucracy's comparatively politicized nature on the other, prior scholarly consideration of decision-making in American public administration has been (perhaps justifiably) preoccupied with the possibility that administrative actors are furthering a political or ideological agenda. That claim's importance notwithstanding, this study represents an attempt to broaden the analytic scope as regards how and why bureaucrats make decisions on crucial matters of public policy. The finding that public officials in the federal bureaucracy decide industrial relations disputes in a way that may be intended to put the marketplace rivals of those firms in which the bureaucrats are most invested at a competitive disadvantage suggests a need to critically reconsider both the nature of bureaucratic neutrality and the scope of bureaucratic discretion in a system of government where administrative agencies wield an expansive amount of political power.

<u>Table 1</u>: Randomization Test – Randomization of Assignment to Disputes on NLRB			
<u>Covariates</u>	**Percent of NLRB Membership** (*Expected* Assignment to Disputes)	**Percent of NLRB Members Assigned** (*Actual* Assignment to Disputes)	**Difference of Means Test** (p-value)
Democrat	60%	67.0%	0.756
Female	20%	21.2%	0.953

<u>Table 2</u>: Personal Financial Interests and Decision-making at the NLRB	
Dependent Variable: *Vote in the NLRB Dispute (0 - pro-labor; 1- pro-management)*	
Independent Variables	Coefficient (Standard error)
Personal Financial Interest	-0.126 (0.076)*
Total Wealth	0.003 (0.003)
Party	1.823 (0.166)***
ALJ Decision	1.856 (0.136)***
Constant	-4.241 (0.226)
Pseudo-R^2	0.194
N	1757
***$p \leq 0.01$; **$p \leq 0.05$; *$p \leq 0.10$ (one-tailed tests for all except *Personal Financial Interest*).	

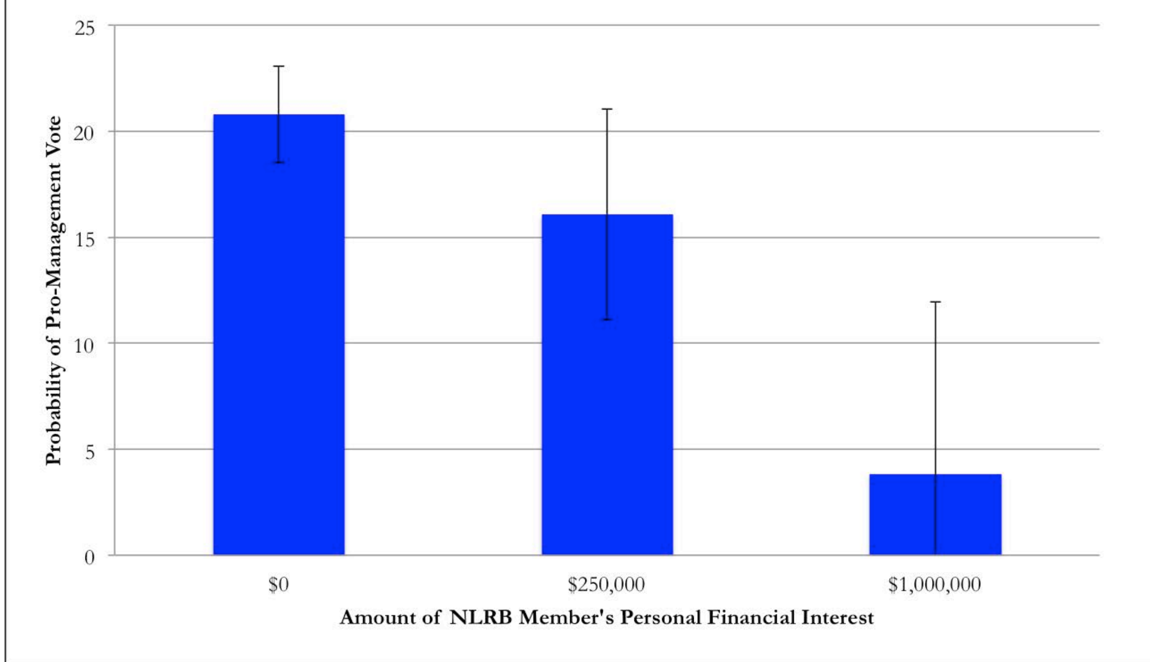
Figure 1: NLRB Members' Personal Financial Interests
and Adjudicatory Decision-Making
25
20
15
10
5
0
Probability of Pro-Management Vote
$0
$250,000
$1,000,000
Amount of NLRB Member's Personal Financial Interest

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Appendix

On page 18 of the text, I indicate that I estimate a different version of the logistic regression model from the paper where the sample is restricted to only unfair labor practice disputes decided by the National Labor Relations Board from 2011-2014. The dependent variable and independent variables all remain exactly the same. The results of a logistic regression model where the sample is restricted to unfair labor practice claims are presented in the following Table (A1). The results remain substantially the same as the model included in the paper, where the sample includes both unfair labor practice claims as well as representation election disputes.

Table A1

Personal Financial Interests and Decision-making at the NLRB, 2011-2014

(Unfair labor practice disputes only)

Dependent Variable: Vote in the NLRB Dispute (0 - pro-labor; 1 - pro-management)

Independent Variables	**Model A1**: Unfair labor practice disputes only Coefficient (Standard Error)
Personal Financial Interest	-0.148 (0.090)*
Total Wealth	0.004 (0.004)
Party	1.814 (0.208)***
ALJ Decision	1.880 (0.171)***
Constant	-4.360 (0.289)
Pseudo-R^2	0.598
N	1153

***$p \leq 0.01$; **$p \leq 0.05$; *$p \leq 0.10$ (one-tailed tests for all except Personal Financial Interest).