States on Appeal: An Examination of State Litigants before the U.S. Circuit Court of Appeals

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Introduction
This study furthers the understanding of the relationship between states and the federal judiciary by examining state litigants success on the U.S. Circuit Court of Appeals level. It is vital to understand how states perform on this level due to the fact that when states are party to a federal court case there are typically high stakes involved for the people of that state, other states, and the nation more broadly. Federal cases in which states are a party are in the unique position to alter or advance the legal precedent in such criminal rights, economic activity, or other highly salient moral issues.

Background and Objectives
The United States is divided into 94 federal judicial districts or U.S. District Courts. These are the federal trial courts. These 94 district courts are organized into 12 regional circuits, each of which has a United States Court of Appeals. A court of appeals hears appeals directly from the district courts located within its circuit. A majority of appeals are heard on the circuit court level with very few actually ending up before the U.S. Supreme Court. Thus, it is vital to understand decision making on the circuit court level. This research aims to bridge a gap in the literature, which often focuses exclusively on the U.S. Supreme Court level.

Methods
Data was collected from 155 cases in a twenty eight year timespan from 1980 to 2008 to examine how the U.S. Court of Appeals for the Tenth Circuit ruled when one of states in the Tenth Circuit was a party, either as an appellant or a respondent. Due to circuit courts hearing cases in three judge panels, the scope of the study included 478 different independent judicial decisions.

The states that make up the Tenth Circuit of Appeals include: Oklahoma, Kansas, Colorado, Wyoming, Utah, and New Mexico. Details gathered for each case included the following:
1. The federal judges who presided over the case
2. The party of the president who appointed the judge
3. Each judge’s ideology measure or GHP Score
4. A classification of the type of case
5. If the state involved had a state solicitor general office

The ideology measure of each justice came from the Giles, Hettinger, and Peppers (GHP) Scores for U.S. Court of Appeals Judges. GHP Scores work off several basic assumptions. The first assumption is that those who participate in the appointment of federal judges seek to appoint judges who share their policy preferences and political ideology. Second, a strong model of senatorial courtesy prevails in the appointment process of the circuit judges meaning that the ideology of the home state senator is reflected in the ideology of the circuit judge who is confirmed in the senate.

The institution of state solicitor general offices is a growing trend among states. The states within the Tenth Circuit who have state solicitor general offices include Oklahoma, Utah, Colorado, and Kansas, Wyoming and New Mexico do not.

Results
The most significant predictor of a circuit judge’s decision was ideology. The p-value for GHP Scores in Table 2, which is .003, and Political Parties in Table 1, which is .007, indicate this. Controlling for both the political party of the president who appointed the circuit judge and the GHP Score, one is able to set clear evidence of the influence of ideology on judicial decisions regarding state litigants on the circuit court level.

The logit regression model that is graphically represented in Figure 1 supports the notion put forth in Hypothesis I that conservative circuit judges are more likely to rule in favor of state litigants. Most liberal judges had a probability of voting for a state .49% of the time, whereas most conservative judges had a probability of voting for a state .70% of the time. Seeing the degree of conservative circuit judge’s support for state litigants provides additional support that a shift away from nation-centered federalism to state-centered federalism during the period under study occurred.

Conclusion
This study helps further the understanding of factors that lead to state litigant success on the U.S. Circuit Court level. Chief among these factors is the ideology of the circuit judge deciding the case. Conservative circuit judges are much more likely than liberal circuit judges to rule in favor of state litigants.

No support was found that state solicitor general offices increase litigation outcomes for states, however it is of interest to the author to see if this finding would be consistent in a study of state litigation performance in all 12 federal circuits.

References

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