



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

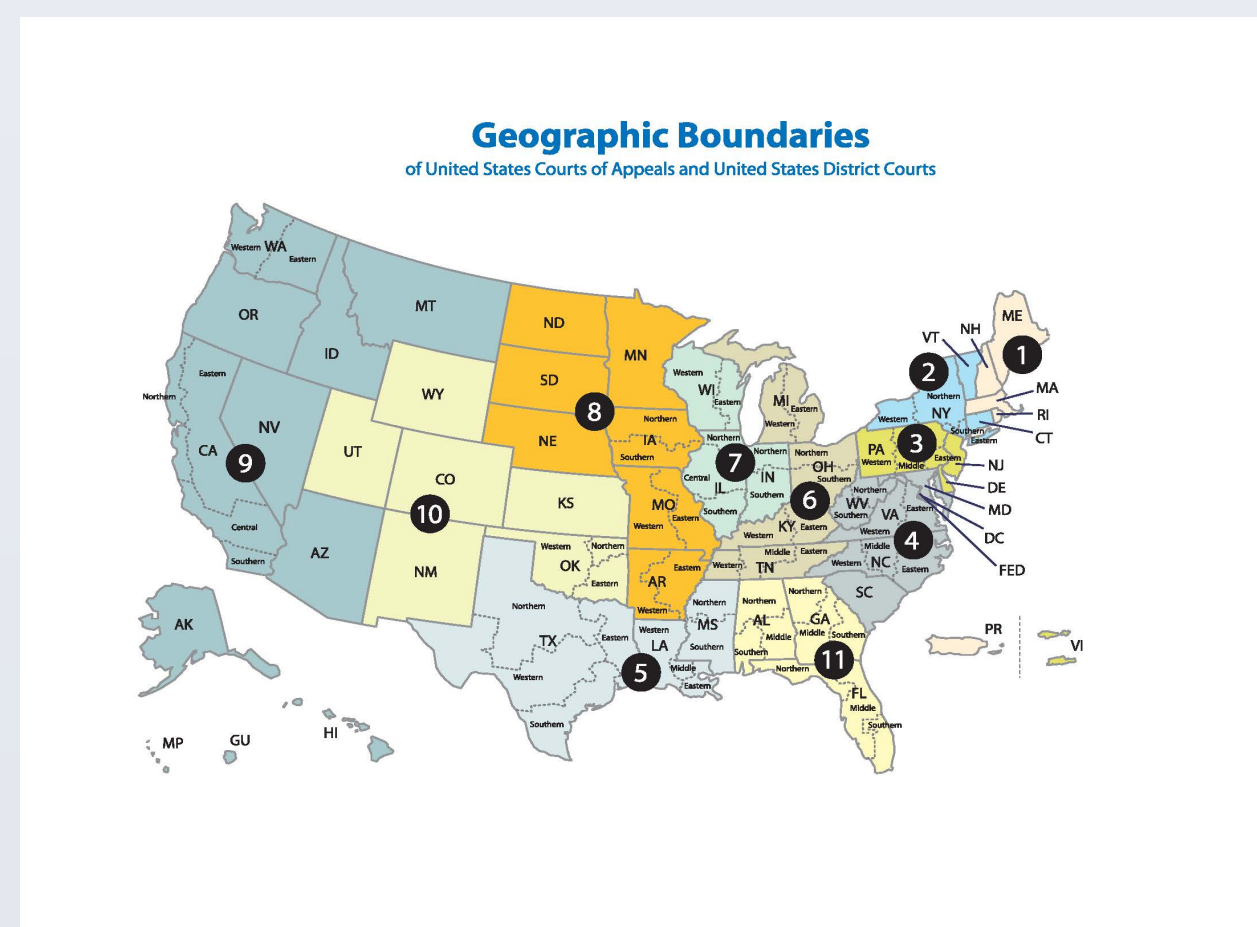
Jedidiah A. Gibson
Oklahoma State University

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 areas as 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.



The objective of this research is to explore two different factors that influence state litigant outcomes on the federal court level. Scholars have noted that starting in the 1980's the United States experienced a shift from nation-centered federalism to state-centered federalism. Movement towards state centered federalism suggest that conservative circuit court judges would be more likely to rule in favor of state litigants during the period under study.

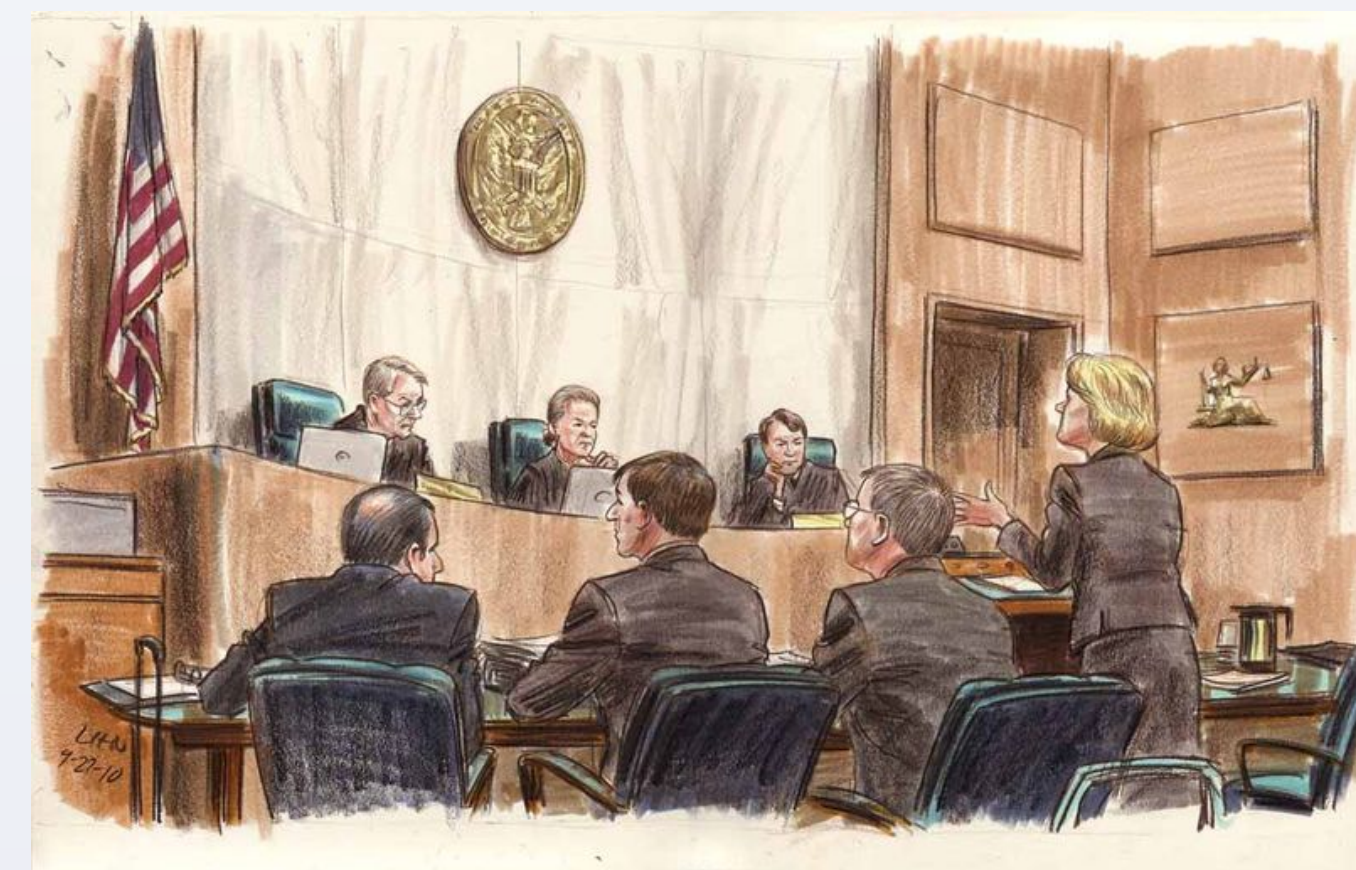
Hypothesis I: Conservative circuit judges are more likely to rule in favor of state litigants.

Additionally, there is a strong body of evidence suggesting that the U.S. Solicitor General, the chief appellate lawyer for the government, has a great deal of influence before the U.S. Supreme Court. Many states have started to implement state solicitor general offices that function quite similarly as their federal counterparts. Prior to this study, there were no empirical studies that explored the effectiveness of state solicitor general offices on the U.S. Circuit Court level.

Hypothesis II: State solicitor general offices will enhance the probability that a circuit judge will rule in favor of a state litigant.

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.

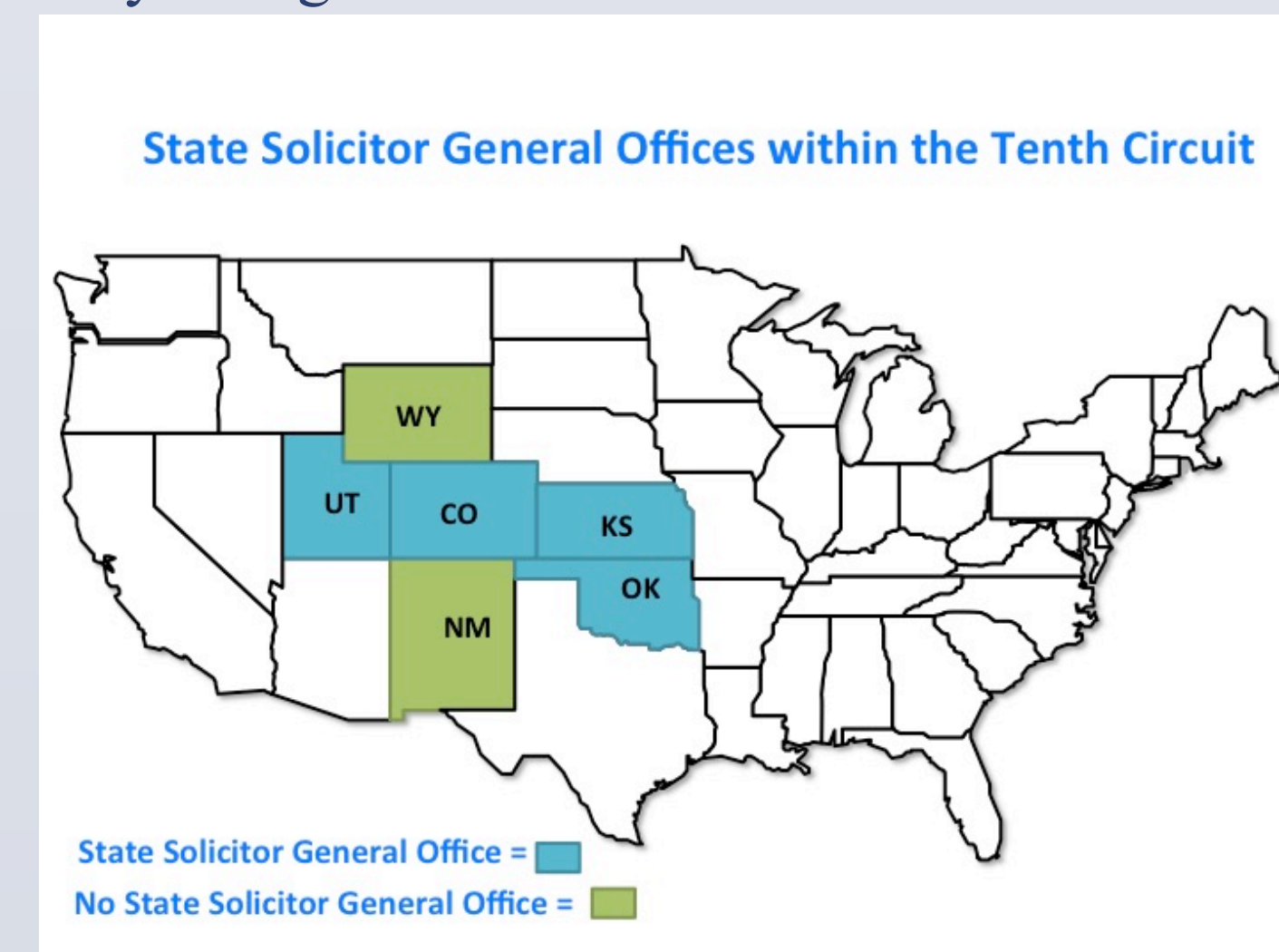


The states that make up the Tenth Circuit of Appeals include: Oklahoma, Kansas, Colorado, Wyoming, Utah, and New Mexico. Details gathered for each case included the following.

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 see 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.

Table 1

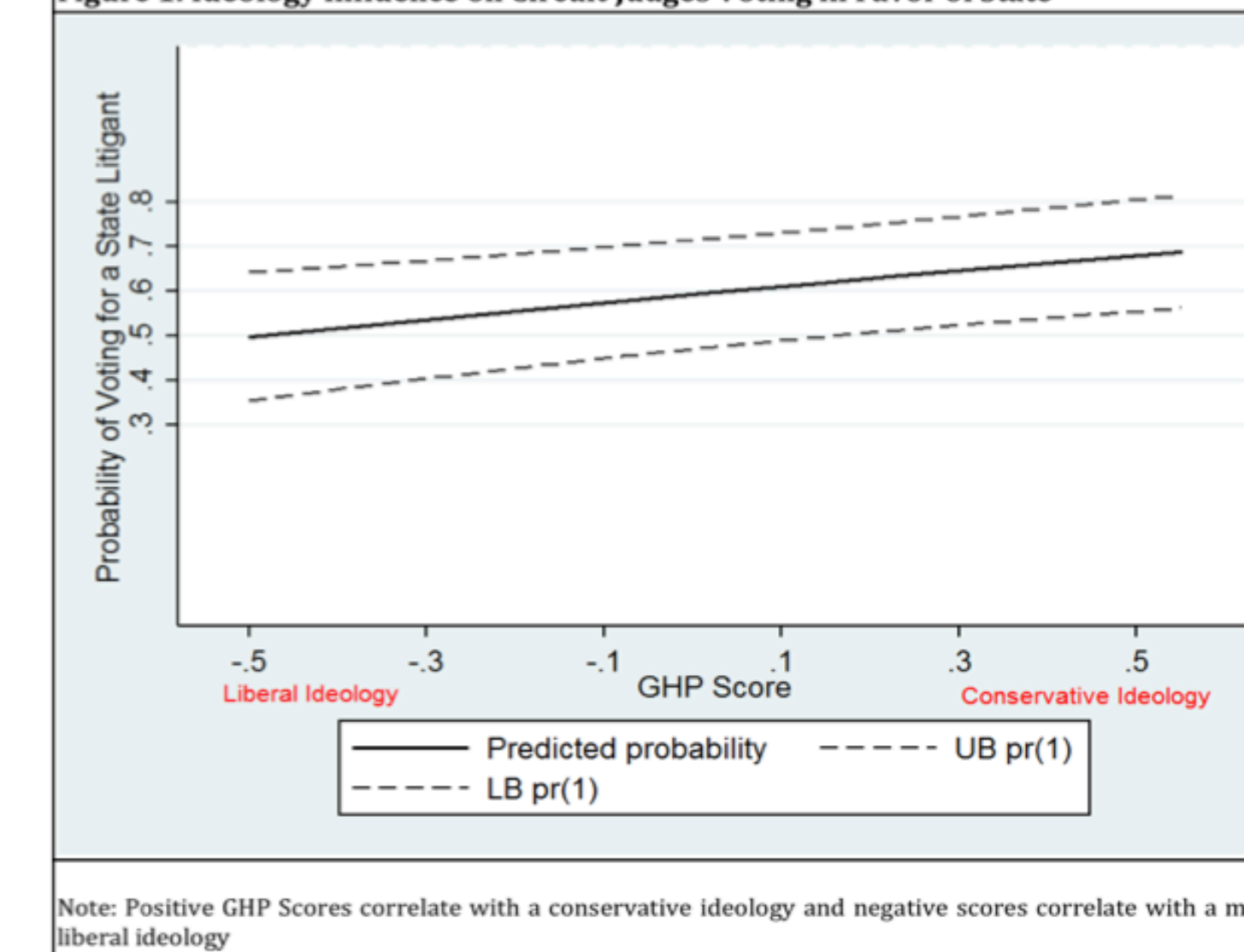
Judicial Decision	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
Political Party	0.0062049	0.0020595	3.01	0.003	0.0021685 0.0102414
Solicitor General	-0.2829232	0.2226583	-1.27	0.204	-0.7193253 0.1534793
Federalism	-0.7968222	0.3902751	-2.04	0.041	-1.561757 -0.031907
Criminal Law	0.6257028	0.3051149	2.05	0.040	0.0276886 1.2237176
Other	-0.4302435	0.2852675	-1.51	0.132	-0.9893576 0.1288706
Constitutional Law	-0.5566732	0.4014198	-1.39	0.166	-1.343442 0.2300952

Table 2

Judicial Decision	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
GHP Score	0.7622180	0.2018381	2.70	0.007	0.2098255 1.3146100
Solicitor General	-0.3044499	0.221782	-1.37	0.170	-0.7391343 0.1302345
Federalism	-0.7724885	0.3892253	-1.98	0.047	-1.5353560 -0.0096210
Criminal Law	0.6223199	0.3043495	2.04	0.041	0.0258059 1.2188340
Other	-0.4111730	0.2841833	-1.45	0.148	-0.961621 0.1458162
Constitutional Law	0.3758549	0.2581841	1.46	0.145	-0.301767 0.8818865

The results from controlling for specific issue areas showed that circuit judges were more likely to vote for states in criminal law and federalism cases out of all the issues areas that were controlled for in this study. Federalism cases were cases that involved state governments suing or being sued by the federal government.

Figure 1: Ideology Influence on Circuit Judges Voting in Favor of State



No significant evidence was found that having a state solicitor general office enhanced the probability that a circuit judge would vote in favor of state litigant. Thus, there was no support found for *Hypotheses II*. This may be due to the limited scope of the study or to the relatively new trend of having solicitor general offices on the state level

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

Broscheid, Andreas. 2011. "Comparing Circuits: Are Some U.S. Courts of Appeals More Liberal or Conservative Than Others?" *Law & Society Review* 45 (1).

Epstein, Lee, and Karen O'Connor. 1998. "States and the U.S. Supreme Court: An Examination of Litigation Outcomes." *Social Science Quarterly* 661-673.

Galanter, Marc. 1974. "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change." *Law and Society* 96-160.

Giles, Micheal W, Virginia A Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54 (3): 623-641.

Johnson, Timothy R, Paul J Wahlbeck, and James F Spriggs . 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review* 100 (1): 99-1113.

Kearney, Richard C., and Reginald S. Sheehan . 1992. "Supreme Court Decision Making: The Impact of Court Composition on State and Local Government Litigation." *The Journal of Politics* 54 (4): 1008-1025.

Nathan, Richard P. 1989. "The Role of the States in American Federalism." In *In The State of the States*, by Carl E. Van Horn. Washington D.C: Congressional Quarterly Press .

Page, Peter. 2008. "State solicitor general appointments open doors for appellate practitioners." *The National Law Journal*.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties before the Supreme Court." *American Political Science Review* 464-471.

Songer, Donald R, and Reginald S Sheehan . 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36 (1): 235-258.

Ulmer, S. Sidney. 1985. "Governmental Litigants, Underdogs, and Civil Liberties in the Supreme Court: 1903-1968 Terms." *The Journal of Politics* 47 (3): 899-909.

Acknowledgments

I would like to thank Dr. Eve M. Ringsmuth, my facility mentor. Her expertise and support throughout the project was invaluable and without her this project would not have been possible. I would also like to thank the Lew Wentz Foundation for their generous financial support that allowed me to get involved in undergraduate research. Lastly, I would like to thank my wife Hannah for her support of this project and for listening to all of my research ideas until I finally settled on this one.