

# An Analysis on Eminent Domain and the Supreme Court

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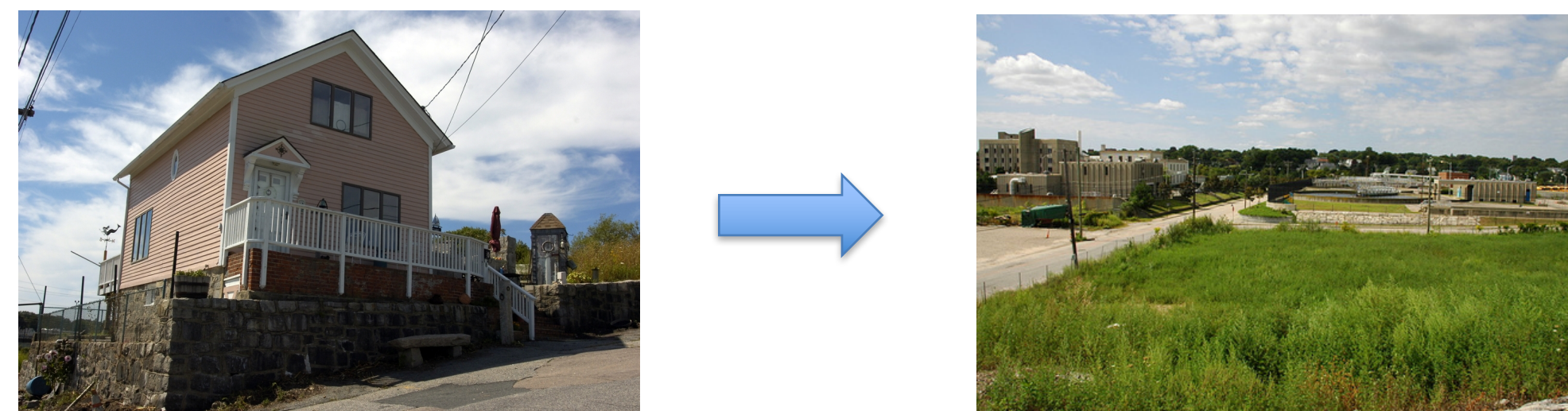
## Introduction

**Eminent Domain** - The right of a government to take private property for public use so long as compensation is made to the property owner.

### *Kelo v. City of New London (2005)*

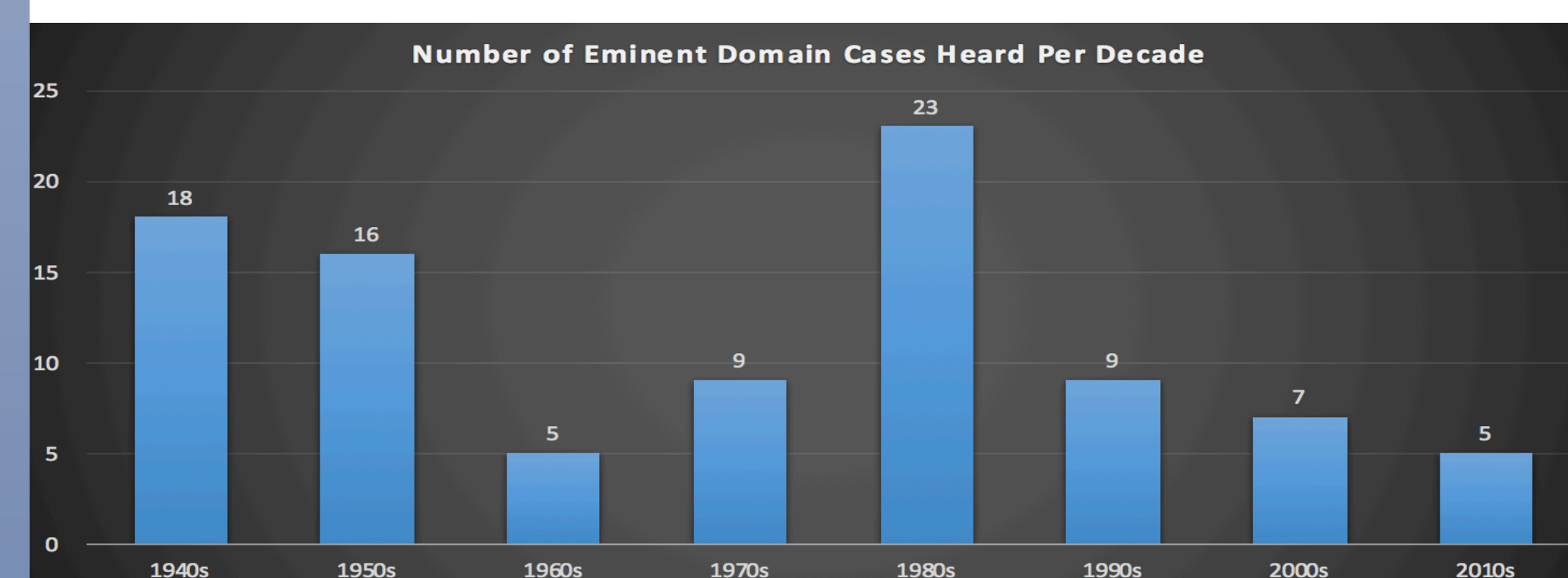
#### Case Facts:

- The city of New London seized private property and compensated the owner but sold it to a private real estate developer.
- With a 5-4 vote, the Supreme Court voted in favor of New London and stated that the potential economic benefit of the real estate project would be a form of public use.
- Public use was reinterpreted to instead mean "public purpose".
- The developer's plans later fell through which led to the project failing. To this day, the Kelo property is an empty wasteland which has not fulfilled its duty of public purpose.



## Aim

**Goal:** The Supreme Court has heard 100 eminent domain cases in the past 60 years therefore the goal is to find a systematic description of what influences how the Court decides on these particular cases.



### The Two Phases of Analysis

#### 1. The Certiorari Stage

- Why is the Supreme Court selecting certain eminent domain petitions over others for further review?

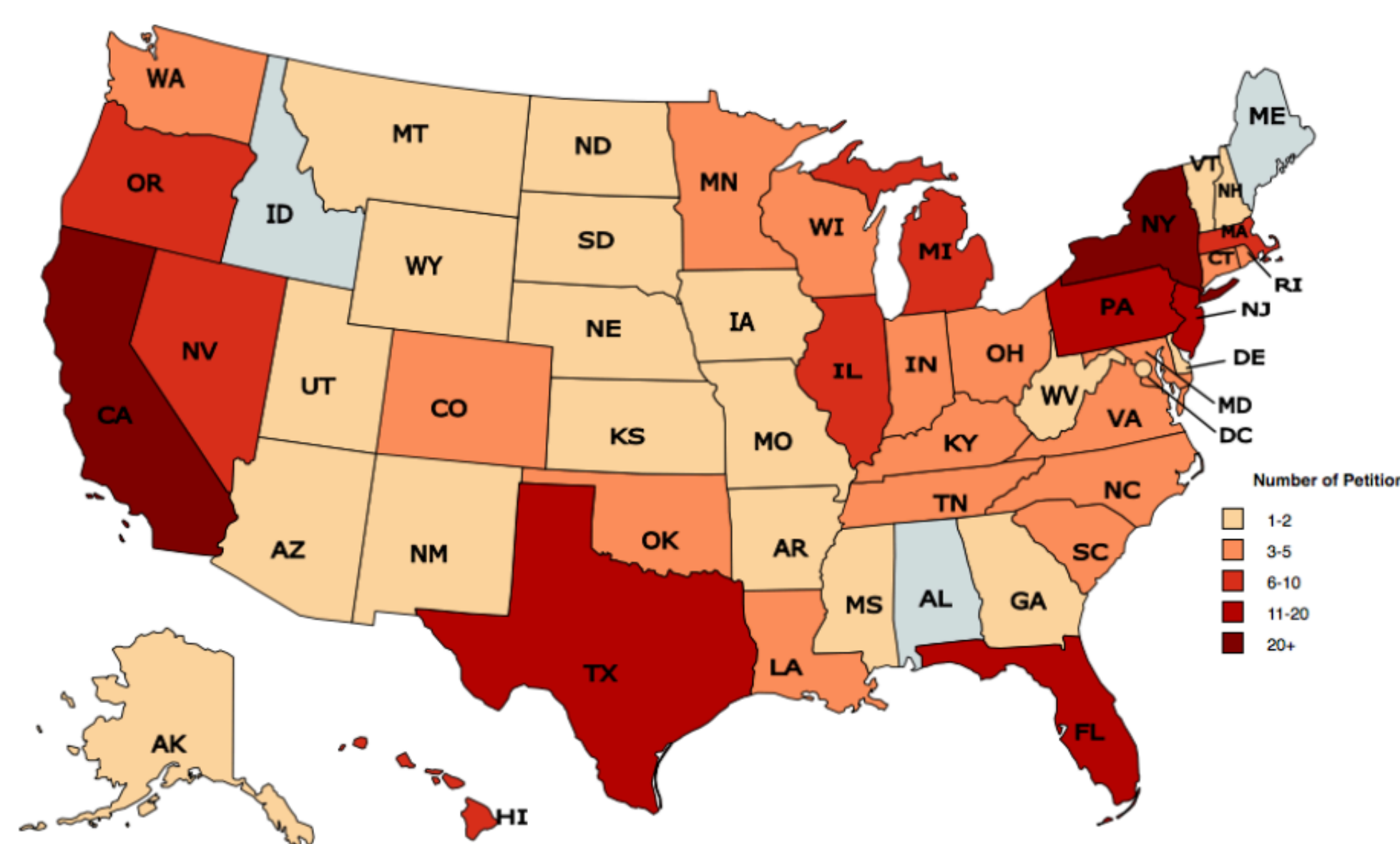
#### 2. The Merit Stage

- What factors influence who wins at the Supreme Court?

## Method and Research Design

### The Certiorari Stage

- 235 eminent domain petitions** from 1984-2015 sampled from Westlaw. A **firth logistic regression** is used to model certiorari votes.
- Dependent Variable** – Petition is granted a writ
- Independent Variables:**
  - Supreme Court Ideology
  - Lower Court Winning Party (Public or Private)
  - Lower Court Disagreement
  - The Parties Involved in the Case

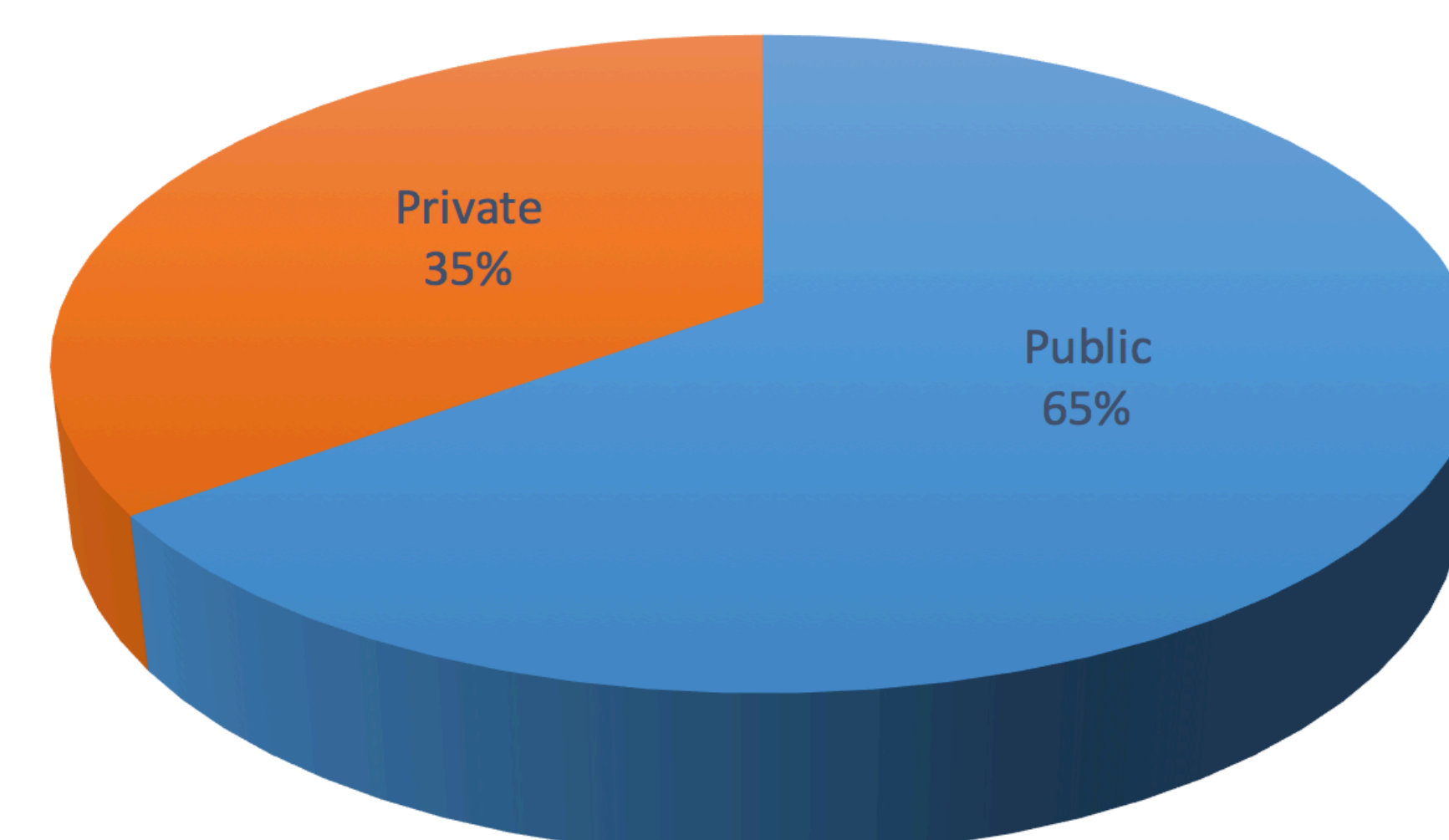


Number of petitions submitted per state from 1984-2015

### The Merit Stage

- 91 eminent domain cases** that the Supreme Court heard from 1946-2014 are analyzed. A **logistic regression** is used to model whether a taking is allowed in the case.
- Dependent Variable** – Whether the government or private entity wins at the Supreme Court
- Independent Variables:**
  - Supreme Court Ideology
  - Lower Court Winning Party (Public or Private)
  - Lower Court Disagreement
  - The Parties Involved in the Case

Winning Party at the Supreme Court



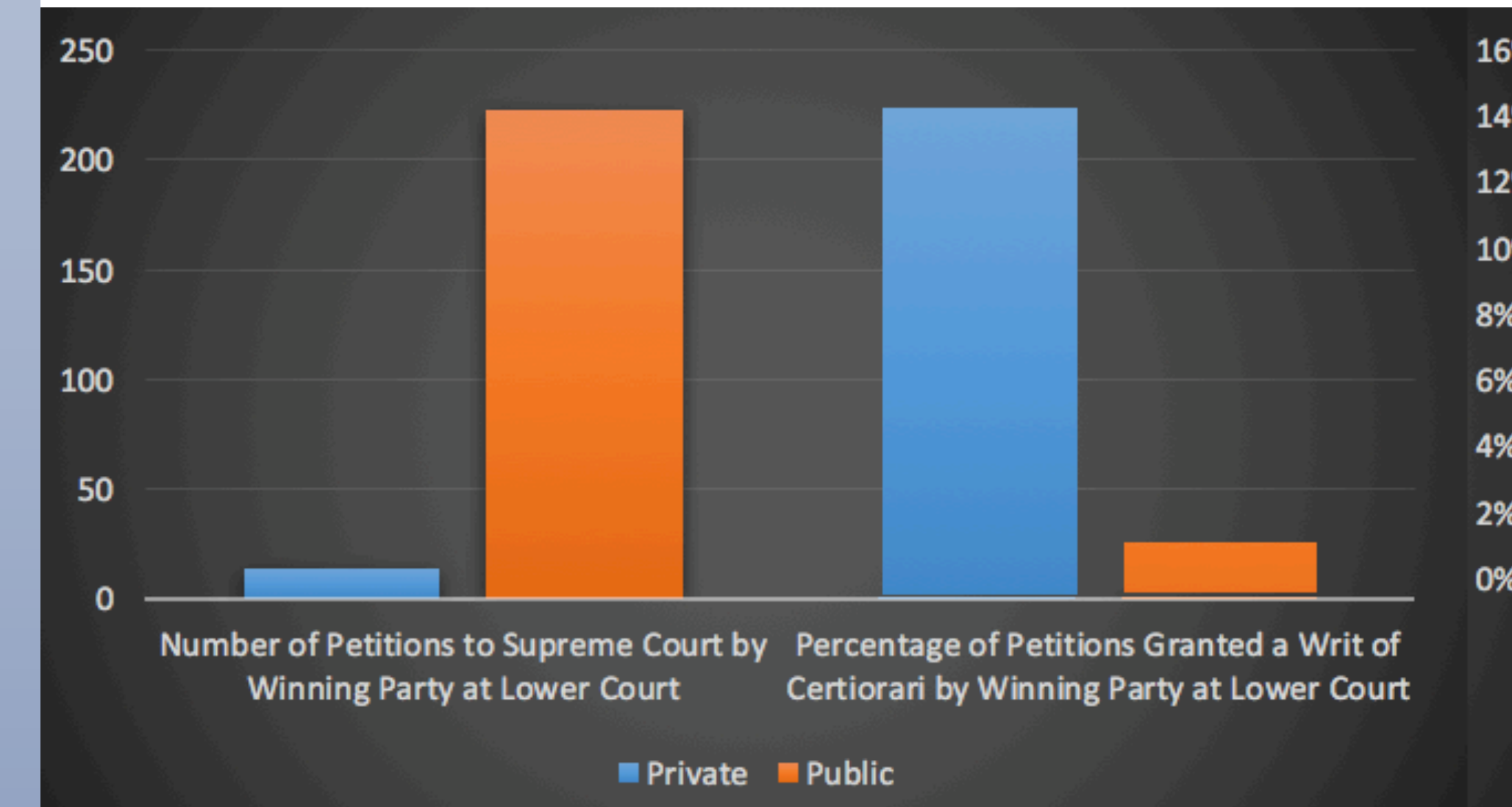
## Results

### The Certiorari Stage

Do the Independent Variables Increase the Likelihood of a Petition Being Granted a Writ of Certiorari?

Variable	Effect
Supreme Court Ideology**	↑
Private Party Wins at the Lower Court***	↑
Lower Court Disagreement*	↑
The Parties Involved in the Case* (Business Being Involved as Opposed to an Individual)	↑

\*\*\* = Significant at the 95% Confidence Level  
\*\* = Significant at the 90% Confidence Level  
\* = Significant at the 85% Confidence Level



### The Merit Stage

Do the Independent Variables Increase the Likelihood That the Government Wins at the Supreme Court?

Variable	Effect
Supreme Court Ideology	⊘
Lower Court Winning Party*	↑
Lower Court Disagreement	⊘
The Parties Involved in the Case	⊘

\* = Significant at the 85% Confidence Level  
⊘ = Not Significant at a Conventional Confidence Level

## Summary

- Liberal Courts are more likely to bring up eminent domain cases than Conservative Courts.
- When a private party wins at the lower court, the Supreme Court is significantly more likely to grant a writ of certiorari to further review the case indicating that they are prone to reverse the decision and side with the government.
- Likely to grant a writ when the lower court is in conflict on a particular case
- The parties involved in the case may matter when receiving a writ of certiorari but do not statistically contribute during the merit stage decision.
- Some significance indicating that whomever wins at the lower court affects the winning party at the Supreme Court.
- Ideology, lower court disagreement, and the parties involved in the case are not significant at the merit stage.

## Conclusions

- The Supreme Court is more likely to allow the government to take private property.
- There is evidence that the Supreme Court seeks lower court cases which vote against the public entity in order to reverse the decision at the merit stage.
- Ideology, which is traditionally determinative of Supreme Court decisions, is significant at the certiorari stage but not the merit stage.
- These results indicate that the Supreme Court's role in deciding these cases, for the most part, is to uphold the government's power of eminent domain.

## Acknowledgments

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